Personal Pension Schemes Guidance Notes

(Including Stakeholder Pension Schemes)

Issued by Inland Revenue SPSS (Nottingham)
an Executive Office of the Inland Revenue

Inland Revenue SPSS (Nottingham)
Yorke House
PO Box 62
Castle Meadow Road
Nottingham
NG2 1BG

Tel.
0115 974 1777
Fax.
0115 974 1480

These notes should be read in conjunction with "Inland Revenue SPSS (Nottingham) Updates", which periodically amend or expand upon them.

Crown Copyright 2000
The text of this document may be freely reproduced provided the source is acknowledged.
Contents

Introductory Notes
Part 1: Introduction
Part 2: Establishment of Schemes
Part 3: Eligibility
Part 4: Contributions
Part 5A: Method of Giving Tax Relief on Contributions - up to 5 April 2001
Part 5B: Method of Giving Tax Relief on Contributions - from 6 April 2001
Part 6A: Carry Back of Contributions - up to 5 April 2001
Part 6B: Carry Back of Contributions - from 6 April 2001
Part 7A: Carry Forward of Unused Relief - up to 5 April 2001
Part 7B: Carry Forward of Unused Relief - from 6 April 2001
Part 8: Commencement of Benefits
Part 9: Member's Benefits
Part 10: Death Benefits
Part 11: Personal Pension Scheme Investments Including Self-Invested Personal Pensions (SIPPs)
Part 12: Transfers – from 6 April 2001
Part 13: Application for Tax Approval
Part 14A: Scheme Administration - up to 5 April 2001
Part 14B: Scheme Administration - from 6 April 2001
Part 15A: Tax Repayment Claims by Scheme Administrators - contributions before 6 April 2001
Part 15B: Tax Repayment Claims by Scheme Administrators - contributions after 5 April 2001
Part 16: The Inland Revenue Inspection
Part 17A: Returns of Information - up to 5 April 2001
Part 17B: Returns of Information - from 6 April 2001
Part 18: Refunds of Contributions
Part 19: Tax Treatment of Approved Schemes
Part 20: Discontinuance of Schemes
Part 21: Withdrawal of Tax Approval
Part 22A: Contracting out of the State Second Pension: Appropriate Personal Pension Stakeholder Pension Schemes
Part 22B: Contracting out of the State Second Pension: Contracted-out Money Purchase Stakeholder Pension Schemes
Part 23: Conversion of Chapter I Scheme to Chapter IV Scheme
Part 24: Registration of Stakeholder Pension Schemes with Opra
Appendix 1: Glossary
Appendix 2: Relevant Earnings
Appendix 3: Non Relevant Earnings
Appendix 4 (withdrawn)
Appendix 5 (withdrawn)
Appendix 6: CPC
Appendix 7 (withdrawn)
Appendix 8 (withdrawn)
Appendix 8A (withdrawn)
Appendix 8B (withdrawn)
Appendix 8C (withdrawn)
Appendix 8D (withdrawn)
Appendix 8E (withdrawn)
Appendix 9: Connected Persons
Appendix 10: Early Pension Ages
Appendix 11: Cap Concurrent Employments
Appendix 12: Interaction of Retirement Annuity Relief & Personal Pension Relief
Appendix 13: Form PP10 (not to be used after 5 April 2001)
Appendix 14: Form PP 14
Appendix 15 (withdrawn)
Appendix 16 (withdrawn)
Appendix 17: Form PP 43 (not to be used after 5 April 2001)
Appendix 18 : Audit and Audit Objectives
Appendix 19 : Member's Application Checklist
Appendix 20 : Checklist for transfer-in application form
Appendix 21 : Appeals against contracting-out decisions on Stakeholder Pension schemes
Appendix 22 : Transfers from Personal Pension Schemes to Overseas Schemes
Appendix 23 : Checklist for transfers in drawdown
Appendix 24
Appendix 25
Appendix 26 : SIB Review of Transfers and Opt Outs : Provision of Redress For Mis-Selling
Index
Note 1 - Occasional Pensions Updates are used to amplify or amend this manual. Where such amendments are announced, substantive changes can be identified in the text by background shading or high-lighting. Revised headings are not normally highlighted. This highlighting is removed when a new set of amendments is announced. However, where a change consists of a large addition (such as a new appendix) and the Update clearly indicates that the entire section is new, the new content may at times be introduced without highlighting in the interests of legibility.
1.1 The legislation governing the tax treatment of personal pension schemes is contained in Chapter IV Part XIV of the Income and Corporation Taxes Act 1988 as amended by subsequent Finance Acts. These guidance notes describe the practice of the Inland Revenue in approving schemes under that legislation. They also describe the tax consequences of approval.

Stakeholder pension schemes are a new type of low-cost personal pension scheme, which may accept contributions from 6 April 2001. Chapter IV Part XIV ICTA 1988 has been amended to give effect to the changes. The changes generally apply to all personal pension schemes, but existing conditions continue to apply in some cases to contracts which came into existence prior to 6 April 2001.

In this publication, unless otherwise stated, all references to personal pension schemes include stakeholder pension schemes. Where special rules or requirements relate to stakeholder pension schemes only, separate guidance is included for both stakeholder and non-stakeholder personal pension schemes.

1.2 Inland Revenue (Savings, Pensions, Share Schemes)’s Nottingham office is responsible for the approval of schemes (Inland Revenue SPSS (Nottingham)). Their address is:

Yorke House
PO Box 62
Castle Meadow Road
Nottingham
NG2 1BG

The Customer Helpline number is - 0115 974 1777.

1.3 These notes also provide general guidance for personal pension scheme administrators on how to deal with the tax relief on payments made to personal pension schemes (Parts 14 - 17 and all the examples in Parts 6 & 7) and refunds of contributions (Part 18). The Inland Revenue (Savings, Pensions, Share Schemes)’s Bootle office is responsible for these areas (Inland Revenue SPSS (Bootle)). Their address is:

St John’s House
Merton Road
Bootle
Merseyside L69 9BB

The telephone and fax numbers are

<table>
<thead>
<tr>
<th>Service</th>
<th>Telephone</th>
<th>Fax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Claims to repayment</td>
<td>0151 472 6109</td>
<td>0151 472 6003</td>
</tr>
<tr>
<td></td>
<td>6110</td>
<td>6110</td>
</tr>
<tr>
<td></td>
<td>6162</td>
<td>6162</td>
</tr>
<tr>
<td></td>
<td>6176</td>
<td>6176</td>
</tr>
<tr>
<td>General Advice</td>
<td>0151 472 6159</td>
<td>0151 472 6003</td>
</tr>
<tr>
<td></td>
<td>6171</td>
<td>6171</td>
</tr>
<tr>
<td></td>
<td>6173</td>
<td>6173</td>
</tr>
</tbody>
</table>
Audit issues are dealt with separately by Inland Revenue (Savings, Pensions, Share Schemes)’s Worthing Office. Their address is:

Room 34
East Block
Barrington Road
Worthing
West Sussex
BN12 4SE

The telephone and fax numbers are:

Telephone           Fax
01903 509963        01903 509885

1.4 Parts 22A and 22B contain guidance on contracting out of the additional state pension (which is now commonly known as the State Second Pension but which was known prior to 6 April 2002 as the State Earnings-related Pension Scheme or SERPS) for stakeholder pension schemes. The guidance in Part 22A relates to an Appropriate Personal Pension stakeholder pension scheme and Part 22B relates to a Contracted-out Money Purchase stakeholder pension scheme. Inland Revenue SPSS (Nottingham) is responsible for these areas where stakeholder pension schemes are concerned.

Contracting-out for non-stakeholder personal pension schemes remains the responsibility of Inland Revenue National Insurance Services to Pensions Industry, formerly COEG (the Contracted-out Employments Group) at the National Insurance Contributions Office. For guidance on contracting out for non-stakeholder schemes or employers, please see the following manuals (some of which are on the Inland Revenue website):

- CA 14D Contracted-out Guidance for Money Purchase Pension Schemes and Money Purchase Overseas Schemes
- CA 15 Cessation of Contracted-out Pension Schemes
- CA 16 Appropriate Personal Pension Scheme Manual – Procedural Guidance
- CA 16A Appropriate Personal Pension Scheme Manual – Guidance for Scheme Managers

Printed copies can be obtained from

Inland Revenue National Insurance Contributions Office
OSG Stationery (Services to Pensions Industry)
Benton Park View
Newcastle upon Tyne
1.5 Part 24 provides information about the Occupational Pensions Regulatory Authority (Opra). Any personal pension scheme which wishes to operate as a stakeholder pension scheme must first register with Opra.

Their address is:

Occupational Pensions Regulatory Authority  
Invicta House  
Trafalgar Place  
Brighton  
East Sussex  
BN1 4DW

Telephone number - 01273 627600  
Website - www.stakeholder.opra.gov.uk

1.6 The notes do not deal, except in passing, with specialised aspects of the legislation such as the tax treatment of the pension business of insurance companies or the tax treatment of payments made to an appropriate personal pension scheme by the National Insurance Contributions Office. Nor do they deal in detail with the requirements of the Pension Schemes Act 1993, the Pensions Act 1995 and the Welfare Reform and Pensions Act 1999 and any regulations made under them concerning appropriate personal pension schemes or occupational pension schemes and protected rights. Guidance on these requirements is the responsibility of the Department for Work and Pensions (DWP).

1.7 References to sections or Chapters and Parts or Schedules will, unless stated otherwise, be to the Income and Corporation Taxes Act 1988.

1.8 All references to primary legislation or regulations should be read as including any amendments and also as including references to the corresponding Northern Ireland legislation.

1.9 Terms identified in the text by the use of italics are defined in the Glossary at Appendix 1.
Part 2 : Establishment of Schemes

AUTHORISED PENSION PROVIDER

2.1 A scheme will only be approved if it is established by an authorised pension provider or if it is a retirement annuity trust scheme approved under section 620(5) before 1 July 1988. The definition of authorised pension provider changed with effect from 6 April 2001 and both definitions are included in the Glossary in Appendix 1.

Open-ended investment companies

2.1a An Authorised Corporate Director (ACD) of an open-ended investment company (OEIC) is not a category in the list of authorised pension providers, but is also acceptable as a provider, as long as

- the OEIC is one to which s468 ICTA 1988 applies, and
- the ACD is authorised by the Financial Services Authority (FSA), and
- if acting as a stakeholder pension scheme manager, the ACD must hold the appropriate permission from the FSA to engage in that activity.

The acceptance of an ACD of an OEIC as a provider is justified because, under paragraph 5(1)(b) of the Open-ended Investment Companies (Tax) Regulations 1997 [SI 1997/1154], references in s632(1)(a) to an authorised unit trust scheme can include reference to an OEIC. The OEIC itself cannot constitute the scheme, but the scheme once established may invest in the OEIC, for example as part of the member(s)' Individual Pension Account (IPA).

Unit trust managers

2.2 A scheme established by a person managing a unit trust will be tax approved only if

- it is a unit trust established by a corporate body which is a trustee or manager of an authorised unit trust, and
- which falls within the definition of a relevant pension scheme under FSA regulations.

Providers who qualify under section 632(1A)

Membership requirements

2.2a Where the personal pension scheme is being set up for individuals in a specified employment or employments, and the provider is as described in the final bullet point of the glossary definition of authorised pension provider (from 6 April 2001), the provider will normally be a single employer whose employees are the scheme members. However, applications for approval will also be considered from:

- personal pension schemes where the membership is to consist of employees of a group of associated employers, one of which is the provider, or
- personal pension schemes where the provider itself is not an employer but is acting for a group of non-associated employers. The provider could be an affinity group; for example, a body representing a particular industry or profession.

Unless the scheme is to be a stakeholder pension scheme, in order to qualify for approval it must be an occupational pension scheme for the purposes of the Pensions Acts. To be categorised as an occupational pension scheme under the Pensions Acts, the scheme rules must provide that
membership of the scheme:

- is limited to employees of the employer who is the provider, or corresponds to the specific employments relating to the group of employers or the affinity group, as appropriate, and
- must cease for contributions purposes at the end of the tax year in which an individual leaves that employment (at the latest); this requirement does not prevent a contribution paid later being carried back to a tax year in which the individual was employed by the employer who is the scheme provider.

**Stakeholder registration**

2.2b A provider of a *personal pension scheme* who qualifies to establish a scheme under the ninth bullet of the glossary definition of *authorised pension provider* in Appendix 1 may wish to register it as a stakeholder pension scheme. Inland Revenue SPSS (Nottingham) will be prepared to give tax approval if the following conditions are met:

- the application is otherwise satisfactory from an Inland Revenue viewpoint, and
- Opra is prepared to register the scheme as a stakeholder pension scheme, and
- the scheme meets requirements of the Financial Services Authority (FSA), and
- the scheme has applied for and qualifies for a contracting-out certificate.

In practice, Opra registration, contracting-out and tax approval would be given at the same time (see Part 13 for further guidance on the approval procedure).

**Small Self-Administered Schemes: Pensioneer Trustee requirements**

2.2c If the scheme provider is within the ninth bullet of an *authorised pension provider (from 6 April 2001)*, and is establishing a scheme which is effectively a small self-administered scheme, that is to say:

- the scheme is expected to have fewer than twelve members, and
- the investments of the scheme are not to be confined to insurance policies, and
- at least one scheme member will be 'connected' with any of the following:
  - another member,
  - a trustee of the scheme or
  - an employer involved with the scheme,

a *pensioneer trustee* must be appointed from the outset. ‘Connected’ for this purpose is as defined in regulation 2 of the Retirement Benefits Schemes (Restriction on Discretion To Approve)(Small Self-administered Schemes) Regulations 1991 [SI 1991 No 1614].

2.2d Inland Revenue SPSS (Nottingham) will require a *pensioneer trustee* to be appointed where the scheme becomes the type of scheme described in paragraph 2.2c, even though it was not such a scheme initially.

2.2e Any person or body who at the time of establishing the *personal pension scheme* is approved by the Inland Revenue to act as a *pensioneer trustee* in relation to small self-administered schemes (SSASs) may be appointed to act for a *personal pension scheme*. This is because the *pensioneer trustee* role for *personal pension schemes* is similar to that in SSASs. A list of
approved pensioneer trustees is published on the Inland Revenue website (www.inlandrevenue.gov.uk).

The appointment of the pensioneer trustee should be shown in the trust deed, rather than the scheme rules, to comply with legislation.

2.2f The role of the pensioneer trustee must be expressly stated in either the trust deed or the rules of the personal pension scheme. In particular, it must be stated that the pensioneer trustee

- will not consent to any action which would infringe tax approval requirements, and
- will not consent to the termination of the scheme other than in accordance with the approved scheme winding-up rule, and
- will be a registered owner of scheme assets along with the other trustee(s) (for any asset where this is not legally possible, there should be a legally enforceable restriction in place to prevent the assets being realised for cash without the written authority of the pensioneer trustee), and
- will be a mandatory co-signatory to the scheme bank accounts that are used to receive transfer payments and pension scheme contributions (apart from accounts that give rise only to a liability, such as loan or overdraft accounts). But it is acceptable for the other trustee(s) to make regular payments from a scheme bank account which have been previously authorised by the pensioneer trustee and which are covered by a standing order or direct debit arrangement (e.g. payments of pension, insurance policy premiums, rent, rates, standing charges for gas, electricity, telephone, mortgage/loan repayments, ground rent, bank charges).

2.2g The approach of setting out the pensioneer trustee duties in the personal pension scheme deed and rules differs from the requirements for schemes approved under Chapter I. For Chapter I approval, the pensioneer trustee gives to the Inland Revenue an undertaking to carry out the duties as described in PN Part 20 in relation to all the schemes they are involved with. A different approach has been taken for personal pension schemes because the undertaking given by the pensioneer trustee to the Inland Revenue is limited to Chapter I approved schemes only. As personal pension schemes almost invariably make use of Inland Revenue model documentation, inclusion of these conditions in the model means that there will be no need for an additional undertaking and the relationship between the pensioneer trustee and the other trustees, the scheme administrator, and the provider can be clearly set out.

If any requirement for a pensioneer trustee is not met, the scheme may jeopardise its tax approval status.

Scheme investment decisions

2.2h If the provider wishes to include a self-invested personal pension (SIPP) facility in the scheme (see Part 11), they must be certain that this facility will not conflict with the provisions of the Pensions Act 1995 as far as they relate to the trustee(s)’s responsibility to carry out certain functions in relation to an occupational pension scheme (see sections 32 to 36 of the Pensions Act 1995). If the provider considers that SIPP arrangements cannot operate without contravening these requirements, the scheme may only operate on a non-SIPP basis. (For converting SSASs, see paragraph 23.10c).

Preservation

2.2i For occupational pension schemes approved under Chapter I, preservation of pension rights under the Pensions Acts normally has effect after two years' service (PN 10.3), and there is provision for charging tax on any refund of contributions which were paid within the two year qualifying period. There is no provision in Chapter IV for contributions which are tax relieved to be refunded, so for occupational pension schemes approved under Chapter IV, all such contributions
must be used to provide benefits. This requirement does not conflict with the preservation requirements under the *Pensions Acts*, which describe minimum standards, and are therefore being met.

**SCHEME ADMINISTRATOR**

2.3 The Act requires the Board of Inland Revenue to be satisfied that there is a person resident in the UK who is responsible for the management of the scheme. The duties of the *scheme administrator* include those described in sections 639(4), 651A and the Personal Pension Schemes (Information Powers) Regulations 2000 [SI 2000 No.2316].

2.4 The *scheme administrator* may be

- the provider
- an employee of the provider
- a committee of management
- a corporate body, or
- in the case of a scheme established under irrevocable trust, the trustee

and must be named in the scheme documents.

**FORM OF SCHEME**

2.5 The form that a scheme takes can vary and depend, for example, on the type of provider. Where either

- the provider is an *insurer*, and
- all contributions and income are invested in insurance or annuity contracts;

or

- the provider is a financial institution (i.e. a person mentioned in s632(1)(a) to (e)), and
- all contributions and income are invested in individual pension accounts (IPAs);

the scheme need not be established under irrevocable trust and may, for example, be set up by means of a deed poll or, in Scotland, by a board resolution.

All other schemes must be established under irrevocable trust.

2.6 A scheme set up under trust

- may itself be under irrevocable trust, or
- may consist of individual irrevocable trusts for each member.

In certain circumstances, each member must also enter into a formal agreement, by deed. This deed must state that the member will not require the withdrawal of trust funds, or income from those trust funds to be paid to them, except for the payment of benefits under the scheme at the time provided by the rules.

These deeds will be required unless

- all the *arrangements* to be made under the scheme are in the form of insurance
contracts, or

- the scheme is set up by an authorised pension provider within section 632(1) (a financial institution), and it is known from the outset that the scheme will have at least 12 members, or

- the scheme was set up by an authorised pension provider under section 632(1A) and is required to appoint a Pensioneer Trustee, or

- the scheme was set up by an authorised pension provider under section 632(1A) but is not required to appoint a Pensioneer Trustee, and there are already 11 members in the scheme (i.e. deeds must be entered into by the first 11 members of such schemes).

Approval will only be available for the scheme as a whole, and if it uses individual trusts it must contain a rule requiring the benefits for each member to be subject to a trust in a form agreed by Inland Revenue SPSS (Nottingham).

2.7 It is also necessary for all schemes to ensure that there is an enforceable right to any benefits provided for survivors.

**Unit trusts**

2.8 A scheme established as a unit trust must be one authorised by the Financial Services Authority, and must include provisions in the scheme rules to show that

- units in the unit trust are only redeemable when
  - the unit trust manager’s charges are payable, or
  - the member’s arrangements vest, or
  - the fund accumulated in respect of the member is to be transferred to another scheme, or
  - excess contributions (see paragraph 4.44) are to be refunded, and

- the unit trust deed directs the unit trust manager as to how to pay the capital sum obtained on redemption or when the unit trust is wound-up, and

- the unit trust deed describes the possible destinations to which units may be transferred by the member.

**FORM OF ARRANGEMENT**

2.9 If the arrangements to be made under a scheme are in the form of insurance contracts, an arrangement may consist of one or more contracts. Conversely, a contract may evidence one or more arrangements.

In all cases the scheme must decide the form of the arrangement and tell the member how many arrangements exist and the amount of contributions being paid to each. Only one PPCC (Personal Pension Contributions Certificate - see paragraph 4.40) should be issued for each member of a scheme irrespective of the number of arrangements made by that member. But see paragraph 4.43 when a member has relevant earnings from both employment and self-employment prior to 6 April 2001.

**FORM OF BENEFITS**

2.10 Section 633 requires that the only benefits which an approved personal pension scheme may provide are
• an annuity or income withdrawals payable to a member,
• a lump sum payable to the member at pension date,
• an annuity or income withdrawals payable to a member’s widow, widower, surviving civil partner or dependants following the death of the member,
• a lump sum payable by an insurer under a term assurance contract on the death of a member before age 75,
• on the death of a member when no annuity has been, or is to be, purchased, a lump sum not exceeding a return of the contributions paid by the member and the member’s employer (together with interest at a reasonable rate or bonuses) or the sale price of units under a unit trust scheme or unitised policy. But see Part 12 where a transfer payment has been accepted.

2.11 A scheme established by a person who is not an insurer may arrange for the term assurance death benefit to be provided under the scheme by means of a suitable contract with an insurer. (The Personal Pension Contributions Certificate - see paragraph 4.40 - should show the name of the provider, not the insurer.)

2.12 Arrangements made under a scheme may provide for

• the payment of an annuity or income withdrawals to the member, or
• the payment on the member’s death before age 75 of a lump sum equal to the sum assured provided by a term assurance, or
• the payment of a combination of an annuity or income withdrawals to the member and any one or more of the other benefits mentioned in paragraph 2.10.

2.13 The scheme administrator and the member may at any time agree to the alteration of the benefits or combination of benefits, other than protected rights, payable under an arrangement (in accordance with paragraph 2.12 above).

CHAPTER IV SCHEMES AND THE VARIOUS PENSIONS ACTS

2.14 Stakeholder pension schemes must be either personal pensions or occupational pensions for the purposes of the Pension Schemes Act 1993 (PSA) and the Pensions Act 1995 (PA). It will be for the provider of the scheme to determine which their scheme is. However, we expect the following to apply in the majority of cases:

<table>
<thead>
<tr>
<th>Description</th>
<th>PSA/PA Definition</th>
<th>Basis of contracting-out</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Based Stakeholder</td>
<td>Personal Pension</td>
<td>APP</td>
</tr>
<tr>
<td>Trust Based Stakeholder - limited to employees of a particular employer or group of employers</td>
<td>Occupational Pension Scheme</td>
<td>COMP</td>
</tr>
<tr>
<td>Trust Based Stakeholder not limited to employees of a particular employer or group of employers.</td>
<td>Personal Pension</td>
<td>APP</td>
</tr>
<tr>
<td>All non stakeholder schemes established by a</td>
<td>Personal Pension</td>
<td>APP</td>
</tr>
<tr>
<td>person listed in s632(1)</td>
<td>Occupational Pension Scheme</td>
<td>COMP</td>
</tr>
<tr>
<td>--------------------------</td>
<td>-----------------------------</td>
<td>------</td>
</tr>
<tr>
<td>All non stakeholder schemes established by a person listed in s632(1A)</td>
<td>Occupational Pension Scheme</td>
<td>COMP</td>
</tr>
<tr>
<td>All Chapter IV approved sections of retirement benefits schemes treated as separate schemes under s611(3)</td>
<td>Occupational Pension Scheme</td>
<td>COMP or COMB depending on the structure of the scheme.</td>
</tr>
</tbody>
</table>

When applying for contracting-out status (see Part 22), it is up to the scheme provider to indicate the type of contracting-out status sought.

2.15 Whether stakeholder pension schemes established by persons listed in s632(1) of ICTA are trust based or not will depend on the characteristics of the scheme. The person establishing the scheme will need to decide which status is appropriate, taking into account the requirements of Schedule 1, Welfare Reform and Pension Act 1999.

Stakeholder pension schemes established by a person under s632(1A) will always be trust based.

Any non-stakeholder scheme established under s632(1A) will always be an occupational pension scheme for the purposes of the Pensions Acts, because they are required to be trust based in order to gain tax approval (see the Personal Pension Schemes (Restriction on Discretion to Approve) (Establishment of Schemes under Trusts) Regulations 2000 [SI 2000 No. 2314]).
WHO MAY JOIN A PERSONAL PENSION SCHEME?

Before 6 April 2001

3.1 Any individual who is under 75 and has relevant earnings in the current tax year may become a member of and contribute to a personal pension scheme.

3.2 It is also possible to pay a contribution in a tax year where the individual has no relevant earnings by making use of carry back (see paragraph 6.24).

3.3 The term relevant earnings is defined in the Glossary at Appendix 1 and the main sources of income which count or are excluded as relevant earnings are listed in Appendices 2 and 3.

3.4 An individual may be a member of more than one personal pension scheme at the same time (except in respect of protected rights) and may have more than one arrangement under each scheme.

Transfer only arrangements

3.5 An individual who is under 75 with no relevant earnings in the current tax year may become a member of a personal pension scheme solely for the purpose of receiving a transfer payment from another approved or acceptable pension scheme (see Part 12).

3.6 An ex-spouse or former civil partner who has pension credit rights from a pension sharing order may, subject to the agreement of the scheme administrator, become a member of a personal pension scheme.

From 6 April 2001

Net relevant earnings

3.7 An individual who is under 75 and has actual net relevant earnings in a tax year may join and contribute to a personal pension scheme in that tax year.

A member who is under 75 may continue to contribute to a personal pension scheme during any tax year in which they have actual net relevant earnings without needing to satisfy any other eligibility requirements. (No contributions may be made to an arrangement after reaching age 75 as the annuity must be purchased at that point).

No net relevant earnings

3.7a However, there is no longer a requirement for an individual to have net relevant earnings in all cases. Any individual who is

- under 75, and
- either
  - resident and ordinarily resident in the UK at some time in the relevant tax year, or
  - a Crown Servant, or
  - the spouse or civil partner of a Crown Servant

may join a personal pension scheme (but see 3.16 where the individual is accruing benefits throughout the tax year under an occupational pension scheme). They may continue to contribute in any tax year in which they have no net relevant earnings, satisfy the above criteria and are not
**accruing benefits** throughout the tax year under an **occupational pension scheme**.

An existing member with no **net relevant earnings** in a tax year who is under 75 but does not satisfy any of the other requirements listed in the second bullet point above may in certain circumstances be eligible to continue to contribute. Please see paragraph 3.28.

3.8 An individual may be a member of more than one **personal pension scheme** at the same time (except in respect of **protected rights**) and may have more than one **arrangement** under each scheme.

**Transfer only arrangements**

3.9 An individual who is under 75 may become a member of a **personal pension scheme** solely for the purpose of receiving a transfer payment from another approved or acceptable pension scheme (see Part 12).

3.10 An ex-spouse **or former civil partner** who has **pension credit rights** from a **pension sharing order** may, subject to the agreement of the **scheme administrator**, become a member of a **personal pension scheme**.

**Minors**

3.11 If the prospective member is under the age of 16, or 18 if not in employment, a contract may only be entered into by the legal guardian. The legal guardian must

- complete the application and any declarations
- be responsible for ensuring that contribution limits in respect of the minor are not exceeded
- be responsible for the contract as if they were the member until the member reaches 18
- sign a separate declaration stating that they understand the contributions paid to the contract may only be returned to the member in the form of benefits payable under the rules of the **personal pension scheme** (after age 50 except in the case of earlier incapacity).

If the member is under the age of 16 and the pension contract is made under the law of Scotland, we require the role of the legal guardian detailed above to be taken by a parent of the member who has full parental rights in relation to that member. The Inland Revenue has no objection to schemes contracting directly with members aged 16 and over, where the law of Scotland governs the contract.

**Ex-employees and contracting-out**

3.11a All stakeholder pension schemes that are also occupational pension schemes for the purposes of the **Pensions Acts** must restrict membership to employees of an employer or groups of employers.

**SIMULTANEOUS MEMBERSHIP OF A PERSONAL PENSION SCHEME AND AN OCCUPATIONAL PENSION SCHEME**

**Before 6 April 2001**

3.12 Members of an **occupational pension scheme** may not make contributions to a **personal pension scheme** in respect of the same period and source of employment unless the only benefits provided for them under the occupational scheme are a lump sum and/or spouses’/dependants’
pensions on death in service.

An individual may however be a member of a personal pension scheme for a part of any tax year in respect of which they have relevant earnings. For example, an individual who leaves an employer’s occupational pension scheme on 31 August but remains in employment may join a personal pension scheme from 1 September. Alternatively, a member joining an occupational pension scheme part way through a tax year would still have relevant earnings for the period from 6 April up to the date of joining the company scheme.

Contributions must be restricted to the relevant percentage (see paragraph 4.4) of relevant earnings for that part of the tax year when the individual was not a member of the occupational pension scheme (plus any unused relief carried forward). Contributions may however be paid at any time during the tax year, even after the individual has joined the occupational pension scheme.

3.13 Members of a contracted-in occupational pension scheme may join a personal pension scheme solely for the purpose of contracting out of the State Second Pension. This type of arrangement may accept only minimum contributions whilst the member remains in pensionable employment through the employer’s scheme. These are sometimes called “rebate only” personal pensions.

Benefits from this type of arrangement do not count as retained benefits for the purposes of occupational pension scheme limits provided all contributions have been paid whilst the member was in pensionable employment. Where contributions have also been paid to the arrangement during a period of non-pensionable employment, the amount which must be treated as a retained benefit is the proportion the period of non-pensionable employment bears to the total period during which contributions have been paid.

3.14 An individual who is currently a member of an occupational pension scheme may join a personal pension scheme and make contributions to take up unused relief from earlier years when the individual was not in pensionable employment. A valid election must be made under section 641 to carry back the contributions to a year when the individual did have relevant earnings. The Certificate of Eligibility (see Appendix 8) should be amended to make it clear that the individual was not a member of an occupational pension scheme in the tax year in which the contributions will be treated as paid.

3.15 An individual who leaves an occupational pension scheme with less than 2 years service and receives no benefit other than a refund of contributions may subsequently treat the period during which he or she was a member of the company scheme as non-pensionable service for the purpose of making contributions to a personal pension scheme.

From 6 April 2001

"Concurrency"

3.16 An individual aged under 75 who has no net relevant earnings in a tax year may join a personal pension scheme while accruing benefits throughout the tax year under an occupational pension scheme if they can satisfy the following conditions

- at some time in the tax year, they are either resident and ordinarily resident in the UK, or are overseas as a Crown Servant or as the spouse or civil partner of a Crown Servant,

and

- they are not and have not been a controlling director of a company at any time in the tax year or in any of the 5 tax years preceding it (tax years prior to 2000-2001 do not count),

and
- on 5 April of one of the 5 tax years preceding the tax year (again, tax years prior to 2000-2001 do not count), they held an office or employment (self-employment does not count for this purpose),

and

- their aggregate grossed up remuneration in that earlier tax year did not exceed the relevant remuneration limit.

The member may continue to contribute in any tax year where all these conditions are satisfied. An individual satisfying these conditions, and/or their employer, may contribute up to the earnings threshold for each tax year to the personal pension scheme.

In relation to the final two bullet points above, please note that

- if on 5 April in a tax year an individual does not hold any offices or employments, they cannot use that tax year in satisfaction of the remuneration limit. If on 5 April in all relevant earlier tax years the individual did not hold any offices or employments, none of those tax years can be used, and the individual is not eligible to contribute under "concurrency".

if the remuneration limit is exceeded in one or more of the earlier 5 tax years, this does not necessarily affect the individual's right to contribute under "concurrency". It is sufficient that aggregate grossed up remuneration is within the remuneration limit in one of the earlier 5 tax years.

3.17 The value of an individual's personal pension fund arising from contributions made during concurrency (see 3.16) will be ignored when applying the Inland Revenue limits to the individual's benefits from an occupational pension scheme.

3.18 A member of a personal pension scheme must notify the scheme administrator if they start accruing benefits under an occupational pension scheme. The notification should be made at the time of joining the occupational pension scheme or on the next occasion that a contribution is made to the personal pension scheme.

If the date of starting to accrue benefits under the occupational pension scheme is 7 April or later in the tax year, the criteria at 3.16 do not become relevant until 6 April in the next tax year. The member will still be eligible to contribute to the personal pension scheme during the rest of the tax year without having to satisfy the criteria at 3.16, providing they qualify under either 3.7 or 3.7a. They may contribute in that tax year up to the earnings threshold, or their age-related percentage of net relevant earnings if higher.

If the member continues to accrue benefits in the occupational pension scheme for the rest of the tax year in which they first joined it, and throughout subsequent tax years, they will be eligible to contribute up to the earnings threshold to the personal pension scheme in each tax year after the one in which they joined the occupational pension scheme - providing they satisfy the criteria at 3.16 in each of those tax years.

However, if the date of starting to accrue benefits in the occupational pension scheme is 6 April and occupational pension scheme membership continues throughout the tax year, the member is only eligible to contribute to the personal pension scheme in that tax year if they satisfy the criteria at 3.16. If eligible, contributions are limited to the earnings threshold.

3.19 A scheme administrator is required to report whether or not a member is a concurrent member in the end of year information return (see paragraph 17.52). From the point of view of individual applications, many of the questions which the member must answer are straightforward. For example

- whether the individual is a member of an employer's occupational pension scheme
• whether the individual earned £30,000 per annum or less in any of the last five tax years
• whether the individual is a controlling director (or has been in any of the current or last five tax years).

An individual who answers "yes", "yes" and "no" is entitled to make contributions up to the earnings threshold without the need to answer further questions. However, the answers provided do not allow the scheme administrator to report on whether or not this is a "concurrent" case or not. At this stage, the scheme administrator can say that it is a "potential concurrent" case.

For example, the individual may have net relevant earnings from another source. Alternatively, the employer's occupational pension scheme may be providing death in service benefits only (see paragraph 3.20). Or the individual may be joining the personal pension scheme solely to contract out of the State Second Pension (see paragraph 3.21). The member would not in any of these circumstances be a "concurrent" case.

So, although the three simple answers above show that an individual is entitled to make personal pension contributions up to the earnings threshold each year, the scheme administrator must ask further questions to establish whether eligibility is under section 632A or section 632B. The questions may mean that the individual has to obtain further information about the type or nature of the employer's occupational pension scheme.

To avoid a scheme administrator having to make these further enquiries in order to report "Y" or "N" on the annual end of year information return, a third report category "P" has been introduced. This can be entered by the scheme administrator for a case where the member is in an employer's occupational pension scheme, earned £30,000 or less in one of the last five tax years and is not in the current or any of the last five tax years a controlling director.

It is of course open to a scheme administrator to ask the individual further questions at the outset to enable the concurrency flag report to be positively determined as either "Y" or "N".

3.19a A scheme administrator who has established that an individual is

• a "concurrent" member, or
• a "potentially concurrent" member

(see paragraph 3.19) must obtain a concurrency declaration from the individual and retain it with the scheme records.

The scheme administrator should ensure that the declaration contains a form of words along the lines of "I understand that to continue to be eligible to make contributions under concurrency, I must have earned £30,000 or less in one of the previous 5 tax years but ignoring tax years earlier than 2000-2001. I will let you know immediately if I cease to be eligible on this basis."

There is no need for the scheme administrator to recheck the position for any subsequent tax year unless the member notifies the scheme of any change which may affect their eligibility position.

**Occupational pension scheme membership for death in service benefits only**

3.20 An individual who is being provided only with death in service benefits under an occupational pension scheme may join a personal pension scheme. The individual does not have to satisfy 3.16 because their earnings are treated as net relevant earnings (see 3.7). The member and/or their employer may together contribute up to the earnings threshold for each tax year (or higher contributions based on relevant earnings) to the personal pension scheme - see Part 4.
"Rebate only" personal pension scheme

3.21 A member of an occupational pension scheme may join a personal pension scheme solely for the purpose of contracting-out of the State Second Pension. The arrangement may accept only minimum contributions while the member remains in pensionable employment through the employer's scheme. This type of arrangement is sometimes called a “rebate only” personal pension.

OTHER ASPECTS

Before 6 April 2001

Low Earners

3.22 Individuals receiving relevant earnings but whose personal allowances reduce their tax liability to NIL are nonetheless eligible to contribute to a personal pension scheme. Employees will pay their contributions net of basic rate tax.

Employees Working Overseas

3.23 Employees working overseas are eligible to contribute to a personal pension scheme provided they have relevant earnings chargeable to UK income tax. If they qualify for the 100% foreign earnings deduction (which applies only to seafarers from 17 March 1998) they are eligible even though they do not actually pay any tax. Contributions are paid net of basic rate tax in the normal way. Whether or not an individual is chargeable to UK tax is a matter for the Tax Office and all queries should be addressed to the office dealing with the individual's tax affairs.

Foreign Emoluments

3.24 An individual receiving foreign emoluments within the meaning of section 192 is not eligible to join a personal pension scheme if that person is a member of an overseas pension scheme which corresponds to a UK approved or relevant statutory scheme (see PN 15.13).

Investment Companies

3.25 Emoluments received by an individual as a controlling director of an investment company are not relevant earnings. An individual is a controlling director if he or she, either alone or together with any other persons who are or have been at any time directors of the company, controls the company.

Non-approved top-up schemes

3.26 An individual who is a member of a non-approved top-up scheme remains eligible to join an approved personal pension scheme.

From 6 April 2001

Overseas aspects

Member abroad with Net Relevant Earnings

3.27 A member who is resident outside the UK is still eligible to contribute to a personal pension scheme during a tax year in which he has actual net relevant earnings (see 3.7). He may contribute up to the higher of the earnings threshold and the relevant percentage of his net relevant earnings from a basis year (see paragraphs 4.9 and 4.10).

Member abroad with no Net Relevant Earnings

3.28 A member who is resident outside the UK and has no actual net relevant earnings in a tax
year is still eligible to contribute to an *arrangement* in that tax year if one of the following applies:

- at some time in the tax year he is resident and ordinarily resident in the UK, or
- at some time in the five tax years preceding the tax year in question he has been resident and ordinarily resident in the UK and was resident and ordinarily resident in the UK when he set up the *arrangement*, or
- he is a Crown servant serving abroad, or the spouse or civil partner of a Crown servant serving abroad.

If for part of the tax year he is not *accruing benefits* under an *occupational pension scheme*, the member may contribute up to the higher of the *earnings threshold* and the *relevant percentage* of his *net relevant earnings* from a *basis year* he has chosen. If there has been a *break year*, the member can use earnings in a *reference year* in accordance with paragraph 4.13 to justify *higher level contributions*.

If he is *accruing benefits* under an *occupational pension scheme* for the whole of the tax year, and he satisfies the last two conditions in paragraph 3.16, he may contribute up to the *earnings threshold*.

**Foreign Earnings Deduction**

3.28a Individuals qualifying for the 100% foreign earnings deduction, which applies to certain employees working outside the UK (seafarers only from 17 March 1998), are still eligible to contribute to a *personal pension scheme* for any tax year in which they have *relevant earnings* chargeable to UK income tax.

Contributions are paid net of basic rate tax, and are limited to the higher of the *earnings threshold* and the *relevant percentage* of *net relevant earnings* from a *basis year*, in the usual way (see paragraphs 4.9 and 4.10).

Any questions concerning an individual's liability to UK tax should be addressed to the Tax Office dealing with that individual's tax affairs.

**General**

3.29 A person who joins a scheme while UK resident but who then moves overseas must inform the *scheme administrator* when they leave the UK.

3.30 An individual receiving foreign emoluments within the meaning of section 192 may (subject to paragraph 3.16) join a *personal pension scheme*, even if they are a member of an overseas pension scheme which corresponds to a UK tax approved or relevant statutory scheme (see PN Part 15 "Corresponding Schemes").

If they are a member of such a scheme, they may contribute up to the *earnings threshold* only.

**Non-approved top-up schemes**

3.31 An individual who is a member of a non-approved top-up scheme remains eligible to join an approved *personal pension scheme*.
WHO MAY CONTRIBUTE

4.1 Contributions (subject to certain limits) may be paid to an approved personal pension scheme by

- the member
- the employer of the member
- the National Insurance Contributions Office.

LIMITS ON CONTRIBUTIONS

Before 6 April 2001

4.2 Contracted-out contributions (see paragraph 4.37 – 4.38) do not count towards any of the limits in the following paragraphs.

4.3 The total contributions which may be paid by the member and the employer together to approved personal pension schemes for any tax year must not exceed the relevant percentage of the member’s net relevant earnings for that tax year, unless an amount is being carried forward from a past year as unused relief (see Part 7) or carried back to an earlier year (see Part 6).

4.4 Relevant percentage means -

<table>
<thead>
<tr>
<th>Age on first day of tax year (6 April)</th>
<th>% of net relevant earnings</th>
</tr>
</thead>
<tbody>
<tr>
<td>35 or under</td>
<td>17.5</td>
</tr>
<tr>
<td>36 – 45</td>
<td>20</td>
</tr>
<tr>
<td>46 – 50</td>
<td>25</td>
</tr>
<tr>
<td>51 – 55</td>
<td>30</td>
</tr>
<tr>
<td>56 – 60</td>
<td>35</td>
</tr>
<tr>
<td>61 or over</td>
<td>40</td>
</tr>
</tbody>
</table>

4.5 A member who is contributing to an approved personal pension scheme may also make payments under an approved retirement annuity contract or trust scheme. In such circumstances the total aggregate contributions paid in any tax year must not exceed the maximum amount which qualifies for relief as personal pension contributions (the figure derived from applying the percentage limit in paragraph 4.4).

Earnings Cap

4.6 For the tax year 1989/90 onwards, the amount of net relevant earnings is limited by section 640A to the allowable maximum. This is known as the earnings cap.

Concurrent Employments

4.7 The effect of the earnings cap on concurrent employments depends on whether or not:
• the employments are associated under section 646A (see Appendix 11)
• the employments are pensionable under an occupational pension scheme
• the earnings are taxed under Schedule E or Schedule D.

The position is set out in greater detail in Appendix 11.

**Term Assurance**

**Term Assurance**

4.8 A member and the member's employer may between them pay up to 5% of net relevant earnings in each tax year as a premium to secure death benefits under a term assurance contract taken out before 6 April 2001. It includes arrangements which commenced before 6 April 2001 which included an option to apply for term assurance life cover, where that option is exercised by the member on or after 6 April 2001.

The 5% of net relevant earnings does not relate to the basis year earnings figure (see paragraph 4.10) where total contributions exceed the earnings threshold. Instead, the 5% figure applies against the actual net relevant earnings for each year. The scheme administrator should obtain a declaration by the member that the term assurance contributions will not exceed 5% of net relevant earnings. The scheme administrator should then accept the position without further enquiry. Inland Revenue SPSS (Bootle) will be responsible for all checks relating to the term assurance contributions paid on this basis.

The 5% limit applies to the aggregate term assurance contributions to pre-6 April 2001 personal pension schemes and retirement annuity term assurance contracts. This limit is part of (not in addition to) the relevant percentage in paragraph 4.4. Minimum contributions may not be used to provide term assurance.

Under a unit-linked contract, there is no objection to term assurance cover continuing by deduction of units for up to six months after contributions have ceased.

**From 6 April 2001**

**Contributions up to the earnings threshold**

4.9 Any eligible member (see Part 3) and/or their employer may contribute up to the earnings threshold in each tax year to a personal pension scheme.

The earnings threshold figure includes the basic rate tax relief on the contributions and any amounts being paid to a retirement annuity contract or trust scheme (see paragraph 4.5). It also includes the employee's and employer's NI minimum payment if the personal pension scheme is a contracted-out money purchase scheme (see paragraph 4.39a and Part 22).

**Contributions exceeding the earnings threshold**

4.10 If a member wishes to contribute more than the earnings threshold in any tax year, this must be justified by their net relevant earnings (subject to the allowable maximum) using the same relevant percentage shown in paragraph 4.4 (and subject to paragraphs 4.5 - 4.7), but with the following differences.

The member may nominate the year which they wish to be used as the basis year for their net relevant earnings. This year may be

• the current tax year, or
• any of the previous five tax years (the individual need not have been a member of the personal pension scheme during the basis year, but they must have had net relevant
When calculating how much they may contribute, the member must use

- **their net relevant earnings** from the chosen **basis year**, ignoring the allowable maximum (earnings cap) in that basis year,
- the allowable maximum (earnings cap) for the current tax year; and
- their age on 6 April of the current tax year.

This will provide them with their contribution limit for the current tax year.

The individual's contribution limit figure includes the basic rate tax relief on the contributions and any amounts being paid to a retirement annuity contract or trust scheme (see paragraph 4.5). It also includes the employee's and employer's NI minimum payment if the personal pension scheme is a contracted-out money purchase scheme (see paragraph 4.39a and Part 22).

### Example

4.11a Mr Jones is 34 on 6 April 2001 and earns £20,000 in 2001/02. He joins a personal pension scheme in that tax year.

He may contribute 17.5% of **net relevant earnings** to his personal pension. If he chooses 2001/02 as his **basis year**, he will be entitled to pay £3,500 based on his earnings, but could in fact pay a contribution of up to £3,600 without evidence of earnings (see paragraph 4.9).

In a previous tax year (1998/99) his **net relevant earnings** were £22,000. If he chooses this year as his **basis year**, he may contribute 17.5% of that figure, giving a maximum contribution of £3,850.

This would be valid for the **basis year** of 1998/99 and the five following tax years, i.e. 1999/2000 to 2003/04 inclusive. Mr Jones joined the scheme in 2001/02, so may contribute £3,850 for the year he joined, and for 2002/03. On 6 April 2003, he is 36, so his age related percentage increases to 20%. This means he may contribute up to £4,400 for the year 2003/04.

For the tax year 2004/05, the **basis year** of 1998/99 will have expired, so Mr Jones will have to choose another suitable year as his new **basis year** - either the current tax year, or any of the previous five tax years (i.e. going back as far as 1999/2000). His maximum contribution for 2004/05 onwards will be 20% of his **net relevant earnings** in that **basis year**.

### Cessation of earnings

4.12 If the member

- has been eligible to make higher level contributions,
- has relevant earnings in a tax year,
- has no relevant earnings in the next tax year (the **break year**), and
• the **break year** is 2001/02 or later,

**higher level contributions** may continue for

• the rest of the tax year in which they cease to have **relevant earnings** (the **cessation year**), and

• the next 5 tax years or (if earlier) until a tax year in which the earlier of the following events occurs

  - the member has **relevant earnings** again, or

  - the member is a member of an **occupational pension scheme** throughout the tax year.

These years are known as **qualifying post cessation years**.

4.13 The contribution limit is calculated in the following way.

The **cessation year** and the 5 tax years immediately before it are called the **reference years**. The maximum contribution in any **qualifying post cessation year** will be based on **net relevant earnings** in one of the **reference years**, chosen by the member, but using their age on 6 April in the **qualifying post cessation year** in question.

This means that in the case of a person who has **net relevant earnings** one tax year and none the next, if they continued to satisfy the conditions above in subsequent tax years, their maximum contribution could eventually be based on **net relevant earnings** from a tax year eleven years previously.

**Example**

4.13a Ms Hall is aged 36 on 6 April 2001. She is self-employed and joins a **personal pension scheme** in 2001/02 (year 1). She earns £50,000 in the first year of membership, and makes contributions of £10,000 - up to her limit of 20% of earnings. In each of the following five tax years, her earnings decrease, but she may still make contributions up to £10,000, as she had nominated 2001/02 as the **basis year** for the purpose of the **relevant percentage** of **net relevant earnings**.

In March 2007, she stops working to care for a relative. She has no earnings for another 10 years, but is able to make contributions from her savings.

Ms Hall's **cessation year** is 2006/07 (the last year in which she had **net relevant earnings**).

Her five **post cessation years** are 2007/08 to 2011/12. As long as she has no **net relevant earnings**, and is not a member of an **occupational pension scheme** throughout any one of those years, they will all be **qualifying post cessation years**, and she may continue to contribute more than £3,600 a year to a **personal pension scheme**.

Her **reference years** are the six years preceding the first **qualifying post cessation year** - in her case, 2001/02 to 2006/07.

If she wishes to nominate 2001/02 (the earliest of the **reference years**) as her **basis year**, she may continue to pay a maximum of £10,000 a year into the scheme up to and including 2010/2011, and £12,500 (as she is now aged 46) in 2011/12.

From then on, if she still had no **net relevant earnings**, she would be limited to the **earnings threshold** of £3,600 (on current figures) a year, as she would no longer be in a **post cessation year**.
Term Life Assurance

4.14 In each tax year, 10% of the relevant pension contributions paid by a member and their employer may be used as a premium to secure death benefits under a term assurance contract. For example, a member who pays a contribution of £100 to provide pension benefits may pay a further £10 (i.e. one-eleventh of the total contribution being paid) to a term assurance contract.

The 10% limit is part of (not in addition to) the earnings threshold, or the relevant percentage, in paragraph 4.4. Minimum contributions may not be used to provide term assurance and do not form part of the relevant pension contributions.

An individual's application for a term assurance contract should contain a declaration by the individual that the proposed term assurance contributions will not exceed 10% of relevant pension contributions. The scheme administrator should accept the position without further enquiry and Inland Revenue SPSS (Bootle) will be responsible for all checks relating to the term assurance contributions made on this basis. Where Inland Revenue SPSS (Bootle) discovers that excess contributions have been made by a member who has completed this declaration, they will seek to recover the excess tax relief direct from the member. In such a case, the contract of insurance will not be voided, but Inland Revenue SPSS (Bootle) may also need to instruct the scheme administrator to reduce the level of future contributions.

Term assurance contracts already in existence before 6 April 2001 may continue and will be subject to paragraph 4.8.

Where a person has term assurance policies under both the old and new rules, contributions of 5% of net relevant earnings may be made to one policy and 10% of relevant pension contributions may be paid to the other, provided the overall contributions limit is not exceeded.

Example

4.14a Mrs Smith, aged 36 on 6 April 2001, had net relevant earnings of £20,000 in her basis year. She may therefore contribute up to £4,000 to a personal pension scheme in the tax year 2001/2002.

She is currently paying £1,000 into an old-style term assurance policy.

This leaves a balance of £3,000 payable in that tax year.

If she wishes to provide further life cover, she can pay a further 10% of her relevant pension contributions to a new-style term assurance policy. If she wishes to pay the maximum term assurance possible, this would be £272 provided she paid £2727 in relevant pension contributions.

WAIVER OF CONTRIBUTIONS

Before 6 April 2001

4.15 A scheme may allow a member to elect that up to 25% of the contributions (other than minimum contributions) paid in a tax year by or for the member will be applied as a premium under an insurance contract which provides for

- the member's contributions and, if wished, those of the employer to be waived for any period when, because of incapacity, the member is unable to follow his or her occupation, in which case the value of the benefits (other than protected rights) will be maintained as if the contributions had been paid
- any term assurance contract to remain in force despite the fact that the premium has not been paid
- a member who retires on grounds of incapacity (see paragraph 8.6) to receive an amount of annuity which matches that which would have become payable at the
originally planned pension date.

For the avoidance of doubt, this 25% limit is separate from the 5% which may be used to provide term assurance cover (see paragraph 4.8). For example, a contribution of £400 might consist of £360 for an annuity and £40 (being at the 5% of earnings rate) for term assurance. Within those amounts, £90 might be used as a premium for a waiver facility for an annuity and £10 for a term assurance waiver facility.

Under a unit-linked contract, there is no objection to waiver of contributions cover continuing, by deduction of units, for up to six months after contributions have ceased.

**Partial Waiver**

4.16 Where, following a period of incapacity covered by a waiver of contributions option, the individual returns to work either

- part time, or
- in a lower paid employment,

there is no objection to a partial waiver remaining in force.

In these circumstances, the amount credited or waived must not exceed the difference between -

- the contributions being paid before the individual became incapacitated, and
- the contributions now payable based on their reduced net relevant earnings.

**PHI Benefits**

4.17 Where, during a period of incapacity, an individual receives a reduced salary under a PHI scheme set up by the employer, there is no objection to the scheme offering a waiver of contributions option to cover the shortfall between

- the contributions which were being paid before the individual became incapacitated, and
- the contributions which may now be paid based on their reduced net relevant earnings.

4.18 The member may choose to make provision for

- waiver of contributions only
- non-reduction of annuity paid early on incapacity only
- both.

4.19 The insurance may be arranged with any insurer and must be a contract between the provider (not the member) and the insurer.

4.20 Any amount waived or credited to a member’s fund during a period of incapacity as a result of a waiver of contribution facility is not a contribution under section 639 and will not therefore qualify for tax relief.

**From 6 April 2001**

4.21 A scheme will no longer be allowed to use contributions to insure the member against inability to pay contributions. Contracts already in existence before 6 April 2001 may continue (paragraph 9 of Schedule 13 to the Finance Act 2000) and will be subject to the rules set out in
paragraphs 4.15 - 4.20; this includes existing pension contracts at 6 April 2001 which include an option to take out waiver of contribution insurance, even where that option has not been exercised at that date - providing the option is exercisable by the member, not the scheme.

If a member wishes to make some provision for continuing their personal pension contributions during a period where they have lost some or all of their usual source of income, either through ill health or unemployment, they may do this through a policy arranged separately from the personal pension scheme. Any benefits the member receives from such a policy may be used to fund contributions to a personal pension scheme, subject to the limits in paragraph 4.4, and will attract tax relief.

A member may agree, as part of the waiver insurance, that any claim under the policy will be paid directly to an approved personal pension scheme of which he or she is a member. The Inland Revenue will accept that such payments have been made as a contribution on behalf of the member and allow tax relief, provided that the total contributions paid in the relevant tax year do not exceed the earnings threshold, or relevant percentage of net relevant earnings if higher.

4.21a A scheme may allow a member to elect that up to 25% of the contributions (other than minimum contributions) paid in a tax year by or for the member will be applied as a premium under an insurance contract which provides for a member who retires on grounds of incapacity (see paragraph 8.6) to receive an amount of annuity which matches that which would have become payable at the originally planned pension date.

PAYMENT OF CONTRIBUTIONS

Method and time of payment

4.22 A contribution cannot be regarded as “paid” under an approved personal pension arrangement until that arrangement is in force. A fully completed application form together with any other appropriate documentation must be provided by the individual and accepted by the scheme administrator before an arrangement can be considered to be in force.

4.23 Any payment made to a scheme administrator prior to an arrangement being in force cannot be considered to be a “contribution” for personal pension purposes. It can however be held by the scheme administrator and treated as a contribution on the first day on which the arrangement comes into force.

Payment by cheque

4.24 A contribution paid by cheque is only valid pending clearance of the cheque. (If the cheque is not subsequently honoured then a valid contribution has not been made). The date of payment is the date the individual gives the cheque to the scheme administrator or, in the case of a cheque which is sent by post, the date it is received by the scheme administrator.

4.25 A scheme administrator may treat a building society draft made payable to the personal pension scheme as a payment by the individual.

4.26 A contribution paid by a cheque drawn on a business account or by direct debit/standing order from that account may be accepted by a scheme administrator as a payment by the individual provided the business confirms in writing that the individual has reimbursed the amount.

4.27 A contribution paid by a cheque drawn on a partnership account or by direct debit/standing order from that account may be accepted by a scheme administrator as a payment by the individual provided the partnership confirms in writing that the payments have been made from the individual’s share of the partnership profits.

Payment by debit/credit card

4.28 A scheme administrator may accept a contribution made by debit/credit card. The date of payment will be the date on which the details are received by the scheme administrator.
**Cashbacks**

4.28a An individual may be entitled to a cashback under the terms of the credit agreement held with a credit card company. Where the individual directs the credit card company to pay the cashback to the individual's personal pension arrangement on his or her behalf, the scheme administrator can treat the amount of the cashback as a valid contribution.

**Payment by direct debit**

4.29 Payment by direct debit is made when the scheme administrator draws the sum from the individual's bank or building society account. However on a practical basis Inland Revenue SPSS (Bootle) have no objection to a scheme administrator regarding the date of receipt of the completed direct debit mandate as the date of the first contribution under the arrangement. This is of course on the understanding that the necessary application has been fully completed and all documentation provided where necessary so that the arrangement is in force.

4.30 A scheme administrator will have difficulty where a contribution is due by direct debit on 5 April and that day falls on a Saturday, Sunday or a Bank Holiday. Under the direct debiting arrangements payments will not be collected until the next working day (either the Monday or Tuesday). In strictness, where a payment is made on 6 April the payment is made in the new tax year even where the contributor has signed a direct debit mandate for payment on 5 April. But, in practice, a scheme administrator may accept that a payment collected on (say) 6 April because 5 April fell on a Sunday, was a payment of the earlier tax year provided the scheme administrator holds a fully completed direct debit mandate under which payment was due on 5 April.

4.31 A scheme administrator must not treat a payment as made in the earlier year where:

- payment under the direct debit is due on or after 6 April,
- payment under a direct debit is re-presented on or after 6 April because it failed to be paid on its original presentation in the earlier year, or
- payment under a direct debit was due on or before 5 April but was not collected until after 6 April because the pension scheme collects payments weekly, fortnightly etc.

**Payment by transfer of shares – from 6 April 2001 only**

4.32 If scheme rules allow, a member may make a contribution by transferring shares into the personal pension scheme. This may be accepted provided the shares are eligible shares, that is, either

- if the member has acquired them through a savings-related share option scheme, they are transferred into the scheme within 90 days of the member exercising the right to acquire them, or
- if the shares have been part of an approved profit-sharing scheme or a share incentive plan, they have been transferred to the scheme within 90 days of the member asking for the shares to be transferred to him, or if earlier, the release date in relation to the shares.

The date of payment in the case of shares will be the date of the transfer of those shares.

The amount of the contribution will be the aggregate market value of the shares.
Payments by persons other than the member

**Joint Accounts**

4.33 A *scheme administrator* may accept a payment made from a joint account provided the individual is one of the joint holders of the account. An authorisation signed by either party to the account is sufficient for the *scheme administrator’s* requirements.

**Third party payments**

4.34 Strictly, a member’s contribution must be paid only by the member. However, in practice, a *scheme administrator* may accept a payment from:

- another individual on the member’s behalf,
- from the payroll system of the member's employer, or
- from the payroll system of the member’s spouse’s, civil partner’s or partner’s employer.

**EMPLOYER CONTRIBUTIONS**

4.35 Contributions paid by an employer to an employee’s personal pension *arrangement*

- are paid gross and claimed as a deduction in the company's accounts (see paragraph 5.12)
- may be made even if the employee is making no contributions
- must be added to any member’s contributions for the purposes of the *earnings threshold* or the percentage limits in paragraph 4.4
- are not assessable on the employee as a benefit in kind (or liable for National Insurance) and should not be included on form P11D (provided the payments are not making up arrears in contributions due from the member)
- cannot be carried back to an earlier year under section 641 or 641A
- cannot be used to take up unused relief carried forward under section 642 (carry forward applies for years up to 2000/2001 only)
- **before 6 April 2001**, must be based solely on remuneration paid by the employer to the employee in the current tax year i.e. earnings from other concurrent employments cannot be included when calculating the maximum amount payable
- **from 6 April 2001**, when aggregated with the employee's contribution must not exceed the higher of £3,600 or the employee's contribution limit (by reference to a *basis year*)
- should normally be paid only while the member is still in service, but there will be no objection to contributions being paid up to the end of the tax year in which the member left the employment.

4.35a It is not an Inland Revenue requirement for a member's employer to contribute to a *personal pension scheme*, even where the employer itself is the provider of the scheme.

**GROUP PERSONAL PENSIONS**

4.36 An employer (or group of employers) may arrange with a personal pension provider for their employees to make individual *arrangements* under the same scheme. The employer is not a party to the contract, but for convenience may collect contributions on behalf of all the employees.
involved. This is acceptable provided the employer’s and each employee’s contributions are separately identifiable and the employer does not apply the net pay arrangement to the employee’s contributions. The net pay arrangement is described in PN 4.3 and is only applicable for contributions to occupational pension schemes approved under Chapter I.

**CONTRACTED-OUT CONTRIBUTIONS (APPS)**

**Appropriate Personal Pensions**

4.37 Where an employee contracts out of the State Second Pension through an Appropriate Personal Pension scheme (stakeholder or non-stakeholder), the employee and the employer will continue to pay National Insurance Contributions at the standard not contracted-out rate. The National Insurance Contributions Office will pass on to the chosen scheme

- ( )
- a payment based on the age of the member on 5 April immediately prior to the tax year in question (Age-Related Rebate) (referred to in the Act as minimum contributions) plus
- an addition representing the basic rate tax on the employee’s share.

4.38 **Minimum contributions** may

- be paid by the National Insurance Contributions Office to an approved personal pension scheme if the scheme holds an appropriate scheme certificate
- continue to be paid up to the tax year before State Pension Age (SPA) is reached or the tax year in which the individual dies, if earlier, even if the member has elected to take the non-protected rights benefits from the arrangement at an earlier date
- not be paid in respect of an individual’s service as a controlling director of an investment company.

More detailed guidance is contained in manuals CA 16 and CA 84, obtainable from the internet (www.inlandrevenue.gov.uk) or from Inland Revenue NI Services to Pensions Industry, formerly COEG (see paragraph 1.4).

**CONTRACTED-OUT CONTRIBUTIONS**

**Contracted-out Money Purchase schemes**

4.39 Where the scheme has contracted-out of the State Second Pension as a Contracted-out Money Purchase (COMP) scheme (stakeholder or non-stakeholder), the employee and the employer will pay National Insurance contributions at the lower contracted-out rate. Full details are contained in manuals CA14A and CA84, obtainable from the internet (www.inlandrevenue.gov.uk) or from Inland Revenue NI Services to Pensions Industry (see paragraph 1.4).

4.39a Where a personal pension scheme is a COMP scheme, or is a COMB scheme by virtue of being a "dual approved" scheme (see paragraph 23.11), and the employer pays reduced NI contributions in return for minimum payments to an occupational pension scheme, the procedure is as follows.

Where the employer does not recover the employee’s share of the minimum payments from earnings, the whole of the minimum payments should be recorded as an employer contribution.

However, where the employer does recover an amount equal to the employee's share of the minimum payment from earnings, he should record the minimum payments as 1% employer and 1.6% employee (prior to 6 April 2002, 0.6% employer and 1.6% employee). The scheme will recover the appropriate amount of tax on the employee's contribution.
In both cases, the whole of the minimum payments will count towards the member’s contribution limits (see Part 4). Any age-related payments made subsequently by the National Insurance Contributions Office do not count towards the member’s maximum contribution.

MEMBERSHIP CERTIFICATE - UP TO 5 APRIL 2001

4.40 Up to 5 April 2001, a Personal Pension Contributions Certificate (PPCC - see Appendices 4 and 5) must be provided to the member shortly after the first contribution is paid.

Where there is a cooling off period during which the individual may cancel membership, the certificate must not be given until the end of that period.

A PPCC is not required for transfer only or minimum contribution only cases.

From 6 April 2001, it will no longer be a requirement for schemes to issue a form PPCC when the member first joins the scheme. Nor will it be necessary to document a change of employment status in accordance with paragraph 4.42. Appendices 4, 5 and 7 will therefore become obsolete from that date.

EVIDENCE OF CONTRIBUTIONS PAID

4.41 Under self-assessment, a member may still be asked by the Tax Office to produce evidence of payment of contributions in certain circumstances. A Contribution Payment Certificate (CPC - see Appendix 6) may be used for this purpose. Other acceptable forms of evidence are -

- an official receipt from the provider or scheme administrator on headed notepaper (which must include the scheme name and Inland Revenue SPSS (Nottingham) reference number)

- a statement of contributions given under the Personal Pension Schemes (Disclosure of Information) Regulations 1987 (SI 1987/1110), provided the particular contribution and the date of payment are clearly identified on it.

CHANGE OF EMPLOYMENT STATUS – UP TO 5 APRIL 2001

4.42 A member who ceases to be self-employed and becomes employed (or vice-versa) should be given a supplementary PPCC (see Appendix 7). The scheme administrator need not take any action to alter the tax treatment of any contributions paid between the date on which the employment status changed and the date the contributions start to be paid on the correct basis.

A self-employed member who becomes employed will also need to provide the scheme administrator with any additional information to enable contributions to be paid on the revised basis (see Part 14A).

CONCURRENT SOURCES OF EARNINGS – UP TO 5 APRIL 2001

4.43 A member may have relevant earnings from both employed and self-employed sources. These different sources need not be pensioned under different arrangements, but the member should be given a PPCC in respect of each source. One should show the amount of contributions being paid net of basic rate tax and the other the amount of contributions being paid gross.

REPAYMENT OF CONTRIBUTIONS

4.44 For years to 2000/2001, if the contributions paid to a personal pension scheme by the member and the employer in any tax year exceed the relevant percentage plus any unused relief carried forward, all contributions which do not qualify for tax relief must be repaid.

For years from 2001/2002 onwards, if the total contributions paid to a personal pension scheme in any tax year exceed the higher of -
• the *earnings threshold*, and
• the *relevant percentage* of *net relevant earnings* in the *basis year*,

all contributions which do not qualify for tax relief must be repaid.

Full details of the procedures to be followed are set out in Part 18.

**CESSATION OF CONTRIBUTIONS**

4.45 No contributions (other than *minimum contributions* - see paragraph 4.37 – 4.38) may be made to an *arrangement* after

• the day on which benefits (including income withdrawals) are first taken, or
• the day before the member reaches age 75.

There is no objection to contributions being paid - before the 75th birthday - based on an estimate of the *relevant earnings* for the whole of the tax year in which the member reaches 75. Any contributions which turn out to be excessive once the actual figures are known must however be refunded (see Part 18).

Where a single *arrangement* conforms with section 638ZA (see paragraph 8.4) and benefits have been taken from only one part, contributions may continue to be paid to the remaining part from which no benefits have been taken.

**Rebated and shared insurance commissions**

4.46 Financial advisers or other intermediaries sometimes pass on to their clients part of the commission they receive from *insurers* on the introduction of new business relating to *personal pension schemes*. Where such rebates arise as a result of commission generated by the direct or indirect movement of funds from one investment vehicle to another and are not used to enhance the value of the scheme funds, the approval of the schemes or *arrangements* concerned could be jeopardised. This is particularly likely where the switched fund is misrepresented as the first of an annual flow of premiums of equivalent amount.

4.47 Similarly, the misrepresentation as an annual premium of any premium applied to new pensions business, so that a higher rate of (rebated) commission is generated, will call into question the bona fides of the pension *arrangement* and jeopardise its approval from inception.

4.48 Where -

• a transfer payment is made from one *Personal Pension Scheme* to another, or
• a new investment is made, or
• an annuity is purchased

with the result that commission, other than commission paid to and retained as income by an intermediary, is paid for a purpose other than the provision of benefits under the schemes, the receiving *arrangement* may be regarded as set up other than for the sole purpose of providing approved benefits and its approval withdrawn from inception. The transfer payment may then be regarded as an unauthorised payment by the transferring scheme taxable under Section 647 on the individual who made the personal pension *arrangement*. 
Part 5A : Method of Giving Tax Relief on Contributions - up to 5 April 2001

5.1 This Part explains how tax relief is given on contributions paid by -

- employees
- self-employed persons
- employers

and shows how to claim relief. Where carry back or carry forward applies, see Parts 6 and 7.

5.2 The status of the individual (i.e. employed or self-employed) at the time the payment is made will determine whether the contribution is to be paid net of basic rate tax or gross (see paragraph 6.23).

5.3 Under self-assessment, it is no longer necessary to send form PPCC (see paragraph 4.40) with the first claim for relief, but the form should be retained by the member as the Tax Office may call for it at a later date.

EMPLOYEES

5.4 Employee contributions are paid net of basic rate tax under The Personal Pension Schemes (Relief at Source) Regulations 1988 (SI 1988/1013). For example, an employee who wishes to pay £100 a month will only pay the net amount (£78 a month for the year ended 5 April 2001).

The scheme administrator will recover the basic rate tax by making a claim to Inland Revenue SPSS (Bootle), St John’s House, Merton Road, Bootle, L69 9BB (See Part 15).

Higher Rate Taxpayers

5.5 Employees who pay tax at the higher rate claim the balance of relief from their Tax Office by completing either -

- form PP120 (available from Tax Offices or scheme administrators) or
- the relevant section of their Self Assessment return.

The PP120 may be completed and sent to the member’s Tax Office at any time during the tax year.

SELF-EMPLOYED INDIVIDUALS

5.6 Self-employed individuals pay their contributions gross and obtain tax relief at basic rate and, if appropriate, higher rate by making a claim to their Tax Office.

The claim is made either -

- on form PP120 (available from Tax Offices) or
- by completing the relevant section of their Self Assessment return.

The PP120 may be completed and sent to the member’s Tax Office at any time during the tax year.

5.7 Building workers who fall within the SC60 certificate procedures are treated as being self-employed for tax purposes. These individuals should pay their contributions gross and claim tax
relief from their Tax Office in the normal way.

5.8 From 6 April 1998 construction workers who work through employment agencies will be treated as employees for tax purposes. An individual who is taxed under PAYE on earnings from the construction industry will be entitled to make contributions to a personal pension scheme net of tax at basic rate.

EMPLOYER CONTRIBUTIONS

5.9 Contributions paid by employers to their employees’ approved personal pension arrangements will generally be allowable, under the normal rules of Schedule D, in arriving at the taxable profits of the business, and should be claimed as a deduction in the accounts submitted to the Inland Revenue. The question of whether tax relief is allowable is solely a matter for the Tax Office to decide and all queries should be addressed to the Tax Office dealing with the employer’s tax affairs.
CREDITING BASIC RATE TAX RELIEF

5.10 From 6 April 2001, all contributions paid by individuals whether in cash or as shares (see paragraph 4.32) are treated as paid net of basic rate tax under section 639(2)(a). This applies to all schemes approved under Chapter IV, including any sections of retirement benefits schemes that are deemed to be separate schemes under s611(3). This applies in respect of

- employees
- self-employed persons
- non-employed persons
- minors

regardless of whether they are

- non taxpayers
- basic rate taxpayers
- higher rate taxpayers (see also paragraph 5.11 below).

For example, an individual who wishes to pay £100 a month to their personal pension would only pay a net amount of £78 a month, if the basic rate of tax was 22%.

The scheme administrator will claim the tax refund at the basic rate from Inland Revenue SPSS (Bootle) (see Part 15) and credit it to the individual's arrangement.

Employers must not use the net pay arrangement to give tax relief on members’ contributions to schemes approved under Chapter IV.

CLAIMING HIGHER RATE TAX RELIEF

5.11 Individuals who pay tax at the higher rate claim the balance of relief from their Tax Office by completing either

- form PP120 (available from Tax Offices or scheme administrators) or
- the relevant section of their Self Assessment return.

The PP120 may be completed and sent to the member’s Tax Office at any time during the tax year. Minors will only be eligible for higher rate relief if they themselves are higher rate taxpayers.

TAX RELIEF ON EMPLOYER CONTRIBUTIONS

5.12 Employers may make contributions to their employees’ approved personal pension arrangements.

The amount paid as a contribution should be shown in the accounts submitted to the Inland Revenue, when calculating the taxable profits of the business, and will generally be allowable as a deduction under the normal rules of Schedule D.

The question of whether tax relief is allowable on these contributions is solely a matter for the Tax Office to decide and all queries should be addressed to the Tax Office dealing with the employer’s tax affairs.
6.0 This Part only applies to payments actually made on or before 5 April 2001.

GENERAL

6.1 An individual who pays a personal pension contribution in any tax year may elect under section 641(1) to have that contribution, or part of it, treated as having been paid in -

- the previous tax year, or
- if the individual has no net relevant earnings in the preceding tax year, the tax year before that.

This is known as “carry back”. A “tax year” is a year ending on 5 April.

6.2 Only contributions paid by the individual can be carried back. Contributions paid by an employer cannot be carried back under any circumstances.

FORM OF ELECTION

6.3 The Inland Revenue provide a form PP43 for an individual to make an election to carry back contributions. A specimen form is reproduced at Appendix 17.

6.4 A scheme administrator is only required to obtain a form PP43 for an employed individual. Where the individual is liable to tax at higher rate the scheme administrator must retain a copy of the PP43 and return the original to the individual. (The individual’s own Tax Office may request this in connection with the claim to higher rate.)

6.5 The scheme administrator needs all the information on the form PP43. It is unlikely that a letter would include all the information. The scheme administrator should obtain forms PP43 but, exceptionally, if a member specifically refuses to complete form PP43, a letter can be accepted provided it contains the full details as shown on form PP43. In particular -

- the election must not cover a period of more than one tax year
- the amount being carried back must be clearly specified (terms such as “maximum relief available” or “maximum possible” are not acceptable)
- the scheme into which the contributions are paid must be clearly specified and
- it must contain a declaration that the details given are to the best of the individual’s knowledge and belief correct.

6.6 Supplies of form PP43 may be obtained from Inland Revenue SPSS (Bootle) (see paragraph 1.3). Personal pension schemes wishing to use their own version of form PP43 should submit a draft to Inland Revenue SPSS (Bootle) for approval before bringing it into use. Photocopied forms should not normally be used but, exceptionally, are acceptable if stocks have been exhausted.

SPECIFIC ISSUES

6.7 An election to carry back contributions may only be made after the individual attains age 75 if it relates to contributions paid before age 75.

6.8 An election must state in monetary terms the amount to be carried back. A scheme administrator should not accept a form PP43 which shows an entry such as “maximum amount
6.9 The amount to be shown on form PP43 to be carried back must always be expressed in gross terms even where the individual has paid only a net amount after tax relief at source.

6.10 An election to carry back a personal pension contribution must be made by 31 January immediately following the end of the tax year in which the contribution was paid.

6.11 An election may not be amended or withdrawn after 31 January unless it transpires that the amount of contributions carried back proves to be excessive (see Part 18) in the earlier tax year. In such a situation the excess will revert back to the actual year of payment.

6.12 An election must not cover contributions paid in more than one tax year.

6.13 Where an election is made, the contribution or part of it specified in the election will be treated for all tax purposes as though it was paid in the tax year specified in the election and not in the actual year of payment.

6.14 Where an individual has a personal pension contract and there is a regular commitment to pay contributions, for example monthly payments, an election to carry back can be made to cover contributions to be paid later in the tax year. But the election must not be made until the first contribution in the tax year has been paid.

6.15 Where an individual makes an election to carry back future contributions to be paid later in the tax year (see paragraph 6.14), the scheme administrator will need to carry out a check at the end of the tax year. If the check shows that the individual did not make all the contributions which he elected to carry back, the scheme administrator will need to obtain a revised PP43 and make an adjustment to his records to show the correct position.

6.16 An individual may pay a personal pension contribution at a time when he/she has no relevant earnings provided that an election is made with the payment to carry back to a tax year when a source of relevant earnings existed.

A scheme administrator must not accept a contribution in such circumstances, without a fully completed election to carry back the contribution.

For example, Mr Jones joined his employer’s occupational pension scheme with effect from 1 May 2000. Although his earnings from 1 May 2000 are not relevant earnings he may make a personal pension contribution after that date and carry it back to the 1999/2000 tax year (when he had relevant earnings from his employment).

6.17 Where a scheme administrator accepts a contribution in the circumstances outlined at paragraph 6.16, he must accept it net of tax at the basic rate applicable to the earlier tax year. But, this only applies where the individual has employee status in that earlier year. (In the example in paragraph 6.16 Mr Jones would pay his contribution net of basic rate tax for the tax year 1999/2000.)

All contributions paid at a time when an individual does not have relevant earnings and which are carried back to an earlier income tax year when that individual was self-employed must be paid gross.

**ACTION ON RECEIPT OF PP43**

6.18 An election on form PP43 to carry back contributions to an earlier tax year will fall within one of two separate categories -

- an election made at the same time as the payment of contributions; or
- an election made at a time later than the payment of contributions.
In the case of employees, a different treatment applies to each of the above categories.

**Election made at the same time as the payment**

6.19 The *scheme administrator* must accept such a net contribution which when grossed up at the basic rate of tax for the earlier tax year, will give the correct gross contribution for that tax year. (Individuals will be calculating their eligibility to carry back contributions by working in gross terms).

**Example**

6.19a In 1999/2000 Mr Taylor paid his maximum personal pension contributions of £2,000 for that tax year based on his estimated earnings of £10,000 (£10,000 x 20% - his age related percentage limit).

On 1 May 2000 he provides details to the *scheme administrator* that his earnings for 1999/2000 were in fact £13,000. He now wishes to pay a further gross contribution in 2000/01 of £600 (being 20% x additional earnings of £3,000) and to carry it back to 1999/2000.

The *scheme administrator* should

- Calculate the net contribution needed to be made to achieve a further gross contribution of £600 for 1999/2000
  
  | Gross contribution | £600 |
  | Tax at 23%(1999/2000 basic rate) | £138 |
  | Net contribution | £462 |

- Accept the net contribution of £462 together with Mr Taylor’s completed election on form PP43 which should show the carry back in gross terms (£600), and

- Reclaim the tax relief from Inland Revenue SPSS (Bootle) (see Part 15).

**Election made at a later time than the payment**

6.20 An individual may elect to carry back to a previous tax year

- the whole or part of a contribution paid earlier in the current tax year, and/or
- the whole or part of a contribution paid in the previous tax year providing the election is made by 31 January following the end of that previous tax year.

6.21 Each situation will present difficulties to the *scheme administrator* as the member will already have received tax relief on the original payment when it was first made. The *scheme administrator* will also have reclaimed tax relief on the original payment.

6.22 The *scheme administrator* should compare the basic rate of tax for the tax year to which the payment is being carried back, with the basic rate for the tax year of payment.

The *scheme administrator* should then proceed as follows:

- if the basic rate for each tax year was the same no further action is necessary

- if the basic rate was higher in the earlier tax year then the individual will be entitled to further tax relief and the *scheme administrator* should follow the principles in Example 1 below.

- if the basic rate was lower in the earlier tax year then the individual will have received too much tax relief and the *scheme administrator* should follow the principles in
Examples 2 and 3 below.

**Example 1 - Basic rate of tax is higher in the earlier year than in the payment year**

6.22a  **Facts:**

- Mr Smith makes a net contribution of £577.50 on 1 July 1999 (1999/2000) representing a gross contribution of £750 less tax relief at basic rate (23%) of £172.50.

- The *scheme administrator* reclaims tax of £172.50 from Inland Revenue SPSS (Bootle) on form PP10 in monthly claim to 5 July 1999 (see Part 15).

- On 1 July 2000 (2000/01) Mr Smith makes a net contribution of £1,170 representing a gross contribution of £1,500 less tax relief at basic rate (22%) of £330.

- The *scheme administrator* reclaims tax of £330 from Inland Revenue SPSS (Bootle) on form PP10 in monthly claim to 5 July 2000 (see Part 15).

- On 1 October 2000 (2000/01) Mr Smith calculates his *net relevant earnings* for 1999/2000 and realises that he could have paid a total of £1,750 personal pension contributions in that tax year. He therefore makes an election to carry back £1,000 (£1,750 less £750 already paid for 1999/2000) in gross contributions to 1999/2000 out of the payment he made on 1 July 2000.

**Action by Scheme Administrator**

6.22b  **Step 1:**

Calculate the net contribution needed to be carried back to 1999/2000 to achieve a gross contribution of £1,000 as follows:

<table>
<thead>
<tr>
<th>Gross Contribution</th>
<th>£1,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax at 23%</td>
<td>£230</td>
</tr>
<tr>
<td>Net contribution</td>
<td>£770</td>
</tr>
</tbody>
</table>

**Step 2**

Calculate the additional tax relief due for 1999/2000 on the gross contribution carried back as follows:

- Gross contribution carried back
  - £1,000 x 23% = £230
- Relief received on gross contribution
  - in year of payment £1,000 x 22% = £220
- Further tax relief due = £10

**Step 3**

Reclaim the further tax relief due of £10 by including it in the next monthly claim on form PP10 and refund £10 to Mr Smith.

**Step 4**

Recalculate the 2000/01 position as follows:
Total net contributions paid £1,170

Net contributions carried back

<table>
<thead>
<tr>
<th>To 1999/2000</th>
<th>£770</th>
</tr>
</thead>
<tbody>
<tr>
<td>Refund to member</td>
<td>£10</td>
</tr>
<tr>
<td>Balance remaining</td>
<td>£390</td>
</tr>
</tbody>
</table>

This is equivalent to

<table>
<thead>
<tr>
<th>Gross contributions</th>
<th>Tax</th>
<th>Net contributions</th>
</tr>
</thead>
<tbody>
<tr>
<td>£500</td>
<td>£110</td>
<td>£390</td>
</tr>
</tbody>
</table>

Note

It is up to the scheme administrator and Mr Smith to decide what should be done with the £10 refund. If Mr Smith decides to reinvest it, it should be regarded as a further net payment for the current tax year. The date of payment will be the date Mr Smith authorises the scheme administrator in writing of the reinvestment.

In the following examples 2 and 3 the 25% basic rate of tax for 2000/01 is purely for illustrative purposes only.

**Example 2 - Basic rate of tax is lower in the earlier year than in the payment year**

6.22c NOTE - In this example the whole of the contribution is being carried back.

**Facts:**

- Mr Green makes a net contribution of £770 on 1 July 1999 (1999/2000) representing a gross contribution of £1,000 less tax relief at basic rate (23%) of £230.
- The scheme administrator reclaims tax of £230 from Inland Revenue SPSS (Bootle) on form PP10 in monthly claim to 5 July 1999 (see Part 15).
- On 1 July 2000 (2000/01) Mr Green makes a net contribution of £750 representing a gross contribution of £1,000 less tax relief at basic rate (say 25%) of £250.
- The scheme administrator reclaims tax of £250 from Inland Revenue SPSS (Bootle) on form PP10 in monthly claim to 5 July 2000 (see Part 15).
- On 1 December 2000 (2000/01) Mr Green calculates his net relevant earnings for 1999/2000 and realises that he could have paid a total of £2,000 personal pension contributions in that year. Mr Green therefore makes an election to carry back £1,000 (£2,000 less £1,000 already paid for 1999/2000) in gross contributions to 1999/2000 i.e. the whole of the payment he made on 1 July 2000.

**Action by Scheme Administrator**

6.22d Step 1

Calculate the net contribution to be carried back to 1999/2000 to achieve a gross contribution of £1,000 as follows:

| Gross contribution | £1,000 |
Step 2

Because Mr Green has only paid a net contribution of £750 in 2000/2001 this is the **maximum** amount available to be carried back and the *scheme administrator* must re-gross this figure at the basic rate of 23% i.e. the 1999/2000 rate.

Gross equivalent in 1999/2000 is

\[ £750 \times \left(\frac{100}{77}\right) = £974.03 \]

Step 3

Calculate the excess tax relief obtained by Mr Green for 2000/01 on the net contribution being carried back as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax relief received on net contribution in 2000/01</td>
<td>£250.00</td>
</tr>
<tr>
<td>Tax relief due on net contribution in 1999/2000 (£974.03 x 23%)</td>
<td>£224.03</td>
</tr>
<tr>
<td>Excess tax relief</td>
<td>£25.97</td>
</tr>
</tbody>
</table>

Step 4

Account for the excess tax relief to Inland Revenue SPSS (Bootle) by deducting the figure of £25.97 from the other amounts claimable in the next monthly claim on form PP10 (see Part 15).

Step 5

The *scheme administrator’s* records should now show that there are no contributions remaining for Mr Green for the 2000/01 tax year. The **total contributions** for the 1999/2000 tax year are now £1974.03 in gross terms (£1000 originally paid plus £974.03 carried back).

**NOTE**

It would still be open to Mr Green to bring his additional contributions up to £1,000 for 1999/2000 by making an additional payment and contemporaneous election at this stage in accordance with paragraph 6.17.

**Example 3 - Basic rate of tax is lower in the earlier year than in the payment year**

6.22e **NOTE** - In this example only **part** of the contribution is being carried back.

**Facts:**

As for example 2 except

5. On 1 December 2000 (2000/01) Mr Green calculates his *net relevant earnings* for 1999/2000 and realises that he could have paid a total of £1,500 personal pension contributions in that tax year. He therefore makes an election to carry back £500 in gross contributions to 1999/2000 out of the payment he made on 1 July 2000 (2000/01).
**Action by Scheme Administrator**

6.22f Step 1

Calculate the net contribution needed to be carried back to 1999/2000 to achieve a gross contribution of £500 as follows:

<table>
<thead>
<tr>
<th>Gross contribution</th>
<th>£500</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax at 23%</td>
<td>£115 (1999/2000 rate)</td>
</tr>
<tr>
<td>Net contribution</td>
<td>£385</td>
</tr>
</tbody>
</table>

Step 2

Calculate the excess tax relief obtained for 2000/01 on the net contribution being carried back as follows:

<table>
<thead>
<tr>
<th>Tax relief received on net contribution in 2000/2001 at 25%</th>
<th>£128.33*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax relief due on net contribution in 1999/2000</td>
<td>£115.00</td>
</tr>
<tr>
<td>Excess tax relief</td>
<td>£13.33</td>
</tr>
</tbody>
</table>

*Net contribution (from Step 1) £385.00 - (A)

Gross equivalent in 2000/01 is

\[ £385 \times \left( \frac{100}{75} \right) \]

\[ £513.33 - (B) \]

Tax relief (B) less (A) £128.33

Step 3

Account for the excess tax relief to Inland Revenue SPSS (Bootle) by deducting the figure of £13.33 from the other amounts claimable in the next monthly claim on form PP10 (see Part 16).

Step 4

Recalculate the 2000/01 position as follows:

<table>
<thead>
<tr>
<th>Total net contributions paid</th>
<th>£750</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net contributions carried back to 1999/2000</td>
<td>£385</td>
</tr>
<tr>
<td>Balance of net contributions</td>
<td>£365</td>
</tr>
</tbody>
</table>

This is equivalent to

<table>
<thead>
<tr>
<th>Gross contributions</th>
<th>Tax</th>
<th>Net contributions</th>
</tr>
</thead>
<tbody>
<tr>
<td>£486.66</td>
<td>£121.66</td>
<td>£365</td>
</tr>
</tbody>
</table>

**WHEN IS A CONTRIBUTION PAID NET OR GROSS?**

6.23 The status of an individual i.e. employed or self-employed, at the time of payment of a contribution will determine whether the contribution is paid net of tax at basic rate or paid gross. The same principle should be applied by the **scheme administrator** to a contribution which is paid
in the current year but carried back to a previous year when the individual's status was different.

6.24 An individual with no net relevant earnings at the time of payment may make a contribution and carry it back to an earlier year. The payment should be accepted net or gross depending on the individual's status in that earlier year (see paragraph 6.17).

For example if Mr Adams is self-employed in 2000/01 and pays a contribution in that year which he wants to carry back to 1999/2000 when he was in non-pensionable employment, he would pay his contribution gross.

Mr Adams would need to make a claim for any tax relief which may be due on his Income Tax Self Assessment return form, or by completing form PP43 and sending it to his Tax Office.

6.25 If, in the example at paragraph 6.24, the facts were that Mr Adams had been in non-pensionable employment in 2000/01 and paid a contribution in that year which he carried back to 1999/2000 when he was self-employed, he would have paid his contribution net of tax at basic rate.

In that event Mr Adams should have given form PP43 to his scheme administrator.

6.26 If, however, Mr Adams is liable to tax at higher rate he would need to claim the additional relief due, that is the difference between the higher rate and basic rate, from his Tax Office. He would need to make his claim on his Income Tax Self Assessment return form or by sending the original form PP43 to his Tax Office. If the latter route is chosen, then the scheme administrator should accept a copy of the PP43 as the authority to give the basic rate relief on the contribution.

COMBINING CARRY BACK WITH CARRY FORWARD

6.27 Carry back may be combined with carry forward (see Part 7A). This means that an amount carried back may exceed the percentage limit (see paragraph 4.4) of net relevant earnings for the earlier year.

6.28 By using carry forward and carry back together, a member may commence or continue to make contributions for up to 2 years after relevant earnings have ceased, but no later than age 75.

This could apply, for example, where an individual -

- has joined an occupational pension scheme
- has become unemployed
- has moved abroad
- has retired.

OTHER ISSUES

6.29 If a scheme administrator is experiencing difficulty in a particular case then Inland Revenue SPSS (Bootle) will try to assist. It would be preferred if contact is in writing with a full report of the facts of the case.
MEMBERS' CONTRIBUTIONS

6.30 A member may elect for a personal pension contribution (or part of it) to be treated as paid in the previous tax year, provided-

- the contribution was paid between 6 April and 31 January, and
- the election was made at or before the time of payment.

6.31 The contribution carried back will be treated for all tax and limit purposes as though it was paid in the previous tax year.

6.32 An election to carry back can only apply to contributions paid before the member attains age 75.

6.33 A member who is making regular contributions, for example monthly, may elect to carry back contributions to be paid later in the tax year. But it will only apply to those contributions to be paid up to 31 January.

6.34 Contributions paid on or after 6 April 2001 and carried back to 2000/2001 are to be paid net of tax at basic rate - even if the member was self-employed in 2000/2001.

EMPLOYER CONTRIBUTIONS

6.35 Contributions paid by an employer cannot be carried back. They are always treated as contributions for the tax year in which they are actually paid.

HOW TO ARRANGE A CARRY BACK

Member

FORM OF ELECTION

6.36 A carry back election may be made to the scheme administrator –

- on a form PP43 (New), or
- by letter, fax or a form issued by the scheme, or
- where the scheme permits, electronically or by telephone.

Where a carry back election is made electronically or by telephone, the scheme administrator must make a record of the election (either in writing or electronically) and send a copy to the individual. This record should show the date it was sent to the member and confirm the details of the carry back provided by the member. The carry back election is valid from the date the scheme administrator received it and the member has 30 calendar days from the date the copy was sent to notify the scheme administrator of any corrections. Such a notification need not be in writing.

Where a correction is notified, the scheme administrator must issue a revised record to the member. The revision will take effect from the date of the original election.

6.37 If the member was liable to tax at higher rate for the previous year to which the contribution is being carried back, then they will normally claim the higher rate element in their Self Assessment tax return.
However, a member who has already sent their Self Assessment tax return to their Tax Office will need to submit a stand-alone claim. Where the election was made to the scheme on a form PP43(New), it is sufficient for the member to send the Tax Office a copy of that form. Where the election was made in some other format (see paragraph 6.36), the member should provide the Tax Office with full details in a letter.

**Scheme Administrator**

6.38 *Scheme administrators* will need to keep supplies of form PP43, as they need to provide them to their members on request. These forms may be obtained from Inland Revenue SPSS (Bootle) (see paragraph 1.3).

*Personal pension schemes* wishing to use their own version of form PP43 should submit a draft to Inland Revenue SPSS (Bootle) for approval before bringing it into use.

6.39 A *scheme administrator* will need to retain a completed election (or a copy where the member has sent the original to their Tax Office) for audit purposes.

6.40 Where an election is made in advance of future payments in a case where the member has a regular contribution *arrangement* (see paragraph 6.33) the *scheme administrator* must take the following further action as soon as possible after 31 January -

- check that the contributions shown to be carried back on the original election were in fact paid, and
- if they were not paid, recalculate the position for that earlier year. Any refund of tax relief will need to be made to Inland Revenue SPSS (Bootle) in accordance with Part 15.

**COMBINING CARRY BACK WITH CARRY FORWARD**

6.41 Due to the abolition of carry forward of unused relief (see Part 7B) from 6 April 2001, it will no longer be possible for carry back to be combined with carry forward after 31 January 2002.

Until that date, it will still be possible in the limited circumstances where

- the member pays a contribution before 31 January 2002 and
- elects to carry it back to 2000-01, and
- has some unused relief available from any of the preceding 6 years. This means that an amount carried back may exceed the *relevant percentage of net relevant earnings* for the earlier year, but must not exceed the *relevant earnings* for that year.

**Example**

6.41a Mr Turner has earnings of £20,000 for the tax year 2000/01, and paid a personal pension contribution for that year of £3,000. He has unused relief of £7,000 available at 6 April 2000. His date of birth is 1 June 1950.

He pays a personal pension contribution of £8,000 on 1 July 2001, and elects to carry it back to the previous tax year 2000/01.

The position for the tax year 2000/01 will be as follows:-

| Contributions originally paid | £3,000 |
| Contributions paid 1 July 2001 and carried back | £8,000 |
Total contributions for 2000/01 £11,000
Maximum contributions possible (£20,000 x 25%) £5,000
Excess contributions £6,000

The excess of £6,000 can be met out of the total unused relief of £7,000 available at 6 April 2000.

The balance of unused relief of £1,000 will be lost after 31 January 2002 as this is the last date by which a payment can be carried back to the tax year 2000/01.

ADVICE ON CARRY BACK

6.42 If a scheme administrator is experiencing difficulty in a particular case, then Inland Revenue SPSS (Bootle) will try to help. Please contact Inland Revenue SPSS (Bootle) with a full report of the facts of the case.
WHAT IS UNUSED RELIEF?

7.1 Where for any tax year the amount of personal pension contributions paid is less than the percentage limit (see paragraph 4.4) of an individual’s net relevant earnings, the balance is referred to as “unused relief”. It is carried forward and may be used in later years.

Example

7.1a Mr Brown is aged 43 on 6 April 1996 and has net relevant earnings of £20,000 for the tax year 1996/97. In that tax year he paid personal pension contributions of £1000.

Mr Brown’s unused relief arising in 1996/97 is as follows:

- Percentage limit x net relevant earnings
  - 20% x £20000 = £4000
- Actual 1996/97 personal pension contributions = £1000
- Unused relief for personal pension purposes = £3000

7.2 In calculating unused relief for a particular tax year an individual must take into account any retirement annuity premiums paid in the year in addition to personal pension contributions paid in the year.

Example

7.2a Mrs Hughes is aged 52 on 6 April 1999 and has net relevant earnings of £30,000. In the 1999/2000 tax year she paid a premium of £1500 to a retirement annuity and a personal pension contribution of £3000.

Mrs Hughes’s unused relief arising in 1999/2000 is as follows:

- Percentage limit x net relevant earnings
  - 30% x £30000 = £9000
- Deduct retirement annuity premium paid in 1999/2000 = £1500
- Actual personal pension contributions in 1999/2000 = £7500
- Unused relief for personal pension purposes = £4500

Term Assurance Contributions

7.3 Unused relief can also arise in respect of term assurance contributions (see paragraph 4.8). However it must not exceed the lesser of:

- any balance of the 5% limit of net relevant earnings for the tax year (the 5% limit less the actual term assurance contributions paid), or
• any balance of the personal pension percentage limit (see paragraph 4.4) of *net relevant earnings* for the tax year (the percentage limit less the actual *total contributions* paid).

*Total contributions* includes amounts paid to both personal pension and retirement annuity contracts. It will also include amounts paid in respect of term assurance.

**HOW IS UNUSED RELIEF USED?**

7.4 An individual with unused relief may use such relief in any of the following 6 tax years providing that the individual makes a personal pension contribution in excess of the normal percentage limit for the year of intended take up of that relief.

7.5 If, for example, Mr Brown (see paragraph 7.1) wished to take up unused relief of £3000 from 1994/95 he can do so in any tax year from 1995/96 to 2000/1. But before the unused relief can be used in the chosen tax year, Mr Brown **must** pay the maximum contribution for that tax year based on the percentage limit of *net relevant earnings*. Mr Brown can then pay a further contribution of up to £3000 to use his unused relief.

7.6 Where an individual has unused relief for more than one tax year, unused relief from the earliest tax year must be used first.

7.7 Where an individual only uses part of the unused relief from any tax year the balance is still available for carry forward subject to the six year rule (see paragraph 7.4). Again, when using any balance in this way unused relief from the earliest year **must** be used first.

7.8 It is **not** permissible for contributions to be paid in a tax year which exceed the individual’s *relevant earnings* even where unused relief is available. The maximum amount which could be paid must be restricted to the *relevant earnings* figure and there are no exceptions to this rule.

**Example:**

<table>
<thead>
<tr>
<th>Relevant Earnings 1997/98</th>
<th>£30000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contribution payable for 1997/98 (30%)</td>
<td>£9000</td>
</tr>
<tr>
<td>Unused relief carried forward from earlier years</td>
<td>£25000</td>
</tr>
<tr>
<td></td>
<td>£34000</td>
</tr>
</tbody>
</table>

Although there is sufficient unused relief to justify a contribution of £34000, in practice only £30000 (made up of £9000 percentage relief and £21000 unused relief) may be paid in 1997/98, because contributions may only be set against *relevant earnings*. The remaining unused relief of £4000 will be carried forward and may be used in a later year.

7.9 Section 642(4) sets out special provisions for paying an additional contribution in cases where an assessment becomes final and conclusive more than 6 years after the end of the tax year in question. The payment must be made within 6 months of the assessment becoming final and conclusive.

7.10 Unused relief arising in respect of term assurance contributions (see paragraph 7.3) may only be taken up where

- contributions are also being paid to secure pension benefits, and
- those contributions exceed the difference between the personal pension percentage limit (see paragraph 4.4) of *net relevant earnings* for the tax year and the 5% term assurance limit (see paragraph 4.8).
Where the arrangement is for term assurance benefits only and no contributions to secure pension benefits are being made, unused relief cannot be taken up. Contributions must be restricted to the 5% limit of net relevant earnings for the tax year.

**Employer contributions**

7.11 Contributions made by an employer of the individual cannot take up unused relief for earlier years.

**WHEN IS CARRY FORWARD NOT AVAILABLE?**

7.12 Carry forward of unused relief is not available in respect of -

- a source of income from an employment held by an individual during which time he/she was a member of the employer’s occupational pension scheme except
  - if that scheme provided only death benefits, or
  - the only benefit paid by that scheme in respect of that period of employment was a refund of his/her contributions (see paragraph 3.15)

- a tax year of assessment falling after an individual has attained age 75.

**SPECIFIC ISSUES**

**Individual is both employed and self-employed**

7.13 An individual may carry forward any unused relief from an earlier tax year (within the allowable 6 year limit) which arose from earnings from both -

- self-employment, and
- non-pensionable employment

in that earlier tax year.

It is not necessary to keep a separate record of how much of the total unused relief for that earlier tax year arose from each separate source. It is sufficient merely for the individual to provide the total figure for the tax year.

However, in the tax year in which the unused relief is used, if the separate sources of earnings still exist, the individual must satisfy the percentage limit applicable to both sources before the unused relief can be used.

**Example:**

**Facts:**

- Mr Lloyd has the following earnings for 1997/98
  - non-pensionable employment £20000, and
  - self-employment £10000.
- He has paid a personal pension contribution of £4000 for 1997/98 and has received relief at source from the scheme administrator.
- He has unused relief available for carry forward of £3000 for 1995/96 and £4000 for 1996/97 and he wishes to use this unused relief in 1997/98.
The percentage limit for the purposes of this example is 20%.

**Action to be followed:**

**Step 1:**

Mr Lloyd can only take up the total unused reliefs carried forward of £7000 once he has satisfied the percentage limit of net relevant earnings for 1997/98. This would be the total earnings figure of £30000 from both employment and self-employment. As Mr Lloyd has already paid the maximum contribution based solely on his earnings from employment i.e. £20000 x 20% = £4000, he now must satisfy the percentage limit based upon his self-employed earnings of £10000. Mr Lloyd must therefore pay a gross contribution of £2000 before he can take up unused relief.

**Step 2:**

Mr Lloyd is now free to make an additional contribution for 1997/98 of £7000 to utilise the unused reliefs brought forward from 1995/96 and 1996/97. He can make payment in one of three ways:

- by making the additional payment of £7000 to his existing employed earner’s arrangement. This would involve basic rate tax relief being obtained at source so only the net amount would be paid to the scheme administrator, or
- by making the additional payment of £7000 to his existing self-employed earner’s arrangement. Such an amount would be paid gross and tax relief would have to be claimed from Mr Lloyd’s tax office, or
- by a mixture of payments to each of the existing employed earner arrangement and self-employed earner arrangement amounting to £7000 in total. Payments to the former must be made net of basic rate tax relief and gross to the latter.

**Example:**

Facts:
On 1/12/98 Mr White makes a current year (1998/99) contribution of £770 net representing a gross contribution of £1000 less tax relief at basic rate (23%).

His net relevant earnings for 1998/99 were estimated at £11000 and his percentage limit based on age is 20%.

On 1/6/99 Mr White decides to make a payment to his personal pension to utilise unused reliefs from 1992/93 to 1997/98 inclusive of £1000 each year.

**Action needed:**

- Mr White must calculate the maximum contribution for 1998/99 i.e. 20% x net relevant earnings £11000 = £2200.
- Mr White must then deduct the actual contribution paid in 1998/99 i.e. £1000 leaving a sum of £1200 as unused relief.
- Mr White then makes a payment of £7200 in gross terms on 1/6/99 (1999/2000) and carries it back to 1998/99. The position for that year then becomes:

<table>
<thead>
<tr>
<th>Original payment (1/12/98)</th>
<th>£1000 gross</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional payment</td>
<td></td>
</tr>
<tr>
<td>Carried back from 1999/2000</td>
<td>£7200 gross</td>
</tr>
<tr>
<td></td>
<td>£8200</td>
</tr>
</tbody>
</table>

Percentage limit

(from 1. above) £2200

Excess contribution £6000

This represents the unused relief of £1000 for each of the years 1992/93 to 1997/98 inclusive.

The actual net payment by Mr White on 1/6/99 would be £5544. This is the gross amount carried back of £7200 less tax at basic rate for 1998/99 (23%).

7.18 In the example above, if Mr White had not used carry back and had merely made a payment in 1999/2000 to utilise the unused reliefs, the unused relief for 1992/93 of £1000 would have been “lost” as not taken up within the 6 year limit.

**INTERACTION WITH RETIREMENT ANNUITY PAYMENTS**

7.19 Where contributions are being paid to both personal pensions and retirement annuity contracts, special care should be taken to check the correct amount of relief (especially where unused relief is involved) because -

- the percentage limits are different from 1989/90 onwards
- personal pensions (but not retirement annuity contracts) are subject to an earnings cap (the allowable maximum) for 1989/90 onwards.

7.20 The general principle which applies in both the calculation of unused relief and its utilisation under the personal pension and retirement annuity rules is that each is to be separately measured by reference to the aggregate contributions paid to both in the year of assessment.

An example of how the interaction between the two types of relief works in practice is contained at Appendix 12.
FORM PP42

Employed individuals

7.21 A payment which is in excess of the relevant percentage may be accepted by a scheme administrator where the individual has unused relief available from earlier years.

7.22 The Inland Revenue provide a form PP42 for an employed individual to complete where he/she is using carry forward of unused relief from earlier years. Supplies of form PP42 may be obtained from Inland Revenue SPSS (Bootle) (see paragraph 1.3). Personal pension schemes wishing to use their own version of form PP42 should submit a draft to Inland Revenue SPSS (Bootle) (Financial Intermediaries Technical) for approval before bringing it into use. Photocopied forms should not normally be used but, exceptionally, are acceptable if stocks have been exhausted.

7.23 Employed individuals receive basic rate tax relief at source on their contributions and pay only the net amount to their personal pension arrangement provided they complete a form PP42 and give it to the scheme administrator at the time of payment of the contribution.

7.24 Form PP42 should be accepted from an employed individual on the basis of his/her own calculations. A scheme administrator is not required to verify information shown by the individual. If, however, the scheme administrator has reason to believe that information given by an individual is incorrect - for example it may conflict with information held on a previous form - the matter should be clarified with the individual before accepting the contribution.

7.25 When dealing with such cases, scheme administrators should bear in mind that although employer contributions cannot in themselves be used to take up unused relief from earlier years, they still count towards the overall contribution limits.

7.26 Forms PP42 must be retained by the scheme administrator as it may be necessary for Inland Revenue SPSS (Bootle) to refer to an election at some later stage.

7.27 If an employed individual is liable to tax at higher rate, the scheme administrator should give the individual the original form PP42 to send to his/her own Tax Office to claim the higher rate element i.e. the difference between the higher rate and the basic rate. In such a case the scheme administrator should retain a copy of form PP42 before releasing the original to the member. The copy may ultimately be required for Inland Revenue SPSS (Bootle) monitoring and/or audit purposes.

Self-employed individuals

7.28 Self-employed individuals do not receive basic rate tax relief at source but instead make contributions gross to their personal pension arrangement. As scheme administrators are not required to carry out checks on contribution levels for the self-employed, it is not necessary for the individual concerned to provide the scheme administrator with a form PP42.

Individuals must make all claims to relief to their own Tax Office.

OTHER ISSUES

7.29 If a scheme administrator is experiencing difficulty in a particular case then Inland Revenue SPSS (Bootle) will try to assist. It would be preferred if contact is in writing with a full report of the facts of the case.
DISCONTINUANCE OF CARRY FORWARD FACILITY

7.30 From 6 April 2001, a member who pays contributions below the maximum based on the earnings threshold or the relevant percentage of net relevant earnings for a tax year will no longer be able to make up the shortfall in a later tax year. There is, however, one exception to this, which is covered in paragraph 6.41.
**PENSION DATE**

8.1 The date from which benefits are paid is known as *pension date*.

8.2 The *pension date* must not normally be

- before the date the member reaches age 50 (but see the exceptions in paragraphs 8.3 and 8.6 to 8.9)

and never

- later than the date the member reaches age 75.

8.3 *Protected rights* may not be paid until age 60. This applies even if the other benefits under the *arrangement* are being paid at an earlier date.

If the member wishes, *protected rights* may be paid instead at any later date up to the 75th birthday.

8.4 The scheme may allow the member to select the *pension date* at any time and different dates may apply to different *arrangements*. From 6 April 2001, the scheme may allow the member to take benefits from a single *arrangement* at different times (section 638ZA). If the member elects to do so, there will be a different *pension date* for each part of the *arrangement*. Once vested, that part of the *arrangement* will be treated as a separate *arrangement* from the *relevant date*. There is no requirement that the member must retire when benefits are taken.

8.5 A *pension date* of age 75 will still enable an annuity to be payable up to a year in arrear, so that the first annuity payment may be paid at any time up to the 76th birthday.

**Incapacity**

8.6 A member who has become permanently incapable through infirmity of mind or body of carrying on their normal occupation, or any occupation of a similar nature for which they are trained or fitted, may take benefits, other than *protected rights*, earlier than age 50. Medical evidence must be provided to the *scheme administrator* to show that the individual has become incapable of carrying on that occupation and is unlikely to be able to return to it.

**Special Occupations**

8.7 Inland Revenue SPSS (Nottingham) has agreed pension ages earlier than age 50 for certain occupations where it has been proved that individuals customarily retire before that age. A current list of agreed occupations and ages is shown in Appendix 10.

A member in an occupation listed at Appendix 10 may only take benefits earlier than the specified early pension age for that occupation if 8.6 applies.

8.8 The following special conditions apply to any *arrangement* set up with an agreed early pension age:

- the member must have *net relevant earnings* from the recognised occupation in the tax year to which contributions relate

- contributions to the *arrangement* must be based solely on the *net relevant earnings* from the recognised occupation that tax year (or the *earnings threshold*, if higher)
• the member must agree to notify the scheme administrator as soon as he ceases to carry on the recognised occupation and all contributions to the arrangement must then stop.

8.9 Applications for additions to the list in Appendix 10 should be sent to Inland Revenue SPSS (Nottingham). The application should include:

• details of the occupation concerned

• the proposed early pension age

• evidence from the relevant professional or representative body demonstrating why the proposed early age is considered to be appropriate for that occupation.

Pension Credit Rights

8.10 An arrangement established using pension credit rights for an ex-spouse or former civil partner should normally have a pension date in accordance with paragraphs 8.1-8.5. An ex-spouse or former civil partner would only qualify to take benefits early on the grounds of incapacity if they so qualified by reference to their own occupation.
9.1 At *pension date* the member may opt under an *arrangement*

- to purchase an immediate annuity (see paragraphs 9.2 - 9.8a)
- to defer purchasing an annuity for a period and instead take income withdrawals (see paragraphs 9.9 - 9.33)
- to purchase an immediate annuity with part of the *arrangement*’s assets (*annuitisation*) and continue to take income withdrawals from the residual fund (see paragraph 9.34 - 9.38a)
- to take benefits from part of the *arrangement* under section 638ZA, in which case that part will be treated as a separate *arrangement* from the *relevant date* (see paragraphs 9.39 - 9.40)
- to take part of the benefits as a lump sum (see paragraphs 9.41 - 9.56).

### PURCHASE OF ANNUITY

9.2 The immediate annuity **must** be

- payable for life
- non-assignable and non-surrenderable except if it is subject to a *pension sharing order* (but see paragraph 9.6)
- paid at least once a year either in advance or in arrear
- purchased from an *insurer* (see paragraph 9.4).

9.3 The immediate annuity **may** be

- level, variable, escalating or index-linked
- reduced at age 60 (see paragraph 9.5)
- reduced if it is subject to a *pension sharing order*
- guaranteed for up to 10 years (even if the member dies within that period)
- assigned (on the death of the individual during the guarantee period) by will or by the member’s legal personal representatives (see paragraph 9.6).

9.4 A member may choose the *insurer* from which the annuity is to be purchased by giving notice in writing to the *scheme administrator*. If the member has failed to make a choice by *pension date*, the non-protected rights annuity will be purchased from an *insurer* chosen by the *scheme administrator* (for protected rights, see Inland Revenue NI Services to Pensions Industry’s manuals CA15 and CA85 obtainable from the internet (www.inlandrevenue.gov.uk) or from the address shown in paragraph 1.4). Alternatively, a specified *pension date* may be deferred to any date up to age 75.

Where the annuity is purchased from another *insurer* using an open market option

- the original provider will pay any lump sum benefit, and
• the insurer paying the annuity is not required to establish a personal pension scheme.

( ) The insurer paying the annuity will refer the premium to pension business.

The position is different in the case of transfers, where the whole fund is transferred to the new provider and the individual becomes a member of the receiving personal pension scheme.

9.5 Where an annuity comes into payment before age 60 and the member is also entitled to a protected rights annuity from the same or any other personal pension scheme, the annuity may be purchased on the basis that it will decrease at age 60 to take account of the protected rights annuity.

9.6 Where an annuity is guaranteed payable for up to 10 years (even if the member dies within that period), it may be assigned by will or in the distribution of the estate to give effect to

• a bequest under a will
• any rights on intestacy
• a legacy or a share or interest in the estate.

In this event, the remaining annuity payments continue to be paid to the assignee.

Amount of Annuity

9.7 There is no Inland Revenue limit on the amount of the annuity which may be paid to the member from an approved personal pension scheme at pension date. This is because contributions to the scheme have already been limited to either the earnings threshold or the relevant percentage of net relevant earnings for each year.

Tax Treatment

9.8a Annuities paid from an approved personal pension scheme are

• treated as earned income (but see paragraph 19.3), and
• taxed under schedule E (PAYE).

Annuity Subject to a Pension Sharing Order

9.8b A pension sharing order may require an annuity originating from a personal pension scheme to be split in order to provide separate annuities for the member and the ex-spouse or former civil partner. An ex-spouse or former civil partner may establish a new arrangement or annuity using the pension credit rights. Generally the form of the original member’s annuity should continue on the same basis after the pension sharing order has been implemented. If however the member had a joint life annuity prior to that time, there would be no objection to the annuity then being recalculated on a single life basis.

ANNUITY DEFERRAL AND INCOME WITHDRAWAL

9.9 If the scheme permits, a member may choose not to purchase an immediate annuity at pension date and instead take income withdrawals from the fund.

9.10 Income withdrawals may be made

• at any time between age 50 and 75 from the non-protected rights fund
• at any time between 60 and 75 from the protected rights fund
• at an earlier date (from the non-protected rights fund only) if
  - the member is retiring on incapacity grounds (paragraph 8.6)
  - an early pension age (see Appendix 10) applies to the particular occupation being pensioned under the arrangement in question.

**Conditions**

9.11 If the income withdrawal option is chosen, the member must

• withdraw income from the fund during the whole of the deferral period
• have used all of the arrangement’s assets to purchase an annuity by age 75.

**Calculation of Minimum and Maximum Limits**

9.12 The Government Actuary’s Department (GAD) has compiled a set of tables showing the maximum income withdrawals for each age and sex on the basis of a single-life annuity (GAD tables).

9.13 The amount to be withdrawn in each successive period of twelve months commencing with pension date must be

• not less than 35 per cent (the minimum) and
• not more than 100 per cent (the maximum)

of the annual amount of the annuity which could have been purchased at pension date (or on subsequent review dates – see paragraphs 9.18 – 9.29), using the tables referred to in paragraph 9.12.

9.14 The scheme administrator is responsible for calculating the minimum and maximum withdrawals and for ensuring that the annual limits are not exceeded.

9.15 The member is free to vary the amounts paid year by year within the specified limits. The amounts withdrawn may be paid at regular intervals or on an annual basis, either in advance or in arrear. Within these parameters, the degree of flexibility available to members under a particular scheme is a matter for the scheme administrator to decide.

9.16 A copy of the GAD tables can be obtained from the Inland Revenue SPSS (Nottingham) Supplies line on 0115-974 1670.

**Taxation of Income Withdrawals**

9.17 The amounts withdrawn in each year will be subject to PAYE in the same way as annuity payments (see paragraph 9.8a).

**Review of Income Withdrawal limits**

9.18 The scheme administrator must review the annual minimum and maximum income withdrawal limits at specified review dates. On the specified review date, the scheme administrator should make a fresh calculation, using the current GAD tables, based on the value of the member’s fund remaining at that date. The relevant reference date determines the timing of the review which, if the new rules referred to in paragraph 9.21 are being used, may be performed within a 60-day window (see paragraphs 9.30 – 9.31).
9.19 When these relevant reference dates fall will depend on whether

- the personal pension scheme has chosen to use the new rules introduced on 1 October 2000 and, if so, whether these rules are being applied to the arrangement(s) in question (see paragraphs 9.20 – 9.22)

- income withdrawals are being taken from only one arrangement under the rules introduced on 1 October 2000 or from two or more arrangements under the pre 1 October 2000 rules (see paragraphs 9.23 – 9.25)

- income withdrawals are being taken from two or more arrangements under the same personal pension scheme at the same time and the new rules introduced on 1 October 2000 are being applied (see paragraphs 9.26 – 9.29)

- the member chooses to part-annuitise the funds held within a single arrangement (annuitisation) (see paragraphs 9.34 – 9.38a).

Position prior to 1 October 2000 ('old rules')

9.20 Under the legislation that applies up to 1 October 2000, the initial minimum and maximum income withdrawal limits apply for three years from pension date. The first day of the subsequent three-year period is the next relevant reference date for review, and so on in three yearly cycles until income withdrawals cease.

Position from 1 October 2000 ('new rules')

9.21 Greater flexibility on the timing of the relevant reference date was introduced with effect from 1 October 2000 to ease the levels of administration where a member holds multiple arrangements under the same personal pension scheme. A 60-day window for performing income limit calculations was also introduced with effect from the same date.

9.22 Personal pension schemes approved on or after 1 October 2000 have the flexibility to apply either the old or the new income withdrawal rules or a combination of both.

Personal pension schemes approved before 1st October 2000 may choose to use the new income withdrawal rules and have the same flexibility as schemes approved after 1 October 2000. Alternatively, they may choose to retain the existing three-year review date in their current rules, in which case there will be no flexibility regarding the timing of the review dates. Each separate arrangement will continue to have its own relevant reference date based on its own pension date throughout the period of income withdrawal. Limit calculations must continue to be made on the relevant reference date.

The new linking of review dates and 60-day window rules may be applied to arrangements already in existence at the time the scheme’s rules are changed (whether income withdrawal payments have commenced or not).

Income withdrawal from two or more arrangements (old rules) or from one arrangement (new rules)

9.23 On the first occasion that income withdrawals are taken from a personal pension scheme, the initial relevant reference date for calculation of the minimum and maximum annual amounts to be withdrawn will be pension date. This calculation will apply until the next relevant reference date (i.e. for the first valuation period).

9.24 All subsequent relevant reference dates will fall due three years from the date of the last relevant reference date.

9.25 These rules will apply in all cases where the member is currently taking income withdrawals from a single arrangement only, or in multiple arrangement cases where the scheme is applying
the old rules. This includes the circumstance where within the new rules a member

- had already commenced income withdrawal payments from an earlier arrangement, but
- has used all the assets from that arrangement to purchase an annuity (or annuities) before the decision to apply the new rules to the later arrangement was made.

Where the new rules are being used and withdrawals are being made at the same time from two or more arrangements under the same personal pension scheme, paragraphs 9.26 - 9.29 will apply.

Schemes using new rules - income withdrawals from two or more arrangements at the same time

Initial relevant reference date

9.26 The initial relevant reference date for calculation of the initial minimum and maximum amounts to be withdrawn from any new arrangement entering income withdrawal will always be pension date.

Alignment of subsequent relevant reference dates

9.27 If preferred, all subsequent relevant reference dates for a later arrangement (to which paragraph 9.25 does not apply) can be brought into line with the earliest arrangement from which income withdrawals are still being taken. In practice, this means that any later arrangements which are aligned in this way will assume the pension date of the arrangement with the earliest pension date for all relevant reference dates after the initial calculation on pension date.

9.28 Once the relevant reference dates of two or more arrangements have been linked, this alignment will not be broken even if income withdrawals from the arrangement with the earliest pension date cease due to annuity purchase. The pension date of the earliest arrangement will continue to set the relevant reference date of any later arrangements still in income withdrawal.

Example 1

Member has three arrangements (A1, A2, and A3) within a personal pension scheme. The new income withdrawal rules are being applied.

Income withdrawal payments commence from A1 on 1 October 2000 (pension date). The relevant reference date for the first review of income withdrawal limits is 1 October 2003. Subsequent relevant reference dates are set in three yearly cycles from this date.

Income withdrawal payments commence from A2 on 1 April 2001 (pension date for A2). The relevant reference date for the first review of income withdrawal limits is set by reference to A1. The next review date is therefore 1 October 2003, not 1 April 2004 as would be the case under the ‘old rules’. Subsequent relevant reference dates are set in three yearly cycles from 1 October 2003.

Income withdrawal payments commence from A3 on 1 December 2001 (pension date for A3). As with A2 the relevant reference date for the first review of income withdrawal limits is set by reference to A1. The next review date is therefore once again 1 October 2003 not 1 December 2004. Subsequent relevant reference dates are set in three yearly cycles from 1 October 2003.

Example 2

A member has four arrangements (A1 – A4) within a personal pension scheme. The new income withdrawal rules are being applied.
Income withdrawal payments commence from A1 on 1 October 2000 (pension date). The relevant reference date for the first review of income withdrawal limits is 1 October 2003. Subsequent relevant reference dates are set in three yearly cycles from this date.

Income withdrawal payments commence from A2 on 1 April 2001 (pension date for A2). The relevant reference date for the first review of income withdrawal limits is set by reference to A1. The next review date is therefore 1 October 2003, not 1 April 2004 as would be the case under the ‘old rules’. Subsequent relevant reference dates are set in three yearly cycles from 1 October 2003.

On 1 March 2002 all the funds under A1 and A2 are used to purchase an annuity.

Income withdrawal payments commence from A3 on 1 December 2002 (pension date for A3). As the member has no other arrangements under the scheme where benefits are being paid through income withdrawal there is no existing review date for the arrangement to be linked to. The relevant reference date for the next review of income withdrawal limits is therefore set by reference to A3’s own pension date, and will be 1 December 2005.

Income withdrawal payments commence from A4 on 1 May 2003. The relevant reference date for the first review of income withdrawal limits is set by reference to A3, the earliest arrangement in existence on 1 May 2003 paying benefits to the member through income withdrawal within the scheme. The next review date is therefore 1 December 2005, not 1 May 2007. Subsequent relevant reference dates are set in three yearly cycles from 1 December 2005.

**Valuation periods of less than 3 years**

9.29 As a consequence of the linking of relevant reference dates, valuation periods of less than 3 years will arise when income withdrawals are taken from later arrangements. In such cases, any 12 month period shortened by the assumption of the relevant reference date of an earlier arrangement will be treated as if it were a full 12 month period for the purposes of calculating the minimum and maximum withdrawal limits. The shortened period will always be at the end of the valuation period.

**Example 3**

For the arrangements in Example 1 the limits calculated at the first review at pension date would be applied to the following periods:

A1:  
1 October 2000 – 30 September 2001  
1 October 2001 – 30 September 2002  
1 October 2002 – 30 September 2003

A2:  
1 April 2001 – 31 March 2002  
1 April 2002 – 31 March 2003  
1 April 2003 – 30 September 2003

A3:  
1 December 2001 – 30 November 2002  
1 December 2002 – 30 September 2003

S 634A(5D)
In the shortened period at the end of the first valuation period for both A2 and A3 the minimum income calculated at pension date must be drawn.

**Schemes using new rules - 60-day window**

9.30 For all reviews, except the initial review on pension date, the calculation of minimum and maximum income withdrawal limits may be made by the scheme administrator on any day within a period of 60 days ending with the specified relevant reference date.

The calculation should be made on the basis of the value of the assets remaining at the date of the actual calculation. The scheme administrator should, however, make the calculation on the basis of the member’s age at the prescribed relevant reference date (the date the limits will come into force), not the date of the actual calculation (if the ages are different).

9.31 Where the 60-day window is used, the income limits for the next three years should only be applied with effect from the specified relevant reference date. Subsequent relevant reference dates are not affected by the use of the 60-day window and continue to be set at three yearly intervals from the pension date of the first arrangement to enter income withdrawal.

**Example 4**

The relevant reference date for review is 1 May 2001. The scheme administrator may make the review calculation at any time between the dates 3 March 2001 and 1 May 2001.

It is decided to make the calculation on 4 April 2001. For the purposes of the limit calculation the scheme administrator uses the fund value ‘as at’ 4 April 2001 and the member’s age at 1 May 2001 when referring to the GAD tables. The limits arrived at are only applied to the arrangement with effect from 1 May 2001 (the first day of the next valuation period).

**Restrictions at Pension Date**

9.32 No further contributions may be accepted after the member’s pension date in relation to the arrangement in question.

9.33 No transfers may be made or accepted after the member has elected to defer the annuity and take income withdrawals from the arrangement except in accordance with the transfer regulations (see Part 12).

**Effect of purchase of qualifying annuity (from 6 April 2001)**

9.34 Where income withdrawals are being taken from an arrangement and the member decides to purchase an annuity by means of annuitisation, this will have no effect on the review process unless the purchase of the annuity is a qualifying annuitisation.

9.35 Where a qualifying annuitisation takes place, a review of the income withdrawal limits will be required and the scheme administrator must make a fresh calculation on the same day using the GAD tables by reference to the remaining part of the member’s fund (in accordance with paragraphs 9.12 - 9.16).

9.36 The new calculation will not affect the amounts being withdrawn in the 12 month period in which the qualifying annuitisation takes place. The new limits will simply supersede the current limits for the remaining 12 month periods in the current valuation period.

9.37 Where a second or subsequent qualifying annuitisation takes place, the same principles will apply. The scheme administrator must make a fresh calculation on the date of each qualifying annuitisation and apply the new limits from the next 12 month period (as set out in paragraph 9.36).
A review that takes place as a result of a *qualifying annuitisation* has no effect on the timing of the 12-month periods under the current *valuation period* or the next *relevant reference date*.

**Example 5**

*Arrangement* as in A2 in Example 3.

*Pension date* for A2 is 1 April 2001. The income withdrawal limits calculated by the *scheme administrator* at this date are £10,000 / £3,500 p.a. The *relevant reference date* for the first review of income withdrawal limits is 1 October 2003 (the *arrangement* being linked to the review date under A1). The periods for application of the income limits calculated at *pension date* are therefore:

1. 1 April 2001 – 31 March 2002 (‘first period’)
2. 1 April 2002 – 31 March 2003 (‘second period’)
3. 1 April 2003 – 30 September 2003 (‘third period’)

On 4 December 2001 (in the ‘first period’) half the assets of A2 are used to purchase an annuity (i.e. an *annuitisation* takes place). This represents a *qualifying annuitisation* as far as the ‘second period’ is concerned as it takes place in a 12-month period which occurred since the last *relevant reference date* (i.e. since *pension date*). The *annuitisation* would represent a *qualifying annuitisation* regardless of how much of the fund had been used to purchase an annuity.

As a *qualifying annuitisation* has occurred, the *scheme administrator* must undertake a fresh income withdrawal limit calculation ‘as at’ 4 December 2001 based on the new reduced fund value. This calculation results in new limits of £5,000 / £1,750 p.a.

The income withdrawal limits for the ‘first period’ (6 March 2001) are still £10,000 / £3,500 p.a. (i.e. the *qualifying annuitisation* has no effect on the period it occurs in).

The timing of the ‘second’ and ‘third’ periods are not affected by the *qualifying annuitisation* (and the limit calculation it generates). Nor is the *relevant reference date* for the next review altered (remaining at 1 October 2003). However, the new limits resulting from the revised calculation on 4 December 2001 must be applied to the ‘second’ and ‘third period’.

The limits for the three periods are therefore as follows:

1. 1 April 2001 – 31 March 2002 (‘first period’): £10,000 / £3,500 p.a.
2. 1 April 2002 – 31 March 2003 (‘second period’): £5,000 / £1,750 p.a.
3. 1 April 2003 – 30 September 2003 (‘third period’): £5,000 / £1,750 p.a.

If the *annuitisation* occurred in the ‘second period’, it too would be a *qualifying annuitisation*. However, the new income withdrawal limits would be applied to the ‘third period’ only.

If the *annuitisation* occurred in the ‘third period’, it would not represent a *qualifying annuitisation* in relation to the next 12-month period (the first period in the next *valuation period*) as the two periods are separated by a *relevant reference date* review (i.e. it has not occurred ‘since the last *relevant reference date*’ by reference to the later period – see the definition of *qualifying annuitisation* in Appendix 1).

**Income Withdrawal Payments Subject to a Pension Sharing Order**

The fund of a member of a *personal pension scheme* who is taking income withdrawal payments may be split in order to provide an ex-spouse or former civil partner with *pension credit rights*. In these circumstances the ex-spouse or former civil partner would have the option of either continuing with income withdrawal payments (based on the age of the ex-spouse or former civil partner).
partner), of purchasing an annuity or opting for deferred benefits. No further lump sum could be taken from the pension credit rights.

9.38c The implementation of a pension share is not an event that changes the annual limits of income withdrawal. Such limits will continue to be applied to the original member’s fund despite the fund’s reduction by the pension debit. The limits will be revised at the next triennial review.

ARRANGEMENTS SPLIT UNDER SECTION 638ZA

9.39 From 6 April 2001, a scheme may allow a member to take benefits from a single arrangement at different times, in accordance with section 638ZA. Each part of the arrangement from which benefits are taken will effectively become a separate arrangement with a separate pension date from the relevant date.

9.40 Benefits from part of an arrangement may be taken either as an annuity (in which case paragraphs 9.2 to 9.8a will apply) or as income withdrawals (in which case paragraphs 9.9 to 9.33 will apply). All references to arrangement and pension date in this context should be read as referring to the separate arrangement from which benefits are being taken from the relevant date.

LUMP SUM

9.41 A member may choose to take part of the benefits from each arrangement as a lump sum, except where

- the arrangement consists solely of protected rights
- in a mixed arrangement (i.e. with both protected rights and non protected rights) the protected rights are paid before the other benefits (see paragraph 9.46)
- the arrangement consists solely of monies transferred in from a designated scheme and a NIL certificate is held by the scheme (see Part 12)

9.42 Different rules apply to the calculation of the maximum amount of lump sum which may be taken depending on whether the arrangement was set up

- on or after 27 July 1989 (see paragraph 9.43)

Arrangements set up on or after 27 July 1989

9.43 The maximum lump sum which may be paid is

- 25% of the current value of the non protected rights fund derived from direct contributions and any pension credit rights (i.e. excluding the current value of any transfer payment from a designated scheme); any protected rights from direct contributions held under the arrangement are excluded from the calculation

plus

- any amount certified (increased by reference to the Retail Price Index) as payable in lump sum form on a transfer certificate held by the scheme (see Part 12) or 25% of the current value of the transfer payment if no certificate was required; any protected rights included in the transfer payment may be included in the calculation

with an overriding restriction that the lump sum paid must never exceed 25% of the total non protected rights fund under the arrangement.
**Arrangements set up before 27 July 1989**

9.44 Where the *arrangement* consists solely of non-protected rights, the maximum lump sum payable is

- 25% of
  - the current value of the total fund derived from direct contributions (i.e. excluding the current value of any transfer payment from a *designated scheme*)

less

- the cost of any annuities payable to a widow, widower, surviving civil partner or dependant under the *arrangement*

plus

- any amount certified (increased by reference to the Retail Price Index) as payable in lump sum form on a transfer certificate held by the scheme (see Part 12) or 25% of the current value of the transfer payment if no certificate was required

with an overriding restriction that the lump sum paid must never exceed 25% of the total fund under the *arrangement*.

*Arrangements* set up before 27 July 1989 may only accept transfers from other pre-27 July 1989 *arrangements* and cannot accept transfers of *pension credit rights*.

9.45 Where *protected rights* and *non protected rights* are held under the same *arrangement*, the amount of lump sum payable will depend on whether

- the *protected rights* are paid first (see paragraph 9.46)
- the *protected rights* and *non protected rights* are paid at the same time (see paragraph 9.47)
- the *non protected rights* are paid first (see paragraph 9.48).

9.46 No lump sum may be taken from the *arrangement* if the *protected rights* are paid before the *non protected rights*. This is because the lump sum may only be paid at *pension date* (section 635(2)), which in this case will be the date on which the *protected rights* annuity is first paid.

9.47 Where both *protected rights* and *non protected rights* are paid at the same time, the maximum lump sum payable is

- 25% of
  - the current value of the total fund derived from direct contributions (i.e. excluding the current value of any transfer payment from a *designated scheme*)

less

- the cost of any annuities payable to a widow, widower, surviving civil partner or dependant from both the *protected rights* and *non protected rights* elements of the *arrangement*

plus

- any amount certified (increased by reference to the Retail Price Index) as payable in lump sum form on a transfer certificate held by the scheme (see Part 12) or 25% of the current value of the transfer payment if no certificate was required
but with the proviso that

- no part of the protected rights fund may be commuted

and with an overriding restriction that the lump sum paid must never exceed 25% of the total fund under the arrangement.

9.48 Where the non protected rights are paid before the protected rights, the position is as set out in paragraph 9.47 except that

- the amount to be excluded from the calculation will be the cost of any annuities payable to a widow, widower, surviving civil partner or dependant from the non protected rights fund only (i.e. the whole of the protected rights fund may be included in the calculation provided no part of it is actually commuted).

**Arrangements split under Section 638ZA**

9.49 Where benefits are taken from part of an arrangement in accordance with section 638ZA, the maximum lump sum payable under section 638ZA(5) is one third of the portion of the non protected rights fund which is being used to purchase an annuity or take income withdrawals (this will effectively be 25% of the total non protected rights fund now being used to provide benefits).

**OTHER RESTRICTIONS (ALL ARRANGEMENTS)**

9.50 The lump sum must be paid on the member’s pension date.

9.51 A member who wishes to receive part of the benefits from an arrangement as a lump sum must make an election to the scheme administrator

- on or before pension date

and

- in good time to ensure that the lump sum is paid no later than the 75th birthday.

9.52 A member’s right to a lump sum must be non-assignable and non-surrenderable except when the scheme administrator is complying with a pension sharing order.

**TAX TREATMENT**

9.53 A lump sum paid from an approved personal pension scheme in accordance with section 635 at pension date is not liable to income tax.

**TRIVIAL FUNDS**

9.54 Administrative procedures were agreed in 1996 to deal with trivial funds held under personal pension schemes.

Under these procedures repayment of the whole fund may be made to the member when all the following criteria are satisfied:

- the member has reached age 60 if there is any element of protected rights or, where there is no such element, has either
  - reached age 50 (or an earlier agreed low pension age – see Appendix 10), or
- retired early on grounds of incapacity

• the member

- is not a member of another personal pension scheme (this criterion may have been met by transfers between schemes),

- is not in receipt of an annuity from any personal pension scheme, and

- has not previously had a trivial personal pension fund repaid as a lump sum

• if any of the arrangements include protected rights, the member’s fund under the scheme (i.e. the aggregate of all arrangements) is insufficient to provide an annuity of at least £260 p.a. (the form of the annuity should be that which would apply if the whole of the fund were protected rights)

• if no protected rights are held under any of the arrangements, the member’s fund does not exceed £2,500

• the member is aware that part of the repayment is chargeable to tax, has consented to the repayment and, in consideration, has waived all rights under the scheme.

Tax Treatment

9.55 The lump sum payable under the rules of the scheme (calculated in accordance with section 635) will be paid free of tax. The balance is an unauthorised payment chargeable to tax under Schedule E on the member under section 647. The scheme administrator must

• deduct tax under PAYE (at basic rate if no tax code is held) from the chargeable amount, and

• account for the tax to the scheme’s PAYE Tax Office.

The member should be advised to enter details of the payment in their Tax Return or notify their Tax Office if they are not liable to pay tax.

End Of Year Return

9.56 A return should be sent to Inland Revenue SPSS (Nottingham) at the end of each tax year showing the following information for each trivial payment made

• the member’s name, address and date of birth

• the membership/policy number(s)

• the member’s National Insurance Number

• the member’s Tax Office and reference number

• the amount of the repayment (net of any lump sum payable under section 635) and the date made

• the amount of the tax deducted.

There is no objection from the Inland Revenue point of view to any administration expenses incurred by the provider in operating these procedures being recouped out of the member’s fund before repayment. The amount of the repayment reported on the end of year return should be the amount after deduction of such administration expenses.
Part 10 : Death Benefits

10.1 This Part sets out the various options available if the member dies

- before pension date (see paragraphs 10.2 - 10.9 and 10.12 - 10.19)

- after pension date (see paragraphs 10.10 - 10.35).

DEATH BEFORE PENSION DATE

10.2 The form in which benefits from an arrangement may be paid on the death of the member before pension date will depend on whether or not

- the member leaves a survivor

- the arrangement provides for a survivor’s annuity

- the arrangement includes protected rights

- a transfer has been received from a designated scheme

- contributions have been paid to a term assurance contract to provide a lump sum.

Member dies leaving no survivor

10.3 The benefits payable if the member dies leaving no survivor are

- a lump sum under section 637A representing the value of contributions paid to provide benefits at pension date including any pension credit rights

plus

- any lump sum payable under section 637 from a term assurance contract (see paragraphs 10.36 - 10.40).

10.4 The lump sum payable under section 637A before pension date

- may include reasonable interest or bonuses from profits

- may represent the sale or redemption value of the units if the contributions were invested in a unit trust or a unitised policy

- is not subject to a tax charge under section 648B

- should be paid in accordance with paragraphs 10.37 - 10.40.

Member dies leaving survivor with no provision for survivor’s annuity under arrangement

10.5 Where

- no provision has been made under the arrangement to pay a survivor’s annuity on the death of the member, either because the member has not named a survivor or because the arrangement does not provide for survivors’ annuities

- no transfer has been received from a designated scheme in respect of a regulated individual
and either

- there are no protected rights under the arrangement, or
- there are protected rights under the arrangement but there is no surviving spouse or surviving civil partner, or
- there are protected rights under the arrangement which are being paid as a lump sum because the annuity for the surviving spouse or surviving civil partner would not exceed £260 per annum

the benefits may be paid wholly in lump sum form. Paragraphs 10.3 - 10.4 will apply to the non protected rights lump sum.

A protected rights lump sum as above will be paid free of income tax. Where there is no surviving spouse or surviving civil partner, it will be paid

- in accordance with any direction given by the member in writing, or
- to the member’s estate.

If a transfer has been received from a designated scheme and the member is a regulated individual, see paragraphs 12.23 to 12.27.

10.6 Where

- no provision has been made under the arrangement to pay a survivor’s annuity on the death of the member
- no transfer has been received from a designated scheme in respect of a regulated individual

but

- there are protected rights under the arrangement which are being used to provide a widow’s or surviving civil partner annuity,

the benefits payable are

- a survivor’s annuity (or income withdrawals) from the whole of the fund (excluding any transfer payment from a designated scheme) which would have been used to provide benefits for the member at pension date (i.e. if an annuity is being paid from the protected rights fund, an annuity (or income withdrawals) must be paid from the non protected rights fund within the same arrangement), except that any non protected rights arising from a transfer from a designated scheme may, if the scheme permits, be paid as a lump sum

plus

- any lump sum payable under section 637 from a term assurance contract (see paragraphs 10.36 - 10.40).

Where an annuity is purchased, paragraphs 10.12 - 10.19 will apply

If a transfer has been received from a designated scheme, and the member is a regulated individual, see paragraphs 12.23 - 12.27.
Member dies leaving survivor where arrangement provides for survivor's annuity

10.7 Where

- the member dies leaving a survivor
- the arrangement provides for the payment of a survivor's annuity and the member has named a spouse, civil partner or dependant
- no transfer has been received from a designated scheme in respect of a regulated individual

the benefits payable are

- a survivor's annuity (or income withdrawals) from the whole of the fund which would have been used to provide benefits for the member at pension date (regardless of whether or not there are any protected rights under the arrangement), except that any non protected rights arising from a transfer from a designated scheme may, if the scheme permits, be paid as a lump sum

plus

- any lump sum payable under section 637 from a term assurance contract (see paragraphs 10.36 - 10.40).

Where an annuity is purchased, paragraphs 10.12 - 10.19 will apply.

If a transfer has been received from a designated scheme and the member is a regulated individual, see paragraphs 12.23 - 12.27.

Income withdrawal

10.8 Where a survivor chooses income withdrawal, paragraphs 10.20 - 10.31 will apply. There is no objection to an annuity being paid from the protected rights fund and income withdrawals being taken from the non-protected rights fund, even within the same arrangement.

Deferral of spouse's or civil partner's annuity

10.9 A surviving spouse or civil partner has a further option to defer purchase of the annuity for any period up to age 60 or until the later cessation of a guaranteed pension. If this option is chosen, income withdrawals will not be available at a later date. Nor will a lump sum under section 637A be payable if the surviving spouse or civil partner dies before the annuity is purchased, because of the restriction in section 637A(2)(c).

DEATH ON OR AFTER PENSION DATE

10.10 On the death of a member on or after pension date after an annuity has been purchased, an annuity may be paid to a survivor if provided under the terms of the member’s arrangement. Income withdrawal will not be available in these circumstances.

10.11 On the death of the member on or after pension date during income withdrawal, each survivor who has been nominated by the member or, in the absence of any such nomination, chosen by the scheme administrator to receive a benefit from an arrangement must choose to

- purchase an immediate annuity (see paragraphs 10.12 - 10.19); or
- defer purchase of the annuity in accordance with paragraph 10.9; or
- defer purchasing an annuity for a period and instead take income withdrawals (see...
 paragraphs 10.20 - 10.31); or

• take a lump sum taxed at 35% (see paragraphs 10.32 - 10.35).

These options may be taken independently of options of other survivors under the same arrangement.

If income withdrawals are taken, the survivor may still choose at a later date to take a taxed lump sum (see 10.32 - 10.35) instead, providing this is paid within two years of the date of the member's death.

Where no survivor has been chosen by either the member or the scheme administrator, the non-protected rights fund will be paid as a lump sum, taxed at 35%, in accordance with paragraph 10.37.

**Purchase of Annuity**

10.12 The immediate annuity must be

• payable for life unless guaranteed or paragraph 10.19 applies
• non-assignable, non-commutable and non-surrenderable (but see paragraph 10.15)
• paid at least once a year either in advance or in arrear
• purchased from an insurer (see paragraph 10.14).

10.13 The immediate annuity may be

• level, variable, escalating or index-linked
• guaranteed for up to 10 years from the date it is purchased (even if the survivor dies within that period).

10.14 A survivor may choose the insurer from which the annuity is to be purchased by giving notice in writing to the scheme administrator. If the survivor fails to make such a choice, the non protected rights annuity will be purchased from an insurer chosen instead by the scheme administrator (for protected rights, see manuals CA15 and CA85, available from the internet (www.inlandrevenue.gov.uk) or from the address shown in paragraph 1.4).

Where the annuity is purchased from another insurer using an open market option

• the original provider will pay any lump sum benefit, and
• the insurer paying the annuity is not required to establish a personal pension scheme.

The annuity must be purchased by the scheme administrator of the personal pension scheme, who will be the grantee named in the contract. The insurer paying the annuity will refer the premium to pension business.

10.15 Where an annuity is guaranteed to be paid for up to 10 years (even if the survivor dies within that period), it may be assigned by will or in the distribution of the estate to give effect to

• a bequest under a will
• any rights on intestacy
- a legacy or a share or interest in the estate.

In this event, the remaining annuity payments continue to be paid to the assignee.

**Amount of survivor’s annuity**

10.16 The aggregate annual amount of all survivors’ annuities under an arrangement cannot exceed the annual amount of the annuity

- actually being paid to the member from that arrangement at the date of death, or
- potentially payable to the member on the day before his death, where the member has died before pension date.

Any annuity paid to a survivor as a result of a guarantee on the member’s annuity is not included as a survivors’ annuity for the purpose of this paragraph.

Where the member’s pension rights have been the subject of a pension sharing order, the amount of all survivors’ annuities must not exceed the annuity being paid to the member, or payable on the day before his death, after deducting the pension debit (section 636(3A)).

**Time of payment**

10.17 Payment of an annuity must commence as soon as practicable after the member’s death, but the payment of an annuity for a surviving spouse or civil partner who is under the age of 60 at the time of the member’s death may be deferred

- until the date the surviving spouse or civil partner reaches age 60, or
- where the member’s annuity was guaranteed for a period, and the payments are being made to the surviving spouse or civil partner, until the end of the guaranteed period.

10.18 Where, on the member’s death, his or her annuity continues to be paid for up to 10 years under a guarantee, the member’s guaranteed annuity and the survivor’s own right annuity may be payable at the same time (unless the survivor is a surviving spouse or civil partner who is under the age of 60 at the time the member dies, and has deferred own right annuity payments as set out in paragraph 10.17). This is because survivor’s benefits would be payable from the date of the member’s death.

**Cessation**

10.19 An annuity may be specified to end when the annuitant marries or forms a civil partnership, and an annuity for a child must end at age 18 or on finishing full-time education unless the child continues to qualify as a dependant.

10.19a Annuities paid from an approved personal pension scheme are

- treated as earned income (but see paragraph 19.3), and
- taxed under Schedule E (PAYE).

**Annuity Deferral And Income Withdrawal**

10.20 A survivor may choose not to purchase an immediate annuity on the death of a member and
instead take income withdrawals from the fund.

Income withdrawals may be made from the date of death until the earliest of

- the survivor’s 75th birthday
- the date on which the deceased member would have attained age 75
- if the survivor’s entitlement is not for life, the date on which their entitlement ceases e.g. the date of a subsequent marriage or forming a civil partnership, cessation of full time education etc.

Conditions

10.21 If this option is chosen, the survivor must

- withdraw income from the fund during the deferral period
- purchase the annuity no later than the earliest of the dates specified in paragraph 10.20.

10.22 The amount to be withdrawn in each 12 month period commencing with the date of death must be

- not less than 35 per cent (the minimum) and
- not more than 100 per cent (the maximum) of the annual amount of the annuity which could have been purchased at the date of death using the tables referred to in paragraph 10.23.

Calculation of minimum and maximum limits

10.23 The Government Actuary’s Department (GAD) has compiled a set of tables showing the maximum income withdrawals for each age and sex on the basis of a level single-life annuity. The tables are obtainable from the Inland Revenue SPSS (Nottingham) Supplies Line on 0115-974 1670.

10.24 The scheme administrator is responsible for calculating the initial minimum and maximum amounts for each survivor based on the GAD tables.

10.25 The initial minimum and maximum withdrawal limits applicable to a survivor will be calculated by reference to the GAD tables and the survivor’s fund at the date of death. The fund should be reduced (if necessary) at the outset to take account of the restriction in Section 636(3)(b) - see paragraph 10.16. This initial reduction (by reference to the annuity which the fund would buy at the date of death) will satisfy section 636(3)(b) and no further restriction will be required during the period of deferral. Scheme administrators may use any reasonable annuity rate when calculating whether the survivor’s fund needs to be reduced. The restriction does not apply if the survivor opts for a lump sum.

10.26 The initial minimum and maximum income withdrawal limits will apply for the first three years from the date of death. A fresh calculation must be made as at the first day of each subsequent three year period, using the current GAD table and the survivor’s fund remaining at that date.

60-day window for performance of reviews

10.27 Schemes approved from 1 October 2000 onwards, and schemes approved before 1 October 2000 which have suitably amended their rules, may take advantage of the 60-day window for the performance of reviews outlined in paragraph 10.28.
Schemes approved before 1 October 2000, which have not amended their rules, will continue to use the review dates in paragraph 10.26.

Schemes using new rules

10.28 For all reviews, except the initial review at the date of death, the calculation of minimum and maximum income withdrawal limits may be made by the scheme administrator on any day within a period of 60 days ending with the specified relevant reference date. The calculation should be made on the basis of the assets remaining as at the date of calculation.

Where the 60 day window is used, the limits for the next three years should only be applied with effect from the specified relevant reference date. Subsequent relevant reference dates are not affected by the use of the 60-day window and continue to be set at three yearly intervals from the date of death.

Frequency and amount of withdrawals

10.29 Survivors are free to vary the amounts from year to year if they so wish, in line with paragraph 10.22.

10.30 The scheme administrator will be responsible for ensuring that the actual amounts withdrawn each year remain within the limits set out in paragraph 10.22. The degree of flexibility available to survivors under a particular scheme is therefore left for the scheme to decide.

10.31 The amounts withdrawn in each year will be subject to PAYE in the same way as annuity instalments.

Lump Sum on Death During Income Withdrawal

10.32 On the death of the member during income withdrawal (after pension date and before an annuity has been purchased), each survivor may opt to take their benefit entitlement from the arrangement in question as a lump sum taxed at 35%. This lump sum must be paid within 2 years of the member’s death unless the lump sum is being paid on the death of a survivor who had been making income withdrawals.

A survivor who has initially opted to take income withdrawals, in accordance with paragraphs 10.20 - 10.31, may change that option and choose instead to take a taxed lump sum at any time within the 2 years following the death of the member.

10.33 Where this option is chosen, the scheme administrator should deduct tax at 35% under section 648B before payment and account for the tax to the Revenue in the scheme’s annual tax return. This tax is a charge on the scheme administrator and is not reclaimable by the beneficiaries.

More than one survivor within an arrangement

10.34 Where there are two or more survivors entitled to benefits on the death of the member, each survivor may choose the method of payment independently of the others. Benefits within an arrangement can therefore be paid out as a mixture of annuity, income withdrawal and taxed lump sum. Benefits from separate arrangements may also be paid out in different forms.

Death of survivor during income withdrawal

10.35 On the death of a survivor during income withdrawal before the annuity has been purchased, the remaining annuity fund will be paid in lump sum form in accordance with paragraphs 10.37 - 10.40. In cases where the member died after pension date, the payment will be charged to tax under section 648B and the scheme administrator should deduct tax at 35%.
before payment in all such cases.

**Taxation of Income Withdrawals**

10.35a The amounts withdrawn in each year will be subject to PAYE in the same way as annuity payments (see paragraph 9.8a).

**LUMP SUM FROM TERM ASSURANCE CONTRACT**

10.36 Where part of the contributions have been paid to secure a lump sum payable on death from a term assurance contract, payment should be made in accordance with paragraphs 10.37 - 10.40.

**PAYMENT OF LUMP SUMS ON DEATH - GENERAL**

10.37 The lump sum may be

- paid to the member’s legal personal representatives
- paid to a beneficiary nominated by the member
- paid under the terms of a trust set up by the member (see paragraph 10.40)
- distributed at the discretion of the *scheme administrator*, or
- in the case of an assigned term assurance contract only, paid to the assignee.

It is not necessary to limit nomination or distribution to *dependants*.

Any queries relating to inheritance tax should be made to the Capital Taxes Office. The helpline number for inheritance tax is 0131 777 4204.

10.38 The money should be paid over promptly to the recipients (or a trust fund on their behalf) once they have been selected, but may continue to be held under the rules of the scheme for up to 2 years after the member’s death, if the *scheme administrator* cannot immediately determine who is to benefit. Any interest accrued during this period may be paid out as part of the benefit and will not be treated as true interest for income tax purposes.

10.39 If the money within the *arrangement* has not been fully distributed within 2 years the remaining fund must be transferred to a separate account outside the scheme.

10.40 A member’s *arrangements* may be subject to a trust under which

- the death benefits are payable to trustees for the benefit of *dependants* and others
- the benefits payable at *pension date* are retained for the benefit of the member.

It is our understanding that any attempt to vest only the death benefits under trust could have no legal effect.

10.41 There is no objection if an *arrangement* under an approved *personal pension scheme* includes an option whereby, on the premature cancellation of a term assurance contract, the member may effect, at no extra cost, a new term assurance or endowment contract outside the scheme. The sum assured under the new contract must not exceed that assured under the personal pension *arrangement* and must mature no later than the expiry date of the term assurance under the original contract.
11.1 This Part is concerned with the investments that personal pension schemes and in particular self-invested personal pensions (SIPPs) are permitted to make and the restrictions that are imposed on those investments. Such investments are governed by The Personal Pension Schemes (Restriction on Discretion to Approve) (Permitted Investments) Regulations 2001 (SI 2001/117) which came into force on 6 April 2001. The position for investments made prior to this date is set out in paragraphs 11.35 – 11.38. Investments for personal pension schemes other than SIPPs are dealt with in paragraph 11.33.

WHAT IS A SIPP?

11.2 A SIPP is an arrangement within a personal pension scheme, in which the member has the power to direct how the contributions are invested. Members may make choices about what assets are bought, leased or sold, and decide when those assets are acquired or disposed of. The role of the scheme administrator in this situation is to control what is happening and to ensure that the requirements for tax approval continue to be met.

11.3 The term ‘self-invested personal pension scheme’ is widely used in the pensions industry and is defined in Regulation 3 of The Investment Regulations (SI 2001/117). The name is used in the sense of ‘member directed’ investments rather than narrowly in the sense of investing in one’s own business etc. However it does not include arrangements where the member merely has the right to choose the type of funds they want from a range of funds offered to any person (See Regulation 3(2) of The Investment Regulations (SI 2001/117).

SCHEME STRUCTURE

11.4 The scheme structure for SIPPs need not be different to those for other personal pension schemes, the only difference being the personalised investment strategy adopted. The investments of SIPPs are still monitored by the trustees/scheme administrator, but the member may select the investments that are made with the fund. Normally, but see paragraph 11.5, the member has no legal ownership over the investments and it is the trustees/scheme administrator who would ultimately decide whether or not to make a certain investment, notwithstanding any particular direction from the member.

Individual Trust

11.5 It will be permissible for a scheme to be set up such that each member has a separate trust holding the member’s fund. The member may be a co-trustee (but not sole trustee) with the other trustees/scheme administrator of the individual trust. This form of trust is different to the deed described in paragraph 2.6.

Insured SIPPs

11.6 SIPPs may take the form of member’s arrangements that are wholly invested in insurance contracts, for example through a personalised fund within a unit-linked policy, or directly held investments held by trust, or a mixture of insured or non-insured assets. The test of a SIPP is whether the member is able to direct how contributions are invested (with the exceptions outlined in paragraph 11.3).

Responsibility of Trustees

11.7 IR SPSS expects scheme trustees to act in accordance with their obligations under Trust Law i.e. in the best interests of scheme members in their capacity as members and not as employees, shareholders etc. If they fail to do so the Inland Revenue is likely to take the view that the arrangement(s) in question are not being properly administered and that exempt approval should be withdrawn from the involved arrangement(s) (see Part 21).
CHOICE OF INVESTMENTS

11.8 There is a wide range of investments available to SIPPs. The investments are governed by The Investment Regulations (SI 2001/117). A list of permitted and prohibited investments is at Appendix 24 and Appendix 25 respectively. Such restrictions are necessary because, for example, of the requirement of section 633 for the scheme to have the sole purpose of providing benefits for retirement. The member cannot receive any benefits from the scheme other than in the prescribed forms.

SOLE PURPOSE

11.9 The sole purpose of a SIPP should always be a consideration in relation to any potential investment. However certain investments are of particular concern in relation to this.

- If any land or property is to be acquired by a SIPP which is directly adjacent to any land or property owned by the member, or any person connected with the member, the scheme administrator must be satisfied that no additional benefit could be gained by the member or connected person as a result of the SIPP’s investment. Further, the property owned by the SIPP in such circumstances must remain separate from the adjacent property owned by a member or connected person. This is obviously also a concern where an existing property is split, with one part being purchased by the member and the other part being purchased by the SIPP.

- A SIPP may purchase a leisure property i.e. a property principally designed to offer a leisure service or charge for the use of recreational facilities. Such properties include golf courses, leisure centres and bowling alleys. The principal sole purpose concern in relation to these premises is that the member or connected persons do not use the facilities, other than at a commercial rate.

CONNECTED TRANSACTIONS

11.10 Given the ‘sole purpose’ test mentioned in paragraphs 11.8 and 11.9, it follows that investment transactions should be on a proper commercial basis. If non-commercial terms were to apply, there is a risk that the personal pension scheme is being used for tax reasons not in accordance with the ‘sole purpose’. As a way of reducing the risk of non-commercial transactions taking place, SIPPs may not enter into transactions with a member or person connected with a member, except where permitted by the Regulations (see paragraphs11.14 and 11.16).

11.11 For the purposes of SIPP investments a person is connected with a member if that person falls within the definition of “connected persons” in section 839, which is reproduced in full in Appendix 9.

It should be noted that the exception in section 839(4) has no relevance in this context as it relates solely to transactions between partners (but see paragraph 11.16). It is, however, relevant that a close company that is controlled by a member, either alone or with others, is, by virtue of section 839(6) and sections 416(2) and (3), a connected person in relation to that member.

11.12 Scheme administrators need not consider whether a transaction is a connected one if it relates to a pooled fund. For this purpose, pooled funds are funds

- which are genuinely open to any member of the public,

- which are clearly described in the provider’s literature and disclosure documents as being standard funds open to all,

- where the investment management is undertaken by the provider with no direction or influence by members, and

- where a common value is applied across the membership with no segregation or
11.13 The acquisition by the scheme of a member’s commercial property or portfolio of stocks and shares is prohibited, as is the acquisition by the member of any of the scheme’s assets. All transactions in UK or overseas securities should take place through an Inland Revenue recognised stock exchange. Recognised stock exchanges are as defined in section 841. To find out whether a particular exchange is listed you may call our Helpline (0115 974 1777) or access the Inland Revenue website (www.inlandrevenue.gov.uk/fid/rse.htm) to obtain a list.

COMMERCIAL PROPERTY

11.14 SIPPs may invest in commercial property including land. As an exception to the rule whereby schemes may not normally enter into transactions with a member or person connected with a member, there will be no objection to a SIPP acquiring a commercial property on the open market, which is then leased for the purposes of a trade or profession to the business of the member or company connected with the member. The scheme administrator should ensure that the lease is on commercial terms and that the rent payable is supported by an independent professional valuation.

Holding of Unlisted Shares in Property Management Companies

11.15 It is a common feature with property purchase that communal areas and facilities are owned and/or managed by a private limited company set up and run specifically and solely for this purpose. When a related property is purchased it is a requirement that each purchaser also acquires a share in the relevant service company. The acquisition of such a share by a SIPP is not considered to be the acquisition of an investment in its own right. Such a share acquisition is ancillary to the acquisition of the related property investment. The holding of such a share does not bear the normal characteristics of an investment e.g., It does not have the potential to produce any income, dividend or capital growth.

Transactions Between Connected Arrangements

11.16 Transactions between arrangements where the members are connected by virtue of being in the same partnership or company are prohibited except in the following circumstances, involving the joint ownership of a commercial property (being the business premises) between two or more SIPP arrangements. These exceptions are

- where the member of a SIPP purchasing a share of a commercial property is, or becomes within a reasonable time after the acquisition, a partner in or director of the business, or
- at such other time, for example on the death or retirement of a scheme member, or on a member leaving the business,

then the share of the property held under that member’s arrangement(s) may be sold, on commercial terms, to any other SIPP arrangement(s) which hold an interest in that property.

Where a transaction is made between arrangements where the members are connected, as with any property transaction, the scheme administrator should ensure that

- the lease is granted on normal commercial terms,
- the amount of rent payable is at a commercial rate, and
- the amount of rent is supported by a commercial valuation.

Such transactions can take place between members connected through the same business, even if the members are otherwise connected (by marriage, civil partnership or as relatives).
Residential Element of Commercial Property

11.17 The inclusion in a commercial property of

- a caretaker’s flat,
- a residential part of a property occupied by an employee as part of their employment or,
- a flat held on a long term leasehold by an unconnected party,

would not preclude the property being held as a scheme investment. Any such residential accommodation must be an integral or associated part of the commercial property.

11.18 Commercial property with a residential aspect, such as hotels, guest houses and nursing homes, is not a prohibited investment. It would not however be permissible for the member or any connected person to use the facilities other than at a commercial rate.

11.19 The intention to convert a residential property to commercial use, or indeed even the existence of planning permission for such a conversion, is not sufficient reason to allow the purchase of that residential property by a SIPP.

JOINT INVESTMENTS

11.20 SIPPs may enter into an agreement whereby an asset of the scheme is jointly owned with another party. Such an investment may be made with an unconnected third party or one or more other SIPPs or trustees of a small self-administered scheme, regardless of any connection between the members. Joint ownership with a connected person is not, however, permitted. In the case of joint ownership by SIPPs, whose members are connected, no transactions may take place between those SIPPs except as outlined in paragraph 11.16.

Joint ownership of an asset between a SIPP and an unconnected person would not confer a degree of connection between the parties. Therefore any future transaction between the parties involving the asset would not be prohibited.

3 YEAR RULE FOR CEASING TO BE CONNECTED

11.21 No asset may be acquired if the member or a connected person has held it within the previous 3 years. Similarly any asset sold by the scheme must not be sold to the member or a connected person within 3 years of its sale by the scheme. Otherwise the transaction would be regarded as an indirect sale to the member.

TRANSFER TO A SIPP

11.22 The 3 year restriction on acquiring an asset previously held by a member or connected person would not apply in relation to the transfer of an asset from a small self-administered scheme to a SIPP, or a SIPP to SIPP transfer. Likewise another pension scheme is not deemed to be a connected person for the purposes of making a transfer. Other than in these circumstances any investment becoming an asset of a SIPP, either through transfer or conversion (see part 23), must comply with the SIPP investment restrictions.

LENDING BY A SCHEME

11.23 SIPPs may not make loans to any party.

BORROWING BY THE SCHEME

11.24 SIPPs may borrow money for specific purposes and within specific limits. Borrowing may only be undertaken for the purpose of purchasing an interest in a commercial property or for the development of such a property, except as described in paragraph 11.29. Any borrowing must be
made at a commercial rate.

**Limit of Borrowing for SIPPs**

11.25 The amount of any borrowing by a SIPP arrangement must not exceed

- 75 per cent of the purchase price (including legal and other incidental costs), or the appropriate share of the purchase price, of the commercial property, or

- 75 per cent of the cost, or the appropriate share of the cost, of any development of a commercial property held by the SIPP arrangement.

11.26 If a SIPP enters into a joint investment with one or more other SIPPs, one overall loan may be taken. The amount borrowed should be proportionally allocated between the SIPPs and is subject to the 75% borrowing limit for each one.

**Security Used for Borrowing and Repayment of Loan**

11.27 The borrowing may be secured on the property or on any other asset of the scheme. However, there is a link between the borrowing and the commercial property in that, if the property is subsequently sold, any outstanding amount of the loan must also be repaid on completion of the sale of the property. No borrowing may be secured by a personal guarantee or through a life assurance contract.

**Replacement Borrowing**

11.28 An original borrowing arrangement may be substituted with a replacement loan, not exceeding the outstanding amount of the original loan.

**Incidental Borrowing**

11.29 SIPPs may also borrow money to pay the VAT liability arising from the purchase or development of a commercial property. The duration of such a loan must not exceed the shorter of

- 12 weeks after the date on which the purchase or development of the property is completed, or

- the period starting from the date on which the purchase or development of the property is completed and ending on the date on which the amount of the liability to VAT is refunded to the purchaser.

**INVESTMENT RESTRICTIONS IN INCOME WITHDRAWAL**

11.30 No new investment in commercial land or property is permissible if the member has reached the later of

- the pension date in relation to the arrangement(s) from which the purchase is to be made, or

- age 65.

11.31 A scheme may not enter into any borrowing arrangement or take any further instalments under any previously agreed serialised borrowing arrangement, after the pension date of the member, in relation to the arrangement(s) for which the borrowing is made.

**OTHER INVESTMENT RESTRICTIONS**

11.32 The development, improvement or modification of any land or property held as an investment of a SIPP must be paid for from the arrangement concerned and must be carried out by an unconnected party. The maintenance of a property under the usual terms of a lease would be
excluded from this restriction.

**INVESTMENTS BY PERSONAL PENSION SCHEMES THAT ARE NOT SIPPS**

11.33 There are two notable differences for the investments that are allowable for *personal pension scheme arrangements* that are not SIPPs. The differences are that

- loans may be made, except to a member or person connected with a member, and
- there is no specific limit on the amount of borrowing they may have, except that it should not overstretch the resources of the member’s fund, given the need to provide a pension at some point before age 75.

**REPORTING INVESTMENT TRANSACTIONS TO THE INLAND REVENUE**

11.34 The Personal Pension Schemes (Information Powers) Regulations 2000 (SI 2000/2316) give the Inland Revenue wide powers to request details of scheme transactions. However, in practice, details of only selected acquisitions will be required. The transactions that will need to be reported will be property acquisitions or sales plus any scheme borrowing. Providers will be notified when, and in what form they should submit this information to the Inland Revenue.

**TRANSITIONAL ARRANGEMENTS**

11.35 The following provisions apply in relation to investment transactions which took place prior to 6 April 2001.

11.36 Investment transactions made up to and including 5 April 2001, which are in accordance with guidelines existing prior to 6 April 2001, may stand and continue unchanged for the future. Such transactions include

- borrowing of more than 75% of the purchase price or development cost of commercial property held as a SIPP asset, and
- borrowing related to assets other than commercial property.

11.37 Other investments made before 6 April 2001 that may stand are

- leasing of a commercial property to the business of a person connected with the member, provided that it is in accordance with the scheme provisions and
- the lending of money which has taken place prior to 14 March 2001, provided it is
  - in accordance with scheme provisions, and
  - not to the member or a person connected with the member.

11.38 All investment transactions entered into on or after 6 April 2001 must comply with The Investment Regulations (SI 2001/117).
Part 12: Transfers – from 6 April 2001

12.1 The Inland Revenue will not approve a personal pension scheme unless it makes such provision for the making, acceptance and application of transfer payments as satisfies any requirements imposed by or under regulations made by the Board (section 638(2)).

12.2 The general Inland Revenue requirements for the making, acceptance and application of transfer payments are set out in The Personal Pension Schemes (Transfer Payments) Regulations 2001 (SI 2001/119). Certain other DWP requirements are set out in the Welfare Reform and Pensions Act 1999, the Stakeholder Pension Schemes Regulations 2000 (SI 2000/1403) and the Protected Rights (Transfer Payment) Regulations 1996 (SI 1996/1461).

Making of Transfer Payments

Basic requirements

12.3 If a member makes a request in writing, an approved personal pension scheme may make a transfer payment to

- another approved personal pension scheme
- a retirement benefit scheme approved under Chapter I Part XIV (including a free-standing additional voluntary contributions scheme (FSAVCS) or a separately approved AVC scheme), but not to a scheme awaiting approval
- a relevant statutory scheme (section 611A)
- an overseas scheme, if
  - all the conditions in Appendix 22 are met, and
  - the prior consent of the Inland Revenue has been obtained, where necessary.

Before making the transfer, the scheme administrator must take all reasonable steps to make sure that the payment is being made to a scheme falling within the categories listed above.

This paragraph does not apply to arrangements in drawdown, which are subject to special rules (see paragraphs 12.33 to 12.50).

12.4 A transfer payment must represent the whole fund accumulated under an arrangement except that it may exclude

- protected rights, and
- any amount which has been, or will be, used to pay a personal pension protected rights premium.

12.5 A transfer from a minimum contributions only arrangement set up for an individual who was a concurrent member of a contracted-in occupational pension scheme (see paragraph 3.21) may only be made to a similar arrangement.

Special requirements for making transfers to certain schemes

12.6 A personal pension scheme may only make a transfer to an approved retirement benefits scheme or a relevant statutory scheme if the individual is already a member of the receiving scheme and is either

- currently accruing benefits under that scheme as a result of service as an employee, or
• an ex-spouse or former civil partner who has rights under that scheme from a pension sharing order.

Requirements for passing on retirement lump sum certificates

12.7 Where a transfer is made from one personal pension scheme to another personal pension scheme and the scheme administrator of the transferring scheme holds a certificate in respect of any part of the transfer payment which was originally held in a designated scheme, the certificate (or an imaged version) must be passed on with the transfer payment to the scheme administrator of the receiving scheme.

For all onward transfers where the original transfer from the designated scheme took place on or after 6 April 2001 and the new regulations apply, the original certificate (or an imaged version) must be passed on, without enhancement, to the new scheme. The RPI enhancement (see paragraph 12.21) will be calculated by the scheme holding the transfer payment at the date benefits are paid and will cover the full period from the date of the original transfer to the member's pension date.

For onward transfers where the original transfer from the designated scheme took place before 6 April 2001, the original certificate (or an imaged version), without enhancement, should normally be passed on, but

• if the original certificate is no longer held in either paper or electronic form, it will be acceptable for the scheme administrator of the transferring scheme to provide either a copy certificate or a new certificate giving the same details, and

• if a certificate is held which already shows the original certified lump sum figure plus RPI (in accordance with the 1988 regulations), the scheme administrator may pass on the enhanced figure, provided the certificate clearly shows the date up to which the RPI increase has been made. The scheme administrator holding the transfer payment at the date benefits are paid must restrict the RPI increase to the period from the date specified on the certificate up to the member's pension date.

The acceptability of imaged versions of certificates (including hard copy printouts) will be subject to compliance with the following conditions (which mirror those set out in 16.17 for imaged application forms) -

• the imaged certificate and any hard copy printouts must be easily legible, and

• on the day the certificate is captured, the operator signs and dates an authentication certificate to the effect that, to the best of their knowledge and belief, the imaged document is a complete and accurate record of the original.

12.8 NIL certificates (i.e. certificates relating to transfer payments from which no lump sum may be paid at pension date), including those already held on 5 April 2001, must also be passed on when a transfer is made from a personal pension scheme to

• an approved retirement benefit scheme,

• a relevant statutory scheme, or

• another personal pension scheme.

Where only some of the arrangements to which the NIL certificate relates are being transferred, the scheme administrator must prepare replacement certificates, each showing NIL payable as a lump sum, and pass the appropriate certificate to the receiving scheme.

Imaged versions (including hard copy printouts) may be passed on, subject to the conditions set out in paragraph 12.7.
12.9 Where

- the scheme administrator of a personal pension scheme holds a lump sum or NIL certificate,
- the member holds two or more arrangements to which the certificate applies,
- the member wishes to make a transfer to another personal pension scheme, but is not transferring all the arrangements,

the scheme administrator must divide the amount shown on the certificate on a proportionate basis, prepare and sign replacement certificates and pass the appropriate certificate to the receiving scheme.

**Example**

Member holds 12 arrangements under a personal pension scheme -

Arrangements 1 to 5 consist of direct personal pension contributions only

Arrangements 6 to 10 consist of funds transferred from a designated scheme and subject to a lump sum certificate (an original transfer fund of £50,000 split into 5 arrangements – total lump sum of £15,000 certified)

Arrangements 11 and 12 consist of funds transferred from a free standing additional voluntary contributions scheme (FSAVCS) and are subject to a NIL certificate.

The member wishes to transfer arrangements 1, 2, 6, 7 and 11 to another personal pension scheme -

arrangements 1 and 2 do not require a certificate

the scheme administrator must prepare and sign replacement certificates for arrangements 6 to 10, passing a certificate showing £6,000 for arrangements 6 and 7 to the new scheme and retaining a certificate showing £9,000 for arrangements 8 to 10

the scheme administrator must also prepare replacement certificates for arrangements 11 and 12, both showing NIL payable as a lump sum (the one relating to arrangement 11 will be passed to the new scheme and the one relating to arrangement 12 will be retained by the scheme administrator).

Protected rights are always non-commutable and any arrangement consisting solely of protected rights should be excluded for the purposes of recertification.

**ACCEPTANCE OF TRANSFER PAYMENTS**

**Basic requirements**

12.10 If a member makes a request in writing, an approved personal pension scheme may accept a transfer payment from

- another approved personal pension scheme
- a retirement annuity contract or trust scheme approved under Chapter III Part XIV
- a retirement benefit scheme approved under Chapter I Part XIV (including a free-standing additional voluntary contributions scheme (FSAVCS) or a separately approved AVC scheme), but not from a scheme awaiting approval
- a relevant statutory scheme (s611A)
- a deferred annuity contract securing benefits which have accrued to the member by virtue of membership of a retirement benefit scheme or relevant statutory scheme, including transfers from
  - section 32 buy-out policies
  - individual policies assigned to the member after leaving service
  - policies bought by trustees on winding-up
- a fund to which s608 applies

but may not accept a transfer from any other source without the prior written approval of the Board of Inland Revenue (see paragraph 12.52). A transfer may not be accepted from an FSAVC scheme while the member is still in pensionable employment - see paragraph 14.2 of the FSAVC Guidance Notes, IR12 (Supplement).

If the receiving scheme is a stakeholder pension scheme, the scheme administrator must accept a transfer from the sources listed in the first 5 bullet points above, including any rights attributable under section 32A of the Pension Schemes Act 1993. This requirement is subject to the scheme keeping within any conditions for tax approval and the conditions of contracting out and The Stakeholder Pension Schemes Regulations 2000 (SI 2000/1403).

12.11 A minimum contributions only arrangement set up by a member of a contracted-in occupational pension scheme (see paragraph 3.21) may only accept a transfer from another such arrangement.

12.12 Special conditions apply to the acceptance of transfers in respect of regulated individuals (see paragraph 12.13) and transfers of arrangements in drawdown (see paragraphs 12.33 to 12.50).

Special requirement for acceptance of transfers from certain schemes

12.13 Regulation 8(3) of SI 2001/119 sets out a special requirement for transfers from a designated scheme in respect of certain individuals.

Where the individual requesting the transfer is a regulated individual, the transfer payment may only be accepted by the personal pension scheme if the scheme administrator has obtained a certificate, signed by either

- the administrator of the transferring scheme, or
- in the case of a section 32 contract taken out after 5 April 2001, the insurance company with whom the contract was made,

confirming that the proposed transfer payment does not exceed the maximum amount permitted under regulation 8(3) of SI 2001/119, calculated in accordance with Appendix XI of the Occupational Pension Schemes Practice Notes IR12.

12.14 Regulation 8(3) of SI 2001/119 does not apply to section 32 contracts taken out before 6 April 2001. Transfers from contracts effected between 1 July 1988 and 5 April 2001 will remain subject to the concessionary practice (originally set out in JOM 97 and paragraph 11.11 of IR76(1991)) which applied during that period. For individuals who, in respect of any period of employment to which the proposed transfer, or any part of it, relates, were

- controlling directors at any time during the period of 10 years prior to the date on which the application is made to transfer from the section 32 contract, or
- earning in excess of the allowable maximum for any year during the period of 10 years
prior to the date on which the application is made to transfer from the section 32 contract

a transfer will only be possible if an old-style regulation 6(3) certificate (under SI 1988/1014)

- was either completed at the time the contract was taken out, or is now completed by
  the administrator of the original occupational scheme as at the date of the transfer to
  the section 32 policy, and

- is passed on to the scheme administrator of the receiving personal pension scheme
  with the transfer payment.

The concessionary practice for section 32 contracts may also be applied to the other individual
policies listed under the 5th bullet in paragraph 12.10.

For the avoidance of doubt, this paragraph does not apply to lump sum certificates, which are only
required if the member is a regulated individual at the date of transfer from the section 32 contract
to the personal pension scheme.

APPLICATION OF TRANSFER PAYMENTS

General

12.15 A transfer from

- another personal pension scheme, or

- a retirement annuity contract or trust scheme approved under Chapter III Part XIV

will be subject to the normal rules of the receiving personal pension scheme, except where

- any part of the transfer payment comes from a non-commutable source and is subject
  to a NIL certificate (see paragraph 12.18), or

- the individual is a regulated individual and all or part of the transfer payment was
  previously held in a designated scheme (see paragraph 12.19).

12.16 A transfer from

- an approved retirement benefits scheme (excluding a free-standing additional
  voluntary contributions scheme (FSAVCS) or a separately approved AVC scheme
  where the member commenced making contributions on or after 8 April 1987),

- a relevant statutory scheme (s611A), or

- a deferred annuity contract (see paragraph 12.10)

will be subject to the normal rules of the personal pension scheme, except where

- any part of the transfer payment comes from a non-commutable source and is subject
  to a NIL certificate (see paragraph 12.18), or

- the individual is a regulated individual (see paragraph 12.19), or

- an individual who is not a regulated individual dies before pension date and the
  arrangement includes protected rights (see paragraphs 10.6 and 10.7).

12.17 A transfer from
- a free-standing additional voluntary contributions scheme (FSAVCS),
- a separately approved AVC scheme where the member commenced making contributions on or after 8 April 1987,
- a scheme to which s608 applies, or
- an approved scheme with a normal retirement date of age 45 or earlier (see also paragraph 12.28) where benefits are wholly in non-commutable form because a lump sum retirement benefit is provided from another source.

will be subject to the normal rules of the personal pension scheme, except that

- no part of the benefits (except benefits which are commutable because they were previously transferred to an FSAVCS from a personal pension scheme) may be paid as a tax free lump sum (see paragraph 12.18), and
- in certain cases, benefits may have to come into payment earlier than normal, in accordance with paragraph 12.28.

Transfers subject to a NIL certificate

12.18 Where a transfer payment, whether already held by a personal pension scheme on 5 April 2001 or received on or after 6 April 2001,

- came from, or was previously held in, any of the sources listed in paragraph 12.17, or
- includes any amount which has been certified as non-commutable at any time by a transferring scheme (e.g. non-commutable pension credit rights)

no part of the benefits arising from the accumulated value of the transfer payment (or from the proportion certified as non-commutable, if only part of the payment is subject to a NIL certificate) may be paid to the member as a lump sum.

Regulated individuals

12.19 Special restrictions apply to the application of transfer payments where all or part of the transfer payment came from, or was previously held in, a designated scheme and the individual was a regulated individual at the date of transfer. There are restrictions on

- the maximum amount of tax free lump sum payable from the personal pension scheme at pension date (see paragraphs 12.20 and 12.21), and
- the maximum amount which may be paid as a tax free lump sum where the member dies before taking any benefits from a personal pension arrangement (see paragraphs 12.23 - 12.27).

Restrictions on lump sum payable at pension date

12.20 Where a transfer payment is received

- on or after 6 April 2001 in respect of a regulated individual, and
- the transfer payment comes directly from a designated scheme,

the amount payable to the member as a lump sum at pension date in respect of the transfer payment will be

- the amount specified on the certificate provided by the transferring scheme at the time
of transfer,

- enhanced by the percentage increase in the retail price index (RPI) between
  - the month in which the transfer payment was received, and
  - the last month before the date on which the lump sum is paid to the member

with an overriding restriction that the lump sum paid must never exceed 25% of the total non-protected rights fund under the arrangement.

12.21 Where a transfer payment is received

- on or after 6 April 2001, and

- the transfer comes from another personal pension scheme but all or part of the transfer payment was originally held in a designated scheme,

the scheme administrator of the transferring scheme will pass on any certificate received at the date of the original transfer in respect of a regulated individual.

The amount payable to the member as a lump sum at pension date in respect of the part of the transfer payment which was originally held in a designated scheme will be

- the amount specified on the certificate provided by the transferring scheme at the time of the original transfer,

- enhanced by the percentage increase in the retail price index (RPI) between
  - the month in which the original transfer was made, and
  - the last month before the date on which the lump sum is paid to the member

with an overriding restriction that the lump sum paid must never exceed 25% of the total non-protected rights fund under the arrangement.

Transfers received before 6 April 2001 – lump sums

12.22 Lump sum certificates received before 6 April 2001 will be treated as if supplied under the new regulations and the certified amounts will continue to apply for individuals who required a certificate at the time of the original transfer, even if they are no longer within the regulated categories.

Death benefit restrictions

12.23 Where a transfer payment is received on or after 6 April 2001 from a designated scheme in respect of a regulated individual and the individual dies

- before any benefits have been paid from an arrangement under which the transfer payment, or any part of it, is held

- leaving either
  - a surviving spouse or civil partner, or
  - a dependant for whom benefits are specifically provided under the arrangement

the current value of the transfer payment must be used either

- to provide an annuity for the surviving spouse or civil partner or specified dependant
from the whole fund (subject to the normal limits and conditions set out in Part 10), or

- to provide income withdrawals for the surviving spouse or civil partner or specified dependant from all or part of the fund and an annuity from any balance (subject to the normal limits and conditions set out in Part 10), or

- to pay a lump sum not exceeding 25% of the current value of the transfer payment and to provide an annuity or income withdrawals for the surviving spouse or civil partner or specified dependant from the balance (subject to the normal limits and conditions in Part 10). Protected rights may be included for the purpose of calculating the 25%, but no part of the protected rights fund may be paid in lump sum form.

Example 1

Total current value of transfer payment £120,000

Protected rights element £ 50,000

The maximum lump sum payable is £30,000 (i.e. 25% of £120,000, as the protected rights would be left intact and the whole £50,000 would remain non-commutable).

Example 2

Total current value of transfer payment £120,000

Protected rights element £100,000

25% of the total transfer payment = £30,000, but no part of the protected rights may be commuted, so the maximum amount payable in lump sum form is £20,000.

12.24 If, at the date of death, there is no surviving spouse or civil partner and no dependant for whom benefits are provided specifically under the arrangement, the whole of the current value of the transfer payment may be paid as a lump sum.

12.25 The benefits paid from a transfer payment need not be in the same form as benefits paid from the rest of the fund held under that arrangement. The balance of the fund (provided it does not include protected rights) may therefore be paid as a lump sum, even though the benefits from the transfer payment are being paid wholly or partly as an annuity or income withdrawals.

12.26 Benefits payable under different arrangements may be paid in different forms. For example, one arrangement may provide benefits for a specified dependant and must be paid in accordance with paragraph 12.23, whereas another arrangement may specify only benefits for the member and may be paid in accordance with paragraph 12.24, if there is no surviving spouse or civil partner.

Transfers received before 6 April 2001 – death benefits

12.27 Where a transfer payment was received before 6 April 2001 and the individual dies on or after 6 April 2001, the restriction in paragraph 12.23 will apply only in the case of a regulated individual. For practical purposes, providers may pay out death benefits without this restriction in all cases where the individual was not subject to a certificate under regulation 6(3) of the 1988 Regulations (SI 1988/1014) at the date of the original transfer. If the individual was subject to a regulation 6(3) certificate, the scheme administrator is free to make whatever enquiries are necessary to ascertain whether the individual was a regulated individual at the date of the original transfer.

Transfers from schemes with early retirement ages

12.28 Where a transfer is made to a personal pension scheme from an approved retirement benefit scheme with a normal retirement age of 45 or less, it is a condition of approval of the transferring scheme that, on making the transfer, the administrator will certify to the receiving
scheme the latest date on which the benefits from the transfer payment must come into payment. It is also a condition of approval of the receiving personal pension scheme that the scheme administrator complies with the information on the certificate and that the benefits from the transfer payment come into payment (either as an annuity or income withdrawals) no later than the date specified. The scheme administrator must pass on these details in the event of any subsequent transfer out of the personal pension scheme.

12.28a Where a transfer takes place from an occupational pension scheme to which the following all apply:

- there is a normal retirement age of 45 years or less in the transferring scheme, and
- lump sum benefits are being provided under the transferring scheme and under a separate occupational pension scheme, and
- those lump sum benefits are aggregable for the purposes of Inland Revenue limits,

where the transfer is to a personal pension scheme, the following approval conditions apply:

- occupational pension scheme – the scheme administrator must provide a certificate showing the amount of tax-free lump sum payable from the personal pension scheme, and
- personal pension scheme – the scheme administrator of the personal pension scheme must comply with the details shown on the certificate, when benefits come into payment.

Transfers subject to a pension sharing order or provision

12.29 Where

- a personal pension scheme has received a transfer payment,
- the scheme administrator holds a certificate in relation to that payment showing an amount payable as a lump sum at the member’s pension date, and
- a pension sharing order or provision is later made against the member

the scheme administrator must recalculate the amount shown on the certificate to take account of the pension debit, and prepare and sign a replacement certificate showing the revised proportion (based on the original value on the certificate) payable to the member as a lump sum at pension date. The revised figure shown on the replacement certificate will be enhanced, at the time the lump sum is paid, in accordance with paragraphs 12.20 and 12.21.

The lump sum payable to the ex-spouse or former civil partner from the pension credit rights arising from a pension sharing order or provision will normally be 25% of the non-protected rights fund i.e. the normal commutation rules under a personal pension scheme will apply, unless the pension credit rights are subject to a NIL certificate (see paragraphs 12.30 and 12.31).

Example

Certificate held showing lump sum of £20,000 payable from a transfer payment of £100,000

Pension debit of £40,000

Lump sum to be recertified for member on replacement certificate is £12,000

Lump sum payable to ex-spouse or former civil partner from pension credit rights is £10,000.
12.30 Where

- a personal pension scheme has received a transfer payment,
- the scheme administrator holds a certificate showing that no amount may be paid from that transfer payment as a lump sum at the member's pension date (a NIL certificate), and
- a pension sharing order or provision is later made against the member

the scheme administrator must prepare and sign a certificate in respect of the pension credit rights arising from that transfer payment showing that no amount may be paid as a lump sum to the ex-spouse or former civil partner from those rights.

12.31 Where

- the member is taking income withdrawals from an arrangement (or arrangements) under a personal pension scheme, and
- a pension sharing order or provision is later made against the member which affects the arrangement(s) in drawdown,

the scheme administrator must prepare and sign a certificate showing that no amount may be paid as a lump sum to the ex-spouse or former civil partner in respect of the pension credit rights arising from the arrangement(s) in drawdown.

12.32 The scheme administrator of the receiving scheme must pass on the certificates and replacement certificates referred to in paragraphs 12.29 - 12.31 if the member or ex-spouse or former civil partner transfers out of the personal pension scheme at any future date.

TRANSFERS IN DRAWDOWN

12.33 Regulation 14 of SI 2001/119, which came into effect on 14 February 2001, sets out 2 exceptions to section 638(7A) (which generally prohibits transfers after the member's pension date) -

- regulation 14(2) covers the situation where the member wishes to make a transfer (paragraphs 12.33 to 12.39)
- regulation 14(3) covers the situation where a survivor wishes to make a transfer (paragraphs 12.40 to 12.46).

Transfers by member

12.34 Where

- a transfer payment is being made from one personal pension scheme to another personal pension scheme
- the member has deferred the purchase of an annuity for a period and is currently making income withdrawals from an arrangement or arrangements under the transferring scheme
- the period of deferral of the purchase of an annuity has not ended, and
- the payment consists of the whole of the funds held under the arrangement(s) which are being transferred (there is no requirement that all arrangements in drawdown are transferred)
the transfer may take place, subject to compliance with the conditions set out in paragraphs 12.35 - 12.39.

12.35 The receiving personal pension scheme must have set up the new arrangement(s) specifically to accept transfers from arrangements in drawdown. The new arrangement(s) may not accept contributions or transfers of other arrangements which are not in drawdown. Subject to paragraph 12.37, further transfers of other arrangements in drawdown may, however, be accepted at any time up to the date an annuity is purchased (each further transfer will be treated as a new arrangement entering income withdrawal for the purpose of the three yearly calculation - see paragraphs 12.49 and 12.50).

12.36 The member must elect, as part of the process to effect the arrangement(s), to defer the purchase of an annuity under section 634 and instead take income withdrawals in accordance with section 634A from the new arrangement(s).

12.37 Following a transfer in drawdown, a member may not transfer funds until they have been held in the new arrangement(s) for at least a year.

12.38 No tax free lump sum is payable from the new arrangement(s) at any time, either to the member or to a survivor on the death of the member.

12.39 An annuity must be purchased in accordance with section 634 no later than the member’s 75th birthday.

**Transfers by survivor**

12.40 Where

- a transfer payment is being made from one personal pension scheme to another personal pension scheme

- the member has died and a survivor, who has deferred the purchase of an annuity for a period, is currently making income withdrawals from an arrangement or arrangements under the transferring scheme

- the period of deferral of the purchase of an annuity has not ended, and

- the payment consists of the whole of the funds held under the arrangement(s) in respect of that survivor which are being transferred (there is no requirement that all arrangement(s) in drawdown in respect of that survivor are transferred)

the transfer may take place, subject to compliance with the conditions set out in paragraphs 12.41 - 12.46.

12.41 The receiving personal pension scheme must have set up the new arrangement(s) specifically to accept transfers from arrangements in drawdown. It may not accept contributions or transfers of other arrangements which are not in drawdown. Subject to paragraph 12.43, further transfers of other arrangements in drawdown may, however, be made at any time up to the date an annuity is purchased (each further transfer will be treated as a new arrangement entering income withdrawal for the purpose of the three yearly calculation - see paragraphs 12.49 and 12.50).

12.42 The survivor must elect, as part of the process to effect the arrangement(s), to defer the purchase of an annuity under section 636 and instead take income withdrawals in accordance with section 636A from the new arrangement(s).

12.43 Following a transfer in drawdown, a survivor may not transfer funds until they have been held in the new arrangement(s) for at least a year.

12.44 No tax free lump sum is payable from the new arrangement(s) at any time, either to the
survivor or to any other person on the death of the survivor (except where the original member died before pension date and the tax charge under section 648B does not apply on the death of the survivor – see paragraph 10.35).

12.45 An annuity must be purchased in accordance with section 636 no later than

- the date the original member who died would have reached age 75, or
- the date the survivor reaches age 75, if earlier.

12.46 The only benefits payable to the survivor under the new arrangement(s) are those which would have been payable under the transferring arrangement(s) in accordance with section 633(1)(c) (i.e. an annuity satisfying the conditions in section 636 or income withdrawals satisfying the conditions in section 636A).

Additional requirements (all transfers in drawdown)

12.47 The rules of the personal pension scheme must be amended as necessary before any transfers in drawdown are made or accepted.

12.48 A special application form will be required for transfers in drawdown, detailing all the conditions which apply to such transfers and including a declaration by the member or survivor that they understand and accept those conditions. A checklist is included at Appendix 23.

12.49 On receipt of the transfer payment, the scheme administrator of the receiving personal pension scheme must make a fresh calculation of the minimum and maximum income withdrawal limits, in accordance with Part 9, based on the fund remaining at the date of transfer.

12.50 The provisions of paragraphs 9.9 - 9.40 will apply to transfers in drawdown, except that the date on which the new arrangement was set up (and the simultaneous election to take income withdrawals was made) must be substituted for pension date, wherever that term occurs.

Regulations 14(2)(b) and 14(3)(c) require the member or survivor to be making income withdrawals from the paying scheme before a transfer in drawdown may take place. Where a transfer is requested before the end of the first 12 month period commencing with pension date (or date of death of member in the case of a survivor) income withdrawals must have actually commenced before the transfer can take place. It is not intended to specify a maximum amount to be taken in the period up to the date of transfer, but the amount withdrawn should be no less than the proportion of the minimum income withdrawal limit that the pre-transfer period bears to a full year.

OVERSEAS TRANSFERS

Transfers to overseas schemes

12.51 Transfers may be made from approved personal pension schemes to overseas schemes subject to certain conditions and, in some cases, subject to the prior approval of the Inland Revenue. Full details of our requirements are set out in Appendix 22.

Transfers from overseas schemes

12.52 Transfers to personal pension schemes from overseas schemes are only permitted with the prior written agreement of the Inland Revenue. Applications should be addressed to Audit and Pension Schemes Services, Yorke House, PO Box 62, Castle Meadow Road, Nottingham, NG2 1BG.

12.53 Transfers may be accepted from either an overseas employer's scheme or an overseas equivalent of a UK personal pension scheme (subject to paragraph 12.55 below).

12.54 The requirements for acceptance are as follows
• the transferring member must provide evidence that they have been a member of the overseas scheme for at least 2 years (this is to ensure that the proposed transfer is not part of an artificial arrangement to transfer from an unapproved UK scheme)

• the transferring member must be making current contributions to a UK *personal pension scheme*, based either on *net relevant earnings* or up to the *earnings threshold*, although the scheme to which contributions are already being made does not need to be the same scheme that is receiving the transfer. The only exception is where contributions cannot be made as a result of concurrent membership of an *occupational pension scheme* - a transfer only *arrangement* (see paragraph 3.9) will not be acceptable in any other circumstances

• the transfer must be unconditional and made directly between the two schemes

• the benefits from the transfer payment must be in accordance with the rules of the *personal pension scheme*.

12.55 Transfers may not be accepted from schemes approved under either

• sections 40(o) or 40(ee) of the Income Tax (Guernsey) Law 1975, as amended, or

• Articles 131A or 131C of the Income Tax (Jersey) Law 1961, as amended.
Part 13: Application for Tax Approval

GENERAL

13.1 This guidance is to be followed in relation to an application for approval under Chapter IV of Part XIV of ICTA 1988 for

- a new entire scheme (stakeholder pension schemes follow 13.11 to 13.21; non-stakeholder pension schemes follow 13.2 to 13.10)

- a section of a new scheme (follow 13.2 to 13.10 – part schemes cannot be stakeholder pension schemes)

- a new section of an existing Chapter I approved occupational pension scheme (follow 13.2 to 13.10 – part schemes cannot be stakeholder pension schemes), and

- an existing personal pension scheme now wishing to register as a stakeholder pension scheme (follow 13.11 to 13.21).

An existing occupational pension scheme already approved under Chapter I of Part XIV of ICTA 1988 wishing to convert wholly or partly to Chapter IV approval should follow the guidance on scheme conversion in Part 23. Please note that stakeholder registration is not available for part schemes.

NON-STAKEHOLDER PERSONAL PENSION SCHEMES

Making an application

13.2 Application for tax approval of a personal pension scheme may be made by an authorised pension provider or by the scheme administrator. (See Part 2, paragraphs 2.1–2.4).

13.3 The authorised pension provider or scheme administrator should –

- obtain form PSPP101 to apply for tax approval

- complete the form in full and attach all the required documents, and

- return it to Inland Revenue SPSS (Nottingham) at the address shown on the form.

The form is available from Inland Revenue SPSS (Nottingham)’s Personal Pensions Customer helpline (telephone number 0115-974-1777) or from the Inland Revenue website – www.inlandrevenue.gov.uk.

An application which is incomplete, or not accompanied by all the required documents, cannot be considered and will not be accepted as a valid application.

13.4 Applications to contract out of the State Second Pension should be made to Inland Revenue NI Services to Pensions Industry (formerly COEG) (see paragraphs 1.4, 22A.2 and 22.41).

Scheme rules

13.5 A set of model rules (IMR2003), for use by both contracted-out and non-contracted-out personal pension schemes is published on the Inland Revenue website – www.inlandrevenue.gov.uk.

If the model rules are used, the applicant should indicate – on the schedule attached to the rules – which of the optional rules are being included in the rules of the scheme (for example, contracting-out rules), and return the completed schedule to Inland Revenue SPSS (Nottingham).
with the rest of the application documents.

If non-standard rules are used, the applicant must submit a full copy of the rules being adopted with the application for approval.

13.6 If the provider of the personal pension scheme or part scheme is not within a category listed in any of the first eight bullets of the definition of authorised pension provider in Appendix 1 (for example, an employer), the following conditions apply –

- the eligibility criteria for scheme membership must be defined in the scheme documentation in terms of being in employment in relation to the employer(s) involved with the scheme. This is because a non-stakeholder pension scheme which is established by a provider of this type must be an occupational pension scheme for the purposes of the Pensions Acts. This means that the scheme must provide benefits in relation to employment(s), so eligibility must cease for contributions purposes at the end of the tax year in which the member leaves that employment;

- a special provision concerning the appointment of a pensioneer trustee must be included in the trust deed, if applicable. Please see the glossary definition of authorised pension provider for details of this provision. The provision is included in the model rules (IMR2003). Please see also paragraphs 2.2c and 2.2d. An existing Chapter I approved occupational pension scheme applying for Chapter IV approval for a new non-stakeholder part of the scheme may already have appointed a Pensioneer Trustee to the existing Chapter I approved scheme. Nonetheless, a Pensioneer Trustee must also be specifically appointed to the part of the scheme for which Chapter IV approval is sought.

Notice of approval

If the scheme can be approved

13.7 If the scheme is approvable, Inland Revenue SPSS (Nottingham) will –

- send the provider/scheme administrator a formal notification that the scheme has been approved for tax purposes, and

- inform the Revenue Offices concerned with the tax consequences of approval (Inland Revenue SPSS (Bootle), and the Tax Offices for the provider and scheme administrator) that the scheme has been approved.

If the scheme cannot be approved

13.8 Under section 631(2) Inland Revenue SPSS (Nottingham) have discretion to refuse an application for tax approval. If they do so they will state the grounds for refusal.

An appeal against the refusal of an application for approval should be made in writing within 30 days of the day on which the notice of refusal was given to the applicant and should state the grounds of the appeal.

Amendments to a personal pension scheme after approval

13.9 All amendments to an approved personal pension scheme must be approved by Inland Revenue SPSS (Nottingham) otherwise the existing approval of the scheme will lapse from the effective date of the amendment. It is advisable for any amendment to a scheme document (other than a policy endorsement) to be submitted in draft form to Inland Revenue SPSS (Nottingham).

A change of scheme name should be notified to Inland Revenue SPSS (Nottingham) with a copy of the Deed of Amendment as soon as possible after the change.
Policy documents

13.10 Inland Revenue SPSS (Nottingham) does not need to see copies of policies or policy endorsements, but the wording of any such document must be consistent with scheme approval. In the event of any conflict between the terms of an arrangement and the rules of the scheme, the rules must always prevail.

STAKEHOLDER PENSION SCHEMES

Making an application

13.11 All stakeholder pension schemes must be capable of accepting a transfer of pension rights for any member. Because such a transfer may include contracted-out rights, all applications from schemes wishing to be registered as stakeholder pension schemes must include an application or election to contract out of the State Second Pension.

If the scheme application or election to contract out has to be refused, the scheme would be unable to comply with the requirement for stakeholder pension schemes to accept a transfer including contracted-out rights. If this happened, Inland Revenue SPSS (Nottingham) would not proceed to approve the scheme for tax purposes, and Opra would be unable to register the scheme as a stakeholder scheme.

13.12 As the stakeholder requirements must apply to the whole scheme for the scheme to be capable of registration with Opra, stakeholder status cannot be obtained by only a part or section of a scheme. Please see Part 24 for brief details of more of the Department for Work and Pensions’ requirements relating to stakeholder pension schemes.

13.13 Application for tax approval of a stakeholder pension scheme may be made by an authorised pension provider or by the scheme administrator (see Part 2, paragraphs 2.1–2.4).

13.14 The applicant should –

- obtain the Application Pack for Establishing a Stakeholder Pension Scheme,
- complete all relevant forms in full and attach all the required documents,
- return the tax approval and contracting-out forms to Inland Revenue SPSS (Nottingham), and
- return the stakeholder registration application forms to Opra.

Application packs are available from the Inland Revenue SPSS (Nottingham) orderline (telephone number 0115 974 1670). Copies of the forms may also be printed off from the Inland Revenue website – www.inlandrevenue.gov.uk.

An application which is incomplete, or not accompanied by all the required documents, cannot be considered and will not be accepted as a valid application.

13.15 An existing personal pension scheme wishing to obtain stakeholder registration must complete the stakeholder application forms (see paragraph 13.14 above) for both Opra and Inland Revenue SPSS (Nottingham), even though it already has tax approval. Existing approval will not lapse, but a new Inland Revenue SPSS (Nottingham) reference number will be allocated to the stakeholder pension scheme once Opra have registered the scheme.

The scheme must also apply, or the employer must elect, to contract out of the State Second Pension. If the scheme or employer is already contracted out, it will need to re-apply for approval to contract out on the form contained in the application pack. A new contracting-out certificate will be issued. A stakeholder pension scheme is supervised for contracting-out purposes by Inland Revenue SPSS (Nottingham) rather than Inland Revenue NI Services to Pensions Industry, who
supervise non-stakeholder personal pension schemes for contracting-out purposes (see Part 22).

**Scheme rules**

13.16 A set of model rules (IMR2003), for use by both contracted-out and non-contracted-out personal pension schemes (including stakeholder pension schemes) is published on the Inland Revenue website – www.inlandrevenue.gov.uk.

If the model rules are used, the applicant should indicate – on the schedule attached to the rules – which of the optional rules are being included in the rules of the scheme, and return the completed schedule to Inland Revenue SPSS (Nottingham) with the rest of the application documents. On the schedule, a stakeholder pension scheme must indicate that the contracted-out rules are to apply, otherwise the scheme will not be approved.

If non-standard rules are used, the applicant must submit a full copy of the rules being adopted with the application for approval. To assist in the approval process, the passages which differ from the model rules may be marked or highlighted by the applicant.

Please also note the guidance at 2.2c and 2.2d.

**Notice of approval**

**If the scheme can be approved for tax and contracting-out**

13.17 If the scheme is approvable for tax purposes and contracting-out, Inland Revenue SPSS (Nottingham) will liaise with Opra regarding the scheme’s application for stakeholder registration. Opra will either –

- confirm that the scheme qualifies as a stakeholder pension scheme, in which case Inland Revenue SPSS (Nottingham) will
  - send the applicant a formal notification that the scheme has been approved for tax purposes and registered by Opra as a stakeholder pension scheme,
  - inform Inland Revenue SPSS (Bootle), who will issue tax repayment claim forms to the scheme administrator,
  - inform the Tax Offices for the provider and scheme administrator, and
  - issue the scheme's contracting-out certificate;

or

- confirm that the scheme does not qualify as a stakeholder pension scheme, in which case Inland Revenue SPSS (Nottingham) will not proceed with the applications for tax approval and contracting-out. If the scheme wishes to re-apply as a non-stakeholder personal pension scheme, a fresh application will have to be made (see paragraphs 13.2–13.6).

**If the scheme cannot be approved for tax or contracting-out**

13.18 Under s631(2) Inland Revenue SPSS (Nottingham) has discretion to refuse an application for tax approval. If they do so they will state the grounds for refusal. They will also inform Opra that the application for tax approval has been refused. Opra would not be able to grant stakeholder registration to a scheme which was not capable of obtaining tax approval.

An appeal against the refusal of an application for approval should be made in writing within 30 days of the date on which the notice of refusal was given to the applicant and should state the grounds of the appeal.
13.19 Inland Revenue SPSS (Nottingham) may also turn down an application or election to contract out of the State Second Pension. If they do so, they will state the grounds for refusal. They will also inform Opra that the application to contract out has been refused. Opra would not be able to grant stakeholder registration to a scheme which was not capable of accepting a transfer of pension rights including contracted-out rights.

Please see the guidance in Appendix 21 regarding the procedure for appealing against a contracting-out decision.

**Amendments to a stakeholder pension scheme after approval**

13.20 All amendments to an approved personal pension scheme, including a stakeholder pension scheme, must be approved by Inland Revenue SPSS (Nottingham) otherwise the existing approval of the scheme will lapse from the effective date of the amendment. It is advisable for any amendment to a scheme document (other than a policy endorsement) to be submitted in draft form to Inland Revenue SPSS (Nottingham).

A change of scheme name should be notified to Inland Revenue SPSS (Nottingham) with a copy of the Deed of Amendment as soon as possible after the change.

**Policy documents**

13.21 Inland Revenue SPSS (Nottingham) does not need to see copies of policies or policy endorsements, but the wording of any such document must be consistent with scheme approval. In the event of any conflict between the terms of an arrangement and the rules of the scheme, the rules must always prevail.
14.1 This Part is concerned with Inland Revenue aspects of the working arrangements and information scheme administrators will need for the purposes of day to day administration, accepting and monitoring contributions and meeting prescribed information requirements.

All forms, declarations and certificates required in connection with the procedures described in this Part should be retained for at least 6 years. Detailed information about the certificates and declarations needed can, if required, be found in The Personal Pension Schemes (Relief at Source) Regulations 1988 (SI 1988/1013).

TRANSFER PAYMENTS

14.2 The general requirements for the making, acceptance and application of transfers are described in Part 12. Transfer applications should enable the scheme administrator to be satisfied that the requirements set out in Part 12 and in The Personal Pension Schemes (Transfer Payments) Regulations 1988 (SI 1988/1014), as amended, have been complied with. The applicant's National Insurance number and Tax Office and reference number should be given.

14.3 The application for transfer, and any certificate obtained as required by the Regulations, should be kept available for inspection and be produced on request. Where an arrangement is being set up solely to accept a transfer, the necessary application for membership may be incorporated into the application for transfer.

APPLICATION FOR MEMBERSHIP

14.4 As a general rule there should be a completed application form for each arrangement, but if an individual makes more than one arrangement at the same time, and if the application form so permits, only one application need be made for those arrangements. Conversely, more than one application may need to be made in respect of one arrangement e.g. where a term assurance contract is added at a later date.

Membership For Transfer Payment Only

14.5 An individual who falls within paragraph 3.5 (transfer only arrangements) will not be able or need to supply all the information required by paragraph 14.6 or that required by paragraphs 14.9 - 14.21, but all the information and details otherwise required must be given. The commencement of the payment of contributions by or in respect of that individual at some subsequent date will require the provision of the information and details not previously given.

THE SELF-EMPLOYED

14.6 Where a self-employed person applies for membership the scheme administrator should -

- ensure as far as possible that an individual is self-employed - if the scheme administrator is doubtful whether the answers given in the completed application form are sufficient, the individual should be asked to obtain confirmation from his or her Tax Office that he or she “is chargeable under Schedule D in respect of relevant earnings from a trade, profession or vocation”

- obtain confirmation from the individual that the proposed contribution(s) together with contributions to any retirement annuity contract, any retirement annuity trust scheme or any other personal pension scheme do not exceed the permitted maximum

- require the individual to notify any change in self-employed status within 30 days of the change.
The application form should include an entry for the individual’s National Insurance number and, if known, the Tax Office and reference number.

EMPLOYEES

Opting for Minimum Contributions

14.7 The scheme administrator should obtain whatever information will be needed to claim minimum contributions from the National Insurance Contributions Office. In addition, in order to satisfy the conditions of section 638, the scheme administrator should obtain a declaration from the individual that, in respect of service to which the minimum contributions relate -

- he or she is not a controlling director of an investment company (section 644(5)) and
- he or she is not a member of an occupational pension scheme (section 645) other than one which will provide benefits only on death.

14.8 Where the individual is a member of an occupational pension scheme, minimum contributions may be accepted if he or she is not in contracted-out employment by reference to the occupational pension scheme. In such cases, and before minimum contributions are accepted, the individual should enter into a written agreement with the scheme administrator that no other contributions should be accepted from or in respect of him or her. Alternatively, the scheme administrator should ensure that the individual has ceased to be in contracted-out employment before membership of the personal pension scheme begins.

Opting for Voluntary Contributions

14.9 Before accepting contributions by, or on behalf of, an employee, the scheme administrator should obtain an application form signed by the employee. This form, together with the certificate referred to in paragraph 14.21, should confirm the individual’s eligibility and act as an application for tax relief at source on the contributions. It should therefore include a prominent warning that it is a serious offence to make false statements: the penalties are severe and could lead to prosecution.

14.10 The membership application form should require the applicant to state

- full name and address
- date of birth
- National Insurance number
- Tax Office and reference number, if known
- the full name and address of the employer
- an estimate of earnings in the current tax year
- whether or not contributions are being paid to any retirement annuity contract, any retirement annuity trust scheme and any other personal pension arrangements by either the applicant or the employer.

Estimate and evidence of earnings

14.11 An estimate of earnings must always be given in writing by the individual and cannot be given by a third party such as an accountant, agent or independent financial adviser. Similarly it is not acceptable for a third party to record evidence of earnings in support of an estimate. Evidence of earnings must be seen and recorded by an authorised representative of the personal pension scheme.
14.12 Reasonable documentary evidence should be obtained in support of the applicant’s estimate of earnings. This may be:

- the payslip for the latest pay period or for the last pay period of the preceding tax year, or
- P60 for the previous tax year.

A copy of the evidence need not be retained; it will be sufficient to record:

- the amount shown,
- the date evidence was obtained and
- what form it took.

The estimate and the documentary evidence should be obtained within 30 days after the date on which the individual first pays a net contribution. If it is not provided within that period the arrangement should be cancelled and the contributions refunded.

If the documentary evidence shows contributions paid to an occupational pension scheme the position should be checked to ensure that the applicant correctly qualifies for membership of the personal pension scheme.

If the initial contribution is a single payment and is to be carried back the scheme administrator should obtain the estimate and evidence relating to the earlier year.

14.13 It will also be acceptable for evidence to be supplied by the applicant’s employer. This may be in the form of:

- suitably headed notepaper giving details of the rate of pay (preferably but not necessarily related to a tax year) or
- on a form provided by the scheme administrator.

In either case the form should be signed by the employer or a person nominated by the employer to provide the information.

In the case of a group personal pension scheme, the details of pay may be supplied on a schedule from the employer and may relate to one or more employees. The schedule should be signed by the employer or a person nominated by the employer to provide the information. The schedule should either be copied to each employee’s individual record, or (where the schedule is retained at some central point) a clear audit trail should be maintained to each individual record.

14.14 Where the evidence presented does not fully substantiate the individual’s estimate of earnings (see paragraph 14.11) a tolerance of not more than 10% below the estimate may be accepted.

The estimate is the normal basis for determining the contribution level and the figure reported to the Revenue in the end of year information return (see paragraph 14.29).

14.15 If the evidence plus 10% is less than the estimate the scheme should contact the member. This may result in the original estimate being reduced by the member and this may only be effected by means of a written note to the scheme which should then be held with the original application form. The scheme administrator should not under any circumstances alter the original estimate on the application form but must alter the scheme records to ensure that the revised estimate is reported to the Revenue in the end of year magnetic tape submission (see Part 17).

14.16 Another possibility is that further evidence may be produced to back up the original estimate
- e.g. a recent payslip which is more up to date than last year's P60. If the scheme administrator is then satisfied it is merely a question of recording the fresh evidence in the normal way.

14.17 If no satisfactory explanation is sought or obtained in a case where the evidence of earnings plus 10% is less than the estimate then contributions may still be permitted but only by using the evidence to determine the contribution limits.

The scheme administrator should attach a brief note to the application form to this effect and must also replace the estimate by the evidence in the scheme records for the end of year magnetic tape reporting to the Revenue. He should not under any circumstances attempt to alter the member’s original estimate on the application form.

The scheme administrator should also ensure that if the member wishes to raise the contribution level above that permitted by the evidence it can only be acceptable providing further evidence is produced to support the new contribution level. This may in practice still be lower than the first original estimate.

14.18 If the evidence produced is greater than the estimate given, the scheme administrator need take no further action except to record the evidence. The contributions must not exceed the limits imposed by the estimate, and it is the estimate which is used for the end of year reporting purposes.

If at some future time the member wishes to raise the contributions to a level above that permitted by the estimate and has suitable evidence of earnings justifying this, he should provide the scheme administrator with that evidence of the earnings on which the new higher contribution is to be based. If evidence is not available, then he or she should be asked to give a revised estimate in writing and then some form of recent evidence when available. (Although the scheme will still have a record of the evidence originally given this may be now well out of date).

14.19 Evidence of earnings obtained by an authorised representative of a scheme need not be seen by the scheme administrator but it is the responsibility of the scheme administrator to ensure that details of the evidence are held on record.

An Independent Financial Advisor (IFA) may be accepted as an authorised representative of a scheme for the purpose of obtaining and recording evidence of earnings. The IFA need not retain the evidence but must record the appropriate details (see paragraph 14.12) and provide that information to the scheme administrator either -

- on the IFA’s headed notepaper and signed by the IFA, or
- on a form provided by the scheme administrator, signed by the IFA and stamped with the IFA’s official stamp.

14.20 A member may commence to make contributions part way through a tax year but may base those contributions on the whole year’s earnings. The scheme administrator must ensure that there are procedures in place to reduce the level of contributions from the beginning of the next tax year to ensure that excess contributions are not accepted.

It is however open to the member to provide an increased estimate of earnings (supported by revised evidence) to justify contributions remaining at the higher level.

14.21 The application should be accompanied by a certificate in the form of the specimen shown at Appendix 8 which confirms that the applicant is not a participant in an occupational pension scheme (Section 645) of the employer. If the information provided is to refer to an earlier period because a single contribution is carried back to a period when the applicant’s status was different, the position should be given in relation to that earlier period and a brief explanation given on the certificate.

14.22 A certificate of the kind described in paragraph 14.21 should also be obtained -
a) whenever a self-employed member becomes employed, or

b) whenever an employed member changes the employer for whom he or she works (the new employer), or

c) if 5 years have elapsed since the completion of the previous certificate.

If a certificate required under a) or b) is not provided within 60 days of the individual first notifying the scheme administrator of the change of employment, any contribution paid within that period in respect of those earnings should be refunded. Further contributions should not be accepted until a certificate is provided.

If a certificate is required under c), it should be obtained within 30 days after the expiry of a period of 5 years from the date on which the previous certificate was provided. If it is not provided within 30 days, any contribution paid within that period should be refunded (see Part 18). Further contributions should not be accepted unless a certificate is provided.

14.23 The application should include a declaration that -

• contributions by or on behalf of the individual are not in respect of emoluments as a controlling director of an investment company (section 644(5))

• the total contributions to this scheme, any retirement annuity contract or trust scheme and any other personal pension scheme by or on behalf of the individual do not exceed the permitted maximum

• to the best of the individual’s knowledge and belief, the particulars given on the application are correct and complete

• the information given in the certificate of eligibility is correct

• the individual undertakes to tell the scheme administrator within 30 days if -

  - there is any change of employment (including becoming self-employed or unemployed), or

  - he or she becomes a member of an occupational pension scheme (other than one providing only death benefits for the member).

If, on a change of employer, the member has not entered pensionable service and wishes to continue to contribute to the scheme, the member should within 30 days provide the name and address of the new employer and confirm that, in the context of the new employment, he or she is not a controlling director of an investment company. Documentary evidence of the earnings with the new employer should also be produced within 30 days.

In respect of an arrangement set up solely to accept a transfer payment, the application need not include the matters covered in the declaration above.

**CHANGE OF EMPLOYMENT STATUS**

**Change from employed to self-employed**

14.24 When an individual who was an employee becomes self-employed, the scheme administrator should -

• advise the individual that future contributions must be paid gross, and

• issue a supplementary PPCC (see Appendix 7) to show the revised basis and the date on which the first contribution made on the revised basis, was paid.
The *scheme administrator* need not take any action to alter the tax treatment of contributions paid in the period between the date of the change and the date on which contributions start to be paid gross.

**Change from self-employed to employed**

14.25 When an individual who was self-employed becomes employed, the *scheme administrator* should obtain from the individual -

- the full name and address of the employer
- estimate and evidence of earnings in respect of the employment, and
- a certificate of eligibility to confirm that
  - the individual is not a member of the employer’s *occupational pension scheme*
  - contributions by or on behalf of the individual are not in respect of emoluments as a *controlling director* of an investment company (Section 644(5)).

The *scheme administrator* should also -

- advise the individual that future contributions must be made under deduction of tax at the basic rate, and
- issue a supplementary PPCC (see Appendix 7) to the individual to show the revised basis and the date on which the first contribution made on the revised basis, was paid.

The *scheme administrator* need take no action to alter the tax treatment of contributions paid between the date of the change of status and the date on which contributions start to be paid under deduction of tax at the basic rate.

**Change as a result of a decision by the Inland Revenue**

14.26 Inland Revenue SPSS (Bootle) will notify a *scheme administrator* of any change to an individual’s status arising from a decision by the Inland Revenue as to whether the individual is an employee or self-employed for personal pension purposes.

**CARRY-FORWARD AND CARRY BACK**

14.27 A member may wish to use carry-back or carry-forward to pay contributions in excess of the percentage limit. Guidance on these aspects is given in Parts 6 and 7.

**CONTRIBUTION CHANGES**

14.28 Except where carry-forward or carry-back apply, if a member wishes to increase contributions beyond the percentage limit justified by the estimate previously given (and supported by evidence) the *scheme administrator* must obtain a revised estimate duly supported by documentary evidence or, in the case of a group *personal pension scheme*, a revised schedule from the employer. The further estimate and evidence must be obtained within 30 days of the payment of the increased contribution. If they are not provided within that period the amount by which the increased contribution exceeds the original level of contribution should be refunded.

**END OF TAX YEAR REQUIREMENTS**

14.29 At the end of each tax year *scheme administrators* should make information returns to the Inland Revenue. Full details of the information to be given is contained in Part 17.
Note. "Earnings" where used in this Part means "net relevant Schedule E earnings" as defined in Regulation 2 of SI 1988/1013.
GENERAL

14.30 This Part is concerned with the tax aspects of the working arrangements and information scheme administrators will need for the purposes of day to day administration, accepting and monitoring contributions and meeting prescribed information requirements. Contracting-out aspects are dealt with in manuals CA14A, CA16 and CA84, all available on the internet, or from the address shown in paragraph 1.4.

All forms, declarations and certificates required in connection with the procedures described in this Part should be retained for at least six years. Detailed information about the certificates and declarations can, if required, be found in the following Regulations:

- The Personal Pension Schemes (Relief at Source) Regulations 1988 (SI 1988/1013)
- The Personal Pension Schemes (Relief at Source) (Amendment) Regulations 2000 (SI 2000/2315), and

TRANSFER PAYMENTS

14.31 The general requirements for the making, acceptance and application of transfers are described in Part 12. Transfer applications should enable the scheme administrator to be satisfied that the requirements set out in Part 12 and in The Personal Pension Schemes (Transfer Payments) Regulations 2001 (SI 2001/119) have been complied with. The applicant’s National Insurance Number (NINO) must be given. Full guidance is set out at paragraph 14.37a on individuals who are unlikely to have a NINO, and at paragraph 14.37b on individuals who cannot produce their NINO.

14.32 The application for transfer, and any certificate obtained as required by the Regulations, should be kept available for inspection and be produced on request. Where an arrangement is being set up solely to accept a transfer, the necessary application for membership may be incorporated into the application for transfer.

MEMBERSHIP APPLICATIONS

14.33 As a general rule there should be a completed application for each arrangement, but if the individual makes more than one arrangement at the same time, only one application need be made for those arrangements.

Conversely, more than one application may need to be made in respect of one arrangement - for example, where a term assurance contract is added at a later date.

14.34 An individual who is making an application for a transfer only arrangement will only have to supply the information and details required on the transfer application form. Additional information will, however, be required if they wish to pay contributions to the arrangement at a later date.

APPLICATIONS NOT IN WRITING

14.35 Where an application is made other than in writing, for example, by telephone, e-mail or unsigned fax, the individual is required to provide the same information and make the same declaration as he or she would have done had the application been made in writing. However the individual’s signature is not required.
If the application is made by telephone, the Inland Revenue recommends that the scheme administrator

- obtains from the individual the information listed in Appendix 19
- asks the individual "Do you declare that the information you have given me is correct?"
- if the answer is "yes", goes on to explain "There are further things relating to this application to which you must agree. These details will be included in a full declaration of the information you have given me and will be sent to you shortly. You must read this very carefully as you will be legally bound by it unless you tell us within 30 days of any changes to the information given. Do you agree to inform us if any of the information you have given me changes?"
- obtains the member's agreement to comply with the statement above.

On receipt of the non-written application (or after the telephone call) the scheme administrator must make a record of the application (either in writing or electronically) and send a copy direct to the individual. This declaration must show the date on which it was sent to the individual and confirm all the details provided by the individual in the application. The declaration will satisfy the requirements of the Regulations if it takes the same format as an application form, prefaced by the statement “This declaration records the terms of the declaration made by the applicant below”.

The application is valid from the date the scheme administrator makes the declaration. The individual has 30 calendar days from the date the copy is sent to notify the scheme administrator of any corrections. Notifications need not be in writing.

Where corrections are notified the scheme administrator must issue a revised declaration. But the revised declaration will take effect from the date of the original declaration by the scheme administrator.

14.36 All contributions paid by individuals on or after 6 April 2001 must be paid net after deduction of tax at basic rate. It is not necessary for a scheme administrator to have separate application forms for self-employed individuals, employed individuals and individuals who have no earnings at all. But there is no objection to a scheme administrator using separate forms provided they contain the relevant declarations and information.

14.37 A scheme’s application form must require the individual to state:

- full name
- permanent residential address (including the postcode where the address is in the UK)
- date of birth
- National Insurance Number (NINO) (see below)
- the category of status that is applicable in his or her case, and
- in the case of an individual whose status above is employed, the name and address of his or her employer and whether or not he or she is a member of an occupational pension scheme of that employer.

**Individuals who are unlikely to have a National Insurance number**

14.37a Scheme administrators may find it useful to know that the following individuals are unlikely to have a National Insurance Number (NINO):

- a married woman who has not worked since 1975 and who has not paid National
Insurance contributions (NICs) or claimed benefits since then,

- a person who had always lived abroad and who has not paid NICs or claimed benefits since arriving in the UK,
- a non-resident individual who is a partner in a UK partnership, and who by participating in that UK partnership's profits, has a source of net relevant earnings (see paragraph 3.7),
- a person who was not the subject of a child benefit claim immediately before their 16th birthday and who has not claimed benefits, worked or paid NICs since,
- foreign nationals who are exempt from NICs in the UK as they are continuing to pay National Insurance contributions in their country of origin.

Where any of the above applies, the scheme administrator should allocate a dummy identifier beginning with "NC" followed by six numbers based on the individual's date of birth and ending with "M" for male or "F" for female. For example, for a man born on 18 June 1950, the scheme administrator should allocate a dummy identifier of "NC180650M".

The scheme administrator must use that identifier for personal pension end of year reporting purposes only (see Part 17B) and report it in the NINO field (paragraph 17.42). The member must not be given the dummy identifier which is used by the Inland Revenue for personal pension compliance data matching only.

A scheme administrator who cannot, or does not wish to, allocate a dummy identifier in the format described above, will not be able to open an arrangement for that individual.

Other individuals without a National Insurance Number

14.37b An individual who does not fall within any of the categories listed in paragraph 14.37a should have a NINO. The NINO can usually be found on:

- payslips and/or forms P60
- form P45 (provided by an employer when someone leaves a job)
- notices of coding, tax returns or other letters from the individual's Tax Office
- letters from the Department for Work and Pensions (DWP) or Employment Services Job Centre
- forms JSA1 (provided by DWP when someone makes a claim)
- payment slips or forms P60 in respect of pensions received from former employers
- pension books (on the front cover)
- RD3 NI numbercard.

Some individuals are given a temporary NINO substitute by their employer, usually where they have recently commenced employment and have lost their NINO, or where they have returned from a period abroad. Temporary NINOs are usually in the format TN999999M or 99Y999999. Individuals who only have temporary NINOs should complete the application form as if they did not have a NINO.

An individual who does have a NINO, but cannot find or remember it, can contact the local DWP Jobseeker Plus office (previously Benefits Agency) to obtain the NINO.
An individual who is not within any of the categories at 14.37a and does not have a NINO should apply to their local DWP office for an appointment to apply for a NINO.

In either situation above, the scheme administrator should set up the personal pension arrangement without the NINO and allocate the "universal" dummy identifier of PP999999P.

The scheme administrator must use that dummy identifier for personal pension end of year reporting purposes only (see Part 17B) and report it in the NINO field (paragraph 17.42). The member must not be given the dummy identifier, which is used by the Inland Revenue for personal pension compliance data matching only.

The scheme administrator must obtain the actual NINO from the individual within two years from the date on the individual's membership application. (If the scheme administrator's records do not record the date of the application but merely the date of joining the scheme, that date may be used for the two-year test). If it is not received by the expiry of that two-year period, the arrangements must be cancelled and all contributions refunded. Any tax relief claimed must also be repaid to Inland Revenue SPSS (Bootle) (see Part 15B).

The simplified recovery audit procedure will not apply in the area of missing NINOs which are discovered after the expiry of the two-year period. This applies both to cases discovered as a result of the scheme administrator's own internal audit, as well as cases discovered by the Inland Revenue audit (see Part 16).

A scheme administrator who cannot, or does not wish to, allocate a dummy identifier in the format described above will not be able to open an arrangement for that individual.

Minors

14.37c Where an application is being made on behalf of a child under 16, the NINO should be shown in the dummy format of YY999999Y. The child should automatically receive a NINO from the National Insurance Contributions Office approximately 3 months before the child's 16th birthday. A scheme administrator should therefore contact the child as soon as he or she reaches age 16 to obtain the actual NINO issued so that the dummy NINO can be replaced by the actual NINO in the scheme's records.

Category of status

14.38 The category of status to be included on the application will be the most applicable of the following

- Employed
  - A person chargeable to tax under Schedule E for the income tax year of assessment concerned in respect of an office or employment held by him or her.
  - A person chargeable to tax under Schedule E for the income tax year of assessment concerned in respect of a pension.

- Self-employed – A person chargeable to tax under Schedule D for the income tax year of assessment concerned in respect of annual profits or gains arising or accruing from any trade, profession or vocation carried on by him or her.

- A child under the age of 16.

- Other status not falling within any of the above. In such a case the individual should also specify which of the following is applicable in his or her case (or if more than one applies the most applicable) -
  - i) caring for one or more children aged under 16
ii) caring for a person aged 16 or over  
iii) in full-time education  
iv) unemployed  
v) other.

Existing scheme members at 6 April 2001 who are transferring to stakeholder pension schemes may be classified as follows -

• where payments in 2000-2001 are being made net of tax, as employees,  
• where payments in 2000-2001 are being made gross, as self-employed, and  
• where no payments are being made in 2000-2001, as "other".

INDIVIDUALS INCAPABLE OF COMPLETING AN APPLICATION FORM

14.38a Normally, an application must be made by the individual. But in certain circumstances scheme administrators may accept applications signed by someone acting on behalf of a physically or mentally incapacitated individual.

Physical incapacity

14.38b Scheme administrators may accept an application by someone acting under a power of attorney if they are satisfied that the individual is physically incapable of making the application. In all cases, scheme administrators should -

• ask to see the power of attorney, and  
• obtain and retain with the application form evidence, for example a written declaration by the person making the application, that the individual is physically incapable of making it.

Scheme administrators must open the personal pension arrangement in the name of the incapacitated person.

Mental incapacity

14.38c Scheme administrators may accept applications by

• an attorney appointed for a person who is mentally incapacitated (scheme administrators should ask to see the enduring power of attorney which has been registered and stamped by the Public Trustee Office or Court of Protection), or  
• a receiver appointed by the Court of Protection for a person who is mentally incapacitated. (Scheme administrators should ask to see the document of appointment).

Scheme administrators must open the personal pension arrangement in the name of the incapacitated person.

Scheme administrators may accept applications under a Scottish power of attorney only where the power was granted on or after 1 January 1991 and the attorney makes a written declaration that the principal is mentally incapacitated. The declaration must be retained with the application. Scheme administrators should open the personal pension arrangement in the name of the incapacitated person and retain the written declaration with the application form.
General powers of attorney

14.38d Scheme administrators must not accept applications made under a general power of attorney where there is no evidence that the individual is physically incapacitated.

Applications by a curator bonis

14.38e In Scotland, a curator bonis appointed by the Court to administer the estate of a physically or mentally incapacitated person must act in his or her own name not that of the incapacitated person. A curator bonis who has a personal pension arrangement in his or her own right may also have a personal pension arrangement in his or capacity as curator bonis on behalf of an incapacitated person for whom he or she acts. Scheme administrators should open the personal pension arrangement in the name of the curator bonis and not the name of the incapacitated person. Scheme administrators should retain a copy of the Court appointment with the application.

Returns of information

14.38f In all cases (including those where a curator bonis is acting) of physical or mental incapacity, scheme administrators should report the full details relating to the incapacitated person on returns of information (see Part 17B).

DETERMINING ELIGIBILITY FROM 6 APRIL 2001

14.39 Scheme administrators must determine the applicant's eligibility to join the scheme (see Part 3). A simple declaration will be sufficient for residence. Those who declare themselves non-resident (other than Crown Servants and spouses or civil partners of Crown Servants) must provide evidence of net relevant earnings. This evidence must be either -

- a copy of a payslip for the current year, or
- a declaration from the employer that there is a source of earnings in the UK. Where the net relevant earnings are in respect of self-employment, the evidence requirements in paragraph 14.46 should be followed.

There is no need for scheme administrators to check this information again.

14.40 Members of occupational pension schemes who do not have net relevant earnings from a separate source of employment must make a concurrency declaration (see Appendix 19) before any contributions may be paid.

EVIDENCE OF EARNINGS

14.41 From 6 April 2001 members of personal pension schemes may either -

- contribute up to the earnings threshold (see paragraph 14.42 below), or
- contribute above the earnings threshold (see paragraph 14.43 below).

Contributions up to the earnings threshold

14.42 A member who wishes to make contributions up to the earnings threshold will not normally be required to supply evidence of earnings (unless the individual is non-resident - see paragraph 14.39). Where an individual does have a source of earnings he or she will not be required to supply a scheme administrator with any details of those earnings as long as contributions remain below the earnings threshold.
Contributions above the earnings threshold

14.43 A member who wishes to make contributions above the earnings threshold must have a source of relevant earnings and must supply the scheme administrator with evidence of those earnings to substantiate the higher contribution level.

The scheme administrator must retain a copy of the evidence in all cases.

Time limits for evidence to be supplied

14.44 Evidence of earnings must be supplied to the scheme administrator within 30 days of payment of a contribution which takes the total contributions for the tax year either

- over the earnings threshold, or
- over the permitted maximum based on the previous evidence held by the scheme administrator (i.e. when a new basis year is declared).

Basis Year

14.45 Evidence of earnings for a tax year will form a basis year and will enable the individual to make higher level contributions for that tax year and the following five years. A basis year can be a tax year prior to 2000/2001.

14.46 The evidence to be supplied should be one of the following:

- Employees:
  - a form P45 issued by the individual's employer, provided it shows the pay from the previous 6 April to the date of cessation of employment
  - a current year payslip, provided it shows the cumulative pay from the previous 6 April to date (the scheme administrator can only accept contributions based on the actual amount shown to date and cannot annualise that figure to produce a higher amount)
  - a copy of a week 52 payslip or P60 showing relevant earnings for the basis year
  - a declaration from the individual's employer stipulating the amount of remuneration paid or to be paid to him or her for the basis year
  - a copy of the appropriate employment page(s) of the self-assessment tax return showing the net relevant earnings of the individual for the basis year.

- Self-employed:
  - a copy of the appropriate page(s) of the accounts of the individual's trade, profession or vocation showing the net relevant earnings of the individual for the basis year
  - a copy of the appropriate self-employment page(s) of the self-assessment tax return showing the net relevant earnings of the individual for the basis year,
  - a written statement from the accountant, solicitor or auditor dealing with the individual's tax affairs, showing the net relevant earnings.

The Inland Revenue do not expect a scheme administrator to have to check any of the figures provided but merely to accept the figure provided as evidence.

Evidence may be supplied to a scheme administrator electronically. In the case of group schemes
where the employer is providing a schedule of earnings for their employees, the *scheme administrator* must ascertain the provenance of the schedule. The *scheme administrator* should therefore ensure that any e-mail is from their usual contact or on behalf of their usual contact and includes a declaration along the lines of "I declare that this schedule is sent on behalf of …….& Co, and that I am the ………..(enter status) authorised to provide the information on the company’s behalf".

14.47 A *scheme administrator* should hold evidence of earnings for all employed members paying net contributions under the old pre-6 April 2001 rules (see paragraph 14.12). In these cases there is no objection to the *scheme administrator* using the estimate held on record in place of evidence for basis year purposes. The *scheme administrator* should show the basis year in the scheme's records as "2000/2001" and report it on the end of year information return as "2001" (see paragraph 17.50).

Contributions over the *earnings threshold* may be made for the tax year 2001/2002 and the following four tax years. After that time the member will need to declare a new *basis year* and provide evidence of earnings.

A member may at any time declare a new *basis year* if that is more advantageous. Alternatively, a *scheme administrator* who does not want to use the existing estimate held at 5 April 2001 is free to write to each member and obtain more up to date evidence. But, any *basis year* which is earlier than 2000/2001 should still be shown in the scheme's records as a *basis year* of "2000/2001" and reported on the end of year information return as "2001" (see paragraph 17.50).

**Example**

Mr Davies had an existing personal pension at 6/4/2001 into which he makes regular monthly contributions of £400 on the 10th of each month. When Mr Davies took out the contract on 1 September 1998, he supplied the *scheme administrator* with a 1997/98 P60 in support of an estimate of earnings under the pre-6/4/01 rules.

The *scheme administrator* is allowed to use the existing evidence of 1997/98 as the *basis year* to support contributions above the *earnings threshold* after 6 April 2001. And, under the normal rules (see paragraph 14.45), it would support contributions made up until the end of tax year 2002/03. But, as paragraph 14.47 allows the *scheme administrator* to report the *basis year* for Mr Davies as 2000/01, contributions can continue until the end of tax year 2005/06.

Mr Davies can increase his contributions above the figure of £4,800 for tax year 2002/03 by supplying the *scheme administrator* with more up to date evidence of earnings, for example his 2001/02 P60. The *basis year* would then become 2001/02 and contributions at the new increased level could continue until the end of tax year 2006/07.

14.48 A *scheme administrator* must obtain evidence of earnings for every self-employed individual who is making contributions above the *earnings threshold*. The time limits in paragraph 14.44 apply but for the tax year 2001/2002 only a scheme administrator was permitted to accept contributions above the *earnings threshold* provided the evidence was supplied by 31 January 2002.

14.48a An individual who becomes self-employed, either as a sole trader or as a partner, in the current tax year and who

- was in pensionable employment throughout the previous 5 tax years, or
- had no net relevant earnings in any of the previous 5 tax years

will not be able to supply evidence of earnings from a *basis year* to support contributions above the *earnings threshold*.

The *scheme administrator* should ask the individual to supply an estimate of earnings for the
current tax year. The scheme administrator should enter that figure in the scheme's records and report it in place of the evidence of earnings figure in the end of year information return (see paragraph 17.51). The basis year should be shown as the current tax year for which the estimate is given.

Contributions above the earnings threshold may be permitted based upon the current year estimate figure. Where appropriate, the current year earnings cap must be applied. The individual must agree to provide the scheme administrator with evidence in support of the estimate. That evidence must be supplied by 31 January following the end of the tax year for which the estimate is provided. The scheme should then replace the estimate in their records with the actual evidence figure which can then be used for future basis year purposes in the normal way.

If the actual evidence is less than the estimated earnings figure, the scheme administrator must adjust the contributions accordingly.

14.48b Scheme administrators will need to contact each self-employed member by 6 April 2001 to inform them that contributions from that date will be paid net of tax at basic rate. At the same time they should inform the member of the new eligibility conditions for membership of a personal pension scheme (see Part 3) which apply from 6 April 2001. Members should be told to contact the scheme if they consider that they are no longer eligible from 6 April 2001. Scheme administrators should assume that the member remains eligible from 6 April 2001 in the absence of any notification to the contrary from the member.

If the member subsequently wishes to contribute above the earnings threshold, the scheme administrator should follow the instructions at paragraph 14.48.

Cessation of Employment or Self-employment

14.49 When a member who is contributing below the earnings threshold notifies the scheme administrator that he or she has ceased employment or self-employment, the scheme administrator does not need to take any further action. Contributions can, if the member so wishes, continue provided they remain below the earnings threshold.

When a member who is contributing above the earnings threshold notifies the scheme administrator that he or she has ceased employment or self-employment and wishes to continue to make contributions at the same level then he or she may be allowed to do so.

A scheme administrator must obtain evidence of earnings from the member relating to the reference year before allowing contributions to continue for any qualifying post cessation year.

END OF TAX YEAR REQUIREMENTS

14.50 At the end of each tax year scheme administrators should make information returns to the Inland Revenue. Full details of the information to be given is contained in Part 17.
INTRODUCTION

15.1 Scheme administrators recover the sums deducted by individuals from personal pension payments by making claims to Inland Revenue SPSS (Bootle) at the address shown in Part 1.

15.2 All claims must be made on the prescribed form and signed by an authorised officer of the scheme administrator.

15.3 Where Inland Revenue SPSS (Bootle) is satisfied with the claim they will pay the sum claimed, through the BACS (Bankers Automated Clearing Services Ltd) system, direct to the scheme administrator’s bank account.

15.4 Claims received by Inland Revenue SPSS (Bootle) on or before the last working day of a calendar month will be paid on the 21st of the following month. But where the 21st falls on a weekend or public holiday Inland Revenue SPSS (Bootle) will make payment on the next working day.

Claims received after the last working day of a calendar month will be paid in the next following month.

INFORMATION TO BE SUPPLIED BEFORE CLAIMS ARE MADE

15.5 Scheme administrators have to provide in advance certain information to enable their tax repayment claims to be processed by Inland Revenue SPSS (Bootle). The information is as follows:-

- Signatories to claims -
  - the full name and status of up to five individuals appointed by a resolution of the scheme administrator’s board or equivalent managing body to sign claims on behalf of the scheme administrator (only one signature is required on each claim),
  - a copy of the resolution of the board or equivalent managing body appointing each signatory, and
  - an original specimen signature of each signatory.

- Bank account details -
  - The full name of the bank/building society,
  - the full address of the branch of the bank/building society to which the payments are to be made,
  - the branch sort code,
  - the account number,
  - any special form of identification given to the account (e.g. deposit, special deposit, number 2 account etc),
  - the building society reference number (if applicable), and
15.6 The application forms for tax approval for personal pension schemes include all the details shown at paragraph 15.5. When Inland Revenue SPSS (Nottingham) approve a personal pension scheme they will notify Inland Revenue SPSS (Bootle) of all necessary details to enable the scheme administrator to make tax repayment claims.

15.7 Inland Revenue SPSS (Bootle) will allocate a reference number to the scheme administrator and issue the appropriate forms to enable tax repayment claims to be made.

Changes to information

15.8 If any of the information provided subsequently changes, the scheme administrator’s liaison officer should inform the Revenue in writing well before the next claim is made. The notification should in all cases be sent to Inland Revenue SPSS (Nottingham).

Failure to do so could lead to a delay in receiving payment of claims.

BASIS OF CLAIMS

15.9 Scheme administrators make an annual claim. They may also make interim claims, usually monthly.

Interim claims - form PP10

15.10 Scheme administrators should make interim claims on form PP10 (see Appendix 13). This form is available on request from Inland Revenue SPSS (Bootle).

15.11 Interim claims may not be based upon an estimate but may only be made to recover an amount of tax deducted by individuals in respect of contributions paid in the tax month. A tax month begins on the 6th day of one month and ends on the 5th of the following month.

15.12 Interim claims may cover a maximum of six tax months provided all those months fall in the same tax year. A tax year begins on 6th April in one year and ends on 5th April in the following year.

15.13 Interim claims include provision for scheme administrators to pay back income tax claimed and received from Inland Revenue SPSS (Bootle) which is later found not to be due.

15.14 Inland Revenue SPSS (Bootle) will not pay an interim claim for the tax month ending 5th October or any subsequent month unless they have received a fully completed annual claim on form PP14 for the previous tax year to 5th April.

15.15 Inland Revenue SPSS (Bootle) will not, normally, pay interim claims of less than £50.

15.16 If Inland Revenue SPSS (Bootle) is not satisfied with an interim claim they will pay any lower amount which they estimate is due. There is no right of appeal against a decision on an interim claim.

15.17 If, as a result of making an interim claim there is net tax due to the Inland Revenue, Inland Revenue SPSS (Bootle) will set this against the scheme administrator’s next claim provided that it is submitted within the following three months. But where the tax cannot be recovered by a deduction from the next claim, Inland Revenue SPSS (Bootle) will normally issue an informal notice, advising the scheme administrator of the amount payable and how to pay back the tax due.
Annual claims - form PP14

15.18 *Scheme administrators* making an annual claim must use form PP14 (see Appendix 14). Stocks of this form are available from Inland Revenue SPSS (Bootle) although *scheme administrators* should automatically receive a supply of both interim and annual claim forms at the beginning of each tax year.

15.19 The annual claim must be certified by the *scheme administrator*’s external auditor.

15.20 Annual claims may not be based on an estimate but may only be made to recover an amount of tax deducted by individuals in respect of contributions paid in the tax year.

15.21 An annual claim for a tax year may be made at any time within six years after the end of the tax year. However, where a *scheme administrator* has received repayment of tax from Inland Revenue SPSS (Bootle) in respect of interim claims previously made in that tax year, the annual claim must be made by 5th October following the end of that tax year.

15.22 Annual claims include provision for *scheme administrators* to pay back income tax claimed and received from Inland Revenue SPSS (Bootle) which is later found not to be due.

15.23 Where an amount shown on an annual claim exceeds the amounts paid on interim claims for that tax year and Inland Revenue SPSS (Bootle) is able to process the claim, they will pay the balance on the 21st of the month following the month in which the form PP14 is received.

15.24 If, on the other hand, the amounts already paid on interim claims exceed the amount shown on an annual claim, the *scheme administrator* should send a cheque to Inland Revenue SPSS (Bootle). Cheques should be made payable to “Inland Revenue” and crossed “A/c Payee”.

15.25 The annual claim on form PP14 must be made by 5 October (see paragraph 15.21). Failure to do so will mean that

- no further interim claims will be paid for the tax month ending 5 October or later months until the fully completed form PP14 is received by Inland Revenue SPSS (Bootle),
- Inland Revenue SPSS (Bootle) will review the payments made for the tax year for which the PP14 is outstanding and will issue a notice showing the payments made and any lower amount which they consider ought to have been made, and
- if the PP14 is not received within 14 days after the issue of that notice, the amount shown in the notice will become immediately recoverable by the Collector of Taxes.

The Inland Revenue may consider withdrawal of approval in respect of the personal pension *scheme* where an annual return on form PP14 is not made.

15.26 *Scheme administrators* may make supplementary annual claims at any time within six years after the end of the tax year for which they are made if it is discovered that the original annual claim contained an error or mistake.

**STATISTICAL REQUIREMENTS - SUMMARY OF SCHEMES**

**General**

15.27 *Scheme administrators* are requested to provide certain statistical information on forms PP10 and PP14. From 6 April 2002, the statistical information will no longer be required to be
given on the annual claim PP14, but on a new form PP14 (Stats) (see paragraph 15.78). The information required is necessary for the Inland Revenue to monitor the take up and movement of personal pensions, including stakeholder pensions.

**Frequency of report**

15.28 The frequency of the statistical information provided will depend upon how often *scheme administrators* submit repayment claims. This will probably be monthly in most cases but the Inland Revenue does not expect a *scheme administrator* to submit a claim each month purely to provide statistical information alone.

**Entries to be made on forms PP10 and PP14**

15.29 Figures to be entered in the statistical boxes should relate only to *arrangements* under which contributions from individuals have been paid on a net basis. *Arrangements* where contributions are received gross i.e. self-employed earner *arrangements* should not be included in the statistical report. This will only be relevant for reports up to 5 April 2001, as all contributions after this date will be paid net.

15.30 The number of *arrangements* reported should relate to contracts which are "live" during the tax year of report. For example, a member who ceases to pay contributions from 1 August 2000 should continue to be shown in the cumulative statistical figures on PP10 up to 5 April 2001. The amounts to be included (in the appropriate categories) will be the actual contributions paid between 6 April 2000 and 31 July 2000.

The member's *arrangement* should cease to be reported in the PP10 statistics from 6 April 2001 onwards until such time that contributions recommence.

15.31 The amounts to be shown in respect of individuals' contributions in any category (boxes 19, 23 and 28 of PP10 and boxes 23, 27 and 32 of PP14) should in all cases be the net contributions total.

15.32 The amounts to be shown in respect of the *minimum contributions* in any category (boxes 16, 18, 22 and 27 of PP10 and boxes 20, 22, 26 and 31 of PP14) should in all cases be the total amount of monies actually received from the National Insurance Contributions Office which may in some cases include a special incentive addition.

15.33 Figures to be shown should be on a cumulative basis within each tax year. For second and subsequent tax years the number of *arrangements* should refer to all "live" *arrangements*. It should therefore include *arrangements* shown in previous tax years which are continuing to receive contributions.

An *arrangement* set up as a "single" contribution only case should therefore cease to be shown as an *arrangement* after the end of the tax year in which the single contribution was paid. The amount of contributions however should be cumulative for the tax year of report.

15.34 Each *arrangement* should be included once only in boxes 15, 17, 21 or 26 of PP10 and box 19, 21, 25 or 30 of PP14 as appropriate. *Arrangements* should be classified according to the type of contribution(s) which are anticipated to be made to the *arrangement*. For example an *arrangement* which is to receive only *minimum contributions* should be entered in box 15 of PP10 (box 19 of PP14) but if the individual will also be making contributions then the *arrangement* is appropriate to box 17 of PP10 (box 21 of PP14).

15.35 If the type of contribution(s) being made to a particular *arrangement* change at any time then the *arrangement* should be reclassified in the next report.

15.36 The heading "Other types of arrangements" is basically to cover any situation not catered for in the other headings. For example an *arrangement* under which the only contributions were those of the individual would fall to be shown as one *arrangement* in box 26 of PP10 (box 30 of PP14) and the net contributions would be shown in box 28 (box 32 of PP14).
15.37 All reported amounts for contributions should be rounded to whole pounds.
INTRODUCTION

15.38 Scheme administrators recover the sums deducted by individuals from personal pension payments by making claims to Inland Revenue SPSS (Bootle) at the address shown in Part 1.

15.39 All claims must be made on the prescribed form and signed by an authorised officer of the scheme administrator.

15.40 Where Inland Revenue SPSS (Bootle) is satisfied with the claim, they will pay the sum claimed, through the BACS (Bankers Automated Clearing Services Ltd) system, direct to the scheme administrator’s bank account.

15.41 Claims received by Inland Revenue SPSS (Bootle) on or before the last working day of a calendar month will be paid on the 21st of the following month. But where the 21st falls on a weekend or public holiday Inland Revenue SPSS (Bootle) will make payment on the next working day.

Claims received after the last working day of a calendar month will be paid in the next following month.

INFORMATION TO BE SUPPLIED BEFORE CLAIMS ARE MADE

15.42 Scheme administrators have to provide in advance certain information to enable their tax repayment claims to be processed by Inland Revenue SPSS (Bootle). The information is as follows:-

- Signatories to claims
  - the full name and status of up to five individuals appointed by a resolution of the scheme administrator’s board or equivalent managing body to sign claims on behalf of the scheme administrator (only one signature is required on each claim),
  - a copy of the resolution of the board or equivalent managing body appointing each signatory, and
  - an original specimen signature of each signatory.

- Bank account details
  - the full name of the bank/building society,
  - the full address of the branch of the bank/building society to which the payments are to be made,
  - the branch sort code,
  - the account number,
  - any special form of identification given to the account (e.g. deposit, special deposit, number 2 account etc),
  - the building society reference number (if applicable), and
an account name for use by Bankers Automated Clearing Services Ltd (BACS). The name must not exceed 18 characters, including spaces.

15.43 The application forms for tax approval for personal pension schemes include all the details shown at paragraph 15.42. When Inland Revenue SPSS (Nottingham) approve a personal pension scheme they will notify Inland Revenue SPSS (Bootle) of all necessary details to enable the scheme administrator to make tax repayment claims.

15.44 Inland Revenue SPSS (Bootle) will allocate a reference number to the scheme administrator and issue the appropriate forms to enable tax repayment claims to be made.

Changes to information

15.45 If any of the information provided subsequently changes, the scheme administrator’s liaison officer should inform the Revenue in writing well before the next claim is made. The notification should in all cases be sent to Inland Revenue SPSS (Nottingham).

Failure to do so could lead to a delay in receiving payment of claims.

BASIS OF CLAIMS

15.46 Scheme administrators make an annual claim. They may also make interim claims, usually monthly.

Interim claims - form PP10

15.47 Scheme administrators should make interim claims on form PP10. Stocks of this form are available on the Forms area of the Inland Revenue website (www.inlandrevenue.gov.uk) or on request from Inland Revenue SPSS (Bootle).

15.48 Interim claims may not be based upon an estimate but may only be made to recover an amount of tax deducted by individuals in respect of contributions paid in the tax month. A tax month begins on the 6th day of one month and ends on the 5th of the following month.

15.49 Interim claims may cover a maximum of six tax months provided all those months fall in the same tax year. A tax year begins on 6th April in one year and ends on 5th April in the following year.

15.50 Interim claims include provision for scheme administrators to pay back income tax claimed and received from Inland Revenue SPSS (Bootle) which is later found not to be due.

15.51 Inland Revenue SPSS (Bootle) will not pay an interim claim for the tax month ending 5th October or any subsequent month unless they have received a fully completed annual claim on form PP14 for the previous tax year to 5th April.

15.52 Inland Revenue SPSS (Bootle) will not, normally, pay interim claims of less than £50.

15.53 If Inland Revenue SPSS (Bootle) is not satisfied with an interim claim they will pay any lower amount which they estimate is due. There is no right of appeal against a decision on an interim claim.

15.54 If, as a result of making an interim claim, there is net tax due to the Inland Revenue, Inland Revenue SPSS (Bootle) will set this against the scheme administrator’s next claim provided that it is submitted within the following three months. But where the tax cannot be recovered by a deduction from the next claim, Inland Revenue SPSS (Bootle) will normally issue an informal
notice, advising the scheme administrator of the amount payable and how to pay back the tax due.

**Annual claims - form PP14**

15.55 Scheme administrators making an annual claim must use form PP14. Stocks of this form are available from Inland Revenue SPSS (Bootle) although scheme administrators should automatically receive a supply of both interim and annual claim forms at the beginning of each tax year.

15.56 The annual claim must be certified by the scheme administrator’s external auditor.

15.57 Annual claims may not be based on an estimate but may only be made to recover an amount of tax deducted by individuals in respect of contributions paid in the tax year.

15.58 An annual claim for a tax year may be made at any time within six years after the end of the tax year. However, where a scheme administrator has received repayment of tax from Inland Revenue SPSS (Bootle) in respect of interim claims previously made in that tax year, the annual claim must be made by 5th October following the end of that tax year.

15.59 Annual claims include provision for scheme administrators to pay back income tax claimed and received from Inland Revenue SPSS (Bootle) which is later found not to be due.

15.60 Where an amount shown on an annual claim exceeds the amounts paid on interim claims for that tax year and Inland Revenue SPSS (Bootle) is able to process the claim, they will pay the balance on the 21st of the month following the month in which the form PP14 is received.

15.61 If, on the other hand, the amounts already paid on interim claims exceed the amount shown on an annual claim, the scheme administrator should send a cheque to Inland Revenue SPSS (Bootle). Cheques should be made payable to “Inland Revenue” and crossed “A/c Payee”.

15.62 The annual claim on form PP14 must be made by 5 October (see paragraph 15.58). Failure to do so will mean that

- no further interim claims will be paid for the tax month ending 5 October or later months until the fully completed form PP14 is received by Inland Revenue SPSS (Bootle),
- Inland Revenue SPSS (Bootle) will review the payments made for the tax year for which the PP14 is outstanding and will issue a notice showing the payments made and any lower amount which they consider ought to have been made, and
- if the PP14 is not received within 14 days after the issue of that notice, the amount shown in the notice will become immediately recoverable by the Collector of Taxes.

The Inland Revenue may consider withdrawal of approval in respect of the personal pension scheme where an annual return on form PP14 is not made.

15.63 Scheme administrators may make supplementary annual claims at any time within six years after the end of the tax year for which they are made if it is discovered that the original annual claim contained an error or mistake.
STATISTICAL REQUIREMENTS - SUMMARY OF SCHEMES

General

15.64 Scheme administrators are requested to provide certain statistical information on forms PP10 and PP14. From 6 April 2002, the statistical information will no longer be required to be given on the annual claim PP14, but on a new form PP14 (Stats) (see paragraph 15.78). The information required is necessary for the Inland Revenue to monitor the take up and movement of personal pensions, including stakeholder pensions.

Frequency of report

15.65 The frequency of the statistical information provided will depend upon how often scheme administrators submit repayment claims. This will probably be monthly in most cases but the Inland Revenue does not expect a scheme administrator to submit a claim each month purely to provide statistical information alone.

Entries to be made on Form PP10

15.66 Figures to be entered in the statistical boxes should relate to all contracts for members where a contribution has been received in the tax year of report.

15.67 The number of members reported should relate to individuals with contracts which are "live" during the tax year of report. For example, a member who ceases to pay contributions from 1 August 2001 should continue to be shown in the cumulative statistical figures on PP10 up to 5 April 2001. The amounts to be included (in the appropriate categories) will be the actual contributions paid between 6 April 2001 and 31 July 2001.

The member should cease to be reported in the PP10 statistics from 6 April 2002 onwards until such time that contributions recommence.

However, where a scheme administrator still holds a fund value for that member it should be reported on the scheme's end of year information return (see Part 17 paragraph 17.57).

15.68 Personal pensions (non-stakeholder contracts) and stakeholder pensions should be reported separately on form PP10.

15.69 The amounts to be shown for contributions received from individuals in any category should always be the net contributions total.

15.70 The amount to be shown for minimum contributions in any category should in all cases be the total amount of monies actually received and applied from the National Insurance Contributions Office.

15.71 The amount to be shown for employer contributions in any category should in all cases be the total gross employer contributions received. It should not include any part which the employee is actually paying via payroll deductions and which the employer pays over to the scheme administrator. That part should be included in the individual contribution reported figures.

15.72 Figures to be shown should be on a cumulative basis within each tax year. For second and subsequent tax years, only those members with live contracts should be reported. The report should therefore include those members shown in previous tax years whose contracts are continuing to receive contributions.

The report should however exclude those members with contracts in previous tax years which have lapsed or discontinued prior to the tax year of report. However, where a scheme administrator still holds a fund value for that member, it should be reported on the scheme's end of year information return (see Part 17 paragraph 17.57).

A member who set up a single contribution one-off contract should also cease to be reported after
the end of the tax year in which the single contribution was paid. However, where a scheme administrator still holds a fund value for that member, it should be reported on the scheme's end of year information return (see Part 17 paragraph 17.57).

The amount of contributions should be cumulative for the tax year of report and should not include any contributions in an earlier tax year.

15.73 Each arrangement should be included only once in any category, based on the type of contributions received. Where a member has more than one contract of the same type, the total contributions for each type should be reported.

15.74 If the type of contributions being made to a particular arrangement changes, the scheme administrator will need to change the report category with effect from the next report.

15.75 All reported amounts for contributions should be rounded to whole pounds.

**Employer sponsored and non-employer sponsored schemes**

15.76 A scheme administrator should report a member under the category of either employer sponsored or non-employer sponsored.

**Report as employer-sponsored**

Personal Pensions (non-stakeholder contracts) -

- all Group Personal Pensions, and
- all contracts within a scheme set up under trust by an employer.

Stakeholder Pensions -

- all contracts for members of stakeholder pension schemes nominated by employers or set up under trust by an employer.

**Report as non-employer sponsored**

Personal Pensions (non-stakeholder contracts) -

- all contracts under a personal pension scheme set up by a financial institution and offered for general sale to the public

Stakeholder Pensions -

- all contracts under stakeholder pension schemes arranged via Trade Unions or other bodies
- all contracts under a stakeholder pension scheme set up by a financial institution and offered for general sale to the public.

15.77 A scheme administrator who has difficulty with any aspect of reporting the statistical data on form PP10 should contact Inland Revenue SPSS (Bootle), Services Team 2 at the address shown in Part 1 paragraph 1.3.

**Entries to be made on PP14 (Stats)**

15.78 The statistical information to be supplied to the Revenue on an annual basis is no longer required to be provided on the annual claim form PP14. Instead a scheme administrator will be sent a form PP14 (Stats) form in March each year and will be required to return the form to Inland Revenue SPSS (Bootle) Services Team 1 by 5 June following the end of the tax year. The first report on the new form will be in respect of the tax year to 5 April 2002.
15.79 Figures to be entered in the statistical boxes should relate to all contracts for members where a contribution has been received in the tax year of report.

15.80 The number of members reported should be those members with "live" contracts at the time of the report. A scheme administrator should not report a member whose contract has lapsed or become discontinued at the time of the report.

However, the amount of contributions paid to a member’s contract between 6 April and the date it lapsed or discontinued must continue to be included in the cumulative contributions totals for the tax year of report. And, where a scheme administrator still holds a fund value for that member, it should be reported on the scheme’s end of year information return (see Part 17 paragraph 17.57).

15.81 Personal pensions (non-stakeholder contracts) and stakeholder pensions should be reported separately on form PP14 (Stats).

15.82 The amounts to be shown for contributions received from individuals in any category should always be the net contributions total.

15.83 The amount to be shown for minimum contributions in any category should in all cases be the total amount of monies actually received and applied from the National Insurance Contributions Office.

15.84 The amount to be shown for employer contributions in any category should in all cases be the total gross employer contributions received. It should not include any part which the employee is actually paying via payroll deductions and which the employer pays over to the scheme administrator. That part should be included in the individual contribution reported figures (see paragraph 15.82).

15.85 Figures to be shown should be on a cumulative basis at 5 April in the tax year. For second and subsequent tax years, only those members with "live" contracts should be reported. The report should therefore include those members shown in previous tax years whose contracts are continuing to receive contributions.

The report should however exclude those members with contracts in previous tax years which have lapsed or discontinued before 5 April in the tax year of report. However where a scheme administrator still holds a fund value for that member it should be reported on the scheme's end of year information return (see Part 17 paragraph 17.57).

A member who set up a single contribution one-off contract should also cease to be reported after the end of the tax year in which the single contribution was paid. However where a scheme administrator still holds a fund value for that member it should be reported on the scheme's end of year information return (see Part 17 paragraph 17.57).

15.86 The amount of contributions should be cumulative at 5 April in the tax year of report and should not include any contributions paid in an earlier tax year.

15.87 Each member should be reported only once in any category, based on the type of contributions received. Where a member has more than one contract of the same type, the total contributions for each type should be reported.

15.88 All reported amounts for contributions should be rounded to whole pounds.

**Employer-sponsored and non-employer sponsored schemes**

15.89 A scheme administrator should report a member under the category of either employer sponsored or non-employer sponsored.

**Report as employer sponsored**

Personal Pensions (non-stakeholder contracts) -
• all Group Personal Pensions, and
• all contracts within a scheme set up under trust by an employer.

Stakeholder Pensions -
• all contracts for members of stakeholder pension schemes nominated by employers or set up under trust by an employer.

**Report as non-employer sponsored**

Personal Pensions (non-stakeholder contracts) -
• all contracts under a *personal pension scheme* set up by a financial institution and offered for general sale to the public

Stakeholder Pensions -
• all contracts under stakeholder pension schemes arranged via Trade Unions or other bodies
• all contracts under a stakeholder pension scheme set up by a financial institution and offered for general sale to the public.

15.90 A *scheme administrator* who has difficulty with any aspect of reporting the statistical data on form PP14 should contact Inland Revenue SPSS (Bootle), Services Team 2 at the address shown in Part 1, paragraph 1.3.
16.1 Inland Revenue SPSS (Worthing) undertake audit inspections to ensure that tax relief at source is operated correctly and that scheme administrators claim the correct amounts.

16.2 The objectives of the audit are to ensure that -

- interim and annual claims have been made at the correct time and calculated correctly
- relief has been given to eligible individuals for personal pension payments and in the correct amounts, and
- scheme administrators have generally met their obligations under the Personal Pension Schemes (Relief at Source) Regulations.

16.3 Auditors will -

- review scheme administrators' procedures
- check the calculation of claims, and
- carry out sample checks on individual payments.

16.4 Inland Revenue SPSS (Worthing) have published a Code of Practice (Code of Practice 4) entitled “Inspection of Schemes Operated by Financial Intermediaries”. This leaflet tells scheme administrators how the Inland Revenue carry out their inspections. In particular it explains scheme administrators' rights and promises that scheme administrators will be treated fairly and courteously. It also promises that Inland Revenue SPSS (Bootle) will provide help where appropriate.

16.5 A copy of the Code of Practice has been sent to all scheme administrators and to professional representatives. Further copies can be obtained from Inland Revenue SPSS (Worthing).

16.6 New scheme administrators (or existing scheme administrators implementing major systems or procedure changes) can seek advice from Inland Revenue SPSS (Worthing) at any time. Inland Revenue SPSS (Worthing) is always willing to give advice and, if necessary, arrange an informal visit.

16.7 The Code of Practice explains that most audits are routine and that the timing and frequency of audits generally depends on the amount of tax involved. The frequency at which scheme administrators are inspected depends on -

- the results of any previous inspection
- the size of claims, and
- other factors, for example, significant fluctuations in claim size, a merger with another scheme administrator, or the transfer of a personal pension portfolio to another provider.

BEFORE THE INSPECTION

16.8 Inland Revenue SPSS (Worthing) will issue a formal notice of an inspection at least two weeks before the date of the visit. This formal notice may be preceded by a telephone call. If the
personal pensions business is large it is likely that a pre-audit meeting will be needed.

16.9 Inland Revenue SPSS (Worthing) will also issue a pre-audit questionnaire at the same time they issue the formal notice of inspection. The pre-audit questionnaire is designed to give auditors an outline of the type of issues that may arise when conducting the audit.

**EXAMINING SCHEME ADMINISTRATORS’ RECORDS**

16.10 Auditors will visit the location at which the personal pension records are maintained. This will normally be the scheme administrator’s head office. However where a decentralised system is in operation they may also wish to visit a selection of local branches.

16.11 Scheme administrators must make available for inspection all books, documents and other records which they have or control containing information relating to:

- payments in respect of which claims are made
- the terms of the arrangements under which payments are made, and
- the individual members

which Inland Revenue SPSS (Worthing) may reasonably require in order to be satisfied that tax relief at source has been given correctly.

16.12 Where records are held on computer the scheme administrator must provide the auditors with the means of obtaining information held on the computer. On-line access may be preferable in cases where, for example, image systems are used to store application forms and other documentation including correspondence.

16.13 Inland Revenue SPSS (Worthing) may also require scheme administrators (or members) to provide information about any arrangement as Inland Revenue SPSS (Worthing) may reasonably require to enable them to be satisfied that tax relief at source has been given correctly.

16.14 There are penalties under Section 98 Taxes Management Act 1970 for failing to make records available for inspection or for failing to provide information.

16.15 The Code of Practice explains the Inland Revenue’s general approach to the examination of records. In relation to personal pensions, auditors will want to see, or have available on request, the following documents or records in particular:

- the personal pension applications and declarations
- the pension agreements (or any other documents detailing payments under the arrangement)
- forms completed by members in respect of carry back and/or carry forward
- certificates of eligibility
- copies of correspondence, relevant to the arrangement, received from individuals
- all computer records, printouts, reconciliations, update statements, microfiche ledgers, etc relating to the production of interim and annual claims for the current and preceding year (the auditor may need to ask scheme administrators to reproduce this data for each periodic claim making up the last annual claim).

Auditors may need to see other records and check a scheme administrator’s systems and procedures.
16.16 Although auditors will wish to inspect recent records, *scheme administrators* should retain records for the following -

<table>
<thead>
<tr>
<th>Application Forms</th>
<th>6 years following declarations and certificates of eligibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Details of Payments Made to Individual</td>
<td>6 years</td>
</tr>
<tr>
<td>Annual Claims</td>
<td>2 years</td>
</tr>
<tr>
<td>Interim Claims</td>
<td></td>
</tr>
</tbody>
</table>

16.17 *Scheme administrators* may hold the records on microfiche or similar media. Records held in this way must be legible and in date order.

*Scheme administrators* may store personal pension application forms in an imaged form and destroy the originals. Inland Revenue SPSS (Bootle) are content to treat optical images of application forms as applications preserved for the purposes of the personal pension rules, provided the imaged application form and any hard copy printouts are easily legible and -

- on the day on which a personal pension application form is captured, the operator signs and dates an authentication certificate to the effect that to the best of his or her knowledge and belief the imaged document is a complete and accurate record of the personal pension application form
- on the day on which a personal pension application form is destroyed, the person who destroys it signs and dates a destruction certificate to that effect
- on being given a notice in writing by Inland Revenue SPSS (Bootle) the scheme administrator will make available within such time as specified in the notice a hard copy of the imaged document, and
- on being required to do so by Inland Revenue SPSS (Bootle) the scheme administrator will, within a reasonable time, provide -
  - a hard copy of the imaged document, and
  - the appropriate authentication and destruction certificate.

Authentication and destruction certificates may be completed for batches of applications, for example personal pension application forms received in a period and imaged on a particular day.

**THE AUDIT INSPECTION**

16.18 Auditors carry out the audit in accordance with audit objectives, designed to ensure that *scheme administrators* are operating the tax relief at source rules correctly. Full details of the audit and audit objectives are at Appendix 18.

**AFTER THE AUDIT INSPECTION**

16.19 Auditors will always report their findings to *scheme administrators* within 28 days of an
inspection visit. This is in the form of a written audit report.

16.20 If, on the basis of the inspection results and other information available, auditors are satisfied that tax relief has been obtained only where due and that all claims by scheme administrators have been made correctly, they will advise scheme administrators that no further action is needed.

**Treatment of breaches of the tax relief at source rules**

16.21 Where auditors find that the tax relief at source rules have been breached, they will ask scheme administrators to correct this. Examples of breaches are -

- ineligible contributions
- excessive contributions, and
- contributions unsupported by documentation.

16.22 Where auditors establish that a personal pension application form is incomplete they will ask scheme administrators to -

- cancel the arrangement, and
- repay amounts claimed arising from contributions made to the arrangement.

In certain circumstances, auditors will allow the arrangement to continue. Where the absence of “personal information” causes an arrangement to be invalid scheme administrators must repay amounts claimed on the invalid arrangement. But provided scheme administrators obtain the missing personal details from the individual, scheme administrators may continue to claim tax relief on subsequent contributions to the arrangement.

16.23 Where auditors establish that a contribution is ineligible (see paragraph 18.12) or excessive (see paragraphs 18.4 to 18.11) they will ask scheme administrators to -

- remove the contribution from the arrangements, and
- repay tax relief claimed on the ineligible contribution.

16.24 Where auditors establish that a contribution is unsupported by documentation (see paragraphs 18.20 and 18.21) they will ask scheme administrators to repay tax relief claimed on the unsupported contribution. In certain circumstances auditors may allow the contribution to remain in the arrangement provided scheme administrators obtain the missing documentation from the individual.

16.25 If the inspection sample shows that some arrangements had incorrectly received tax relief at source but auditors are nevertheless satisfied that, so far as they can determine, claims have otherwise been made correctly, they will ask scheme administrators to -

- repay the tax relief overclaimed only on those arrangements identified with the sample, and
- correct the individual errors identified.

These circumstances are particularly likely to arise where the number of incorrect arrangements within the sample is such that it would be unreasonable to conclude that similar errors are likely to exist throughout the rest of the portfolio.

16.26 In other cases, for example, where auditors could reasonably conclude that errors exist throughout the rest of the portfolio or a particular part of it, they will -
advise *scheme administrators* that they must repay all the personal pension tax relief overclaimed, not just that relating to the cases included in the audit sample

seek to determine, by agreement with *scheme administrators*, amounts to be repaid (see paragraph 16.27), and

if appropriate, ask *scheme administrators* to make a general payment on account while the correct figure is calculated.

**Quantifying any overclaim**

16.27 Auditors will aim to agree with *scheme administrators* the amount of tax relief overclaimed after discussion of the inspection findings. Auditors will normally extrapolate the agreed results of the sample across the rest of the personal pension *arrangements* held.

16.28 Where *scheme administrators* are unwilling to rely on the results of the inspection to quantify the amount of the tax overclaimed, they may undertake further work to quantify the actual amount. That may involve reviewing -

- all personal pension *arrangements*, or
- a further sample of sufficient size that the results are reliable enough to be extrapolated across the rest of the portfolio.

Where *scheme administrators* decide to review all personal pension *arrangements*, invalid, ineligible, excessive and unsupported contributions must be removed and auditors will seek monetary settlement from *scheme administrators* in accordance with paragraphs 16.22 - 16.24.

**Default interest**

16.29 Overclaims by *scheme administrators* attract interest under section 86 Taxes Management Act 1970.

**Penalties**

16.30 Overclaims may also attract penalties under section 98 Taxes Management Act 1970 where the overclaims have been made fraudulently or negligently.

16.31 Failure to make documents etc available for audit may also attract penalties under section 98 Taxes Management Act 1970.

**Simplified Recovery**

16.32 From 1 December 2001, the Inland Revenue introduced a simplified system for dealing with certain breaches of the personal pension tax relief at source rules. The new system is an optional alternative to the strict statutory position set out at paragraph 16.21 – 16.29 and is known as Simplified Recovery (SR).

SR will allow certain breaches of the personal pension rules to be repaired and pension *arrangements* left undisturbed. Under SR, audit settlements will be based simply on an interest charge calculated from the date of the claim to relief to the date of the repair.

SR will apply to most administrative breaches where the member is otherwise eligible to make contributions – for example, where an application form is missing, some information is missing from an application form, or where evidence of earnings is not held, but the member is otherwise eligible to make contributions.

16.33 Some breaches will be non-repairable. For example:

- where an individual makes contributions in excess of £3,600 per annum that are not
justified by reference to net relevant earnings of any in date basis year,

- where an individual is not eligible for a personal pension, or
- where the carry back election was not lodged by the statutory date.

Non-repairable breaches will continue to require recovery of the excessive tax relief and, in the case of an individual ineligible for the personal pension, cancellation of the pension arrangement itself. And interest on the excessive tax relief will be added to the audit settlement. Where non-repairable breaches are found it will be necessary for the scheme administrator to review the whole population of members potentially affected by that specific type of breach.

**Audit protection**

16.34 The Inland Revenue Statement of Practice SP8/91 explains the circumstances in which the Inland Revenue will recover tax where a claim or an assessment has previously been settled by agreement. Briefly, they do not go back on an agreement unless the information on which that agreement was based was misleading. In line with this practice, Inland Revenue SPSS (Worthing) do not seek to recover on claims made before the end of the period covered by the last inspection (whether or not that earlier inspection resulted in any recovery) unless:

- the settlement was based on misleading or incorrect information provided by the scheme administrator, or
- the settlement was based on computational errors which the scheme administrator could not reasonably have believed were correct or intended, or
- errors arose that were not readily susceptible to audit inspection checks.

16.35 The protection afforded by the Statement of Practice does not extend to claims made after the end of the period covered by the last inspection. Nevertheless, where following the last inspection the scheme administrator reviewed all personal pensions arrangements and the auditors sampled into that review, all arrangements in existence at the end of that inspection will be excluded from future inspections except in relation to certain limited checks - for example 5 year certificates of eligibility.

Where following the last inspection there had been an extrapolated settlement, all arrangements in existence will be sampled at the next inspection. But any settlement on error case will only be recovered from the date of the previous inspection.

Where the last inspection only identified isolated errors, all arrangements in existence will be sampled at the next inspection. But any settlement on error cases will only be recovered from the date of the previous inspection.

**Other issues**

16.36 There may be some particular issues which arise out of an inspection or which are of special concern to a particular scheme administrator. Inland Revenue SPSS (Worthing) will be pleased to give advice or explain their approach on any issue as it arises.
Part 17A : Returns of Information
- up to 5 April 2001

BEFORE 6 APRIL 2001

17.1 The Inland Revenue may issue a notice to a scheme administrator for a specified income tax year requiring him to make a return in respect of all those individuals who have paid contributions on a net basis.

TIME LIMIT FOR MAKING RETURNS

17.2 The Inland Revenue normally requires scheme administrators to make annual returns. The time limit for making a return is specified in the notice, and normally scheme administrators must submit their return by 5 October following the end of the income tax year to which the notice relates. The Inland Revenue may allow an extended period in cases of exceptional difficulty.

GENERAL REQUIREMENTS

17.3 Scheme administrators must supply details of all contracts for individuals during the tax year relating to the return where there is an amount greater than zero in any one or more of the following -

- employee contribution
- employer contribution
- term assurance contribution
- total amount of transfer payment received.

17.4 Arrangements which have been transferred in or out during the tax year relating to the return should be included, as should any arrangement which has ceased since the previous 6 April.

17.5 Scheme administrators do not need to include in their report any arrangement which is funded solely by minimum contributions.

SPECIFIC INFORMATION

IR scheme administrator reference

17.6 This is the number provided to the scheme administrator by Inland Revenue SPSS (Bootle) for the purposes of submitting returns of information and is in the format A9999/99.

Scheme administrator name

17.7 This is the name of the scheme administrator submitting the return.

Tax year

17.8 This is the tax year in which the reporting date falls. For a return to 5 April 2001 the entry should be 2001. If a scheme administrator ceases to operate personal pensions on 31 August 2000, the entry should still be 2001.

Inland Revenue SPSS (Nottingham) approval number

17.9 This is the reference number issued by Inland Revenue SPSS (Nottingham) on approval of a scheme.
MEMBER INFORMATION

17.10 **Scheme administrators** are required to supply the following information for each member -

- contract reference number;
- full name;
- full permanent residential address, including postcode;
- date of birth;
- National Insurance Number (NINO); and
- contribution details.

Address

17.11 “Care of” or other correspondence addresses are not permitted. If, exceptionally, the individual’s current permanent residential address is not known the **scheme administrator** should report the last known address.

Date of Birth

17.12 This should be reported in the format DDMMCCYY. Example: The date of birth of an individual born on 7 August 1948 should be reported as 07081948.

National Insurance Number (NINO)

17.13 This should be in the format AB123456C. The final character which will always be A, B, C, or D, is not critical and **scheme administrators** may omit it if not known. If exceptionally the NINO is not known the field should be left blank. Temporary NINOs (those beginning with TN) must not be supplied.

Contribution Details

**Employee contribution**

17.14 This should be the total cumulative amount in gross terms of employee (member) contributions made in the tax year relating to the return. It should include any term assurance contributions (see paragraph 4.8) made by the member in the tax year. This amount could be “0” if no contribution was made to the arrangement by the employee during the year but there was an employer contribution and/or transfer payment during the tax year of report. The amount should be rounded **up** to the nearest £ (for example £1000.45 should be reported as £1001).

**Employer contribution**

17.15 This should be the total cumulative amount of employer contributions made in the tax year relating to the return. It should include any term assurance contributions (see paragraph 4.8) made by the employer in the tax year. This amount could be “0” if no contribution was made to the arrangement by the employer but there was an employee (member) contribution and/or transfer payment during the tax year of report. The amount should be rounded **up** to the nearest £ (for example £1000.45 should be reported as £1001).

**Term assurance contribution**

17.16 This should be the total amount in gross terms of term assurance contribution (see paragraph 4.8) made in the tax year relating to the return. The amount should be rounded **up** to the nearest £ (for example £1000.45 should be reported as £1001).
**Estimate of earnings**

17.17 This should be the estimate of earnings supplied by the individual on the application form (or any later updated figure). The amount should be rounded up to the nearest £ (for example £1000.45 should be reported as £1001).

**Earnings estimate date**

17.18 This should be the date on which the individual supplied the scheme administrator with the earnings estimate. This should be reported in the format DDMMCCYY.

**Carry forward indicator**

17.19 This should be completed to show whether some of the amount in the “employee contribution” field is utilising carry forward of unused reliefs from earlier years (see Part 7). The entry here should be either “Y” - Yes or “N” - No. If the entry is “Y” there must be an entry greater than “0” in the employee contribution field.

**Amount carried back**

17.20 This should be completed to show whether some or all of the amount in the “employee contribution” field was carried back to an earlier year (see Part 6A). The amount cannot be greater than the amount in the employee contribution field. The amount should be rounded up to the nearest £ (for example £1000.45 should be reported as £1001). If there was no amount carried back then “0” must be entered.

**Tax year of carry back**

17.21 This must be the tax year to which the amount in the “amount carried back” field was carried back. This should be reported in the format CCYY.

If the amount carried back was “0” this field should be left blank.

**Other scheme indicator**

17.22 This should be completed to show whether or not any contributions were paid to any retirement annuity contract, any retirement annuity trust scheme and any other personal pension arrangements. (In the case of the latter it includes arrangements funded by either the employee or employer or both). The report should be either “Y” - Yes or “N” - No.

**Transfer payment received**

17.23 This should be the total amount of any transfer payment received during the tax year of report. The amount should be rounded up to the nearest £ (for example £1000.45 should be reported as £1001).

If no transfer payment was received then “0” must be entered.

**FORM IN WHICH RETURNS MAY BE MADE**

**Magnetic media**

17.24 The Inland Revenue prefers the return of information to be submitted on magnetic media. Data will be accepted on ½” magnetic tape and IBMPC compatible 3½” (720k/1.44M) or 5¼” (360k/1.2M) floppy diskettes. Files must be in ASCII/EBCDIC.

17.25 The content of files should conform with the PP Returns of Information Magnetic Media Specification which is available, on request, from Inland Revenue SPSS (Worthing).
Forms PP COM100(Z)

17.26 **Scheme administrators** unable to submit the return of information on magnetic media should make their return for each personal pension arrangement on a form PP COM100(Z).

17.27 **Scheme administrators** should use a form PP COM100(Z) to return details of each personal pension *arrangement* which is not included on a return made on magnetic media. They should submit completed forms PP COM100(Z) along with the return made on magnetic media.

17.28 **Scheme administrators** may obtain forms PP COM100(Z) and the notes on completion from Inland Revenue SPSS (Worthing).

**TEST TAPES AND TECHNICAL ASSISTANCE**

17.29 Technical assistance is available from and magnetic media returns can be sent for testing to:

EDS  
Financial Institution Liaison Group  
Z200 Matheson House  
Grange Central  
Telford Town Centre  
TELFORD  
TF3 4ER

The telephone numbers are 01952 295189, 295609 or 295386.

**SUBMISSION OF RETURNS**

17.30 The Inland Revenue will send a submission document and labels to **scheme administrators** no later than 31 March before the return is due. Instructions on the submission of returns are included in the PP Magnetic Media Specification.

17.31 **Scheme administrators** should submit their returns of information to the Taxes Information Distribution Office (TIDO) at:

The Post Room  
Inland Revenue  
Taxes Information Distribution Office  
DATA MATCHING UNIT  
Ground Floor  
Ty Glas  
Llanishen  
Cardiff  
CF4 5ZG.

The telephone number is 02920 326379.
FROM 6 APRIL 2001

17.32 The Inland Revenue may issue a notice to a scheme administrator for a specified income tax year requiring him to make a return in respect of all members.

TIME LIMIT FOR MAKING RETURNS

17.33 The Inland Revenue normally requires scheme administrators to make annual returns. The time limit for making a return is specified in the notice, and normally scheme administrators must submit their return by 5 October following the end of the income tax year to which the notice relates. The Inland Revenue may allow an extended period in case of exceptional difficulty.

GENERAL REQUIREMENTS

17.34 Scheme administrators must supply details of all contracts for individuals during the tax year relating to the return where there is an amount greater than zero in any one or more of the following –

- individual contribution
- employer contribution
- National Insurance rebate
- term assurance contribution – pre 6 April 2001 contract
- term assurance contribution – post 6 April 2001 contract
- total amount of transfer payment received
- value of member’s fund
- date of fund valuation.

17.35 Arrangements which have been transferred in or out during the tax year relating to the return should be included, as should any arrangement which has ceased since the previous 6 April.

17.36 All monetary amounts should be reported by scheme administrators in whole pounds. For example £1000.45 could be reported as £1000 or £1001 depending on the system used.

SPECIFIC INFORMATION

IR scheme administrator reference

17.37 This is the number provided to the scheme administrator by Inland Revenue SPSS (Bootle) for the purposes of submitting returns of information and is the format A9999/99.

Scheme administrator name

17.38 This is the name of the scheme administrator submitting the return.

Tax year

17.39 This is the tax year in which the reporting date falls. For a return to 5 April 2002 the entry
should be 2002. If a scheme administrator ceases to operate personal pensions on 31 August 2001, the entry date should still be 2002.

MEMBER INFORMATION

17.40 Scheme administrators are required to supply the following information for each member –

- title.
- gender.
- forename(s).
- surname.
- date of birth.
- National Insurance Number (NINO).
- full address including postcode.
- status.

Date of birth

17.41 This should be reported in the format DDMMCCYY. Example: The date of birth of a member born on 8 June 1950 should be reported as 08061950.

National Insurance Number (NINO)

17.42 This should be in the format AB 123456C. The final character which will always be A,B,C or D is not critical and a scheme administrator may omit it if not known. If the member is a child under 16 at the 5 April reporting date the scheme administrator should enter YY 999999Y. Temporary NINOs (those beginning with TN) must not be shown.

In certain cases (see paragraph 14.37c) Inland Revenue SPSS (Bootle) will supply a scheme administrator with a dummy NINO to be used for reporting purposes.

Address

17.43 This should be the member’s permanent residential address. “Care of” or other correspondence addresses are not permitted. If, exceptionally, the member’s current permanent address is not known the scheme administrator should report the last known address. The postcode must be reported in all cases with a United Kingdom address.

Status

17.44 This will be the status of the member at the time the arrangements were entered into or at 6 April 2001 whichever is the later. There is no need for a scheme administrator to track status.

The scheme administrator should enter the code from the following table. When a member is asked to determine his status he should choose the most appropriate from 1. to 4. Below. If none of these applies he should choose the most appropriate from 5. to 9.

1. Employed – A person chargeable to tax under Schedule E for the year of assessment concerned in respect of emoluments from an office or employment held by that person.
2. A person chargeable to tax under Schedule E for the year of assessment concerned in respect of a pension.
3. Self-employed – a person chargeable to tax under Schedule D for the year of assessment concerned in respect of annual profits or gains arising or accruing from any trade, profession or vocation carried on by that person.

4. A child under the age of 16.

5. Caring for one or more children aged under 16.

6. Caring for a person aged 16 or over.

7. Full-time education.

8. Unemployed.

9. Other status.

CONTRIBUTION DETAILS

General

17.45 A scheme administrator should report separate details for each member under each scheme of which that individual is a member. For example, if a scheme administrator runs three separate schemes, and an individual is a member of each of those schemes, then three separate entries will be required on the end of year information return.

However if the member has more than one contract within the same scheme, the scheme administrator should aggregate the contributions for report purposes.

Example

XYZ Assurance run two non-stakeholder personal pension schemes and a separate stakeholder pension scheme. Mr Roberts is a member of all three schemes, and has the following contracts

- scheme 1 (PP)
  - contract A £300
  - contract B £500
  - contract C £700

- scheme 2 (PP)
  - contract A £300
  - contract B £400

- scheme 3 (SHP)
  - contract A £800

For the purposes of this example, only individual contributions are being paid.

XYZ Assurance will need to show three separate entries on the end of year information return as follows

- 1st entry scheme 1 (PP) aggregated contributions £1,500
- 2nd entry scheme 2 (PP) aggregated contributions £700
• 3rd entry scheme 3 (SHP) contributions £800

Under no circumstances should a scheme administrator aggregate amounts paid to stakeholder arrangements and other non-stakeholder personal pension arrangements.

Inland Revenue SPSS (Nottingham) approval number

17.46 This is the reference number issued by Inland Revenue SPSS (Nottingham) on approval of a scheme and should be in the format SF999/999999/999999 for a stakeholder pension scheme, and SF99/999/999 for a non-stakeholder personal pension scheme.

Individual contributions

17.47 This should be the total cumulative amount in gross terms of contributions made by, or on behalf of, the member in the tax year relating to the return. It should not include any term assurance contributions made by, or on behalf of, the member in the tax year. This amount could be “0” if no contributions were made to the arrangement during the tax year.

Separate amounts should be reported for stakeholder arrangements and non-stakeholder personal pension arrangements as appropriate.

Amount carried back

17.48 This should be completed to show whether some or all of the amount in the “Individual contribution” field was carried back to the previous tax year (see Part 6B). The amount cannot be greater than the amount in the individual contribution field.

If there was no amount carried back then “0” must be entered.

Employer contributions

17.49 This should be the total cumulative amount of employer contributions made in the tax year relating to the return. It should not include any term assurance contributions made by the employer in the tax year. This amount could be “0” if no employer contributions were made during the tax year.

Basis Year

17.50 Where a member has paid contributions above the earnings threshold the basis year is the tax year for which the member has provided evidence of earnings (see paragraph 14.43). The basis year should be reported in the format YYYY. For example a basis year of 2001/02 should be reported as 2002.

Net relevant earnings

17.51 This should be the evidence of earnings figure for the basis year as supplied by the member.

Concurrency flag

17.52 This should be completed in every case as one of the following

• "N" - non-concurrent member

• "Y" - concurrent member

• "P" - potential concurrent member.

Scheme administrators should follow the guidance in paragraph 3.19 in deciding upon the category of report.
Total National Insurance rebates

17.53 This should be the total amount of monies actually received in the tax year from the National Insurance Contributions Office for the member. It should be shown under the stakeholder or non-stakeholder personal pension field as appropriate. If there are recoveries deducted in respect of an earlier tax year, the report entry should be the "netted-off" figure. Minus amounts should not be reported, so if no rebate is received because the recovery is greater than the rebate, then no entry should be made.

Term assurance contributions (pre 6 April 2001 arrangements)

17.54 This should be the total amount in gross terms of term assurance contributions made in the tax year relating to the return in respect of a contract effected before 6 April 2001.

Term assurance contributions (post 6 April 2001 arrangements)

17.55 This should be the total amount in gross terms of term assurance contributions made in the tax year relating to the return in respect of a contract effected on or after 6 April 2001.

Transfer payment received

17.56 This should be the total amount of any transfer payment received during the tax year of report. If no transfer was received then "0" must be entered.

Value of member's fund

17.57 This should be the total value of monies, assets and investments held for the member under the scheme on a particular date determined by the scheme (provided this date falls in the 12 month period beginning on 6 October of the tax year that the return relates to). Where an individual has more than one arrangement, these should be aggregated to provide a single figure.

Where a member's fund is transferred out, or has vested, before the valuation date determined by the scheme and contributions have been received in the tax year of report, the entry for fund value should be "0". However, if no contributions have been received in the tax year of report, the arrangement can be omitted from the report.

Where the member has an old style (pre-6 April 2001) term assurance contract only, and no contributions have been or are being paid to secure pension benefits, there will be no fund value. The entry in such a case should be "0".

Where a transfer payment is received solely for the purpose of an immediate annuity purchase, then the transfer payment should be shown in the report (see paragraph 17.56). There is no need for a scheme to also enter that amount in the "Value of member's fund" field and the scheme administrator should enter "0" in this field.

Date of fund valuation

17.58 This should be reported in the format DDMMCCYY. For example a fund valuation at 31 March 2002 should be reported as 31032002.

FORM IN WHICH RETURNS MAY BE MADE

Magnetic media

17.59 The Inland Revenue prefer the return of information to be submitted on magnetic media. Data will be accepted on ½" magnetic tapes and IBMPC compatible 3 ½" (720k/1.44M) or 5 ¼" (360k/1.2M) floppy diskettes. Files must be in ASCII/EBCDIC.

17.60 The content of files should conform with the PP Returns of Information Magnetic Media Specification which is available, on request, from Inland Revenue SPSS (Worthing).
FORMS PPCOM100(Z)

17.61 Scheme administrators unable to submit the return of information on magnetic media should make their return for each individual member on a form PPCOM 100(Z).

17.62 Scheme administrators should use a form PP COM 100(Z) to return details of each member of each scheme who is not included on a return made on magnetic media. They should submit completed forms PPCOM100(Z) along with the return made on magnetic media.

17.63 Scheme administrators may obtain forms PPCOM100(Z) and the notes on completion from Inland Revenue SPSS (Bootle).

TEST TAPES AND TECHNICAL ASSISTANCE

17.64 Technical assistance is available from, and magnetic media returns can be sent for testing to:-

EDS
Financial Institution Liaison Group
Z200 Matheson House
Grange Central
Telford Town Centre
Telford
TF3 4ER

The telephone numbers are 01952 295189, 295609 or 295386.

Submission of returns

17.65 The Inland Revenue will send a submission document and labels to scheme administrators no later than 31 March before the return is due. Instructions on the submission of returns are included in the PP Magnetic Media Specification.

17.66 Scheme administrators should submit their returns of information to the Taxes Information Distribution Office (TIDO) at:

The Post Room
Inland Revenue
Taxes Information Distribution Office
DATA MATCHING UNIT
Ground Floor
Ty Glas
Llanishen
Cardiff
CF4 5ZG

The telephone number is 02920 326379.
GENERAL

18.1 This Part explains the procedures to be followed by scheme administrators for refunding contributions paid to an arrangement under an approved personal pension scheme.

18.2 There are many instances where refunds of contributions are appropriate but equally there are others where it would not be proper for repayment of contributions to be made.

In some cases refunds may be made automatically by the scheme administrator but in others prior approval should be obtained from Inland Revenue SPSS (Bootle).

AUTOMATIC REFUNDS

18.3 A scheme administrator should automatically refund contributions which are:

- excessive
- ineligible
- paid in error
- paid prior to cancellation within the cooling off period or
- unsupported by documentation.

Excessive contributions

18.4 It will sometimes be the case that an individual's contributions exceed the contribution limits (see paragraphs 4.4 - 4.10).

Where excessive contributions arise and -

- there is no claim to carry back (or carry forward pre 6 April 2001 only) to cover the excess, or
- even after giving effect to a claim to carry back and/or carry forward, an excess still remains

the scheme administrator should refund the excess. NOTE - Carry forward is only available for payments made before 6 April 2001, except in the limited circumstances covered in paragraph 6.41.

18.5 In the course of completing their Self Assessment returns some individuals will calculate that they have made excessive contributions. A scheme administrator can repay excessive contributions to the individual without prior approval from Inland Revenue SPSS (Bootle). A scheme administrator should ensure, as far as possible, that a request to refund contributions is because they are excessive and not merely because the individual wants a refund of contributions that are within the permitted limits.

18.6 If contributions are made by both the individual and his/her employer, the excess should be treated as arising from the individual’s contributions and should be repaid to the individual to the extent of his/her contributions. Any excess still remaining must be returned to the employer.

18.7 Although a scheme administrator will not normally be able to determine whether a self-employed individual has paid excess contributions, if an excess comes to light the scheme administrator should arrange for repayment to be made.
18.8 In all cases where an excess contribution arises, any contributions to approved retirement annuity contracts and trust schemes should be taken into account in calculations.

18.9 Where an individual is a member of more than one personal pension scheme, he/she may select the scheme(s) from which any excess is repaid. In such circumstances the scheme administrators must liaise with each other to ensure that no employer contributions are repaid until the excess is first reduced by repaying the whole of the individual’s contributions (see paragraph 18.6).

18.10 Although contributions paid by an individual may have been paid net of basic rate tax, excess contributions will always be expressed in gross terms. In such a case, before repaying any excess the scheme administrator should deduct tax at the same basic rate as was deducted when the individual first paid the contribution(s) and account for that tax to the Inland Revenue. This may be done by adjustment to the next claim made to Inland Revenue SPSS (Bootle) (see Chapter 15) or alternatively by direct payment to Inland Revenue SPSS (Bootle).

18.11 A scheme administrator may make an adjustment to a repayment of contributions to take account of interest and expenses or any change in value of the underlying assets during the intervening period.

Ineligible contributions - before 6 April 2001

18.12 An individual may not be a member of a personal pension scheme and an occupational pension scheme in respect of the same source of earnings except in the circumstances outlined in paragraphs 3.12 to 3.16.

18.13 All ineligible contributions must be refunded to the source from which they came. Employer contributions cannot be refunded to the individual and vice versa.

18.14 As with excessive contributions (see paragraph 18.10) any tax relief which a scheme administrator has claimed previously on any ineligible contributions must be repaid to the Inland Revenue. This may be done by adjustment to the next claim made to Inland Revenue SPSS (Bootle) or alternatively by direct payment to the Inland Revenue.

Contributions paid in error

18.15 Contributions which have continued to be debited in error after the date of cancellation either under the direct debit system or by standing order should be refunded by the scheme administrator. This will also include cases where an employer (either acting as a paying agent or in its own right) continues to pay contributions after the employee has left service (unless the final bullet of 4.35 applies).

18.16 As with excessive contributions (see paragraph 18.10) any tax relief which a scheme administrator has claimed previously on contributions erroneously paid must be repaid to the Inland Revenue. This may be done by adjustment to the next claim made to Inland Revenue SPSS (Bootle) or alternatively by direct payment to Inland Revenue SPSS (Bootle).

Contributions paid prior to cancellation within the cooling off period.

18.17 Contributions which are paid at the outset of an arrangement which is subsequently cancelled by the individual within the cooling off period should be refunded by the scheme administrator. The cooling off period is laid down by the personal pension schemes own regulatory body.

18.18 In such a case it is unlikely that the scheme administrator will already have reclaimed the basic rate tax relief from Inland Revenue SPSS (Bootle) because of the short time span. If however, relief has been claimed it must be repaid to the Inland Revenue. This may be done by adjustment to the next claim made to Inland Revenue SPSS (Bootle) or alternatively by direct payment to Inland Revenue SPSS (Bootle).
Contributions unsupported by documentation - before 6 April 2001

18.19 Where the individual fails to produce an estimate of earnings (supported by the appropriate evidence) within 30 days of the date on which the first contribution was paid, the arrangement must be cancelled and contributions refunded by the scheme administrator.

18.20 Where the time limit for producing a certificate of eligibility (see paragraphs 14.21 and 14.22) has expired, contributions paid to an arrangement from the relevant date must be refunded. The time limits are

- change of status from self-employed to employed
  - 60 days after the individual first pays a net contribution (The relevant date is the date of notification of change of status).

- change of employer
  - 60 days from the notification of change. (The relevant date is the date of notification.)

- 5 years have elapsed since the completion of last certificate
  - 30 days after the expiry of 5 years from the date on which the previous certificate was provided. (The relevant date is the date of expiry of the 5 year period.)

Contributions unsupported by documentation from 6 April 2001

18.21 From 6 April 2001 a scheme administrator must have all the appropriate documentation in place before accepting any contribution from or on behalf of a member. However, see paragraphs 14.37a – 14.37c regarding setting up cases without a National Insurance Number (NINO).

Where a scheme administrator accepts a contribution which brings the total contributions for the tax year:

- above the earnings threshold for the first time, or

- above the level supported by the evidence held from the member’s chosen basis year,

the required evidence in support of the new increased level of contributions must be obtained within 30 days of making the contribution. If the scheme administrator does not receive the evidence within that time, any part of the contribution which is excessive based on the earlier details held by the scheme must be refunded.

NON-AUTOMATIC REFUNDS

18.22 Scheme administrators should not make automatic refunds where either of the following applies

- there is a claim that the arrangement was mis-sold or effected under a misapprehension and the validity of the arrangement is in doubt, or

- there is a claim of poor service or maladministration by the scheme administrator.

18.23 The general position is that the scheme administrator is not entitled to make a refund where the arrangement is valid (i.e. a legally binding contract exists).

18.24 It does however happen from time to time that an individual becomes dissatisfied with the service given by a scheme administrator and requests a full refund of contributions. If the arrangement is valid there can be no question of the scheme administrator making a refund to the individual. A possible solution in such a case would be for the scheme administrator to offer the
individual a transfer to a personal pension scheme of another provider.

18.25 The most difficult area of all is the case where it is claimed that the arrangement has been mis-sold or effected under a misapprehension. Quite apart from the two parties to the arrangement (i.e. the individual and the scheme) there is the role of any intermediary to be considered particularly where “best advice” requirements are involved.

18.26 In determining whether a refund may be made in these circumstances, the scheme administrator should consider the outcome of any formal complaints procedure, whether conducted by:

- the scheme administrator’s own internal complaints department
- the Personal Investment Authority Ombudsman Bureau Limited, or
- any organisation set up under the Financial Services Management Act 2000 (previously the Financial Services Act 1986).

Where the recommendation of the Personal Investment Authority Ombudsman Bureau is that a refund should be made, then the scheme administrator should make the appropriate refund to the individual and make a full report to Inland Revenue SPSS (Bootle). The report should show -

a) the individual’s full name
b) the individual’s National Insurance Number (NINO)
c) the individual’s Tax Office and reference number (if known)
d) the date on which the arrangement commenced
e) the amounts and dates of payment of contributions
f) details of the reason(s) for the refund request
g) details of the complaints procedure followed and the decision adjudicated under that procedure
h) details of the amount refunded, and
i) details of any tax relief previously obtained from Inland Revenue SPSS (Bootle) and in which interim/annual claim the tax relief is being repaid to Inland Revenue SPSS (Bootle).

In all other cases, the scheme administrator should make a full report to Inland Revenue SPSS (Bootle) for a decision on whether or not a refund may be made. The report should include all the details at a) - g) above.

**Annuity in course of payment when an excess is discovered**

18.27 When an excess is discovered in the case of an arrangement which has vested and an annuity is in payment, the scheme administrator should provide Inland Revenue SPSS (Bootle) with the following details:

a) the individual’s full name
b) the individual’s National Insurance Number (NINO)
c) the individual’s Tax Office and reference number (if known)
d) the date on which the arrangement commenced
e) the date of commencement of the annuity, and

f) the amount of the excess.

( )

The *scheme administrator* should not take any action regarding the excess until Inland Revenue SPSS (Bootle) have considered the matter. Inland Revenue SPSS (Bootle) will contact the *scheme administrator* as soon as possible in such a case.
TAXATION OF ANNUITIES

19.1 Annuities paid as an entitlement under an approved personal pension scheme are chargeable to tax under Schedule E and PAYE is to be operated. This applies whether the annuity is paid by the original provider or by another insurer under the open market option. The person paying the pension is responsible under Section 203 for applying PAYE and accounting for the tax to the Inland Revenue.

19.2 Annuity payments will be treated as earned income if paid as an entitlement under the member’s arrangements.

19.3 Annuities paid for a term certain following the death of the original annuitant will be treated as unearned income. This is because such payments are not made to a person specified in the personal pension arrangement.

19.4 Sections 166 and 167 of the Pensions Act 1995 permit a court to order the earmarking of a pension on divorce. This means that when a scheme member’s pension comes into payment the amount specified in the order is paid direct to the former spouse by the scheme trustees. These payments remain taxable on the scheme member and are tax free in the hands of the former spouse. This provision applies to petitions for divorce presented to a court on or after 1 July 1996.

19.5 The Act provides no general exemption from income tax under Schedule E to annuitants resident abroad. Exemption at source may however be available under a Double Taxation Agreement between the UK and the country of residence. Where there is no exemption, tax relief may be due to British subjects and certain other persons resident abroad, under Section 278. Inland Revenue SPSS (Bootle) authorises exemption at source and deals with applications for tax relief.

TAXATION OF INCOME WITHDRAWALS

19.6 Income withdrawals taken from an approved personal pension scheme are chargeable to tax under Schedule E and PAYE is to be operated as for annuity payments. The payments are treated as earned income of the recipient.

TAX TREATMENT OF LUMP SUMS

19.7 A lump sum satisfying Section 635 paid to a member at pension date from an approved personal pension scheme is not liable to income tax (but see paragraph 9.54 where the whole fund has been paid as a lump sum under the agreed triviality procedures).

EXEMPTION FROM INCOME TAX AND CAPITAL GAINS TAX

19.8 Approved personal pension schemes are exempt from -

- income tax on income from investments (other than from UK dividends) or deposits held for the purposes of the scheme

- capital gains tax on gains arising from the disposal of such investments (Section 271(1)(h) Taxation of Chargeable Gains Act 1992).

SCHEME BASED ON UNIT TRUSTS

19.9 Sections 468 and 469 exempt a member of an approved personal pension scheme from
liability in respect of payments and gains which would otherwise have been deemed to be payments and gains accruing to the member for the purposes of those sections.

**BUILDING SOCIETY INTEREST**

19.10 Interest paid on deposits held in a building society which form part of the assets of an approved personal pension scheme may be paid gross by virtue of Regulation 4(1)(k) SI 1990 No 2231.

**SCHEMES ESTABLISHED BY AN INSURANCE COMPANY**

19.11 A scheme established by an insurance company solely for the issue of insurance policies or annuity contracts does not obtain relief from tax on its income and gains under Section 271(1)(h) Taxation of Chargeable Gains Act 1992 and Section 643(2). Contributions to such a scheme are referable instead to pension business under Section 431B(2)(c).

19.12 Income and gains arising from the pension business of an insurance company are exempt from liability to corporation tax (Section 438).

This exemption also applies to the pension business of a friendly society by virtue of Section 463.

**TAXATION OF UNAUTHORISED PAYMENTS AND PAYMENTS MADE AFTER CESSATION OF APPROVAL**

19.13 If a payment is made to or for the benefit of an individual who has made arrangements under the scheme, out of funds which are or have been held for the purposes of an approved scheme, and payment is not expressly authorised by the rules of the scheme, the individual is liable to income tax on the payment for the year of assessment in which the payment is made (Section 647). Tax may similarly be charged if the payment is made at a time when the scheme or the arrangements are not approved and it would not have been expressly authorised by the rules of the scheme or the terms of arrangements when they were last approved.

**CAPITAL GAINS TAX WHEN CONTRIBUTION MADE IN FORM OF TRANSFER OF SHARES**

19.14 When eligible shares are transferred from a share incentive plan, savings-related share option scheme or an approved profit-sharing scheme to a personal pension scheme, there is a disposal of those shares for capital gains tax (CGT) purposes. The individual may be liable to CGT on the difference between the market value at the date of transfer and the acquisition cost.

19.15 The direct transfer of shares from a share incentive plan to a personal pension scheme is however unlikely to give rise to CGT. With the other two schemes, the acquisition cost of the shares is often less than the current market value and so there may be a gain on the transfer. CGT Taper relief will not be available to reduce any gain on savings-related share option scheme shares because the member has not held them for one whole year, but Taper relief will usually be available to reduce any gain on approved profit-sharing scheme shares.

19.16 Depending on whether they have any other capital gains in the tax year when the shares are transferred to the personal pension scheme, the individual's annual exempt amount for CGT (£7,500 for 2001/2002) may be available to reduce any gain on the transfer.

In a specific case, the individual should seek advice from their Tax Office.
Part 20 : Discontinuance of Schemes

GENERAL

20.1 The documents governing an approved personal pension scheme must set out what will happen on discontinuance. This will not be regarded as a breach of the requirement that certain types of personal pension scheme must be established under irrevocable trust (see paragraphs 2.5 and 2.6), but the action to be taken on discontinuance must satisfy Inland Revenue requirements.

20.2 The discontinuance of an approved scheme may be achieved in one of three ways:

- by making it closed;
- by making it paid-up; or
- by winding it up

but see paragraph 20.7 where a stakeholder pension scheme loses its registration or contracted-out status.

CLOSED SCHEME

20.3 The scheme may be closed to new members and continue to accept contributions from (or on behalf of) existing members who may continue to participate in the scheme in accordance with the scheme rules and any arrangements made under it.

PAID-UP SCHEME

20.4 The scheme may be frozen or made paid-up. All contributions cease but otherwise the scheme continues to operate in accordance with the rules.

WINDING UP

Non-Stakeholder Pension Schemes

20.5 Alternatively the scheme may be discontinued altogether. In that event the accumulated rights of members should be transferred in accordance with the provisions set out in Part 12.

20.6 The provider and scheme administrator must comply with the requirements of any DWP regulations concerning the issue of notices to the members, annuitants and any beneficiaries in relation to any closure or discontinuance of the scheme.

Stakeholder Pension Schemes

20.7 If a registered stakeholder pension scheme loses its registration or contracted-out status, it must be wound up.

20.7a Two weeks after the scheme has been removed from the Opra register, the trustees and managers must inform all members that the scheme has been de-registered and has to commence winding up.

In the case of an Appropriate Personal Pension Stakeholder Pension Scheme, within two weeks of commencing to wind up the scheme, the trustees or manager must notify any employers who have designated the scheme.

20.7b Within four months of the date winding up began, the trustees must give to each member notice that they propose to transfer their rights to another stakeholder pension scheme of the trustees’ choice, which must be named in the notice.
The member may request that their rights are instead transferred to a pension scheme of their choice, but must do so within four months of the date of the notice from the trustees. If the member exercises this right, the trustees must make the transfer to the selected scheme within one month of receiving the member's request.

If a member has not requested otherwise, the trustees will transfer the member's rights to the trustees' chosen stakeholder pension scheme. The trustees must then notify the member in writing of the amount transferred, and the name and address of the receiving scheme, within one month of the date of transfer.

Where the trustees

- do not know a member's address, and
- have had correspondence sent to the last known address returned as undelivered, and
- have received no contribution from or on behalf of the member in the two years ending with the date the scheme winding up commenced,

they may transfer that member's rights to a stakeholder pension scheme of the trustees' choice without needing to notify the member either before or after the transfer is made.

The scheme will cease to exist as soon as the accumulated rights of members have been transferred in accordance with Part 12.

**Contracted-out Money Purchase schemes**

20.8 If a contracted-out money purchase scheme is being wound up, it will have to surrender its contracting-out certificate, and account for the destination of the protected rights held under the scheme.

Stakeholder schemes should notify Inland Revenue SPSS (Nottingham) if the scheme ceases to be contracted-out. The scheme will have to wind up. Please see Part 22B for further details.

Non-stakeholder schemes should notify Inland Revenue NI Services to Pensions Industry if the scheme ceases to be contracted-out. Please see leaflet CA 15 for further details. This may be obtained from the address shown in paragraph 1.4.
Part 21 : Withdrawal of Tax Approval

21.1 Section 650 empowers the Board to withdraw approval from either -

- the whole scheme, in which case all arrangements under the scheme will lose approval or
- one or more particular arrangements under the scheme only.

The grounds for withdrawal will be notified in all cases.

21.2 Approval may be withdrawn if, in the opinion of the Board, matters concerning

- the scheme itself
- the administration of the scheme
- one or more particular arrangements under the scheme

cease to warrant approval.

21.3 Approval may be withdrawn from a date not earlier than the date when the facts first ceased to warrant approval.

21.4 Approval may be withdrawn from inception in any case where the Board considers that the arrangement was not set up for the sole purpose of providing approvable benefits.

21.5 Approval will lapse automatically if any unacceptable amendment is made to a scheme.  

21.6 Withdrawal of approval from the whole scheme under Section 650(1) has the following consequences for the personal pension scheme concerned:

- exemption and reliefs previously available to the scheme, the members and the members’ employers will cease
- members will be liable to income tax under Schedule E in respect of any contributions paid by their employer after the scheme or arrangement lost approval
- any payments made to (or for the benefit of) members which were not expressly authorised by the rules before loss of approval will be liable to income tax
- any future contributions should be treated as referable to basic life assurance and general annuity business
- annuities purchased from funds held under schemes or arrangements which have lost approval will not be regarded as earned income for tax purposes.

21.7 Approval may also be withdrawn from one or more particular members’ arrangements under Section 650(2). Withdrawal of approval under Section 650(2) might apply, for example, where -

- the member has been involved in tax avoidance, or
- the arrangement has not been used solely for the purposes of providing retirement benefits.
21.8 In addition to the various consequences of loss of approval listed in paragraph 21.6, a tax charge of 40% of the value of the assets held under the arrangement or arrangements in question will apply where approval is withdrawn in these circumstances.

21.9 The tax reliefs of other members not involved will not be disturbed and the tax approval of the scheme as a whole may remain intact. If, however, the scheme itself is involved in the matter bringing about the withdrawal of approval, then Inland Revenue SPSS (Nottingham) will have to review the continued approval of the scheme.

21.10 There may be circumstances when approval is withdrawn automatically from the whole scheme under Section 650(1) because, for example, an unacceptable rule amendment is made or the scheme does not introduce required rule changes within the period specified by the Inland Revenue. So long as approval is not being withdrawn because of tax avoidance or because the scheme is no longer providing funds for retirement only, the 40% tax charge will not apply. To ensure, however, that no-one can bring about the automatic loss of approval of the whole scheme to avoid a tax charge on specific members’ arrangements, Section 650(6) provides for the tax charge under Section 650A to apply to particular members’ arrangements where the withdrawal of approval applies to the whole scheme.

21.11 The tax charge will be under Case VI of Schedule D. The charge will be on the value of the fund of the member that would be used to pay benefits for that member. The value will be determined by the Inland Revenue using market value or, in the case of a loan still outstanding, the amount owed including interest. The charge will apply at the effective date of withdrawal.

21.12 The 40% tax charge on withdrawal of approval is imposed on the scheme administrator. The scheme administrator means all the parties that collectively are appointed scheme administrator whether individuals or companies, but excludes any former scheme administrator at the time of the assessment.

21.13 Instructions for payment will be given at the time. The tax charge does not come within the self-assessment procedures, but will be directly charged by the Inland Revenue. If the tax is not paid for any reason, the member will be liable. Formal requests for payment can be issued to the scheme provider, but the tax will only be payable by the scheme administrator or the member.

21.14 The tax charge under Section 647 on unauthorised payments is not affected by the tax charge under Section 650A.

21.15 Where approval is withdrawn, Capital Gains Tax will only be imposed on the growth of the assets since the date withdrawal has effect. Any growth in the assets for the earlier period will not fall in the charge to Capital Gains Tax.

21.16 A person receiving a notice of withdrawal of approval may appeal in writing within 30 days of the receipt of that notice, stating the grounds of the appeal.

21.17 Inland Revenue SPSS (Nottingham) will advise the National Insurance Contributions Office whenever an Appropriate Personal Pension Scheme or arrangements made under it cease to be approved for tax purposes.

21.18 If a scheme which is or has been a stakeholder pension scheme loses tax approval, it must wind up in accordance with the legislation (see Part 20).
Important note: Under section 1(8) of the Welfare Reform and Pensions Act 1999, a stakeholder pension scheme must be capable of receiving a transfer of a member's fund from another approved pension scheme, which could include contracted-out rights. This means that all stakeholder pension schemes must be contracted out of the additional state pension (commonly known as the State Second Pension, previously as SERPS).

22A.1 Inland Revenue SPSS (Nottingham) deal with contracting-out matters relating to Appropriate Personal Pension stakeholder pension schemes, that is:

- applications by schemes to be Appropriate Personal Pension stakeholder pension schemes (APPSHPs); and
- any issue concerning the APPSHP scheme itself (that is, not an issue to do with a scheme member's contracting out).

22A.2 Inland Revenue National Insurance Services to Pensions Industry, formerly COEG, deal with contracting-out matters relating to non-stakeholder pension schemes, and with scheme members’ contracting-out issues relating to all schemes including stakeholder pension schemes, that is:

- applications to contract out of the State Second Pension by personal pension schemes which are not and are not applying to be stakeholder pension schemes (such contracting-out applications may however be submitted via Inland Revenue SPSS (Nottingham)). Guidance for such schemes is not contained in this publication, but can be found in
  - CA16: Appropriate Personal Pension Scheme Manual: Procedural Guidance, and
  - CA16A: Appropriate Personal Pension Scheme Manual: Technical Guidance for Scheme Managers,

  which are both on the Inland Revenue website: www.inlandrevenue.gov.uk. Paper copies can be obtained from Inland Revenue NI Services to Pensions Industry at the address shown in paragraph 1.4;

- applications by individuals to join an APP scheme or an APPSHP scheme;

- any issues arising from the contracted-out employment of an individual after contracting out (in an APP scheme or an APPSHP scheme).

APPROPRIATE PERSONAL PENSION STAKEHOLDER PENSION SCHEMES

Appropriate schemes

22A.3 A scheme which is a personal pension scheme as defined in section 1 of the Pension Schemes Act 1993 may apply to be an Appropriate Personal Pension (APP) scheme. An APP scheme can provide those of its members who wish to contract out of the State Second Pension with an additional pension replacing the State Second Pension element of the state scheme.

22A.4 The Inland Revenue pays to the APP scheme (via BACS) minimum contributions in respect of each contracted-out member. Minimum contributions are contracted-out rebates based on that part of an employee's earnings falling between the Lower Earnings Limit (LEL) and the Upper Earnings Limit (UEL). There are three rates of rebate, depending on actual earnings level. An additional amount comprising basic rate tax relief on an employee's share of the rebate is also added to the minimum contributions).
Contracted-out members continue to pay full non-contracted-out National Insurance contributions as if they were still in the State Second Pension.

22A.5 A stakeholder pension scheme which applies to contract out as in 22.3–4 must be a scheme classed as a personal pension scheme under section 1 Pension Schemes Act 1993, for example, a stakeholder pension scheme whose provider is an authorised pension provider under one of the first eight bullets in the definition in Appendix 1 (for example, a Group Personal Pension (GPP), or a stakeholder pension scheme open to the public for anyone who is eligible to contribute).

A scheme in the following circumstances will therefore need to contract out as an APPSHP:

- an existing approved personal pension scheme which is now applying for stakeholder registration and must therefore also contract out of the State Second Pension,

- a new personal pension scheme which is applying for tax approval and stakeholder registration and must also contract out of the State Second Pension from the outset.

Self-invested personal pension schemes

22A.6 Schemes which are self-invested personal pension schemes (SIPPs) cannot be APPSHP schemes due to a restriction in the Personal Pension Schemes (Appropriate Personal Pension Schemes) Regulations 1997.

HOW TO APPLY

22A.7 The trustees/scheme administrator must complete form SHP 102 APP and return it to Inland Revenue SPSS (Nottingham) at the address shown on the form.

The scheme must have adopted suitable rules for contracting out (see paragraph 13.13). If the model rules are being adopted, the schedule submitted with the application for approval must show that the scheme rules include the APP contracting-out rules. If the scheme is already tax approved and the rules need to be amended for contracting out, the Deed of Amendment must accompany the contracting-out application form.

Action in Inland Revenue

22A.8 If all the information and documents are provided with the application and all the conditions for being treated as an Appropriate Personal Pension are met, Inland Revenue SPSS (Nottingham) will:

- inform Inland Revenue NI Services to Pensions Industry that the stakeholder pension scheme is now contracted-out, and

- issue a contracting-out certificate to the scheme provider, showing the Appropriate Scheme Number (ASCN).

22A.9 The scheme provider should quote the ASCN on all correspondence relating to that scheme. The Inland Revenue will use the number as a reference for tracking NI contributions and pension liability.

CHANGES AFTER THE CERTIFICATE IS ISSUED

22A.10 The details given on the original contracting-out application are likely to change over time. If any of the details listed in paragraph 22A.12 change, the scheme administrator must first notify the members (see 22.11) and then the Inland Revenue (see 22.13–22.16).
Notice of intention to members

22A.11 Before notifying the Inland Revenue of any of the changes at 22.12, the scheme administrator must give a notice of intention in writing to any member who:

- has protected rights under the scheme, or
- has safeguarded rights under the scheme, or
- does not have protected rights under the scheme, but has given joint notice with the trustees or managers of the scheme of his/her intention to join it (and has not had this notice cancelled).

The notice of intention must specify:

- the name of the scheme administrator and address where the scheme is administered, and
- the date from which it is desired that the change will have effect.

Changes to be notified

22A.12 The changes which the scheme administrator must notify to the members and Inland Revenue SPSS (Nottingham) are as follows:

a) change of identity of scheme administrator,
b) change of name or address of scheme administrator or provider,
c) change of name of scheme.

Notification to Inland Revenue

22A.13 The changes must be notified to Inland Revenue SPSS (Nottingham) on form SHP 106 as soon as possible after the date of the event. In the case of a change of name of scheme, scheme administrator, or provider, a copy of the Deed of Amendment must also be submitted.

22A.14 If there is a transfer of business from one provider to another (section 49 of the Insurance Companies Act 1982) the transferring provider must submit the following documentation to Inland Revenue SPSS (Nottingham):

a) a statement confirming that all payments which have been received by the scheme and which give rise to protected rights, as defined in section 10 of the Pension Schemes Act 1993, have been credited to each member's account; and
b) a statement from the new provider, confirming that:

- the scheme is covered by an arrangement for compensating members in the event of insolvency, and
- the notification of the transfer of business has been given to the scheme members within one month of the date of change.

(The new provider need not contact Inland Revenue SPSS (Nottingham) directly, but provide the transferring provider with their statement as in b) above).

22A.15 A change of nature of provider (for example, a building society becomes a bank) must be notified in writing as soon as possible after the date of the event.

22A.16 If any changes fundamentally affect the financial structure of the scheme, then a new
scheme must be established.

**Inland Revenue action**

22A.17 Inland Revenue SPSS (Nottingham) will issue a revised certificate to the provider, showing the new details. This is known as a ‘variation of an Appropriate Personal Pension Stakeholder Pension scheme certificate’.

The provider should note the original certificate ‘replaced by certificate issued on ../../..’.

**SURRENDERING AN APPROPRIATE PERSONAL PENSION STAKEHOLDER PENSION SCHEME CERTIFICATE**

22A.18 If the contracting-out certificate is surrendered, the stakeholder pension scheme must wind up and be removed from the stakeholder register. This is because all stakeholder pension schemes must be capable of accepting a transfer of *protected rights*, but a scheme which had surrendered its certificate would not be able to do so.

22A.19 Before an application to surrender a certificate is made to Inland Revenue SPSS (Nottingham), the *scheme administrator* must send a notice of intention, in writing, to the last known address of any member who:

- has *protected rights* under the scheme, or
- has *safeguarded rights* under the scheme, or
- does not have *protected rights* under the scheme, but has given joint notice with the trustees or managers of the scheme of his/her intention to join it (and has not had this notice cancelled).

The notice of intention must specify:

- the name of the scheme and address where it is administered,
- the date from which it is desired that the surrender will have effect, and
- where the scheme starts to wind up, any arrangements made or proposed for the transfer of *protected rights* under the scheme.

22A.20 The *scheme administrator* must then send completed form SHP 428 to Inland Revenue SPSS (Nottingham) to apply to surrender the certificate. The form can be found on the Inland Revenue website or can be ordered from the stationery orderline on 0115 974 1670.

Inland Revenue SPSS (Nottingham) will inform the *scheme administrator* of the outcome of the application. If the application is accepted, Inland Revenue SPSS (Nottingham) will amend its records to show that the contracting-out certificate has been surrendered and will inform Inland Revenue NI Services to Pensions Industry, and Opra. The scheme must then be wound up.

**CANCELLATION OF AN APPROPRIATE PERSONAL PENSION STAKEHOLDER PENSION SCHEME CERTIFICATE**

22A.21 If the scheme no longer meets the conditions for being an APPSHP scheme, Inland Revenue SPSS (Nottingham) may cancel the contracting-out certificate. This could be, for example, because of a failure to meet the ongoing financial supervision requirements in 22.28–22.38. If the certificate is cancelled, the scheme must wind up and be de-registered as a stakeholder pension scheme, as it will no longer be able to accept transfers of *protected rights*.

Similarly, if Opra withdraws the scheme’s stakeholder registration, or Inland Revenue SPSS (Nottingham) withdraws tax approval, the scheme must wind up (see paragraph 21.18). Inland Revenue SPSS (Nottingham) will cancel the contracting-out certificate.
22A.22 The date of cancellation will be either:

- the date on which the certificate is actually cancelled, that is, the date on which cancellation action is taken by Inland Revenue SPSS (Nottingham), or
- 6 April in the tax year during which the scheme failed to meet the conditions for continuing to be an APPSHP scheme, if the scheme has failed to meet those conditions before the date the certificate is actually cancelled.

22A.23 Inland Revenue SPSS (Nottingham) will take the following action:

- amend its records to show that the scheme's contracting-out certificate has been cancelled, and
- ask the scheme administrator for details of how the protected rights of the members are being secured, and
- inform any other Revenue offices with an interest in the matter, and Opra, of the cancellation of the certificate.

ACTION FOLLOWING CESSATION OF AN APPROPRIATE PERSONAL PENSION STAKESHOLDER PENSION SCHEME

What happens to protected rights built up in the scheme?

22A.24 When an APPSHP scheme ceases to be Appropriate, the trustees/provider must make arrangements to secure all contracted-out rights that have accrued in respect of members or former members of the scheme. These rights will either be:

- pre-97 protected rights accrued up to 5 April 1997, or
- post-97 protected rights accrued from 6 April 1997,

and there are different requirements for each. Inland Revenue SPSS (Nottingham) will issue leaflet CA85: Cessation of Contracted-out Stakeholder Pension Schemes to the trustees/provider giving general guidelines on securing the liabilities and the options that are available.

Pre-97 protected rights which become safeguarded rights following a pension sharing order (see 22.31–22.34) must be treated as post-97 protected rights.

The scheme must wind up (it no longer satisfies the stakeholder pension scheme requirements).

22A.25 It is not necessary to secure every member's protected rights by the same method. The trustees/provider must: within 4 months of the scheme ceasing to contract out: provide each member with information about their rights and options, and should tell Inland Revenue SPSS (Nottingham) once a decision has been taken what arrangements have been made.

22A.26 When a scheme ceases to be an APPSHP scheme, Inland Revenue SPSS (Nottingham) will notify Inland Revenue NI Services to Pensions Industry who will take action to identify:

- all possible current members,
- any early leavers from the scheme,
- pensioners, and
- members who have died and have a widow/widower/surviving civil partner.

Inland Revenue NI Services to Pensions Industry will send the scheme written instructions, along
with:

- current member Contracted-out Deduction (COD) calculations and re-input schedules,
- early leaver COD calculations and re-input schedules, and
- pensioner/widow/widower COD calculations and re-input schedules.

(If the period of employment for an individual is entirely post 5 April 1997, no calculations will be required. The individual will be shown on the re-input schedule only).

22A.27 Inland Revenue NI Services to Pensions Industry will also:

- write to the scheme to ask about arrangements to secure the members' protected rights, and
- within 4 months of ceasing to contract out, write separately to the members to explain that the scheme is no longer an APPSHP scheme and outline the options that are available to them.

Schemes should wait for written instructions from Inland Revenue NI Services to Pensions Industry before doing anything.

**PROVIDER'S DUTIES: SUPERVISION OF APPROPRIATE PERSONAL PENSION STAKEHOLDER PENSION SCHEMES**

**Minimum contributions: unallocated payments**

22A.28 As a condition of continuing APPSHP scheme status:

- *minimum contributions* must be invested immediately on receiving them from the National Insurance Contributions Office, so as to provide benefits for the member,
- *minimum contributions* must be allocated to members' accounts within three months of receipt,
- if any payments remain unallocated at the end of this period, the scheme must send a report (see 22.29) to Inland Revenue SPSS (Nottingham) within one month, that is, four months from the date of receipt of the *minimum contributions*. An unallocated payment of *minimum contributions* includes:
  - a payment received for a member but for whatever reason not yet credited to the member's account,
  - a payment received for a member whose policy has been transferred to another provider, or payment received from other providers which cannot be credited to an individual account, and
  - a payment received and the provider does not hold a policy or any information for the member.

22A.29 The report (see 22.28) should include the total amount of unallocated payments broken down as follows:

- the names and NI numbers of the members concerned, together with the respective unallocated amounts for each member,
- the month in which the payments were received,
- the reason(s) why the payments remain unallocated, and
- proposals for resolving the situation.

22A.30 New applications for new clients may be refused where a scheme consistently fails to allocate payments on time.

**Pension sharing on divorce**

**Pension sharing order**

22A.31 The Welfare Reform and Pensions Act 1999 allows divorcing couples the option to share their pension assets as a part of the overall divorce settlement. 'Pension sharing' is available alongside other methods of dealing with pension rights on divorce (offsetting and earmarking) in all divorce and nullity proceedings which begin on or after 1 December 2000. A court may issue a *pension sharing order* to the pension scheme or provider as a part of the divorce settlement. The scheme has four months to implement the provisions of the *pension sharing order*.

**Safeguarded rights**

22A.32 To distinguish them from the contracted-out rights built up by the scheme member, rights of a scheme member derived from membership of an APPSHP scheme which are transferred to the former spouse or civil partner as a result of a *pension sharing order* are known as *safeguarded rights*.

22A.33 Scheme rules can specify whether all of the accrued rights that are subject to a *pension sharing order* become *safeguarded rights*, therefore *safeguarded rights* may include some pension rights which are not contracted-out rights. In addition, the *safeguarded rights* might include *safeguarded rights* from a previous divorce.

**Supervision of safeguarded rights**

22A.34 The requirements for *safeguarded rights* broadly reflect those for contracted-out rights. In particular, the Government wishes to ensure that *safeguarded rights* (which are wholly or in part financed by rebates of National Insurance contributions and tax relief on the employee’s share of the rebate) are securely protected and used for the purpose for which they are intended: to provide an income in retirement. The scheme should ring-fence the *safeguarded rights*.

As *safeguarded rights* are not tracked or monitored by Inland Revenue NI Services to Pensions Industry it is important that a scheme maintains accurate records when a former spouse's or civil partner’s rights are preserved in the scheme, transferred or bought out through an insurance policy. The scheme should also keep details of the *pension sharing order*, as the percentage of the share needs to be recorded on the member's pension account.

**Informing Inland Revenue**

22A.35 On receiving a *pension sharing order*, the provider must notify Inland Revenue NI Services to Pensions Industry on form CA 2202. An example of the form is shown on the Inland Revenue website, but the provider should obtain a printed copy from the address shown in paragraph 1.4. Inland Revenue NI Services to Pensions Industry will update the NI accounts of both the member and former spouse or civil partner to show that a pension share has occurred.

**Annual Statement**

22A.36 Inland Revenue SPSS (Nottingham) will issue an annual statement form SHP 504 to the *scheme administrator* at the end of each tax year, for completion and return by 30 September. For a stakeholder scheme to retain its status as an APPSHP, it must return to Inland Revenue SPSS (Nottingham):

a) the form SHP 504, signed by a senior person within the scheme (for example, director,
appointed actuary, scheme administrator, or any other senior person who can ensure that the information required to be given is complete), confirming that:

- since the previous annual statement, no changes have been made in the scheme details, and
- all payments received by the scheme from the National Insurance Contributions Office up to the end of the tax year have been credited to members' accounts, and
- all payments received which give rise to protected rights have been credited to each member's account in accordance with Regulation 14 of the Personal Pension Schemes (Appropriate Schemes) Regulations 1997, and
- the scheme does not hold safeguarded rights, or if it does, the scheme meets the prescribed requirements;

b) a declaration by an auditor not working for the provider that, throughout the year, systems and controls have been operated to identify:

- minimum contributions, and
- tax relief on the member's share of the rebate, and
- the appropriateness of the allocation of these amounts to members' accounts.

22A.37 Inland Revenue SPSS (Nottingham) will consider cancelling the contracting-out certificate if the statement is not submitted on time or the provider fails to meet these supervision requirements.

22A.38 New applications from providers who consistently fail to meet the supervision requirements may be refused.

APPEALS

22A.39 The recipient of a contracting-out decision has the right of appeal to an Appeals Tribunal. Please see Appendix 21 for further details.
Important note: Under section 1(8) of the Welfare Reform and Pensions Act 1999, a stakeholder pension scheme must be capable of receiving a transfer of a member’s fund from another approved pension scheme, which could include contracted-out rights. This means that all stakeholder pension schemes must be contracted out of the additional state pension (commonly now known as the State Second Pension, previously SERPS).

22B.40 Inland Revenue SPSS (Nottingham) deal with the following contracting-out matters relating to Contracted-out Money Purchase Schemes:

- elections from employers to contract out of the State Second Pension, via Contracted-out Money Purchase stakeholder pension schemes (COMPSHPs)
- any issues arising from the contracting out of an employer in a COMPSHP scheme.

22B.41 Inland Revenue NI Services to Pensions Industry, formerly COEG, deal with scheme contracting-out matters relating to non-stakeholder pension schemes, and individuals’ contracting-out issues relating to all schemes, as follows:

- elections from employers to contract out of the State Second Pension via Contracted-out Money Purchase (COMP) schemes which are not stakeholder pension schemes (such applications may however be submitted via Inland Revenue SPSS (Nottingham). (Guidance in respect of this is not contained in this publication, but can be found in CA14D: Contracted-out Guidance for Money Purchase Pension Schemes and Money Purchase Overseas Schemes, available from Inland Revenue NI Services to Pensions Industry (see 1.4) or from the Inland Revenue website);
- issues arising from the contracted-out employment of an individual after contracting out (in any COMP scheme, stakeholder or non-stakeholder).

CONTRACTED-OUT MONEY PURCHASE STAKEHOLDER PENSION SCHEMES

Contracted-out Money Purchase schemes: general background

22B.42 An employer may elect that some or all of its employees are contracted-out of the State Second Pension via a Contracted-out Money Purchase (COMP) scheme. COMP schemes are always occupational pension schemes for the purpose of section 1 of the Pension Schemes Act 1993. The scheme will provide its members with an additional pension which replaces the State Second Pension element of the state pension scheme. (Please note that in a stakeholder pension scheme, all employees who are eligible members of the scheme must be contracted-out through the scheme).

22B.43 COMPSHP schemes are COMP schemes which satisfy the requirements to be and are registered as stakeholder pension schemes. Stakeholder pension schemes through which employers elect to contract out of the State Second Pension must be contracted-out as COMPSHP schemes. A scheme falls into this category if:

- it is a stakeholder pension scheme, and
- membership of the scheme is only available to people in specific employment(s).

For example, the following types of stakeholder pension scheme would be COMPSHP schemes:

- existing employer-provider schemes which have been approved under Chapter I, but are now seeking re-approval as stakeholder pension schemes under Chapter IV (see Part 23) and which must therefore also contract out of the State Second Pension;
new employer-provider schemes which are classed as occupational pension schemes under section 1 Pension Schemes Act 1993 and which are applying for tax approval under Chapter IV and stakeholder registration, and must therefore also contract out of the State Second Pension from the outset.

**National Insurance contributions**

22B.44 The employer and the employees who are scheme members pay to the Inland Revenue reduced National Insurance contributions (NICs) at source.

Also, the employer pays amounts known as minimum payments to the COMPSHP in respect of each contracted-out employee. The minimum payments consist of an employer element and an employee element, and represent an amount equal to the reduction in the NICs. (Employers may only deduct lower rate NICs from employees for the period during which they would be liable for NICs, that is, between the age of 16 and State Pension Age).

22B.45 The Inland Revenue also pays to the scheme (via BACS) an additional rebate, based on the employee’s age (the Age-Related Rebate).

**Contracting-out certificate**

22B.46 An employer wishing to contract out through a COMPSHP must be covered by a contracting-out certificate or schedule issued by Inland Revenue SPSS (Nottingham). This is the employer’s authority to deduct NICs at the lower contracted-out rate for those employments covered by the certificate. All potential members of the scheme must be covered by the category or categories of employment shown on the certificate or schedule, otherwise the scheme cannot satisfy the stakeholder requirements.

22B.47 If only one employer is involved in the scheme, one certificate covering that employer will be issued. If there is more than one employer in the scheme, according to the circumstances, more than one certificate may be issued, or the participating employers may be included on a schedule giving details of all employers covered by the certificate (see 22.62–22.71).

22B.48 Once the employer has received its certificate, or the employer has been added to a holding company’s schedule, lower-rate NICs may be deducted and paid for the employees in employments covered by the certificate, from its effective date. A refund of excess contributions for earlier tax years can be claimed from the National Insurance Contributions Office.

22B.49 Further information about NICs, contracted-out employment and other related issues can be found in leaflet CWG2: The Employer’s Further Guide to Pay As You Earn and NICs. This can be obtained from the Inland Revenue website or the address shown in paragraph 1.4.

**Protected rights**

22B.50 Protected rights are a member’s total rights to money purchase benefits under the scheme unless the scheme rules provide for a different definition of protected rights.

At the very least, benefits which build up in the scheme in respect of the member as a result of:

- minimum payments,
- Age-Related Rebates paid to the scheme by the National Insurance Contributions Office,
- contracted-out rights transferred in from another contracted-out scheme, and
- incentive payments made to the scheme,

must be protected rights.
ELECTION TO CONTRACT OUT

Single employer scheme

Action by the employer

22B.51 An employer’s election to contract out via a COMPSHP scheme should be sent on form SHP 102 COMP to Inland Revenue SPSS (Nottingham). The proposed date from which the contracting-out certificate is to have effect should, where possible, be a future date to avoid retrospective adjustment of NICs and a claim for a refund.

22B.52 Before sending the election to Inland Revenue SPSS (Nottingham) the employer must give either a written notice of intention (see paragraphs 22.56–22.58) or in certain circumstances, a written notice of explanation (see paragraph 22.59) to all of the following:

- all employees in employments which are to be covered by the certificate (in a COMPSHP scheme, this means all those who are eligible to join the scheme), and
- any independent trade union(s) recognised in relation to the earners concerned, and
- the trustees of the scheme, and
- the scheme administrator, and
- the insurance company or Friendly Society (if the scheme benefits are to be secured through an insurance policy).

22B.53 The notice must be given to the employees by either:

- sending or delivering it to each of them, or
- exhibiting it conspicuously at the place of work and drawing each employee’s attention to it (for example, by posting the notice on a main notice board and making reference to it in slips issued with individual pay notifications, or by a prominent statement in a staff magazine sent to each employee concerned).

Changes before the contracting-out certificate is issued

22B.54 An employer may amend his election at any time before the issue of a contracting-out certificate without serving further notices, if the amendment does not alter the categories or descriptions of the earners to which the election relates. For example, the following changes could be made without serving further notices:

- amendment to any details given on the election which are subject to notice and consultation, provided that the correct information was shown on the actual notice issued to all recipients;
- minor amendment to details not subject to notice and consultation requirements.

22B.55 However, the employer must issue fresh notices to all concerned if:

- the amendment would alter the categories or descriptions of earners, or
- incorrect information was shown on the original notice.

A new notice period will start to run from the date the new notice is issued.
**Notice of intention**

22B.56 Unless paragraph 22B.59 applies, a notice of intention to contract out must be issued.

22B.57 An employer who issues a notice of intention must consult with all independent trade unions recognised in relation to the earners concerned.

In the event of a dispute, the employer or the independent trade union concerned may refer either or both of the following questions to an Industrial Tribunal:

- whether an organisation is an independent trade union recognised in relation to the employees concerned;
- whether the employer has complied with the consultation requirements.

The notice of intention must run for at least one month from the date on which it is given, unless any of the independent trade unions involved does not agree to this period. If any independent trade union does not agree to a period of less than three months, the notice must run for three months from the date on which it is given.

22B.58 When the notice period has expired, and any issues arising have been dealt with, the employer should make the election to contract out of the State Second Pension. An election made more than three months after the date of expiry of the notice of intention must be accompanied by an explanation of the reason for the delay. Inland Revenue SPSS (Nottingham) will consider backdating the contracting-out certificate beyond three months only in exceptional circumstances and may require the employer to issue fresh notices.

The election should be made at the same time as the application for tax approval and stakeholder registration, by sending to Inland Revenue SPSS (Nottingham):

- completed form SHP 102 COMP, signed by
  - the employer or someone authorised to sign on their behalf with their specific knowledge and approval, and
  - the trustees or someone authorised to sign on their behalf with their specific knowledge and approval; and
- if the scheme is already an approved scheme and any rule amendments are necessary in connection with contracting out, the Deed of Amendment.

**Notice of explanation**

22B.59 A notice of explanation may be used by the employer if

- the scheme is already a COMP, and was tax approved under Chapter I of Part XIV of ICTA prior to the stakeholder application; or
- the scheme is already a COMPSHP, and a re-organisation involving the employer has occurred (see example below);

and

- all the following conditions apply:
  - the employees in the employments covered by the new election will continue to qualify for protected rights from the same scheme,
  - the rights of those employees to protected rights from the scheme will be unaffected,
the employment of those employees will remain contracted out by reference to the same scheme, and

there is no change in contracted-out status at all for the employees concerned.

(Where more than one election is necessary to make the change, a single notice of explanation will suffice).

Example

Changes may occur within a group of companies which make it necessary to alter the contracting-out certificates, for example the revival of a dormant company or the formation of a new company.

As a result of such a change, employees who have been contracted-out under the group’s scheme could remain so, but in the employment of a company not already covered by a certificate. A new election to contract out through the scheme would have to be made, and in these circumstances, notices of explanation may be given. Whether it is an election by a holding company to vary its certificate, or an election by a company for a contracting-out certificate in its own right, the new/revived company must adhere formally to the scheme for the relevant period.

As a result of the change, a company may lose all its contracted-out employees, or leave the scheme. The company no longer needs to be covered by a contracting-out certificate, so an election may be made for that company to be deleted from the schedule (or for its certificate to be surrendered) using the notice of explanation procedure. This applies whether or not the employees are now contracted out in the same scheme with an employer who was already contracted out via the scheme.

Action in Inland Revenue

22B.60 If all the information and documents are provided with the application, and all the conditions are met, Inland Revenue SPSS (Nottingham) will:

• issue a contracting-out certificate to the employer, and
• inform Inland Revenue NI Services to Pensions Industry that the scheme and/or employer is now contracted out.

Unless the employer has indicated otherwise on the election form, Inland Revenue SPSS (Nottingham) will also forward a copy of the certificate to the scheme administrator.

However, please note that if an Employer Compliance Officer of the Inland Revenue should require the certificate to be produced, it is the employer’s responsibility to do so, not the scheme administrator’s.

22B.61 The certificate will show

• the Scheme Contracted-out Number (SCON), and
• the Employer’s Contracting-out Number (ECON).

If the employer already has an ECON, that number will be shown on the certificate. If not, a new ECON will be allocated to the employer.

The employer should take note of these numbers, and quote them on all correspondence relating to the contracting out of those employments. The Inland Revenue will use these numbers as a reference for recording and tracking NICs and pensions liability.

Holding companies

22B.62 An employer may consider itself a holding company for contracting-out purposes where:
Partnerships and non-corporate bodies do not meet the definition of “company” in the Companies Act 1985 and should therefore apply for individual contracting-out certificates.

**Action by the employer**

22B.63 The employers involved should follow the notice of intention/explanation procedure (see paragraphs 22.52–22.59).

The holding company should then elect on form SHP 102 COMP for a single contracting-out certificate. The subsidiaries or associated employers who are participating in the scheme should be listed on the form. The employer must confirm that the subsidiaries or associated employers to be included fall within the definitions at paragraph 22.62.

22B.64 The holding company itself does not need to be contracted out through the scheme in order to hold a contracting-out certificate. If the holding company is not contracted out, this should be made clear when describing contracted-out employments on election documentation.

Please note that if the holding company is not contracted out, its own employees cannot be eligible to join the scheme.

**Action in Inland Revenue**

22B.65 If all the conditions are met, Inland Revenue SPSS (Nottingham) will issue to the holding company:

- a contracting-out certificate, and
- a schedule listing all the subsidiary or associated employers participating in the scheme.

Inland Revenue SPSS (Nottingham) will also inform Inland Revenue NI Services to Pensions Industry and Opra that the scheme and employers are now contracted out.

**Industry-wide schemes**

22B.66 Industry-wide COMPSHP schemes are centrally-administered schemes in which only employers in a specified industry are eligible to participate.

Such schemes may contract out on a simplified basis. The advantages in this are:

- the *scheme administrator* acts as agent for each employer participating in the scheme,
- consultation with trade unions may be carried out centrally (if the unions agree),
• the notice of intention may be issued by the scheme administrator, who must make it clear that it is being issued on behalf of the employer,

• a single election to contract out may be made by the scheme administrator on behalf of any number of participating employers.

22B.67 To take advantage of this simplified procedure, the rules of the scheme must specify that each participating employer must

• make minimum payments to the scheme administrator and

• supply accurate earnings and membership information as required by the scheme administrator.

Action by employers

22B.68 Employers wishing to contract out through the scheme should carry out the notice of intention/explanation procedure (see paragraphs 22.52: 22.59).

Action by the scheme administrator

22B.69 The scheme administrator should complete form SHP 107 and not SHP 102 COMP. Details of each employer, whether a holding company or subsidiary, must be shown on form SHP 107, with the required effective date of contracting-out for each employer. An employer’s employees must not be eligible to contribute to the scheme at all before the effective contracting-out date for that employer.

Action in Inland Revenue

22B.70 If all the conditions are met, a contracting-out certificate will be produced for each participating employer. Inland Revenue SPSS (Nottingham) will send all the contracting-out certificates to the scheme administrator, who will decide whether or not to hold the certificates centrally. Inland Revenue SPSS (Nottingham) will notify both Opra and Inland Revenue NI Services to Pensions Industry that the scheme and employers are now contracted out.

A common ECON will be issued to all the employers participating in the scheme unless a participating employer already has an ECON.

Centralised schemes for non-associated employers

22B.71 Centralised COMPSHP schemes for trade associations or other organisations (e.g. insurance companies) may contract out on a single scheme basis. In this situation the following should be noted:

• the scheme will have no principal employer. The Life Office or scheme administrator must accept responsibility for each participating employer’s compliance with the contracting-out requirements,

• each participating employer must adhere legally to the scheme,

• individual ECONs will be issued to each participating employer in the normal way,

• the Life Office or scheme administrator will be required to apply to contract out, vary or surrender on behalf of those employers covered by the scheme, ensuring that full notice and consultation procedures have been undertaken,

• all scheme members must be contracted out through one of the participating employers.
Overseas schemes

22B.72 An overseas scheme is a scheme which, although it has a UK based scheme administrator, is administered wholly or primarily outside the United Kingdom.

Inland Revenue SPSS (Nottingham) will seek periodic assurances from the scheme that it is being administered in accordance with requirements.

Action by employers

22B.73 In order to contract out, the employer establishing the overseas scheme must complete the notice of intention or explanation procedures as set out in paragraphs 22.52–22.59.

22B.74 An employer wishing to contract out by reference to an overseas scheme must elect to do so on form SHP 102 COMP. The forms must be completed to show the full names and addresses of the employer, auditor and UK based scheme administrator, and must be signed by each of them, or by someone authorised to sign on their behalf providing this is with their specific knowledge and approval.

Action by scheme administrator

22B.75 The scheme administrator and scheme auditor must submit form SHP 108 to Inland Revenue SPSS (Nottingham). In doing so, they will confirm that the scheme meets the following requirements:

- there are employees based in the UK for whom NICs are payable, and
- the scheme has an administrator who is resident in the UK, appointed in accordance with section 638 (1), and
- the trustees or managers of the scheme have appointed an auditor who satisfies the requirements of regulation 4 of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 [SI 1996 no. 1715], and
- the scheme provides for indexation of pensions in accordance with sections 51–54 of the Pensions Act 1995, and
- the scheme provides for revaluation of accrued benefits in accordance with sections 83–86 of the Pension Schemes Act 1993.

Action in Inland Revenue

22B.76 If all the conditions are met, Inland Revenue SPSS (Nottingham) will issue a contracting-out certificate to the employer, and notify both Opra and Inland Revenue NI Services to Pensions Industry that the scheme and employer are contracted out.

EMPLOYER’S DUTIES WHILE SCHEME IS ONGOING

Minimum payments

22B.77 An employer who is contracted out through a COMPSHP scheme must pay to the scheme, for the benefit of each employee who is contracted out, amounts equal to the contracted-out rebate. These amounts are referred to as minimum payments.

22B.78 An employer must make the minimum payments to the trustees of the pension scheme within 14 days of the end of the income tax month in which liability for NICs arose (that is, on or before the 19th of each month). An employer may not make an annual payment at the start of the year to cover the year’s minimum payments.

22B.79 The trustees must invest minimum payments on behalf of the member within one month of
the end of the income tax month to which they relate, and age related payments within one month of the date of payment by the Inland Revenue. A COMPSHP scheme must provide a pension based on the value of the amount of minimum payments paid into the member’s pension account, together with the investment return.

**Separate scheme account**

22B.80 The trustees of COMPSHP schemes must open a separate scheme account in accordance with section 49(1) of the Pensions Act 1995 unless the circumstances are as described in Regulation 11(1) of the Occupational Pension Schemes (Scheme Administration) Regulations 1996.

**Pension sharing on divorce**

22B.81 The Welfare Reform and Pensions Act 1999 allows divorcing couples the option to share their pension assets as a part of the overall divorce settlement. “Pension sharing” is available alongside other methods of dealing with pension rights on divorce (offsetting and earmarking) in all divorce and nullity proceedings which begin on or after 1 December 2000. A court may issue a pension sharing order to the pension scheme or provider as a part of the divorce settlement. The scheme has four months to implement the provisions of the pension sharing order.

**Safeguarded rights**

22B.82 To distinguish them from the contracted-out rights built up by the scheme member, rights of a scheme member derived from membership of a COMPSHP scheme which are transferred to the former spouse or civil partner as a result of a pension sharing order are known as safeguarded rights.

22B.83 Scheme rules can specify whether all of the accrued rights that are subject to a pension sharing order become safeguarded rights, therefore safeguarded rights may include some pension rights which are not contracted-out rights. In addition, the safeguarded rights might include safeguarded rights from a previous divorce or dissolution of a civil partnership.

**Supervision of safeguarded rights**

22B.84 The requirements for safeguarded rights broadly reflect those for contracted-out rights. In particular, the Government wishes to ensure that safeguarded rights (which are wholly or in part financed by rebates of National Insurance contributions) are securely protected and used for the purpose for which they are intended: to provide an income in retirement. The scheme should ring-fence the safeguarded rights.

22B.85 As safeguarded rights are not tracked or monitored by Inland Revenue NI Services to Pensions Industry, it is important that schemes maintain accurate records when a former spouse’s or civil partner’s rights are preserved in the scheme, transferred or bought out through an insurance policy. The scheme should also keep details of the pension sharing order, as the percentage of the share needs to be recorded on the member’s pension account.

**Informing Inland Revenue**

22B.86 On receiving a pension sharing order, the scheme administrator must notify Inland Revenue NI Services to Pensions Industry on form CA 2202. An example of the form is available on the Inland Revenue website, but the scheme administrator should obtain a printed copy from the address at 1.4. Inland Revenue NI Services to Pensions Industry will update the NI accounts of the member and former spouse or civil partner to show that a pension share has occurred.

**Employer-related investment**

**UK schemes**

22B.87 All COMPSHP schemes (except overseas schemes: see paragraphs 22.91–22.92) must
comply with the restrictions on employer-related investment (ERI) imposed under section 40 of the Pensions Act 1995.

The scheme must not invest more than 5% of the current market value of its resources in

- a person who is an employer in relation to the scheme;
- an associated business of an employer in relation to the scheme;
- an associated company, if
  - it is a subsidiary of the other, or
  - it is the holding company for an employer in relation to the scheme (holding companies and subsidiaries are described in detail at paragraph 22.62), or
  - it and an employer in relation to the scheme are companies which are directly or indirectly controlled by the same third party.

22B.88 The investments covered by the restriction include:

- shares, or other securities issued by the employer,
- land occupied by, used by or subject to lease in favour of the employer,
- property, other than land used for the purpose of a business carried out by the employer (but property purchased on or before 9 March 1992 which was then valued at more than 5% of the scheme’s resources, may be retained indefinitely).

The following investments are not allowed at all

- loans to the employer (however, existing loans may be retained for a transitional period), and
- debts due and outstanding from the employer to the scheme, and
- guarantee of any security or indemnity given by the scheme in respect of the employer’s obligations.

22B.89 As a condition of contracting out, the scheme must confirm by signing form SHP 102 COMP that:

- it is not exempt from the ERI restrictions imposed under section 40 of the Pensions Act 1995 and any subsequent regulations, and
- it complies with the Occupational Pension Schemes (Investment) Regulations 1996 (as amended by SI 2002 no 681).

Overseas schemes

22B.90 An overseas COMPSHP scheme must not invest more than 5% of the current market value of its resources in a person who is an employer or connected with an employer in relation to the scheme, if such investments are required to meet the scheme’s liabilities for protected rights. This includes:

- its contracted-out liabilities
- any prescribed liabilities with a higher priority and
any increase in those liabilities.

Inland Revenue SPSS (Nottingham), on behalf of the Board of Inland Revenue, will decide whether schemes are complying with the restriction.

22B.91 If the liabilities set out in paragraph 22B.88 are funded by ERI which is more than 5% of the current market value of the scheme’s resources, Inland Revenue SPSS (Nottingham) will consider cancelling the scheme contracting-out certificate.

**Scheme administrator**

22B.92 The scheme must have an administrator who is resident in the UK. If the person appointed subsequently ceases to act for the scheme in that capacity, a replacement must be appointed immediately. Failure to do so will lead to the scheme losing tax approval. The scheme will be required to wind up and the contracting-out certificate will be cancelled with effect from the date the person ceased to act.

**CHANGES AFTER THE CERTIFICATE HAS BEEN ISSUED**

**Minor variations**

22B.93 Minor variations are changes which do not alter the categories or description of the employees covered by the contracting-out certificate. For example, if there is a change to:

- the name of an employer, or
- the scheme name,

the **scheme administrator** should notify Inland Revenue SPSS (Nottingham) by submitting form SHP 200, together with the appropriate Deed in the case of a change of scheme name, within three months of the effective date of change. (A notification received outside the three month period may be accepted at the discretion of the Board of Inland Revenue).

Full election action as in paragraph 22.52–22B.59 is not required in relation to minor variations.

**Major variations**

**All types**

22B.94 All major variations detailed in paragraphs 22.96–22B.102 require full election action as in paragraphs 22.35–22.41, including either:

- the issue of a notice of intention and consultation with independent trade union(s) (see paragraphs 22.52–22.58); or
- the issue of a notice of explanation (see paragraph 22.59).

**A change to the effective date of contracting-out**

22B.95 This type of change must be notified to Inland Revenue SPSS (Nottingham) on form SHP 105 within three months of the effective date of change. However, an election received outside the three month period may be accepted at the discretion of the Board of Inland Revenue.

If the new effective date of contracting out is earlier than the original one, the employer must also confirm that the scheme’s provisions allow for contracting out to commence from the earlier date, and that the contracting-out conditions have been satisfied from that date. This is included in the statement the applicant has to sign on form SHP 105. The effective date of contracting out cannot however predate the date from which the scheme is tax approved.
Changes to the categories of employment covered by the certificate

22B.96 This type of change must be notified to Inland Revenue SPSS (Nottingham) on form SHP 105 within three months of the effective date of change. However, an election received outside the three month period may be accepted at the discretion of the Board of Inland Revenue.

An employer can elect that certain employments are to be excluded from the coverage of a contracting-out certificate. A category of employment must be clearly identifiable, for example, an employer might choose to contract out clerical staff, but not sales staff. Employees in a category of employment excluded in this way must, from the date of exclusion, cease to be eligible to join or contribute to the stakeholder pension scheme.

Change of principal employer

22B.97 The principal employer in a scheme may be any employer whether or not they are the holding company in the scheme or are contracted out by reference to the scheme (but if the principal employer is not contracted out by reference to the scheme, its employees must not be eligible to contribute to the scheme). Where there is a change of principal employer, form SHP 201 must be submitted, along with a copy of the appropriate Deed.

22B.98 If the whole of the business and employees of the existing principal employer are taken over by a new principal employer, the continuity provision may apply (see paragraph 22.122). If so, no change is needed to the contracting-out certificate(s).

22B.99 If the contracting-out certificate(s) is/are unaffected by the change, for example, the principal employer and a participating employer swap roles but each retain their contracting-out certificate, form SHP 105 should be appropriately completed to contain a statement confirming that the certificate is unchanged.

22B.100 If the contracting-out certificate(s) is/are affected by the change: for example, a new employer is contracting out by reference to the scheme and replacing the existing principal employer: a full election for the issue of a certificate (paragraphs 22.52–22.59) must be made by the new principal employer.

Adding a subsidiary to the schedule of a holding company certificate

22B.101 This type of change must be notified to Inland Revenue SPSS (Nottingham) on form SHP 105 within three months of the effective date of change. However, an election received outside the three month period may be accepted at the discretion of the Board of Inland Revenue.

Both the subsidiary and the holding company must be corporate bodies. All categories of employee of any of the employers to be covered by the holding company certificate who are eligible to contribute to the scheme must be included as categories of employment on the certificate.

Deleting a subsidiary from the schedule to a holding company certificate

22B.102 This type of change must be notified to Inland Revenue SPSS (Nottingham) on form SHP 105 within three months of the effective date of change. However, an election received after the three month period may be accepted at the discretion of the Board of Inland Revenue.

The deleted employer’s employees must immediately cease to be eligible members of the scheme and must not contribute to the scheme from the date of deletion.

Temporary arrangements: sale of subsidiary

22B.103 Where a subsidiary employer named on a schedule to a holding company contracting-out certificate is sold, it may remain in the scheme for a period of temporary participation until alternative arrangements are made. The subsidiary may continue to be named on the schedule to the holding company's contracting-out certificate, subject to the following conditions:
- the ex-subsidiary continues to be an employer subject to the rules of the scheme (or one of the other definitions of “subsidiary” of Regulation 12(2) c) of the Occupational Pension Schemes (Contracting-out) Regulations 1996 is satisfied) and

- Inland Revenue SPSS (Nottingham) agrees that the ex-subsidiary may retain temporary membership of the scheme.

When the alternative pension arrangements have been made, the holding company must elect to delete the subsidiary employer from the contracting-out certificate using form SHP 105. Notices of intention should be issued to the employees. The employees of the ex-subsidiary must cease to be eligible to contribute to the scheme once their employer has been deleted from the contracting-out certificate.

**Temporary arrangements: sale of part of a business**

22B.104 Where part of the business of an employer named on the schedule to a holding company contracting-out certificate is sold, the employees in that part of the business may, subject to Inland Revenue SPSS (Nottingham)’s approval, continue to be contracted out by reference to the scheme for a temporary period until alternative arrangements are made. This may be done by varying the holding company’s schedule (see paragraph 22.106) or by the issue of a separate contracting-out certificate for the acquiring employer (see paragraph 22.108).

22B.105 If the sold part of the business:

- either:
  - continues to be an employer subject to the rules of the scheme, or
  - satisfies one of the other definitions of “subsidiary” in Regulation 12 of the Occupational Pension Schemes (Contracting-out) Regulations 1996; and

- wishes to be named on the schedule to the holding company’s contracting-out certificate,

the holding company should elect to vary its contracting-out certificate to add the sold part of the business to the schedule.

A notice of explanation should be issued to the employees of the sold part of the business.

22B.106 At the end of the period of temporary participation, the holding company should elect to vary its contracting-out certificate, to delete the acquiring employer from the schedule.

A notice of intention will be required, in accordance with Regulation 9 of the Occupational Pension Schemes (Contracting-out) Regulations 1996. Employees of the acquiring employer which is being deleted from the schedule must cease to be eligible to contribute to the scheme.

22B.107 The sold part of the business should elect for its own certificate to participate in the scheme on a temporary basis if either:

- the definition of subsidiary in Regulation 12 of the Occupational Pension Schemes (Contracting-out) Regulations 1996 is not satisfied, or

- it does not wish to be named on the schedule to the holding company’s contracting-out certificate.

A notice of explanation would be appropriate.

22B.108 At the end of the period of temporary participation, the sold part of the business should issue notices of intention and elect to surrender its contracting-out certificate. Its employees must
cease to be eligible to contribute to the scheme from the date of surrender.

22B.109 If the employer changes as a result of the sale of the part of the business, the contents of Regulation 43(5) of the Occupational Pension Schemes (Contracting-out) Regulations 1996 should be noted. The employees may be treated as continuing to contract out through the new employer if certain conditions are satisfied.

**Employer in receivership**

22B.110 When Inland Revenue SPSS (Nottingham) have been informed that a receiver has been appointed, they will need to establish whether the scheme will continue to contract out. Inland Revenue SPSS (Nottingham) will contact the Life Office or the *scheme administrator* to find out.

If the employer which is in receivership is the only employer in the scheme but the scheme is to continue, and remain contracted-out, the employer must continue to make minimum payments.

If the employer in receivership is the only one participating in the scheme and the scheme is to cease to contract out, an election must be made to surrender the employer’s contracting-out certificate. Inland Revenue SPSS (Nottingham) will then contact the receiver and the Life Office to inform them that the scheme must be wound up and removed from the stakeholder pension scheme register.

If there is more than one employer participating in the scheme, any participating employer which goes into receivership may surrender its contracting-out certificate if it is no longer to contract out through the scheme. The scheme may however continue for any remaining employers who wish to continue contracting out through that scheme.

**Employer in liquidation**

22B.111 When Inland Revenue SPSS (Nottingham) are informed that an employer is in liquidation, they will contact the liquidator to obtain more information. Where the scheme is for a single employer, Inland Revenue SPSS (Nottingham) will need to establish the date from which the scheme ceased to contract out. An election must be made to surrender the employer’s contracting-out certificate, where possible.

Where it is not possible for the liquidator to submit an election to surrender the contracting-out certificate, the liquidator must advise Inland Revenue SPSS (Nottingham) of the date from which the contracting-out certificate should be cancelled. This will be either the date of insolvency, or the date the last minimum payment covered. Inland Revenue SPSS (Nottingham) will then cancel the employer’s contracting-out certificate. The scheme must be wound up and Opra will remove it from the stakeholder pension scheme register.

If more than one employer participates in the scheme and at least one of the employers is not in liquidation and wishes to carry on contracting out through the scheme, the scheme may continue providing the contracting-out certificate of the employer in liquidation is surrendered, as above.

**Industry-wide scheme: participating employer**

22B.112 If a participating employer ceases to meet any contracting-out requirement, the *scheme administrator* must notify Inland Revenue SPSS (Nottingham) who will then consider cancelling the participating employer’s contracting-out certificate. If the certificate is cancelled the *scheme administrator* is responsible for notifying terminations to NI Services to Pensions Industry, formerly COEG. The employees of the participating employer whose certificate has been cancelled must cease to be eligible to contribute to the scheme.

**Other changes**

22B.113 Any other changes to the COMPSHP contracting-out certificate should be notified to Inland Revenue SPSS (Nottingham) in writing, within three months of the effective date of change. However, an election received outside the three month period may be accepted at the discretion of
The Board of Inland Revenue.

The periodic return system: holding companies only

22B.114 Employers with a holding company contracting-out certificate participate in a periodic return system on a voluntary basis. The system provides for the notification of changes to holding company contracting-out certificates to be supplied annually, instead of as and when the changes occur. An employer may, however, choose instead to notify any changes as they occur by submitting the appropriate election forms.

The periodic return is issued on an annual basis, based on the date of contracting out.

22B.115 The following changes may be notified on the periodic return form:

- the addition or deletion of employers from the schedule in issue to the holding company,
- a change of scheme name,
- a change of name of the principal employer and/or the participating employer(s),
- the appointment of a new principal employer. Additional information and documentation is also required as detailed in paragraph 22.120–22.121.

22B.116 The Inland Revenue’s Employer Compliance Officers are aware that as a result of the periodic return system there may be periods during which a contracting-out certificate does not reflect the true contracting-out position in the scheme.

Action by Inland Revenue

22B.117 If the contracting-out conditions are satisfied, Inland Revenue SPSS (Nottingham) will issue a revised contracting-out certificate/schedule to the employer and, unless the employer has indicated otherwise, a copy will be sent to the scheme administrator.

The employer should retain the existing certificate/schedule for future reference and ensure that they mark it “replaced by certificate/schedule issued on ....... [date]”.

INLAND REVENUE: POWERS OF VARIATION

22B.118 Inland Revenue SPSS (Nottingham) has the powers on behalf of the Board of Inland Revenue

- to decide that an employment should no longer be contracted out and vary the contracting-out certificate accordingly (employees in such an employment must cease to be eligible to contribute to the scheme from the date of variation), and
- to vary a contracting-out certificate where, for example, a subsidiary employer no longer needs to be included in the coverage of a holding company certificate, but the normal application procedures cannot be undertaken because there are no longer any employees to whom notices can be given.

SURRENDERING A CONTRACTING-OUT CERTIFICATE

22B.119 If an employer wishes to stop being contracted out of the State Second Pension and surrender its contracting-out certificate, it must first give notice to employees (see paragraph 22.121) and then apply to Inland Revenue SPSS (Nottingham). As stakeholder pension schemes must be capable of accepting transfers of protected rights for all members, this would mean that the employer and its employees must cease to be part of the stakeholder scheme.

If the employer was the only one contracting out through the scheme, the scheme must be wound
up, following the procedures outlined in paragraphs 22.130–22.138. Opra will remove the scheme from the stakeholder pension schemes register.

22B.120 The employer must

- either
  - give a notice of intention to all employees, and undertake consultation with independent trade unions as described in paragraph 22.52–22.58, or
  - give a notice of explanation if the conditions in paragraph 22B.59 apply; and
- submit a completed form SHP 427 to Inland Revenue SPSS (Nottingham).

**The continuity provision**

22B.121 If the whole of a business and its employees are being transferred to a new employer, the old employer should surrender the existing contracting-out certificate and the new employer will make an election for a new one unless it can take advantage of the continuity provision.

The certificate does not have to be surrendered if:

- the employees’ service continues to qualify them for protected rights from the same scheme, and
- the new employer accepts the previous employer’s responsibilities in relation to the scheme (including any contributions due to it at the time of the take-over) in respect of the employees concerned, and
- the new employer does not need a holding company contracting-out certificate, and
- if the old employer’s contracting-out certificate is a holding company certificate, action has been taken to delete all subsidiaries from the coverage of it.

The new employer should notify Inland Revenue SPSS (Nottingham) of the change as soon as practicable, and must provide a statement confirming all conditions are met. It must also give details of any changes to the contracting-out certificate.

**Scheme remains contracted out for other employers**

22B.122 If a participating employer surrenders its contracting-out certificate but the scheme continues to be contracted out for other employers, the employer which has surrendered the contracting-out certificate should follow the appropriate termination procedures detailed in manual CA84 Stakeholder Pension Scheme Manual: Procedural Guide. This may be viewed on the Inland Revenue website or obtained from the address shown in paragraph 1.4.

**Protected rights retained in the scheme**

22B.123 The scheme must notify Inland Revenue NI Services to Pensions Industry on form CA 1589 if:

- a member’s protected rights are to be retained in the scheme, and
- the date contracted-out employment ended was before the start of the tax year in which State Pension Age is reached.

The form should be submitted within 6 months of the termination of contracted-out employment.
Protected rights transferred out of the scheme

22B.124 Protected rights may be transferred to another contracted-out scheme or schemes. When protected rights are transferred, the scheme must notify Inland Revenue NI Services to Pensions Industry. More details about the circumstances in which protected rights may be transferred, and about the termination procedures appropriate in each type of transfer are given in manual CA84 Stakeholder Pension Scheme Manual: Procedural Guide.

Action by Inland Revenue

22B.125 On receipt of form SHP 427 Inland Revenue SPSS (Nottingham) will confirm that the certificate has been surrendered and inform the employer and scheme administrator/insurer in writing. The employer should retain the old certificate for future reference and ensure that they mark it "surrendered with effect from ………[date]".

Inland Revenue SPSS (Nottingham) will inform Inland Revenue NI Services to Pensions Industry of the surrender and, if this means the scheme has to be wound up, will also inform Opra.

CANCELLATION OF A CONTRACTING-OUT CERTIFICATE BY INLAND REVENUE

22B.126 The Inland Revenue SPSS (Nottingham) has the power, on behalf of the Board of Inland Revenue, to decide that an employment should no longer be contracted-out and cancel the COMPSHP contracting-out certificate accordingly.

Cancellation will be appropriate where an employer is unable to elect to surrender its certificate because there are no longer any employees to whom notices can be given.

Other than this, an employer’s contracting-out certificate will usually only be cancelled if it comes to light that a COMPSHP scheme’s financial or administrative arrangements are inadequate to meet the contracting-out requirements: for example, there is evidence that the employer consistently failed to make minimum payments within the time limits.

22B.127 If the employer whose certificate is being cancelled is the only or only remaining employer contracting out through the scheme, the scheme must wind up (see 22.130–22.138). If the scheme is to be wound up, Inland Revenue SPSS (Nottingham) will inform Opra.

22B.128 The Inland Revenue SPSS (Nottingham), on behalf of the Board of Inland Revenue, may backdate the cancellation where it determines it is appropriate to do so.

ACTION ON SCHEME CEASING TO CONTRACT OUT

22B.129 A COMPSHP scheme can cease to contract out, but it must then be wound up, because it would no longer satisfy the requirement that a stakeholder pension scheme must be capable of accepting a transfer of contracted-out rights. For example, if the scheme:

- no longer satisfies the contracting-out legislative requirements,
- is no longer registered as a stakeholder pension scheme,
- is no longer approved for tax,

it must cease to contract out, and wind up. It must be removed from the stakeholder register.

22B.130 When the scheme ceases to contract out because

- it is winding up for a reason other than those at 22.130, or
- it is amalgamated with or replaced by another scheme operated by the same employer and the protected rights are transferred,
the employer/insurer must notify Inland Revenue SPSS (Nottingham) in writing.

22B.131 Following cancellation or surrender action Inland Revenue SPSS (Nottingham) will write to the employer and trustee/insurer and confirm the cessation date. The certificate is no longer valid from the end of the day specified in the acceptance of the surrender or the notice of determination to cancel the certificate.

If the certificate is the only or only remaining one valid by reference to the scheme, this date is the last day on which there can be contracted-out employment by reference to the scheme.

**What happens to protected rights built up in the scheme**

22B.132 A COMPSHP scheme where all employers have ceased to contract out must wind up and be removed from the stakeholder pension scheme register. The scheme has a period of 12 months in which protected rights of individual members must be discharged to an appropriate home by one of the following methods:

- transferred to another approved contracted-out scheme, or
- secured by the purchase of an appropriate policy of insurance, or
- secured by annuity purchase.

22B.133 When a COMPSHP scheme ceases to be contracted out, trustees must make arrangements to secure all contracted-out rights that have accrued in respect of members and/or former members of the scheme. These rights will either be:

- pre-97 protected rights accrued up to 5 April 1997, or
- post-97 protected rights accrued from 6 April 1997,

and there are different requirements for each. Inland Revenue SPSS (Nottingham) will issue leaflet CA85: Cessation of Contracted-Out Stakeholder Pension Schemes to the trustees giving general guidelines on securing the liabilities and the options that are available.

Pre-97 protected rights which have become safeguarded rights following a pension sharing order must be treated as post-97 protected rights.

22B.134 It is not necessary to secure every member’s protected rights by the same method. Trustees must provide members with information about their rights and options and once a decision has been taken should tell Inland Revenue SPSS (Nottingham) what arrangements have been made. See also paragraphs 20.7, 20.7A and 20.7B.

22B.135 Once a COMPSHP scheme has ceased to contract out, Inland Revenue SPSS (Nottingham) will notify Inland Revenue NI Services to Pensions Industry, who will identify:

- all possible current members,
- any early leavers from the scheme,
- pensioners,
- members who have died and have a widow/widower/surviving civil partner.

Inland Revenue NI Services to Pensions Industry will send the scheme written instructions and:

- current member COD calculations and re-input schedules,
- early leaver COD calculations and re-input schedules,
• pensioner/widow/widower/surviving civil partner pensioner calculations and re-input schedules.

If the individual’s period of employment is entirely post 5 April 1997, no calculations will be required. The individual will be shown on the re-input schedule only.

Inland Revenue NI Services to Pensions Industry will also write to the scheme to ask about arrangements to secure the members’ protected rights.

22B.136 The trustees or insurer of a COMPSHP scheme must notify Inland Revenue NI Services to Pensions Industry within 5 weeks of effect being given to protected rights. They should also advise Inland Revenue SPSS (Nottingham) as soon as all the contracted-out rights for every member of the scheme have been secured by either:

• preservation within the scheme (not available in scheme wind-up),

• discharge to an appropriate home.

Inland Revenue NI Services to Pensions Industry will then carry out a search of their records as in 22.135. If they confirm that nothing is outstanding, Inland Revenue SPSS (Nottingham) will issue letter SHP 503 granting approval for securing protected rights within the scheme.

**Winding-up period**

22B.137 A COMPSHP scheme which has ceased to be contracted out must be wound up. Inland Revenue SPSS (Nottingham) will if necessary seek assurances about the administration of the scheme during the winding-up period until either all of the protected rights within the scheme have been discharged or until a certificate of non-approval of arrangements has been issued to the trustees, including a written direction to discharge the liabilities to an appropriate home within 6 months (see paragraphs 22.142–22.146).

**ACTION WHERE EMPLOYER CEASES TO CONTRACT OUT BUT SCHEME CONTINUES**

22B.138 Where not all the employers in a COMPSHP are ceasing to contract out so that the scheme is continuing, the scheme has a period of 2 years in which the protected rights of individual members who are now ceasing to be scheme members must either be:

• discharged to an appropriate home by one of the following methods
  - transferred to another approved contracted-out scheme, or
  - secured by the purchase of an appropriate policy of insurance, or
  - secured by annuity purchase, or
  - used to provide a pension paid from the scheme; or

• preserved within the scheme.

The two year period will begin when calculations and/or membership lists are issued by Inland Revenue NI Services to Pensions Industry to the life office/administrator. If arrangements cannot be submitted for approval within this time limit, a request for an extension must be made in writing providing full details of the circumstances. An extension to the 2-year time limit can only be granted in very exceptional circumstances.

22B.139 If rights are not discharged/approved for preservation in the scheme within 2 years, Inland Revenue SPSS (Nottingham) on behalf of the Board of Inland Revenue will issue a certificate of non-approval to the trustees. The certificate includes a written direction to discharge the liabilities to an appropriate home within 6 months (see paragraph 22.142–22.146).
Securing the liabilities

22B.140 The trustees or insurer of a COMPSHP scheme must notify Inland Revenue NI Services to Pensions Industry within 5 weeks of effect being given to protected rights.

Withdrawal of approval to preserve protected rights within the scheme

22B.141 Where the scheme is continuing because there are still employers who are contracting out through the scheme, approval to preserve protected rights within the scheme will be withdrawn if the scheme does not continue to meet requirements. Inland Revenue SPSS (Nottingham) on behalf of the Board of Inland Revenue will issue a certificate of non-approval to the trustees including a direction to discharge the contracted-out liabilities to an appropriate home within 6 months.

22B.142 Within the 6-month period allowed for discharge, the trustees must

- notify all active and deferred members with any entitlement to protected rights under the scheme of the issue of the certificate of non-approval and the reasons for it, and
- allow a period of 3 months from the date of the notification to give the member time to elect to transfer their rights before they are discharged.

22B.143 Where trustees have not received any request from the member to transfer their rights, they will be able to buy out the benefits without the individual’s consent through appropriate policies of insurance.

22B.144 If liabilities cannot be discharged within the time limit, the trustees must make a written request for an extension, providing full details of the circumstances. An extension to the 6-month period can only be granted in very exceptional circumstances.

22B.145 If trustees have been directed by the Board of Inland Revenue to discharge contracted-out liabilities but fail to comply with the direction, the Board may start legal action.

APPEALS

22B.146 Any person who receives a contracting-out decision has the right of appeal to an Appeals Tribunal. Please see Appendix 21 for further details.
CONVERTING AN EXISTING APPROVED SCHEME

23.1 From 1 October 2000, certain occupational pension schemes approved under Chapter I of Part XIV of ICTA 1988 may apply to convert to a personal pension scheme.

In converting, the scheme adopts the Chapter IV (personal pensions) tax regime in its entirety (i.e. on funding, contribution limits, benefits, membership, etc) as set out in this publication.

If a conversion application is approved, the scheme will be given fresh approval by the Inland Revenue SPSS (Nottingham) under Chapter IV of Part XIV of ICTA 1988, subject to certain conditions (see paragraphs 23.15 - 23.20 below).

23.2 A converting scheme will not be granted an approval date under Chapter IV earlier than 6 April 2001, and will continue to operate as an occupational pension scheme under Chapter I until its Chapter IV approval date.

The proposed date of change of approval (see 23.16 (d)) should therefore be a future date, allowing time for the approval process to take place, and from which the employer will realistically be in a position to switch from the net pay arrangement to the relief at source method of deducting employee contributions from the payroll, as this change must take place as soon as Chapter IV approval takes effect.

23.2a Existing members of the converting scheme may have arranged to make voluntary contributions to a Free Standing Additional Voluntary Contribution Scheme (FSAVC), alongside the Chapter I scheme. Once the employer's scheme has converted to Chapter IV approval the member will no longer be able to contribute to the FSAVC scheme. The employer should therefore inform employees that they are applying for Chapter IV approval for the scheme and that this will mean any FSAVC contributions being made by employees will have to stop.

23.3 If the scheme wishes to become contracted-out of the State Second Pension for the first time at the time of conversion, a separate election must be made to Inland Revenue SPSS (Nottingham) for a certificate allowing them to do so (see Part 22B). Both the application for tax approval and the contracting-out election should be submitted to Inland Revenue SPSS (Nottingham), who will liaise with Inland Revenue NI Services to Pensions Industry regarding the issue of the contracting-out certificate.

If the scheme is already contracted-out, it should nonetheless notify Inland Revenue NI Services to Pensions Industry direct of the change unless it is applying for registration as a stakeholder pension scheme, in which case the contracting-out application may be made to Inland Revenue SPSS (Nottingham) as stated at paragraph 23.4.

Please note that all stakeholder pension schemes must contract out.

23.4 If the converting scheme wishes to become a stakeholder pension scheme on conversion, the provider must also apply to Opra for stakeholder registration.

Whether such a scheme was already contracted out prior to conversion or not, if it wishes to be a stakeholder pension scheme, a fresh election to contract out must be made to Inland Revenue SPSS (Nottingham) by each employer participating in the scheme. A stakeholder Employer Contracting-out Number (ECON) will be allocated, and the scheme will be supervised by Inland Revenue SPSS (Nottingham) rather than Inland Revenue NI Services to Pensions Industry (see Part 22B for further guidance).

The two applications and the election will be considered at the same time. Stakeholder approval will only be given if all three are successful (see paragraph 23.27).
Whether such a scheme is already contracted-out prior to conversion or not, if it wishes to contract out as a stakeholder pension scheme, a fresh election must be made to Inland Revenue SPSS (Nottingham). A stakeholder Employer Contracting-out Number (ECON) will be allocated, and the scheme will be supervised by Inland Revenue SPSS (Nottingham) rather than COEG (see Part 22 for further guidance).

WHICH SCHEMES MAY CONVERT - GENERAL

23.5 A converting scheme must:

- be a retirement benefits scheme,
- be approved under Chapter I of Part XIV of ICTA 1988,
- be an occupational pension scheme for the purposes of section 1 of the Pension Schemes Act 1993/section 1 of the Pension Schemes (Northern Ireland) Act 1993,
- be a money purchase scheme (section 181 Pension Schemes Act 1993/section 1 Pension Schemes (Northern Ireland) Act 1993,
- adopt suitable rules for a personal pension scheme, and
- satisfy the valuation conditions (see paragraphs 23.16 - 23.20 below).

23.5a Converting schemes must include in the new rules of the scheme a provision that comes into operation if the scheme at any time mirrors the description of a SSAS in regulation 2 (1) of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991 [SI 1991 No 1614 as amended by SI 1998 No 728].

The provision is that should the scheme ever fall under this description, a pensioneer trustee must be appointed (see also glossary definition of authorised pension provider in Appendix 1).

23.5b If the member is in receipt of all or part of their benefits from the scheme as approved under Chapter I, then unless their rights under the scheme have been secured by the purchase of an annuity by the date of conversion, that member may not be included in the converting scheme.

Final salary schemes

23.6 These schemes will have to become money purchase schemes prior to the conversion application being made.

Simplified defined contribution schemes

23.7 Schemes which are simplified defined contribution schemes mentioned in Part 22 of PN are not required to satisfy the further conditions described in this Part of IR 76. Their application may be made without surplus checks, valuations or trustees’ statements on allocation of assets.

Common trust funds

23.8 Schemes operating as common trust funds must review their structure to ensure that, as a personal pension scheme, they are able to identify the assets held for each member, and allocate assets accordingly (see paragraph 23.20a).

Trust based schemes

23.9 These schemes will have to supply a supplementary deed with their application for approval (see paragraph 2.6). The deed should include provisions relating to pensioners and deferred pensioners whose rights relate to the period prior to conversion.

23.10 The deed mentioned in paragraph 2.6 (not to require the withdrawal of trust funds other than
as provided under the rules of the scheme) will not be necessary if the number of members \textit{converting} is 12 or more.

**Scheme documentation**

23.10a The \textit{converting} scheme must have, immediately prior to the date of change of approval, rules which fully comply with the Inland Revenue requirements for Chapter I approval at that time, i.e. all necessary rule amendments have been incorporated.

**Scheme investments**

23.10b The \textit{converting} scheme must hold as assets at the date of \textit{conversion} only assets which are acceptable under Chapter IV (see Part 11, Appendices 24 and 25).

If it is intended to \textit{convert} the scheme to a stakeholder pension scheme, the assets must also comply with the provisions of the Stakeholder Pension Schemes Regulations 2000 [SI 2000 No 1403, as amended].

23.10c If the scheme being \textit{converted} is a small self-administered scheme (SSAS), the \textit{scheme administrator} should consider whether any \textit{arrangements} within the scheme after \textit{conversion} are to be self-invested personal pensions (SIPPs). (See Part 11).

An \textit{arrangement} which is not a SIPP is not permitted to engage in any transaction with the scheme member or a person connected with the member (unless paragraph 4.32 applies). The full range of employer-related transactions permitted under Chapter I approval for a SSAS is therefore not allowed in Chapter IV non-SIPP \textit{arrangements} in the scheme after \textit{conversion}. Where a \textit{converting} SSAS chooses not to include SIPP \textit{arrangements} on conversion, the scheme will need to ensure that connected-party transactions do not take place after \textit{conversion}.

A SIPP arrangement may enter into a transaction with the member, or a person connected with the member, only in the specific circumstances described in paragraphs 11.14 and 11.16. The type of employer-related transactions permitted in a SIPP arrangement after \textit{conversion} from Chapter I to Chapter IV approval must therefore be limited to those circumstances.

It should also be borne in mind that employer-related investment will need to be limited to 5% of the scheme fund to meet the requirements of The Occupational Pension Schemes (Investment) Regulations 1996 (as amended by SI 2002 no 681).

**Preservation**

23.10d The conditions of tax approval under Chapter IV (unlike Chapter I) do not allow for repayment of contributions in the first two years of membership. The tax approval rules therefore override the discretion allowed to occupational pension schemes in Chapter I of the Pension Schemes Act 1993. The rules which are to govern the scheme after conversion must not therefore permit repayment of contributions on the grounds that membership has ceased within 2 years.

**Partial conversion**

23.11 A scheme may split into two parts and retain Chapter I approval for one part of the scheme, and obtain Chapter IV approval for the other (subject to paragraph 23.12 below). This may happen, for example, where some members do not wish their benefits to become subject to the personal pension regime. The scheme must be able to identify at any time which part of the scheme a member belongs to.

The scheme will then be treated by the Inland Revenue as two different schemes, each approved under different Chapters of ICTA 1988.

An individual may be a member of both of the separately approved parts. This may happen, for example, when someone has rights as an employee in one scheme and \textit{pension credit rights} in the other. Or when someone has rights relating to different parts of their career, or a member is...
entitled to concurrent membership of Chapter I and Chapter IV schemes.

NB Member contributions to the Chapter I scheme will be paid gross using the net pay arrangement. Member contributions to the Chapter IV scheme will be made net of basic rate tax under the relief at source method (see paragraph 5.10).

23.12 It is not possible to convert part of a Chapter I scheme to a stakeholder pension scheme, as the DWP stakeholder minimum requirements must relate to the whole scheme. If an employer wishes to have both a Chapter I scheme and a stakeholder pension scheme, it will be necessary to set up a separate contracted-out scheme for approval under Chapter IV and registration by Opra as a stakeholder pension scheme.

Surplus Funding

23.13 The conversion will take the form of a transfer of the fund. But the transfer will not be subject to the conditions of the Personal Pension Schemes (Transfer Payments) Regulations 2001. Instead, particular members will be subject to a funding check as stated in paragraph 23.17. The scheme will not be required to certify that it is not in surplus as a whole in relation to the conditions described in Part 13 of PN, but it should nonetheless ensure that any surplus funding is removed prior to conversion, since any reduction of a surplus by means of a payment to the scheme administrator of the Chapter IV approved scheme would prejudice the tax approved status.

23.13a The converting scheme must ensure that all regular actuarial valuations required on the scheme under Chapter I legislation have been carried out and submitted to Inland Revenue SPSS (Nottingham) by the due date, in relation to due dates which fall prior to the date of change of approval.

The legislation on conversion does not include provisions about how the views of members are sought in the process of a scheme reaching a decision whether to convert. This is a matter for the employer, the scheme trustees and the scheme administrator.

23.13b If the occupational pension scheme to be converted is under enquiry by any part of the Inland Revenue, the conversion application will not be considered. The application will be returned to the trustees, who should re-submit an application to convert when the enquiry is completed, if they still wish to convert the scheme at that time.

Can a scheme convert back?

23.14 No. The conversion is irrevocable, and there is no legal provision for any personal pension scheme to convert to a Chapter I scheme.

New Chapter IV part scheme

23.14a An existing Chapter I approved scheme may create a new section of the scheme, and apply for approval under Chapter IV for the new section. This is not a conversion as no members or funds are changing regimes. The application for Chapter IV approval should be made following the guidance in Part 13.

The same applies where an entirely new scheme is established with two sections, one under Chapter I and one under Chapter IV, both of which will apply separately for approval.

The result will be that the scheme receives two letters of approval, one for each section of the scheme (dual approval). Each part scheme will have its own date of approval, which may be different from that of the other part scheme.

HOW TO APPLY FOR CHAPTER IV APPROVAL/DUAL APPROVAL

23.15 The trustees/scheme administrator must:

- identify which employees are to move to the personal pension scheme,
• value the assets which are to provide their benefits, and

• either

- apply to Inland Revenue SPSS (Nottingham) to convert the whole scheme to Chapter IV approval, or

- apply to Inland Revenue SPSS (Nottingham) for the scheme to be split, and receive fresh Chapter IV approval in respect of the members who wish to transfer, while retaining Chapter I approval in respect of the rest of the membership.

**Application**

23.16 The application should include the following:

a) completed application form for conversion on form SHP 101 if a stakeholder pension scheme, or form PSPP 101 for other cases, signed by the trustees,

aa)

b) a copy of the deed of conversion,

c) if the model rules are adopted, a completed schedule specifying which of the optional parts (e.g. contracting-out) apply, and if the model rules are not adopted, a copy of the scheme rules,

d) the date from which the new rules are intended to apply,

e) confirmation that the scheme has identified the members to which the conversion relates (where dual approval is to apply),

f) confirmation that the scheme will be able to identify at any time the part of the scheme to which any member belongs (where dual approval applies),

g) confirmation for "prescribed members" (see paragraph 23.17) that the valuation checks have been carried out and the member satisfies the tests. The check required (see paragraph 23.18) is similar to the maximum benefit check for transfers for certain categories of individuals under the Personal Pension Schemes (Transfer Payments) Regulations SI 2001/119),

h) statements about the assets in respect of each member involved in the conversion,

- confirming that the assets have been identified (see paragraph 23.20a)

- stating how this was done (see paragraph 23.20a) and

- showing the extent that assets, or part of specific assets if applicable, have been earmarked for each member as part of the fund within Chapter IV approval,

i) confirmation that the valuation at g) above is in accordance with The Personal Pension Schemes (Conversion of Retirement Benefit Schemes) Regulations 2001 [SI 2001/118]. These valuations should be made no more than 3 months before the date of the scheme application to convert,

j) completed contracting-out forms (if the scheme is applying on conversion for stakeholder registration),

k) written confirmation from the employer, including any other employer participating in the scheme, showing consent to the making of the application to convert.
Which members need valuations?

23.17 The prescribed members who require their funds to be valued prior to conversion, are as follows:

- a "high earner", that is a person
  - aged 45 or over at the proposed date of conversion, and
  - who had earnings from an employment which is the subject of the conversion, and
  - those earnings arose in any tax year falling wholly or partly in the period of 6 years prior to the date of the scheme application to convert, and
  - those earnings exceeded the allowable maximum in force on the date the conversion application is made,

and

- any person who is, or who has been in the ten years prior to the date of the scheme application to convert, a controlling director;

and

- if a controlling director is a member of the converting scheme and will continue to be after conversion, any relative of the controlling director who is also converting will also be required to undergo a valuation check.

What is the valuation test?

23.18 The valuation test is set out in Appendix XI of the Practice Notes IR 12 (1997) (PN) or, for valuations made before 6 April 2001, in regulation 6 of the Personal Pension Schemes (Transfer Payments) Regulations 1988 [SI 1988/1014]. The check is carried out by comparing the proposed ‘transfer value’ with the amount produced from the calculation under Appendix XI or the formula in regulation 6(3), as appropriate.

What happens if the member's fund exceeds the permitted value?

23.19 If the value of the fund exceeds the permitted value, that member may not be a member of the converting scheme, until the fund value has become lower and does not exceed the permitted value. Inland Revenue SPSS (Nottingham) will not object to a reallocation of part of the member's fund to other scheme members to bring the member's fund within the permitted value. But for the member to be included in the conversion, a further valuation must be carried out prior to the date of intended conversion which shows the current value is within the permitted value.

Allocation of assets

23.20 The scheme trustees must provide statements with their application to convert the scheme (see paragraph 23.16 (h)). These statements deal with the change in status from what may be pooled assets for the purpose of Chapter I approval, to earmarking of assets for the purpose of Chapter IV approval.

23.20a The extent of change required will vary from scheme to scheme and indeed vary even within the Chapter IV regime.

- Example 1

A Chapter I approved scheme could be run on the basis of members holding units, and the only difference from member to member is in the number of units held. Such a structure could continue
within Chapter IV virtually unchanged. In such a set-up, the underlying assets within the scheme might be varied but the members’ interests are expressed in a common form.

- Example 2

Under Chapter I, the rights may be expressed in the form of notional earmarking of assets within a pooled fund. This is usually the case in a self-administered occupational pension scheme. One member may have particular assets shown as producing their rights, and those assets may differ to those used for another member. In this example, there can also be a continuation of form within Chapter IV so long as the separation of assets is clear, continuous, and known to all parties involved.

23.20b The trustees' statement (following any appropriate actuarial advice) should include a description of the way assets have been held under Chapter I approval, and an explanation of the principles according to which assets are to be held in future under Chapter IV approval.

23.20c The trustees’ statements accompanying an application for conversion should include sufficient information to show that any change required to the form of the scheme has been effected. If the statements are not sufficiently clear, Inland Revenue SPSS (Nottingham) may have to make further enquiries, which may delay the processing of the application. The trustees should produce a report of the position. This report, which should list the assets and indicate which asset or which proportion has been allocated to individual members, need not be referred to Inland Revenue SPSS (Nottingham) but the trustees may be asked to produce it at a later date.

23.20d In making the statements, the trustees (following advice as necessary) may choose to express them as in the following examples. These are illustrative only, and are not intended to be prescriptive. Scheme trustees should take advice as necessary, and provide statements which reflect the circumstances of their scheme.

- Illustration A

'We confirm that we hold a list of the assets of the scheme as at --/--/---- and that we have allocated, in relation to each member who is currently a member and who is to be a member in the personal pension scheme following conversion, specific assets in whole or in part to each of those members. We confirm also that each member has been informed of what assets, or type of assets, form the basis of their fund within the scheme.'

NB It is not necessary to actually earmark assets for each member - unless the scheme requires otherwise, the earmarking may be notional - providing each member is aware of the investments producing their benefits.

- Illustration B

'We confirm that the scheme assets for each member as allocated were identified by:

Continuation of the existing basis whereby assets had already been earmarked and whereby each member is aware of what assets, or type of assets they hold; or

Reviewing the existing basis of allocation of assets, and re-allocating by taking into account member’s known choices on how they want their contributions invested, or in a way which we believe fairly allocates the assets following consultation with members.'

- Illustration C

'We confirm that, for each current member who is to be a member in the personal pension scheme, that either whole assets have been allocated to the member’s fund or assets have been partly allocated to more than one member. This has been done as described in a report made by the trustees on --/--/---- which is available for inspection to an officer of the Board of Inland Revenue.'
ACTION ON RECEIVING A CONVERSION APPLICATION

23.21 Inland Revenue SPSS (Nottingham) will check the application and all accompanying documents, and either

- approve the application (see paragraphs 23.23 - 23.25 below), or
- reject the application (see paragraphs 23.26 - 23.27 below).

These applications are dealt with on a "process now, check later" basis, and the documents may be examined fully by Inland Revenue SPSS Audit at a later date.

23.22 If the scheme has also applied to Opra to be registered as a stakeholder pension scheme, Inland Revenue SPSS (Nottingham) will await the outcome of that application before approving the conversion application and the contracting-out forms (see Part 13 and Part 24).

Approval of conversion to a personal pension

23.23 If the conversion has been approved, Inland Revenue SPSS (Nottingham) will issue an approval letter which should be retained by the scheme provider.

The approval date will not be earlier than 6 April 2001. Subject to this, the approval date will usually be the date which was shown on the application form as the date from which the provider intended the new rules to apply.

23.24 If the scheme has also applied separately to Opra for stakeholder registration, the approval letter will not be issued until the stakeholder application has also been approved. If the scheme does not obtain stakeholder registration with Opra, it will not be approved under Chapter IV for tax purposes either.

The approval date will not be earlier than 6 April 2001. Subject to this, the approval date will usually be the date which was shown on the application form as the date from which the provider intended the new rules to apply.

23.25 If the converting scheme is applying to become a stakeholder pension scheme it will have also applied to Inland Revenue SPSS (Nottingham) electing to contract out of the State Second Pension. Inland Revenue SPSS (Nottingham) will also issue a fresh contracting-out certificate.

Conversion to a personal pension cannot be approved

23.26 If the new Chapter IV scheme does not meet tax approval or contracting-out requirements, Inland Revenue SPSS (Nottingham) will issue a letter explaining why it has been refused approval. The scheme will have to apply again, having made the appropriate changes, if it still wishes to convert to a Chapter IV scheme.

23.27 If the scheme has also applied for stakeholder pension scheme registration, the conversion will only be approved if the scheme both meets the DWP minimum requirements for a stakeholder pension scheme and obtains Chapter IV tax approval and contracted-out status. If the scheme fails to meet any of these requirements, Inland Revenue SPSS (Nottingham) or Opra, as appropriate, will write explaining why the application was refused or not proceeded with. The scheme may make a further application to convert once changes have been made (see Part 24).

TAX POSITION ON CONVERSION

23.28 There is no tax charge on conversion of the scheme. Section 591C (which applies a tax charge on certain schemes or part of such a scheme ceasing to be approved under Chapter I) has been amended and does not apply where the scheme loses its Chapter I approval as part of the process of conversion to Chapter IV.
Controlling directors: restrictions on benefits while scheme is operating under Chapter IV approval

23.29 Where a controlling director is a member of the scheme at the time of conversion and becomes a member of the scheme under Chapter IV approval, particular conditions apply to the benefits payable on retirement or death.

Retirement lump sum certificate

23.30 A lump sum may only be paid from the controlling director’s fund (as converted) if a certificate showing the amount payable as a lump sum is held by the trustees under Chapter IV approval. The amount shown on the certificate should be calculated as if a transfer payment was being made as set out in paragraphs 12.19–12.21, and may be increased by reference to the changes in the Retail Prices Index between the date the certified amount was calculated and the date of the scheme application for conversion. In the receiving Chapter IV scheme, the amount paid at pension date will be as stated in the rules governing transfer payments.

Death

23.31 On the death of a controlling director, the benefits paid from the converted fund will be the same as if the converted fund had been a transfer payment (see paragraph 12.23).
WHO IS OPRA AND WHAT IS ITS ROLE?

24.1 The Occupational Pension Schemes Regulatory Authority (Opra) is the UK regulator of pension arrangements offered by employers. Opra’s main aim is to get problems put right and achieve compliance with the law. It takes action on certain reported breaches of pensions legislation, and has the power to impose civil penalties on those responsible if the problems are significant or not put right in a timely manner. Opra maintains a register of UK pension schemes at the Pension Schemes Registry.

24.2 Under the Welfare Reform and Pensions Act 1999, Opra is also responsible for the registration of stakeholder pension schemes.

A scheme must be registered by Opra in order to be a stakeholder pension scheme.

24.3 Opra’s address and contact details are shown in Part 1 paragraph 1.5.

WHAT CONDITIONS DOES A SCHEME NEED TO SATISFY TO REGISTER AS A STAKEHOLDER PENSION SCHEME?

24.4 Stakeholder pension schemes must meet the conditions set out in Section 1 of the Welfare Reform and Pensions Act 1999, and The Stakeholder Pension Schemes Regulations 2000 [SI 2000 No 1403] (as amended), as set out below. References to regulations below are references to The Stakeholder Pension Schemes Regulations 2000 [SI 2000 No 1403] (as amended).

All stakeholder pension schemes

- The scheme must be established under trust or by deed poll. Where the scheme is established by deed poll, the manager of the scheme may enter into contracts with each member of the scheme or a person acting on their behalf.

- The scheme must provide money purchase benefits (within the meaning of section 181 of the Pension Schemes Act 1993).

- The scheme must not restrict membership on the basis of a member’s financial status, the amount of contributions to be made, or the manner in which contributions will be made to the scheme. This condition shall not prevent schemes from restricting membership by reference to employment with a particular employer or in a particular trade or profession, or membership of a particular organisation.

- The scheme must provide an investment option for any member who does not wish to make a choice about how contributions to the scheme or how any income or capital gain arising from it should be invested.

- The scheme must use all contributions, income or capital gains arising from the investment of contributions and the value of rights under the scheme in a way that results in the provision of benefits for members. The only exceptions to this are the deductions related to expenses and charges permitted under regulations 13 and 14. Further guidance on these requirements is contained in Opra Note 11 on Opra’s website at www.opra.gov.uk.

- The scheme’s winding up rule must specify the period and manner in which the scheme must be wound up (see paragraph 20.7).

- The scheme’s trustees or managers must comply with the requirements of section 113.
of the Pension Schemes Act 1993 and associated regulations in providing members and potential members with relevant information about the scheme.

- The scheme must accept transfer payments from other pension schemes, retirement annuity contracts, and other relevant annuity and insurance policies (see Part 12). As this includes contracted-out rights, all stakeholder schemes must be contracted out of the State Second Pension.

- The scheme must have tax approval under Chapter IV Part XIV of ICTA 1988.

- The trustees or managers of the scheme, or the scheme's fund manager, must ensure that the funds are invested with due regard to the need for diversification and suitability, having first obtained and considered proper advice from an authorised person.

- The trustees or managers of the scheme must ensure that there is a written statement of principles governing their decisions about the scheme's investments. The content of the statement of investment principles is covered in regulation 9 for deed poll schemes, and section 35 of the Pensions Act 1995 for schemes established under trust.

- The scheme must accept any contribution of £20 (net of basic rate income tax) or more.

- The trustees or managers of the scheme must provide members with an annual benefit statement in accordance with the requirements of regulation 18.

- In the event that the scheme changes the rules or manner in which charges and deductions are made, the trustees or managers of the scheme must provide members with an explanatory statement within one month of making the change.

- The trustees or managers must ensure that the assets of the scheme are invested in accordance with regulation 8. Where the assets are invested in a with profits fund, the trustees or managers must ensure that the requirements of regulation 15 are complied with.

- The trustees or managers of the scheme must appoint a reporting accountant in accordance with the requirements of regulation 11.

- The trustees or managers must make a declaration at least once a year containing the statements set out in regulation 12, including a statement from the scheme's reporting accountant. Further guidance on making the annual declaration is available on Opra's website at www.stakeholder.opra.gov.uk.

**Additional condition for schemes set up under trust**

- A scheme established under trust must ensure that at least one third of the total number of trustees, or directors in the case of a corporate trustee, are independent. This means that the trustees must not be connected with, or an associate of any person providing services to or managing the scheme, except where those services are trustee services. Where the scheme has less than three trustees or directors, at least one trustee or director must be independent. The meaning of connected and associated persons is defined in sections 249 and 435 of the Insolvency Act 1986 and section 74 of the Bankruptcy (Scotland) Act 1985.

**HOW TO REGISTER AS A STAKEHOLDER PENSION SCHEME**

24.5 To apply to register as a stakeholder pension scheme, the trustees or managers of the scheme must –

- obtain the application pack "Establishing a Stakeholder Pension Scheme" from Inland
Revenue SPSS (Nottingham) (see Part 13), and

- complete the appropriate application form for tax approval and return it to Inland Revenue SPSS (Nottingham), and

- complete the application form for stakeholder registration and return it to Opra with the registration fee of £200 (guidance on how to complete the form and pay the registration fee is contained within the application pack) and

- if the scheme is established under trust (see paragraph 2.5 and 2.6), each trustee (or director in the case of a corporate trustee) must also complete a questionnaire for Opra, to make sure that the individual is eligible to act as a trustee and is not disqualified under section 29 of the Pensions Act 1995, and

- ( ) apply to Inland Revenue SPSS (Nottingham) to be contracted out of the State Second Pension (see Part 22).

**Action by Opra and Inland Revenue SPSS (Nottingham)**

24.6 Opra and Inland Revenue SPSS (Nottingham) will each look at their application forms separately, and advise each other whether the conditions for registration, contracting out and approval, as appropriate, are met.

A scheme cannot be registered as a stakeholder pension scheme if it does not receive tax approval and a contracting-out certificate, and if an application to register as a stakeholder pension scheme is refused, the scheme's application will not be proceeded with for tax approval or contracting out purposes.

24.7 However, in their application to register a stakeholder pension scheme, the trustees or managers will have signed a declaration that the scheme meets all the conditions set out in paragraph 24.4 (above). Providing this is done, and Opra has no reasonable grounds to believe that the conditions will not be met, the scheme will be registered (subject to tax approval and a contracting-out certificate being obtained).

24.8 If they are unable to register the scheme as a stakeholder pension scheme, Opra will write to the trustees or managers of the scheme explaining why they have reached that decision.

If they are unable to approve the scheme for tax or contracting out purposes, Inland Revenue SPSS (Nottingham) will write to the applicant explaining why they have reached that decision.

Where all three applications are successful, Inland Revenue SPSS (Nottingham) will issue the scheme with a letter of approval and registration. ( ) The contracting-out certificate will be issued with the letter of approval.

**Publication of the register of Stakeholder Pension Schemes**

24.9 Opra's register of stakeholder pension schemes is published on the Internet at www.stakeholder.opra.gov.uk.
GLOSSARY OF TERMS USED IN THE GUIDANCE NOTES

**Act**


**Accruing Benefits**

Accruing benefits means, in relation to an *occupational pension scheme*, that section 645 applies to the office or employment to which the membership of the *occupational pension scheme* relates.

**Aggregate grossed up remuneration**

Aggregate grossed up remuneration has the meaning in s632B, and means the aggregate of remuneration from each office and each employment held on 5 April in that earlier year, grossed up in accordance with Article 3 of The Personal Pension Schemes (Concurrent Membership) Order 2000 [SI 2000 No.2318].

**Allowable maximum**

Allowable maximum is defined in section 640A and meant £60,000 for tax year 1989-1990. The most recent relevant indexed figures specified in Treasury Orders are as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Allowable Maximum</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990/91</td>
<td>£64,800</td>
</tr>
<tr>
<td>1991/92</td>
<td>£71,400</td>
</tr>
<tr>
<td>1992/93</td>
<td>£75,000</td>
</tr>
<tr>
<td>1993/94</td>
<td>£75,000</td>
</tr>
<tr>
<td>1994/95</td>
<td>£76,800</td>
</tr>
<tr>
<td>1995/96</td>
<td>£78,600</td>
</tr>
<tr>
<td>1996/97</td>
<td>£82,200</td>
</tr>
<tr>
<td>1997/98</td>
<td>£84,000</td>
</tr>
<tr>
<td>1998/99</td>
<td>£87,600</td>
</tr>
<tr>
<td>1999/00</td>
<td>£90,600</td>
</tr>
<tr>
<td>2000/01</td>
<td>£91,800</td>
</tr>
<tr>
<td>2001/02</td>
<td>£95,400</td>
</tr>
<tr>
<td>2002/03</td>
<td>£97,200</td>
</tr>
<tr>
<td>2003/04</td>
<td>£99,000</td>
</tr>
<tr>
<td>2004/05</td>
<td>£102,000</td>
</tr>
<tr>
<td>2005/06</td>
<td>£105,600</td>
</tr>
</tbody>
</table>
Annuitisation

Annuitisation is defined in section 634A(4A) (or 636A(5A) for a survivor) and means the application of part of the personal pension fund in the purchase of an annuity satisfying the conditions in section 634 (or 636 for a survivor).

Appropriate policy of insurance

Appropriate policy of insurance means a policy which fulfils the conditions set out in section 32A of the Pension Schemes Act 1993, together with the Occupational Pension Schemes (Discharge of Protected Rights on Winding up) Regulations 1996. The conditions relate to the nature of the policy provider; the assignment, surrender or commutation of the policy; the age on receiving the benefit; the charges; and the rights of the beneficiary to transfer, interim payments and information.

Approved converted scheme

Approved converted scheme is defined in section 630 (1) and means an approved personal pension scheme which is such a scheme by virtue of paragraph 3(2)(b) of Schedule 23ZA to the Income and Corporation Taxes Act 1988.

Approved profit sharing scheme

Approved profit sharing scheme is defined in section 638 (13) as having the same meaning as in Section 186.

Arrangement

Arrangement means a contractual arrangement made by an individual under a personal pension scheme. Benefits from different arrangements may be taken at different times and be paid in different forms. From 6 April 2001, benefits from a single arrangement may be taken at different times and in different forms.

Authorised pension provider (up to 5 April 2001)

Authorised pension provider (up to 5 April 2001) means one of the following:

- a person who is authorised under Chapter III of Part I of the Financial Services Act 1986 to carry on investment business and who carries on business of the following kind:
  - issuing insurance policies or annuity contracts, or
  - managing unit trust schemes authorised under section 78(1) of the Financial Services Act 1986
- an EC company which -
  - lawfully carries on long term business in the United Kingdom, or
  - lawfully provides long term insurance in the United Kingdom
- a building society within the meaning of the Building Societies Act 1986
- a pension company within the meaning of the Building Societies (Designation of Pension Companies) Order 1987 which is an associate of a building society within the meaning of section 18(17) of the Building Societies Act 1986
- an institution authorised under the Banking Act 1987
• a body corporate which is a subsidiary or holding company of an institution authorised under the Banking Act 1987, or is a subsidiary of a holding company of such an institution

• a recognised bank or licensed institution within the meaning of the Banking Act 1979

• an institution which
  - is a European institution within the meaning of regulation 3(1) of the Banking Coordination (Second Council Directive) Regulations 1992 and
  - conforms with the conditions and requirements of those Regulations.

**Authorised pension provider (from 6 April 2001)**

Authorised pension provider (from 6 April 2001) means one of the following:

• a person who is authorised under Chapter III of Part I of the Financial Services Act 1986 to carry on investment business and who carries on business of the following kind:
  - issuing insurance policies or annuity contracts, or
  - managing unit trust schemes authorised under section 78(1) of the Financial Services Act 1986.

• an EC company which:
  - lawfully carries on long term business in the United Kingdom (i.e. through a branch in respect of which such of the requirements of Part I of Schedule 2F to the Insurance Companies Act 1982 as are applicable have been complied with), or
  - lawfully provides long term insurance in the United Kingdom (i.e. such of the requirements of Part I of Schedule 2F to the Insurance Companies Act 1982 as are applicable have been complied with in respect of the insurance)

• a building society within the meaning of the Building Societies Act 1986

• a pension company within the meaning of the Building Societies (Designation of Pension Companies) Order 1987 which is an associate of a building society within the meaning of section 18(17) of the Building Societies Act 1986

• an institution authorised under the Banking Act 1987

• a body corporate which is a subsidiary or holding company of an institution authorised under the Banking Act 1987, or is a subsidiary of a holding company of such an institution

• a recognised bank or licensed institution within the meaning of the Banking Act 1979

• an institution which:
  - is a European institution within the meaning of regulation 3(1) of the Banking Coordination (Second Council Directive) Regulations 1992 and
  - conforms with the conditions and requirements of those Regulations.

• in the case of a personal pension scheme established under a trust or trusts, any
person not falling within any of the above categories, providing the following conditions are satisfied

- an application has been made for registration as a stakeholder pension scheme and the approval is conditional on that registration taking place, or

- it is an occupational pension scheme established under a trust for the purposes of the Pensions Acts, and the trust deed contains the following provisions which apply if the scheme is at any time a small self-administered scheme as defined in regulation 2(b) of the Personal Pension Schemes (Restriction on Discretion to Approve)(Establishment of Schemes under Trusts) Regulations 2000 [SI 2000 No. 2314]:

(a) one of the trustees must be a pensioneer trustee; and

(b) the pensioneer trustee’s appointment must not be capable of termination at any time, unless:

- the pensioneer trustee has died, or

- the pensioneer trustee is removed by an order of the court, or

- the pensioneer trustee is disqualified, suspended or prohibited under the Pensions Act 1995, or

- the pensioneer trustee has committed a fraudulent breach of trust in relation to the scheme and that is the reason for the termination, or

- the pensioneer trustee is replaced by another pensioneer trustee and the appointment of the other pensioneer trustee takes effect at the same time as the termination; and

(c) where the termination occurs by virtue of any of the first four listed events under the bullet point immediately above, the appointment of a successor to the pensioneer trustee of the scheme is made no more than 30 days after the termination.

Authorised pension provider (from 1 December 2001)

Authorised pension provider (from 1 December 2001) means one of the following:

- a person who has permission under Part 4 of the Financial Services and Management Act 2000 (FSMA 2000):
  - to effect or carry out contracts of long-term insurance (see Part II of Schedule 1 to the Financial Services and Management Act 2000 (Regulated Activities) Order 2001), or
  - to manage unit trust schemes authorised under section 243 of that Act.

- a firm which satisfies all of the following conditions:
  - its head office is situated in a State (other than the UK) which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2 May 1992, (an EEA firm), and
  - it is an undertaking pursuing the activity of direct insurance (within the meaning of Article 1 of the first life insurance directive (Council Directive of 5 March 1979 - No 79/267/EEC) or of the first non-life insurance directive (Council Directive of 24 July 1973 - No 73/239/EEC)) and which has received authorisation under Article 6 from its home state regulator,
- it has permission under paragraph 15 of Schedule 3 to the FSMA 2000 to effect or carry out contracts of long term insurance (see Part II of Schedule 1 to the FSMA 2000 (Regulated Activities) Order 2001), and
- it fulfils any one of the requirements under subsections (5), (6) or (7) of section 659B.

- a UK branch of an EEA firm which has permission under paragraph 4 of Schedule 4 to the FSMA 2000 (as a result of qualifying for authorisation under paragraph 2 of that Schedule) to manage unit trust schemes authorised under section 243 of that Act.
- an operator, trustee or depositary of a recognised collective investment scheme.
- an authorised open-ended investment company.
- a building society within the meaning of the Building Societies Act 1986.
- a person falling within section 840A(1)(b).
- a body corporate which is a subsidiary or holding company of a person falling within section 840A(1)(b) or is a subsidiary of the holding company of such a person.
- an institution which:
  - is an EEA firm of the kind mentioned in paragraph 5(a), (b) or (c) of Schedule 3 to the FSMA 2000, and
  - qualifies for authorisation under paragraph 12(1) or (2) of that Schedule, and
  - has permission under that Act to manage portfolios of investments.
- in the case of a personal pension scheme established under a trust or trusts, any person not falling within any of the above categories, providing the following conditions are satisfied:
  - an application has been made for registration as a stakeholder pension scheme and the approval is conditional on that registration taking place, or
  - it is an occupational pension scheme established under a trust for the purposes of the Pensions Acts, and the trust deed contains the following provisions which apply if the scheme is at any time a small self-administered scheme as defined in regulation 2(b) of the Personal Pension Schemes (Restriction on Discretion to Approve)(Establishment of Schemes under Trusts) Regulations 2000 [SI 2000 No. 2314]:
    (a) one of the trustees must be a pensioneer trustee; and
    (b) the pensioneer trustee's appointment must not be capable of termination at any time, unless:
      - the pensioneer trustee has died, or
      - the pensioneer trustee is removed by an order of the court, or
      - the pensioneer trustee is disqualified, suspended or prohibited under the Pensions Act 1995, or
      - the pensioneer trustee has committed a fraudulent breach of trust in relation to the scheme and that is the reason for the termination, or
the pensioneer trustee is replaced by another pensioneer trustee and the appointment of the other pensioneer trustee takes effect at the same time as the termination; and 

(c) where the termination occurs by virtue of any of the first four listed events under the bullet point immediately above, the appointment of a successor to the pensioneer trustee of the scheme is made no more than 30 days after the termination.

**Authorised unit trust**


Before 1 December 2001, authorised unit trust meant a trust authorised under either section 78 or paragraph 9 Schedule 15 Financial Services Act 1986.

**Basis year**

Basis year is defined in section 646B (1) and means any year of assessment in respect of which a member has provided the scheme administrator with the information needed to calculate the member's net relevant earnings for that year. The basis year earnings can validate contribution levels in the basis year itself and the five following tax years (unless the member has ceased to have earnings - see below). The member need not have actually been a member of the personal pension scheme concerned in the basis year.

The definition in section 646B (1) is modified by section 646D (2) where the member has ceased to have earnings. The basis year can then be any one of the reference years.

**Break year**

Break year is defined in section 646D(1)(a) and means any year of assessment in which a member of a personal pension scheme has no actual net relevant earnings, and which follows a cessation year.

**Building Society**

Building Society means a Building Society within the meaning of the Building Societies Act 1986.

**Cessation year**

Cessation year is defined in section 646D (1)(b) as a year of assessment preceding a break year, in which the member had actual relevant earnings.

**Contract based**

Contract based means a scheme not considered to be trust-based for the purposes of section 1(2) Welfare Reform and Pensions Act 1999.

**Controlling director**

Controlling director has the meaning given in paragraph 5(5) of Schedule 23 ICTA 1988.

**Controls**

Controls has the meaning given in section 416 ICTA 1988.

**Conversion or Convert**

Conversion or Convert means a scheme which is approved under Chapter I of Part XIV of ICTA 1988, but which applies to cease being approved in that way and instead receives approval under
Dependant

Dependant means a person who is financially dependent on the member or dependent on the member because of disability or who was so dependent at the time of the member’s death or retirement. An ex-spouse or former civil partner of the member who was in receipt of payments from the member up to his or her death in respect of, for example, a financial provision order under the Matrimonial Causes Act 1973 may be regarded as financially dependent on the member.

An adult relative who is not or was not supported by the member is not that member’s dependent. Subject to the following paragraphs a pension paid to an adult dependant who qualifies on grounds of financial dependency or disability may continue indefinitely.

Natural or adopted children of the member may automatically be regarded as dependent on the member if at the time of his or her death they were

   i) under 18

   ii) over 18 but continuing to receive full-time education or vocational training

   iii) dependent on the member because of disability.

Any pensions paid by reason of (i) and (ii) should cease when age 18 is reached or full-time education or vocational training ceases* whichever is the later. A pension paid by reason of (iii) may continue indefinitely.

Other children (i.e. neither natural nor adopted children of the member) may qualify as dependants only if they were financially dependent on the member, or dependent on the member by reason of disability. Any pensions paid to such children on grounds of financial dependence should cease when age 18 is reached or full-time education or vocational training ceases* whichever is the later. This ensures parity of treatment between offspring and other minor dependants. A pension paid because of dependency by reason of disability may continue indefinitely.

It is not necessary to show financial dependency for a person dependent on the member because of disability or in the case of widows, widowers or surviving civil partner. The latter automatically qualify for survivors’ benefits on the basis that partners in a legal marriage or civil partnership may always be assumed to be financially dependent on one another. But a partner not married to, or not in a civil partnership with, the member, whether of the same or opposite sex, can qualify for a survivor’s pension only if he or she were financially dependent on the member. Financial interdependence of the member and his or her partner would be an acceptable criterion, e.g. where the partner relied upon a second income to maintain a standard of living which had depended on joint income prior to the member’s death.

Whether or not a person is a dependant is a matter for scheme administrators to decide. The Inland Revenue SPSS (Nottingham) would not challenge their judgement provided they had acted in accordance with the scheme rules.

* A break of not more than an academic year between leaving school and taking up a confirmed place in full-time further education or vocational training will not be regarded as a cessation for this purpose, but it is for trustees to decide whether the pension should be paid during the break.

Designated scheme

Designated scheme means

- a retirement benefits scheme approved or being considered for approval under Chapter I Part XIV ICTA 1988
- a relevant statutory scheme (section 611A)
• a deferred annuity contract securing benefits which have accrued to the individual as a result of their membership of an occupational pension scheme.

**Earnings threshold**

Earnings threshold is defined in section 630(1) and means for the tax year 2001-02, £3,600. This figure may be amended every year by Treasury Order.

**Eligible scheme**

Eligible scheme is defined in paragraph 2 of Schedule 23ZA to the Finance Act 2000. An eligible scheme is a retirement benefits scheme which is approved under Chapter I of Part XIV of ICTA 1988, but only if

- it is an occupational pension scheme as defined in section 1 of the Pension Schemes Act 1993 or section 1 of the Pensions Schemes (Northern Ireland) Act 1993,

- it is a money-purchase scheme, as defined in section 181 of the Pension Schemes Act 1993 or section 176 of the Pension Schemes (Northern Ireland) Act 1993,

- any documents relating to the scheme which are prescribed under section 631(1) are such that the scheme is capable of being an approved personal pension scheme for the purposes of Chapter IV of Part XIV as from the date of the change, and

- it satisfies any other conditions that may be prescribed.

**Eligible shares**

Eligible shares is defined in section 638 (11) of ICTA 1988, and means shares which

- the member has exercised the right to acquire, or

- have been appropriated to the member,

in accordance with the provisions of a savings-related share option scheme, an approved profit sharing scheme or a share incentive plan.

**Existing approved scheme**

Existing approved scheme is defined in paragraph 28(1) of Schedule 23ZA of the Finance Act 2000. It means any personal pension scheme which is or has been approved under Chapter IV of Part XIV of ICTA 1988 before 6 April 2001.

**Higher level contributions**

Higher level contributions is defined in section 630 (1) and means in the case of any year of assessment, contributions in excess of the earnings threshold for the year.

**Income withdrawal fund**

Income withdrawal fund means a portion of the personal pension fund which is specified or described in an election for deferral as the portion of that fund to which the election relates.

**Insurer**

Insurer means an insurance company, an EC company or a friendly society as described in regulation 11 of the Personal and Occupational Pension Schemes (Protected Rights) Regulations 1996 (SI 1996/1537), and in section 659B of the Act.
Market value

Market value means the same as in section 272 of the Taxation of Chargeable Gains Act 1992.

Minimum contributions

Minimum contributions has the meaning given in section 45 of the Pension Schemes Act 1993 (formerly Section 3(1) of the Social Security Act 1986) and section 39 Pension Schemes (Northern Ireland) Act 1993 (formerly Part II of the Social Security (Northern Ireland) Order 1986).

Net relevant earnings

Net relevant earnings is defined in section 646(1) and generally means

- the amount of an individual’s relevant earnings for the year of assessment in question

less

- the amount of any deductions within section 646(2) which fall to be made from the relevant earnings in computing the individual’s total income for that year for tax purposes

but see also definition of allowable maximum.

Non protected rights

Non protected rights means the part of the member's fund under an arrangement which is not protected rights.

Occupational pension scheme

Occupational pension scheme means a scheme or arrangement approved under Chapter 1

- the object or one of the objects of which is the provision, in respect of persons serving in particular offices or employments, of relevant benefits within the meaning of section 612, and

- which is established by a person other than the individual, and

- which is of a description mentioned in section 596(1)(a), (b) or (c).

Pensions Acts


Pension credit rights


Pension date

Pension date means in relation to any arrangement (or part of an arrangement from 6 April 2001) the date on which

- an annuity is first payable, or

- the member elects to make income withdrawals from the arrangement.
Pension debit


Pensioneer Trustee

Pensioneer Trustee is defined in Regulation 2 (1) of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991, and means a trustee of a scheme who is approved by the Board to act as such, and is not connected with a scheme member, any other trustee of the scheme, or a person who is an employer in relation to the scheme.

Pension sharing order

Pension sharing order means a split of pension rights, arising after divorce under the provisions of the Welfare Reform and Pensions Act 1999.

Personal pension fund

Personal pension fund is defined in section 630 (1) and means the accrued rights to which an individual is entitled, conferring prospective entitlement to benefits under the arrangement.

Personal Pension Protected Rights Premium

Personal Pension Protected Rights Premium means a premium payable under section 55(1) of the Pension Schemes Act 1993 or section 51(6)(d) of the Pension Schemes (Northern Ireland) Act 1993

Personal pension scheme

Personal pension scheme means a scheme set up for the sole purpose of providing annuities, income withdrawals or lump sums for eligible individuals who have made arrangements under the scheme.

PN

PN followed by a number identifies a paragraph in the Practice Notes on Approval of Occupational Pension Schemes IR12 (2001).

Post cessation year

Post cessation year is defined in section 646D(4) and means any of the five years of assessment following the cessation year.

Protected rights

Protected rights means protected rights as defined in regulation 3 of the Personal and Occupational Pension Schemes (Protected Rights) Regulations 1996, but should be read as including safeguarded rights, wherever appropriate.

Qualifying annuitisation

Qualifying annuitisation is defined in section 634A(4A) (or 636A(5A) for a survivor) as an annuitisation in relation to a period of twelve months such as is mentioned in section 634A(4)(or 636A(5) for a survivor) if it has taken place in an earlier such twelve month period but since the relevant reference date.

Qualifying lump sum

Qualifying lump sum is defined in section 638ZA (3) and means a lump sum satisfying the
conditions of Section 635.

**Qualifying post cessation year**

Qualifying post cessation year is defined in section 646D (5) as any *post cessation year* where all of the following apply -

- the member has no actual *relevant earnings*, and
- throughout the year, the member does not hold an office or employment to which section 645 applies, and
- if it follows another *post cessation year*, that earlier year must also have been a qualifying post cessation year.

**Reference years**

Reference years is defined in section 646D (1)(c) and means the six years of assessment preceding the *break year*.

**Regulated individual**

Regulated individual means, in respect of any employment to which the transfer payment or any part of it relates,

- an individual who is, or was at any time during the period of ten years prior to the date of transfer, a *controlling director*, or
- an individual
  - whose annual remuneration is, or was for any year of assessment falling (wholly or partly) during the period of six years prior to the date of transfer, more than the *allowable maximum* for the year of assessment in which the transfer was made, and
  - who was aged 45 or over at the date of transfer.

Where the individual has left pensionable service without leaving the employment to which the transfer relates, the test will be made against the actual remuneration figure for each whole or part tax year occurring in the period of six years prior to the date of transfer.

**Relative**

Relative means, in relation to a *controlling director* (regulation 6 (4) of the Personal Pension Schemes (Conversion of Retirement Benefit Schemes) Regulations 2001 [SI 2001/118] -

- the *controlling director*'s *spouse or civil partner*,
- the *controlling director*'s brother, sister, parent or remoter forebear, child or remoter lineal descendant,
- the *spouse or civil partner* of a brother, sister, parent or remoter forebear, child or remoter lineal descendant of the *controlling director*, or
- a brother, sister, parent or remoter forebear, child or remoter lineal descendant of the *controlling director*'s *spouse or civil partner*. 
Relevant date

Relevant date is defined in section 638ZA (3) and means in relation to any qualifying annuity or election for deferral, the date determined in accordance with the arrangement on which either (a) the qualifying annuity commences, or (b) the member makes the election for deferral.

Relevant earnings

Relevant earnings is defined in section 644 and broadly means any income which is chargeable to UK tax for the year of assessment in question and is within the following:

- emoluments chargeable under Schedule E from an office or employment held by the individual (unless section 645 applies)
- income from any property which is attached to or forms part of the emoluments of an office or employment held by him (unless section 645 applies)
- income which is chargeable under Schedule D and is immediately derived from the carrying on or exercise of a trade, profession or vocation (either as an individual or as a partner acting personally or in a partnership)
- income from patent rights treated as earned income by virtue of section 529.

See Appendices 2 and 3 for easy-reference lists of income which counts/does not count as relevant earnings.

Relevant pension contribution

Relevant pension contribution is defined in section 640 (3A) and means a contribution paid towards securing benefits falling within paragraph (a), (b) or (c) of section 633(1) under arrangements made under a personal pension scheme on or after 6 April 2001.

Relevant percentage

Relevant percentage means

<table>
<thead>
<tr>
<th>Age on first day of tax year</th>
<th>% of net relevant earnings</th>
</tr>
</thead>
<tbody>
<tr>
<td>(6 April)</td>
<td></td>
</tr>
<tr>
<td>35 or less</td>
<td>17.5</td>
</tr>
<tr>
<td>36-45</td>
<td>20</td>
</tr>
<tr>
<td>46-50</td>
<td>25</td>
</tr>
<tr>
<td>51-55</td>
<td>30</td>
</tr>
<tr>
<td>56-60</td>
<td>35</td>
</tr>
<tr>
<td>61 or more</td>
<td>40</td>
</tr>
</tbody>
</table>

Relevant reference date

Relevant reference date is the date on which the income withdrawal limits must be reviewed and is defined in section 634A(5).

Remuneration limit

Remuneration limit was introduced by section 632B(4)(c) and means £30,000 in connection with
remuneration in any tax year being used to prove eligibility under section 632B(1)(d). This figure may be amended by Treasury Order. The figure relates to the amount shown for the year on the member's P60 and does not include any P11D benefits.

Requisite evidence

Requisite evidence is defined in Regulation 5(2)(e) of The Personal Pension Schemes (Relief at Source) Regulations 1996 (as amended).

Retirement benefits scheme

Retirement benefits scheme means a pension scheme approved under Chapter I, Part XIV of ICTA 1988.

Safeguarded Rights


Savings related share option scheme

Savings related share option scheme means a scheme which complies with the requirements of paragraph 1(1) of Schedule 9 to the Income and Corporation Taxes Act 1988.

Scheme administrator

Scheme administrator means the person resident in the United Kingdom who will be responsible for the management of the scheme.

Share incentive plan

Share incentive plan means an employee share ownership plan, which is defined in section 638(13) as having the same meaning as in Schedule 8 to the Finance Act 2000.

State Second Pension

State Second Pension means the additional state pension. The additional state pension pre-6 April 2002 was commonly known as SERPS (State Earnings-related Pension Scheme) but since 6 April 2002 has been known as the State Second Pension.

Survivor

Survivor means a widow, widower, surviving civil partner or dependant of a member who has died.

Total contributions

Total contributions is defined in paragraph 28(8) of Schedule 23ZA to the Finance Act 2000, and means

- the aggregate amount of the contributions made in the year by the member and any employer of his under the arrangement/s in question, together with
- the aggregate amounts of such contributions under other arrangements made by that member.

Trust based

Trust based means a scheme considered to be trust-based for the purposes of section 1(2) Welfare Reform and Pensions Act 1999 and to which all the conditions in Schedule 1 Welfare Reform and Pensions Act 1999 will apply.
Valuation period

Valuation period is defined in section 634A(5) and means a period of three years (or less if section 634A(5D) applies) between two consecutive relevant reference dates.
a2.1 The following income counts as relevant earnings:

- profits chargeable under Schedule D immediately derived from a trade, profession or vocation
- salary, wages, bonus, overtime, commission
- benefits in kind which are chargeable to tax under Schedule E (applies to employees earning over £8,500, and to directors)
- profit related pay (including the part which is not taxable)
- Statutory Sick Pay (SSP) and Statutory Maternity Pay (SMP) provided it is paid by the employer and chargeable under Schedule E
- Permanent Health Insurance (PHI) payments paid by the employer whilst the individual is still in employment
- furnished holiday lettings chargeable under Schedule D Case VI for the years 1982/83 - 1994/95
- furnished holiday lettings chargeable under Schedule A for the years 1995/96 onwards
- salary paid by way of Government Securities
- Enterprise Allowance payments chargeable under section 127
- post-cessation receipts which qualify as earned income under section 107
- remuneration paid in the form of units in an authorised unit trust provided it is treated, on receipt, as a taxable emolument of the individual
- income from woodlands provided it is treated for tax purposes as immediately derived from the carrying on of a trade
- patent rights treated as earned income under section 529
- sub-postmaster’s retirement gratuities
- payments made to local councillors which are chargeable under Schedule E
- amounts deducted from salary to purchase partnership shares in a share incentive plan provided they qualify as such under paragraph 83 of Schedule 8 of Finance Act 2000
- employer contributions to a funded unapproved retirement benefit scheme (FURBS) which are assessable on the employee, provided the FURBS is the only scheme of the employer of which the employee is a member.
a3.1 The following income does not count as relevant earnings:

- income from an employment which is pensioned under an *occupational pension scheme* (section 645)
- redundancy and termination payments chargeable to tax under section 148 (golden handshakes)
- income arising from the acquisition or disposal of shares or an interest in shares or from a right to acquire shares
- emoluments received by an individual as a *controlling director* of an investment company
- earnings falling within section 644(6A) (see Appendix 8 or, from 6 April 2001, Appendix 19)
- pensions (a pension is not remuneration from an office or employment)
- all benefits paid by the State, including Invalid Care Allowance, Working Family Tax Credit and Disabled Person’s Tax Credit
- grants paid by local authorities to foster parents
- Statutory Sick Pay and Statutory Maternity Pay paid by the DWP
- except for directors, benefits in kind where earnings from the employment are less than £8,500 (such benefits are not taxable)
- Permanent Health Insurance (PHI) paid directly to the individual by the insurance company after the employment has ceased
- partnership retirement annuities
- client’s account interest assessed under Schedule D Case III
- earnings from international organisations which are exempt from UK tax by reason of a statutory instrument, including
  - United Nations
  - World Health Organisation
  - International Sugar Organisation
  - International Coffee Organisation
  - International Cocoa Organisation
  - International Maritime Satellite Organisation
  - “foreign emoluments” chargeable under section 192 where the individual is a member of a “corresponding” overseas pension scheme
- employer contributions to a funded unapproved retirement benefit scheme (FURBS) where the employee is also a member of an approved *occupational pension scheme*. 
a4.1 The self-employed earner’s personal pension contributions certificate (PPCC) has been withdrawn from this manual: it ceased to be required for first contributions paid on or after 6 April 2001.
a5.1 The employed earner’s personal pension contributions certificate (PPCC) has been withdrawn from this manual: it ceased to be required for first contributions paid on or after 6 April 2001.
The Inland Revenue Savings, Pensions, Share Schemes has approved the scheme as a Personal Pension Scheme for the purposes of Chapter IV, Part XIV Income and Corporation Taxes Act 1988 under reference SF__/______/____

The scheme administrator is XYZ Administration Ltd

10 Annuity Street

Anytown

AN1 9EJ

Name of Member _____________________ Membership number _____________________

Date of Birth _____________________

National Insurance Number _______________________

The member paid a contribution to the scheme on ___________________. This amounted to £_____________ net of basic rate tax [and included £_____________ to be used to provide a lump sum on death]*.

NOTES

1 This certificate is not a guarantee that contributions will qualify for tax relief. It is issued for the purpose of production to the Inland Revenue and is of no value for any other purpose.

2 The amounts shown on this certificate are exclusive of Minimum Contributions paid by the Department of Social Security under the Pension Schemes Act 1993.#

# Delete if member is self-employed or not employed.

* Delete if not applicable
a7.1 The Supplementary Personal Pension Contributions Certificate (PPCC) has been withdrawn from this manual: it ceased to be required for first contributions paid on or after 6 April 2001.
a8.1 The Inland Revenue Certificate of Eligibility has been withdrawn from this manual: it ceased to be required for first contributions paid on or after 6 April 2001.
a8a.1 The Inland Revenue Certificate of Eligibility has been withdrawn from this manual: it ceased to be required for first contributions paid on or after 6 April 2001.
a8b.1 The notes on the Inland Revenue Certificate of Eligibility have been withdrawn from this manual: the certificate ceased to be required for first contributions paid on or after 6 April 2001.
a8c.1 Form A for the Inland Revenue 5 Yearly Check has been withdrawn from this manual: the form ceased to be required for first contributions paid on or after 6 April 2001.
a8d.1 Form B for the Inland Revenue 5 Yearly Check has been withdrawn from this manual: the form ceased to be required for first contributions paid on or after 6 April 2001.
a8e.1 Forms for the Inland Revenue 5 Yearly Check have been withdrawn from this manual: they ceased to be required for first contributions paid on or after 6 April 2001.
Appendix 9: Connected Persons

INCOME AND CORPORATION TAXES ACT 1988

S839
(1) For the purposes of, and subject to, the provisions of the Tax Acts which apply this section, any question whether a person is connected with another shall be determined in accordance with the following provisions of this section (any provision that one person is connected with another being taken to mean that they are connected with one another).

(2) A person is connected with an individual if that person is the individual's spouse or civil partner, or is a relative, or the spouse or civil partner of a relative, of the individual or of the individual's spouse or civil partner.

(3) A person, in his capacity as trustee of a settlement, is connected with-

(a) any individual who in relation to the settlement is a settlor,

(b) any person who is connected with such an individual, and

(c) any body corporate which is connected with that settlement.

In this subsection "settlement" and "settlor" have the same meaning as in Chapter IA of Part XV (see Section 660G(1) and (2)).

(3A) For the purpose of subsection (3) above a body corporate is connected with a settlement if:

(a) it is a close company (or only not a close company because it is not resident in the United Kingdom) and the participators include the trustees of the settlement; or

(b) it is controlled (within the meaning of Section 840) by a company falling within paragraph (a) above.

(4) Except in relation to acquisitions or disposals of partnership assets pursuant to bona fide commercial arrangements, a person is connected with any person with whom he is in partnership, and with the spouse or civil partner or relative of any individual with whom he is in partnership.

(5) A company is connected with another company -

(a) if the same person has control of both, or a person has control of one and persons connected with him, or he and persons connected with him, have control of the other; or

(b) if a group of two or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person with whom he is connected.

(6) A company is connected with another person if that person has control of it or if that person and persons connected with him together have control of it.

(7) Any two or more persons acting together to secure or exercise control of a company shall be treated in relation to that company as connected with one another and with any person acting on the directions of any of them to secure or exercise control of the company.

(8) In this section -

"company" includes any body corporate or unincorporated association, but does not include a partnership, and this section shall apply in relation to any unit trust scheme as if the scheme were a company and as if the rights of the unit holders were shares in
the company;
“control” shall be construed in accordance with Section 416;

and

“relative” means brother, sister, ancestor or lineal descendant.

In relation to any period during which Section 470(2) has effect the reference above to a unit trust scheme shall be construed as a reference to a unit trust scheme within the meaning of the Prevention of Fraud (Investments) Act 1958 or the Prevention of Fraud (Investments) Act (Northern Ireland) 1940.
### PERSONAL PENSION SCHEMES

a10.1 The list below shows for certain professions and occupations the pension ages agreed by the Inland Revenue under the provisions of Section 634(3)(b) Income and Corporation Taxes Act 1988. Individuals in other professions and occupations may not take benefits from their pension arrangements before age 50. (See Part 8 of IR 76 - Guidance Notes on Personal Pensions.)

<table>
<thead>
<tr>
<th>PROFESSION OR OCCUPATION</th>
<th>RETIREMENT AGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Athletes</td>
<td>35</td>
</tr>
<tr>
<td>Badminton Players</td>
<td>35</td>
</tr>
<tr>
<td>Boxers</td>
<td>35</td>
</tr>
<tr>
<td>Cricketers</td>
<td>40</td>
</tr>
<tr>
<td>Cyclists</td>
<td>35</td>
</tr>
<tr>
<td>Dancers</td>
<td>35</td>
</tr>
<tr>
<td>Divers (Saturation, Deep Sea and Free Swimming)</td>
<td>40</td>
</tr>
<tr>
<td>Footballers</td>
<td>35</td>
</tr>
<tr>
<td>Golfers</td>
<td>40</td>
</tr>
<tr>
<td>Ice Hockey Players</td>
<td>35</td>
</tr>
<tr>
<td>Jockeys - Flat Racing</td>
<td>45</td>
</tr>
<tr>
<td>Jockeys - National Hunt</td>
<td>35</td>
</tr>
<tr>
<td>Members of the Reserve Forces</td>
<td>45</td>
</tr>
<tr>
<td>Models</td>
<td>35</td>
</tr>
<tr>
<td>Motor Cycle Riders (Motocross or Road Racing)</td>
<td>40</td>
</tr>
<tr>
<td>Motor Racing Drivers</td>
<td>40</td>
</tr>
<tr>
<td>Rugby League Players</td>
<td>35</td>
</tr>
<tr>
<td>Rugby Union Players</td>
<td>35</td>
</tr>
<tr>
<td>Skiers (Downhill)</td>
<td>30</td>
</tr>
<tr>
<td>Snooker/Billiards Players</td>
<td>40</td>
</tr>
<tr>
<td>Speedway Riders</td>
<td>40</td>
</tr>
<tr>
<td>Squash Players</td>
<td>35</td>
</tr>
<tr>
<td>Table Tennis Players</td>
<td>35</td>
</tr>
<tr>
<td>Tennis Players (including Real Tennis)</td>
<td>35</td>
</tr>
</tbody>
</table>
Trapeze Artistes  40
Wrestlers  35

NOTES

1- The pension age shown applies only to pension arrangements funded by contributions paid in respect of the relevant earnings from the occupation or profession carrying that age. If an individual wishes to make pension provisions in respect of another source of relevant earnings to which the pension age shown above does not apply then a separate arrangement, with a pension age within the normal range, must be made.

2- The ages shown above for professional sportsmen apply only to arrangements made in respect of relevant earnings from activities as professional sportsmen e.g. tournament earnings, appearance and prize money. They do not apply to relevant earnings from sponsorship or coaching for which, if desired, a separate arrangement with a pension age within the normal range should be made.
THE PENSIONS EARNINGS CAPS - CONCURRENT EMPLOYMENTS

a11.1 Two or more pensionable associated offices or employments. The cap applies to the aggregate earnings (Section 590(3)(e) ICTA).

a11.2 Two or more pensionable non-associated offices or employments. The cap applies separately to each pensionable employment.

a11.3 Two or more non-pensionable sources of earnings. The Section 640A ICTA cap on net relevant earnings available for personal pension scheme contributions applies to the aggregate net relevant earnings, whether or not the sources are associated, and irrespective of the Schedule under which the income is assessed.

a11.4 One or more pensionable office or employment plus one or more non-pensionable office or employment. Where the pensionable and non-pensionable employments are associated Section 646A ICTA applies. Where they are not associated the earnings caps apply to each source of earnings pensionable through an occupational scheme (unless these sources are themselves associated - see 1. Above), and separately to the aggregate non-pensionable net relevant earnings for personal pension scheme contributions.

a11.5 One or more pensionable offices or employments plus one or more sources of earnings assessable under Schedule D. The earnings cap applies to the pensionable earnings, in aggregate if the employments are associated, otherwise separately. The separate cap applies to the aggregate net relevant earnings for personal pension scheme contribution purposes. No account is taken of any association between the Schedule D and Schedule E sources.

WHEN ARE OFFICES OR EMPLOYMENTS ASSOCIATED

a11.6 Two or more offices or employment held by an individual in a year of assessment are associated in that year if the employers in question are associated at any time during it. Employers are associated if (directly or indirectly) one is controlled by the other or if both are controlled by a third person. Control, in relation to a body corporate, shall be construed

- where the body corporate is a close company, in accordance with Section 416, and
- where it is not, in accordance with Section 840.

a11.7 Section 646A applies if, in the year of assessment in question,

- an individual holds two or more offices or employment which are associated in that year,
- one or more of them is an office or employment to which Section 645 applies (a pensionable job), and
- one or more of them is an office or employment to which Section 645 does not apply (a non pensionable job).

In these circumstances, section 646A restricts the amount of net relevant earnings which may be pensioned under a personal pension scheme to the allowable maximum less the emoluments for that year from the pensionable job. (Alternatively, contributions up to the earnings threshold may be made, if this is a higher figure).
Examples

A. Emoluments for 1999/00 from pensionable job £70,000
   Emoluments for 1999/00 from non-pensionable job £40,000
   NRE £20,600

B. Emoluments for 1999/00 from pensionable job £100,000
   Emoluments for 1999/00 from non-pensionable job £40,000
   NRE NIL
### Appendix 12: Interaction of Retirement Annuity Relief & Personal Pension Relief

#### a12.1

**EXAMPLE**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Age at beginning of year</td>
<td>48</td>
<td>49</td>
<td>50</td>
<td>51</td>
<td>52</td>
<td>53</td>
</tr>
</tbody>
</table>

#### Net relevant earnings

- (for RAR) £20,000 £100,000 £80,000 £50,000 £40,000 £60,000
- (for PPR) £20,000 £78,600 £80,000 £50,000 £40,000 £60,000

#### Percentage limit

- (For RAR) 17.5 17.5 17.5 20 20 20
- (For PPR) 25 25 25 30 30 30

#### Maximum percentage relief

- (For RAR) £3,500 £17,500 £14,000 £10,000 £8,000 £12,000
- (For PPR) £5,000 £19,650 £20,000 £15,000 £12,000 £18,000

#### Retirement Annuity Premium/PP contribution

- £2,000 £15,000 £2,000 NIL £4,000 £12,000
- £1,000 £500 £900 £24,250 £6,000 £24,200

#### Relief allowed

- (For RAR) £2,000 £15,000 £2,000 NIL £4,000 £12,000
- (For PPR) £1,000 £500 £900 £24,250 £6,000 £13,900
- (For TOTAL) £3,000 £15,500 £11,000 £24,250 £10,000 £25,900

#### Unused Relief

<table>
<thead>
<tr>
<th>UNUSED RELIEF</th>
<th>RAR</th>
<th>PPR</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Maximum percentage less total allowed relief)</td>
<td>£500</td>
<td>£2,000</td>
</tr>
<tr>
<td></td>
<td>£2,000</td>
<td>£4,150</td>
</tr>
</tbody>
</table>

#### Balance Carried Forward to following year

<table>
<thead>
<tr>
<th>RAR</th>
<th>PPR</th>
</tr>
</thead>
<tbody>
<tr>
<td>NIL</td>
<td>NIL</td>
</tr>
<tr>
<td>£500</td>
<td>£2,000</td>
</tr>
<tr>
<td>£2,500</td>
<td>£6,150</td>
</tr>
<tr>
<td>£5,500</td>
<td>£15,150</td>
</tr>
<tr>
<td>NIL</td>
<td>£5,900</td>
</tr>
<tr>
<td>NIL</td>
<td>£7,900</td>
</tr>
</tbody>
</table>

#### Unsued Relief Utilised

<table>
<thead>
<tr>
<th>RAR</th>
<th>PPR</th>
</tr>
</thead>
<tbody>
<tr>
<td>NIL</td>
<td>NIL</td>
</tr>
<tr>
<td>(See Note 1)</td>
<td>NIL</td>
</tr>
<tr>
<td>(See Note 1)</td>
<td>£9,250</td>
</tr>
</tbody>
</table>

#### Note 1: If there is an insufficient balance of unused relief from the preceding year the amount to be utilised is the amount of the balance.

#### Note 2: The total PP relief available must be reduced by the RAR. The excess PP contribution of £10,300 must be refunded.
a13.1 This form has been revised and re-located to the Inland Revenue website at 'www.inlandrevenue.gov.uk'. The last version to have been available in print on the paper version of this manual was the 1998 version. This earlier version should no longer be used.
Appendix 14 : Form PP 14

a14.1

Inland Revenue
Personal Pension/Additional Voluntary Contribution Schemes

Year ended 5 April 19
Annual claim by scheme administrator to recover amounts deducted by individuals

FICO (PP)
St John's House
Merton Road
BOOTLE
Merseyside L69 9BB

You should complete this form and return it to me at the above address by 6 October

Application

I, the scheme administrator named overleaf, apply for recovery of the balance of any amount of the above income tax year.

This application is made in accordance with all Regulations made under Section 639(2)-(5) Income and Corporation Taxes Act 1988 and/or Section 612(3) Income and Corporation Taxes Act 1988.

Certificate

I certify that

1. all records required by the Regulations are being kept;
2. the claim relates only to contributions for which relief is given under Section 639(1) Income and Corporation Taxes Act 1988 or Section 592(7) Income and Corporation Taxes Act 1988;
3. the sum claimed takes account of any interim claims made;
4. the scheme administrator agrees to account to the Board of Inland Revenue for any excess amount claimed;
5. the statements on this form are true and correct in all aspects to the best of my knowledge and belief.

Signature of authorised officer ______________________________ Date ______________________________
Report any changes separately

External Auditor's Report

We have examined the records of contributions received kept by ______________________________
for the purposes of the Regulations made under Section 639(2)-(5) Income and Corporation Taxes Act 1988 and/or Section 612(3) Income and Corporation Taxes Act 1988 for the period covered by the annual claim.

In our opinion appropriate records have been maintained by ______________________________
and the amounts included in Parts 1-5 are in accordance with those records.

Signature of Appointed Auditor ______________________________ Date ______________________________

Auditor's name and address ______________________________ Postcode ______________________________
Annual Claim

Please make sure that you fold page 4 under this page and insert a sheet of carbon paper before completion

Year ended 5 April 1999

Name of scheme administrator

Ref No

Liaison Officer (report any changes separately)

Name: __________________________ Telephone number: ___________ Ext: ______

Name of scheme administrator’s bank

Bank account number: ________ Bank sorting code: __________

Note: The appointed liaison officer should give FICO (PP) full details of any change in the Bank Account Information in a separate letter.

Part 1 Statement of contributions received and amount claimed

<table>
<thead>
<tr>
<th>FSAVCS</th>
<th>PPS</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>£</td>
<td>£</td>
<td>£</td>
</tr>
<tr>
<td>Contributions received from Individuals £</td>
<td>£</td>
<td>£</td>
</tr>
<tr>
<td>Amount claimed £</td>
<td>£</td>
<td>£</td>
</tr>
</tbody>
</table>

£    + £     = £  A

Part 2 Details of excess relief (Schedule attached in accordance with the Regulations, if not already provided)

<table>
<thead>
<tr>
<th>FSAVCS</th>
<th>PPS</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>£</td>
<td>£</td>
<td>£</td>
</tr>
<tr>
<td>Excess Contributions received £</td>
<td>£</td>
<td>£</td>
</tr>
<tr>
<td>Excess relief obtained £</td>
<td>£</td>
<td>£</td>
</tr>
</tbody>
</table>

£     + £ = £   B

Part 3

Net amount claimed (A - B)

C £

Net payment due (B - A)

D £

Part 4 Details from Interim claims/statements made during the year

Net payments received from the Inland Revenue i.e where amounts recovered exceeded excess relief payments E £

or

Net payments made to the Inland Revenue i.e where excess relief payments exceeded amounts recovered F £

Part 5 Details of amounts now claimed or excess relief repayable

Amount now claimed - (C - E), (C + F), or (F - D) to be paid by the Inland Revenue G £

Excess relief repayable - (D - F), (D + E) or (E - C) to be paid to the Inland Revenue per cheque enclosed H £

If your address has changed or is going to do so please let us know as soon as you can

For official use only

<table>
<thead>
<tr>
<th>Amount of this claim £</th>
<th>Show net refund in red £</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount b/f from £</td>
<td></td>
</tr>
<tr>
<td>Total repayment £</td>
<td></td>
</tr>
</tbody>
</table>

Initals __________________________

Date __________
Summary of Schemes

**Personal Pensions**

**Year ended 5 April**

**Arrangements with DSS minimum contributions only**

- Number of arrangements
- Contributions received from DSS £

**Arrangements with both DSS minimum contributions and individuals' contributions**

- Number of arrangements
- Contributions received from DSS £
- Individual £
- Total contributions received £

**Arrangements with contributions from DSS, individual and employer**

- Number of arrangements
- Contributions received from DSS £
- Individual £
- Employer £
- Total contributions received £

**Other types of arrangement**

- Number of arrangements
- Contributions received from DSS £
- Individual £
- Employer £
- Total contributions received £

**Freestanding AVC Schemes**

- Number of contracts
- Total contributions received from individuals £
Name of scheme administrator ___________________________ Ref No ___________________________

### Part 1  Statement of contributions received and amount claimed

<table>
<thead>
<tr>
<th></th>
<th>FSAVCS</th>
<th>PPS</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>01</td>
<td>02</td>
<td>03</td>
</tr>
<tr>
<td></td>
<td>04</td>
<td>05</td>
<td>06</td>
</tr>
</tbody>
</table>

### Part 2  Details of excess relief

<table>
<thead>
<tr>
<th></th>
<th>FSAVCS</th>
<th>PPS</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>07</td>
<td>08</td>
<td>09</td>
</tr>
<tr>
<td></td>
<td>10</td>
<td>11</td>
<td>12</td>
</tr>
</tbody>
</table>

### Part 3

<table>
<thead>
<tr>
<th></th>
<th>13</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>14</td>
</tr>
</tbody>
</table>

### Part 4  Details from Interim claims/statements made during the year

<table>
<thead>
<tr>
<th></th>
<th>15</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>16</td>
</tr>
</tbody>
</table>

### Part 5  Details of amounts now claimed or excess relief repayable

<table>
<thead>
<tr>
<th></th>
<th>17</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>18</td>
</tr>
</tbody>
</table>
a15.1 Form PP 21 has been withdrawn from this manual: it ceased to be required for scheme applications from 6 April 2001 - these details are now shown on the application form for approval under Chapter IV (PSPP 101 or SHP 101 - as appropriate).
Appendix 16 (withdrawn)

16.1 Form PP 42 has been withdrawn from this manual: it is not to be used after 31 January 2002.
a17.1 This form has been revised and re-located to the Inland Revenue website at ‘www.inlandrevenue.gov.uk’. The last version to have been available in print on the paper version of this manual was the 1998 version. This earlier version should no longer be used.
INTRODUCTION

Initial meeting

a18.1 At the initial meeting, auditors will

- explain the aims and objectives of the audit;
- outline the format of the audit;
- explain the basis of sampling and the intended levels of confidence and accuracy;
- confirm that the members of staff named in the pre-audit questionnaire will be available during the period of the audit; and
- confirm that the records requested in the notice of audit and/or pre-audit questionnaire are available for inspection.

a18.2 Auditors will record the points discussed at the meeting.

Review of systems and controls

a18.3 Auditors will undertake a review of systems and controls to

- establish the nature and extent of the systems in place;
- identify any internal controls; and
- assess whether the systems and controls in place enable the scheme administrator to administer tax relief at source in accordance with the obligations under the Taxes Acts

a18.4 When undertaking the systems review, auditors will

- ascertain, by discussion with the appropriate members of the staff
  - The system(s) in place, and
  - The internal controls relating to each audit objective;
- follow one transaction through the system from beginning to end for each system in place - a “walkthrough” test; and
- test the internal controls to establish their effectiveness.

a18.5 Auditors will record details of

- each system identified and its internal controls either by means of narrative notes or flowcharts;
- the results of any walkthrough tests;
- the way in which internal controls have been tested; and
- their assessment of the effectiveness of the internal controls.
Sampling

a18.6 Auditors, normally select a general sample of arrangements at random. However, other methods of sampling, for example samples taken at regular intervals, may be used depending on how scheme administrators’ records are kept.

a18.7 In addition to the general sample, auditors take particular samples from those areas of business which sometimes give rise to specific problems. These include, for example

- carry back and carry forward cases; and
- change of status cases.

a18.8 The general sample will be selected from the total number of arrangements within the scheme to check scheme administrators have

- correctly calculated the amounts claimed in respect of such arrangements; and
- taken appropriate action in relation to events such as
  - change of employer;
  - renewal of certificates of eligibility; and
  - issue of forms PPCC.

a18.9 The size of the sample will vary for scheme administrators depending on the number of arrangements held. The sample will be large enough

- to enable auditors to determine whether there is evidence suggesting that claims may have been made incorrectly, or that scheme administrators have failed to comply with their obligations under the Personal Pensions (Relief at Source) Regulations; and
- to provide the basis of agreement of the amount of any overclaim.

a18.10 Auditors will always explain the basis of sampling.
OBJECTIVE 1
Interim Claims

a18.11 To check that

- claims are supported by detailed listings with page sub-totals;
- claims are based on contributions paid in the period of the claim and at the correct rate of tax (for example, after carry back elections);
- unmet contributions are reflected in the claim (for example, failed direct debits);
- refunded contributions are reflected in the claim (including ‘cooling off’ cases);
- ineligible contributions are excluded (waivers - employers - self-employed - DWP); and
- where contributions are paid after commission the relief is based on actual contributions paid.

a18.12 Auditors will select a recent interim claim.

a18.13 Auditors will

- establish the scheme administrator’s procedures when completing claims;
- obtain a detailed listing of all members included in the claim and reconcile this, together with any additional documentation, to the amounts reflected on the form PP10;
- ask the scheme administrator to identify a sample of failed net PP cases around the period of the claim being audited;
- ask the scheme administrator to identify a sample of cancellation cases both inside and outside the cooling off period no later than the period of the claim being audited;
- ask the scheme administrator to identify a sample of cases where PP contributions have been waived.

a18.14 Auditors will record full details of the findings on a sample sheet. This will include errors where any of the conditions are not met.
OBJECTIVE 2

Annual Claims

a18.15 To determine and agree the reasons for any difference between the annual claim and the sum of the interim claims.

a18.16 Auditors will select the latest annual claim.

a18.17 Auditors will check the amount claimed on the annual claim agrees with the total of the amounts claimed in the interim claims for the year of claim and if there is any difference, establish the reason(s).

a18.18 Auditors will record full details of the findings on a sample sheet. This will include error(s) where significant differences have arisen through any error by the scheme administrator.
OBJECTIVE 3

Application Forms and Certificates of Eligibility

a18.19 To check that

- application forms and certificates of eligibility are fully complete and include all the required particulars and declarations;
- certificates of eligibility are in accordance with the Guidance Notes (Booklet IR76);
- replacement certificates of eligibility are obtained after five years; and
- PPCCs are not issued before the end of the ‘cooling-off’ period.

a18.20 Auditors will select a random sample of 60 cases from the support provided for the interim claim which was subject to audit. Further cases, identified from a general scrutiny of the listing for large or unusual amounts, may be examined.

a18.21 For each case, auditors will

- check that an application form is held which has been completed in full and signed by the individual;
- check that a certificate of eligibility is held which has been completed and signed by the individual;
- check whether the most recent certificate of eligibility was received more than 5 years ago; and
- check that the PPCC was not issued until after the end of the ‘cooling-off’ period.

No application form held

a18.22 A personal pension contribution should not be accepted without a fully completed application form. However, in cases where there is good evidence that an application form was held but has been lost, auditors will not treat the arrangement as invalid.

Incomplete application form

a18.23 Auditors will not treat an arrangement as invalid, where the full name is not given, providing the individual can be clearly identified from the information provided on the application form.

a18.24 Auditors will not treat an arrangement as invalid merely because a postcode is not provided or where the address is incomplete in some respects but the individual’s permanent residential address can be identified from the application form.

Where the application form does not include the individual’s permanent residential address the arrangement is invalid.

a18.25 Where the application form does not include the individual’s date of birth the arrangement is invalid.
a18.26 Where the application form does not include the individual’s NINO the arrangement is invalid.

a18.27 Where the application form has not been signed by the individual the arrangement is invalid.

a18.28 A personal pension contribution should not be accepted without a fully completed certificate of eligibility. However, in cases where there is good evidence that a certificate of eligibility was held but has been lost, auditors will not treat the arrangement as invalid.

a18.29 Where the certificate of eligibility has not been signed by the individual the arrangement is invalid.

**Recording findings**

a18.30 Auditors will record full details of the findings on a sample sheet. This will include error(s)

- where an application form is not held;
- where an application form is incomplete;
- where a certificate of eligibility if not held;
- where a certificate of eligibility is incomplete;
- where a certificate of eligibility is out of date as it was received more than 5 years ago; and
- where the PPCC was issued before the end of the ‘cooling-off’ period.
OBJECTIVE 4

Evidence and Estimate of Earnings

a18.31 To check

- valid evidence of earnings has been properly recorded as seen or a copy retained;
- the correct earnings figure has been input into the system.

Sample

a18.32 Auditors will use the random sample extracted for Objective 3 together with any further cases identified from the general scrutiny.

Procedure

a18.33 For each case auditors will

- check that valid evidence of earnings has been recorded as seen or a copy retained;
- check that subject to the 10% tolerance (see paragraph 14.14) the evidence figure supports the estimate given;
- check that where the evidence does not support the estimate (subject to the 10% tolerance), the scheme administrator has sought an explanation (unless the intended contributions can be justified by the lower evidence); and
- check that the correct earnings figure has been input to the scheme administrator’s records for reporting purposes (see Chapter 17).

Recording findings

a18.34 Auditors will record full details of findings on a sample sheet.
OBJECTIVE 5

Excessive Contributions

a18.35 To check

- *total contributions* in gross terms in any tax year do not exceed the maximum percentage of *net relevant earnings* unless a valid carry forward or carry back election is held (PP42/PP43)

- further estimates and evidence are obtained within 30 days when necessary when contributions are increased.

a18.36 Auditors will use the random sample extracted for Objective 3 together with any further cases identified from the general scrutiny.

a18.37 For each case auditors will

- make a manual calculation to ensure that contributions are not excessive (unless an appropriate carry forward and/or carry back election is held); and

- check that further estimates and evidence are obtained within 30 days when contributions are increased above the level justified by the previous estimate/evidence.

a18.38 Auditors will enter full details of findings on a sample sheet.
OBJECTIVE 6

Carry Forward and Carry Back Elections

a18.39 To check

- carry forward elections that:
  - forms PP42 have been correctly completed;
  - unused relief is correctly determined;
  - the six year limit is not exceeded; and
  - contributions do not exceed net relevant earnings.

- carry back elections that:
  - forms PP43 have been correctly completed and election made by 31 January (5 July for years 1995/96 and earlier) following year of payment;
  - the correct tax rate is included in the claim; and
  - contributions after carry back do not exceed relevant earnings.

Auditors will use the random sample extracted for Objective 3 together with any further cases identified from the general scrutiny. If insufficient cases are found, auditors will ask the scheme administrator to provide examples.

a18.40 Auditors will

- check that the appropriate election is fully completed and signed;
- check that where carry forward is used, form PP42 accompanied the payment over and above the normal percentage limit of the individual’s net relevant earnings;
- check that total contributions for the year in which carry forward is being used do not exceed the individual’s net relevant earnings;
- check that where carry back is used form PP43 (or equivalent) was submitted timeously;
- the correct tax rate was applied to contributions carried back; and
- contributions after carry back do not exceed net relevant earnings;
- make a manual calculation for each case to ensure that the figures have been correctly calculated and the excessive contribution(s) justified.

a18.41 Auditors will enter full details of findings on a sample sheet.
OBJECTIVE 7

Change in Status

a18.42 To check

- changes of status (change of employer - change from self-employed to employed and vice versa - unemployment) are correctly administered; and
- supplementary PPCCs are issued in appropriate cases.

a18.43 Auditors will use the random sample extracted for Objective 3 together with any further cases identified from the general scrutiny. If insufficient cases are found, auditors will ask the scheme administrator to provide examples.

a18.44 Auditors will

- check that the appropriate notification or correspondence informing of the change of status has been correctly actioned (including altering the basis of contributions from gross to net or vice versa as appropriate);
- check that supplementary PPCCs have been issued showing the revised contribution basis; and
- check that where there has been a change of employer, fresh estimate and evidence of earnings and a certificate of eligibility have been obtained.

a18.45 Auditors will enter full details of findings on a sample sheet.
OBJECTIVE 8

Transfer Values Received

a18.46 To check whether the transfer value

- was received direct from an approved provider or independent broker; and
- has generated any tax relief.

a18.47 Auditors will

- check that the transfer value was not routed via the individual but was received from an approved provider or independent broker; and
- check from the application form and correspondence that the transfer value was not treated as a net contribution thus generating a claim for tax relief.

a18.48 Auditors will enter full details of findings on a sample sheet.
OBJECTIVE 9

Information Returns

a18.49 To check that end of year returns of information are correct.

a18.50 Inland Revenue SPSS (Worthing) (Audit & Compliance) will provide auditors with details of any significant problems with the information provided on end of year returns of information.

a18.51 Auditors will discuss with the scheme administrator any errors or irregularities that have become evident in the end of year information returns.

a18.52 Auditors will record full details of findings.
CONCLUSION

Final Meeting

a18.53 Auditors will arrange a final meeting at the end of the audit. At that meeting auditors will

- outline the tests they have undertaken;
- summarise the audit findings;
- indicate any remedial action required by the \textit{scheme administrator}; and
- where appropriate, make suitable recommendations for improving the \textit{scheme administrator’s} systems or controls.

a18.54 Auditors will record the points discussed at the meetings.
FROM 6 APRIL 2001

a19.1 Although Inland Revenue SPSS (Nottingham) does not need to see a copy of the member’s application form, it must contain all the information listed below. Providers must ensure that these requirements are complied with.

All applicants

a19.2 Required information:

- Prominent warning about false declarations.

- Full name and permanent residential address of member, including postcode.

- Date of birth of member.

- National Insurance number of the member (see Part 14B, paragraph 14.37).

- Full name and address of employer (if employed). (This information will be required for those paying up to the earnings threshold, if the employer is also contributing, and for those paying above the earnings threshold, to evidence earnings).

- Status (e.g. Employed, self-employed, under 16, other - see IR 76 Part 14B, paragraph 14.38). If employed, whether or not in a relevant superannuation scheme.

- Declaration by the member, including the following:

  - Eligibility declaration - i.e. UK residency or other qualifying criteria, see Part 3, paragraph 3.7 et seq.

  - Concurrency declaration - if employed, whether or not in a Chapter I approved occupational pension scheme, and if so whether criteria for concurrent membership of a personal pension scheme are satisfied (see part 3, paragraph 3.16 et seq.)

  - Higher level contributions declaration - if member wishes to contribute in excess of the earnings threshold in a tax year, that

    - emoluments as a controlling director of an investment company are not being included in the basis year remuneration, and

    - the earnings do not fall within section 644(6A)

  - Confirmation that the total contributions being paid to this scheme together with any paid to a retirement annuity contract or trust scheme and any other personal pension scheme by or on behalf of the member do not exceed the earnings threshold (or the permitted maximum if a basis year has been declared)

  - Agreeing to inform the scheme administrator in writing when any of the following occur:

    - The member ceases to be UK resident

    - The member also becomes a member of an occupational pension scheme (other than one providing only death benefits for the member) - the notification should take place when they join the occupational pension scheme, or when they make the first contribution to the personal pension scheme after joining the occupational pension scheme
- The member becomes a controlling director
- The member ceases to be a controlling director
- The member ceases to have net relevant earnings
- The member begins to have net relevant earnings again

- Agrees to be bound by the scheme rules
- Confirmation that to the best of their knowledge and belief, the details given on the application are correct and complete.

Additional information for members intending to pay above the earnings threshold

a19.3 Nomination of basis year. This may be done at the outset, or later, but must be done before the expiry of 30 days from the date of payment of a contribution which takes the total contributions in a tax year over the earnings threshold.

a19.4 Evidence of earnings in the basis year. This may be provided at the outset, or later, but must be provided before the expiry of 30 days from the date of payment of a contribution which takes the total contributions in a tax year over the earnings threshold. Scheme administrator to record the type of evidence seen, e.g. Payslip, P60 or other, and date seen.

Additional requirements where the member is under 18

a19.5 If the applicant is under 16, or 18 if not in employment, the member's legal guardian must complete the application and make the declarations. The legal guardian must be responsible for the contract as if they were the member until the member reaches 18, and must be responsible for ensuring that the minor's contribution limits are not exceeded (see Part 3, paragraph 3.11).

a19.6 If the applicant is under 16 and the pension contract is under Scots law, we require the role of the legal guardian in a19.5 above to be taken by a parent of the member who has full parental rights in relation to the member. We have no objection to schemes contracting directly with members aged 16 and over, where Scots law applies to the contract.

a19.7 The application must include the full name and permanent residential address of the legal guardian.

a19.8 The legal guardian must also make a separate declaration stating that they understand that the contributions paid to the scheme may only be returned to the member in the form of benefits payable under the rules of the scheme (i.e. after the member attains the age of 50 except in the case of earlier incapacity).

Scheme administrator

a19.9 The scheme administrator agrees to administer the scheme on behalf of the provider/stakeholder manager.
Appendix 20: Checklist for transfer-in application form

FROM 6 APRIL 2001

a20.1 The information, declarations and certificates listed below must be obtained before a transfer is accepted. The Inland Revenue SPSS (Nottingham) does not need to see a copy of the application form.

a20.2 Required information:

- Prominent warning about false declarations.
- Full name and permanent residential address of member, including postcode.
- Date of birth of member.
- National Insurance number of member (see paragraph 14.37).
- Full title and SF reference number (if known) of transferring scheme.
- Name and address of administrator of transferring scheme.
- Amount of transfer payment.
- Amount of protected rights/GMP included in the transfer (if appropriate).
- Source of transfer payment (see paragraph 12.10).
- If the transfer is from a retirement benefit scheme or relevant statutory scheme:
  - Have any benefits (other than benefits taken before main scheme benefits from AVCs and FSAVCs) come into payment? (If yes, a transfer is not permitted)
  - Where NRA under transferring scheme is 45 or less, the NRA and the latest date for payment of benefits under the transferring scheme (see paragraph 12.28).
- If the transfer is from another personal pension scheme:
  - Does the transfer include any amounts which were originally held in a designated scheme? (If yes, any certificates held by the transferring scheme must be passed on - see paragraph 12.8)

Transfers into pre-27/7/89 arrangements

- When was the transferring arrangement set up? (Transfers are not permitted from a post-27/7/89 arrangement to a pre-27/7/89 arrangement)

Transfers from one pre-27/7/89 arrangement to another pre-27/7/89 arrangement

- Amount already taken into account for the purpose of a lump sum calculation under section 635 – only applies where protected rights are being transferred after non-protected rights benefits have been taken from the arrangement.

A20.3 Required declarations:

- A declaration signed by the member (or legal guardian in the case of a minor, when paragraph 3.11 will also apply)
- agrees to be bound by the rules of the scheme
- to the best of their knowledge and belief, all the particulars given on the application form are correct and complete.

- Statement that the scheme administrator will administer the scheme on behalf of the provider.

A20.4 Required Certificates:

- A regulation 8(3) certificate (or a regulation 6(3) certificate if the transfer is from a section 32 contract effected between 1 July 1988 and 5 April 2001) must be obtained, if appropriate (see paragraphs 12.13 and 12.14).

- A lump sum certificate must be obtained (if appropriate) – see paragraphs 12.19 – 12.22.

- A NIL certificate must be obtained (if appropriate) – see paragraph 12.18.
Appendix 21 : Appeals against contracting-out decisions on Stakeholder Pension schemes

BACKGROUND

a21.1 This guidance relates to decisions made by the Inland Revenue SPSS (Nottingham) under sections 8, 9 and 10 of the Social Security Act 1988.

Formal notifications of decisions relating to contracting-out issues, for example, the issue, cancellation and variation of a contracting-out certificate carry the right of appeal to an independent Appeal Tribunal.

If you disagree with a decision

a21.2 If you disagree with a decision, you should contact the person who made the decision within one calendar month of the date of the decision, giving your reasons for disputing the decision, together with any new evidence or information.

a21.3 You will be advised whether, in the light of what you have said or any evidence you have provided, the decision can be revised. If the decision can be revised, a revised decision will be issued. If the decision cannot be revised, you will be advised of this. If you want more information about the decision, you should contact the person who made the decision, and ask for an explanation.

RIGHT OF APPEAL

a21.4 You have the right of appeal against a contracting-out decision to an Appeals Tribunal. If you want to do this, your appeal must be received by the person who made the decision within one calendar month of either -

- the date on the Notice of Decision or
- the date of the notification following reconsideration of the decision (see paragraph 3 above).

a21.5 Before referring your appeal to an Appeals Tribunal, the person who made the decision will review what you have said in your appeal as they may be able to revise the decision.

a21.6 If the revised decision is to your advantage, the appeal will lapse. However, if you are still unhappy with the revised decision you will have the right of appeal against the revised decision. If the decision is revised, but not to your advantage, the appeal against the original decision will continue.

WHEN SHOULD YOU APPEAL

Time limit

a21.7 You have only one calendar month from the date of the decision in which to appeal.

Do not delay submitting your appeal because you need further time in which to gather information to support your appeal. Lodge your appeal and let Inland Revenue SPSS (Nottingham) know how much time you will need to provide this information.

Late appeals

a21.8 If you appeal outside the time limit, and can satisfy the person who made the decision that there were good reasons for this, your late appeal may be accepted.
If your late appeal cannot be accepted, the Appeals Service will consider your application and advise you of the outcome. Their decision is final and is not subject to appeal.

**Who can appeal**

a21.9 You can appeal against a decision if you are -

- a member of the pension scheme
- a trustee or manager of the pension scheme
- an employer of earners in an employment to which the scheme applies.

**How to appeal**

a21.10 If you want to appeal against the decision you should do so by writing to Inland Revenue SPSS (Nottingham) at the address shown on the Notice of Decision, within the time limit, explaining that you want to appeal.

We shall need to know -

- the reference number shown on the Notice of Decision
- the date that the decision you are appealing against was issued
- details of the decision you are appealing against and
- why you think the decision is wrong, together with any appropriate supporting evidence.

A person who is listed in paragraph 9 above must sign the appeal.

**THE APPEALS SERVICE**

a21.11 When your appeal is received, Inland Revenue SPSS (Nottingham) will notify the Appeals Service. The Appeals Service handles the administration of appeals and arranges for appeals to be heard.

We will send you a "pre-hearing" enquiry form which must be completed and returned to the Appeals Service in the enclosed pre-paid envelope. The Appeals Service must receive the form within 14 days of the date of issue. If the form is not received within this time limit, it will be assumed that you do not wish to continue with your appeal and it will be brought to an end without a hearing.

The pre-hearing enquiry form asks whether you and/or your representative will be attending the hearing or whether you are content for the appeal to proceed without an oral hearing.

**Withdrawing an appeal**

a21.12 You can withdraw your appeal at any stage up until the Appeals Tribunal considers the appeal. If you decide to withdraw your appeal, you must notify the Appeals Service. You can either tick the box on the pre-hearing enquiry form, or send a letter. You can also withdraw your appeal verbally at an oral hearing. You do not need to give any reason for withdrawing your appeal.

If you withdraw your appeal that will bring the matter to a close, and no further action will be taken.

**Misconceived appeals.**

a21.13 If in the opinion of the person who made the original decision against which you are
appealing, you appeal has no reasonable prospect of success, you will be given the reason why this is so. You will also receive a pre-hearing enquiry form.

The pre-hearing enquiry form asks you to provide reasons why you think your appeal can succeed either in writing or by requesting an oral hearing so that you can be present to explain your reasons. The pre-hearing enquiry form should be returned to the Appeals Service.

a21.14 If the Appeals Service does not receive the pre-hearing form within 14 days of the date of issue, the appeal may not be heard.

When you return the pre-hearing enquiry form, a legally qualified tribunal member will consider the case and decide whether there are sufficient grounds for the appeal to be heard. You will be advised of the decision.

a21.15 Where you are advised that there are insufficient grounds for the appeal to be held and you disagree with this notification you may inform the clerk to the Appeals Tribunal that you want a tribunal, to determine whether the appeal is misconceived as a preliminary issue at an oral hearing.

You will be advised of the decision from the oral hearing.

**Appeal hearing**

a21.16 The Appeals Service will give you at least 14 days notice of the date of the hearing. If you had originally indicated that you and/or your representative wished to attend the hearing but are unable to attend on that date, you must inform the Appeals Service as soon as possible.

Hearings can only be postponed in exceptional circumstances.

**Composition of Appeals Tribunals**

a21.17 The appeal tribunal may consist of one, two, or three members chosen by the President of Appeals Tribunals from the panel of persons appointed by the Lord Chancellor. At least one member must be legally qualified, so where a tribunal consists of only one member, that member must be legally qualified.

a21.18 Where the appeal is complex, the Appeals Service will invite an expert witness who has knowledge of contracting-out procedures to attend the Tribunal to provide advice and guidance.

a21.19 Where the tribunal consists of more than one member, the President nominates one of the members as a chairman. This will usually be the legally qualified member. Decisions in these tribunals are made by a majority of votes.

a21.20 After the appeal has been heard, you will be notified in writing of the tribunal's decision as soon as possible.

**APPLICATION FOR LEAVE TO APPEAL TO THE OFFICE OF SOCIAL SECURITY AND CHILD SUPPORT COMMISSIONERS (THE COMMISSIONER)**

a21.21 If you disagree with the Appeal Tribunal's decision, you have the right to appeal to the Office of Social Security and Child Support Commissioners (The Commissioner) but only on a point of law and with the approval of the chairman of the Appeal Tribunal.

An application to appeal to the commissioner can be made in writing to the chairman of the tribunal at the relevant Appeals Service Office. Where the tribunal announces its decision orally after a hearing, an application for leave to submit a further appeal can be made orally at the hearing.

The application should cover details of the grounds on which it is made. The Appeals Service must receive it within one calendar month of the date on which a copy of the record of the full decision was issued.
a21.22 A copy of all documentation relating to the original decision and the tribunal decision will be passed to the Commissioner to consider.

You will be notified of the Commissioner’s decision as soon as possible.

**APPEALS TO THE COURT OF APPEAL, COURT OF SESSION OR COURT OF APPEAL IN NORTHERN IRELAND**

a21.23 An appeal against a Commissioner’s decision on a question of law can only be made to either

- the Court of Appeal in England and Wales
- the Court of Session in Scotland or
- the Court of Appeal in Northern Ireland.

a21.24 An appeal to the Court of Appeal in England and Wales, the Court of Session in Scotland or the Court of Appeal in Northern Ireland can be made only

- with the leave of the Commissioner who made the decision
- with the leave of the Chief Commissioner in certain cases or
- if the Commissioners refuse leave with leave of the appropriate court.

**Time limit**

a21.25 The application for leave to appeal to the Court of Appeal in England and Wales, the Court of Session in Scotland or the Court of Appeal in Northern Ireland must be received within one calendar month from the date of the Commissioner’s decision being issued.

**JUDICIAL REVIEW.**

a21.26 The High Court has legal authority to decide questions affecting people’s rights.

The decision-making authorities are subject to Judicial Review that is the controlling jurisdiction of the High Court.

A Judicial Review differs from an Appeal. An appeal considers a case with the aim of substituting a correct decision for a wrong one. A Judicial Review considers a case to find out if a decision under review is wrong in law. If there has been an error of law, the High Court quashes the original decision.

The High Court can quash a Commissioner’s decision by Judicial Review only if there are compelling reasons in the interest of justice.
Appendix 22: Transfers from Personal Pension Schemes to Overseas Schemes

A. General conditions applying to all overseas transfers

a22A.2 Where a member requests a transfer to an overseas scheme of his or her accrued rights (including any protected rights and safeguarded rights) - the transfer cannot be made if any of the following general conditions are not met:

- No part of the benefit under the personal pension scheme has come into payment.
- The transfer is made directly from the scheme administrator of the personal pension 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 scheme administrator 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 the Inland Revenue SPSS (Nottingham) 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.

Where either or both of these conditions is not met, a transfer is not permissible. No transfer application should be submitted to the Inland Revenue SPSS (Nottingham).

a22A.3 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:

- for protected rights held in an Appropriate Personal Pension Scheme - complete form CA1881. See Appropriate Personal Pension Scheme Manual, CA16, for further
information


Completed forms CA1881 and CA1895 should be sent to Inland Revenue National Insurance Contributions Office, Services to Pensions Industry Longbenton Park View, 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 DWP 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

a22A.4 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 II of IR12, the Occupational Pension Schemes Practice Notes). The agreements cover personal pension schemes but not retirement annuity contracts.

a22A.5 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 the Inland Revenue SPSS (Nottingham). The scheme administrator of the transferring scheme should arrange for the evidence that the conditions in the reciprocal agreement and those in A above are met to be kept for a period of six years from the date of transfer.

a22A.6 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

a22A.7 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.

a22A.8 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.

a22A.9 Where the conditions are met, a transfer may be made without the specific approval of the Inland Revenue SPSS (Nottingham). The scheme administrator of the transferring scheme should arrange for the evidence that the conditions are met 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.

a22A.10 Where any of the conditions is not met, a transfer is not permissible. No transfer application should be submitted to the Inland Revenue SPSS (Nottingham).
D. Other overseas transfers

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

a22A.11 Where any of the following conditions is not met, the transfer is not permissible. No transfer application should be submitted to the Inland Revenue SPSS (Nottingham).

- 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, plus
  - for employees, the transferee's form P45 or payroll records or a letter from the transferee's last UK employer or, for the self-employed, 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 authority/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 schemes are not permitted to accept funds transferred or "rolled over" from UK schemes.
  Evidence: written confirmation from the overseas scheme administrator (or equivalent).

II. Transfers not requiring the prior consent of the Inland Revenue SPSS (Nottingham)

a22A.12 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 the Inland Revenue SPSS (Nottingham). Where that is the case, go to D.III below.
Transfers of the rights of other members can be made without obtaining the prior consent of the Inland Revenue SPSS (Nottingham), provided all of the conditions in A and D.I are satisfied. The scheme administrator should arrange for the evidence that the conditions in A and D.I are met to be kept for a period of six years from the date of transfer. A copy of the evidence that the member was not a controlling director or a high earner should be kept for a similar period.

For members who are not controlling directors and for whom no evidence of net relevant earnings is available the scheme administrator may rely on a certificate provided by the member in the format at E.1 below. The transfer can then be made provided all of the conditions in A and D.I are satisfied, but the scheme administrator must send a copy of the E.I certificate to the Inland Revenue SPSS (Nottingham) within 90 days of the transfer.

III. Transfers requiring the specific consent of the Inland Revenue SPSS (Nottingham)

a22A.13 To enable the Inland Revenue SPSS (Nottingham) to consider whether the transfer is permissible the scheme administrator of the transferring scheme will need to provide the following information:

- The evidence specified at D.I above and confirmation that the conditions in the first bullet point in A above are satisfied.

About the transferee

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

- 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.

- Full details of any part of the proposed transfer payment which is not in the form of cash.

E. Acceptable formats of certificates

a22.14

I. Certificate relating to the controlling director or high earner condition in D.II

Member’s name:

Member’s National Insurance number:

I certify that I am not a Controlling Director (see Note below) and the total amount of my net relevant earnings 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 allowable maximum for the year of assessment in which the transfer request was made].

Member’s signature:

Date:

Note: Controlling Director 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, civil
partner, 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.

Information to be provided by the scheme administrator of the transferring scheme:

Name of transferring scheme:

Inland Revenue SPSS (Nottingham) reference of transferring scheme:

Name of overseas scheme:

Amount of transfer value:

Date of transfer request:

II. Certificate referred to in third 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 – Definitions for use with this Appendix only

a22A.15 (Legislative references to a numbered section are references to Income And Corporation
Taxes Act 1988, unless otherwise indicated)

Allowable Maximum is defined in section 640A. The figure for the year 2000/01 is £91,800.
**Controlling Director** 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, civil partner, 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 & 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 arrangements whereby the transferee is employed either:

- in the UK or elsewhere for a UK tax resident employer, or
- in the UK branch or representative office of an overseas tax resident employer.

**High Earner** is a member whose total net relevant earnings 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 allowable maximum for the year of assessment in which the transfer request is made.

Net relevant earnings is defined in section 646(1) and generally means

- the amount of an individual's relevant earnings for the year of assessment in question less
- the amount of any deductions within section 646(2) which fall to be made from the relevant earnings in computing the individual's total income for that year for tax purposes.

**Protected Rights** has the meaning given in regulation 3 of the Personal Pension Schemes (Protected Rights) Regulations 1996.

**Relevant Earnings** is defined in section 644 and broadly means any income which is chargeable to UK tax for the year of assessment in question and is within the following

- emoluments chargeable under Schedule E from an office or employment held by the individual
- income from any property which is attached to or forms part of the emoluments of an office or employment held by the individual
- income which is chargeable under Schedule D and is immediately derived from the carrying on or exercise of a trade, profession or vocation (either as an individual or as a partner acting personally or in a partnership
- income from patent rights treated as earned income by virtue of section 529.

**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.

**Scheme Administrator** means the person resident in the United Kingdom who will be responsible for the management of the scheme.
OVERSEAS TRANSFERS FLOWCHART

Member requests a transfer of accrued rights

- Are all of the conditions in A met?
  - Yes
    - Make transfer and keep records
  - No
    - No overseas transfer can be made

- Is the transfer permitted under a reciprocal agreement?
  - Yes
    - Make transfer and keep records
  - No
    - Are all of the conditions referred to in C met?
      - Yes
        - Make transfer and keep records
      - No
        - No overseas transfer can be made

- Is the transfer to a scheme for staff of EU institutions?
  - Yes
    - Are all of the conditions in D I met?
      - Yes
        - Make transfer and keep records
      - No
        - No overseas transfer can be made
  - No
    - Send transfer application to PSO with information specified in D III. PSO will advise whether or not the transfer can be made.

- Is the transferee a controlling director or a high earner? (see D II)
  - Yes
    - Make transfer and keep records
  - No
    - No overseas transfer can be made
Appendix 23 : Checklist for transfers in drawdown

a23.1 The information and declaration listed below must be obtained before the transfer is accepted. Inland Revenue SPSS (Nottingham) does not need to see a copy of the application form.

a23.2 Required information:

- Prominent warning about false declarations.
- Full name and permanent residential address of member, including postcode.
- Date of birth of member.
- National Insurance number of member.
- Full title and SF reference number (if known) of transferring personal pension scheme.
- Name and address of administrator of transferring personal pension scheme.
- Amount of transfer payment.
- Amount of protected rights included in the transfer.

a23.3 Declaration signed by the member or substitute member (i.e. a survivor transferring after the death of the original member)

- confirms that income withdrawals are currently being taken from the transferring arrangement
- elects to defer the purchase of an annuity and take income withdrawals in accordance with section 634A (or section 636A in the case of a survivor) from the new arrangement
- understands that
  - no tax free lump sum is available from the new arrangement at any time (except on the death of a survivor where the original member died before pension date)
  - no contributions may be paid to the arrangement
  - no further transfers may accepted into the arrangement unless the transfer is from another arrangement in drawdown
  - the funds may not be transferred to another personal pension scheme until they have been held in the new arrangement for at least a year
  - an annuity complying with section 634 (or section 636 in the case of a survivor) must be purchased no later than the date the member reaches age 75, or (in the case of a survivor) the date the survivor reaches age 75, if earlier
- accepts the conditions of the arrangement and agrees to be bound by the rules of the scheme
- to the best of their knowledge and belief, all the particulars given on the application form are correct and complete.
a24.1 PERMITTED INVESTMENTS FOR SIPPS

- Stocks and shares listed or dealt in on any Inland Revenue recognised stock exchange (including the AIM), including:
  - equities
  - fixed interest securities issued by governments or other bodies
  - debenture stock and other loan stock
  - warrants (for equities)
  - permanent interest bearing shares
  - convertible securities

- Shares received by a SIPP as a contribution to the scheme in accordance with paragraph 4.32.

- Futures and options, relating to stocks and shares traded on a recognised futures exchange

- Authorised unit trusts resident in the UK and authorised under Financial Services Act (FSA)

- Tax exempt unauthorised unit trusts that do not hold residential property

- Investment trusts:
  Stocks and shares in investment trusts purchased and held through investment trust savings schemes or investment plans operated by persons:
  - resident in the UK and authorised for that purpose under FSA
  - resident outside the UK but subject to regulation for that purpose in terms of the FSA

- UK based open ended investment companies (OEICs) or FSA recognised EEA member state equivalents (investments limited to stocks and shares or related warrants)

- Insurance company managed funds and unit-linked funds, investment policies or unit linked funds of a UK insurance company or an insurance company within the EEC authorised under Article 6 of the First Life Insurance Directive 79/267/EEC

- Endowment policies traded by a FSA regulated person (TEPs)

- Deposit accounts held with any UK based deposit taker (as defined in section 481(2) in any currency

- Commercial property (including land whether development land, farmland or forestry) in or outside the UK including
  - hotels and motels
- guest houses
- nursing homes
- public houses

- Borrowing to finance the purchase or development of a commercial property. Or to pay for VAT liability arising from the purchase or development of any such property

- Undertaking for Collective Investment in Transferable Securities (UCITS) that is either a recognised scheme or a designated scheme within the meaning of section 86 or 87 of the Financial Services Act 1986.

- Ground rents

- Depositary Interests (including CREST Depositary Interests)

- Individual Pension Accounts (IPAs)
a25.1 PROHIBITED INVESTMENTS FOR SIPPS INCLUDE

- Premium bonds
- Loans to any party
- Milk quotas
- Fishing quotas
- Residential property (except as an element of commercial property as specified in 11.17 of Part 11)
- Gold bullion
- Shares traded on OFEX
- Unlisted shares (except in a site maintenance company, for the necessary extent needed to purchase a commercial property (see 11.15) and those received as contributions in accordance with paragraph 4.32).
- Personal chattels (e.g. paintings, antiques, fine wine and jewellery)
- Borrowing other than that specified in 11.25, 11.28 or 11.29 of Part 11
Appendix 26: SIB Review of Transfers and Opt Outs: Provision of Redress For Mis-Selling

Introduction

a26.1. The Securities and Investments Board (SIB) announced on 25 October 1994 details of redress for people suffering material loss as a result of bad investment advice which led them to forego occupational pension scheme membership, in favour of retirement annuity contracts, personal pension schemes or buy-out policies. The relevant transactions are those based on advice given between 29 April 1988 (the date on which the main provisions of the Financial Services Act 1986 came into force) and 30 June 1994 inclusive. (New regulatory safeguards took effect on 1 July 1994). The SIB review also required that redress for mis-selling be provided in “execution-only” cases. This would arise where the investor requested a transaction and no advice or judgement on the part of the firm selling the pensions vehicle was expected or given. The investor may however have been prompted to request the transaction after reading misleading advertising or sales literature which could be regarded as bad investment advice.

The aim of the accepted remedies in the SIB review guidelines was to put people in a financial position equivalent to, or as close as possible to, that in which they would have been had the bad investment advice not been given.

a26.2. It should be appreciated that it is not possible to provide in this guidance for every situation that may arise in the matter of redress. General enquiries not related to specific cases, should be sent in writing to IR SPSS (Nottingham). Case specific enquiries should contain full details of all relevant names, reference numbers etc. and be sent in writing to, IR SPSS (Nottingham).

Enquiries should not be sent to IR SPSS which relate more properly to the SIB (now Financial Services Authority) guidance.

a26.3. The procedures set out in this Appendix, apply to compensation payments satisfying the conditions of section 148 Finance Act 1996 and should not be assumed to have wider application.

Form of Redress

a26.4. Redress should in the majority of cases take the form of the reinstatement of individuals in their original occupational pension schemes. It has also been agreed that compensation in the form of a cash lump sum paid to the individual would in general be inappropriate because it is normally not possible to convert pension rights into a cash lump sum before retirement. The general recommendation is therefore that compensation should be paid to the pension vehicle securing the individual’s, or, where appropriate a widow’s, widower’s, surviving civil partner’s or dependant’s, benefits, for example, an occupational pension scheme or personal pension scheme. The personal pension scheme does not have to be the original personal pension scheme that was mis-sold. or, in the case of someone who has retired, the vehicle under which the annuity/pension is being paid. Redress in the form of cash in hand, should be paid only where the individual has already retired (or died) and catching-up payments are needed to match what he or she would already have received from the occupational pension scheme, or, exceptionally, where it is impractical for redress to be achieved by the provision of retirement benefits.

Tax Position

a26.5. Section 148 Finance Act 1996 exempts from income tax and capital gains tax compensation paid to individuals or to pension vehicles as a consequence of a review carried out under, or consistent with, the SIB review process. The exemption will also apply to lump sums received in cash by individuals as a result of, for example, Court awards, and to interest forming part of a compensation payment for the period up to the earliest date on which the amount of compensation is determined whether by agreement or by a decision of a Court. The Inland Revenue will not therefore seek to divide a payment into capital and interest: the entire sum will be exempt from tax. But interest which accrues after the date of determination (for example, because
the compensator delays making the capital sum payment) will be clearly identifiable and will be fully taxable under the normal rules applicable to the payment of interest. The exemption under section 148 would also arise where redress is provided in “execution-only” cases.

a26.6. If an amount in respect of "distress and inconvenience" is added to a compensation payment it will be exempt from tax under the provisions of section 51(2) of the Taxation of Chargeable Gains Act 1992.

a26.7. In all cases covered by section 148 - whether the compensation payment is made following agreement between the parties concerned or as a result of, for example, a decision by a Court or Ombudsman - there will be no need to clear the payment in advance with IR SPSS. Nor will the Inland Revenue require the provisions of the receiving pension vehicles to be amended for the purpose of accepting compensation payments.

a26.8. Where an individual has died and redress is paid to make up the shortfall in cash benefits that his/her dependants should have received, the compensation payment will not be subject to Inheritance Tax unless the individual had (immediately prior to death) a general power of disposal over those benefits.

a26.9. The exemption from tax provided by section 148 Finance Act 1996 will not apply to annuities (or other annual payments made to individuals) arising from compensation. (Annual payments are periodic payments of income which could continue for more than a year and are not instalments of a capital sum). It will however apply to lump sum compensation payments paid to make up arrears of annuity/pension instalments.

Reinstatement and Instatement in Occupational Pension Schemes

a26.10. Where an individual was persuaded by bad investment advice to join a personal pension scheme rather than join his/her employer's occupational pension scheme, the desired remedy is that firstly, if possible, the individual should be allowed to join, i.e., be instated in the occupational pension scheme for future service with the employer. Secondly, the parties concerned should try to restore the occupational pension scheme rights that the individual would have had for past service.

The preferred form of redress for loss of past service rights is normally reinstatement in the occupational pension scheme. In this situation, the appropriate level of personal pension scheme funds would be returned to the occupational pension scheme as described in paragraph 15 below and the payment would be made to the occupational pension scheme of any compensation amount required. The return of the funds to the occupational pension scheme is not treated as a transfer payment.

a26.11. Where the individual was already a member of the employer's occupational pension scheme but was persuaded to "opt-out" and join a personal pension scheme, the objective is the same. Where the original rights in the occupational pension scheme were transferred to the personal pension scheme, the return of funds from the personal pension scheme to the occupational pension scheme will automatically include that original transfer (plus income "build-up"). In cases where the original rights in the occupational pension scheme remained with that scheme as a deferred benefit, the return of funds from the personal pension scheme will be added to the deferred benefit.

Amendments to Legislation

a26.12. There are three sets of amending regulations which came into force on 1 January 1997 as follows:

- The Retirement Benefits Schemes (Continuation of Rights of Members of Approved


These regulations add to the "disapplication" provisions and, among other things, enable an individual to be reinstated as a member of an occupational pension scheme (whether reinstatement covers both past and future service or future service only), under the tax regime applicable to him/her at the time of opting-out of the occupational pension scheme (or at the time when they would have joined but for the bad investment advice). In the case of an individual who at the time of becoming a member of a personal pension scheme was not then eligible to join an occupational pension scheme, for example, because a certain minimum age or service condition had not been attained, it is the date on which the individual would have first become eligible to join the occupational pension scheme that is relevant for the purpose of deciding which tax regime should apply on "instatement". IR SPSS (Nottingham) will not need to be notified of the granting to individuals of continued rights under the terms of these amending regulations.

a26.13. The provisions of Regulation 10(2) of SI 1988 No 1436 will enable an individual to rejoin an additional voluntary contribution scheme on the same basis as prevailed at the time of the opt-out. This means that if an individual was paying additional voluntary contributions under an arrangement entered into before 8 April 1987, there will be no prohibition on an appropriate part of the benefits arising being taken in lump sum form.

Excess Contributions Paid to a Personal Pension Scheme

a26.14. There will be individuals who were (or would have been) required to contribute to their occupational pension schemes at a rate of say, 5% of salary but who, when they became members of personal pension schemes, were able to pay contributions at the rate of, for example, 20%. In the event of reinstatement or instatement, sums representing any such "excess" contributions should to the maximum extent possible (see paragraph a26.15 below) be placed in the receiving occupational pension scheme’s additional voluntary contributions facility or a free standing additional voluntary contributions scheme.

a26.15. Where the individual is to be reinstated/instated in the occupational pension scheme and a personal pension scheme fund is to be returned to the occupational pension scheme, the return payment should, wherever possible, be made before any compensation payment is paid to the occupational pension scheme (see paragraph a26.4). If, as a consequence of this process, the payment of the whole of the compensation to the occupational pension scheme would result in the overfunding of the individual's benefits, the "excess" compensation may be paid to the individual as indicated in paragraph a26.4. The examples that follow illustrate how a payment from a PPS should be dealt with. (In all cases it is assumed that compensation to make up for "lost" employer contributions will be subsumed in the main fund of the occupational pension scheme).

- Reinstatement/instatement in a contributory occupational pension scheme

  - Sufficient monies to restore the compulsory employee contributions that would have been made during the reinstated period of membership (plus income "build-up") should be subsumed into the occupational pension scheme main fund.

  - Any balance, to the extent that total employee contributions do not exceed the aggregate of 15% of the relevant earnings for each tax year separately (or part year) of reinstated membership of the occupational pension scheme (plus income "build-up"), should be placed in the additional voluntary contributions facility.

  - Any amount remaining should be placed with the main fund of the occupational pension scheme and the benefits emerging from that amount treated for the purposes of maximum Inland Revenue limits as though they were benefits provided by the employer.
Reinstatement/instatement in a non-contributory occupational pension scheme

- Firstly, payment as at the second bullet point above should be placed in the additional voluntary contributions facility.
- Any amount remaining should be dealt with as at the third bullet point above.

a26.16. If, as a condition of reinstatement, the occupational pension scheme will not accept any part of the "excess" contributions, and though in principle an individual should have occupational pension scheme benefits only or personal pension scheme benefits only in respect of the same period of service, the "excess" should be retained in the individual's personal pension scheme in a "paid-up" form. The benefits emerging from the personal pension scheme should be treated as retained benefits for the purposes of maximum Inland Revenue limits on the occupational pension scheme benefits.

a26.17. In the examples given above, income "build-up" should be calculated by having regard to the actual returns achieved by the scheme's main fund or additional voluntary contributions facility or other suitable indicators, for example, bank base rates.

Reinstatement or Instatement of Continued Life Cover

a26.18. Where reinstatement/instatement into the occupational pension scheme has taken place as described above, continued life cover can also be reinstated/instated into the scheme. Continued life cover is to referred in PN, paragraph 7.37.

Payment of Contributions for Back Years

a26.19. If the personal pension scheme funds transferred into the occupational pension scheme are insufficient to make up for the compulsory employee contributions (plus income "build-up") that would have been made (see paragraph a26.15, third bullet point above), the individual may be required or permitted by the employer to make further contributions for past years. In such a case, the normal rules for tax relief on employee contributions to an occupational pension scheme apply (see PN paragraph 4.2-3). There is no objection to the payment of back contributions by instalments over future years' service in order to keep the amount paid in any one year of assessment within the 15% tax relief limit.

a26.20. If an individual's contributions in any one year of assessment would nevertheless exceed 15% of remuneration, the Board of Inland Revenue will, under their discretionary powers in the case of schemes approved on or after 27 July 1989, not object to the payment of an excess. In the case of schemes approved before 27 July 1989 the Retirement Benefits Schemes (Continuation of Rights of Members of Approved Schemes) (Amendment) Regulations will disapply the override which currently limits contributions to 15%. In neither case will tax relief be allowable on contributions in excess of 15%.

a26.21. In the case of an individual who retired before any redress could be paid and who is retrospectively reinstated in the occupational pension scheme concerned, there will be no objection to the compensation payment being paid to that occupational pension scheme and used to provide further benefits (both pension and lump sum) within Inland Revenue limits. Nor will there be any objection to the individual being allowed to make up a shortfall by payment of the appropriate amount (without tax relief on that amount) to that scheme. If the individual retired in the same tax year as that in which the contribution shortfall is paid, tax relief on payments up to 15% of remuneration for the part tax year will be available.

a26.22. While an individual remains in the personal pension scheme pending reinstatement in the occupational pension scheme, there is no objection to contributions continuing to be made to the personal pension scheme under normal rules.
Personal Pension Scheme Top Ups

a26.23. Where reinstatement in the occupational pension scheme cannot be achieved, the accepted SIB recommendation is that the compensation should be paid into a personal pension scheme to make up for "lost" occupational pension scheme benefits. Provided a compensation payment meets the conditions of section 148(3) Finance Act 1996 and is made by agreement or by a decision of any of the persons mentioned in section 148(5) of that Act, the Inland Revenue will not regard it as a "contribution" to the personal pension scheme, and the scope for employer's and member's contributions to the scheme will not be affected by this payment. This applies whether, as a result of such agreement or decision, the compensator pays the compensation direct into the personal pension scheme or whether he or she pays it to the member, who immediately pays it into the personal pension scheme. The personal pension scheme does not have to be the original personal pension scheme and could include, for example a stakeholder pension scheme.

a26.24. In the situation referred to in paragraph a26.22 above, it is essential that the personal pension scheme provider tells the member whether or not the payment is a contribution. (Tax relief may be claimed on contributions but not on other payments). Though a contribution certificate should not be issued in respect of a compensation payment which is not a contribution, the member must be told that the payment must not be entered in his or her tax return as a contribution or included in any claim for tax relief which is made to the Inland Revenue.

Section 32 Buy Out Contracts

a26.25. Where, as a result of bad investment advice, the value of the accrued benefits of an individual under an occupational pension scheme was secured by means of a section 32 buy-out contract, any compensation payment should be paid to that contract and the contract reprofiled to provide further benefits (both pension and lump sum) within Inland Revenue limits.

a26.26. If the original contract is unable to accept the payment, there will be no objection to a new buy-out contract to receive the payment and to provide further benefits (both pension and lump sum) for which there is scope. It is also permissible for the payment to be placed instead in an existing personal pension scheme. If any of the amount concerned is to be placed in "pension business", the appropriate provision of section 431(B) Income and Corporation Taxes Act 1988 will need to be satisfied.

Retirement Annuity Contracts

a26.27. No retirement annuity contracts were made after 30 June 1988 so only those sold in the preceding 2 months come within the ambit of the SIB review. Redress may take the form of a compensation payment to augment the (eventual) annuity. Part of the augmented annuity may be commuted in the normal way. Any compensation that is paid into a retirement annuity contract, is free of tax under section 148 Finance Act 1996 and will not be regarded as a premium. In addition, if the member decides to "make up" some of the shortfall for "lost" occupational pension scheme benefits, by placing additional premiums into the retirement annuity contract, tax relief will be given up to the percentage limit of net relevant earnings as referred to at section 619(2) and section 626 of the Income and Corporation Taxes Act 1988.

Transferred Retirement Annuity Contracts and Section 32 Buy Out Contracts

a26.28. Where the original contract was previously transferred for example, to a personal pension scheme, there will be no objection if any redress due in respect of mis-selling the original contract, is paid to the subsequent pension vehicle which has accepted the transfer.

Individuals Who Have Taken Benefits

a26.29. If an individual is in receipt of an annuity under a section 32 buy-out contract, retirement annuity contract or personal pension scheme, there will be no objection to the provider changing the structure or amount of that annuity for the purpose of providing from a compensation payment further benefits (including lump sum benefits) within Inland Revenue limits.
a26.30. If it is not possible to reprofile the contract or augment the annuity there will be no objection to a new buy-out contract or to the setting up (whether by the original provider or another) of a new personal pension scheme arrangement to receive the compensation payment followed by the immediate provision of further benefits (both annuity and lump sum). If any of the amounts concerned is to be placed in "pension business" the appropriate provision of section 431(B) Income and Corporation Taxes Act 1988 will need to be satisfied.

a26.31. The "compensation-only" personal pension scheme arrangements referred to in paragraph a26.28 above will be acceptable where the compensator pays the compensation to the individual, who immediately uses it to enter into such an arrangement with a personal pension scheme provider. The compensation payment in such cases must meet the conditions of section 148(3) Finance Act 1996 and may have been made by agreement or by a decision of any of the persons mentioned in section 148(5) of that Act.

**Personal Pension Scheme End of Year Requirements**

a26.32. Paragraph 17.34 above, contains details of the end of year returns to be made to the Inland Revenue. Though compensation payments received by a personal pension scheme need not be included in the normal end year return, a separate record of them should be made and retained. This record should include the information at the first four bullet points of paragraph 17.34 above together with the following:

- the amount and date of payment;
- the name and address of the payer;
- any amount paid as a supplementary lump sum benefit;
- a brief summary of the circumstances leading to the payment including the name(s) of any other scheme(s) involved.

These separate records should be retained for 6 years to accord with the usual requirements concerning contributions to a personal pension scheme.

**Guarantees to Mirror Occupational Pension Scheme Benefits**

a26.33. This form of redress is available to authorised insurers. Such an insurer who, after discussion with its FSA regulator and its prudential regulators, proposes to use this method should, for the purpose of obtaining confirmation about the tax position, send full details of what is proposed to IR SPSS (Nottingham).

**Scheme members who have been declared bankrupt**

a26.34. Where a scheme member has been declared bankrupt and a trustee in bankruptcy has been appointed, this situation does not alter the fact that the redress monies should in most cases be paid to a pension vehicle as referred to in paragraph a26.4 which restricts the occasions when an immediate lump sum may be paid.

**Annuity Purchase**

a26.35. If redress is to be provided by the purchase of an annuity, the annuity must be in the form of a compulsory purchase annuity and not in the form of a purchased life annuity.

**Where the Bad Investment Advice Took Place Before 29 April 1988 and After 30 June 1994**

a26.36. There are occasions when the bad investment advice described at paragraph a26.1 above, took place outside of the period from 29 April 1988 to 30 June 1994. Where this has arisen, the accepted remedies in the SIB review guidelines to put people in a financial position equivalent to, or as close as possible to, that in which they would have been had the bad
investment advice not been given, are still relevant. The recommendations that have been mentioned in this guidance, may be adopted regardless of when the bad investment advice was given.

The exemption, under section 148 Finance Act 1996, from income tax and capital gains tax on compensation paid to individuals or to pension vehicles as a consequence of a review carried out under, or consistent with, the SIB review process, does not apply where the compensation paid is as a result of bad investment advice that was given outside of the period under the review.
Index

Subject Paragraph

A
Administrator
- Duties 2.3
- Identity 2.4
Amendment of schemes 13.9, 13.20
Annuitants
- Resident abroad 19.5
Appeals
- Against refusal of application for approval (PP) 13.8
- Against refusal of application for approval (SHP) 13.18
- Against withdrawal of approval from scheme 21.16
- Against a contracting-out decision (SHP) Appendix 21
Application for approval (shp)
- Application pack 13.14
- Contracting-out 13.11, 13.15–17, 13.19
- Model rules 13.16
- Notification of approval 13.17–19
- Procedure 13.11–15
Application for approval (non-shp)
- Form pspp101 13.3
- Model rules 13.5
- Notification of approval 13.7–8
- Procedure 13.2–4
APPLICATION FOR MEMBERSHIP (from 14.33–38f, Appendix 19
6/4/2001)
Appropriate personal pension schemes 1.4
Arrangements 2.9, 2.12, 3.4, 3.8, Appendix 1
Audit

See INLAND REVENUE INSPECTION

Authorised pension provider

2.1–2a, Appendix 1

B

Basis year

4.10–11a

Benefits

See also MEMBER'S BENEFITS AT PENSION DATE

- Commencement

8.2–5

- Pension dates

- Early pension age, recognised occupations 8.7–9, Appendix 10

- Incapacity

8.6

- Normal

8.2–5

- Taxation

19.1–7

C

Capital gains tax

19.8–9, 19.11–12, 19.14–16

CARRY BACK OF CONTRIBUTIONS (from 6 April 2001)

Part 6B

- Election form (PP43)

6.36–40

- Employer contributions

6.35

- Time limit

6.30–34

CARRY FORWARD OF UNUSED RELIEF (from 6 April 2001)

Part 7B

Cessation of earnings

4.12–13a

Claims by scheme administrators

Part 15B

- Annual claims PP 14

15.55–63 Appendix 14

- Basis of claims

15.46

- Certification by approved auditor

15.56

- Claim less than £50

15.52

- Information required prior to claims 15.42–44, Appendix 15

- Interim claims PP 10

15.47–54

- Payment of claims

15.38–41

- Statistical information

15.78–90
- Supplementary claims 15.63
- Tax due to Inland Revenue 15.54, 15.61

Contracting out of state second pension
- Appeals 22.140, Appendix 21
- Contributions
  - Minimum contributions 4.37–38
  - Minimum payments 4.39–39a
- Death of a member 10.2–8, 10.11, 10.14
- Lump sum at pension date - effect on calculation
  - All arrangements 9.41
  - arrangements made before 27 July 1989 9.44–48
  - arrangements made on or after 27 July 1989 9.43
- Retained benefits 3.13
- Stakeholder pension schemes 22A.4 - 22A.27 or 22A.28 - 22.139

- State pension age (SPA)
  - Incapacity 8.6
  - Vesting 8.2–3
- Term assurance
  - exclusion of Protected Rights 4.8, 4.14
- Waiver of contributions
  - exclusion of Protected Rights 4.15

Contributions
- Cessation 4.45
- Date of payment 4.22–32
- Employer
  - Allowance for tax 5.9, 5.12
  - Limits on contributions 4.9 - 4.13a
  - Repayment of contributions 18.15
  - Waiver of contributions 4.15–16, 4.21
- End of year requirements
- Incapacity annuity
- Limits
- Minimum contributions
- Paid by third party
- Repayment
- Tax relief
  - Employee
  - Employer
  - form PP120
  - Higher rate
  - Minors
  - Non taxpayers
  - Self-employed
- Waiver of contributions

Controlling director
- Definition
- Investment company

Conversion
- Benefit restrictions
- Chapter IV approval
- Eligible schemes
- Investments
- Part-schemes
- Valuation test

D
Death before pension date
- Annuities
  - Cessation
- choice of Insurer 10.14
- Guarantee 10.13
- Maximum benefits 10.16
- Non-assignment and non-surrender 10.12
- Protected rights 10.2–7
- Time of payment 10.17

- Lump sums
  - Distribution 10.38–40
  - Return of contributions/fund 10.3–4
  - Time of payment 10.38
  - Term assurance 10.3, 10.36
  - Trust 10.40

Death on or after pension date
- Annuities 10.10–19
- Cessation 10.19
- Choice of Insurer 10.14
  - Guarantee 10.13, 10.18
  - Maximum benefits 10.16
  - Non-assignment and non-surrender 10.12
  - Time of payment 10.17
- Income withdrawals 10.20–31, 10.34
- Lump sums 10.32–37
- Term assurance 10.36

Disability
See INCAPACITY

Discontinuance of schemes
- Closed membership 20.3
- Methods 20.2
- Paid up 20.4
- Provisions in rules 20.1
- Winding up 20.5–8
<table>
<thead>
<tr>
<th>Drawdown</th>
<th>See INCOME WITHDRAWALS</th>
</tr>
</thead>
<tbody>
<tr>
<td>E</td>
<td></td>
</tr>
<tr>
<td>Early retirement</td>
<td></td>
</tr>
<tr>
<td>- Incapacity</td>
<td>8.6</td>
</tr>
<tr>
<td>- Recognised occupations</td>
<td>Appendix 10</td>
</tr>
<tr>
<td>Eligibility</td>
<td>Part 3, 14.39</td>
</tr>
<tr>
<td>End of year requirements</td>
<td>See RETURNS OF INFORMATION</td>
</tr>
<tr>
<td>Enforceable right to survivors' benefits</td>
<td>2.7</td>
</tr>
<tr>
<td>Evidence of earnings</td>
<td>14.41–48a</td>
</tr>
<tr>
<td>F</td>
<td></td>
</tr>
<tr>
<td>Foreign emoluments</td>
<td>3.30, Appendix 3</td>
</tr>
<tr>
<td>I</td>
<td></td>
</tr>
<tr>
<td>Ill health</td>
<td>See INCAPACITY</td>
</tr>
<tr>
<td>Incapacity</td>
<td></td>
</tr>
<tr>
<td>- Commencement of benefits</td>
<td>8.6</td>
</tr>
<tr>
<td>- Waiver of contributions</td>
<td>4.15–16</td>
</tr>
<tr>
<td>Income withdrawals</td>
<td>9.9–33</td>
</tr>
<tr>
<td>Inland revenue inspection</td>
<td></td>
</tr>
<tr>
<td>- Audit objectives</td>
<td>16.2–3, Appendix 18</td>
</tr>
<tr>
<td>- Audit protection</td>
<td>16.34–36</td>
</tr>
<tr>
<td>- Code of practice</td>
<td>16.4–5, 16.7</td>
</tr>
<tr>
<td>- Examining the scheme records</td>
<td>16.10–17</td>
</tr>
<tr>
<td>- Notification of audit</td>
<td>16.8–9</td>
</tr>
<tr>
<td>- Penalties</td>
<td>16.30–31</td>
</tr>
<tr>
<td>- Quantifying any overclaim</td>
<td>16.27–28</td>
</tr>
<tr>
<td>- Simplified recovery</td>
<td>16.32–33</td>
</tr>
<tr>
<td>- Treatment of breaches of the tax relief at source rules</td>
<td>16.21–26</td>
</tr>
<tr>
<td>Investments</td>
<td>Part 11</td>
</tr>
<tr>
<td>- Borrowing</td>
<td>11.24–29</td>
</tr>
</tbody>
</table>
- Connected transactions 11.10–16
- Loans 11.23
- Made before 6/4/01 11.35–37
- Sipp 11.2–3
- Sole purpose 11.9
Irrevocable trust 2.5–6

L
Lump sum at pension date See MEMBER'S BENEFITS AT PENSION DATE

M
Member's benefits at pension date Part 9

- Annuity
  - Duration of payment 9.2–3
  - Guaranteed 9.3, 9.6
  - Limits 9.7
  - Non-assignment 9.2
  - Non-surrender 9.2
  - Purchased from chosen insurer 9.4
  - Taken before protected rights 9.5
  - Taxation 19.1–5
- Income withdrawals 9.9–33
  - Taxation 19.6
- Lump sum
  - Basis of calculation 9.41–42
  - Instead of small annuity 9.54–56
  - Maximum benefit 9.43–49
  - Payable at pension date 2.10, 9.50
  - Taxation 9.53, 19.7
  - Trivial funds 9.54–56
Membership of schemes

- Chargeable to UK tax in respect of relevant earnings 3.7, Appendices 2 & 3
- Concurrency 3.16, 3.19–19a
- Controlling director
  - Of an investment company 3.25
  - in receipt of S644(6A) benefits Appendices 3 & 8
- Deed not to withdraw funds 2.6, 23.10
- No relevant earnings, but not concurrency 3.7a
- Occupational pension scheme DIS only 3.20
- Rebate only scheme 3.21
- Simultaneous membership 3.16–21
- Transfer only 3.9–10

Minimum contributions

- Continuation beyond Pension Date 4.38
- Treatment of minimum contributions 4.37–38
- Where individual is a member of an occupational pension scheme 3.21

MINORS 3.11, 14.37–38

Mis-selling Appendix 26

Multiple arrangements 2.9, 3.4, 3.8, 8.4

N
Net relevant earnings Part 4, Appendix 1
- Allowable maximum 4.6, 4.10, Appendix 1
- Concurrent/associated employments 4.7, Appendix 11

P
Pension date
- Early (recognised occupations) 8.7–9, Appendix 10
- Incapacity 8.6
- Normal 50 - 75 8.2–5
- Taxation 19.1–7
Purchase of annuities 9.2–8

R

Refunds of contributions
- Annuity in payment 18.27
- Automatic refunds
  - Contributions paid in error 18.15–16
  - Contributions paid prior to cancellation within cooling off period 18.17–18
    - Excessive contributions 18.4–11
    - Ineligible contributions 18.12–14
    - Unsupported contributions 18.21
- Non-automatic refunds 18.22–26

Relevant earnings Part 3, Appendices 1, 2 & 3
- Concurrent sources of earnings 4.7, 4.43
- Exclusions Appendix 3
- Limit on contributions 4.3–7, 4.9–14a
- Post cessation receipts Appendix 2

Retirement annuity relief
- Interaction with personal pension relief Appendix 12

RETURNS OF INFORMATION (from 6/4/01)
- Form of return 17.59–64
- Information to be supplied 17.37–58
- Submission of returns 17.65–66
- Test tapes and technical assistance 17.64
- Time limit for submission of return 17.33

S

Stakeholder pension schemes
- Registration Part 24

State second pension 4.37–39a
Tax repayment claims

Part 15B

See also CLAIMS BY SCHEME ADMINISTRATORS

Tax treatment of approved schemes

- Allowance of contributions  See contributions
- Annuities
  - Charge to tax 19.1–5
  - payments to former spouse under Court Order 19.4
  - Annuitants resident abroad 19.5
- Exemption from tax 19.8–12
- Income withdrawals 19.6
- Lump sums: exemption from tax 19.7
- Pension business 19.11
- Unauthorised payments 19.13

Term assurance

- Continuation option 10.41
- Contributions 4.8, 4.14
- End of year requirements From 6/4/01 17.54–55
- Form of benefit 2.10
- Scheme established by non Insurer 2.11

Transfers

- Acceptance of 12.10–12
  - Controlling directors/high earners 12.13–14
- Application of 12.15–17
  - Controlling directors/high earners 12.19–22
  - Nil lump sum certificates 12.18
  - Pension sharing orders 12.29–32
  - Schemes with early retirement ages 12.28
- Death benefits 12.23–27
- During income withdrawal 12.33–50
- Lump sum calculation 9.41–44
- Making of 12.3–5
  - Controlling directors/high earners 12.6–9
- Member's application form 12.6–9
- Overseas Appendix 20
- Transfer only arrangement 3.9
Trivial funds 9.54–56

U
Unauthorised payments 19.13
Unit trusts 2.2, 2.8, 19.9

W
Waiver of contributions 4.15–16, 4.21
Widow's, widower's, surviving civil partner and dependants annuities See DEATH ON OR AFTER PENSION DATE, DEATH BEFORE PENSION DATE

Winding up 20.5–8
Withdrawal of approval
- Appeals 21.16
- Appropriate schemes 21.17
- Insured schemes: pension business 21.6
- Notice 21.1
- Operative date 21.3–5
- Reasons 21.2, 21.7
- Stakeholder schemes 21.18
- Taxation consequences 21.6–15