

March 2005

To All Members

Dear Member

GN16: Retirement Benefit Schemes – Transfers Without Consent

Introduction

GN16 (currently entitled Retirement Benefit Schemes – Bulk Transfers) gives guidance on the actuarial Certificate that is normally required if members of an occupational pension scheme are to be transferred to another occupational pension scheme without their consent.

The current version of GN16 (Version 2.1) essentially requires three tests to be carried out when deciding whether a Certificate can be given – a ‘value test’ (paragraph 2.5), a ‘benefit test’ (paragraph 2.6) and a ‘wind up test’ (paragraph 2.7). However, views have been expressed by some lawyers that the current regulations governing transfers without consent do not specify what tests are required and that it is not appropriate for GN16 to attempt to define them. Accordingly, on the basis of legal advice that the Profession has obtained to test these views, we have amended GN16 to reflect our legal advice.

We regret that this means that it is no longer possible to give the same guidance on the tests that must be used to determine whether a Certificate may be given. This is explained more fully below. However, we have received legal advice that it is possible and appropriate to include a professional requirement to inform the trustees of matters which have not been taken into account when giving the Certificate and the extent to which the actuary considers they should be investigated before the trustees decide whether or not the transfer should proceed. Such information should enable the trustees to take a fully informed decision. This professional requirement is now included in GN16.


The opportunity has also been taken to make a number of other changes to GN16.

Version 3.0 of GN16: Retirement Benefit Schemes – Transfers Without Consent is being issued simultaneously as a Fast Track Guidance Note and an Exposure Draft. It comes into effect on 05.04.05. Although Version 3.0 of GN16 is being issued under Fast Track, it is recognised that the changes from the current version may cause problems for actuaries who are about to sign a Certificate. Therefore, up to and including 04.07.05, actuaries may choose, instead, to comply with Version 2.1 of GN16. The revisions to GN16 do not invalidate any Certificate given before 05.04.05.

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Only the Courts can give a definitive interpretation of the regulations where they are unclear. The Board's legal advisers have advised that, while the Faculty and Institute can give guidance in relation to the effect of legislation where it believes that such guidance would be useful, it would not be appropriate to include a specific interpretation which arguably goes beyond the legislation. Such a specific interpretation would risk conflicting with the intended effect of the legislation. Further, it might prevent actuaries acting in accordance with what would be a proper interpretation of the legislation. In Version 3.0 of GN16 less guidance is therefore given on the tests required when giving a Certificate, which are now largely left to the actuary's professional judgement.

However, the Profession has obtained an Opinion from Counsel on a number of issues relating to the certification process and reference to some of the advice given is made in certain paragraphs of GN16. This Opinion is now available on the profession's website at

http://www.actuaries.org.uk/link/pensions/gn_supportingpapers.html

While, as stated above, only the Courts can give a definitive interpretation of the regulations, actuaries with GN16 certificates to sign are strongly recommended to read the Opinion to ensure that they have considered the issues that it discusses when exercising their professional judgement. However, it must be stressed that this legal advice must not be relied upon as being legal advice to individual actuaries or their firms. Each actuary should consider the extent to which it may be necessary to take his or her own legal advice on the meaning of the regulations.

Detail

The principal changes are as follows:

1. The requirement to carry out a value test, a benefit test and a wind up test as part of the certification process has been removed. In the absence of case law it is now for the actuary to decide what tests should be carried out to determine whether the requirements of the Regulations are satisfied, taking into account all relevant circumstances. The actuary should consider the extent to which it may be necessary to take legal advice on the meaning of the regulations. However, it is expected that the factors taken into account when providing the Certificate would normally include the results of value tests and any differences between certain benefits and options in the transferring and receiving schemes, as described in paragraph 3.3.1, which will not be adequately reflected in such tests. In addition, the Faculty and Institute have received legal advice that:
 - although a categorical statement is not possible, the better view (and the view that a court is likely to take) is that a consideration of the extent to which rights might be satisfied in practice (i.e. on a winding up) is not relevant to the assessment of the 'broadly no less favourable' requirement, and

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- as it is the overall package represented by the transfer credits that must be 'broadly no less favourable', the separate elements of the benefits do not each have to be 'broadly no less favourable'.
2. The requirements of paragraph 2.3 of Version 2.1 of GN16 have been removed. These related to the levels of discretionary benefits or discretionary increases in benefits which could be taken into account in a receiving scheme which was either newly established or had no established practice of providing such benefits. It is now left to the actuary's discretion to decide what factors should be taken into account in this situation. However, when considering the level of any discretionary benefits or discretionary increases in benefits which may be provided in any receiving scheme, the actuary may need to consider both the financial strength of the scheme and the commitment and ability of the employers of the receiving scheme to fund such benefits or increases in benefits in the future.
 3. A Certificate is now provided on the basis that it is valid for transfers in a stated period which must not exceed three months, provided that there are no changes to the benefits or the other terms of the transfer as described in the Certificate.
 4. The actuary must now:
 - draw the attention of the trustees to certain elements of the benefits and options in the transferring scheme which are not taken into account when giving the Certificate, as described in paragraph 2.3 a), and
 - advise the trustees whether any further investigations into the differences between the transferring and receiving schemes in relation to these elements should, in his or her opinion, be carried out before a decision is made on whether or not the transfer should proceed.

The actuary must also provide the trustees with a list briefly stating any matters relating to the benefits or options of transferring members (or their contingent beneficiaries) which are not relevant to his or her assessment of the 'broadly no less favourable' requirements but which might, in his or her opinion, be relevant to the trustees' decision to make the transfer. It is for the actuary to decide what matters to include on the list. However, the actuary must consider, in particular, whether possible differences between the benefits which might be available, for service covered by the transfer, in the event of each scheme winding up might be relevant to the trustees' decision (to the extent that these have not been taken into account when giving the Certificate).

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When providing the list the actuary must advise the trustees whether the effect of any of the matters listed on individual members should, in his or her opinion, be investigated before they take a decision on whether or not the transfer should proceed.

Timescales for providing the above information are given in paragraph 2.6.

5. The actuary must ensure that the trustees are aware of the need to take legal advice before a decision is made on whether or not the transfer should proceed.
6. The actuary must advise the trustees of the transferring scheme that he or she will review certain matters, as described in paragraph 4.2, in the light of any events which he or she is advised, or becomes aware, of before the transfer is made.
7. In accordance with Due Process and the PCS, 'must' means that a requirement is mandatory and 'should normally' means that members must comply with the particular requirement unless the circumstances are such that the requirement is inappropriate and non-compliance is consistent with the standards of behaviour, integrity, competence and professional judgement which other members or the public might reasonably expect of a member.

Supplements to the Manual of Actuarial practice are only sent to those members who have requested them. If you have requested a hard copy of Guidance Notes, the revised Version 3.0 of GN16 will be attached to this letter.

Covering letters are also only being sent to those members who have requested them. Should you wish to stop receiving these letters in hard copy and receive an e-alert instead, please alter your despatch preferences in the members' only part of the profession's website, or contact the MAP Editor, Sarah Gander (sarahg@actuaries.org.uk).

Version 3.0 of GN16 will be found, from its effective date, on the profession's Website at <http://www.actuaries.org.uk/files/pdf/map/Contents.pdf>

Before then it can be found at http://www.actuaries.org.uk/link/board_area/pensions.html


As Version 3.0 of GN16 represents a major revision and restructuring of the existing version it is felt that it would not be helpful to produce a copy which tracks the changes that have been made since Version 2.1.

As Version 3.0 of GN16 is also an Exposure Draft comments are sought. Please send them by 05.06.05 to Mervyn Bryn-Jones, Secretary, Guidance Committee of the Pensions Board at Staple

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Inn (mervynb@actuaries.org.uk). It would be helpful if you could co-ordinate comments in the usual manner with colleagues in your organisation.

It is not thought necessary to hold a consultation meeting on these amendments in either Edinburgh or London, unless specifically required by a sufficient number of members.

Yours sincerely

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Chairman
Pensions Board

29 March 2005

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