

Occupational superannuation funds and pension schemes practice notes

This information has been prepared for the use and assistance of persons who advise or manage superannuation funds and pension schemes, approval of which is sought under Article 131. It supersedes the information of May 2001.

1. Changes have been made to reflect the amendments which came into effect on 1 January 2011.
2. The following paragraphs explain in general terms the conditions and limits to be met by a superannuation fund or pension scheme for which approval under Article 131 is sought.
3. It will remain open for employers and their advisers to discuss with the comptroller what can be done outside the conditions and limits in particular circumstances.

Members of Jersey occupational pension schemes (paragraphs 4 to 7)

4. Membership must be confined to employees of the particular employer, or employers, but need not be open to all employees. A pension arrangement may be established for a particular employee and a scheme may relate to individual employees selected on a discretionary basis. Part-time or temporary employees may be members of a scheme. An employer may participate in a 'centralised' or 'multi-employer' scheme, on condition the scheme is established under a master trust. The master trust must submit the trust deed and rules for approval and each participating employer must obtain article 131 approval, by means of submission of the executed deed of adherence to the master trust. Any participating employer with less than 12 members remains subject to the additional conditions of the appendix on small self-administered occupational superannuation funds and pension schemes.
 - 4.1. An employee who is temporarily absent from work or who is seconded to another employer may remain in full membership even if no remuneration or reduced remuneration is paid during this absence provided that:
 - there is a definite expectation of return to service
 - the period of absence is not expected to exceed 3 years
 - the employee does not become a member of any other occupational pension scheme during the period of absence
5. Full-time working directors may be included in a scheme whether or not they have a controlling interest in the business.
6. The proprietor or proprietors of a firm are not employees and neither they nor their spouses or civil partners can be included in the membership of a scheme.
7. Should an employee become a proprietor of the firm, he is to be treated as having withdrawn from the scheme and granted the normal options available under the scheme.

Contribution by employers (paragraph 8)

8. The employer must contribute to the scheme and an ordinary annual contribution will be an allowable deduction for the year in which it is paid. An ordinary annual contribution is regarded as a fixed amount, or a varying one calculated as a percentage of pay or on some other stated

basis, which is payable each year. Where a contribution is not an ordinary annual contribution but a special contribution to provide for eg back service or augmentation, the allowance for the contribution may be spread forward over a period of years if it differs substantially in amount from ordinary annual contributions normally payable.

Contribution by employees (paragraphs 9 to 12)

9. It is not necessary for an employee to be required to contribute to the scheme but where he does contribute his contribution will be allowed as an expense of his employment for the year in which the contribution is paid, provided that it is an ordinary annual contribution (see paragraph 8).
10. A scheme may permit employees to make voluntary contributions to increase their benefits or special contributions to obtain additional benefits. However, these contributions must be within the monetary limits set out in the legislation.
11. An employee's contributions should normally cease at normal retirement age or on earlier withdrawal from the scheme, but if he remains in service after normal retirement age they may be continued so long as his maximum approval benefits (see paragraphs 14 to 16) are not exceeded.
12. The limits on an employee's contributions to a 131 scheme are as follows:
Any ordinary annual contribution by an employed person aggregated with the premiums paid by that person under an annuity contract as defined in Article 131B or a Retirement Annuity Trust scheme as defined by Article 131CA shall not exceed:
 1. £50,000 in any year of assessment
 2. the employed person's related earnings during the year of assessment whichever is the lower.

Benefits on retirement at normal retirement age (paragraphs 13 to 19)

13. Normal retirement age should be within the range 60 - 70, for both men and women, in respect of schemes commencing on or after 1 January, 1991. Schemes existing before that date may include a nominal retirement age for women of 55 – 65 (60 - 70 for men). Different ages can be applied to different categories of employees. In cases where, because of the nature of the employment, employees customarily retire at earlier ages, those earlier ages will be acceptable.
14. The aggregate benefits payable to an employee, under all schemes set up by his employer, who retires at normal retirement age, after 40 or more years' service must not exceed an amount which actuarially produces a pension payable for life, or for life subject to a guaranteed minimum period not exceeding 10 years, of two-thirds of the employee's final remuneration. A maximum annual rate for periods of service of 40 years or less based on 1/60th of final remuneration for each year's service is approvable (N/60ths). In the case of late entrants, see paragraph 16.
15. Final remuneration for all purposes may be either:
 - (a) the remuneration for any 1 of the 5 years preceding retirement date and may include the average over 3 or more of those years of any fluctuating emoluments such as directors fees; or
 - (b) the average of the total remuneration for any 3 consecutive years ending not earlier than 10 years before the retirement date.

Reductions in earnings during the last 10 years of service due to ill health may be ignored in calculating final remuneration. Where an employee (but not a director) was absent during the

period used to calculate final remuneration and remained a full member (see paragraph 4(i) but on reduced, or zero, remuneration, that reduced figure may be increased to an amount equal to his basic salary at the date the absence began adjusted by reference to the rise in the Jersey cost of living index during the period of absence. The comptroller will also consider alternative proposals for the calculation of this notional remuneration. Whenever final remuneration is that of a year other than the 12 months ending on retirement date, or is an average of 3 or more years' remuneration, each year's remuneration may be increased, or dynamised, in an amount not exceeding the increase in the Jersey cost of living index for the period from the end of the year up to retirement date.

16. In the case of employees who cannot, by reason of the date of their entry into the scheme, complete 40 years service before normal retirement date, the scheme may provide for maximum pensions on the basis of the following table:

Years of service to normal retirement date	Maximum pension as a fraction of final remuneration
1-5	1/60th for each year
6	8/60ths
7	16/60ths
8	24/60ths
9	32/60ths
10 or more	40/60ths

If an employee has a retained benefit from service with any other employer(s), a pension provided on the basis of the above in excess of N/60ths must be restricted so that the aggregate pension does not exceed two-thirds of final remuneration. No restriction is, however, necessary where the pension to be provided is based on N/60ths.

17. The scheme may provide for increases of pensions in the course of payment by a fixed amount not exceeding £200 per annum or, at a fixed rate of up to 5% per annum or at the rate shown by the Jersey cost-of-living index, whichever is the higher. Advance funding can be provided for the whole of the pension, even though the scheme may allow commutation. See paragraph 26.

Benefits on early retirement (paragraphs 18 to 19)

18. A scheme may provide for an employee to retire on reaching the age of 50 or within 10 years before normal retirement age and to take an immediate pension.
19. The maximum immediate pension to which he is entitled should be 1/60th of the final remuneration for each year of actual service or, if it is more favourable, a proportion of the maximum approvable pension to which he would have been entitled if he had served to normal retirement age, the proportion being, the number of years of his actual service to the number of years of his potential service (to normal retirement age). If the latter benefit is provided and the number of years potential service is fewer than 40, the restriction for any retained benefit must be applied to the maximum approvable pension (see paragraph 16).
- 19.1. Where an employee retires before the date on which he becomes entitled to an old age pension payable under the Social Security (Jersey) Law 1974 the amount of his immediate pension (after any commutation) payable between the date of retirement and the date of his entitlement to old age pension may be increased provided that it is decreased after his old age pension comes into payment. These variable rates must be actuarially calculated so that they require no extra funding and so that there is no cost to

the scheme. The increase in the amount payable in the former period cannot exceed the maximum amount of old age pension payable under the Social Security Law.

Benefits on early retirement due to incapacity (paragraph 20)

20. A scheme may permit an employee to take an immediate pension if he retires before normal retirement age due to incapacity and may provide a maximum pension of an amount computed as if he had remained in service to normal retirement age on the final remuneration he was receiving at actual retirement date. Where retirement is due to serious ill-health, the scheme may provide for full commutation of pension for a lump sum (see paragraphs 26 and 28). Serious ill health is regarded where a registered medical practitioner certifies that the life expectancy is less than 12 months.

Benefits on retirement after normal retirement age (paragraphs 21 to 23)

21. A scheme may provide that an employee who remains in service after normal retirement age shall receive additional pension up to the maximum amount approvable on the basis that his actual date of retirement was his normal retirement date, subject to the pension coming into payment no later than age 75.
22. If an employee's total service exceeds 40 years, provision can be made for each year in excess of 40, subject to a maximum of 5 years, to earn a further one-60th of final remuneration or, alternatively, the pension can be increased actuarially to reflect its later commencement and the yield on monies invested or policy monies.
23. It is permissible for an employee who continues in service after normal retirement date to take at that date the benefits then accrued but no further benefits are to accrue in respect of service after normal retirement date.

Pensions generally (paragraphs 24 to 25)

24. Pensions must not be assignable or capable of surrender except in respect of surrender for a widow's or dependant's pension and the pension must be payable for the employee's life as a minimum period.
25. Pensions must be paid under deduction of income tax at standard rate. The responsibility for deducting the tax, and for remitting it to the comptroller, rests with the person having the management of the scheme (including any insurance company paying the pension in the form of an annuity). However, upon a request being made promptly, ie before payment of the pension begins, the comptroller will normally authorise gross payment while a pensioner remains resident in Jersey.

Lump sum benefits in commutation of pensions (paragraphs 26 to 28)

26. A scheme may provide for the commutation for a lump sum on retirement of not more than 30% of the capital value of the total benefits provided at that retirement date. Where, however, the pension is trivial in amount (for a defined contribution scheme, a fund value, or for a defined benefit scheme, where the capital value placed on the benefits by the trustees is determined acting on the advice of the actuary) the scheme may provide for a full commutation of the pension for a lump sum providing the following are met:
 - the person has attained the age of 60

- the lump sum does not exceed a total aggregate value of £30,000. This includes the value of the fund at the time of the election and all previous elections to trivial commutations from all occupational and personal pension schemes either from an approved occupational scheme, a retirement annuity contract or a retirement annuity trust.

Commutation is also allowed for a pension payable to a widow, surviving civil partner or dependants under this rule, subject to the £30,000 fund value. A scheme may also provide for full commutation of pension for a lump sum if retirement is due to serious ill-health. Serious ill health in this respect is where a medical practitioner certifies that the life expectancy of the person is less than 12 months.

27. An employed person may make up to three elections from the date an annuity would be payable to that person until the date an annuity is first paid provided that the sums commuted following two or more elections do not when aggregated, exceed the limit of 30%.
28. Sums paid which do not exceed 30% of the fund value are exempt from tax. Trivial pensions are subject to tax at 10% on the balance after the 30% tax free commutation has been made. However, in the case of serious ill-health the lump sum is exempted from tax.

Benefits on death in service (paragraphs 29 to 32)

29. A scheme may provide for a payment of a lump sum on death in service before normal retirement age in an amount not exceeding 4 times the deceased employee's final remuneration at the date of his death, plus the return of the deceased employee's contributions, with interest, or in an amount not exceeding 5 times final remuneration, inclusive of any return of contributions (whichever is the greater). Where an employed person dies before retirement no tax shall be charged on the trustees in respect of a lump sum paid to the beneficiary under the rules of the fund provided that such lump sum does not exceed 5 times the employed person's annual remuneration at the time of his or her death or his or her actual remuneration, before tax, during the 12 months immediately prior to death, whichever is the greater amount. Any excess is subject to tax at the prescribed rate.
30. In addition to a lump sum, a scheme may provide a pension to the widow or surviving civil partner of the employee or, where there is no widow or surviving civil partner, to a dependant, ie a person financially dependent upon the employee. The pension may not exceed 2/3rds of the maximum pension, being the amount computed as if the deceased had remained in service to normal retirement age on the final remuneration he was receiving at the date of his death. A widow's pension may cease on re-marriage. The same applies to a surviving civil partner entering into a new civil partnership. A pension for a child must cease when the child attains his majority or ceases to receive full-time education, if later. Where, exceptionally, a scheme provides at normal retirement age a lump sum and a pension (ie the lump sum is not an optional matter), the 'maximum pension' may include the pension equivalent of the lump sum and any preserved benefits from an earlier employment may be taken into account.
31. Where there is both a widow or surviving civil partner and dependants, or no widow or surviving civil partner but more than 1 dependant, separate pensions may be provided for each. However, no pension may be greater than specified in the preceding paragraph and the total of the pensions must not exceed the incapacity pension which could have been provided for the employee himself.
32. If an employee dies in service after normal retirement age, the maximum benefits can be calculated either on the basis of death in service generally, or on the basis that he had retired on the day before his death.

Benefits on death after retirement (paragraphs 33 to 39)

33. The scheme may provide for a widow's or civil partner's pension of 2/3rds of the pension that the deceased employee would have been receiving if he had not exchanged any pension for a lump sum or surrendered any pension. Alternatively, a similar pension may be provided for a dependant. If there is more than 1 pension payable, the total of the pensions must not exceed the full amount of the deceased employee's own pension. A widow's or surviving civil partner's pension may cease on re-marriage or registration of a new civil partnership. A pension for a child must cease when the child attains his majority or ceases to receive full-time education, if later.
34. A scheme may provide for an employee to surrender part of his own pension to provide for a pension for his wife but the wife's pension must not exceed the reduced pension retained by the employee. This surrender is permissible even if the wife is entitled to a separate pension in her own right from another scheme or from another rule of the employee's own scheme. Similarly, a scheme may provide for an employee to surrender part of his or her own pension to provide for his or her civil partner. The surrendered pension must not exceed the reduced pension retained by the employee. Alternatively, a similar pension can be provided for a dependant of the employee.
35. If, in any case, the benefits that were paid to the deceased employee are less than the employee's own contributions plus a reasonable rate of interest, the rules may provide for payment of a lump sum equal to the difference.
36. As an alternative to the payment of a lump sum in paragraph 35, the rules may provide for the payment of a pension for a guaranteed number of years, not exceeding ten, after retirement. If the guaranteed period does not exceed 5 years, provision may be made for the payment of an immediate lump sum equal to the instalments falling due after the pensioner's death.
37. Pensions for widows, surviving civil partners and dependant's pensions cannot be guaranteed for a minimum number of years except in the case where a pension for a widow, surviving civil partner or dependant has been provided by a surrender of part of the employee's pension when both pensions can be guaranteed for a period of 5 years from the commencement of the employee's pension.
38. No provision for a lump sum benefit on death after retirement can be made except in the rare case of a life cover continuing after retirement. In such a case, the benefit of the continuing life cover must be taken into account as part of the retirement benefit available in non-pension form and any commutation entitlement must be restricted accordingly (see paragraph 26).
39. A scheme may allow for the widow, surviving civil partner, a child or any dependant who is entitled to benefits following the death of the person to whom the annuity was paid, to be paid a lump sum by way of commutation of all the benefits to which that person is entitled provided that the value of the benefits do not exceed £30,000 at the time the lump sum is paid

Withdrawal from service (paragraphs 40 to 48)

40. The scheme may provide, in the case of an employee leaving the service of the employer otherwise than on retirement or on death, for a return of the employee's own contributions plus interest, or for a deferred or 'frozen' pension payable at normal retirement date or for the purchase of an annuity contract approved under Article 131B, or the payment of a transfer value to the scheme of a subsequent employer, or the transfer to an annuity contract approved under Article 131B or a retirement annuity trust approved under Article 131CA.
41. If the rules of the scheme give an option to an employee withdrawing from service either to take a refund of his own contributions and interest or to take other benefits, the exercise by the employee of the option to take a refund must prohibit him from receiving any other benefits.

42. A deferred or 'frozen' pension can be payable at the normal retirement date under the scheme in which the benefits were secured, or at any earlier date in the case of incapacity, or at any time between the earliest date from which an immediate pension on early retirement could be paid under the rules of the scheme and normal retirement date under that scheme, or at the normal retirement date under the last employer's scheme. The amount of a deferred or 'frozen' pension must not exceed the amounts (see paragraph 19) provided for early retirement pensions otherwise than on the grounds of incapacity, but a scheme may always grant the deferred pension that could be provided by the employees own contributions alone if that would be greater. The deferred pension which can be provided in accordance with this paragraph may be increased, when the payment begins, up to 5% per annum over the period of deferment or, if greater, by the annual percentage increase in the cost of living.
43. A scheme may give a right to an employee who dies before a deferred pension becomes payable to a lump sum benefit. The lump sum so payable should be governed by the limits of the 'death in service' provisions of paragraphs 29 to 32 of this note, his final remuneration being that on the date of his withdrawal. If benefits are also provided for the widow, surviving civil partner or dependant they should be similarly governed.
44. If the rules of the scheme provide for a deferred or frozen pension it cannot be assigned or surrendered.
45. The rules of the scheme may provide that if the employee ceases to be a member of the scheme but continues in the service of the employer (other than in the circumstances described in paragraph 23) his benefits to the date of ceasing to be a member may be held under the scheme until he retires or leaves the employer's service, or transferred to an annuity contract approved under Article 131B or retirement annuity trust approved under Article 131CA.
46. A scheme may permit the payment of a transfer value to an approved scheme of a subsequent employer, and the receipt of a transfer value from an approved scheme of a previous employer. The receiving scheme may treat the transfer payment as representing the employee's contributions only to the extent certified by the administrator of the paying scheme, and may provide the maximum benefits appropriate to the employee's service with the new employer plus the additional benefit which the transfer payment is sufficient to buy if invested by the receiving scheme or if it is applied by way of a premium under the relevant policy. The aggregate benefit must not, however, exceed 2 thirds of the employee's final remuneration, less any retained benefits in respect of still earlier employments.
47. Tax is chargeable and payable by the person having the management of the scheme at 1/2 of the standard rate in respect of all contributions refunded to an employee during his life-time. The amount on which tax is chargeable is the gross amount refundable inclusive of the interest element. Refunds of contributions in respect of sums transferred in from a 131B or 131CA scheme are prohibited. No tax is chargeable in respect of transfer values paid to approved schemes or for the purchase of benefits under an annuity contract approved under Article 131 B.
48. Where an employee leaves service and a surplus of his benefits representing the employer's contributions and interest remains, the scheme may provide that the surplus should be retained to reduce future contributions or to augment benefits or to provide a reserve. Exceptionally, where the surplus cannot be so utilised, or in the case of an individual pension arrangement, the rules must provide for the return of the surplus to the employer and the surplus will then be treated as a receipt of his trade or business.

Discontinuance of schemes (paragraphs 49 to 52)

49. The rules of a scheme may provide for its discontinuance because of bankruptcy or liquidation or at the discretion of the employer. However, the rules must also provide that on discontinuance the benefits then accrued, subject to the maximum approvable benefits, will be preserved.
50. Discontinuance can be achieved by making the scheme 'frozen' or 'paid-up'. In these circumstances, all contributions must cease and the assets must be held by or on behalf of the manager or administrator to be applied to provide benefits according to the rules when the existing members retire, die or withdraw from service. The scheme will be eventually wound up when all benefits have been so applied.
51. Alternatively, the scheme may be immediately wound up and the assets realised and applied to provide the respective benefits. The benefits may be transferred by means of transfer payments to approved schemes of the new employers of the members or may be secured by the purchase of immediate or deferred non-assignable annuity contracts duly endorsed with the appropriate limits of commutation etc. or transferred to an annuity contract approved under Article 131 B or a RAT approved under 131CA. If the scheme is operated by means of policies securing benefits for particular employees, the policies suitably endorsed, may be assigned to the employees.
52. In the case of winding up, the maximum approvable benefits must not exceed those which would have been applicable if the employees had withdrawn from service when the benefits are determined.

Application for approval (paragraph 53)

53. Article 2 of the Income tax (Superannuation Funds) (Jersey) Order, 1972, makes provision for the manner in which applications for approval of a scheme shall be made, and Article 3 of that order provides that details of subsequent amendments and alterations to the rules of a fund or scheme shall be notified to the comptroller.

Appendix 2 - Provision of benefits where service consists of both part time and full time service

Change from either part time to full time or full time to part time

- 1.1 Whether part-time service precedes or follows full-time service, it is always permissible to compute the benefits for each period of service separately by reference to the remuneration of that period (for this purpose, the time restrictions contained in paragraph 15 on final remuneration may be set aside in respect of the earlier period of service).

Change from part-time to full-time

- 2.1 Alternatively where the full-time service follows the part-time, benefits may be based on final remuneration in the full-time job provided that the part-time service is converted into its full-time equivalent using the formula:

$$\text{Years of part-time service} \times \text{part-time working hours} \div \text{full-time working hours}^*$$

This should be the number of hours on which final remuneration is based.

Change from full-time to part-time

- 3.1 A similar alternative is available where the part-time service follows the full-time. In this case, however, not only does the part-time service need to be converted to fulltime service but also the final remuneration needs to be converted to its full-time equivalent. This alternative is not to be used for calculating benefits in respect of remuneration which includes emoluments as a director.

Retained benefits

4.1 Paragraphs 16 and 19 describes circumstances where benefits must not exceed 2/3rds of final remuneration less retained benefits. When applying this restriction to benefits for mixed full-time and part-time service, final remuneration should be calculated:

- (a) in conversion cases (i.e. where paragraphs 2 or 3 above apply) as the actual or notional full-time final remuneration used in the calculation, and
- (b) where separate period calculations are used, as follows:

Years of part-time service ÷ Years of total service × final remuneration for part-time service
plus

Years of full-time service ÷ Years of total service × final remuneration for full-time service

Benefits on death in service

5.1 Maximum approvable pensions for widows, widowers, surviving civil partners or dependants should be calculated on the assumption that the terms of employment (i.e. full or part-time) at the time of death would have continued unchanged until normal retirement date.

Disclaimer

These notes are intended to provide some background information in respect of occupational superannuation funds and pension schemes. They should not be taken as a definitive statement of the law on a particular aspect, or in any particular case.

These rules only apply to schemes before 2015