

THE OCCUPATIONAL PENSION SCHEMES (EARLY LEAVERS: CASH TRANSFER SUMS and CONTRIBUTION REFUNDS) REGULATIONS 2005

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Preface

1. This consultation document seeks views on a set of proposed regulations dealing with cash transfer sums and contribution refunds for early leavers from occupational pension schemes who do not have vested rights in the scheme. It follows the letter sent out by Olwen Hooker on 29 March 2005 (attached).
2. One of the proposals in the regulations concerns the circumstances in which cash transfer sums can be reduced on the basis of scheme underfunding, and mirrors changes that we intend to make to calculation of cash equivalent transfer values under the Occupational Pension Schemes (Transfer Values) Regulations 1996 (SI 1996/1847) (“the main Transfer Value regulations”), and to those Pensions on Divorce regulations with similar provisions¹. We would particularly welcome comments on this aspect (see paragraphs 7-13 of the Introduction).

Who should respond to this consultation?

3. This document is primarily aimed at the private pensions industry, but comments from the wider public are also welcome.

DWP Website

4. This document is available on the Department’s website at:

<http://www.dwp.gov.uk/consultations/2005/>

Related Regulations

5. These regulations mirror many of the provisions contained in the main Transfer Values Regulations as amended by regulation 15 of the Occupational Pension Schemes (Winding up etc.) Regulations 2005 (SI 2005/706). These can be found at, respectively:

http://www.opsi.gov.uk/si/si1996/Uksi_19961847_en_1.htm

<http://www.opsi.gov.uk/si/si2005/20050706.htm>

Regulatory Impact Assessment

6. There is no regulatory impact assessment (RIA) attached to these regulations, as the impact of this change was covered by the RIA for the Pensions Act 2004.

Code of Practice

¹ Pension Sharing (Valuation) Regulations 2000, Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 and Pension Sharing (Pension Credit Benefit) Regulations 2000

7. The Pensions Regulator is already consulting on a Code of Practice that covers what constitutes a reasonable period for:
 - the trustees to write to the member,
 - the member to reply,
 - payment of the member's option, and
 - the default process where the member fails to choose an option.

Consultation

8. Although there is no legal or other requirement for consultation as these regulations will be made within 6 months of the date the primary legislation comes into force, we would welcome comments.

How to respond

9. The consultation period runs until **Friday 26 August** 2005. Please ensure that your response reaches us by that date. If you would like further copies of this consultation document it can be found at

<http://www.dwp.gov.uk/consultations/2005/>

10. Please send consultation responses to:

Andy Carter
Private Pensions
3rd Floor
Adelphi
1-11 John Adam Street
LONDON WC2N 6HT

Phone: 020 7962 8969

Fax: 020 7962 8676

Email responses can be sent to: andy.carter@dwp.gsi.gov.uk

11. When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation please make clear whom the organisation represents, and where applicable, how the views of members were assembled.
12. A list of those consulted is attached. If you have any suggestions of others who may wish to be involved in this process please contact us.
13. The information you send us may need to be passed to colleagues within the Department for Work and Pensions and published in a summary of responses received in response to this consultation along with a response from the Government. **Because of the Freedom of Information Act 2000, all information contained in your response, including personal information, may be subject to publication or disclosure. By providing personal information for the purposes of the public consultation exercise, it is**

understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information which is provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this. We cannot guarantee confidentiality even if your IT system claims it automatically. The contact point to discuss this is Andy Carter (see paragraph 9 for contact details). More information about the Freedom of Information Act can be found on the website of the Department for Constitutional Affairs at –

<http://www.dca.gov.uk/foi/guidance/exguide/index.htm>

14. The Government will aim to publish a summary of responses, including the next steps by the end of of 2005. You will be able to find this at:

<http://www.dwp.gov.uk/consultations/2005/>

15. Because of the technical nature of this document, and because the fundamental policy was widely discussed during the development of the Pensions Act 2004, Ministers have decided not to publish it under the terms of the Cabinet Office Code of Practice on consultation. However, it is informed by best practice from the code.
16. DWP values feedback on how well it consults. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact the DWP Consultation co-ordinator. In particular, please tell us if you feel that the consultation does not satisfy these criteria. Please also make any suggestions as to how the process of consultation could be improved further. Please contact:

Geoff Ashton DWP Consultation Co-ordinator
5th Floor East, Trevelyan Square, Leeds LS1 6EB
0113 23 27 107 Geoff.Ashton@dwp.gsi.gov.uk

Introduction

1. This set of draft regulations is part of the Government's policy to encourage people to save for their retirement and, in conjunction with the primary legislation from which these regulations are derived, will give many early leavers from an occupational pension scheme who have no vested rights in that scheme the right to either a cash transfer sum which can go to another pension scheme, or to a refund of their contributions.

Background

2. At present a person who leaves an occupational pension scheme before their rights have vested (rights have to vest after a maximum of two years' pensionable service) is usually entitled to a refund of their contributions, depending on scheme rules, but nothing else.
3. However there are many individuals who work for short spells for the same, or several, employers but under the current vesting requirements are unable to build up any pension savings. The Government decided to give them the choice of a refund of their contributions or a cash transfer sum that could be transferred to another pension scheme. The latter would give a valuable kick start to their pension saving.
4. The new provisions are made by section 264 of the Pensions Act 2004 which inserts a new Chapter 5 into the Pension Schemes Act 1993. The changes are intended to come into effect from 6 April 2006 and will apply to those with at least three months' pensionable service. Where the former member does not exercise his choice within a reasonable time then the trustees can discharge their liabilities by refunding contributions.
5. Although the primary legislation sets out a lot of the detail, there are regulation-making powers to prescribe, among other things:
 - a. how to calculate and verify cash transfer sums and contribution refunds;
 - b. circumstances in which cash transfer sums and contribution refunds can be increased or reduced;
 - c. requirements to be met by receiving schemes of cash transfer sums;
 - d. information to be given to the member.
6. Wherever possible the Government has decided to use the existing regulations on cash equivalent transfer values (CETVs) as the basis for the draft regulations for cash transfer sums, as in essence the two are similar, except that CETVs derive from vested rights, whilst cash transfer sums do not. To do otherwise would create unnecessary complexity for schemes.

Main Transfer Value regulations (and Pension Sharing regulations with equivalent provisions)

7. In considering this consultation you will need to be aware of intended changes to the main Transfer Value regulations (and Pension Sharing regulations with equivalent provisions - see footnote 1 of Preface).
8. The Minimum Funding Requirement (MFR) is currently used as an underpin in the calculation of CETVs. The MFR is to be replaced by new scheme funding requirements under Part 3 of the Pensions Act 2004 (provisionally from this September). Trustees will be able to comply with the new requirements in line with their scheme's existing valuation cycle, which will mean that it is likely that the trustees of some schemes will not have their first valuation under the new requirements for over four years. In the meantime, transitional provisions will provide for the MFR to continue to apply to individual schemes until their first valuation under the new requirements is completed.
9. CETVs have at present an underpin equal to the member's rights as assessed in accordance with the MFR.¹ It has been previously announced that this underpin will be discontinued. In line with the general approach discussed above, the Government intends that, for the purposes of CETVs and related pension sharing amounts, the MFR underpin will remain in place until the scheme receives its first valuation under Part 3 of the Pensions Act 2004.
10. CETVs are most commonly reduced where the scheme is underfunded based on the scheme actuary's report compiled under actuarial guidance note GN11² (the Actuarial Profession is currently consulting on a re-draft of GN11). At present any reduction cannot take the amount of a CETV below the MFR underpin (which can itself be reduced if the latest valuation shows the scheme to be underfunded on a MFR basis)³. The Government intend to keep the underpin on a transitional basis, as discussed above.
11. The Government is aware that opinion is divided as to whether, once the underpin has gone, basing a reduction on the actuary's report only will represent sufficient protection for members as, unless a report is provided in conjunction with a formal valuation, it need not be based on audited accounts or on full membership data. On the one hand, it is generally accepted that the MFR has not kept pace with changing demographic and economic trends. As a result the MFR underpin has increasingly become an irrelevance in the calculation of CETVs (the Actuarial Profession advised its members in September 2002 that continuing to certify that CETVs equal to the MFR underpin satisfy the mandatory requirements of GN11 has become close to untenable).

¹ Regulation 7(3)(b)(iv) of the main Transfer Value regulations

² Regulation 8(4)-(4C) & (4J) of the main Transfer Value regulations

³ Regulation 8(4D)-(4I) & (4K)-(4L) of the main Transfer Value regulations

Against that there is concern that without some kind of level below which CETVs cannot go there could be scope for abuse and members could lose out.

12. The Government has decided to proceed on the basis that no change is made other than removing the MFR underpin. So reductions because of underfunding will be based solely on the actuary's report (which in practice is what happens, the Government understands, in the large majority of such reductions anyway). Also it is open to the member not to accept the amount offered for transfer.
13. **We would particularly welcome comments on the intended changes to the main Transfer Value regulations outlined in the preceding paragraphs.**

Commentary on the draft regulations

Regulation 1

1. This is a general regulation about the citation, commencement and interpretation of the regulations.

Regulation 2

2. Most schemes already provide contribution refunds so the Government does not think that the calculation of refunds needs to be covered in these regulations.

Q1: Do you agree that nothing needs to be included here about the calculation of contribution refunds? If you disagree, please say what you think should be included.

3. This regulation provides that the calculation of the cash transfer sum is done on the same basis as that for CETVs. This regulation applies to schemes which have received their first valuation under Part 3 of the Pensions Act 2004 on or before the member's pensionable service ends.
4. GN11 reports on or after 6 April 2006 will have to take account of possible entitlement to cash transfer sums and contribution refunds, as well as cash equivalents.

Q2: Is this the right approach to the calculation of cash transfer sums? If not, please give alternatives.

Regulation 3

5. This sets out circumstances in which a cash transfer sum or contribution refund may be reduced. Most of the circumstances affect only the cash transfer sum, and mirror existing provisions for CETVs. The Government has excluded provisions that do not seem to be relevant to cash transfer sums – for example, where protected rights have been given effect to via section 32A of the Pension Schemes Act 1993.
6. The main circumstance in which CETVs are reduced is where the scheme is underfunded based on a GN11 report, and this approach is replicated here. The GN11 report to be used will be the last one before the member left pensionable service.

Q3. Paragraphs 7-13 of the Introduction discuss intended changes to the main Transfer Value regulations, and we would be particularly interested in getting your views on whether it is safe to reduce cash transfer sums (and CETVs) based solely on the latest GN11 report? If not, what safeguards should we build in?

7. This regulation also provides that cash transfer sums and contribution refunds may be reduced if the scheme begins to wind-up after the member has left pensionable service but before payment is made.¹ This ensures that early leavers are not given advantageous treatment compared to others, and is consistent with the approach taken for CETVs². Also these amounts may be reduced where the member has committed an offence which has led to a monetary loss for the scheme and/or employer.³
8. This regulation applies to schemes which have received their first valuation under Part 3 of the Pensions Act 2004 on or before the member's pensionable service ends.

Q4. Do you agree with reductions in these circumstances? Are there other circumstances where there should be reductions?

Regulation 4

9. This sets out the circumstances where the amount of the cash transfer sum and contribution refund can be increased. This is where the trustees have failed to make the payment within a reasonable time, with or without reasonable excuse. It mirrors existing provisions for CETVs.⁴

Q5. Is this a reasonable approach?

Regulation 5

10. This sets out the type of scheme that can receive a cash transfer sum. Essentially if the sum includes contracted-out rights then the receiving scheme must be able to accept such rights. Otherwise the transfer must be to a scheme registered by HMRC, or a qualifying registered overseas pension scheme. Again this approach is consistent with that already in place for CETVs.⁵

Q6. Are there other types of pension scheme that should be allowed to accept cash transfer sums?

Regulation 6

¹ Please note that regulation 5 of the Occupational Pension Schemes (Winding up etc.) Regulations 2005 (SI 2005/706) provides that where a member acquires Chapter 5 rights because pensionable service has ended as a result of the scheme starting to wind-up, then the right to a cash transfer sum is lost and the member can only have a contribution refund (which will be subject to the winding-up priority order).

² Regulation 9(3) of the main Transfer Value regulations

³ Sections 91, 92 and 93 of the Pensions Act 1995 (with associated regulations) will not apply to cash transfer sums or contribution refunds, as they apply only to vested rights within a scheme. However the Government decided it was appropriate to have some forfeiture provisions in these regulations to ensure that those leaving with a cash transfer sum are not in a better position than those with CETVs.

⁴ Regulation 10 of the main Transfer Value regulations

⁵ Regulation 12(1) & (3) of the main Transfer Value regulations. Changes consequential to the Finance Act 2004, coming into effect from 6 April 2006, have been anticipated.

11. This specifies the sort of information that must be given to members, in addition to that already set out in the Act. This ensures that the member:

- can make an informed choice,
- knows the deadline for reply, and
- knows the consequences if a reply is not received within that deadline.

Q7. Is the information to be given to the member necessary and sufficient?

12. This regulation also provides at paragraph (2) that where the scheme that the member has left (scheme B) had previously received a transfer from another occupational pension scheme (scheme A) in respect of that member, then on written application the trustees of scheme A must provide to the trustees of scheme B details about member contributions to scheme A. This is to enable the trustees of scheme B to calculate the total of the member's contributions that could be refunded.

Regulation 7 and the Schedule

13. These provide that for schemes established before the date that the new scheme funding requirements come into force [date to be inserted], and where the member's pensionable service ends before the scheme receives its first valuation under Part 3 of the Pensions Act 2004, then regulations 2 and 3 do not apply and the Schedule used instead. The Schedule retains the use of the MFR underpin in these circumstances.

Q8: Paragraphs 7-13 of the Introduction discuss the reasons for retaining the MFR underpin for a transitional period. Do you agree that this is needed?

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Private Pensions

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Date: 29 March 2005

Dear Sir/Madam

Section 264 of The Pensions Act 2004 - Early Leavers: Cash Transfer Sums and Contribution Refunds: Proposed Secondary Legislation

You will be aware that The Pensions Act 2004 introduced rights for early leavers from occupational pension schemes whose rights have not vested. Under these new provisions a scheme member whose service is of at least three months duration but whose rights have not vested in the scheme must be offered the choice of either a cash sum that can be transferred to another occupational or personal pension scheme, or a refund of their own contributions. We are planning to bring the legislation into effect from 6 April 2006.

Although the primary legislation sets out a lot of the detail in respect of these new provisions there are regulation powers to prescribe certain requirements. As it will be a little while before we can go out to consultation on draft secondary legislation, we thought that it would be helpful to let you know at this stage how we think the regulations will be constructed. This advance notice may also help you consider any administrative changes that you may need to make to accommodate these new provisions, and let us know if what we are proposing will cause operational problems.¹

Purpose of the Regulations

At present most people who leave an occupational pension scheme before their rights have vested may be entitled to a refund of their contributions depending on scheme rules but nothing else. The Pensions Act 2004 brought in provisions, which will commence from April 2006, to offer such scheme members the choice of either a cash transfer sum or a refund of contributions.

¹ Please note that these particular regulations will not cover the situation where a member becomes a person to whom Chapter 5 applies because the scheme has started to wind up. This is instead covered by regulation 5 of The Occupational Pension Schemes (Winding up etc.) Regulations 2005, which stipulates that people in this position will not have a choice of a cash transfer sum or contribution refund, but will be entitled to receive a contribution refund only, which will be subject to the priority order. The choice would bring additional complexity and cost on wind up.

The primary legislation does set out in some detail the new provisions but it also contains regulation-making powers to:

- a) prescribe the way that the calculation of the cash transfer sum and contribution refund should be done;
- b) allow for the cash transfer sum and contribution refund to be increased or reduced in certain circumstances;
- c) prescribe requirements that a pension scheme has to satisfy in order to accept the cash transfer sum; and
- d) set out information that the member must have about his choice.

We do not intend to set out in regulations the method of calculating the contribution refund. This is we believe a straightforward process and most schemes already undertake to make contribution refunds through scheme rules. We consider however that the calculation of the cash transfer sum should be done on the same basis as cash equivalent transfer values (see regulation 7 of the Occupational Pension Schemes (Transfer Value) Regulations 1996) and this provision will be covered in the draft regulations.

We propose that the draft regulations will cover the circumstances where there can be a reduction in the cash transfer sum or contribution refund. This will normally be where the scheme is underfunded at the time that pensionable service ends. We intend that the reductions of cash transfer sums in this situation will operate in the same way as for cash equivalents (see regulation 8 of the Occupational Pension Schemes (Transfer Value) Regulations 1996).¹ The draft regulations will also provide that some or all of the cash transfer sum and contribution refund can be forfeited where the member owes money to the scheme or employer as a result of some wrong-doing. It is not intended however that the wider forfeiture provisions that apply to cash equivalents should apply here given the relatively small amounts of money involved. It is also intended that the draft regulations will permit the cash transfer sum and contribution refund to be reduced if the scheme begins to wind-up after the member has left pensionable service but before the payment of the cash transfer sum or contribution refund is made.

Conversely the regulations will cover the situations where the amount of the cash transfer sum or contribution refund can be increased. This can happen where trustees have failed to pay the cash transfer sum or contribution refund, as appropriate, within a reasonable period and is based on the existing provision for cash equivalents (see regulation 10 of the Occupational Pension Schemes (Transfer Value) Regulations 1996).

It is proposed that the information that must be included in the notice sent to the member, in addition to the amounts involved, the options available and the reply date, will be set out in regulations. We consider that it is important that the right level of information is provided to the member to enable him to make an informed choice in this matter. It is proposed that the regulations will prescribe that the following is included in the notice:

¹ Note that a cash transfer sum (CTS) will not be reduced by a contributions equivalent premium (CEP), but that trustees will not have to pay a CEP where a CTS has been paid (the latter point is covered by draft regulation 2(6) of the Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2005, which were issued for consultation on 10 March 2005)

- The amount, details and reason for any reduction in the cash transfer sum or contribution refund
- Details of any set off of the contribution refund in accordance with section 101AG(5)(b) and 101AH(3)(b) of the Pensions Act 2004
- Details of any tax liability in respect of the contribution refund
- Details of the amount of any contribution equivalent premium deducted from the contribution refund
- How the member's exercise of his rights to a contribution refund or a cash transfer sum may affect any other rights that he may have under the scheme
- That if the scheme begins to wind up that the cash transfer sum or contribution refund may be reduced and
- If the member does not exercise their right on or before the reply date, or any later date that the trustees may allow that the trustees or scheme manager will be entitled to pay a contribution refund to him.

We also propose that regulations will provide that trustees of a transferring occupational pension scheme must advise the trustees of the receiving scheme, if asked, of the amount of employee contributions included in a transfer payment. This is to enable any contribution refund from the second scheme to take account of previous employment if the member leaves before rights in the second scheme have vested.

The draft regulations will prescribe the types of pension schemes that can accept cash transfer sums. It is intended that these provisions will mirror the conditions that currently apply in respect of cash equivalent transfer values.

Please note that the Pensions Regulator will be issuing a Code of Practice on what should constitute a reasonable period for the purposes of, among other things, how soon the trustees should send the notice to the member and how long the member should have to make his choice.

We plan to undertake a full consultation process in respect of these draft regulations later this year and will be pleased to receive your comments at that stage. In the meantime, however, please let us know if what we are proposing will cause operational problems. We trust that this advance notice has been helpful to you.

Yours faithfully

Olwen Hooker

Olwen Hooker
Private Pensions.

List of those consulted:

Addleshaw Booth & Co
Aries Pensions and Insurance Systems
Association of British Insurers
Association of Consulting Actuaries
Association of Independent Financial Advisers
Association of Corporate Trustees
Association of Pension Lawyers
Association of Pensioner Trustees
Auditing Practices Board
British Chambers of Commerce
Cabinet Office (Regulatory Impact Unit)
Confederation of British Industry
Construction Company
Consumers Association
Engineering Employers Federation
Equal Opportunities Commission
Faculty and Institute of Actuaries
Federation of Small Businesses
Financial Services Authority
Government Actuaries Dept
HMRC
HM Treasury (MOCOP)
Industry Wide Pension Schemes Group
Institute of Chartered Accountants
Institute of Chartered Accountants in Scotland
Institute of Directors
Investment Managers' Association
Law Debenture
Law Society
Law Society of Scotland
Legal & General
National Association of Pension Funds
National Consumers Council
National Pensions Convention
Office of Fair Trading
Pensions Management Institute
Pensions Ombudsman
Policy and Legal Division DHSS Northern Ireland
Prudential
Punter Southall
Scottish Equitable

Scottish Executive
Small Business Service
Society of Pension Consultants
Standard Life
Technical Connection
The Pensions Advisory Service
The Pensions Regulator
Trades Union Congress
Welsh Assembly

2005 No.

PENSIONS

The Occupational Pension Schemes (Early Leavers: Cash Transfer Sums and Contribution Refunds) Regulations 2005

<i>Made</i> - - - -	[]
<i>Laid before Parliament</i>	[]
<i>Coming into force</i> - -	<i>6th April 2006</i>

The Secretary of State for Work and Pensions in exercise of the powers conferred upon him by sections 101AC(2)(a), 101AE(2), 101AF, 113A, 181(1), 182(2) and 183 of the Pension Schemes Act 1993⁽¹⁾ and of all other powers enabling him in that behalf by this instrument which contains regulations made before the end of the period of six months beginning with the coming into force of section 264 of, and paragraph 18 of Schedule 12 to, the Pensions Act 2004⁽²⁾ by virtue of which they are made, makes the following Regulations:

Citation, commencement, interpretation and application

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Early Leavers: Cash Transfer Sums and Contribution Refunds) Regulations 2005 and shall come into force on 6th April 2006.

(2) In these Regulations—

“the Act” means the Pension Schemes Act 1993;

“the 1995 Act” means the Pensions Act 1995⁽³⁾;

“the 2004 Act” means the Pensions Act 2004.

(3) These Regulations apply only where the member’s pensionable service under the occupational pension scheme terminates on or after 6th April 2006.

⁽¹⁾ 1993 c.48, sections 101AA to 101AF are inserted by section 264 of the Pensions Act 2004 (c.35); section 113A is inserted by paragraph 18 of Schedule 12 to the Pensions Act 2004; section 181(1) of the Act is cited because of the meanings given to “prescribe” and “regulations”; and section 183(3) is amended by paragraph 32 of Schedule 12 to the Pensions Act 2004..

⁽²⁾ See section 317 of the Pensions Act 2004 under which the requirement to consult such persons as the Secretary of State considers appropriate does not apply to regulations made before the end of the period of six months beginning with the coming into force of the provisions of that Act by virtue of which the regulations are made.

⁽³⁾ 1995 c.26.

Calculation and verification of cash transfer sum

2.—(1) Except in a case to which, or to the extent to which, paragraph (2) or (4) applies, cash transfer sums are to be calculated and verified in such manner as may be approved in particular cases by the scheme actuary or in relation to a scheme to which section 47(1)(b) of the 1995 Act (professional advisers) does not apply, by—

- (a) a Fellow of the Institute of Actuaries⁽¹⁾;
- (b) a Fellow of the Faculty of Actuaries⁽²⁾; or
- (c) a person with other actuarial qualifications who is approved by the Secretary of State, at the request of the trustees of the scheme in question, as being a proper person to act for the purposes of these Regulations in connection with that scheme.

and, subject to paragraph (2), in this regulation “actuary” means the scheme actuary or, in relation to a scheme to which section 47(1)(b) of the 1995 Act does not apply, the actuary referred to in sub-paragraph (b) or (c) of this paragraph.

- (2) Where the member in respect of whom a cash transfer sum is to be calculated and verified is a member of a scheme having particulars from time to time set out in regulations made under section 7 of the Superannuation Act 1972⁽³⁾ (superannuation of persons employed in local government service, etc.), that cash transfer sum shall be calculated and verified in such manner as may be approved by the Government Actuary or by an actuary authorised by the Government Actuary to act on his behalf for that purpose and in such a case “actuary” in this regulation means the Government Actuary or the actuary so authorised.
- (3) Except in a case to which paragraph (4) applies, cash transfer sums are to be calculated and verified by adopting methods and making assumptions which—
 - (a) if not determined by the trustees of the scheme in question, are notified to them by the actuary; and
 - (b) are certified by the actuary to the trustees of the scheme—
 - (i) as being consistent with the calculation of cash equivalents under the requirements of Chapter 4 of Part 4 of the Act (transfer values),
 - (ii) as being consistent with “Retirement Benefit Schemes – Transfer Values (GN11)” published by the Institute of Actuaries and the Faculty of Actuaries and current at the date on which the member’s pensionable service terminates,
 - (iii) as being consistent with the methods adopted and assumptions made, at the time when the certificate is issued, in calculating the benefits to which entitlement arises under the rules of the scheme in question for a person who is acquiring transfer credits under those rules.
- (4) Where a cash transfer or any portion of a cash transfer sum relates to money purchase benefits which do not fall to be valued in a manner which involves making estimates of the value of benefits, then that cash transfer sum or that portion shall be calculated and verified in such manner as may be approved in particular cases by the trustees of the scheme and in accordance with methods consistent with the requirements of Chapter 4 of Part 4 of the Act.

⁽¹⁾ The Institute of Actuaries is located at Staple Inn Hall, High Holborn, London WC1V 7QJ.

⁽²⁾ The Faculty of Actuaries is located at Maclaurin House, 18 Dublin Street, Edinburgh EH1 3PP.

⁽³⁾ 1972 c.11.

Reduction of cash transfer sums and contribution refunds

3.—(1) In the case of a scheme to which Part 3 of the 2004 Act applies (scheme funding), the cash transfer sum may be reduced by the trustees or managers of the scheme if the GN11 insufficiency conditions are met.

- (2) The GN11 insufficiency conditions are that the actuary's last relevant GN11 report shows that at the effective date of the report—
 - (a) the scheme had assets that were insufficient to pay the full amount of cash equivalents under Chapter 4 of Part 4 of the Act and any cash transfer sums and contribution refunds payable to members, and
 - (b) the assets were insufficient to pay in full any category of liabilities that is a category of liabilities for the benefits in respect of which the member's cash transfer sum is payable.
- (3) If the GN11 insufficiency conditions are met the trustees may reduce any part of the member's cash transfer sum that is payable in respect of such a category of liabilities as are mentioned in paragraph (2)(b) by a percentage not exceeding the GN11 deficiency percentage.
- (4) The GN11 deficiency percentage for any such part of a member's cash transfer sum is the percentage by which the actuary's last relevant GN11 report shows that the assets were insufficient to pay that category of liabilities.
- (5) The references in this regulation to the actuary's last relevant GN11 report is to his last report before the member's pensionable service terminates in accordance with "Retirement Benefit Schemes – Transfer Values (GN11)" published by the Institute of Actuaries and Faculty of Actuaries and current at the date on which the member's pensionable service terminates.
- (6) If by virtue of regulations made under section 232 of the 2004 Act (power to modify provisions of Part 3), Part 3 of that Act applies to a section of a scheme as if that section were a separate scheme, paragraphs (1) and (2) shall apply to a section as if that section were a separate scheme, and as if the reference to a scheme were accordingly a reference to that section.
- (7) Where a scheme begins to wind up after the member's pensionable service terminates but before the trustees or managers have used the cash transfer sum or paid the contribution refund to the member, the cash transfer sum or contribution refund may be reduced to the extent necessary for the scheme to comply with the winding up provisions (as defined in section 73B(10)(a) of the 1995 Act⁽¹⁾) and regulations made under those provisions.
- (8) If, by virtue of regulations made under section 73B(4)(b)(i) of the 1995 Act by virtue of section 73B(5) of that Act, the winding up provisions (as so defined) apply to a section of a scheme as if that section were a separate scheme, paragraph (7) shall apply as if that section were a separate scheme and as if the references therein to a scheme were accordingly references to that section.
- (9) A member's cash transfer sum or contribution refund under the scheme may be reduced if the member has incurred some monetary obligation due to the employer or to the scheme and arising out of a criminal, negligent or fraudulent act or omission by that member.
- (10) A member's cash transfer sum or contribution refund under the scheme may be reduced by reason of paragraph (9) to the extent only that the reduction does not exceed the amount of the monetary obligation in question.
- (11) A reduction under paragraph (9) must not take effect where there is a dispute as to the amount of the monetary obligation in question, unless the obligation has become enforceable under an order of a competent court or in consequence of an

⁽¹⁾ Section 73B is inserted by section 270 of the Pensions Act 2004.

award of an arbitrator, or in Scotland, an arbiter to be appointed (failing agreement between the parties) by the sheriff.

- (12) In a case where two or more paragraphs of this regulation fall to be applied to a cash transfer sum or paragraphs (7) and (9) fall to be applied to a contribution refund, they shall be applied in the order in which they occur in this regulation.

Increases of cash transfer sum and contribution refund

4.—(1) Subject to paragraph (2), if there is a failure by the trustees or managers of the scheme to comply with section 101AG(2) of the Act (duty to act within a reasonable period) in relation to the cash transfer sum, the cash transfer sum shall be increased by the amount, if any, by which the cash transfer sum as calculated in accordance with regulation 2 and 3 falls short of what it would have been had the cash transfer sum been calculated on the date on which the trustees or managers should have done what was needed to carry out the member's requirement.

- (2) If there is a failure by the trustees or managers of the scheme to comply with section 101AG(2) of the Act without reasonable excuse the cash transfer sum shall be increased by—
- (a) interest on that sum calculated on a daily basis over the period from the date on which they received the member's notice under section 101AD(2) of the Act (exercise of right under section 101AB) to the date on which they do what is needed to carry out that requirement, at an annual rate of one per cent, above the Bank of England base rate; or
- (b) the amount, if any, by which the cash transfer sum as calculated in accordance with regulations 2 and 3 falls short of what it would have been had the cash transfer sum been calculated on the date on which the trustees or managers should have done what was needed to carry out the member's requirement,

whichever is the greater.

- (3) If there is a failure by the trustees or managers of the scheme to comply with section 101AG(4) of the Act without reasonable excuse the contribution refund shall be increased by interest on that sum calculated on a daily basis over the period from the date on which they received the member's notice under section 101AD(2) of the Act to the date on which they do what is needed to carry out the member's requirement, at an annual rate of one per cent, above the Bank of England base rate.
- (4) In this regulation "Bank of England base rate" means—
- (a) the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets; or
- (b) where an order under section 19 of the Bank of England Act 1998⁽¹⁾ is in force, any equivalent rate determined by the Treasury under that section.

Cash transfer sums: requirements to be met by receiving schemes

5. The prescribed requirements referred to in section 101AE(2)(a)(ii) and (b)(ii) of the Act (cash transfer sum to be used for acquiring transfer credits or rights under another occupational pension scheme or a personal pension scheme) are that—

- (a) if the member's cash transfer sum (or any portion of it to be used under section 101AE(2)(a) or (b) of the Act⁽²⁾) (requirement for guaranteed minimum

⁽¹⁾ 1998 c.11.

⁽²⁾ Section 9(2B) is inserted by section 136(3) of the Pension Act 1995 and amended by paragraph 35(2) of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2).

pension)) comprises, or includes, rights which would have accrued under section 9(2B) of the Act, then the occupational pension scheme or personal pension scheme under whose rules transfer credits or rights are to be acquired is one to which, had those rights been accrued rights, a transfer of liability in respect of those accrued rights could have been made in accordance with regulation 7 of the Contracting-out (Transfer and Transfer Payment) Regulations 1996⁽¹⁾ (transfer of liability in respect of section 9(2B) rights: general);

- (b) if the member's cash transfer sum (or any portion of it to be used under section 101AE(2)(a) or (b) of the Act) comprises, or includes, protected rights, then the scheme or personal pension scheme under whose rules transfer credits or rights are acquired is one to which a transfer payment in respect of protected rights could be made in accordance with regulation 2 of the Protected Rights (Transfer Payment) Regulations 1996⁽²⁾ (general); and
- (c) if the scheme in respect of which the member acquires a right under section 101AB(1)(a) of the Act (right to cash transfer sum and contribution refund) is a scheme which is registered by the Inland Revenue under section 153 of the Finance Act 2004⁽³⁾ (registration of pension schemes) (but not a scheme which was immediately before 6th April 2006 approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988⁽⁴⁾ (pension scheme etc.: retirement annuities)), then the scheme or personal pension scheme in respect of which the cash transfer sum is to be used is a scheme so registered or is a qualifying recognised overseas pension scheme within the meaning of section 169(2) of the Finance Act 2004⁽⁵⁾ (recognised transfers).

Information

6.—(1) The statement given under subsection (2)(a) of section 101AC of the Act (notification of right to cash transfer sum or contribution refund) must in addition to the matters specified in subsections (2) and (3) of that section also specify—

- (a) if the amount of the cash transfer sum or contribution refund has been reduced in accordance with regulation 3, the reason for the reduction;
- (b) details of any reduction required from the cash transfer sum or contribution refund in accordance with regulation 3;
- (c) details of any set off of the contribution refund against the refund payment made in accordance with section 101AG(5)(b) or 101AH(3)(b) of the Act (powers of trustees or managers where right not exercised);
- (d) details of any tax liability in respect of the contribution refund;
- (e) if a contribution equivalent premium is to be deducted in accordance with section 61 of the Act⁽⁶⁾ (deduction of contributions equivalent premium from refund of scheme contributions) from any payment of a contribution refund, details of the amount to be deducted;
- (f) how the exercise of the member's right mentioned in subsection (2)(a)(i) of section 101AC of the Act will affect his other rights, if any, under the scheme;

⁽¹⁾ S.I.1996/1462; the relevant amending instrument is S.I. 1997/786, S.I.1996/1462 is modified by S.I.1996/1977.

⁽²⁾ S.I.1996/1461; as modified by S.I.1996/1977..

⁽³⁾ 2004 c.12. Section 153 is amended by paragraphs 2 and 3 of Schedule 10 to the Finance Act 2005 (c.7).

⁽⁴⁾ 1988 c.1.

⁽⁵⁾ Section 169 is amended by paragraph 36 of Schedule 10 to the Finance Act 2005.

⁽⁶⁾ Section 61 is amended by paragraph 55 of Schedule 5 to the Pensions Act 1995, paragraph 5(2) of Schedule 5 to the Child Support, Pensions and Social Security Act 2000 (c.19) and paragraph 12 of Schedule 12 to the Pensions Act 2004.

- (b) a Fellow of the Faculty of Actuaries; or
- (c) a person with other actuarial qualifications who is approved by the Secretary of State, at the request of the trustees of the scheme in question, as being a proper person to act for the purposes of these Regulations in connection with that scheme,

and, subject to sub-paragraph (2), in this paragraph “actuary” means the scheme actuary or, in relation to a scheme to which section 47(1)(b) of the 1995 Act does not apply, the actuary referred to in sub-paragraph (1) (b) or (c) of this paragraph.

(2) Where the member in respect of whom a cash transfer sum is to be calculated and verified is a member of a scheme having particulars from time to time set out in regulations made under section 7 of the Superannuation Act 1972, that cash transfer sum shall be calculated and verified in such manner as may be approved by the Government Actuary or by an actuary authorised by the Government Actuary to act on his behalf for that purpose and in such a case “actuary” in this paragraph means the Government Actuary or the actuary so authorised.

(3) Except in a case to which sub-paragraph (4) applies, cash transfer sums are to be calculated and verified by adopting methods and making assumptions which—

- (a) if not determined by the trustees of the scheme in question, are notified to them by the actuary; and
- (b) are certified by the actuary to the trustees of the scheme—
 - (i) as being consistent with the calculation of cash equivalents under the requirements of Chapter 4 of Part 4 of the Act,
 - (ii) as being consistent with “Retirement Benefit Schemes – Transfer Values (GN11)” published by the Institute of Actuaries and the Faculty of Actuaries and current at the date on which the member’s pensionable service terminates,
 - (iii) as being consistent with the methods adopted and assumptions made, at the time when the certificate is issued, in calculating the benefits to which entitlement arises under the rules of the scheme in question for a person who is acquiring transfer credits under those rules, and
 - (iv) in the case of a scheme to which section 56 of the 1995 Act (minimum funding requirement) applied, as providing as a minimum an amount consistent with the methods and assumptions adopted in calculating for the purposes of section 57 of that Act (valuation and certification of assets and liabilities), the liabilities for the benefits in respect of which cash transfer sums are being calculated.

(4) If, by virtue of regulations made under section 61 of the 1995 Act (scheme funding) section 56 of that Act applied to a section of a scheme as if that section were a separate scheme, sub-paragraph (3)(b)(iv) shall apply as if that section were a separate scheme and as if the reference therein to a scheme were accordingly a reference to that section.

(5) Where a cash transfer sum or any portion of a cash transfer sum relates to money purchase benefits which do not fall to be valued in a manner which involves making estimates of the value of benefits, then that cash transfer sum or that portion shall be calculated and verified in such manner as may be approved in particular cases by the trustees of the scheme and in accordance with methods consistent with the requirements of Chapter 4 of Part 4 of the Act

Reduction of cash transfer sums and contribution refunds

2.—(1) In the case of a scheme to which section 56 of the 1995 Act continues to apply by virtue of regulation 7 the cash transfer sum may be reduced by the trustees or managers of the scheme if the GN11 insufficiency conditions are met.

- (2) The GN11 insufficiency conditions are that the actuary’s last relevant GN11 report (see paragraph 11) shows that at the effective date of the report—
 - (a) the scheme had assets that were insufficient to pay the full amount of cash equivalents under Chapter 4 of Part 4 of the Act and any cash transfer sums and contribution refunds payable to members, and

- (b) the assets were insufficient to pay in full any category of liabilities that is a category of liabilities for the benefits in respect of which the member's cash transfer sum is payable.
- (3) If the GN11 insufficiency conditions are met then subject to sub-paragraph (5) the trustees may reduce any part of the member's cash transfer sum that is payable in respect of such a category of liabilities as are mentioned in sub-paragraph (2)(b) by a percentage not exceeding the GN11 deficiency percentage.
- (4) The GN11 deficiency percentage for any such part of a member's cash transfer sum is the percentage by which the actuary's last relevant GN11 report shows that the assets were insufficient to pay that category of liabilities.
- (5) The total reduction made in a member's cash transfer sum under sub-paragraph (1) must not reduce the member's cash transfer sum below the MFR basis minimum for the member.
- (6) For the purposes of this paragraph, the MFR basis minimum for the member is the minimum amount required in accordance with paragraph 1(3)(b)(iv) to pay in full the liabilities for the benefits in respect of which the member's cash transfer sum is being calculated but this is subject to sub-paragraph (7).
- (7) If the GN11 insufficiency conditions and the MFR insufficiency conditions are both met, the MFR basis minimum for the member for the purposes of sub-paragraph (5) may be reduced by the trustees of the scheme in accordance with sub-paragraph (9).
- (8) The MFR insufficiency conditions are that the last relevant MFR valuation (see sub-paragraph 12) shows that at the effective date of the valuation—
 - (a) the scheme had assets that were insufficient to pay in full the liabilities of the scheme in respect of pensions and other benefits towards which the assets would be required by section 73 of the 1995 Act⁽¹⁾ (preferential liabilities on winding up) to be applied in the order determined under that section, and
 - (b) the assets were insufficient to pay in full any category of liabilities to which that order applies that are liabilities for benefits in respect of which the member's cash transfer sum is being calculated.
- (9) The reduction that may be made under sub-paragraph (7) is that any part of the MFR basis minimum for the member that relates to that category of liabilities may be reduced by a percentage not exceeding the MFR deficiency percentage.
- (10) The MFR deficiency percentage for any such part of the MFR basis minimum for the member is the percentage by which the last relevant MFR valuation shows that the assets were insufficient to pay that category of liabilities.
- (11) The references in this paragraph to the actuary's last relevant GN11 report is to his last report before the member's pensionable service terminates in accordance with "Retirement Benefit Schemes – Transfer Values (GN11)" published by the Institute of Actuaries and Faculty of Actuaries and current at the date on which the member's pensionable service terminates.
- (12) The references in this paragraph to the last relevant MFR valuation statement are to the statement made by the actuary in accordance with Schedule 1 to the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuation Regulations 1996⁽²⁾) (minimum funding valuation statements) contained in the last actuarial valuation under section 57 of the 1995 Act before the date on which the member's pensionable service terminates.
- (13) If the last relevant MFR valuation refers to an order for applying assets determined under section 73 that is an order modified by regulations made under

⁽¹⁾ Section 73 is substituted by section 270 of the Pensions Act 2004.

⁽²⁾ S.I.1996/1536; relevant amending instruments are S.I.2004/3031 and 2005/706.

that section, then the reduction under sub-paragraph (7) is to be made by reference to the order as so modified.

- (14) If by virtue of regulations made under section 61 of the 1995 Act, section 56 of that Act applied to a section of a scheme as if that section were a separate scheme, sub-paragraphs (1), (2) and (8) shall apply to a section as if that section were a separate scheme, and as if the reference to a scheme were accordingly a reference to that section.
- (15) Where a scheme begins to wind up after the member's pensionable service terminates but before the trustees or managers have used the cash transfer sum or paid the contribution refund to the member, the cash transfer sum or contribution refund may be reduced to the extent necessary for the scheme to comply with the winding up provisions (as defined in section 73B(10)(a) of the 1995 Act) and regulations made under those provisions.
- (16) If, by virtue of regulations made under section 73B(4)(b)(i) of the 1995 Act by virtue of section 73B(5) of that Act, the winding up provisions (as so defined) apply to a section of a scheme as if that section were a separate scheme, sub-paragraph (15) shall apply as if that section were a separate scheme and as if the references therein to a scheme were accordingly references to that section.
- (17) A member's cash transfer sum or contribution refund under the scheme may be reduced if the member has incurred some monetary obligation due to the employer or to the scheme and arising out of a criminal, negligent or fraudulent act or omission by that member.
- (18) A member's cash transfer sum or contribution refund under the scheme may be reduced by reason of sub-paragraph (17) to the extent only that the reduction does not exceed the amount of the monetary obligation in question.
- (19) A reduction under sub-paragraph (17) must not take effect where there is a dispute as to the amount of the monetary obligation in question, unless the obligation has become enforceable under an order of a competent court or in consequence of an award of an arbitrator, or in Scotland, an arbiter to be appointed (failing agreement between the parties) by the sheriff.
- (20) In a case where two or more sub-paragraphs of this paragraph fall to be applied to a cash transfer sum or sub-paragraphs (15) and (17) fall to be applied to a contribution refund, they shall be applied in the order in which they occur in this paragraph.

Application of regulations 4 to 6 to cash transfer sums and contribution refunds to which paragraphs 1 and 2 apply

3. The provisions of regulations 4 to 6 shall apply to cash transfer sums and contribution refunds to which paragraphs 1 and 2 apply, and for that purpose—

- (a) as if references in regulation 4 to “regulations 2 and 3” were references to “paragraphs 1 and 2”;
- (b) as if references in regulation 6 to “regulation 3” were references to “paragraph 2”; and
- (c) as if the reference in regulation 6(1)(g) to “regulation 3(7)” were a reference to “paragraph 2(15)”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are principally made under the new Chapter 5 of Part 4 of the Pensions Schemes Act 1993 (c.48) (“the Act”) inserted by section 264 of the Pensions Act 2004 (c.35). Chapter 5 makes provision for a member who leaves after 3 months' pensionable service in an occupational pension scheme to be entitled to a cash transfer sum which might be used to acquire

rights under another occupational pension scheme or personal pension scheme or to a refund of his employee contributions.

Regulation 1 provides for the citation, commencement and interpretation; and for the Regulations to apply only where the member's pensionable service terminates on or after 6th April 2006.

Regulation 2 provides for the calculation and verification of the cash transfer sum. They are calculated in a similar manner to cash equivalents under Chapter 4 of Part 4 of the Act as set out in regulation 7 of the Occupational Pensions Schemes (Transfer Values) Regulations 1996 (S.I.1996/1847).

Regulation 3 makes provision for the cash transfer sum to be reduced where the scheme is under funded. The regulation also provides for the cash transfer sum and the contribution refund to be reduced where the scheme is being wound up to the extent necessary to meet any preferential liabilities; and where the member has incurred a monetary obligation due to the employer or to the scheme as a result of a criminal, negligent or fraudulent act or omission.

Regulation 4 makes provision for the cash transfer sum and contribution refund to be increased where the trustees or managers of the scheme fail to carry out what the member requires within a reasonable period and, where the failure is without reasonable excuse, provides for interest to be payable on the cash transfer sum and contribution refund.

Regulation 5 sets out the requirements which an occupational pension scheme or personal pension scheme must satisfy if the cash transfer sum is to be used to acquire rights under that scheme.

Regulation 6 prescribes additional information which the trustees or managers of the scheme must provide in the statement which they are required to give to the member explaining the nature of his rights under Chapter 5; and provides for the trustees and managers of the transferring scheme when requested by the trustees and managers of a scheme under which transfer credits have been allowed to the member, to provide information as to the amount of employee contributions made by or on behalf of the member as they relate to the transfer payment.

Regulation 7 makes transitional provision where entitlement to a cash transfer sum or contribution refund arises before the first actuarial valuation under Part 3 of the Pensions Act 2004 is received and provides for the cash transfer sum to be calculated and for the cash transfer sum and contribution refund to be reduced by adopting methods and assumptions consistent with sections 56 to 61 of the Pensions Act 1995 (c.26) as if those provisions continued in force.

As these Regulations are made before the expiry of six months beginning with the coming into force of section 264 of, and paragraph 18 of Schedule 12 to, the Pensions Act 2004 by virtue of which they are made, the requirement for the Secretary of State to consult such persons as he considers appropriate does not apply.

An assessment of the impact on business, charities or the voluntary sector of the provisions in these Regulations was included in the Regulatory Impact Assessment that accompanied the Pensions Act 2004. A copy of that assessment has been placed in the libraries of both Houses of Parliament. Copies may be obtained from the Department for Work and Pensions, Better Regulation Unit, 4th Floor, The Adelphi, 1-11 John Adam Street, London WC2N 6HT.