
STATUTORY RULES OF NORTHERN IRELAND

1996 No. 619

The Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996

Part I

General

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996 and shall come into operation on 6th April 1997.

(2) In these Regulations—

“the 1985 Regulations” means the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1985(1);

“the Act” means the Pension Schemes (Northern Ireland) Act 1993;

“appropriate date” has the meaning given to that expression in section 93(3A)(2);

“base rate” means the base rate for the time being quoted by the reference banks or, where there is for the time being more than one such base rate, the rate which, when the base rate quoted by each bank is ranked in a descending sequence of 7, is fourth in the sequence;

“cash equivalent” means a cash equivalent or guaranteed cash equivalent mentioned in section 89A(1) or 90(1)(3);

“the guarantee date” has the meaning given to that expression in section 89A(2);

“member” (except in regulation 11 and regulation 13(a)(iii)) means a member of a scheme to whom Chapter IV of Part IV of the Act applies;

“reference banks” means the 7 largest institutions for the time being which—

- (a) are authorised by the Bank of England under the Banking Act 1987(4);
- (b) are incorporated in and carrying on within the United Kingdom a deposit-taking business (as defined in section 6, but subject to any order under section 7 of that Act); and
- (c) quote a base rate in sterling,

and for the purpose of this definition the size of an institution at any time is to be determined by reference to the gross assets denominated in sterling of that institution, together with any subsidiary (as defined in section 736 of the Companies Act 1985(5)), as shown in the audited end-of-year accounts last published before that time;

(1) S.R. 1985 No. 358, as amended by S.R. 1986 Nos. 114, 225 and 362, S.R. 1987 Nos. 285 and 292, S.R. 1988 Nos. 107, 109, 127 and 214, S.R. 1990 No. 203, S.R. 1991 No. 37 and S.R. 1994 No. 300

(2) Section 93(3A) was inserted by paragraph 6(c) of Schedule 4 to the Pensions (Northern Ireland) Order 1995

(3) Section 90 was amended by Article 150 of the Pensions (Northern Ireland) Order 1995

(4) 1987 c. 22

(5) 1985 c. 6; section 736 was substituted by section 144(1) of the Companies Act 1989 (c. 40)

“the Regulatory Authority” means the Occupational Pensions Regulatory Authority;

“the relevant date” has the meaning given to that expression in section 90(2);

“salary related scheme” means a scheme which is salary related within the meaning of section 89(1A)(6);

“scheme”, except in the expressions “personal pension scheme” and “receiving scheme”, means occupational pension scheme;

“scheme actuary”, in relation to a scheme to which Article 47(1)(b) applies, means the actuary mentioned in Article 47(1)(b);

“section 5(2B) rights” has the meaning given to that expression in the Transfer Regulations;

“the Taxes Act” means the Income and Corporation Taxes Act 1988(7);

“the Transfer Regulations” means the Contracting-out (Transfer and Transfer Payment) Regulations (Northern Ireland) 1996(8);

“trustees”, in relation to a scheme which is not set up or established under a trust, means the managers of the scheme(9),

and other expressions have the same meaning as in the Act.

(3) Subject to paragraph (5), the Interpretation Act (Northern Ireland) 1954(10) shall apply to these Regulations as it applies to a Measure of the Assembly.

(4) In these Regulations—

- (a) any reference to a numbered section is a reference to the section of the Act bearing that number; and
- (b) any reference to a numbered Article is a reference to the Article of the Pensions (Northern Ireland) Order 1995 bearing that number.

(5) For the purposes of these Regulations and notwithstanding section 39(2) of the Interpretation Act (Northern Ireland) 1954, where a period of time is expressed to begin on, or to be reckoned from, a particular day, that day shall be included in the period.

Part II

Restrictions on Right to Cash Equivalent

Pre-1986 leavers

2. Chapter IV of Part IV of the Act shall not apply to a member of a salary related scheme whose pensionable service terminated before 1st January 1986 if all of the member’s accrued rights to benefits under the scheme—

- (a) are rights—
 - (i) to official pensions specified in Schedule 2 to the Pensions (Increase) Act (Northern Ireland) 1971(11) (official pensions);

(6) Section 89(1A) was inserted by Article 148(3) of the Pensions (Northern Ireland) Order 1995

(7) 1988 c. 1

(8) S.R. 1996 No. 618

(9) In relation to regulation 11, *see also* S.R. 1986 No. 320, as amended by S.R. 1988 No. 109 and S.R. 1994 No. 300

(10) 1954 c. 33 (N.I.)

(11) 1971 c. 35 (N.I.); Schedule 2 was amended by paragraph 11 of Schedule 6 to the Superannuation (Northern Ireland) Order 1972 (S.I. 1972/1073 (N.I. 10)), regulation 79 of S.R. & O. (N.I.) 1972 No. 319, paragraph 109 of Schedule 2 to the Social Security (Consequential Provisions) Act 1975 (c. 18), Schedule 6 to the Social Security Pensions (Northern Ireland) Order 1975 (S.I. 1975/1503 (N.I. 15)) and paragraph 5 of Schedule 3 to the Fire Services (Northern Ireland) Order 1984 (S.I. 1984/1821 (N.I. 11))

- (ii) to pensions in relation to which that Act has effect by virtue of regulations made under section 5(2) of that Act(12) (scope of Act and general powers); or
 - (iii) to pensions under a scheme the rules of which provide that pensions thereunder shall be increased in accordance with that Act; or
- (b) are rights to pensions under a scheme the rules of which provide that pensions thereunder shall in the pre-pension period (as defined in section 79(1)(a)(iii) (scope of Chapter II: revaluation of accrued benefits excluding guaranteed minimum pensions)) be revalued at a rate equal to or exceeding the rate of inflation as measured by the retail prices index.

Rules on continuation in employment after termination of pensionable service

3.—(1) This regulation applies where a member continues in employment to which a scheme applies after the member's pensionable service in such employment terminates and—

- (a) that pensionable service commenced before 6th April 1988 and terminated at the member's request; and
- (b) that pensionable service—
 - (i) but for that request, would have continued until the guarantee date; or
 - (ii) continued, or but for that request would have continued, until the relevant date.

(2) Where this regulation applies and the condition mentioned in paragraph (1)(b)(i) is satisfied, without prejudice to any right the member may acquire to a cash equivalent of money purchase benefits, the member, on making a relevant application in accordance with section 90(1)(aa) (right to guaranteed cash equivalent) acquires a right to only that part of the guaranteed cash equivalent which relates to benefits specified in paragraph (4).

(3) Where this regulation applies and the condition mentioned in paragraph (1)(b)(ii) is satisfied, without prejudice to any right the member may acquire to a cash equivalent of benefits other than money purchase benefits, the member acquires a right to the cash equivalent of only those money purchase benefits which are benefits specified in paragraph (4).

(4) The benefits referred to in paragraphs (2) and (3) are—

- (a) in the case of benefits which have accrued in respect of the member's pensionable service in employment to which the scheme applied, those benefits which are attributable to pensionable service after 5th April 1988; and
- (b) in the case of benefits which have not so accrued, those benefits which were credited to the member after 5th April 1988.

(5) Where a member exercises a right to the part of a guaranteed cash equivalent described in paragraph (2) or to a cash equivalent of only certain money purchase benefits as described in paragraph (3), Chapters II and III of Part IV of the Act are modified so that, for the purposes of those provisions, the benefits to which that part or that cash equivalent, as the case may be, related are disregarded and the pensionable service by reference to which those benefits were calculated is excluded from the pensionable service referred to in paragraph 1(1) of Schedule 2 to the Act (the final salary method of revaluation of accrued benefits).

Right to further cash equivalent on termination of employment to which the scheme applies

4.—(1) This regulation applies to a case where regulation 3 (or regulation 2A of the 1985 Regulations(13)) has operated to restrict a member's cash equivalent and subsequently the member's

(12) See S.R. & O. (N.I.) 1973 No. 15, S.R. 1975 Nos. 38, 154 and 226, S.R. 1977 No. 14 and S.R. 1992 No. 294

(13) Regulation 2A was inserted by regulation 2(4) of S.R. 1987 No. 285 and amended by regulation 2 of S.R. 1988 No. 127, regulation 6 of S.R. 1990 No. 203 and paragraph 5(7) of Schedule 2 to S.R. 1994 No. 300

employment terminates on a date which is at least one year earlier than the date on which the member would attain the age which is the normal pension age for the scheme or, where the normal pension age is earlier than 60, the age of 60.

(2) Where this regulation applies, a right to any cash equivalent or any part of a guaranteed cash equivalent to which the member has not acquired a right but would, but for the operation of regulation 3 (or regulation 2A of the 1985 Regulations), have acquired a right by the date when the member's employment terminates shall accrue to the member on that date.

(3) Where a right to any part of a guaranteed cash equivalent accrues to a member under paragraph (2), the cash equivalent of the benefits to which that part relates shall be recalculated as at—

- (a) the date on which the member's employment terminates; or, if later,
- (b) the date on which the member applies to take that part,

and that part shall be increased or reduced by the amount by which it falls short of or exceeds the value of the cash equivalent of those benefits as so recalculated.

(4) In relation to any case to which this regulation applies, for the definitions of "the relevant date" in section 90(2) (right to cash equivalent) and "the last option date" in section 91(8) (ways of taking right to cash equivalent) there shall be substituted respectively the following definitions—

““the relevant date” means the date when the member's employment terminates or the date of the relevant application, whichever is the later;” and

““the last option date” means the date which falls—

- (a) one year before the date on which the member attains normal pension age; or
 - (b) six months after the date when his employment terminates,
- whichever is the later.”.

(5) In this regulation "employment" means employment to which the scheme applies.

Treatment of a number of employments as a single employment

5. For the purposes of section 94(1) and (1A) (variation and loss of rights to cash equivalent) and of regulations 3 and 4, where a member's employment to which a scheme applies terminates but that member enters again into employment to which that scheme applies, then, if there is between those 2 employments—

- (a) an interval not exceeding one month; or
- (b) an interval of any length if the second of the employments results from the exercise of a right to return to work under Article 111 of the Employment Rights (Northern Ireland) Order 1996⁽¹⁴⁾ (maternity: right to return to work),

they shall be treated as a single employment.

Part III

Guaranteed Statements of Entitlement and Calculation of Transfer Values

Guaranteed statements of entitlement

6.—(1) The guarantee date in relation to a statement of entitlement such as is referred to in section 89A (salary related schemes: right to statement of entitlement) must be within a period

(14) S.I. 1996/1919 (N.I. 16)

of 3 months beginning on the date of the member's application under that section for a statement of entitlement, or, where the trustees of the scheme are for reasons beyond their control unable within that period to obtain the information required to calculate the cash equivalent mentioned in section 89A(1), within such longer period as they may reasonably require as a result of that inability, provided that such longer period does not exceed 6 months beginning on the date of the member's application.

(2) The guarantee date must be within the period of 10 days (excluding Saturdays, Sundays, Christmas Day, New Year's Day and Good Friday) ending with the date on which the statement of entitlement is provided to the member.

(3) A member who has made an application under section 89A(1) for a statement of entitlement may not within a period of 12 months beginning on the date of that application make any further such application unless the rules of the scheme provide otherwise or the trustees allow the member to do so.

(4) Subject to paragraph (3), any application for a cash equivalent made by a member of a salary related scheme which does not result in the member acquiring a right to a guaranteed cash equivalent under section 90(1)(aa) shall be treated as if it were an application under section 89A(1) for a statement of entitlement.

Manner of calculation and verification of cash equivalents

7.—(1) Except in a case to which, or to the extent to which, paragraph (2) or (5) applies, cash equivalents 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 Article 47(1)(b) (professional advisers) does not apply, by—

- (a) a Fellow of the Institute of Actuaries⁽¹⁵⁾;
- (b) a Fellow of the Faculty of Actuaries⁽¹⁶⁾; or
- (c) a person with other actuarial qualifications who is approved by the Department, 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 and in regulations 8 and 11 “actuary” means the scheme actuary or, in relation to a scheme to which Article 47(1)(b) does not apply, the actuary referred to in sub-paragraph (a), (b) or (c) of this paragraph.

(2) Where the member in respect of whom a cash equivalent is to be calculated and verified is a member of a scheme having particulars from time to time set out in regulations made under Article 9 of the Superannuation (Northern Ireland) Order 1972⁽¹⁷⁾ (superannuation of persons employed in local government service, etc.), that cash equivalent 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 and in regulations 8 and 11 means the Government Actuary or the actuary so authorised.

(3) Except in a case to which paragraph (5) applies, cash equivalents 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 as being—
 - (i) consistent with the requirements of Chapter IV of Part IV of the Act;

⁽¹⁵⁾ The Institute of Actuaries is at Staple Inn Hall, High Holborn, London WC1V 7QJ

⁽¹⁶⁾ The Faculty of Actuaries is at 17 Thistle Street, Edinburgh EH2 1DF

⁽¹⁷⁾ S.I. 1972/1073 (N.I. 10)

- (ii) consistent with “Retirement Benefit Schemes - Transfer Values (GN 11)” published by the Institute of Actuaries and the Faculty of Actuaries and current at the guarantee date, or if the cash equivalent is of money purchase benefits, at the relevant date;
- (iii) 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 Article 56 (minimum funding requirement) applies, consistent with the methods and assumptions adopted in calculating, for the purposes of Article 57 (valuation and certification of assets and liabilities), the liabilities mentioned in Article 73(3)(a), (c)(i) and (d) (preferential liabilities on winding up), subject only to adjustments necessary to take account of the fact that the cash equivalent calculation is made on an individual and not a collective basis.

(4) If, by virtue of regulations made under Article 61 (Articles 56 to 60: supplementary), Article 56 applies to a section of a scheme as if that section were a separate scheme, 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 equivalent or any portion of a cash equivalent 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 equivalent 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 IV of Part IV of the Act.

Further provisions as to calculation of cash equivalents and increases and reductions of cash equivalents (other than guaranteed cash equivalents)

8.—(1) A cash equivalent such as is mentioned in section 89A shall not be reduced under this regulation once it has become a guaranteed cash equivalent and a direction such as is mentioned in paragraph (2) shall not affect such a cash equivalent unless it is made before the guarantee date.

(2) Where it is the established custom for additional benefits to be awarded from the scheme at the discretion of the trustees or the employer, the cash equivalent shall, unless the trustees have given a direction that cash equivalents shall not take account of such benefits, take account of any such additional benefits as will accrue to the member in question if the custom continues unaltered.

(3) The trustees shall not make a direction such as is mentioned in paragraph (2) unless, within 3 months before making the direction, they have consulted the actuary and have obtained the actuary’s written report on the implications for the state of funding of the scheme of making such a direction, including the actuary’s advice as to whether or not in the actuary’s opinion there would be any adverse implications for the funding of the scheme should the trustees not make such a direction.

(4) In the case of a scheme to which Article 56 applies, each respective part of the cash equivalent which relates to liabilities referred to in Article 73(3)(a), (c)(i) or (d) may be reduced by the percentage which is the difference between—

- (a) 100 per cent; and
- (b) the percentage of the liabilities mentioned in the relevant sub-paragraph of Article 73(3) which the actuarial valuation shows the scheme assets as being sufficient to satisfy,

where the actuarial valuation is the latest actuarial valuation obtained in accordance with Article 57 before the guarantee date.

(5) If, by virtue of regulations made under Article 61, Article 56 applies to a section of a scheme as if that section were a separate scheme, paragraph (4) of this regulation 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.

(6) Where—

- (a) the guarantee date falls before whichever is the earlier of the date on which the trustees first obtain an actuarial valuation under Article 57 and the date of expiry of the first period within which they are required to obtain such a valuation; and
- (b) the latest actuarial statement issued to the scheme in accordance with the provisions of regulation 8(7) of the Occupational Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 1986⁽¹⁸⁾ shows that on the date of that statement the scheme does not have sufficient assets to meet its liability in respect of the whole or any specified part of the accrued rights to benefit of its members,

the cash equivalent, or, as the case may be, that part of it which relates to that specified part of those accrued rights, may be reduced by the percentage by which the scheme is so shown to be deficient.

(7) In a case where a contributions equivalent premium has been paid in respect of a member in accordance with section 51⁽¹⁹⁾ (state scheme etc. premiums), the cash equivalent shall be reduced (to nil if need be) to the extent that it represents the member's accrued rights which have been extinguished by virtue of section 56⁽²⁰⁾ (effect of payment of premiums on rights) by payment of that premium.

(8) Where a member's cash equivalent is to be used for acquiring transfer credits under the rules of another scheme or for acquiring rights under the rules of a personal pension scheme and the receiving scheme has undertaken to provide benefits at least equal in value to the benefits represented by that cash equivalent on payment of a lesser sum, including nil, then that cash equivalent shall be reduced to that lesser sum.

(9) Where effect has been given to protected rights in accordance with section 28A⁽²¹⁾ (discharge of protected rights on winding up: insurance policies), the cash equivalent of those rights shall be reduced to nil.

(10) Where all or any of a member's benefits have been appropriately secured, the cash equivalent in respect of those benefits shall be reduced to nil.

(11) For the purposes of paragraph (10), "appropriately secured" means the same as in section 15 (discharge of liability where guaranteed minimum pensions secured by insurance policies or annuity contracts) except that a policy of insurance or annuity contract which is taken out or entered into with an authorised friendly society (as defined for the purposes of regulation 6 of the Occupational Pension Schemes (Preservation of Benefit) Regulations (Northern Ireland) 1991⁽²²⁾ (means of assuring short service benefit)), but which otherwise satisfies the conditions for being appropriate for the purposes of section 15, is to be treated as if it were appropriate for the purposes of that section provided the terms of such policy or contract are not capable of being amended, revoked or rescinded.

(12) Where a scheme has (in the case of a cash equivalent mentioned in section 89A, before the guarantee date) begun to be wound up, a cash equivalent may be reduced to the extent necessary for the scheme to comply with Article 73 and regulations made under that Article.

(13) If, by virtue of regulations made under Article 73, that Article applies to a section of a scheme as if that section were a separate scheme, paragraph (12) 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.

(14) Where all or any of the benefits to which a cash equivalent relates have been surrendered, commuted or forfeited before the date on which the trustees do what is needed to carry out what

⁽¹⁸⁾ S.R. 1986 No. 225, to which there are amendments not relevant to these regulations

⁽¹⁹⁾ Section 51 is amended by Article 138(1) of, and paragraph 42 of Schedule 3 to, the Pensions (Northern Ireland) Order 1995

⁽²⁰⁾ Section 56 is amended by paragraph 46 of Schedule 3 to the Pensions (Northern Ireland) Order 1995

⁽²¹⁾ Section 28A was inserted by Article 143(1) of the Pensions (Northern Ireland) Order 1995

⁽²²⁾ S.R. 1991 No. 37; the definition of "authorised friendly society" was substituted by regulation 8(b) of S.R. 1995 No. 7

the member requires, the cash equivalent of the benefits so surrendered, commuted or forfeited shall be reduced to nil.

(15) In a case where 2 or more of the paragraphs of this regulation fall to be applied to a calculation, they shall be applied in the order in which they occur in this regulation.

Increases and reductions of guaranteed cash equivalents

9.—(1) This regulation applies to a guaranteed cash equivalent when a statement of entitlement has been sent to a member of a salary related scheme by the trustees of the scheme.

(2) Where all or any of the benefits to which a guaranteed cash equivalent relates have been surrendered, commuted or forfeited before the date on which the trustees do what is needed to carry out what the member requires, that part of the guaranteed cash equivalent which relates to the benefits so surrendered, commuted or forfeited shall be reduced to nil.

(3) Where a scheme has on or after the guarantee date begun to be wound up, a guaranteed cash equivalent may be reduced to the extent necessary for the scheme to comply with Article 73 and regulations made under that Article.

(4) If, by virtue of regulations made under Article 73, that Article applies to a section of a scheme as if that section were a separate scheme, paragraph (3) of this regulation 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.

(5) If a member's guaranteed cash equivalent falls short of or exceeds the amount which it would have been had it been calculated in accordance with Chapter IV of Part IV of the Act and these Regulations it shall be increased or reduced to that amount.

(6) In a case where 2 or more of the paragraphs of this regulation fall to be applied to a calculation, they shall be applied in the order in which they occur in this regulation except that where paragraph (5) falls to be applied it shall be applied as at the date on which it is established that the guaranteed cash equivalent falls short of or exceeds the proper amount.

Increases of cash equivalents on late payment

10.—(1) Subject to paragraph (2), if the trustees of a scheme, having received an application under section 91(23), fail to do what is needed to carry out what the member requires within 6 months of the appropriate date the member's cash equivalent, as calculated in accordance with regulations 7 to 9, shall be increased by the amount, if any, by which that cash equivalent falls short of what it would have been if the appropriate date had been the date on which the trustees carry out what the member requires.

(2) If the trustees of a scheme, having received an application under section 91, fail without reasonable excuse to do what is needed to carry out what the member requires within 6 months of the appropriate date the member's cash equivalent, as calculated in accordance with regulations 7 to 9, shall be increased by—

- (a) interest on that cash equivalent calculated on a daily basis over the period from the appropriate date to the date on which the trustees carry out what the member requires, at an annual rate of one per cent. above base rate; or, if it is greater,
- (b) the amount, if any, by which that cash equivalent falls short of what it would have been if the appropriate date had been the date on which the trustees carry out what the member requires.

Disclosure

11.—(1) An active member of any scheme, and a deferred member of a scheme which is a money purchase scheme, is entitled on request (not being a request made less than 12 months after the last occasion (if any) on which such information was furnished to that member) to the information mentioned in Schedule 1 and such information shall be provided to the member by the trustees in writing as soon as is practicable and in any event within 3 months after the member makes that request.

(2) An active or deferred member of any scheme is entitled on request to a copy of the actuary's written report (if any) obtained in accordance with regulation 8(3) and such report shall be sent to the member by the trustees within one month after the member makes that request.

(3) For the purposes of paragraphs (1) and (2) "active member" and "deferred member" have the meaning given to those expressions by Article 121 (interpretation).

(4) The trustees must ensure that a statement of entitlement to a guaranteed cash equivalent is accompanied by—

- (a) the information mentioned in Schedule 1 in relation to any cash equivalent of, or transfer value in relation to, the member's money purchase benefits (if any) under the scheme, calculated by reference to the guarantee date;
- (b) a statement in writing—
 - (i) where the trustees have given a direction such as is referred to in regulation 8(2), indicating that the cash equivalent does not take account of discretionary benefits, that the trustees have been obliged to obtain the actuary's written report before excluding such benefits from the calculation of the cash equivalent and that the member is entitled on request to a copy of that report;
 - (ii) indicating whether, and if so for what reasons and by what amount, the member's cash equivalent has been reduced under regulation 8 and if any such reduction has been made the statement shall indicate the paragraph of regulation 8 which has been relied upon and shall give an estimate of the date (if any) by which it will be possible to make available a guaranteed cash equivalent which is not so reduced;
 - (iii) explaining the terms and effect of regulation 6(3) (no right to make an application for a guaranteed statement of entitlement within 12 months of the last such application);
 - (iv) explaining that if the member wishes to exercise his right to take the guaranteed cash equivalent the member must submit a written application to do so within 3 months beginning on the guarantee date; and
 - (v) explaining that in exceptional circumstances the guaranteed cash equivalent may be reduced and that the member will be informed if it is so reduced.

(5) Where a guaranteed cash equivalent is reduced or increased under regulation 9, the trustees must notify the member of that fact in writing within 10 days (excluding Saturdays, Sundays, Christmas Day, New Year's Day and Good Friday) and such notification must—

- (a) state the reasons for, and the amount of, the reduction or increase;
- (b) indicate the paragraph of regulation 9 which has been relied upon; and
- (c) state that the member has a further 3 months, beginning on the date on which the member is informed of the reduction or increase, to make a written application to take the guaranteed cash equivalent as so reduced or increased.

(6) Where any person fails to comply with any requirement imposed upon that person by this regulation, the Regulatory Authority may require that person to pay, within 28 days, a penalty which—

- (a) in the case of an individual, shall not exceed £1,000; and

- (b) in any other case, shall not exceed £10,000.

Part IV

Receiving Schemes, Annuities and Arrangements

Requirements to be met by receiving schemes, annuities and arrangements

12.—(1) The prescribed requirements referred to in section 91(2)(a)(ii) and (b)(ii) (cash equivalent of member's rights in a scheme to be used for acquiring transfer credits or rights under another scheme or personal pension scheme) are that—

- (a) if the member's cash equivalent (or any portion of it to be used under section 91(2)(a) or (b)) is or includes the cash equivalent of accrued rights to guaranteed minimum pensions, then the scheme or personal pension scheme under whose rules transfer credits or rights are acquired is one to which those accrued rights may be transferred, or to which a transfer payment in respect of those accrued rights may be made, in accordance with regulation 2 of the Transfer Regulations;
- (b) if the member's cash equivalent (or any portion of it to be used under section 91(2)(a) or (b)) is or includes the cash equivalent of accrued section 5(2B) rights, then the scheme or personal pension scheme under whose rules transfer credits or rights are acquired is one to which a transfer of liability in respect of those accrued rights may be made in accordance with regulation 7 of the Transfer Regulations;
- (c) if the member's cash equivalent (or any portion of it to be used under section 91(2)(a) or (b)) is or includes the cash equivalent of 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 may be made in accordance with regulation 2 of the Protected Rights (Transfer Payment) Regulations (Northern Ireland) 1996⁽²⁴⁾; and
- (d) if the scheme from which rights are transferred or from which a transfer payment is made is of a kind described in any of sub-paragraphs (a) to (d) of paragraph (3), the scheme or personal pension scheme to which rights are transferred or to which a transfer payment in respect of rights is made is of a kind described in any of sub-paragraphs (a), (c) or (e) of that paragraph or otherwise satisfies requirements of the Commissioners of Inland Revenue.

(2) The prescribed requirements referred to in section 91(2)(c) (cash equivalent to be used for purchasing annuities) are that—

- (a) the annuity is provided by a policy of insurance or an annuity contract which satisfies the requirements of regulations 2, 3 and 4 of the Occupational Pension Schemes (Discharge of Liability) Regulations (Northern Ireland) 1985⁽²⁵⁾;
- (b) if the scheme from which rights are transferred is of a kind described in any of sub-paragraphs (a) to (d) of paragraph (3), the annuity satisfies requirements of the Commissioners of Inland Revenue.

(3) The kinds of scheme mentioned in paragraphs (1)(d) and (2)(b) are—

- (a) a scheme which is approved by the Commissioners of Inland Revenue for the purposes of Chapter I of Part XIV of the Taxes Act;

⁽²⁴⁾ S.R. 1996 No. 509

⁽²⁵⁾ S.R. 1985 No. 356; regulations 2, 3 and 4 were amended by regulation 3(2) to (4) of S.R. 1986 No. 362, regulation 4(2) of S.R. 1987 No. 284, regulation 6(2) to (4) of S.R. 1987 No. 292, regulation 4(1) of S.R. 1988 No. 214, regulation 4(2) of S.R. 1988 No. 109, regulation 3 of S.R. 1992 No. 304 and paragraph 4(4) and (6) to (8) of Schedule 2 to S.R. 1994 No. 300

- (b) a scheme which is being considered for approval by the Commissioners of Inland Revenue for the purposes of Chapter I of Part XIV of the Taxes Act;
 - (c) a relevant statutory scheme as defined in section 611A(1) of the Taxes Act⁽²⁶⁾;
 - (d) a fund to which section 608 of the Taxes Act applies; and
 - (e) a scheme which is approved by the Commissioners of Inland Revenue under Chapter IV of Part XIV of the Taxes Act.
- (4) The prescribed circumstances referred to in section 91(5)(a) (except in prescribed circumstances section 91(2) to be construed as if paragraph (d) were omitted) are that a member of a scheme who has acquired a right to a cash equivalent under section 90⁽²⁷⁾ has required the trustees to use the cash equivalent for subscribing to a pension arrangement mentioned in paragraph (5)(a).
- (5) The prescribed requirements referred to in section 91(2)(d) (cash equivalent to be used for subscribing to pension arrangements not mentioned in section 91(2)(a) to (c)) are that the pension arrangement to which it is proposed to subscribe—
- (a) is an overseas arrangement or a self-employed pension arrangement;
 - (b) if it is an overseas arrangement and the cash equivalent is or includes the cash equivalent of accrued section 5(2B) rights, is one to which a transfer payment in respect of such rights may be made in accordance with regulation 11 of the Transfer Regulations; and
 - (c) if the scheme from which rights are transferred is of a kind described in any of subparagraphs (a) to (d) of paragraph (3), satisfies requirements of the Commissioners of Inland Revenue.
- (6) In this regulation—
- (a) “self-employed pension arrangement” means a personal pension scheme within the meaning of Chapter IV of Part XIV of the Taxes Act which is approved by the Commissioners of Inland Revenue under that Chapter but which is neither a personal pension scheme within the meaning of section 1 of the Act nor a contract or a scheme approved under Chapter III of Part XIV of the Taxes Act; and
 - (b) “overseas arrangement” has the same meaning as in the Transfer Regulations.

Part V

Time Limits for Payment of Cash Equivalents

Extension of time limits for payment of cash equivalents

13. The Regulatory Authority may grant an extension of the period mentioned in section 95(2) (a) or, as the case may be, (b)⁽²⁸⁾ (trustees' duties after exercise of option) if the trustees have within that period applied to the Regulatory Authority for an extension and—

- (a) the Regulatory Authority are satisfied that—
 - (i) the scheme is being wound up or is about to be wound up;
 - (ii) the scheme is ceasing to be a contracted-out scheme;
 - (iii) the interests of the members of the scheme generally will be prejudiced if the trustees do what is needed to carry out what is required within that period;

⁽²⁶⁾ Section 611A was inserted by paragraph 15 of Schedule 6 to the Finance Act 1989 (c. 26)

⁽²⁷⁾ Section 90 was amended by Article 150 of the Pensions (Northern Ireland) Order 1995

⁽²⁸⁾ Section 95(2)(a) and (b) is substituted by paragraph 8(a) of Schedule 4 to the Pensions (Northern Ireland) Order 1995

- (iv) the member has not taken all such steps as the trustees can reasonably expect in order to satisfy them of any matter which falls to be established before they can properly carry out what the member requires;
 - (v) the trustees have not been provided with such information as they reasonably require properly to carry out what the member requires; or
 - (vi) the member's guaranteed cash equivalent has been reduced or increased under regulation 9 or the member has disputed the amount of the cash equivalent;
- (b) the provisions of section 49(29) (supervision of formerly certified schemes) apply; or
- (c) an application has been made for an extension on a ground specified in paragraph (a) or (b) and the Regulatory Authority's consideration of the request cannot be completed before the end of that period.

Part VI

Modification of the Act

Extension of time within which member may exercise option to take a guaranteed cash equivalent

14.—(1) Where a member's guaranteed cash equivalent has been reduced or increased under regulation 9, section 90(1)(aa) does not apply, or ceases to apply, but if the member—

- (a) has made a relevant application within 3 months beginning on the guarantee date; or
- (b) makes a relevant application within 3 months beginning on the date on which the member is informed that the guaranteed cash equivalent is to be increased or reduced,

the member acquires a right to the guaranteed cash equivalent as so increased or reduced.

(2) In any case in which a member, within 3 months beginning on the guarantee date, disputes the amount of the guaranteed cash equivalent, or, within 3 months beginning on the date on which that member is informed that the guaranteed cash equivalent is to be increased or reduced in accordance with regulation 9, disputes the basis or amount of the increase or reduction, section 90(1)(aa) does not apply, or ceases to apply, but if the member—

- (a) has made a relevant application within 3 months beginning on the guarantee date; or
- (b) makes a relevant application within 3 months beginning on the date on which the amount of the guaranteed cash equivalent is finally determined the member acquires a right to the guaranteed cash equivalent at the amount so determined.

Cases where normal pension age is earlier than 60

15. In their application to a member of a scheme whose normal pension age is earlier than 60, section 89(1)(a)(i)(30) (scope of Chapter IV) shall have effect as if the words "at least one year" were omitted and sections 91(8)(a) (ways of taking right to cash equivalent), 94(7)(a) (variation and loss of rights under section 90) and 95(2)(a) and (b) (trustees' duties after exercise of option) shall have effect as if the references therein to normal pension age were references to the age of 60.

(29) Section 49 applies to occupational pension schemes by virtue of section 48(1) of the Pension Schemes (Northern Ireland) Act 1993. Section 49 is amended by paragraph 40 of Schedule 3 to the Pensions (Northern Ireland) Order 1995

(30) Section 89(1)(a) was substituted by Article 148(2) of the Pensions (Northern Ireland) Order 1995

Accrued rights, or liabilities in respect of accrued rights, transferred without consent

16.—(1) This regulation applies where—

- (a) a member has acquired a right under section 90 to a cash equivalent but has not exercised the option conferred by section 91; and
- (b) the member's accrued rights have been transferred to another scheme without that member's consent.

(2) Where this regulation applies, Chapter IV of Part IV of the Act shall have effect as if the member's right to a cash equivalent of the benefits in respect of which a transfer or transfer payment has been made existed in relation to the receiving scheme instead of the transferring scheme.

Schemes with an overseas element

17.—(1) This regulation applies to schemes with any overseas element, as described in section 161(5) (requirements as to preservation of benefit under occupational pension schemes).

(2) Where this regulation applies, Chapter IV of Part IV of the Act applies to schemes with any overseas element only to the extent that the requirements specified in or under sections 67 to 78(31) (the preservation requirements) apply to the scheme.

Termination of pensionable service in certain circumstances to be disregarded

18.—(1) Subject to paragraph (3), where a member's pensionable service terminates in the circumstances set out in paragraph (2), Chapter IV of Part IV of the Act shall have effect as if that pensionable service had not terminated.

(2) The circumstances referred to in paragraph (1) are that—

- (a) the pensionable service which has terminated is a period of such service which is one, other than the last one, of a series of such periods in employment to which the scheme relates; and
- (b) there is between successive periods of pensionable service—
 - (i) no interval;
 - (ii) an interval not exceeding one month;
 - (iii) an interval of any length if it is between 2 periods of pensionable service the second of which results from the exercise of a right to return to work under Article 111 of the Employment Rights (Northern Ireland) Order 1996; or
 - (iv) an interval of any length if it is between 2 periods of pensionable service the second of which results from a return to work by the member following a period of absence arising in consequence of a trade dispute within the meaning of Article 2(2) of the Jobseekers (Northern Ireland) Order 1995(32).

(3) This regulation shall not have effect where the trustees of a scheme, during any interval such as is set out in paragraph (2)(b)(ii) to (iv), do what is needed to carry out what a member requires in exercising an option under section 91.

Hybrid schemes

19.—(1) In this regulation "hybrid scheme" means a scheme which is a salary related scheme but under which some of the benefits which may be provided are money purchase benefits.

(31) Sections 73 to 76 are repealed by paragraph 14 of Schedule 1 to the Pensions (Northern Ireland) Order 1995 and section 78 is amended by paragraph 15 of Schedule 1 to that Order

(32) [S.I. 1995/2705 \(N.I. 15\)](#)

- (2) In relation to a hybrid scheme—
- (a) section 89A(1) shall have effect as if after “benefits” there were inserted “other than money purchase benefits”;
 - (b) section 90(1)(a) shall have effect as if the words “other than a salary related scheme” were omitted and as if for “any benefits” there were substituted “any money purchase benefits”; and
 - (c) section 92(1)(a) (further provisions concerning exercise of option under section 91) shall have effect as if it read “in relation to both the whole of his guaranteed cash equivalent and the whole of any other cash equivalent such as is mentioned in section 90(1)(a);”.

Part VII

Penalties

Maximum penalty under Article 10

20. Where Article 10 (civil penalties) applies by virtue of section 89A(4)(**33**) or 95(7)(**34**), the maximum amount for the purposes of Article 10(2) shall be £1,000 in the case of an individual and £10,000 in any other case.

Part VIII

Revocations and Transitional Provisions

Revocations and transitional provisions

21.—(1) Subject to paragraph (2) and to Schedule 2, the regulations specified in column (1) of Schedule 3 are revoked to the extent mentioned in column (3) of that Schedule.

(2) Where an application under section 91 has been made before the commencement of these Regulations, regulations 2 to 20 shall not apply for the purposes of dealing with that application and for those purposes the 1985 Regulations (as in operation immediately before the commencement of these Regulations) shall continue to apply, subject to the modifications set out in Schedule 2, until the trustees have done what is needed to carry out what the member requires or until that application has been withdrawn.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 31st December 1996.

L.S.

John O'Neill
Assistant Secretary

(33) Section 89A was inserted by Article 149 of the Pensions (Northern Ireland) Order 1995

(34) Section 95(7) was added by paragraph 8(e) of Schedule 4 to the Pensions (Northern Ireland) Order 1995