
STATUTORY INSTRUMENTS

1996 No. 1847

**The Occupational Pension Schemes
(Transfer Values) Regulations 1996**

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 93A of the 1993 Act (salary related schemes: right to statement of entitlement) must be within a period of three months beginning with 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 93A(1) of the 1993 Act, within such longer period as they may reasonably require as a result of that inability, provided that such longer period does not exceed six months beginning with the date of the member's application.

(2) The guarantee date must be within the period of ten 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 93A(1) of the 1993 Act for a statement of entitlement may not within a period of twelve 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 94(1)(aa) of the 1993 Act shall be treated as if it were an application under section 93A(1) of that Act 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 section 47(1)(b) of the 1995 Act (professional advisers) does not apply, by—

- (a) a Fellow of the Institute of Actuaries;
- (b) a Fellow of the Faculty of Actuaries⁽¹⁾; or

(1) The Institute of Actuaries is at Staple Inn Hall, High Holborn, London WC1V 7QJ. The Faculty of Actuaries is at 40-44 Thistle Street, Edinburgh EH2 1EN.

- (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 and in regulations 8 and 11 “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 (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 section 7 of the Superannuation Act 1972(2) (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 1993 Act,
 - (ii) consistent with “Retirement Benefit Schemes-Transfer Values (GN11)” 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 section 56 of the 1995 Act (minimum funding requirement) applies, 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 mentioned in paragraphs (a), (c)(i) and (d) of section 73(3) of that Act (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 section 61 of the 1995 Act (sections 56 to 60: supplementary), section 56 of that Act 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 1993 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 93A of the 1993 Act 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 three 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 section 56 of the 1995 Act applies, each respective part of the cash equivalent which relates to liabilities referred to in paragraph (a), (c)(i) or (d) of section 73(3) of the 1995 Act 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 paragraph of section 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 section 57 of the 1995 Act before the guarantee date.

(5) If, by virtue of regulations made under section 61 of the 1995 Act, section 56 of that Act applies to a section of a scheme as if that section were a separate scheme, paragraph (4) 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 section 57 of the 1995 Act 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 1986⁽³⁾ 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 55 of the 1993 Act⁽⁴⁾ (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 60 of the 1993 Act⁽⁵⁾ (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

(3) [S.I. 1986/1046](#).

(4) Section 55 was amended by section 141(1) of and paragraph 50 of Schedule 5 to the Pensions Act 1995.

(5) Section 60 was amended by paragraph 54 of Schedule 5 to the Pensions Act 1995.

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 32A of the 1993 Act⁽⁶⁾ (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 19 of the 1993 Act (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 1991⁽⁷⁾ (means of assuring short service benefit)), but which otherwise satisfies the conditions for being appropriate for the purposes of section 19, 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 93A of the 1993 Act, 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 section 73 of the 1995 Act and regulations made under that section.

(13) If, by virtue of regulations made under section 73 of the 1995 Act, section 73 of that Act 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 the member requires, the cash equivalent of the benefits so surrendered, commuted or forfeited shall be reduced to nil.

(15) In a case where two 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 section 73 of the 1995 Act and regulations made under that section.

(4) If, by virtue of regulations made under section 73 of the 1995 Act, section 73 of that Act applies to a section of a scheme as if that section were a separate scheme, paragraph (3) 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.

(6) Section 32A was inserted by section 146(1) of the Pensions Act 1995.

(7) [S.I. 1991/167](#). The relevant amending instrument is [S.I. 1995/35](#).

(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 1993 Act and these Regulations it shall be increased or reduced to that amount.

(6) In a case where two 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 95 of the 1993 Act, fail to do what is needed to carry out what the member requires within six 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 95 of the 1993 Act, fail without reasonable excuse to do what is needed to carry out what the member requires within six 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 three 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 section 124 of the 1995 Act (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 three 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 ten 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 three months, beginning with 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.