
STATUTORY INSTRUMENTS

2006 No. 33

PENSIONS

The Occupational Pension Schemes (Early Leavers: Cash Transfer Sums and Contribution Refunds) Regulations 2006

<i>Made</i>	- - - -	<i>9th January 2006</i>
<i>Laid before Parliament</i>		<i>12th January 2006</i>
<i>Coming into force</i>	- -	<i>6th April 2006</i>

The Secretary of State for Work and Pensions makes the following regulations in exercise of the powers conferred by sections 101AC(2)(a), 101AE(2), 101AF, 113A, 181(1), 182(2) and 183 of the Pension Schemes Act 1993 ^{M1}.

This instrument contains regulations which are made before the end of the period of six months beginning with the coming into force of the provisions of the Pensions Act 2004 by virtue of which the regulations are made ^{M2}:

Marginal Citations

- M1** 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.
- M2** 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.

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 2006 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 ^{M3};
- “the 2004 Act” means the Pensions Act 2004.

[^{F1}“actuary” means—

- (a) the actuary mentioned in section 47(1)(b) of the 1995 Act (professional advisers); or
- (b) in relation to a scheme to which that section does not apply—
 - (i) [^{F2}a Fellow of the Institute and Faculty of Actuaries; or]
 - (ii) a person with other actuarial qualifications who is approved, at the request of the trustees of the scheme in question, by the Secretary of State as being a proper person to act for the purposes of these Regulations in connection with that scheme;]

[^{F3}“cash balance benefit” has the meaning given by regulation 2 of the Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014;]

[^{F4} ...

[^{F1}“discount rates” means the interest rates used to discount future payments of benefit for the purposes of placing a current value on them;]

[^{F5}“final salary”, in relation to a member to or in respect of whom benefits under a pension scheme are payable, means the member’s pensionable earnings, or highest, average or representative pensionable earnings, in a specified period ending at, or defined by reference to, the time when the member’s pensionable service in relation to that scheme ends;]

[^{F1}“initial cash transfer sum” means the amount calculated in accordance with regulation 2(1)(a);]

[^{F1}“insufficiency report” means the actuary’s last relevant report before the date on which the member’s pensionable service terminated, as provided for by regulation 7D of, and Schedule 1B to, the Transfer Values Regulations (reductions to initial cash equivalents);]

[^{F1}“insufficiency report liabilities” has the meaning given in paragraph 7 of Schedule 1B to the Transfer Values Regulations;]

[^{F6}“pensionable earnings”, in relation to a member of a pension scheme, means earnings by reference to which benefits under the scheme are calculated;]

[^{F1}“salary related benefits” means benefits that are not money purchase benefits;]

[^{F1}“the Transfer Values Regulations” means the Occupational Pension Schemes (Transfer Values) Regulations 1996;]

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

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| F1 | Words in reg. 1(2) inserted (1.10.2008) by Occupational Pension Schemes (Transfer Values) (Amendment) Regulations 2008 (S.I. 2008/1050) , reg. 1(1) Sch. 2 para. 8(a)(i) |
| F2 | Words in reg. 1(2) substituted (6.4.2012) by The Pensions (Institute and Faculty of Actuaries and Consultation by Employers – Amendment) Regulations 2012 (S.I. 2012/692) , regs. 1(2), 13 |
| F3 | Words in reg. 1(2) inserted (24.7.2014) by The Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014 (S.I. 2014/1711) , regs. 1(1), 35(2)(a) (with regs. 6, 41, 44(1), 47(1), 69(2), 72(1), 76(1)); coming into force immediately after s. 29 of 2011 c 19 - see S.I. 2014/1683, art. 2 |
| F4 | Words in reg. 1(2) omitted (1.10.2008) by virtue of Occupational Pension Schemes (Transfer Values) (Amendment) Regulations 2008 (S.I. 2008/1050) , reg. 1(1) Sch. 2 para. 8(a)(ii) |
| F5 | Words in reg. 1(2) inserted (24.7.2014) by The Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014 (S.I. 2014/1711) , regs. 1(1), 35(2)(b) (with regs. 6, 41, 44(1), 47(1), 69(2), 72(1), 76(1)); coming into force immediately after s. 29 of 2011 c 19 - see S.I. 2014/1683, art. 2 |

F6 Words in reg. 1(2) inserted (24.7.2014) by *The Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014* (S.I. 2014/1711), regs. 1(1), **35(2)(c)** (with regs. 6, 41, 44(1), 47(1), 69(2), 72(1), 76(1)); coming into force immediately after s. 29 of 2011 c 19 - see S.I. 2014/1683, art. 2

Marginal Citations

M3 1995 c. 26.

[^{F7}Manner of calculation and verification of cash transfer sums - general provisions

2.—(1) Subject to paragraphs (4) and (7), cash transfer sums are to be calculated and verified—

(a) by calculating the initial cash transfer sum—

(i) for salary related benefits^[^{F8}other than cash balance benefits in respect of which the available sum is not calculated by reference to final salary], in accordance with regulations 2A and 2B; or

(ii) for money purchase benefits^[^{F9}and cash balance benefits in respect of which the available sum is not calculated by reference to final salary], in accordance with regulation 2C,

and then making any reductions in accordance with regulation 4; or

(b) in accordance with regulation 2D.

(2) The trustees or managers must decide whether to calculate and verify the cash transfer sum in accordance with paragraph (1)(a) or (b), but they can only choose paragraph (1)(b) if they have had regard to any requirement for consent to paying a cash transfer sum which is higher than the amount calculated and verified in accordance with paragraph (1)(a).

(3) The trustees or managers are responsible for the calculation and verification of cash transfer sums and initial cash transfer sums.

(4) Where a member, in relation to whom a cash transfer sum is to be calculated and verified, is a member of a scheme modified by—

(a) the *British Coal Staff Superannuation Scheme (Modification) Regulations 1994*; or

(b) the *Mineworkers' Pension Scheme (Modification) Regulations 1994*,

the cash transfer sum of his bonus is to be calculated and verified by the trustees or managers, having obtained the advice of the actuary, to reflect the fact that a reduced bonus, or no bonus, may become payable in accordance with the provisions governing the scheme in question.

(5) For the purposes of paragraph (4) “bonus” means any—

(a) augmentation of his benefits; or

(b) new, additional or alternative benefits,

which the trustees or managers of the scheme in question have applied to the member's benefits, or granted to him in accordance with the provisions governing that scheme, on the basis of findings as to that scheme's funding position.

(6) Paragraph (7) applies where the cash transfer sum is calculated and verified in accordance with paragraph (1)(a).

^{[^{F10}(7)} Where a portion of the cash transfer sum relates to a benefit specified in paragraph (1)(a)(i) and a portion relates to a benefit specified in paragraph (1)(a)(ii), the initial cash transfer sum is to be calculated—

(a) for the portion falling within paragraph (1)(a)(i), in accordance with regulations 2A and 2B; and

(b) for the portion falling within paragraph (1)(a)(ii), in accordance with regulation 2C.]

- F7** Reg. 2-2D substituted (1.10.2008) for reg. 2 by [Occupational Pension Schemes \(Transfer Values\) \(Amendment\) Regulations 2008 \(S.I. 2008/1050\)](#), reg. 1(1), **Sch. 2 para. 8(b)**
- F8** Words in reg. 2(1)(a)(i) inserted (24.7.2014) by [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#), regs. 1(1), **35(3)(a)** (with regs. 6, 41, 44(1), 47(1), 69(2), 72(1), 76(1)); coming into force immediately after s. 29 of 2011 c 19 - see S.I. 2014/1683, art. 2
- F9** Words in reg. 2(1)(a)(ii) inserted (24.7.2014) by [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#), regs. 1(1), **35(3)(b)** (with regs. 6, 41, 44(1), 47(1), 69(2), 72(1), 76(1)); coming into force immediately after s. 29 of 2011 c 19 - see S.I. 2014/1683, art. 2
- F10** Reg. 2(7) substituted (24.7.2014) by [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#), regs. 1(1), **35(3)(c)** (with regs. 6, 41, 44(1), 47(1), 69(2), 72(1), 76(1)); coming into force immediately after s. 29 of 2011 c 19 - see S.I. 2014/1683, art. 2

Manner of calculation of initial cash transfer sums for salary related benefits^{F11} other than cash balance benefits not calculated by reference to final salary]

2A.—(1) For salary related benefits^{F12} other than cash balance benefits in respect of which the available sum is not calculated by reference to final salary], the initial cash transfer sum is to be calculated—

- (a) on an actuarial basis; and
- (b) in accordance with paragraph (2) and regulation 2B.

(2) The initial cash transfer sum is the amount which is required to make provision within the scheme for a member's accrued benefits, options and discretionary benefits mentioned in section 101AA(4)(b) of the Act (scope of Chapter 5).

- (3) For the purposes of paragraph (2), the trustees or managers must determine the extent—
- (a) of any options the member has which would increase the value of his benefits under the scheme;
 - (b) of any adjustments they decide to make to reflect the proportion of members likely to exercise those options; and
 - (c) to which any discretionary benefits should be taken into account, having regard to any established custom for awarding them and any requirement for consent before they are awarded.

- F7** Reg. 2-2D substituted (1.10.2008) for reg. 2 by [Occupational Pension Schemes \(Transfer Values\) \(Amendment\) Regulations 2008 \(S.I. 2008/1050\)](#), reg. 1(1), **Sch. 2 para. 8(b)**
- F11** Words in reg. 2A heading inserted (24.7.2014) by virtue of [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#), regs. 1(1), **35(4)(a)** (with regs. 6, 41, 44(1), 47(1), 69(2), 72(1), 76(1)); coming into force immediately after s. 29 of 2011 c 19 - see S.I. 2014/1683, art. 2
- F12** Words in reg. 2A(1) inserted (24.7.2014) by [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#), regs. 1(1), **35(4)(b)** (with regs. 6, 41, 44(1), 47(1), 69(2), 72(1), 76(1)); coming into force immediately after s. 29 of 2011 c 19 - see S.I. 2014/1683, art. 2

[^{F13}Initial cash transfer sum for salary related benefits]^{F14} other than cash balance benefits not calculated by reference to final salary]: assumptions and guidance

2B.—(1) The trustees or managers must calculate the initial cash transfer sum for salary related benefits^{F15} other than cash balance benefits in respect of which the available sum is not calculated by reference to final salary]—

- (a) by using the assumptions determined under this regulation; and
- (b) where the scheme falls within paragraph (6), in accordance with the guidance referred to in that paragraph.]

(2) Having taken the advice of the actuary, the trustees or managers must determine the economic, financial and demographic assumptions.

(3) In determining the demographic assumptions, the trustees or managers must have regard to—

- (a) the main characteristics of the members of the scheme; or
- (b) where the members of the scheme do not form a large enough group to allow demographic assumptions to be made, the characteristics of a wider population sharing similar characteristics to the members.

(4) [^{F16}Except where the scheme falls within paragraph (6), the trustees or] managers must have regard to the scheme's investment strategy when deciding what assumptions will be included in calculating the discount rates in respect of the member.

(5) The trustees or managers must determine the assumptions under this regulation with the aim that, taken as a whole, they should lead to the best estimate of the initial cash transfer sum.

[^{F17}(6) A scheme falls within this paragraph if it is a public service pension scheme in respect of which guidance has been prepared, and from time to time revised, by the Treasury for calculating the discount rates.]

- F7** Reg. 2-2D substituted (1.10.2008) for reg. 2 by [Occupational Pension Schemes \(Transfer Values\) \(Amendment\) Regulations 2008 \(S.I. 2008/1050\)](#), reg. 1(1), **Sch. 2 para. 8(b)**
- F13** Reg. 2B(1) and heading substituted (13.10.2008) by [Occupational and Personal Pension Schemes \(Transfer Values\) \(Amendment\) Regulations 2008 \(S.I. 2008/2450\)](#), regs. 1, **4(2)(a)**
- F14** Words in reg. 2B heading inserted (24.7.2014) by virtue of [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#), regs. 1(1), **35(5)(a)** (with regs. 6, 41, 44(1), 47(1), 69(2), 72(1), 76(1)); coming into force immediately after s. 29 of 2011 c 19 - see S.I. 2014/1683, art. 2
- F15** Words in reg. 2B(1) inserted (24.7.2014) by [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#), regs. 1(1), **35(5)(b)** (with regs. 6, 41, 44(1), 47(1), 69(2), 72(1), 76(1)); coming into force immediately after s. 29 of 2011 c 19 - see S.I. 2014/1683, art. 2
- F16** Words in reg. 2B(4) substituted (13.10.2008) by [Occupational and Personal Pension Schemes \(Transfer Values\) \(Amendment\) Regulations 2008 \(S.I. 2008/2450\)](#), regs. 1, **4(2)(b)**
- F17** Reg. 2B(6) inserted (13.10.2008) by [Occupational and Personal Pension Schemes \(Transfer Values\) \(Amendment\) Regulations 2008 \(S.I. 2008/2450\)](#), regs. 1, **4(2)(c)**

Manner of calculation of initial cash transfer sums for money purchase benefits]^{F18} and cash balance benefits not calculated by reference to final salary]

2C.—(1) For^{F19} cash balance benefits in respect of which the available sum is not calculated by reference to final salary and] money purchase benefits, the initial cash transfer sum is to be calculated in accordance with this regulation.

- (2) The initial cash transfer sum is the realisable value^[F20] at the date of calculation] of any benefits to which the member is entitled.
- (3) The trustees or managers must calculate that realisable value—
- (a) in accordance with the scheme rules; and
 - (b) in a manner which is—
 - (i) approved by the trustees or managers; and
 - (ii) consistent with Chapter IV of Part IV of the 1993 Act.
- ^[F21](4) The realisable value must include—
- (a) for money purchase benefits, any increases to the benefits resulting from a payment of interest made in accordance with the scheme rules; or
 - (b) for cash balance benefits—
 - (i) any interest (including notional interest) which, in accordance with the scheme rules, applies to the available sum in respect of which the benefits are calculated;
 - (ii) any guarantee which, in accordance with the scheme rules, applies to the available sum in respect of the benefits or to the contributions made by the member or by another person in respect of the member;
 - (iii) any options the member has which would increase the value of the member's benefits under the scheme (adjusted to reflect the proportion of members the trustees determine are likely to exercise those options); and
 - (iv) any discretionary benefits which the trustees determine should be taken into account, having regard to any established custom for awarding the benefits and any requirement for consent before they are awarded.]

- F7** Reg. 2-2D substituted (1.10.2008) for reg. 2 by [Occupational Pension Schemes \(Transfer Values\) \(Amendment\) Regulations 2008 \(S.I. 2008/1050\)](#), reg. 1(1), **Sch. 2 para. 8(b)**
- F18** Words in reg. 2C inserted (24.7.2014) by [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#), regs. 1(1), **35(6)(a)** (with regs. 6, 41, 44(1), 47(1), 69(2), 72(1), 76(1)); coming into force immediately after s. 29 of 2011 c 19 - see S.I. 2014/1683, art. 2
- F19** Words in reg. 2C(1) inserted (24.7.2014) by [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#), regs. 1(1), **35(6)(b)** (with regs. 6, 41, 44(1), 47(1), 69(2), 72(1), 76(1)); coming into force immediately after s. 29 of 2011 c 19 - see S.I. 2014/1683, art. 2
- F20** Words in reg. 2C(2) inserted (13.10.2008) by [Occupational and Personal Pension Schemes \(Transfer Values\) \(Amendment\) Regulations 2008 \(S.I. 2008/2450\)](#), regs. 1, **4(3)**
- F21** Reg. 2C(4) substituted (24.7.2014) by [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#), regs. 1(1), **35(6)(c)** (with regs. 6, 41, 44(1), 47(1), 69(2), 72(1), 76(1)); coming into force immediately after s. 29 of 2011 c 19 - see S.I. 2014/1683, art. 2

Alternative manner of calculating and verifying [^{F22}cash transfer sums]

2D.—(1) This regulation applies where the trustees or managers have decided to calculate and verify the [^{F23}cash transfer sum] in accordance with regulation 2(1)(b).

(2) The [^{F23}cash transfer sum] is to be calculated and verified in such manner as may be approved by the trustees or managers.

(3) The [^{F23}cash transfer sum] must be higher than it would be if it was calculated and verified in accordance with regulation 2(1)(a).

(4) For the purposes of calculating and verifying the [^{F23}cash transfer sum], the trustees or managers may request an insufficiency report from the actuary in accordance with Schedule 1B to the Transfer Values Regulations.

(5) The trustees or managers may treat the actuary's last relevant GN11 report as an insufficiency report.]

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| <p>F7 Reg. 2-2D substituted (1.10.2008) for reg. 2 by Occupational Pension Schemes (Transfer Values) (Amendment) Regulations 2008 (S.I. 2008/1050), reg. 1(1), Sch. 2 para. 8(b)</p> <p>F22 Reg. 2D: words in heading substituted (13.10.2008) by Occupational and Personal Pension Schemes (Transfer Values) (Amendment) Regulations 2008 (S.I. 2008/2450), regs. 1, 4(4)(a)</p> <p>F23 Words in reg. 2D substituted (13.10.2008) by Occupational and Personal Pension Schemes (Transfer Values) (Amendment) Regulations 2008 (S.I. 2008/2450), regs. 1, 4(4)(b)</p> |
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Contribution refund; investments etc.

3. For the purposes of these Regulations, where under the rules of the scheme—

- (a) interest is payable on a member's employee contributions to the scheme, the amount of the contribution refund shall be increased by the interest so payable; or
- (b) a member's employee contributions to the scheme fall to be invested and the member is entitled to the surrender value of the investments derived from those contributions, the amount of the contribution refund shall be increased or, as the case may be, reduced to the amount of that surrender value,

and in the following provisions of these Regulations references to a contribution refund are, where applicable, to the contribution refund as so increased or, as the case may be, reduced.

[^{F24}Reduction of cash transfer sums and contribution refunds

4.—(1) In the case of a scheme to which Part 3 of the 2004 Act (scheme funding) applies, the member's initial cash transfer sum may be reduced by the trustees or managers [^{F25}if—

- (a) the insufficiency conditions are met; and
- (b) the cash transfer sum relates to salary-related benefits.]

(2) The insufficiency conditions are that the last insufficiency report shows that at the effective date of the report—

- (a) the scheme had assets that were insufficient to cover the insufficiency report liabilities in respect of all the members; and
- (b) the assets were insufficient to cover in full any category of insufficiency report liabilities that is an equivalent category of liabilities for benefits in respect of which the member's cash transfer sum is being calculated.

(3) If the insufficiency conditions are met the trustees or managers may reduce, by a percentage not exceeding the deficiency percentage, any part of the member's initial cash transfer sum [^{F26}which does not relate to money purchase benefits] that is payable in respect of such an equivalent category of liabilities as are mentioned in paragraph 2(b).

(4) The deficiency percentage for any such part of a member's initial cash transfer sum is the percentage by which the insufficiency report shows that the assets were insufficient to cover that category of liabilities.

(5) 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) apply as if that section were a separate scheme and as if the reference to a scheme were accordingly a reference to that section.

(6) In a case where a contributions equivalent premium has been paid in respect of a member in accordance with section 55 of the Act (payment of state scheme premiums on termination of certified status), the initial cash transfer sum must be reduced (to nil if need be) to the extent that it represents the member's rights to a cash transfer sum under section 101AB of the Act (right to cash transfer sum and contribution refund) which have been extinguished by virtue of section 60 of the Act (effect of payment of premiums on rights) by payment of that premium.

(7) Where a scheme begins to wind up after the member's pensionable service terminates but before the trustees or managers have discharged the cash transfer sum or paid the contribution refund to the member, the initial cash transfer sum or contribution refund^{F27}, where it does not relate to money purchase benefits,] 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.

(8) If, by virtue of regulations made under section 73B(4)(b)(i) of the 1995 Act (sections 73 and 73A: supplementary) 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) applies as if that section were a separate scheme and as if the references to a scheme were accordingly references to that section.

(9) A member's initial 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 initial 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 award of an arbitrator, or in Scotland, an arbiter to be appointed (failing agreement between the parties) by the sheriff.

(12) The trustees or managers may reduce an initial cash transfer sum to reflect any reasonable administration costs were the member to leave the scheme and must offset against these costs any reasonable administrative savings.

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

F24 Reg. 4 substituted (1.10.2008) by [Occupational Pension Schemes \(Transfer Values\) \(Amendment\) Regulations 2008 \(S.I. 2008/1050\)](#), reg. 1(1), **Sch. 2 para. 8(c)**

F25 Words in reg. 4(1) substituted (24.7.2014) by [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#), regs. 1(1), **35(7)(a)** (with regs. 6, 41, 44(1), 47(1), 69(2), 72(1), 76(1)); coming into force immediately after s. 29 of 2011 c 19 - see S.I. 2014/1683, art. 2

F26 Words in reg. 4(3) inserted (24.7.2014) by [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#), regs. 1(1), **35(7)(b)** (with regs. 6, 41, 44(1), 47(1), 69(2), 72(1), 76(1)); coming into force immediately after s. 29 of 2011 c 19 - see S.I. 2014/1683, art. 2

F27 Words in reg. 4(7) inserted (24.7.2014) by [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#), regs. 1(1), **35(7)(c)** (with regs. 6, 41,

44(1), 47(1), 69(2), 72(1), 76(1)); coming into force immediately after s. 29 of 2011 c 19 - see S.I. 2014/1683, art. 2

Increases of cash transfer sum and contribution refund

5.—(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 [F28 regulations 2 to 2D and 4] 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 [F29 regulations 2 to 2D and 4] 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 ^{M4} (Treasury's reserve powers) is in force, any equivalent rate determined by the Treasury under that section.

F28 Words in reg. 5(1) substituted (1.10.2008) by [Occupational Pension Schemes \(Transfer Values\) \(Amendment\) Regulations 2008 \(S.I. 2008/1050\)](#), reg. 1(1), **Sch. 2 para. 8(d)**

F29 Words in reg. 5(2)(b) substituted (1.10.2008) by [Occupational Pension Schemes \(Transfer Values\) \(Amendment\) Regulations 2008 \(S.I. 2008/1050\)](#), reg. 1(1), **Sch. 2 para. 8(d)**

Marginal Citations

M4 1998 c. 11.

Cash transfer sums: requirements to be met by receiving schemes

6. 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) comprises, or includes, section 9(2B) rights, 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^{M5} (transfer of liability in respect of section 9(2B) rights: general), and in this paragraph “section 9(2B) rights” has the meaning given to that expression in regulation 1(2) of those Regulations; and
- (b) 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 Her Majesty's Revenue and Customs under section 153 of the Finance Act 2004^{M6} (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^{M7} (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^{M8} (recognised transfers).

Marginal Citations

- M5** [S.I.1996/1462](#); the relevant amending instrument is [S.I. 1997/786](#); [S.I.1996/1462](#) is modified by [S.I. 1996/1977](#).
- M6** [2004 c. 12](#). Section 153 is amended by paragraphs 2 and 3 of Schedule 10 to the [Finance Act 2005](#) (c. 7).
- M7** [1988 c. 1](#).
- M8** [Section 169](#) is amended by paragraph 36 of Schedule 10 to the Finance Act 2005.

Information

7.—(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 4, the reason for the reduction;
- (b) details of any reduction required from the cash transfer sum or contribution refund in accordance with regulation 4;
- (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 an amount is to be deducted from a refund under section 61(2) of the Act^{M9} (deduction of contributions equivalent premium from refund of scheme contributions), details of the amount certified under section 63 of the Act^{M10} (further provisions concerning calculations relating to premiums);
- (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;
- (g) that if on a winding up of a scheme the cash transfer sum or contribution refund may be reduced in accordance with regulation 4(7), that the member will be informed that

there may be reductions and that if the scheme does begin to be wound up that he will be informed if the cash transfer sum or contribution refund is to be reduced; and

- (h) that if the member does not exercise his right on or before the reply date or such later date as the trustees or managers may allow in his case under section 101AI(2) of the Act (rights under section 101AB: further provisions), the trustees or managers will be entitled to pay the contribution refund to him^{F30}; and
- (i) where the cash transfer sum or contribution refund is subject to variation by virtue of regulation 2C or 3, a statement explaining the reason for the variation.]

(2) Where in relation to a member—

- (a) a payment is made out of an occupational pension scheme (A) to the trustees or managers of another occupational pension scheme (B); and
- (b) transfer credits have been allowed to the member under scheme (B),

the trustees or managers of scheme (A) shall on the written request of the trustees or managers of scheme (B) provide the trustees or managers of scheme (B) within a period of one month beginning with the date of the request, information in writing as to the amount of the employee contributions made to scheme (A) by or on behalf of the member so far as they relate to the transfer payment.

F30 Reg. 7(1)(i) inserted (1.10.2008) by [Occupational Pension Schemes \(Transfer Values\) \(Amendment\) Regulations 2008 \(S.I. 2008/1050\)](#), reg. 1(1), **Sch. 2 para. 8(e)**

Marginal Citations

- M9** 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.
- M10** Section 63 is amended by paragraph 57 of Schedule 5 and Part 3 of Schedule 7 to the Pensions Act 1995, paragraph 56 of Schedule 1 to the [Social Security Contributions \(Transfer of Functions, etc\) Act 1999 \(c. 2\)](#) and paragraph 5 of Schedule 5 to the Child Support, Pensions and Social Security Act 2000.

Signed by authority of the Secretary of State for Work and Pensions.

Department for Work and Pensions
9th January 2006

Stephen Timms
Minister of State,

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. Cash transfer sums 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 provides for the contribution refund to be increased by any interest payable on the member's contributions to the scheme, and where the contributions have been invested, for the refund to represent the value of the invested contributions.

Regulation 4 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 5 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 6 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 7 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 a 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.

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, Adelphi, 1-11 John Adam Street, London WC2N 6HT.

Changes to legislation:

There are currently no known outstanding effects for the The Occupational Pension Schemes (Early Leavers: Cash Transfer Sums and Contribution Refunds) Regulations 2006.