
STATUTORY INSTRUMENTS

1996 No. 1847

PENSIONS

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

<i>Made</i>	- - - -	<i>15th July 1996</i>
<i>Laid before Parliament</i>		<i>23rd July 1996</i>
<i>Coming into force</i>	- -	<i>6th April 1997</i>

The Secretary of State for Social Security, in exercise of the powers conferred upon him by sections 93(1)(1), 93(1B)(2), 93A(2) and (3)(3), 94(3)(4), 95(2), (5) and (6), 97(1), (2), (3) and (4)(5), 98(1), (1A), (2), (3) and (4)(6), 99(4) and (7)(7), 113(1) and (3), 153(1), 168(4)(8), 181(1)(9), 182(2) and (3) and 183(3)(10) of the Pension Schemes Act 1993(11) and sections 10(2) and 124(1)(12) of the Pensions Act 1995(13) and of all other powers enabling him in that behalf, after agreement with the Occupational Pensions Board that certain proposals within these Regulations need not be referred to them(14), by this instrument, which otherwise contains regulations made under section 10(2) of the Pensions Act 1995 which are made before the end of the period of six months beginning with the coming into force of that section(15), regulations made only for the purpose of consolidating regulations revoked by them(16) and regulations made under provisions of the Pension Schemes Act 1993 as inserted or amended by sections 152 to 154 and paragraphs 2 to 6 of Schedule 6 to the Pensions Act 1995 and which are made before the end of the period of six months beginning with

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- (1) Section 93(1)(a) was substituted by section 152(2) of the Pensions Act 1995 (c. 26).
(2) Section 93(1B) was inserted by section 152(3) of the Pensions Act 1995.
(3) Section 93A was inserted by section 153 of the Pensions Act 1995.
(4) Section 94(3) was inserted by section 154(5) of the Pensions Act 1995.
(5) Section 97 was amended by paragraph 4 of Schedule 6 to the Pensions Act 1995.
(6) Section 98 was amended by paragraph 5 of Schedule 6 to the Pensions Act 1995.
(7) Section 99 was amended by paragraph 6 of Schedule 6 to the Pensions Act 1995.
(8) Section 168 was substituted by section 155 of the Pensions Act 1995.
(9) Section 181(1) is cited because of the meaning there given to “prescribed” and “regulations”.
(10) Section 183(3) was amended by paragraph 15(b) of Schedule 6 to the Pensions Act 1995.
(11) 1993 c. 48.
(12) Section 124(1) is cited because of the meaning there given to “prescribed” and “regulations”.
(13) 1995 c. 26.
(14) See section 185(6) of the Pension Schemes Act 1993 and section 173(1) of the Social Security Administration Act 1992 (c. 5) under which the requirement to consult does not apply where the Occupational Pensions Board agrees that regulations need not be referred to them.
(15) See section 120 of the Pensions Act 1995 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 provision of Part I of that Act by virtue of which the regulations are made.
(16) See section 185(2) of the Pension Schemes Act 1993 under which the requirement to consult does not apply where regulations are made only for the purpose of consolidating other regulations revoked by them.

the coming into force of those sections as so inserted or amended(17), hereby makes the following Regulations:

PART I GENERAL

Citation, commencement and interpretation

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

(2) In these Regulations, unless the context otherwise requires—

“the 1993 Act” means the Pension Schemes Act 1993;

“the 1995 Act” means the Pensions Act 1995;

“appropriate date” has the meaning given to that expression in section 97(3A) of the 1993 Act(18);

“base rate” has the meaning given to that expression in the Local Government Pension Scheme Regulations 1995(19);

“cash equivalent” means a cash equivalent or guaranteed cash equivalent mentioned in section 93A(1) or 94(1) of the 1993 Act(20);

“guarantee date” has the meaning given to that expression in section 93A(2) of the 1993 Act;

“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 1993 Act applies;

“post-97 protected rights” has the meaning given to that expression in the Protected Rights (Transfer Payment) Regulations 1996(21);

“relevant date” has the meaning given to that expression in section 94(2) of the 1993 Act(22);

“salary related scheme” means a scheme which is salary related within the meaning of section 93(1A) of the 1993 Act(23);

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

“scheme actuary”, in relation to a scheme to which section 47(1)(b) of the 1995 Act applies, means the actuary mentioned in section 47(1)(b) of that Act;

“section 9(2B) rights” has the meaning given to that expression in the Contracting-out (Transfer and Transfer Payment) Regulations 1996(24);

(17) See section 185(6) of the Pension Schemes Act 1993 and section 173(5) of the Social Security Administration Act 1992 under which the requirement to consult does not apply where regulations are made before the end of the period of six months beginning with the coming into force of the enactment under which they are made.

(18) Section 97(3A) was inserted by paragraph 4(c) of Schedule 6 to the Pensions Act 1995.

(19) S.I. 1995/1019.

(20) Section 94(1) was amended by section 154(1) of the Pensions Act 1995.

(21) S.I. 1996/1461.

(22) Section 94(2) was amended by section 154(4) of the Pensions Act 1995.

(23) Section 93(1A) was inserted by section 152(3) of the Pensions Act 1995.

(24) S.I. 1996/1462.

“trustees”, in relation to a scheme which is not set up or established under a trust, means the managers of the scheme⁽²⁵⁾

and other expressions have the same meaning as in the 1993 Act.

PART II

RESTRICTIONS ON RIGHT TO CASH EQUIVALENT

Pre-1986 leavers

2. Chapter IV of Part IV of the 1993 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 1971⁽²⁶⁾ (official pensions),
 - (ii) to pensions in relation to which the Pensions (Increase) Act 1971 has effect by virtue of regulations made under section 5(2) of that Act (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 the Pensions (Increase) Act 1971; 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 83(1)(a)(iii) of the 1993 Act (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 price 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) (i) that pensionable service, but for that request, would have continued until the guarantee date, or
- (ii) that pensionable service continued, or but for that request would have continued, until the relevant date.

(2) Where this regulation applies and the condition mentioned in regulation 3(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 94(1)(aa) of the 1993 Act (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 regulation 3(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).

⁽²⁵⁾ In relation to regulation 11, see also the Occupational Pension Schemes (Managers) Regulations 1986, S.I. 1986/1718.

⁽²⁶⁾ 1971 c. 56.

- (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 1993 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 3 to the 1993 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 Occupational Pension Schemes (Transfer Values) Regulations 1985⁽²⁷⁾) has operated to restrict a member's cash equivalent and subsequently the member's 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 Occupational Pension Schemes (Transfer Values) Regulations 1985), 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 there shall be substituted for the definitions of "relevant date" in section 94(2) of the 1993 Act (right to cash equivalent) and of "the last option date" in section 95(8) of that Act (ways of taking right to cash equivalent) the following definitions—

““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.

(27) S.I. 1985/1931. The relevant amending instruments are S.I. 1987/1107, S.I. 1988/523, S.I. 1990/1142 and S.I. 1994/1062.

Treatment of a number of employments as a single employment

5. For the purposes of section 98(1) and (1A) of the 1993 Act (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 two 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 section 79 of the Employment Rights Act 1996(28) (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 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⁽²⁹⁾; or
- (c) a person with other actuarial qualifications who is approved by the Secretary of State, at the request of the trustees of the scheme in question, as being a proper person to act for the purposes of these Regulations in connection with that scheme

and, subject to paragraph (2), in this regulation 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⁽³⁰⁾ (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.

⁽²⁹⁾ 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.

⁽³⁰⁾ 1972 c. 11.

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⁽³¹⁾ 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⁽³²⁾ (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⁽³³⁾ (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

⁽³¹⁾ S.I. 1986/1046.

⁽³²⁾ Section 55 was amended by section 141(1) of and paragraph 50 of Schedule 5 to the Pensions Act 1995.

⁽³³⁾ 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⁽³⁴⁾ (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⁽³⁵⁾ (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.

⁽³⁴⁾ Section 32A was inserted by section 146(1) of the Pensions Act 1995.

⁽³⁵⁾ *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.

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 95(2)(a)(ii) and (b)(ii) of the 1993 Act (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 95(2)(a) or (b) of the 1993 Act) 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 Contracting-out (Transfer and Transfer Payment) Regulations 1996;
- (b) if the member's cash equivalent (or any portion of it to be used under section 95(2)(a) or (b) of the 1993 Act) is or includes the cash equivalent of accrued section 9(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 Contracting-out (Transfer and Transfer Payment) Regulations 1996;

- (c) if the member's cash equivalent (or any portion of it to be used under section 95(2)(a) or (b) of the 1993 Act) 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 1996; 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) of this regulation, 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 Inland Revenue.
- (2) The prescribed requirements referred to in section 95(2)(c) of the 1993 Act (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 1985⁽³⁶⁾;
 - (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) of this regulation, the annuity satisfies requirements of the Inland Revenue.
- (3) The kinds of scheme mentioned in paragraphs (1)(d) and (2)(b) of this regulation are—
- (a) a scheme which is approved by the Commissioners of Inland Revenue for the purposes of Chapter I of Part XIV of the Income and Corporation Taxes Act 1988⁽³⁷⁾;
 - (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 Income and Corporation Taxes Act 1988;
 - (c) a relevant statutory scheme as defined in section 611A(1)⁽³⁸⁾ of the Income and Corporation Taxes Act 1988;
 - (d) a fund to which section 608 of the Income and Corporation Taxes Act 1988 applies; and
 - (e) a scheme which is approved by the Commissioners of Inland Revenue under Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988.
- (4) The prescribed circumstances referred to in section 95(5)(a) of the 1993 Act (except in prescribed circumstances section 95(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 94 of that Act 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 95(2)(d) of the 1993 Act (cash equivalent to be used for subscribing to pension arrangements not mentioned in section 95(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 9(2B) rights, is one to which a transfer payment in respect of such rights may be made in accordance with regulation 11 of the Contracting-out (Transfer and Transfer Payment) Regulations 1996; and

⁽³⁶⁾ S.I. 1985/1929. The relevant amending instruments are S.I. 1986/2171, S.I. 1987/1106, S.I. 1987/1114, S.I. 1988/476, S.I. 1988/1016, S.I. 1992/1531 and S.I. 1994/1062.

⁽³⁷⁾ 1988 c. 1.

⁽³⁸⁾ Section 611A(1) was inserted by section 75 of and paragraphs 1, 15 and 18(1) of Part I of Schedule 6 to the Finance Act 1989 (c. 26).

- (c) if the scheme from which rights are transferred is of a kind described in any of subparagraphs (a) to (d) of paragraph (3) of this regulation, satisfies requirements of the 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 Income and Corporation Taxes Act 1988 which is approved by the Inland Revenue under that Chapter but which is neither a personal pension scheme within the meaning of section 1 of the 1993 Act nor a contract or a scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988; and
 - (b) “overseas arrangement” has the same meaning as in the Contracting-out (Transfer and Transfer Payment) Regulations 1996.

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 99(2) (a) or, as the case may be, (b) of the 1993 Act (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 is 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,
 - (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 53 of the 1993 Act⁽³⁹⁾ (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.

⁽³⁹⁾ Section 53 was amended by paragraph 48 of Schedule 5 to the Pensions Act 1995.

PART VI

MODIFICATION OF THE 1993 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 94(1)(aa) of the 1993 Act does not apply, or ceases to apply, but if the member—

- (a) has made a relevant application within three months beginning with the guarantee date; or
- (b) makes a relevant application within three months beginning with 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 three months beginning with the guarantee date, disputes the amount of the guaranteed cash equivalent, or, within three months beginning with 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 94(1)(aa) does not apply, or ceases to apply, but if the member—

- (a) has made a relevant application within three months beginning with the guarantee date; or
- (b) makes a relevant application within three months beginning with 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 93(1)(a)(i) of the 1993 Act (scope of Chapter IV) shall have effect as if the words “at least one year” were omitted and sections 95(8)(a), 98(7)(a) (variation and loss of rights under section 94) and 99(2)(a) and (b) of that Act shall have effect as if the references in them to normal pension age were references to the age of 60.

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 94 of the 1993 Act to a cash equivalent but has not exercised the option conferred by section 95 of that Act; 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 1993 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 165(6) of the 1993 Act (requirements as to preservation of benefit under occupational pension schemes).

(2) Where this regulation applies, Chapter IV of Part IV of the 1993 Act applies to schemes with any overseas element only to the extent that the requirements specified in or under sections 71 to 82 of the 1993 Act (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 1993 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 two periods of pensionable service the second of which results from the exercise of a right to return to work under section 79 of the Employment Rights Act 1996, or
 - (iv) an interval of any length if it is between two 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 section 35 of the Jobseekers Act 1995⁽⁴⁰⁾.

(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 95 of the 1993 Act.

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.

- (2) In relation to a hybrid scheme—
- (a) section 93A(1) of the 1993 Act shall take effect as if after the word “benefits” there were added the words “other than money purchase benefits”;
 - (b) section 94(1)(a) of the 1993 Act shall take effect as if the words “other than a salary related scheme” were omitted and as if for the words “any benefits” there were substituted the words “any money purchase benefits”; and
 - (c) section 96(1)(a) of the 1993 Act (further provisions concerning exercise of option under section 95) shall take 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 94(1)(a);”.

PART VII

PENALTIES

Maximum penalty under section 10 of the 1995 Act

20. Where section 10 of the 1995 Act (civil penalties) applies by virtue of section 93A(4) or section 99(7) of the 1993 Act, the maximum amount for the purposes of section 10(2) of the 1995 Act shall be £1,000 in the case of an individual and £10,000 in any other case.

(40) 1995 c. 18.

PART VIII

REVOCATIONS AND TRANSITIONAL PROVISIONS

Revocations and transitional provisions

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

(2) Where an application under section 95 of the 1993 Act has been made before the date on which these Regulations come into force, regulations 2 to 20 shall not apply for the purposes of dealing with that application and for those purposes the Occupational Pension Schemes (Transfer Values) Regulations 1985(**41**) (as in force immediately before these Regulations came into force) 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.

Signed by authority of the Secretary of State for Social Security.

15th July 1996

Oliver Heald
Parliamentary Under-Secretary of State,
Department of Social Security

(41) S.I. 1985/1931, amended by S.I. 1986/751, S.I. 1986/1046, S.I. 1986/2171, S.I. 1987/1107, S.I. 1987/1114, S.I. 1988/474, S.I. 1988/476, S.I. 1988/523, S.I. 1988/1016, S.I. 1990/1142, S.I. 1991/167 and S.I. 1994/1062.

SCHEDULE 1

Regulation 11

INFORMATION TO BE MADE AVAILABLE TO MEMBERS

1. Whether any cash equivalent (within the meaning of Chapter IV of Part IV of the 1993 Act) is available to the member or would be so available if the member's pensionable service were to terminate and if so—

- (a) an estimate of its amount, calculated on the basis that the member's pensionable service terminated or will terminate on a particular date;
- (b) the accrued rights to which it relates;
- (c) whether any part of the estimated amount of the cash equivalent is attributable to additional benefits—
 - (i) which have been awarded at the discretion of the trustees, or
 - (ii) which will be awarded at their discretion if their established custom continues unaltered

and in either case whether that part is attributable to the whole or only to part of those benefits;

- (d) where the trustees have given a direction such as is referred to in regulation 8(2), a statement indicating that the calculation of the estimated cash equivalent does not take account of discretionary benefits, that the trustees are obliged to obtain the actuary's written report before excluding such benefits from the calculation of cash equivalents and that the member is entitled on request to a copy of that report; and
- (e) if the estimated amount of the cash equivalent has been reduced by reference to regulation 8—
 - (i) a statement of that fact and of the amount by which the cash equivalent has been reduced and an explanation of the reason for the reduction, which shall refer to the paragraph of regulation 8 relied upon,
 - (ii) an estimate of the date (if any) by which it will be possible to make available a cash equivalent which is not so reduced, and
 - (iii) a statement of the member's rights to obtain further estimates.

2. Whether any transfer value (not being a cash equivalent within the meaning of Chapter IV of Part IV of the 1993 Act) is available to the member or would be so available if the member's pensionable service were to terminate and if so—

- (a) an estimate of its amount, calculated on the basis that the member's pensionable service terminated or will terminate on a particular date;
- (b) the accrued rights to which it relates;
- (c) whether any part of the estimated amount of the transfer value is attributable to additional benefits—
 - (i) which have been awarded at the discretion of the trustees, or
 - (ii) which will be awarded at their discretion if their established custom continues unaltered

and in either case whether that part is attributable to the whole or only to part of those benefits; and

- (d) if the estimated amount of the transfer value has been reduced to an amount which is less than it otherwise would be because of an actuary's opinion that the scheme's assets are insufficient to meet its liabilities in full—

- (i) a statement of that fact and an explanation,
- (ii) an estimate of the date (if any) by which it will be possible to make available a transfer value the amount of which is not so reduced, and
- (iii) a statement of the member's rights to obtain further estimates.

SCHEDULE 2

Regulation 21

TRANSITIONAL PROVISIONS

In the case of an application such as is mentioned in regulation 21(2), the Occupational Pension Schemes (Transfer Values) Regulations 1985 are modified as follows—

- (a) after regulation 4(3A) there shall be inserted—
 - “(3B) Paragraphs (3) and (3A) shall not apply after the expiry of the first period within which the trustees are required under section 57 of the Pensions Act 1995 to obtain an actuarial valuation (as defined in section 56(5)(c) of that Act) nor where the trustees have obtained such a valuation within that period.”;
- (b) in regulation 3(2)(b)(ii) for the words “current at the date of the calculation” there shall be substituted the words “current on 5th April 1997”.

SCHEDULE 3

Regulation 21

REVOCATIONS

(1) Statutory Instrument Number	(2) Statutory Instrument	(3) Provision revoked
S.I. 1985/1931	The Occupational Pension Schemes (Transfer Values) Regulations 1985	The whole of the Regulations
S.I. 1986/751	The Occupational Pension Schemes (Revaluation and Transfer Values) Amendment Regulations 1986	The whole of the Regulations
S.I. 1986/2171	The Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1986	Regulation 4
S.I. 1987/1107	The Occupational Pension Schemes (Transfer Values) Amendment Regulations 1987	The whole of the Regulations
S.I. 1987/1114	The Personal and Occupational Pension Schemes (Consequential Provisions) Regulations 1987	Regulation 8
S.I. 1988/474	The Personal and Occupational Pension Schemes (Tax	Regulation 3

Status: This is the original version (as it was originally made).

(1) Statutory Instrument Number	(2) Statutory Instrument	(3) Provision revoked
	Approval and Miscellaneous Provisions) Regulations 1988	
S.I. 1988/476	The Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1988	Regulation 3
S.I. 1988/523	The Occupational Pension Schemes (Transfer Values) Amendment Regulations 1988	The whole of the Regulations
S.I. 1988/1016	The Personal and Occupational Pension Schemes (Transfer to Self-employed Pension Arrangements) Regulations 1988	Regulation 2
S.I. 1990/1142	The Personal and Occupational Pension Schemes (Miscellaneous Amendments) (No. 2) Regulations 1990	Regulation 5
S.I. 1991/167	The Occupational Pension Schemes (Preservation of Benefit) Regulations 1991	Schedule 1, paragraph 2
S.I. 1994/1062	The Occupational and Personal Pension Schemes (Consequential Amendments) Regulations 1994	Schedule 2, paragraph 7

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace the Occupational Pension Schemes (Transfer Values) Regulations 1985 which are now revoked. The Regulations supplement the changes introduced by the Pensions Act 1995 to Chapter IV of Part IV of the Pension Schemes Act 1993. They also consolidate and amend the 1985 Regulations. Provisions carried forward from the 1985 Regulations are amended to take into account new provisions introduced by the 1995 Act and changes made by the 1995 Act to parts of the 1993 Act other than Chapter IV of Part IV. Provisions carried forward from the 1985 Regulations which have been amended substantively for other reasons are contained in regulation 8(3) (requirement to obtain actuary's report before directing that cash equivalents not take account of discretionary benefits), regulation 10 (requirement to increase cash equivalent if paid late) and regulation 11 (disclosure requirements and penalties).

The regulations made by virtue of sections 152 to 154 of and Schedule 6 to the Pensions Act 1995 are made within six months of those provisions coming into force and as a consequence there is no requirement to consult. As regards those regulations which are neither made only for the purpose of consolidation nor under the 1995 Act, the Occupational Pensions Board has agreed that proposals to make such regulations need not be referred to them.

Part II of the Regulations provides restrictions on the right to take a cash equivalent if the member's pensionable service terminated before 1st January 1986 or if the member terminates his or her pensionable service while still in employment to which the scheme applies.

Part III of the Regulations concerns the new requirements relating to guaranteed statements of entitlement for members of salary related occupational pension schemes. Part III also deals with the way in which cash equivalents are to be calculated. Regulation 6 sets out the time limits within which the guarantee date in respect of a guaranteed statement of entitlement must fall and within which the statement must be provided to the member. Regulations 7 to 10 provide how cash equivalents are to be calculated and the circumstances in which they can be increased or reduced. Regulation 11 consolidates (with minor amendments) provisions relating to estimates of cash equivalents which were previously contained in the Occupational Pension Schemes (Disclosure of Information) Regulations 1986. Regulation 11 also contains further disclosure requirements. Penalties are imposed for breaches of any of the requirements of regulation 11.

Part IV of the Regulations sets out the requirements which a pension scheme must satisfy if a cash equivalent is to be used for acquiring transfer credits in it or rights under it, the requirements which an annuity must satisfy if a cash equivalent is to be used for purchasing it and the requirements which an overseas arrangement or a self-employed pension arrangement must satisfy if a cash equivalent is to be used for subscribing to it.

Part V of the Regulations provides for the Regulatory Authority to extend the statutory time limits for payment of cash equivalents on the application of the trustees or managers of the scheme in question.

Part VI of the Regulations modifies the Pension Schemes Act 1993 in certain circumstances. Regulation 14 modifies section 94(1)(aa) to extend the period within which a member may apply to take his or her guaranteed cash equivalent where that member has been informed that that guaranteed cash equivalent is to be increased or reduced or where the member has disputed the amount of the cash equivalent. Regulation 19 modifies certain provisions of Chapter IV of Part IV in relation to a scheme which provides or may provide both salary related and money purchase benefits. Regulations 15 to 18 carry forward provisions previously contained in the Occupational Pension Schemes (Transfer Values) Regulations 1985.

Part VII of the Regulations sets out the penalties that apply for breaches of obligations imposed by section 93A (obligation to provide guaranteed statements of entitlement within certain time limits) and section 99(2) (obligation to pay cash equivalent within certain time limits) of the 1993 Act.

Part VIII of the Regulations contains revocations and transitional provisions.

An assessment of the compliance cost for employers of the measures arising from the Pensions Act 1995, including these Regulations, has been placed in the libraries of both Houses of Parliament. Copies can be obtained by post from the Department of Social Security, Private Pensions Directorate, 11th floor, The Adelphi, 1-11 John Adam Street, London WC2N 6HT.