STATUTORY INSTRUMENTS

2003 No. 1727

PENSIONS

The Occupational Pension Schemes (Transfer Values and Miscellaneous Amendments) Regulations 2003

Made - - - -	*10th July 2003*
Laid before Parliament	*14th July 2003*
Coming into force - -	*4th August 2003*

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 97(1), (2)(b) and (3)(c), 101I, 101L(1) and (2)(b), 181, 182(1) and (2), 183(3) and 185(1) of the Pension Schemes Act 1993(**1**) and sections 23(1)(c), 30(1), 45(1), 83(1), (4)(a), (6) and (11) of, and paragraph 8(1) of Schedule 5 to, the Welfare Reform and Pensions Act 1999, having consulted such persons as he considers appropriate(**2**), hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Occupational Pension Schemes (Transfer Values and Miscellaneous Amendments) Regulations 2003 and shall come into force on 4th August 2003.

Amendment of the Occupational Pension Schemes (Transfer Values) Regulations 1996

2.—(1) The Occupational Pension Schemes (Transfer Values) Regulations 1996(**3**) shall be amended as provided for by the following paragraphs of this regulation.

(2) In paragraph (2) of regulation (1) (interpretation), after the definition of "cash equivalent" there shall be inserted the following definition:

> ""effective date" in paragraph (4) or (4A) of regulation 8 means the date as at which the assets and liabilities are valued;".

(3) In regulation 8 (further provisions as to calculation of cash equivalents and increases and reductions of cash equivalents (other than guaranteed cash equivalents)), for paragraph (4) there shall be substituted the following paragraphs:

(**1**) 1993 c. 48. Section 181 is cited because of the meaning given to "prescribed" and "regulations". Section 185(1) was amended by paragraph 46 of Schedule 3 and paragraph 80 of Schedule 5 to the Pensions Act 1995 (c. 26). Sections 101I, 101L(1) and 101L(2)(b) were inserted into the Pension Schemes Act 1993 by the Welfare Reform and Pensions Act 1999, Section 37.

(**2**) 1999 c. 30. *See* section 185(1) of the Pension Schemes Act 1993 and section 83(11) of the Welfare Reform and Pensions Act 1999 for the requirement to consult.

(**3**) S.I.1996/1847 as amended by S.I. 1997/786.

"(4) Subject to paragraph (4A), where a scheme to which section 56 of the 1995 Act (minimum funding requirement) applies had, at the effective date of the actuary's last report to the trustees of the scheme before the guarantee date in accordance with "Retirement Benefit Schemes—Transfer Values (GN 11)" published by the Institute of Actuaries and the Faculty of Actuaries and current at the guarantee date, assets that were not sufficient to pay the full amount of the cash equivalent in respect of all members, the trustees may reduce each part of the cash equivalent as shown in that report by an amount that is no greater than the percentage by which the assets are shown in the actuary's report as being insufficient to pay the full amount of the corresponding part of the cash equivalent in respect of all members provided, in any case, that the amount of any cash equivalent after the reduction is not less than the minimum amount required under regulation 7(3)(b)(iv) to satisfy the liabilities referred to in section 73(3) of the 1995 Act (preferential liabilities on winding up) as modified by regulation 3 of the Occupational Pension Schemes (Winding Up) Regulations 1996.

(4A) In the case of a scheme to which section 56 of the 1995 Act applies which had, at the effective date of the last actuarial valuation under section 57 of the 1995 Act (valuation and certification of assets and liabilities) before the guarantee date, assets that were not sufficient to pay the minimum amount of the cash equivalent in respect of the liabilities referred to in section 73(3) of the 1995 Act (preferential liabilities on winding up) as modified by regulation 3 of the Occupational Pension Schemes (Winding Up) Regulations 1996, the trustees of the scheme may reduce each part of the minimum amount of the cash equivalent, as calculated under regulation 7(3)(b)(iv), by a percentage that is no greater than the percentage which is the difference between—

(a) 100 per cent; and

(b) the percentage of the liabilities mentioned in the paragraph of section 73(3) of the 1995 Act, as modified by the Winding Up Regulations, corresponding to that part which the actuarial valuation shows the scheme assets as being sufficient to satisfy."(**4**).

Amendment of the Pensions on Divorce etc. (Provision of Information) Regulations 2000

3. In paragraph (2)(c) of regulation 4 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000(**5**) (provision of information in response to a notification that a pension sharing order or provision may be made), for the words "regulation 8(4), (6) or (12)" there shall be substituted the words "regulation 8(4), (4A), (6) or (12)".

Amendment of the Pension Sharing (Valuation) Regulations 2000

4.—(1) The Pension Sharing (Valuation) Regulations 2000(**6**) shall be amended as provided for by the following paragraphs of this regulation.

(2) In paragraph (2) of regulation 1 (interpretation), after the definition of "the 1999 Act" there shall be inserted the following definition:

""effective date" in paragraph (3) or (3A) of regulation 5 means the date as at which the assets and liabilities are valued;".

(**4**) Copies of the publication "Retirement Benefit Schemes—Transfer Values (GN 11)" may be obtained from the Faculty of Actuaries, Maclaurin House, 18 Dublin Street, Edinburgh EH1 3PP and the Institute of Actuaries, Staple Inn Hall, High Holborn, London WC1V 7QJ or downloaded from the website www.actuaries.org.uk.

(**5**) S.I. 2000/1048. Regulation 4 was amended by regulation 8 of S.I. 2000/2691.

(**6**) S.I. 2000/1052 as amended by regulation 10(1) and (4) of S.I. 2000/2691.

(3) For paragraph (3) of regulation 5 (Occupational pension schemes: further provisions as to the calculation of cash equivalents and increases and reductions of cash equivalents), there shall be substituted the following paragraphs:

"(3) Subject to paragraphs (3A) and (6), where a scheme to which section 56 of the 1995 Act (minimum funding requirement) applies had, at the effective date of the actuary's last report to the trustees or managers before the valuation day in accordance with "Retirement Benefit Schemes—Transfer Values (GN 11)" published by the Institute of Actuaries and the Faculty of Actuaries and current on the valuation day, assets that were not sufficient to pay the full amount of the cash equivalent in respect of all members, the trustees may reduce each part of the cash equivalent as shown in that report by an amount that is no greater than the percentage by which the assets are shown in that report as being insufficient to pay the full amount of the corresponding part of the cash equivalent in respect of all members of the scheme provided, in any case, that the amount of any cash equivalent after the reduction is not less than the minimum amount required under regulation 4(3)(b)(iii) to satisfy the liabilities referred to in section 73(3) of the 1995 Act (preferential liabilities on winding up) as modified by regulation 3 of the Occupational Pension Schemes (Winding Up) Regulations 1996.

(3A) Subject to paragraph (6), in the case of a scheme to which section 56 of the 1995 Act applies which had, at the effective date of the last actuarial valuation under section 57 of the 1995 Act (valuation and certification of assets and liabilities) before the valuation day, assets that were not sufficient to pay the minimum amount of the cash equivalent in respect of the liabilities referred to in section 73(3) of the 1995 Act (preferential liabilities on winding up) as modified by regulation 3 of the Occupational Pension Schemes (Winding Up) Regulations 1996 ("the Winding Up Regulations"), the trustees or managers may reduce each part of the minimum amount of the cash equivalent, as calculated under regulation 4(3)(b)(iii), by a percentage that is no greater than the percentage which is the difference between—

(a) 100 per cent; and

(b) the percentage of the liabilities mentioned in the paragraph of section 73(3) of the 1995 Act, as modified by the Winding Up Regulations, corresponding to that part which the actuarial valuation shows the scheme assets as being sufficient to satisfy.".

Amendment of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000

5.—(1) The Pension Sharing (Implementation and Discharge of Liability) Regulations 2000(**7**) shall be amended as provided for by the following paragraphs of this regulation.

(2) In paragraph (2) of regulation (1) (interpretation), after the definition of "base rate" there shall be inserted the following definition:

""effective date" in paragraph (2) or (2A) of regulation 16 means the date as at which the assets and liabilities are valued;".

(3) After paragraph (1) of regulation 16 (adjustments to the amount of the pension credit—occupational pension schemes which are underfunded on the valuation day), there shall be inserted the following paragraph:

"(2) Subject to paragraph (2A), where a scheme to which section 56 of the 1995 Act applies had, at the effective date of the actuary's last report to the trustees or managers of the scheme before the valuation day in accordance with the Guidance Note 11 "Retirement

(**7**) S.I. 2000/1053.

Benefit Schemes—Transfer Values" published by the Institute of Actuaries and the Faculty of Actuaries and current at the valuation day, assets that were not sufficient to pay the full amount of the cash equivalent in respect of all members of the scheme, the lesser amount referred to in paragraph 8(1) of Schedule 5 to the 1999 Act may be determined for the purposes of that paragraph by reducing the amount of the pension credit which relates to the liabilities referred to in section 73(3) of the 1995 Act as modified by regulation 3 of the Occupational Pension Schemes (Winding Up) Regulations 1996 ("the Winding Up Regulations") by an amount that is no greater than the percentage by which the assets are shown in the actuary's last report as being insufficient to pay the full amount of the corresponding part of the cash equivalent to all members of the scheme provided, in any case, that the amount of any cash equivalent after the reduction is not less than the minimum amount that is required under regulation 4(3)(b)(iii) of the Pension Sharing (Valuation) Regulations 2000 (occupational pension schemes: manner of calculation and verification of cash equivalents) to satisfy the liabilities referred to in section 73(3) of the 1995 Act as modified by the Winding Up Regulations.".

(4) For paragraph (2), there shall be substituted the following paragraph:

"(2A) Where a scheme to which section 56 of the 1995 Act (minimum funding requirement) applies had, at the effective date of the latest actuarial valuation under section 57 of the 1995 Act (valuation and certification of assets and liabilities) before the valuation day, assets that were not sufficient to pay the minimum amount of the cash equivalent which relates to the liabilities referred to in section 73(3) of the 1995 Act (preferential liabilities on winding up) as modified by regulation 3 of the Occupational Pension Schemes (Winding Up) Regulations 1996 in respect of all members, the lesser amount referred to in paragraph 8(1) of Schedule 5 to the 1999 Act may be determined by reducing the amount of the pension credit that relates to those liabilities by an amount which is no greater than the percentage which is the difference between—

(a) 100 per cent.; and

(b) the percentage of the pension credit which the actuarial valuation shows the scheme assets as being sufficient to satisfy.".

Amendment of the Pension Sharing (Pension Credit Benefit) Regulations 2000

6.—(1) The Pension Sharing (Pension Credit Benefit) Regulations 2000(**8**) shall be amended as provided for by the following paragraphs of this regulation.

(2) In paragraph (2) of regulation (1) (interpretation)—

(a) after the definition of "contracted-out rights" there shall be inserted the following definition:

""effective date" in paragraph (4) or (4A) of regulation 27 means the date as at which the assets and liabilities are valued;";

(b) in the definition of "valuation date", for the words "the 1993 Act." there shall be substituted the words "the 1993 Act;"; and

(c) after the definition of "valuation date" there shall be added the following definition:

""valuation day" has the meaning given in section 29(7) of the 1999 Act.".

(3) After paragraph (3) of regulation 27 (increases and reductions of cash equivalents before a statement of entitlement has been sent to the eligible member) there shall be inserted the following paragraph:

(**8**) S.I. 2000/1054. Regulation 27 was amended by regulation 12(6) of S.I. 2000/2691.

"(4) Subject to paragraph (4A), where a scheme to which section 56 of the 1995 Act applies had, at the effective date of the actuary's last report to the trustees or managers of the scheme before the date by reference to which the cash equivalent is determined under section 101F(4) of the 1993 Act (power to give transfer notice) in accordance with "Retirement Benefit Schemes—Transfer Values (GN 11)" published by the Institute of Actuaries and the Faculty of Actuaries and current at that date, assets that were not sufficient to pay the full amount of the cash equivalent in respect of all members, the trustees or managers may reduce each part of the cash equivalent as shown in that report that relates to the liabilities referred to in section 73(3) of the 1995 Act (preferential liabilities on winding up) as modified by regulation 3 of the Occupational Pension Schemes (Winding Up) Regulations 1996 ("the Winding Up Regulations") by an amount that is no greater than the percentage by which the assets are shown in that report as being insufficient to pay the full amount of the corresponding part of the cash equivalent in respect of all members provided, in any case, that the amount of any cash equivalent after the reduction is not less than the minimum amount that is required under regulation 24(3)(b)(iv) (manner of calculation and verification of cash equivalents) to satisfy the liabilities referred to in section 73(3) of the 1995 Act as modified by the Winding Up Regulations.".

(4) For paragraph (4) there shall be substituted the following paragraph:

"(4A) Where a scheme to which section 56 of the 1995 Act (minimum funding requirement) applies had, at the effective date of the latest actuarial valuation under section 57 of the 1995 Act (valuation and certification of assets and liabilities) prior to the date by reference to which the cash equivalent is determined under section 101F(4) of the 1993 Act (power to give transfer notice), assets that were not sufficient to pay the minimum amount of the cash equivalent which relates to the liabilities referred to in section 73(3) of the 1995 Act (preferential liabilities on winding up) as modified by regulation 3 of the Occupational Pension Schemes (Winding Up) Regulations 1996 in respect of all members, each respective part of the cash equivalent that relates to those liabilities may be reduced by an amount that is no greater than the percentage which is the difference between—

(a) 100 per cent.; and

(b) the percentage of the liabilities mentioned in the paragraph of section 73(3) of the 1995 Act, as modified by the Winding Up Regulations, corresponding to that part which the actuarial valuation shows the scheme assets as being sufficient to satisfy."

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

Malcolm Wicks
Minister of State,
Department for Work and Pensions

10th July 2003

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Occupational Pension Schemes (Transfer Values) Regulations 1996 ("the principal Regulations"). They also make various consequential amendments to the Pensions on Divorce etc. (Provision of Information) Regulations 2000, the Pension Sharing (Valuation) Regulations 2000, the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 and the Pension Sharing (Pension Credit Benefit) Regulations 2000.

Regulation 1 provides for citation and commencement.

Regulation 2 amends regulations 1 and 8 of the principal Regulations. Paragraph (2) of regulation 2 inserts a definition of "effective date" into regulation 1(1) of the principal Regulations so as to make further provision for the interpretation of the Regulations. Paragraph (3) of regulation 2 substitutes paragraph (4) of regulation 8 of the principal Regulations with two new paragraphs (4) and (4A).

Regulation 8(4) of the principal Regulations enables the trustees or managers of an occupational pension scheme to which the minimum funding requirement in section 56 of the Pensions Act 1995 ("the Act") applies to make adjustments to the amount of a cash equivalent (other than a guaranteed cash equivalent) before the guarantee date in circumstances where the last minimum funding valuation under section 57 of the Act shows that the scheme is underfunded.

The new paragraph (4) applies to occupational pension schemes to which the requirement in section 56 of the Act (minimum funding requirement) applies. Where such a scheme is not sufficiently funded to meet the full amount of the cash equivalent in respect of all of its members, as determined by the actuary for the purposes of the last report to the trustees or managers of the scheme before the guarantee date under the actuarial guidance note entitled "Retirement Benefit Schemes—Transfer Values (GN 11)", the new provision enables the trustees or managers to reduce the amount of a cash equivalent. The amount of the reduction must be no greater than the amount by which the actuary's report shows the scheme assets as being insufficient to pay the minimum amount of the cash equivalent in respect of all scheme members and the amount of the cash equivalent after the reduction must not, in any case, be less than the minimum amount which is required under regulation 7 of the principal Regulations to satisfy the liabilities referred to in section 73(3) of the Act (preferential liabilities on winding up) as modified by regulation 3 of the Occupational Pension Schemes (Winding Up) Regulations 1996. The new paragraph (4A) of regulation 8 enables the trustees or managers of occupational pension schemes to which the minimum funding requirement applies to reduce the minimum amount of the cash equivalent by a percentage which is no greater than the percentage by which the scheme was not, by reference to its last minimum funding valuation under section 57 of the Act (valuation and certification of assets and liabilities), able to pay the minimum amount of the cash equivalent that is required under regulation 7 of the principal Regulations in respect of the preferential liabilities on winding up. This provision amends the regulation so as to permit the trustees or managers to reduce the minimum amount of the cash equivalent by a percentage which is no greater than the percentage by which the last minimum funding valuation shows the scheme assets as being insufficient to satisfy the preferential liabilities on winding up under section 73(3) of the Act (preferential liabilities on winding up) as modified.

Regulation 3 amends regulation 4(2)(c) of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 so that it also refers to the new regulation 8(4A) of the principal Regulations.

Regulation 4 amends regulations 1 and 5 of the Pension Sharing (Valuation) Regulations 2000. Paragraph (2) of regulation 4 inserts a definition of "effective date" into regulation 1 of those Regulations so as to make further provision for the interpretation of the Regulations. Paragraph (3) of regulation 4 substitutes paragraph (3) of regulation 5 of those Regulations so as to make similar provision to that made by the substituted paragraph 8(4) of the principal Regulations. Paragraph (3) also inserts a new paragraph (3A) into regulation 5 of those Regulations which makes similar provision to that made by the new regulation 8(4A) of the principal Regulations.

Regulation 5 amends regulations 1 and 16 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000. Paragraph (2) of regulation 5 inserts a definition of "effective date" into regulation 1 of those Regulations so as to make further provision for the interpretation of the Regulations. Paragraph (3) of regulation 5 inserts a new paragraph (2) and (2A) into regulation 16 of those Regulations.

Regulation 6 amends regulations 1 and 27 of the Pension Sharing (Pension Credit Benefit) Regulations 2000. Paragraph (2) of regulation 6 inserts a definition of "effective date" and "valuation day" into regulation 1 of those Regulations so as to make further provision for the interpretation of the Regulations. Paragraph (3) of regulation 6 inserts a new paragraph (4) and (4A) into regulation 27 of those Regulations. The effect of these amendments is to make similar provision to that made by the amendments to regulation 8 of the principal Regulations (see paragraphs 2 to 4 above).

The provisions of these Regulations will not impose any overall costs to business. A regulatory impact assessment is therefore not necessary.