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STATUTORY INSTRUMENTS

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**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(1).

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(2):

**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(3);

“the 2004 Act” means the Pensions Act 2004.

(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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(1) 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.

(2) 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.

(3) 1995 c. 26.

**Calculation and verification of cash transfer sum**

2.—(1) Except in a case to which, or to the extent to which, paragraph (2) or (4) applies, cash transfer sums 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<sup>(4)</sup>;
- (b) a Fellow of the Faculty of Actuaries<sup>(5)</sup>; 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 regulation 4 “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 transfer sum 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<sup>(6)</sup> (superannuation of persons employed in local government service, etc.), that cash transfer sum 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 regulation 4 means the Government Actuary or the actuary so authorised.

(3) Except in a case to which paragraph (4) applies, cash transfer sums 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—
  - (i) as being consistent with the calculation of cash equivalents under the requirements of Chapter 4 of Part 4 of the Act (transfer values),
  - (ii) as being consistent with “Retirement Benefit Schemes – Transfer Values (GN11)” published by the Institute of Actuaries and the Faculty of Actuaries and current at the date on which the cash transfer sum is calculated,
  - (iii) as being 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.

(4) Where a cash transfer sum or any portion of a cash transfer sum 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 transfer sum 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 4 of Part 4 of the Act.

**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

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

(5) The Faculty of Actuaries is located at Maclaurin House, 18 Dublin Street, Edinburgh EH1 3PP.

(6) 1972 c. 11.

- (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.

### **Reduction of cash transfer sums and contribution refunds**

4.—(1) In the case of a scheme to which Part 3 of the 2004 Act applies (scheme funding), the cash transfer sum in respect of a member may be reduced by the trustees or managers of the scheme if the GN11 insufficiency conditions are met.

(2) The GN11 insufficiency conditions are that the actuary's last relevant GN11 report shows that at the effective date of the report—

- (a) the scheme had assets that were insufficient to pay the full amount of cash equivalents under Chapter 4 of Part 4 of the Act in respect of all the members, and
- (b) the assets were insufficient to pay in full any category of liabilities that is a category of liabilities for the benefits in respect of which the member's cash equivalent is being calculated.

(3) If the GN11 insufficiency conditions are met the trustees may reduce any part of the member's cash transfer sum that is payable in respect of such a category of liabilities as are mentioned in paragraph (2)(b) by a percentage not exceeding the GN11 deficiency percentage.

(4) The GN11 deficiency percentage is the same as the percentage by which a member's cash equivalent for such a category of liabilities is being reduced.

(5) The references in this regulation to the actuary's last relevant GN11 report is to his last report, in accordance with "Retirement Benefit Schemes – Transfer Values (GN11)" published by the Institute of Actuaries and the Faculty of Actuaries, before the cash transfer sum is calculated.

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

(7) Where a scheme begins to wind up after the member's pensionable service terminates but before the trustees or managers have used the cash transfer sum or paid the contribution refund to the member, the cash transfer sum or contribution refund 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(7)) and regulations made under those provisions.

(8) If, by virtue of regulations made under section 73B(4)(b)(i) of the 1995 Act 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) 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.

(9) A member's 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 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.

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(7) Section 73B is inserted by section 270 of the Pensions Act 2004.

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

### **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 regulations 2 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 regulations 2 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<sup>(8)</sup> (Treasury's reserve powers) is in force, any equivalent rate determined by the Treasury under that section.

### **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

<sup>(8)</sup> 1998 c. 11.

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<sup>(9)</sup> (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<sup>(10)</sup> (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<sup>(11)</sup> (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<sup>(12)</sup> (recognised transfers).

### 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<sup>(13)</sup> (deduction of contributions equivalent premium from refund of scheme contributions), details of the amount certified under section 63 of the Act<sup>(14)</sup> (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.

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<sup>(9)</sup> S.I.1996/1462; the relevant amending instrument is S.I. 1997/786; S.I.1996/1462 is modified by S.I. 1996/1977.

<sup>(10)</sup> 2004 c. 12. Section 153 is amended by paragraphs 2 and 3 of Schedule 10 to the Finance Act 2005 (c. 7).

<sup>(11)</sup> 1988 c. 1.

<sup>(12)</sup> Section 169 is amended by paragraph 36 of Schedule 10 to the Finance Act 2005.

<sup>(13)</sup> 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.

<sup>(14)</sup> 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.

(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.

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

9th January 2006

*Stephen Timms*  
Minister of State,  
Department for Work and Pensions

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## 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.

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