

**2008 No. 1050**

**PENSIONS**

**The Occupational Pension Schemes (Transfer Values)  
(Amendment) Regulations 2008**

<i>Made</i> - - - -	<i>3rd April 2008</i>
<i>Laid before Parliament</i>	<i>11th April 2008</i>
<i>Coming into force</i> - -	<i>1st October 2008</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 27(3), 93A(2), 95(2)(d), 97(1), (2)(b), (3)(c) and (4), 101AC(2)(a), 101AF(1), (3)(b), (4)(b) and (5)(a), 101H(2) and (3), 101I, 101L, 113(1) and (3), 181(1), 182(2) and (3), and 183 of the Pension Schemes Act 1993(a), 67D(4), 124(1) and 174(2) and (3) of the Pensions Act 1995(b) and sections 23(1)(b), 26(1), 30, 41(1) and (2) and 83(4) and (6) of, and paragraphs 5(b) and 8(1) and (2) of Schedule 5 to, the Welfare Reform and Pensions Act 1999(c).

In accordance with section 185(1) of the Pension Schemes Act 1993(d), section 120(1) of the Pensions Act 1995 and section 83(11) of the Welfare Reform and Pensions Act 1999, he has consulted with such persons as he considers appropriate.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Transfer Values) (Amendment) Regulations 2008 and shall come into force on 1st October 2008.

(2) In these Regulations, “the principal Regulations” means the Occupational Pension Schemes (Transfer Values) Regulations 1996(e).

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- (a) 1993 c.48. Section 93A was inserted by section 153 of the Pensions Act 1995 (c.26) and amended by paragraph 34 of Schedule 12 to the Welfare Reform and Pensions Act 1999 (c.30). Section 97 was amended by paragraph 4 of Schedule 6 to the Pensions Act 1995 and paragraph 8(1) of Schedule 5 to the Child Support, Pensions and Social Security Act 2000 (c.19). Sections 101AC and 101AF were inserted by section 264 of the Pensions Act 2004 (c.35). Sections 101H, 101I and 101L were inserted by section 37 of the Welfare Reform and Pensions Act 1999. Section 113(1) was amended by section 52 of the Child Support, Pensions and Social Security Act 2000. Section 183 was amended by paragraph 45 of Schedule 3, paragraph 79 of Schedule 5 and paragraph 15 of Schedule 6 to the Pensions Act 1995, paragraph 42 of Schedule 12 to the Welfare Reform and Pensions Act 1999 and paragraph 32 of Schedule 12 to the Pensions Act 2004. Section 181(1) is cited for the meaning it gives to “prescribe” and “regulations”.
- (b) 1995 c.26. Section 67D was inserted by section 262 of the Pensions Act 2004 (c.35). Section 124(1) is cited for the meaning it gives to “prescribed” and “regulations”.
- (c) 1999 c.30. Section 23(1)(b) was amended by paragraph 157(5) of Schedule 27 to the Civil Partnership Act 2004 (c.33). Section 26(1) is cited for the meaning it gives to “prescribed”. Paragraph 8(1) of Schedule 5 was amended by paragraph 77 of Schedule 12 to the Pensions Act 2004.
- (d) Section 185(1) was amended by paragraph 46 of Schedule 3, and paragraph 80(a) of Schedule 5, to the Pensions Act 1995.
- (e) S.I. 1996/1847. Amending instruments are S.I.s 1997/786 and 1613, 2003/1727, 2005/72, 686, 706 and 3377, 2006/34 and 744 and 2007/60.

## **Amendment of regulation 1 of the principal Regulations**

2. In regulation 1(2) of the principal Regulations(a) (interpretation)—

- (a) in the appropriate alphabetical places, insert—
- ““actuary” means—
- (a) the actuary mentioned in section 47(1)(b) of the 1995 Act (professional advisers);  
or
- (b) in relation to a scheme to which that section does not apply—
- (i) a Fellow of the Faculty of Actuaries(b);  
(ii) a Fellow of the Institute of Actuaries(c); or  
(iii) a person with other actuarial qualifications who is approved, at the request of the trustees of the scheme in question, by the Secretary of State as being a proper person to act for the purposes of these Regulations in connection with that scheme;”;
- ““discount rates” means the interest rates used to discount future payments of benefit for the purposes of placing a current value on them;”;
- ““initial cash equivalent” means the amount calculated in accordance with regulation 7(1)(a);”;
- ““insufficiency report” means the actuary’s last relevant report before the guarantee date prepared in accordance with Schedule 1B (insufficiency reports);”;
- ““insufficiency report liabilities” has the meaning given in paragraph 7 of Schedule 1B;”;
- ““insurance policy” means an insurance policy which is a contract on human life or a contract of annuity on human life, but excluding a contract which is linked to investment funds;”;
- ““salary related benefits” means benefits that are not money purchase benefits;”;
- ““statement of entitlement” has the meaning given in section 93A(1) of the 1993 Act (salary related schemes: right to statement of entitlement);”;
- (b) for the definition of “effective date”, substitute—
- ““effective date” means the date as at which the assets and liabilities are valued for the purposes of the insufficiency report;”;
- (c) for the definition of “member”, substitute—
- ““member” has the meaning given in section 124(1) of the 1995 Act (interpretation);”;  
and
- (d) omit the definitions of “the Board for Actuarial Standards” and “scheme actuary”.

## **Substitution of regulation 6(1) of the principal Regulations**

3. For regulation 6(1) of the principal Regulations(d) (guaranteed statements of entitlement), substitute—

- “(1) Subject to paragraph (1A), the guarantee date in relation to a statement of entitlement must be—
- (a) within the period of three months beginning with the date of the member’s application under section 93A of the 1993 Act (salary related schemes: right to statement of entitlement) for a statement of entitlement; or

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(a) Regulation 1 was amended by S.I.s 1997/786 and 1613, 2003/1727, 2005/3377 and 2007/60.

(b) The Faculty of Actuaries can be contacted at Faculty of Actuaries, MacLaurin House, 18 Dublin Street, Edinburgh, EH1 3PP.

(c) The Institute of Actuaries can be contacted at Institute of Actuaries, Staple Inn Hall, High Holborn, London, WC1V 7QJ.

(d) Relevant amending instrument is S.I. 2005/686.

- (b) where the trustees are unable to provide a statement of entitlement for reasons beyond their control within the period specified in sub-paragraph (a), within such longer period not exceeding six months beginning with the date of the member's application as they may reasonably require.”.

#### **Substitution of regulations 7 and 8 of the principal Regulations**

4. For regulations 7 and 8 of the principal Regulations(a), substitute—

##### **“Manner of calculation and verification of cash equivalents - general provisions**

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

- (a) by calculating the initial cash equivalent—
  - (i) for salary related benefits, in accordance with regulations 7A and 7B; or
  - (ii) for money purchase benefits, in accordance with regulation 7C, and then making any reductions in accordance with regulation 7D; or
- (b) in accordance with regulation 7E.

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

(3) The trustees are responsible for the calculation and verification of cash equivalents and initial cash equivalents.

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

- (a) the British Coal Staff Superannuation Scheme (Modification) Regulations 1994(b); or
- (b) the Mineworkers' Pension Scheme (Modification) Regulations 1994(c),

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

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

- (a) augmentation of his benefits; or
- (b) new, additional or alternative benefits,

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

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

(7) Where a portion of the cash equivalent relates to a salary related benefit and a portion relates to a money purchase benefit, the initial cash equivalent is to be calculated—

- (a) for the salary related benefit portion, in accordance with regulations 7A and 7B; and
- (b) for the money purchase benefit portion, in accordance with regulation 7C.

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(a) Regulation 7 was amended by S.I.s 1997/786, 2005/3377, 2006/34 and 2007/60. Regulation 8 was amended by S.I.s 2005/706 and 3377 and 2007/60.

(b) S.I. 1994/2576.

(c) S.I. 1994/2577.

### **Manner of calculation of initial cash equivalents for salary related benefits**

**7A.**—(1) For salary related benefits, the initial cash equivalent is to be calculated—

- (a) on an actuarial basis; and
- (b) in accordance with paragraph (2) and regulation 7B.

(2) The initial cash equivalent is the amount at the guarantee date which is required to make provision within the scheme for a member's accrued benefits, options and discretionary benefits.

(3) For the purposes of paragraph (2), the trustees must determine the extent—

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

### **Initial cash equivalents for salary related benefits: assumptions**

**7B.**—(1) The trustees must use the assumptions determined under this regulation in calculating the initial cash equivalent for salary related benefits.

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

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

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

(4) The trustees must have regard to the scheme's investment strategy when deciding what assumptions will be included in calculating the discount rates in respect of the member.

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

### **Manner of calculation of initial cash equivalents for money purchase benefits**

**7C.**—(1) For money purchase benefits, the initial cash equivalent is to be calculated in accordance with this regulation.

(2) The initial cash equivalent is the realisable value of any benefits to which the member is entitled.

(3) The trustees must calculate that realisable value—

- (a) in accordance with the scheme rules; and
- (b) in a manner which is—
  - (i) approved by the trustees; and
  - (ii) consistent with Chapter IV of Part IV of the 1993 Act.

(4) The realisable value must include any increases to the benefits resulting from a payment of interest made in accordance with the scheme rules.

### **Reductions to initial cash equivalents**

**7D.**—(1) An initial cash equivalent may, or as the case may be must, be reduced in accordance with Schedule 1A (reductions in initial cash equivalents).

(2) The trustees may request an insufficiency report from the actuary in accordance with Schedule 1B.

(3) The trustees may treat the actuary’s last relevant GN11(a) report as an insufficiency report.

### **Alternative manner of calculating and verifying cash equivalents**

**7E.**—(1) This regulation applies where the trustees have decided to calculate and verify the cash equivalent in accordance with regulation 7(1)(b).

(2) The cash equivalent is to be calculated and verified in such manner as may be approved by the trustees.

(3) The cash equivalent must be higher than it would be if it was calculated and verified in accordance with regulation 7(1)(a).

(4) For the purposes of calculating and verifying the cash equivalent, the trustees may request an insufficiency report from the actuary in accordance with Schedule 1B.

(5) The trustees may treat the actuary’s last relevant GN11 report as an insufficiency report.”.

### **Amendment of regulation 11 of the principal Regulations**

**5.** Regulation 11 of the principal Regulations (disclosure)(b) is amended as follows—

(a) for paragraph (1), substitute—

“(1) Subject to paragraphs (1A) and (1B), an active member of any scheme, and a deferred member of a money purchase scheme, is entitled to receive from the trustees, on request, the information mentioned in Schedule 1 in writing.

(1A) Paragraph (1) does not apply where the request is made within 12 months of the last occasion that such information was provided to the member.

(1B) Information provided under paragraph (1) is to be provided by the trustees as soon as reasonably practicable, and in any event within three months after the date that the member makes the request.”;

(b) omit paragraph (2);

(c) in paragraph (3) for “paragraphs (1) and (2)”, substitute “paragraph (1)”;

(d) in paragraph (4)(b)(ii)—

(i) for “regulation 8” in both places where it appears, substitute “Schedule 1A”; and

(ii) before “cash equivalent” in the first place where it appears, insert “initial”;

(e) omit paragraphs (4)(b)(i) and (4)(b)(vi)(cc);

(f) at the end of paragraph (4)(b)(vi)(aa), insert “and”; and

(g) after paragraph (4)(b), insert—

“(c) the information mentioned in paragraph 3 of Schedule 1.”.

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(a) “GN11: Retirement Benefit Schemes – Transfer Values” was adopted by the Board for Actuarial Standards on 6th April 2007. The Board for Actuarial Standards means the operating body of that name of the Financial Reporting Council. The Financial Reporting Council can be contacted at Planning & Resources, 5th floor, Aldwych House, 71 – 91 Aldwych, London WC2B 4HN.

(b) Regulation 11 was amended by S.I. 2005/72.

## **Amendment of regulation 12 of the principal Regulations**

6. Regulation 12 of the principal Regulations (requirements to be met by receiving schemes, annuities and arrangements)(a) is amended as follows—

- (a) in paragraph (2)(a), for “a policy of insurance” substitute “an insurance policy”; and
- (b) in paragraph (5)(c), for “or” substitute “,”.

## **Amendment of Schedule 1 to the principal Regulations**

7. Schedule 1 to the principal Regulations (information to be made available to members), is amended as follows—

- (a) in paragraph 1—
  - (i) for sub-paragraph (a), substitute—

“(a) an estimate of its amount, calculated and verified in accordance with regulations 7 to 7E on the basis that the member’s pensionable service terminated or will terminate on a particular date;”;
  - (ii) at the end of sub-paragraph (c), insert “and”;
  - (iii) omit sub-paragraph (d); and
  - (iv) in sub-paragraph (e)—
    - (aa) for “has been reduced by reference to regulation 8”, substitute “included a reduction of the initial cash equivalent under Schedule 1A”; and
    - (bb) for paragraph (i), substitute—

“(i) a statement of that fact, a statement of the amount by which the initial cash equivalent has been reduced and an explanation of the reason for the reduction, which must refer to the paragraph of Schedule 1A relied upon;”;

and
- (b) after paragraph 2, insert—

“3. Where information is made available under paragraph 1 or 2 to a member of a salary related scheme, the information to be made available to such a member also includes—

- (a) a statement that the Financial Services Authority(b), the Regulatory Authority(c) and the Pensions Advisory Service(d) provide information about transfers that may assist the member in deciding whether to transfer;
- (b) if the scheme is an eligible scheme as defined in section 126 of the 2004 Act (eligible schemes), confirmation that the scheme is so eligible and that the Board of the Pension Protection Fund(e) exists;
- (c) a recommendation that the member should take financial advice before making decisions about transfers.”.

## **Schedules**

8. The Schedules to these Regulations have effect (Schedule 1 inserts Schedules 1A and 1B into the principal Regulations and Schedule 2 makes consequential amendments).

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(a) Regulation 12 was amended by S.I.s 1997/786 and 2006/744.

(b) The Financial Services Authority can be contacted at [www.fsa.gov.uk](http://www.fsa.gov.uk) or at the Financial Services Authority, 25 North Colonnade, Canary Wharf, London E14 5HS.

(c) The Pensions Regulator (the Regulatory Authority is defined to mean the Pensions Regulator by section 181(1) of the Pensions Act 1993) can be contacted at [www.thepensionsregulator.gov.uk](http://www.thepensionsregulator.gov.uk) or at the Pensions Regulator, Napier House, Trafalgar Place, Brighton, BN1 4DW.

(d) The Pensions Advisory Service can be contacted at [www.pensionsadvisoryservice.org.uk](http://www.pensionsadvisoryservice.org.uk) or at 11 Belgrave Road, London, SW1V 1RB.

(e) The Board of the Pension Protection Fund is established under section 107 of the Pensions Act 2004.

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

3rd April 2008

*Mike O'Brien*  
Minister of State,  
Department for Work and Pensions

## SCHEDULE 1

Regulation 8

### Insertion of Schedules 1A and 1B to the principal Regulations

After Schedule 1 to the principal Regulations, insert—

#### “SCHEDULE 1A

Regulation 7D(1)

#### Reductions in initial cash equivalents

1. In a case where two or more paragraphs of this Schedule apply, they must be applied in the order in which they occur in this Schedule.
2. In the case of a scheme to which Part 3 of the 2004 Act (scheme funding) applies<sup>(a)</sup>, the member's initial cash equivalent may be reduced by the trustees if—
  - (a) the insufficiency conditions are met; and
  - (b) the insufficiency report has an effective date which is no earlier than the effective date of the most recent actuarial valuation received by the trustees in accordance with section 224(4) of the 2004 Act (scheme funding).
3. The insufficiency conditions are that the last insufficiency report shows that at the effective date of the report—
  - (a) the scheme had assets that were insufficient to cover the insufficiency report liabilities in respect of all the members; and
  - (b) the assets were insufficient to cover in full any category of insufficiency report liabilities that is an equivalent category of liabilities for benefits in respect of which the member's cash equivalent is being calculated.
4. If the insufficiency conditions are met the trustees may reduce, by a percentage not exceeding the deficiency percentage, any part of the member's initial cash equivalent that is payable in respect of such an equivalent category of liabilities as are mentioned in paragraph 3(b).
5. The deficiency percentage for any such part of a member's initial cash equivalent is the percentage by which the insufficiency report shows that the assets were insufficient to cover that category of liabilities.
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 2 and 3 apply as if that section were a separate scheme and as if the reference to a scheme were accordingly a reference to that section.
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 (payment of state scheme premiums

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(a) Regulation 17(1)(l) of S.I. 2005/3377 provides that Part 3 does not apply where a scheme is winding up.

on termination of certified status)(a), the initial cash equivalent must 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 (effect of payment of premiums on rights)(b) by payment of that premium.

**8.** Where a member's cash equivalent is to be used for acquiring—

- (a) transfer credits under the rules of another scheme; or
- (b) rights under the rules of a personal pension scheme,

and the 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), the initial cash equivalent must be reduced so that the cash equivalent is that lesser sum.

**9.** Where effect has been given to protected rights in accordance with section 32A of the 1993 Act (discharge of protected rights on winding up: insurance policies)(c), the initial cash equivalent of those rights must be reduced so that the cash equivalent is nil.

**10.** Where all or any of a member's benefits have been appropriately secured, the initial cash equivalent in respect of those benefits must be reduced so that the cash equivalent is 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)(d), 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)(e) (means of assuring short service benefit), but which otherwise satisfies the conditions for being appropriate for the purposes of section 19 of that Act, 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, an initial cash equivalent 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(f)) and regulations made under those provisions.

**13.** If, by virtue of regulations made under section 73B(4)(b)(i) of the 1995 Act (sections 73 and 73A: supplementary) by virtue of section 73B(5) of that Act, the winding up provisions (as so defined) apply to a section of a scheme as if that section were a separate scheme, paragraph 12 applies as if that section were a separate scheme and as if the references to a scheme were accordingly references to that section.

**14.** Where all or any of the benefits to which an initial 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 initial cash equivalent of the benefits so surrendered, commuted or forfeited must be reduced so that the cash equivalent is nil.

**15.** The trustees may reduce an initial cash equivalent to reflect any reasonable administration costs were the member to leave the scheme and must offset against these costs any reasonable administrative savings.

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(a) Section 55 was amended by section 141 of, and paragraph 50 of Schedule 5 to, the Pensions Act 1995, paragraph 7 of Schedule 2 to the Welfare Reform and Pensions Act 1999 and S.I. 2005/2050.  
(b) Section 60 was amended by paragraph 54 of Schedule 5 to the Pensions Act 1995 and S.I. 2005/2050.  
(c) Section 32A was inserted by section 146(1) of the Pensions Act 1995 and amended by S.I.s 2001/3649 and 2007/3014.  
(d) Section 19 was amended by S.I.s 2001/3649, 2005/2050 and 2007/3014.  
(e) S.I. 1991/167. Regulation 6 was amended by S.I.s 1994/1062, 1995/35 and 3067 and 1997/786.  
(f) Section 73B was inserted by section 270(1) of the Pensions Act 2004.



## Insufficiency Reports

1. Where the trustees have requested an insufficiency report under regulation 7D(2) or 7E(4), the actuary is responsible for the preparation of the report.
2. The insufficiency report must contain—
  - (a) a comparison, as at the effective date of the report, between the insufficiency report liabilities of all members and the market value of the assets of the scheme; and
  - (b) a statement of any allowance the actuary makes under paragraph 3.
3. The actuary may deduct from the assets of the scheme an allowance which—
  - (a) is of such amount as he considers reasonable in the circumstances of the scheme; and
  - (b) represents the expenses associated with wind up.
4. Where it appears to the actuary that the circumstances are such that it is appropriate, he may exclude any rights under an insurance policy from the scheme assets.
5. Where rights under an insurance policy are excluded under paragraph 4, the liabilities secured by the policy must be disregarded for the purposes of the insufficiency report.
6. The value of any rights under an insurance policy included in the scheme assets must be the value the actuary considers appropriate.
7. The insufficiency report liabilities are—
  - (a) for active members with vested rights, calculated and verified in accordance with regulations 7 to 7E and Schedule 1A as appropriate except that—
    - (i) paragraphs 2 to 6 of Schedule 1A are to be disregarded;
    - (ii) references to “guarantee date” are to be taken to mean the effective date of the report; and
    - (iii) it is to be assumed that the member ceases pensionable service on the effective date;
  - (b) for deferred members, calculated and verified in accordance with regulations 7 to 7E and Schedule 1A as appropriate except that—
    - (i) paragraphs 2 to 6 of Schedule 1A are to be disregarded; and
    - (ii) references to “guarantee date” are to be taken to mean the effective date of the report;
  - (c) for pensioner members, calculated and verified in accordance with regulations 7 to 7C as appropriate except that references to “guarantee date” are to be taken to mean the effective date of the report;
  - (d) for members over normal pension age not in receipt of a pension, calculated and verified—
    - (i) in the same way as those of pensioner members; and
    - (ii) on the assumption that the member’s pension comes into payment on the effective date of the report;
  - (e) for pension credit members, calculated and verified in accordance with regulations 7 to 7E and Schedule 1A as appropriate except that—
    - (i) paragraphs 2 to 6 of Schedule 1A are to be disregarded; and
    - (ii) references to “guarantee date” are to be taken to mean the effective date of the report; and

- (f) for members with unvested rights, equal to the amount of the unvested contributions and the actuary is to assume that the member ceases pensionable service on the effective date of the report.

**8. When preparing the insufficiency report—**

- (a) the actuary must make estimates comparing the relevant assets with the relevant liabilities of the scheme in respect of each category of liability;
- (b) for the purposes of sub-paragraph (a), the actuary may use one or more categories of liability;
- (c) where the actuary uses more than one category, he must have regard to the priority order on winding up specified in section 73(3) of the 1995 Act (preferential liabilities on winding up)(a); and
- (d) in determining the extent and content of the category or categories of liabilities, the actuary may use such approximations as he considers reasonable.

**9. In this Schedule—**

“relevant assets” means, subject to paragraphs 2(b) to 6, for a particular category of liability, the market value of the scheme assets, less the total of the relevant liabilities for all categories with greater priority under the priority order and are not to exceed the maximum of the relevant liabilities for that category.

“relevant liabilities” means, for a particular category of liability, the sum of all insufficiency report liabilities falling into that category.”.

## SCHEDULE 2

Regulation 8

### Consequential Amendments

**1. In the Personal Pension Schemes (Transfer Values) Regulations 1987(b),**

- (a) in regulation 1(2) (interpretation)—
  - (i) in the appropriate alphabetical place, insert—

““initial cash equivalent” means the amount calculated in accordance with regulation 3(2) to (4);”;
  - (ii) for the definition of “personal pension scheme”, substitute—

““personal pension scheme” has the same meaning as in section 181(1) of the Act;”;

and
  - (iii) omit the definitions of “the Board for Actuarial Standards” and “money purchase benefits”;
- (b) for regulation 3 (manner of calculation and verification of cash equivalents), substitute—

**“Manner of calculation and verification of cash equivalents**

**3.—(1)** Cash equivalents are to be calculated and verified by calculating the initial cash equivalent in accordance with this regulation and then making any increases or reductions in accordance with regulation 4.

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(a) Section 73 was substituted by section 270 of the Pensions Act 2004.

(b) S.I. 1987/1112. Relevant amending instruments are S.I.s 1994/1062 and 2007/60.

(2) The initial cash equivalent is the realisable value of any benefits to which the member is entitled.

(3) The trustees must calculate that realisable value—

- (a) in accordance with the scheme rules; and
- (b) in a manner which is—
  - (i) approved by the trustees; and
  - (ii) consistent with Chapter IV of Part IV of the Act.

(4) The realisable value must include any increases to the benefits resulting from a payment of interest made in accordance with the scheme rules.”; and

(c) for regulation 4 (increases and reductions of cash equivalents), substitute—

#### **“Increases and reductions of cash equivalents**

4.—(1) Initial cash equivalents may, or as the case may be must, be increased or reduced in accordance with this regulation.

(2) If the whole or any part of the benefits referred to in section 94(1)(b) of the Act (right to cash equivalent)(a) is or has been surrendered, commuted or forfeited before the trustees of the personal pension scheme do what is needed to comply with what the member requires, the initial cash equivalent must be reduced in proportion to the reduction in the total value of the benefits.

(3) If the trustees of a personal pension scheme fail without reasonable excuse to do what is needed to carry out what a member of the scheme requires within 6 months of the relevant date, that member’s initial cash equivalent must be increased by—

- (a) the interest on that initial cash equivalent, calculated on a daily basis over the period from the relevant date to the date on which the trustees carry out what the member requires, at the same rate as that payable for the time being on judgment debts by virtue of section 17 of the Judgment Act 1838 (judgment debts to carry interest)(b); or if it is greater,
- (b) the amount, if any, by which that initial cash equivalent falls short of what it would have been if the relevant date had been the date on which the trustees carry out what the member requires.

(4) In a case where both paragraphs (2) and (3) fall to be applied to a calculation, paragraph (2) must be applied first.”.

2. In the Personal and Occupational Pension Schemes (Protected Rights) Regulations 1996(c)—

- (a) in regulation 1(2) (interpretation), omit the definition of “the Board for Actuarial Standards”; and
- (b) for regulation 2 (manner of calculation and verification of protected rights), substitute—

#### **“Manner of calculation and verification of protected rights**

2.—(1) For the purposes of section 27(3) of the 1993 Act (identification and valuation of protected rights), the trustees must calculate and verify the value of a member’s protected rights in accordance with regulation 7C of the Occupational Pension Schemes (Transfer Values) Regulations 1996.

(2) In calculating the rights under paragraph (1), the trustees must treat the references to “initial cash equivalent” in regulation 7C as if they were to “protected rights”.

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(a) Section 94 was amended by section 154 of the Pensions Act 1995, paragraph 35 of Schedule 12 to the Welfare Reform and Pensions Act 1999 and paragraph 13 of Schedule 12 to the Pensions Act 2004.  
(b) 1 & 2 Vic. c.110. The rate of interest was amended by S.I. 1993/564.  
(c) S.I. 1996/1537. Relevant amendments were made by Schedule 2 to the Social Security Contributions (Transfer of Functions, etc) Act 1999 (c.2) and S.I. 2007/60.

(3) The trustees must adopt methods and assumptions that are consistent with sections 9(3) and (5)(a), 10(b) and 26 to 32 of the 1993 Act(c).”.

**3. In the Pensions on Divorce etc. (Provision of Information) Regulations 2000(d)—**

- (a) in regulation 1(2) (interpretation)—
  - (i) in the appropriate alphabetical places, insert—
    - ““normal pension age” has the meaning given in section 180 of the 1993 Act (normal pension age);”;
    - ““the Transfer Values Regulations” means the Occupational Pension Schemes (Transfer Values) Regulations 1996;”;
  - (ii) for the definition of “salary related occupational pension scheme”, substitute—
    - ““salary related occupational pension scheme” has the meaning given by regulation 1A of the Transfer Values Regulations;”;
    - and
  - (iii) omit the definition of “the Board for Actuarial Standards”;
- (b) in regulation 3 (information about pensions and divorce and dissolution of a civil partnership: valuation of pension benefits)—
  - (i) in paragraph (1)(d)—
    - (aa) for “paragraphs (7) to (9)” substitute “paragraphs (7) and (8)”; and
    - (bb) after head (iii), insert—
      - “; or
      - (iv) the pension of the person with pension rights is not in payment and the person has attained normal pension age.”;
  - (ii) for paragraph (4)(b), substitute—
    - “(b) in accordance with regulation 11 of, and Schedule 1 to, the Transfer Values Regulations (disclosure).”;
  - (iii) for paragraphs (7) to (9), substitute—
    - “(7) Cash equivalents are to be calculated and verified in accordance with regulations 7 to 7C and 7E(1) to (3) of the Transfer Values Regulations as appropriate.
    - (8) But when calculating and verifying a cash equivalent in accordance with those regulations—
      - (a) references to “trustees” must be read as references to “person responsible for the pension arrangement”;
      - (b) where the person with pension rights is a pensioner member on the date on which the request for the valuation is received, the value of his pension must be calculated and verified in accordance with regulations 7 to 7E of the Transfer Values Regulations as appropriate;
      - (c) where the person is over normal pension age but not in receipt of a pension—

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- (a) Section 9 was amended by section 136(4) of, and paragraph 24 of Schedule 5 to, the Pensions Act 1995 and paragraph 35 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc) Act 1999.
  - (b) Section 10 was amended by paragraph 25 of Schedule 5 to the Pensions Act 1995, section 32 of the Welfare Reform and Pensions Act 1999, paragraph 36 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc) Act 1999 and paragraph 22 of Schedule 11 to the Proceeds of Crime Act 2002 (c.29).
  - (c) Section 28 was amended by sections 142 and 146 of, and paragraph 34 of Schedule 5 to, the Pensions Act 1995, paragraph 5 of Schedule 2 to the Welfare Reform and Pensions Act 1999, paragraphs 2 and 3 of Schedule 5 to the Child Support, Pensions and Social Security Act 2000, section 284 of the Pensions Act 2004 and S.I.s 2005/2050 and 2006/745. Sections 28A and 28B were inserted by section 143 of the Pensions Act 1995. Section 28A was amended by S.I.s 2005/2050 and 2006/745. Sections 28B and 30 were amended by paragraphs 41 and 42 respectively of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc) Act 1999. Section 29 was amended by section 144 of, and paragraph 35 of Schedule 5 to, the Pensions Act 1995, section 284 of the Pensions Act 2004 and S.I.s 2001/3649 and 2005/2050. Section 31 was amended by paragraph 36 of Schedule 5 to the Pensions Act 1995 and paragraph 43 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc) Act 1999.
  - (d) S.I. 2000/1048. Relevant amending instruments are S.I.s 2000/2691, 2003/1727, 2005/2877, 2006/744 and 2007/60.

- (i) the value of his pension must be calculated and verified in accordance with regulations 7 to 7E of the Transfer Values Regulations as appropriate; and
- (ii) the person responsible for the pension arrangement must assume that the pension came into payment on the date on which the request for the valuation was received; and
- (d) the date by reference to which the cash equivalent is to be calculated and verified is to be the date on which the request for the valuation was received.”; and
- (iv) in paragraph (10), for “paragraph (3), (4) or (9)” substitute “paragraph (3), (4) or (7)”;
- (c) in regulation 4(2)(c) (provision of information in response to a notification that a pension sharing order or provision may be made), for the words from “regulation 8(4)” to the end, substitute “paragraphs 2, 3 and 12 of Schedule 1A to the Transfer Values Regulations (reductions in initial cash equivalents);”.

4. In the Pensions on Divorce etc. (Charging) Regulations 2000(a) in regulation 9(2)(f)(i) (charges in respect of pension sharing activity — method of recovery), for “regulation 7” substitute “regulations 7 to 7E”.

5. In the Pension Sharing (Valuation) Regulations 2000(b)—

- (a) in regulation 1(2) (interpretation)—
  - (i) in the appropriate alphabetical places, insert—
    - ““initial cash equivalent” means the amount calculated in accordance with regulation 7(1)(a) of the Transfer Values Regulations;”;
    - ““the Transfer Values Regulations” means the Occupational Pension Schemes (Transfer Values) Regulations 1996;”;
  - (ii) omit the definitions of “the Board for Actuarial Standards”, “effective date” and “scheme actuary”;
- (b) for regulations 4 to 6, substitute—

**“Manner of calculation and verification of cash equivalents: occupational pension schemes**

4.—(1) Subject to this regulation, cash equivalents for members of occupational pension schemes are to be calculated and verified in accordance with regulations 7 to 7E of the Transfer Values Regulations.

(2) Reductions to initial cash equivalents can only be made in accordance with regulation 7D of, and paragraphs 1 to 6 and 12 to 14 of Schedule 1A to, those Regulations.

(3) The reduction referred to in paragraph 2 of Schedule 1A to the Transfer Values Regulations must not be applied to a case where liability in respect of a pension credit is to be discharged in accordance with—

- (a) paragraph 1(2) of Schedule 5 to the 1999 Act (pension credits: mode of discharge - funded pension schemes); or
- (b) paragraph 1(3) of that Schedule, in a case where regulation 7(2) of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (funded pension schemes)(c) applies.

(4) When calculating and verifying the cash equivalent, the Transfer Values Regulations are to be read as if—

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(a) S.I. 2000/1049.

(b) S.I. 2000/1052. Relevant amending instruments are S.I.s 2000/2691, 2003/1727, 2005/706 and 3377, 2006/34 and 2007/60.

(c) Regulation 7(2) was amended by S.I. 2000/2691.

- (a) in regulation 1(2) (interpretation), there were inserted at the appropriate alphabetical places—
- ““normal pension age” has the meaning given by section 180 of the 1993 Act (normal pension age);”;
- ““occupational pension scheme” has the meaning given by section 1 of the 1993 Act (categories of pension schemes)(a);”;
- ““transfer day” has the meaning given by section 29(8) of the Welfare Reform and Pensions Act 1999 (creation of pension debits and credits);”;
- ““valuation day” has the meaning given by section 29(7) of the Welfare Reform and Pensions Act 1999;”;
- (b) in regulation 7(1) (manner of calculation and verification of cash equivalents – general provisions), for “paragraphs (4) and (7)” there were substituted “paragraphs (4), (7) and (8) to (11)”;
- (c) after regulation 7(7), there were inserted—
- “(8) Where the person with pension rights is a deferred member of an occupational pension scheme on the transfer day, the value of the benefits which he has accrued under that scheme must be taken to be—
- (a) in the case of an occupational pension scheme other than a salary related scheme, the cash equivalent to which he acquired a right under section 94(1)(a) of the 1993 Act (right to cash equivalent) on the termination of his pensionable service, calculated and verified on the assumption that he has made an application under section 95(1) of that Act (ways of taking right to cash equivalent)(b); or
- (b) in the case of a salary related occupational pension scheme, the guaranteed cash equivalent to which he would have acquired a right under section 94(1)(aa) of the 1993 Act if he had made an application under section 95(1) of that Act.
- (9) Where the person with pension rights is an active member of an occupational pension scheme on the transfer day, the value of the benefits which he has accrued under that scheme must be calculated and verified on the assumption that the member had made a request for an estimate of the cash equivalent that would be available to him were his pensionable service to terminate on the transfer day.
- (10) Where the person with pension rights is a pensioner member of an occupational pension scheme on the transfer day, the value of his pension must be calculated and verified in accordance with this regulation and regulations 7A to 7C and 7E(1) to (3) as appropriate.
- (11) Where the person with pension rights attains, or is over, normal pension age and is not in receipt of a pension—
- (a) the pension must be calculated and verified in accordance with this regulation and regulations 7A to 7C and 7E(1) to (3) as appropriate; and
- (b) the trustees must assume that the member’s pension comes into payment on the transfer day.”;
- (d) in regulation 7A(2), the reference to “guarantee date” was a reference to “valuation day”; and
- (e) in paragraph 12 of Schedule 1A, the reference to “guarantee date” was a reference to “valuation day”.

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(a) The definition of “occupational pension scheme” was substituted by section 239 of the Pensions Act 2004 and amended by S.I. 2007/3014.

(b) Section 95(1) was amended by paragraph 3 of Schedule 6 to the Pensions Act 1995.

**Manner of calculation and verification of cash equivalents: other relevant arrangements**

5.—(1) Subject to this regulation, cash equivalents for members of a relevant arrangement other than an occupational pension scheme are to be calculated and verified in accordance with regulations 7 to 7E of the Transfer Values Regulations.

(2) When calculating and verifying the cash equivalent, the Transfer Value Regulations are to be read as if—

(a) in regulation 1(2)—

(i) for the definition of “trustees” there were substituted—

““trustees” means the person responsible for the relevant arrangement;”; and

(ii) there were inserted at the appropriate alphabetical places—

““personal pension scheme” has the meaning given by section 1 of the 1993 Act (categories of pension scheme);”;

““transfer day” has the meaning given by section 29(8) of the Welfare Reform and Pensions Act 1999 (creation of pension debits and credits);”;

(b) in regulation 7(1) (manner of calculation and verification of cash equivalents – general provisions), for “paragraphs (4) and (7)” there were substituted “paragraphs (4), (7) and (8)”; and

(c) after regulation 7(7), there were inserted—

“(8) Where the person with pension rights is a member of a personal pension scheme, or those rights are contained in a retirement annuity contract, the value of the benefits which he has accrued under that scheme or contract on the transfer day must be taken to be the cash equivalent to which he would have acquired a right under section 94(1)(b) of the 1993 Act (right to cash equivalent), if he had made an application under section 95(1) of that Act (ways of taking right to cash equivalent) on the date on which the request for the valuation was received.”.

(3) In relation to a personal pension scheme which is comprised in a retirement annuity contract made before 4th January 1988, this regulation applies as if such a scheme were not excluded from the scope of Chapter IV of Part IV of the 1993 Act by section 93(1)(b) of that Act (scope of Chapter IV).”;

(c) regulation 7 (other relevant arrangements: reduction of cash equivalents) becomes paragraph (1) of regulation 7; and

(d) in regulation 7, after paragraph (1) insert—

“(2) This regulation does not apply to occupational pension schemes.”.

**6. In the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000(a)—**

(a) in regulation 1(2) (interpretation)—

(i) in the appropriate alphabetical place, insert—

““the Transfer Values Regulations” means the Occupational Pension Schemes (Transfer Values) Regulations 1996;”; and

(ii) omit the definitions of “the Board for Actuarial Standards”, “effective date” and “scheme actuary”;

(b) for regulation 10 (calculation of the value of appropriate rights), substitute—

**“Calculation of the value of appropriate rights**

**10.** The value of rights conferred on a person entitled to a pension credit are to be calculated in a manner which is consistent with the methods adopted and assumptions made

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(a) S.I. 2000/1053. Relevant amending instruments are S.I.s 2000/2691, 2003/1727, 2005/706 and 3377 and 2007/60.

when transfers of other pension rights are received by the person responsible for the pension arrangement.”; and

- (c) for paragraphs (2) to (3) of regulation 16 (adjustments to the amount of the pension credit—occupational pension schemes which are underfunded on the valuation day), substitute—

“(2) Reductions may be made to a pension credit in accordance with paragraphs 2 to 6 of Schedule 1A to the Transfer Values Regulations modified as if—

- (a) in paragraph 2, the reference to “initial cash equivalent” were a reference to “pension credit”;
- (b) in paragraph 3(b), the words “in respect of which the member’s cash equivalent is being calculated and verified” were “to which the pension credit relates”;
- (c) in paragraph 4, the words “member’s initial cash equivalent that is payable in respect of” were “pension credit that relates to”; and
- (d) in paragraph 5, the words “a member’s initial cash equivalent” were “the pension credit”.”.

**7. In the Pension Sharing (Pension Credit Benefit) Regulations 2000(a)—**

- (a) in regulation 1(2) (interpretation)—
  - (i) in the appropriate alphabetical place, insert—

““the Transfer Values Regulations” means the Occupational Pension Schemes (Transfer Values) Regulations 1996;”;
  - (ii) omit the definitions of “the Board for Actuarial Standards” and “effective date”;
- (b) in regulation 23(2) (statements of entitlement), omit the words—
  - (i) “to obtain the information required”; and
  - (ii) “as a result of that inability”;
- (c) for regulation 24 (manner of calculation and verification of cash equivalents), substitute—

**“Manner of calculation and verification of cash equivalents**

**24.—**(1) Subject to paragraph (2), cash equivalents are to be calculated and verified in accordance with regulations 7 to 7E of the Transfer Values Regulations as appropriate.

(2) When calculating and verifying the cash equivalent, those Regulations are to be read as if—

- (a) in regulation 1(2) (interpretation), there were inserted at the appropriate alphabetical places—
  - ““eligible member” has the meaning given by section 101P(1) of the 1993 Act (interpretation)(b);”;
  - ““valuation date” has the meaning given by section 101J(7) of the 1993 Act (time for compliance with transfer notice)(c);”;
- (b) in regulation 7(1) (manner of calculation and verification of cash equivalents – general provisions), for “paragraphs (4) and (7)” there were substituted “paragraphs (4), (7) and (8)”;
- (c) in regulations 7 to 7C and Schedule 1A, references to “member” were references to “eligible member”;
- (d) after regulation 7(7), there were inserted—

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(a) S.I. 2000/1054. Relevant amending instruments are S.I.s 2000/2691, 2003/1727, 2005/706 and 3377, 2006/34 and 2007/60.  
(b) Section 101P was inserted by section 37 of the Welfare Reform and Pensions Act 1999.  
(c) Section 101J was inserted by section 37 of the Welfare Reform and Pensions Act 1999.



“(8) Cash equivalents are to be calculated and verified in relation to the valuation date.”;

- (e) in regulation 7A(2), the reference to “guarantee date” was a reference to “valuation date”;
- (f) paragraphs 7 and 9 of Schedule 1A were omitted; and
- (g) in paragraph 12 of Schedule 1A, the words “a cash equivalent mentioned in section 93A of the 1993 Act, before the guarantee date” were “a cash equivalent such as is mentioned in section 101H of the 1993 Act, before the valuation date.”; and
- (d) omit regulation 27 (increases and reductions of cash equivalents before a statement of entitlement has been sent to the eligible member).

**8. In the Occupational Pension Schemes (Early Leavers: Cash Transfer Sums and Contribution Refunds) Regulations 2006(a)—**

- (a) in regulation 1(2) (interpretation)—
  - (i) in the appropriate alphabetical places, insert—

““actuary” means—

    - (a) the actuary mentioned in section 47(1)(b) of the 1995 Act (professional advisers); or
    - (b) in relation to a scheme to which that section does not apply—
      - (i) a Fellow of the Faculty of Actuaries;
      - (ii) a Fellow of the Institute of Actuaries; or
      - (iii) a person with other actuarial qualifications who is approved, at the request of the trustees of the scheme in question, by the Secretary of State as being a proper person to act for the purposes of these Regulations in connection with that scheme;”;
  - ““discount rates” means the interest rates used to discount future payments of benefit for the purposes of placing a current value on them;”;
  - ““initial cash transfer sum” means the amount calculated in accordance with regulation 2(1)(a);”;
  - ““insufficiency report” means the actuary’s last relevant report before the date on which the member’s pensionable service terminated, as provided for by regulation 7D of, and Schedule 1B to, the Transfer Values Regulations (reductions to initial cash equivalents);”;
  - ““insufficiency report liabilities” has the meaning given in paragraph 7 of Schedule 1B to the Transfer Values Regulations;”;
  - ““salary related benefits” means benefits that are not money purchase benefits;”;
  - ““the Transfer Values Regulations” means the Occupational Pension Schemes (Transfer Values) Regulations 1996;”;
- (ii) omit the definition of “the Board for Actuarial Standards”;
- (b) for regulation 2 (calculation and verification of cash transfer sum), substitute—

**“Manner of calculation and verification of cash transfer sums - general provisions**

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

- (a) by calculating the initial cash transfer sum—
  - (i) for salary related benefits, in accordance with regulations 2A and 2B; or

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(a) S.I. 2006/33. Relevant amending instrument is S.I. 2007/60.

(ii) for money purchase benefits, in accordance with regulation 2C, and then making any reductions in accordance with regulation 4; or

(b) in accordance with regulation 2D.

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

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

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

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

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

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

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

(a) augmentation of his benefits; or

(b) new, additional or alternative benefits,

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

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

(7) Where a portion of the cash transfer sum relates to a salary related benefit and a portion relates to a money purchase benefit, the initial cash transfer sum is to be calculated—

(a) for the salary related benefit portion, in accordance with regulations 2A and 2B; and

(b) for the money purchase benefit portion, in accordance with regulation 2C.

#### **Manner of calculation of initial cash transfer sums for salary related benefits**

**2A.**—(1) For salary related benefits, the initial cash transfer sum is to be calculated—

(a) on an actuarial basis; and

(b) in accordance with paragraph (2) and regulation 2B.

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

(3) For the purposes of paragraph (2), the trustees or managers must determine the extent—

(a) of any options the member has which would increase the value of his benefits under the scheme;

(b) of any adjustments they decide to make to reflect the proportion of members likely to exercise those options; and

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(a) Section 101AA was inserted by section 264 of the Pensions Act 2004.

- (c) to which any discretionary benefits should be taken into account, having regard to any established custom for awarding them and any requirement for consent before they are awarded.

#### **Initial cash transfer sum for salary related benefits: assumptions**

**2B.**—(1) The trustees or managers must use the assumptions determined under this regulation in calculating the initial cash transfer sum for salary related benefits.

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

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

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

(4) The trustees or managers must have regard to the scheme's investment strategy when deciding what assumptions will be included in calculating the discount rates in respect of the member.

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

#### **Manner of calculation of initial cash transfer sums for money purchase benefits**

**2C.**—(1) For money purchase benefits, the initial cash transfer sum is to be calculated in accordance with this regulation.

(2) The initial cash transfer sum is the realisable value of any benefits to which the member is entitled.

(3) The trustees or managers must calculate that realisable value—

- (a) in accordance with the scheme rules; and
- (b) in a manner which is—
  - (i) approved by the trustees or managers; and
  - (ii) consistent with Chapter IV of Part IV of the 1993 Act.

(4) The realisable value must include any increases to the benefits resulting from a payment of interest made in accordance with the scheme rules.

#### **Alternative manner of calculating and verifying cash transfer values**

**2D.**—(1) This regulation applies where the trustees or managers have decided to calculate and verify the cash transfer value in accordance with regulation 2(1)(b).

(2) The cash transfer value is to be calculated and verified in such manner as may be approved by the trustees or managers.

(3) The cash transfer value must be higher than it would be if it was calculated and verified in accordance with regulation 2(1)(a).

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

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

- (c) for regulation 4 (reduction of cash transfer sums and contribution refunds), substitute—

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

4.—(1) In the case of a scheme to which Part 3 of the 2004 Act (scheme funding) applies<sup>(a)</sup>, the member’s initial cash transfer sum may be reduced by the trustees or managers if the insufficiency conditions are met.

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

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

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

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

(5) If, by virtue of regulations made under section 232 of the 2004 Act (power to modify provisions of Part 3), Part 3 of that Act applies to a section of a scheme as if that section were a separate scheme, paragraphs (1) and (2) apply as if that section were a separate scheme and as if the reference to a scheme were accordingly a reference to that section.

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

(7) Where a scheme begins to wind up after the member’s pensionable service terminates but before the trustees or managers have discharged the cash transfer sum or paid the contribution refund to the member, the initial cash transfer sum or contribution refund may be reduced to the extent necessary for the scheme to comply with the winding up provisions (as defined in section 73B(10)(a) of the 1995 Act) and regulations made under those provisions.

(8) If, by virtue of regulations made under section 73B(4)(b)(i) of the 1995 Act (sections 73 and 73A: supplementary) by virtue of section 73B(5) of that Act, the winding up provisions (as so defined) apply to a section of a scheme as if that section were a separate scheme, paragraph (7) applies as if that section were a separate scheme and as if the references to a scheme were accordingly references to that section.

(9) A member’s initial cash transfer sum or contribution refund under the scheme may be reduced if the member has incurred some monetary obligation due to the employer or to the scheme and arising out of a criminal, negligent or fraudulent act or omission by that member.

(10) A member’s initial cash transfer sum or contribution refund under the scheme may be reduced by reason of paragraph (9) to the extent only that the reduction does not exceed the amount of the monetary obligation in question.

(11) A reduction under paragraph (9) must not take effect where there is a dispute as to the amount of the monetary obligation in question, unless the obligation has become

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<sup>(a)</sup> Regulation 17(1)(l) of S.I. 2005/3377 provides that Part 3 does not apply where a scheme is winding up.  
<sup>(b)</sup> Section 101AB was inserted by section 264 of the Pensions Act 2004.

enforceable under an order of a competent court or in consequence of an award of an arbitrator, or in Scotland, an arbiter to be appointed (failing agreement between the parties) by the sheriff.

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

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

(d) in regulation 5(1) and (2)(b) (increases of cash transfer sum and contribution refund), for “regulations 2 and 4” substitute “regulations 2 to 2D and 4”; and

(e) in regulation 7(1) (information), at the end of sub-paragraph (h) insert—  
“; and

(i) where the cash transfer sum or contribution refund is subject to variation by virtue of regulation 2C or 3, a statement explaining the reason for the variation.”.

9. In regulation 5(2)(a)(ii) of the Occupational Pension Schemes (Modification of Schemes) Regulations 2006<sup>(a)</sup> (calculation of the actuarial value of affected member’s subsisting rights), for “regulation 7(3)(b)”, substitute “regulations 7 to 7C and 7E(1) to (3) as appropriate”.

## EXPLANATORY NOTE

*(This note is not part of the Regulations )*

These Regulations make amendments to provisions about the calculation and verification of transfer values (the amount that may be transferred from one pension scheme to another). They set out the new manner for calculating and verifying cash equivalents and cash transfer sums.

Regulation 2 amends the interpretation provisions in the Occupational Pension Schemes (Transfer Values) Regulations 1996 (S.I. 1996/1847) (“the principal Regulations”).

Regulation 3 amends regulation 6 of the principal Regulations to specify the guarantee date (the date by reference to which the value of the cash equivalent is calculated).

Regulation 4 substitutes new regulations 7 to 7E for regulations 7 and 8 of the principal Regulations. These new regulations prescribe the manner by which cash equivalent transfer values are calculated and verified. The trustees or managers of a pension scheme are required to calculate the cash equivalent in accordance with the rules in new regulations 7 to 7D or by any other method that produces a higher figure (new regulation 7E).

The new rules inserted by regulation 4 are also used in modified form for the purposes of (a) other Regulations which deal with cash equivalents and (b) calculating and verifying the cash transfer sums for pension sharing Regulations. Both these modified forms are set out in Schedule 2 to these Regulations.

Regulations 5 and 7 amend respectively regulation 11 of, and Schedule 1 to, the principal Regulations. They modify the information that members of certain pension schemes are entitled to receive from the trustees or managers of the scheme. In particular, they ensure that members are aware that advice is available when making transfers from one pension scheme to another.

Regulation 6 amends regulation 12 of the principal Regulations to reflect the new definition of “insurance policy” (paragraph (a)) and correct a minor technical error (paragraph (b)).

Regulation 8 introduces the Schedules to these Regulations.

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(a) S.I. 2006/759. Relevant amending instrument is S.I. 2007/60.

Schedule 1 inserts two new Schedules into the principal Regulations. New Schedule 1A contains the circumstances in which an initial cash equivalent transfer value must or may be reduced. New Schedule 1B makes provisions about actuaries preparing insufficiency reports for trustees or managers of pension schemes.

Schedule 2 sets out amendments to the provisions of—

- The Personal Pension Schemes (Transfer Values) Regulations 1987 (S.I. 1987/1112).
- The Personal and Occupational Pension Schemes (Protected Rights) Regulations 1996 (S.I. 1996/1537).
- The Pensions on Divorce etc. (Provision of Information) Regulations 2000 (S.I. 2000/1048).
- The Pensions on Divorce etc. (Charging) Regulations 2000 (S.I. 2000/1049).
- The Pension Sharing (Valuation) Regulations 2000 (S.I. 2000/1052).
- The Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (S.I. 2000/1053).
- The Pension Sharing (Pension Credit Benefit) Regulations 2000 (S.I. 2000/1054).
- The Occupational Pension Schemes (Early Leavers: Cash Transfer Sums and Contribution Refunds) Regulations 2006 (S.I. 2006/33).
- The Occupational Pension Schemes (Modification of Schemes) Regulations 2006 (S.I. 2006/759).

An Impact Assessment of the effect these Regulations will have on the costs of business, charities and the voluntary sector has been made. Copies of the Impact Assessment are available 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.

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STATUTORY INSTRUMENTS

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**PENSIONS**

**The Occupational Pension Schemes (Transfer Values)  
(Amendment) Regulations 2008**

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