

SCHEDULE 2

Consequential Amendments

8. In the Occupational Pension Schemes (Early Leavers: Cash Transfer Sums and Contribution Refunds) Regulations 2006⁽¹⁾—

(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
 - (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.

⁽¹⁾ S.I. 2006/33. Relevant amending instrument is S.I. 2007/60.

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(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)(2).

(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;

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

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- (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 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).

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(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⁽³⁾, 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)⁽⁴⁾ 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

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

⁽⁴⁾ Section 101AB was inserted by section 264 of the Pensions Act 2004.

separate scheme, paragraph (7) applies as if that section were a separate scheme and as if the references to a scheme were accordingly references to that section.

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

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

(11) A reduction under paragraph (9) must not take effect where there is a dispute as to the amount of the monetary obligation in question, unless the obligation has become enforceable under an order of a competent court or in consequence of an award of an arbitrator, or in Scotland, an arbiter to be appointed (failing agreement between the parties) by the sheriff.

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

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

- (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.”.