Draft Regulations laid before Parliament under section 316(2)(zb) of the Pensions Act 2004, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No. 000

PENSIONS

The Pensions Regulator (Contribution Notices) (Sum Specified following Transfer) Regulations 2010

Made - - - - 000

Coming into force in accordance with regulation 1(1)

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 39A(5), 315(2) and 318(1) of the Pensions Act 2004(**1**).

In accordance with section 316(2)(zb) of that Act(**2**), a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

In accordance with section 317(1) of that Act, the Secretary of State has consulted such persons as the Secretary of State considers appropriate.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pensions Regulator (Contribution Notices) (Sum Specified following Transfer) Regulations 2010 and shall come into force on the day after the day on which they are made.

(2) In these Regulations—

"the 1993 Act" means the Pension Schemes Act 1993(**3**);

"the 1995 Act" means the Pensions Act 1995(**4**);

"baseline sum" means the sum which the Regulator estimates to be the amount of the liabilities of the initial scheme, were those liabilities to be determined, calculated and verified in accordance with section 75(5) (deficiencies in the assets) of the 1995 Act(**5**);

(**1**) 2004 c.35; section 318(1) is cited because of the meaning it gives to "prescribed" and "regulations". Section 39A was inserted by section 126 of, and Schedule 9 to, the Pensions Act 2008 (c.30).
(**2**) Paragraph 316(2)(zb) was inserted by section 126 of, and Schedule 9 to, the Pensions Act 2008 (c.30).
(**3**) 1993 c.48.
(**4**) 1995 c.26.
(**5**) Section 75(5) was amended by section 271(1) and (3) of the Pensions Act 2004 (c.35).

"earner" is to be construed in accordance with sections 3, 4 and 112 of the Social Security Contributions and Benefits Act 1992(**6**);

"relevant time" has the meaning given by section 39(4);

"rights acquired" means rights allowed to an earner under the rules of a work-based pension scheme, which is not an occupational pension scheme, by reference to a transfer to the scheme of, or a transfer payment to the trustees or managers of the scheme in respect of, any of the earner's rights (including transfer credits allowed) under an occupational pension scheme;

"transfer credits" has the meaning given by section 181(1) of the 1993 Act(**7**).

(3) In these Regulations, a reference to a numbered section is a reference to the section of the Pensions Act 2004 bearing that number, unless the context otherwise requires.

Manner of determination of contribution notice sum

2.—(1) This regulation applies where—

(a) the Regulator determines to issue a contribution notice under section 38 in relation to a transferee scheme in accordance with section 39A(2);

(b) the transferee scheme—

(i) is a scheme to which section 75 (deficiencies in the assets) of the 1995 Act does not apply, or

(ii) is a scheme to which that section applies but the liabilities of the scheme that would be taken into account for the purposes of that section do not relate to the members of the initial scheme; and

(c) the transfer of the members of the initial scheme is determined by the Regulator to amount to an act or failure to act falling within section 38(5).

(2) Subject to regulation 3, the sum specified by the Regulator in the contribution notice may be either the whole or a specified part of the amount calculated in accordance with the following provisions.

(3) Stage one of the calculation is to identify the attributable amount, being the amount of the baseline sum at the relevant time which, in the Regulator's opinion, is attributable to the members transferred.

(4) Stage two of the calculation is to deduct from the attributable amount the amount of the aggregate cash value of the transfer credits and rights acquired in the transferee scheme by the members transferred, substituting zero if the calculation results in an amount less than zero.

(5) Where this regulation applies and the Regulator is satisfied that, otherwise than by virtue of the transfer, the act or failure to act falling within section 38(5) resulted in the amount of the baseline sum being less than it would otherwise have been, the Regulator may increase the baseline sum by such amount as the Regulator considers appropriate.

(6) For the purposes of this regulation—

(a) in estimating the baseline sum the Regulator is to disregard the reduction of the liabilities of the initial scheme brought about by the transfer; and

(b) the aggregate cash value of the transfer credits and rights acquired in the transferee scheme is the aggregate cash value which, in the Regulator's opinion, those credits and rights held at the time of their acquisition.

(**6**) 1992 c.4.
(**7**) Section 181(1) was amended by section 319(1) of, and Schedule 12 to, the Pensions Act 2004 (c.35).