STATUTORY RULES OF NORTHERN IRELAND

2010 No. 250

PENSIONS

The Pensions Regulator (Contribution Notices) (Sum Specified Following Transfer) Regulations (Northern Ireland) 2010

Made - - - - *28th July 2010*

Coming into operation *29th July 2010*

Approved by resolution of the Assembly on 6th December 2010

The Department for Social Development makes the following Regulations in exercise of the powers conferred by Articles 35A(5) and 287(2) of the Pensions (Northern Ireland) Order 2005(**1**).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pensions Regulator (Contribution Notices) (Sum Specified Following Transfer) Regulations (Northern Ireland) 2010 and shall come into operation on 29th July 2010.

(2) In these Regulations—

"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 Article 75(5)(**2**) of the 1995 Order (deficiencies in the assets);

"earner" is to be construed in accordance with sections 3(**3**) ("earnings" and "earner"), 4(**4**) (payments treated as remuneration and earnings) and 112(**5**) (certain sums to be earnings) of the Contributions and Benefits Act;

"the relevant time" has the meaning given by Article 35(4)(**6**) (the sum specified in an Article 34 contribution notice);

(**1**) S.I. 2005/255 (N.I. 1); Article 35A was inserted by paragraph 9 of Schedule 8 to the Pensions (No. 2) Act (Northern Ireland) 2008 (c.13 (N.I.)); *see also* Article 288(3)(ab) as inserted by paragraph 12 of Schedule 8 to that Act

(**2**) Article 75 was amended by Article 248 of the Pensions (Northern Ireland) Order 2005 and is modified by S.R. 2005 No. 168

(**3**) Section 3 was amended by Articles 45 and 46 of the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)) and paragraph 4 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671)

(**4**) Section 4 was amended by Schedule 2 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12)), Article 47(1) of the Social Security (Northern Ireland) Order 1998, paragraph 5 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999, section 78(3) of the Child Support, Pensions and Social Security Act 2000 (c. 19), paragraph 1(1) of Schedule 2 to the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2)) and paragraph 193 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1)

(**5**) Section 112 was amended by Schedule 1 to the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16)) and paragraph 21 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999

(**6**) Article 35 was amended by paragraph 8(2) of Schedule 8 to the Pensions (No. 2) Act (Northern Ireland) 2008

"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 176(1)(**7**) of the Pension Schemes Act;

"work-based pension scheme" has the meaning given by Article 4(3).

(3) In these Regulations any reference to a numbered Article is a reference to the Article of the Pensions (Northern Ireland) Order 2005 bearing that number.

Manner of determination of contribution notice sum

2.—(1) This regulation applies where—

(a) the Regulator determines to issue a contribution notice under Article 34(**8**) (contribution notices where avoidance of employer debt) in relation to a transferee scheme in accordance with Article 35A(2);

(b) the transferee scheme—

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

(ii) is a scheme to which that Article applies but the liabilities of the scheme which would be taken into account for the purposes of that Article 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 Article 34(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 Article 34(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.

(**7**) The definition of "transfer credits" was amended by paragraph 26 of Schedule 10 to the Pensions (Northern Ireland) Order 2005

(**8**) Article 34 was amended by paragraphs 2(1), 6, 7 and 8(1) of Schedule 8 to the Pensions (No. 2) Act (Northern Ireland) 2008