STATUTORY RULES OF NORTHERN IRELAND

2008 No. 370

PENSIONS

The Occupational Pension Schemes (Transfer Values) (Amendment) Regulations (Northern Ireland) 2008

Made - - - -	*5th September 2008*
Coming into operation	*1st October 2008*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 23(3), 89A(2), 91(2)(d), 93(1), (2)(b), (3)(c) and (4), 97AC(2)(a), 97AF(1), (3)(b), (4)(b) and (5)(a), 97H(2) and (3), 97I, 97L, 109(1) and (3), 177(2) to (4) and 178 of the Pension Schemes (Northern Ireland) Act 1993(**1**), Articles 67D(4) and 166(1) to (3) of the Pensions (Northern Ireland) Order 1995(**2**) and Articles 21(1)(b), 27, 38(1) and (2) and 73(4) of, and paragraphs 5(b) and 8(1) and (2) of Schedule 5 to, the Welfare Reform and Pensions (Northern Ireland) Order 1999(**3**), and now vested in it(**4**).

Citation, commencement and interpretation

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

(**1**) 1993 c. 49; section 89A was inserted by Article 149 of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)) and amended by paragraph 23 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and subsection (1) is modified by regulation 19(2)(a) of S.R. 1996 No. 619; section 91 was amended by paragraph 5 of Schedule 4 to the Pensions (Northern Ireland) Order 1995, Part III(6) of Schedule 9 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)) and Article 133 of S.I. 2001/3649; section 93 was amended by paragraph 6 of Schedule 4 to the Pensions (Northern Ireland) Order 1995 and paragraph 5(1) of Schedule 5 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000; sections 97AC and 97AF were inserted by Article 241 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)); sections 97H, 97I and 97L were inserted by Article 34 of the Welfare Reform and Pensions (Northern Ireland) Order 1999; section 109 was amended by section 48 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000, paragraph 13 of Schedule 10 to the Pensions (Northern Ireland) Order 2005, paragraph 4 of Schedule 5 to the Pensions Act (Northern Ireland) 2008 (c. 1 (N.I.)) and paragraph 15 of the Schedule to S.R. 2005 No. 434; section 178 was amended by paragraph 14 of Schedule 4 and Schedule 5 to the Pensions (Northern Ireland) Order 1995, paragraph 31 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 and paragraph 27 of Schedule 10 to the Pensions (Northern Ireland) Order 2005; *see also* the definition of "guarantee date" in section 89A(2)

(**2**) S.I. 1995/3213 (N.I. 22); Article 67D was inserted by Article 239 of the Pensions (Northern Ireland) Order 2005 and amended by paragraph 5 of Schedule 5 to the Pensions Act (Northern Ireland) 2008

(**3**) S.I. 1999/3147 (N.I. 11); Article 21 was amended by paragraph 108 of Schedule 29 to the Civil Partnership Act 2004 (c. 33); Article 27 is modified by regulation 2(2)(b) of S.R. 2006 No. 282; paragraph 8 of Schedule 5 was amended by paragraph 71(2) of Schedule 10 to the Pensions (Northern Ireland) Order 2005

(**4**) *See* Article 8(b) of S.R. 1999 No. 481

(2) In these Regulations "the principal Regulations" means the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996(**5**).

(3) The Interpretation Act (Northern Ireland) 1954(**6**) shall apply to these Regulations as it applies to an Act of the Assembly.

Amendment of regulation 1 of the principal Regulations

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

(a) after the definition of "the Act" insert—

""actuary" means—

(a) the actuary mentioned in Article 47(1)(b) (professional advisers); or

(b) in relation to a scheme to which that Article does not apply—

(i) a Fellow of the Faculty of Actuaries(**7**);

(ii) a Fellow of the Institute of Actuaries(**8**); or

(iii) a person with other actuarial qualifications who is approved, at the request of the trustees of the scheme in question, by the Department as being a proper person to act for the purposes of these Regulations in connection with that scheme;";

(b) omit the definition of "the Board for Actuarial Standards"(**9**);

(c) after the definition of "cash equivalent" insert—

""discount rates" means the interest rates used to discount future payments of benefit for the purposes of placing a current value on them;";

(d) for the definition of "effective date"(**10**) substitute—

""effective date" means the date as at which the assets and liabilities are valued for the purposes of the insufficiency report;";

(e) after the definition of "the guarantee date" insert—

""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 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;";

(f) for the definition of "member" substitute—

""member" has the meaning given to that expression in Article 121(1)(**11**);";

(**5**) S.R. 1996 No. 619; relevant amending provisions are S.R. 1997 No. 160, S.R. 2003 No. 337, S.R. 2005 Nos. 20, 114, 171 and 568, S.I. 2006/744 and S.R. 2007 No. 64
(**6**) 1954 c. 33 (N.I.)
(**7**) The Faculty of Actuaries can be contacted at MacLaurin House, 18 Dublin Street, Edinburgh EH1 3PP
(**8**) The Institute of Actuaries can be contacted at Staple Inn Hall, High Holborn, London WC1V 7QJ
(**9**) The definition of "the Board for Actuarial Standards" was inserted by paragraph 5(a) of the Schedule to S.R. 2007 No. 64
(**10**) The definition of "effective date" was inserted by regulation 2(2) of S.R. 2003 No. 337
(**11**) The definition of "member" in Article 121(1) was amended by paragraph 50(2) of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999

(g) in the definition of "the Regulatory Authority" for "the Occupational Pensions Regulatory Authority" substitute "the Pensions Regulator(**12**)";

(h) after the definition of "the relevant date" insert—

""salary related benefits" means benefits which are not money purchase benefits;";

(i) omit the definition of "scheme actuary";

(j) after the definition of "section 5(2B) rights" insert—

""statement of entitlement" has the meaning given in section 89A(1);".

Amendment of regulation 6 of the principal Regulations

3. For regulation 6(1)(**13**) of the principal Regulations (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 3 months beginning on the date of the member's application under section 89A (salary related schemes: right to statement of entitlement) for a statement of entitlement; or

(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 6 months beginning on 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(**14**) (manner of calculation and verification of cash equivalents) and 8(**15**) (further provisions as to calculation of cash equivalents and increases and reductions of cash equivalents (other than guaranteed cash equivalents)) of the principal Regulations substitute—

"**Manner of calculation and verification of cash equivalents - general provisions**

7.—(1) Subject to paragraph (5), 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).

(**12**) The Pensions Regulator is established by section 1 of the Pensions Act 2004 (c. 35); *see also* Article 6(1) of the Pensions (Northern Ireland) Order 2005 which transferred the functions of the Occupational Pensions Regulatory Authority to the Pensions Regulator

(**13**) Regulation 6 was amended by regulation 4(2) of S.R. 2005 No. 114

(**14**) Regulation 7 was amended by paragraph 11(4) of the Schedule to S.R. 1997 No. 160, regulation 15(2) of S.R. 2005 No. 171, paragraph 2(3) of Schedule 3 to S.R. 2005 No. 568 and paragraph 5(b) of the Schedule to S.R. 2007 No. 64

(**15**) Regulation 8 was amended by regulation 2(3) of S.R. 2003 No. 337, regulation 15(3) to (6) of S.R. 2005 No. 171, paragraph 2(4) of Schedule 3 to S.R. 2005 No. 568 and paragraph 5(c) of the Schedule to S.R. 2007 No. 64

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

(4) Paragraph (5) applies where the cash equivalent is calculated and verified in accordance with paragraph (1)(a).

(5) 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.

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 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.

(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(**16**) 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 were 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. In regulation 11 of the principal Regulations (disclosure)—

(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 on which 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 3 months after the date on which the member makes the request.";

(**16**) "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 and can be contacted at Planning & Resources, 5th floor, Aldwych House, 71-91 Aldwych, London WC2B 4HN