STATUTORY RULES OF NORTHERN IRELAND

2006 No. 49

PENSIONS

The Occupational Pension Schemes (Early Leavers: Cash Transfer Sums and Contribution Refunds) Regulations (Northern Ireland) 2006

Made - - - - 16th February 2006

Coming into operation 6th April 2006

The Department for Social Development makes the following regulations in exercise of the powers conferred by sections 97AC(2)(a), 97AE(2), 97AF, 109A, 177(2) and (3) and 178 of the Pension Schemes (Northern Ireland) Act 1993(**1**) and now vested in it(**2**).

Citation, commencement, interpretation and application

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Early Leavers: Cash Transfer Sums and Contribution Refunds) Regulations (Northern Ireland) 2006 and shall come into operation on 6th April 2006.

(2) In these Regulations—

"the Act" means the Pension Schemes (Northern Ireland) Act 1993;

"the 1995 Order" means the Pensions (Northern Ireland) Order 1995(**3**);

"the 2005 Order" means the Pensions (Northern Ireland) Order 2005(**4**).

(3) These Regulations apply only where the member's pensionable service under the occupational pension scheme terminates on or after 6th April 2006.

(4) In these Regulations any reference to a numbered section is a reference to the section of the Act bearing that number.

(**1**) 1993 c. 49; sections 97AC to 97AI are inserted by Article 241 of the Pensions (Northern Ireland) Order 2005 (S.I.2005/255 (N.I. 1)); section 109A is inserted by paragraph 14 of Schedule 10 to that Order and section 178 was amended by paragraph 37 of Schedule 1, paragraph 68 of Schedule 3, paragraph 14 of Schedule 4 and Schedule 5 to the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)) and paragraph 31 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)). Section 178 is also amended by paragraph 27 of Schedule 10 to the Pensions (Northern Ireland) Order 2005

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

(**3**) S.I. 1995/3213 (N.I. 22)

(**4**) S.I. 2005/255 (N.I. 1)

(5) For the purposes of these Regulations and notwithstanding section 39(2) of the Interpretation Act (Northern Ireland) 1954(**5**), where a period of time is expressed to begin on, or to be reckoned from, a particular day, that day shall be included in the period.

Calculation and verification of cash transfer sum

2.—(1) Except in a case to which, or to the extent to which, paragraph (2) or (4) applies, cash transfer sums are to be calculated and verified in such manner as may be approved in particular cases by the scheme actuary or in relation to a scheme to which Article 47(1)(b) of the 1995 Order (professional advisers) does not apply, by—

(a) a Fellow of the Institute of Actuaries(**6**);

(b) a Fellow of the Faculty of Actuaries(**7**), or

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

and, subject to paragraph (2), in this regulation and in regulation 4 "actuary" means the scheme actuary or, in relation to a scheme to which Article 47(1)(b) of the 1995 Order does not apply, the actuary referred to in sub-paragraph (a), (b) or (c) of this paragraph.

(2) Where the member in respect of whom a cash transfer sum is to be calculated and verified is a member of a scheme having particulars from time to time set out in regulations made under Article 9 of the Superannuation (Northern Ireland) Order 1972(**8**) (superannuation of persons employed in local government service, etc.), that cash transfer sum shall be calculated and verified in such manner as may be approved by the Government Actuary or by an actuary authorised by the Government Actuary to act on his behalf for that purpose and in such a case "actuary" in this regulation and in regulation 4 means the Government Actuary or the actuary so authorised.

(3) Except in a case to which paragraph (4) applies, cash transfer sums are to be calculated and verified by adopting methods and making assumptions which—

(a) if not determined by the trustees of the scheme in question, are notified to them by the actuary, and

(b) are certified by the actuary to the trustees of the scheme—

(i) as being consistent with the calculation of cash equivalents under the requirements of Chapter IV of Part IV of the Act (transfer values),

(ii) as being consistent with "Retirement Benefit Schemes - Transfer Values (GN11)" published by the Institute of Actuaries and the Faculty of Actuaries and current at the date on which the cash transfer sum is calculated,

(iii) as being consistent with the methods adopted and assumptions made, at the time when the certificate is issued, in calculating the benefits to which entitlement arises under the rules of the scheme in question for a person who is acquiring transfer credits under those rules.

(4) Where a cash transfer sum or any portion of a cash transfer sum relates to money purchase benefits which do not fall to be valued in a manner which involves making estimates of the value of benefits, then that cash transfer sum or that portion shall be calculated and verified in such manner as may be approved in particular cases by the trustees of the scheme and in accordance with methods consistent with the requirements of Chapter IV of Part IV of the Act.

(**5**) 1954 c. 33 (N.I.)
(**6**) The Institute of Actuaries is located at Staple Inn Hall, High Holborn, London WC1V 7QJ
(**7**) The Faculty of Actuaries is located at Maclaurin House, 18 Dublin Street, Edinburgh EH1 3PP
(**8**) S.I. 1972/1073 (N.I. 10)

Contribution refund: investments etc.

3. For the purposes of these Regulations, where under the rules of the scheme—

(a) interest is payable on a member's employee contributions to the scheme, the amount of the contribution refund shall be increased by the interest so payable, or

(b) a member's employee contributions to the scheme fall to be invested and the member is entitled to the surrender value of the investments derived from those contributions, the amount of the contribution refund shall be increased or, as the case may be, reduced to the amount of that surrender value,

and in the following provisions of these Regulations references to a contribution refund are, where applicable, to the contribution refund as so increased or, as the case may be, reduced.

Reduction of cash transfer sums and contribution refunds

4.—(1) In the case of a scheme to which Part IV of the 2005 Order applies (scheme funding), the cash transfer sum in respect of a member may be reduced by the trustees or managers of the scheme if the GN11 insufficiency conditions are met.

(2) The GN11 insufficiency conditions are that the actuary's last relevant GN11 report shows that at the effective date of the report—

(a) the scheme had assets that were insufficient to pay the full amount of cash equivalents under Chapter IV of Part IV of the Act in respect of all the members, and

(b) the assets were insufficient to pay in full any category of liabilities that is a category of liabilities for the benefits in respect of which the member's cash equivalent is being calculated.

(3) If the GN11 insufficiency conditions are met the trustees or managers may reduce any part of the member's cash transfer sum that is payable in respect of such a category of liabilities as are mentioned in paragraph (2)(b) by a percentage not exceeding the GN11 deficiency percentage.

(4) The GN11 deficiency percentage is the same as the percentage by which a member's cash equivalent for such a category of liabilities is being reduced.

(5) The references in this regulation to the actuary's last relevant GN11 report is to his last report, in accordance with "Retirement Benefit Schemes - Transfer Values (GN11)" published by the Institute of Actuaries and the Faculty of Actuaries, before the cash transfer sum is calculated.

(6) If by virtue of regulations made under Article 211 of the 2005 Order (power to modify provisions of Part IV) Part IV of that Order applies to a section of a scheme as if that section were a separate scheme, paragraphs (1) and (2) shall apply to a section as if that section were a separate scheme, and as if the reference to a scheme were accordingly a reference to that section.

(7) Where a scheme begins to wind up after the member's pensionable service terminates but before the trustees or managers have used the cash transfer sum or paid the contribution refund to the member, the 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 Article 73B(10)(a) of the 1995 Order(**9**)) and regulations made under those provisions.

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

(**9**) Articles 73 to 73B were substituted for Article 73 by Article 247(1) of the Pensions (Northern Ireland) Order 2005

(9) A member's 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 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.

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

Increases of cash transfer sum and contribution refund

5.—(1) Subject to paragraph (2), if there is a failure by the trustees or managers of the scheme to comply with section 97AG(2) (duty to act within a reasonable period) in relation to the cash transfer sum, the cash transfer sum shall be increased by the amount, if any, by which the cash transfer sum as calculated in accordance with regulations 2 and 4 falls short of what it would have been had the cash transfer sum been calculated on the date on which the trustees or managers should have done what was needed to carry out the member's requirement.

(2) If there is a failure by the trustees or managers of the scheme to comply with section 97AG(2) without reasonable excuse the cash transfer sum shall be increased by—

(a) interest on that sum calculated on a daily basis over the period from the date on which they received the member's notice under section 97AD(2) (exercise of right under section 97AB) to the date on which they do what is needed to carry out that requirement, at an annual rate of one per cent above the Bank of England base rate, or

(b) the amount, if any, by which the cash transfer sum as calculated in accordance with regulations 2 and 4 falls short of what it would have been had the cash transfer sum been calculated on the date on which the trustees or managers should have done what was needed to carry out the member's requirement,

whichever is the greater.

(3) If there is a failure by the trustees or managers of the scheme to comply with section 97AG(4) without reasonable excuse the contribution refund shall be increased by interest on that sum calculated on a daily basis over the period from the date on which they received the member's notice under section 97AD(2) to the date on which they do what is needed to carry out the member's requirement, at an annual rate of one per cent above the Bank of England base rate.

(4) In this regulation "Bank of England base rate" means—

(a) the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets, or

(b) where an order under section 19 of the Bank of England Act 1998(**10**) (Treasury's reserve powers) is in force, any equivalent rate determined by the Treasury under that section.

(**10**) 1998 c. 11