STATUTORY RULES OF NORTHERN IRELAND

2016 No. 107

PENSIONS

The Occupational Pension Schemes (Schemes that were Contracted-out) Regulations (Northern Ireland) 2016

Made - - - - 4th March 2016

Coming into operation in accordance with regulation 1

The Department for Social Development makes the following Regulations in exercise of the powers conferred by the provisions set out in Schedule 1 and now vested in it(**1**).

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Occupational Pension Schemes (Schemes that were Contracted-out) Regulations (Northern Ireland) 2016 and shall come into operation—

(a) for the purposes of this regulation and regulations 2 to 24, on 6th April 2016, and

(b) for the purposes of regulation 25, on 6th April 2019.

Interpretation

2.—(1) In these Regulations—

"the 1993 Act" means the Pension Schemes (Northern Ireland) Act 1993(**2**);

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

"the 1996 Regulations" means the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996(**4**);

(**1**) *See* Article 8(b) of S.R. 1999 No. 481
(**2**) 1993 c. 49
(**3**) S.I. 1995/3213 (N.I. 22)
(**4**) S.R. 1996 No. 493

"the 2004 Act" means the Finance Act 2004(**5**);

"administrator" means the person resident in the United Kingdom having responsibility for the management of an occupational pension scheme or, in the case of an overseas scheme (within the meaning of regulation 6), the person who is appointed in accordance with section 270(**6**) of the 2004 Act;

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;

"the Contributions and Benefits Act" means the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**7**);

"section 5(2B) rights" are—

(a) rights to the payment of pensions and accrued rights to pensions (other than rights attributable to voluntary contributions) under a scheme that was a salary related contracted-out scheme(**8**), so far as attributable to an earner's service in contracted-out employment on or after the principal appointed day(**9**), and

(b) where a transfer payment has been made (other than a payment made in accordance with regulation 10 of the Contracting-out (Transfer and Transfer Payment) Regulations (Northern Ireland) 1996(**10**) (transfer payments in occupational and personal pension schemes in respect of section 5(2B) rights)) to such a scheme, whether before or after the second abolition date(**11**), any rights arising under the scheme as a consequence of that payment which are derived directly or indirectly from—

(i) such rights as are referred to in paragraph (a) under another scheme that was a salary related contracted-out scheme, or

(ii) protected rights under another occupational pension scheme or under a personal pension scheme attributable to payments or contributions in respect of employment on or after the principal appointed day where that transfer payment was made before the first abolition date(**12**);

"trustees" in relation to a scheme which is not set up or established under a trust, means the managers or administrators of the scheme.

(2) For the purposes of these Regulations, 2 people of the same sex are to be regarded as living together as if they were civil partners if, but only if, they would be regarded as living together as husband and wife were they instead 2 people of the opposite sex.

(3) For the purposes of these Regulations—

(a) any person, government department or public authority who, under or by virtue of Part 1 of the Contributions and Benefits Act is, or is to be treated as, the secondary Class 1 contributor, is to be treated as the employer of the earner in respect of whom the Class 1 contributions are payable;

(b) without prejudice to sub-paragraph (a), there is to be treated as the employer of a self-employed earner to whom a scheme that was a salary related contracted-out scheme applies any person (other than the self-employed earner), government department or public

(**5**) 2004 c. 12
(**6**) Section 270 was amended by paragraph 9 of Schedule 7 to the Finance Act 2014 (c. 26)
(**7**) 1992 c. 7
(**8**) *See* section 3B of the Pension Schemes (Northern Ireland) Act 1993 as inserted by paragraph 6 of Schedule 13 to the Pensions Act (Northern Ireland) 2015
(**9**) *See* section 176(1) of the Pension Schemes (Northern Ireland) Act 1993 as amended by paragraph 42(9) of Schedule 13 to the Pensions Act (Northern Ireland) 2015 (c. 5 (N.I.))
(**10**) S.R. 1996 No. 618; regulation 10 was substituted by regulation 7(4) of S.R. 2012 No. 120 and is amended by regulation 22(3) of these Regulations
(**11**) *See* section 3A of the Pension Schemes (Northern Ireland) Act 1993 as inserted by paragraph 6 of Schedule 13 to the Pensions Act (Northern Ireland) 2015
(**12**) *See* section 3A of the Pension Schemes (Northern Ireland) Act 1993 as inserted by paragraph 6 of Schedule 13 to the Pensions Act (Northern Ireland) 2015

authority who makes or is liable to make payments towards the resources of the scheme in respect of the self-employed earner (either under actual or contingent legal obligation or in the exercise of power conferred, or duty imposed, on a Minister of the Crown, government department or any other person, being a power or duty which extends to the disbursement or allocation of public money).

(4) Subject to paragraphs (5) and (6), the Interpretation Act (Northern Ireland) 1954(**13**) shall apply to these Regulations as it applies to an Act of the Assembly.

(5) Without prejudice to any other method of service authorised under section 24 of the Interpretation Act (Northern Ireland) 1954, the requirement to send any document under these Regulations may be met by sending it by ordinary post.

(6) For the purposes of these Regulations and notwithstanding section 39(2) of the Interpretation Act (Northern Ireland) 1954, 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.

PART 2

GENERAL PROVISIONS RELATING TO SCHEMES THAT WERE SALARY RELATED CONTRACTED-OUT SCHEMES

Alteration of scheme rules

3. For the purposes of section 33(1)(**14**) of the 1993 Act (prohibition on alteration of rules of schemes that were contracted-out unless alteration is of a prescribed description), the alterations which are prescribed are any alterations which are allowed by regulations 8 and 11.

Determination that an earner was in contracted-out employment

4.—(1) This regulation applies where—

(a) an earner ("E") has been in employment, during a period in which employment of the same description as E's employment was contracted-out(**15**), but E's employment was not (apart from this regulation) contracted-out in relation to E, and

(b) the Commissioners are satisfied—

(i) that the employment was not contracted-out in relation to E solely because E was not, during that period, a member of the relevant scheme(**16**), and

(ii) that E, during that period, was not a member of that scheme solely because of inadvertence.

(2) Where this regulation applies, the Commissioners may determine that E was in contracted-out employment by reference to that scheme during that period.

(**13**) 1954 c. 33 (N.I.)
(**14**) Section 33(1) was substituted by paragraph 24 of Schedule 13 to the Pensions Act (Northern Ireland) 2015
(**15**) *See* section 4 of the Pension Schemes (Northern Ireland) Act 1993 as amended by paragraph 7 of Schedule 13 to the Pensions Act (Northern Ireland) 2015
(**16**) *See* section 33A(2) of the Pension Schemes (Northern Ireland) Act 1993 as inserted by paragraph 25 of Schedule 13 to the Pensions Act (Northern Ireland) 2015

Provision of information

5.—(1) The Department or the Commissioners may give any information that they could give to the trustees of an occupational pension scheme, under section 152(1)(**17**) of the 1993 Act (information for purposes of contracting-out), to the following persons—

(a) an earner, or widow, widower or surviving civil partner of an earner, to whom the information relates;

(b) the employer in relation to the contracted-out employment of an earner to whom the information relates;

(c) any independent trade union recognised in relation to earners who are members of a scheme that was a salary related contracted-out scheme, and

(d) any person who is or who, in the opinion of the Commissioners, is likely to become, responsible for paying guaranteed minimum pensions, or pensions in respect of section 5(2B) rights, in accordance with the pension scheme.

(2) Paragraph (1)(c) is subject to the condition that the information to be given is either—

(a) as to—

(i) the total amount of the guaranteed minimum pensions to which it appears to the Commissioners that all persons entitled under the scheme (whether immediately or prospectively) are so entitled, or

(ii) whether the scheme is liable in respect of any section 5(2B) rights, or

(b) given with the consent of the earner, widow, widower or surviving civil partner to whom it relates, such consent being given in writing, or by means of an electronic communication in such form as the Commissioners may approve.

(3) For the purposes of this regulation, "independent trade union" means an independent trade union which is recognised to any extent for the purpose of collective bargaining.

Overseas schemes

6.—(1) The rules of an overseas scheme are to provide—

(a) that, if the scheme is wound up, the assets of the scheme are to be applied first towards satisfying the amounts of the liabilities mentioned in Article 73(4)(**18**) of the 1995 Order (preferential liabilities on winding up) and, if they are insufficient to satisfy those amounts in full, then—

(i) they are to be applied first towards satisfying the amounts of the liabilities mentioned in earlier sub-paragraphs of that Article before those mentioned in later sub-paragraphs, and

(ii) where the amounts of the liabilities mentioned in one of those sub-paragraphs cannot be satisfied in full, all such liabilities are to be satisfied in the same proportions;

(b) that not more than 5 per cent. of the current market value of the scheme's resources are invested in a person who is an employer, or connected with an employer, in relation to the scheme if such investments are required to meet the liabilities specified in sub-paragraph (a) and the value of such investments is to be calculated and determined in a manner approved by the Commissioners, and

(c) in respect of rights that have accrued as a result of contracted-out employment in the scheme in Northern Ireland, for revaluation of accrued rights in accordance with sections

(**17**) Section 152 was substituted by paragraph 6 of Schedule 5 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)) and subsection (1) was amended by Article 4(17) of S.R. 2012 No. 124

(**18**) Article 73 was substituted by Article 247(1) of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1))

79 to 82(**19**) of the 1993 Act and for indexation of pensions in accordance with Articles 51 to 54(**20**) of the 1995 Order.

(2) In this regulation "overseas scheme" means an occupational pension scheme that was a salary related contracted-out scheme and that has its main administration outside the EEA states(**21**), but does not include a scheme that was contracted-out in the Isle of Man by virtue of satisfying section 9(2) of the Pension Schemes Act 1993(**22**) as it had effect in the Isle of Man before the second abolition date.

Continuation of transitional arrangements for schemes that began winding up before 6th April 1997

7. Where a scheme that was a salary related contracted-out scheme began winding up before the principal appointed day—

(a) regulation 37 of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1985(**23**) (priorities on the winding-up of a scheme) continues to have effect in relation to that scheme, and

(b) the resources of the scheme must be sufficient to meet the liabilities specified in section 20(1)(c)(**24**) of the 1993 Act (as it had effect on the day the scheme began winding up), such resources being calculated, determined and verified in a manner approved by the Commissioners.

PART 3

ADDITIONAL REQUIREMENTS IN RELATION TO RIGHTS ATTRIBUTABLE TO CONTRACTED-OUT EMPLOYMENT ON AND AFTER 6TH APRIL 1997

Alteration of scheme rules

8.—(1) The rules of a scheme may be altered in relation to section 5(2B) rights only if—

(a) following the alteration, the scheme provides benefits for the earner and for the earner's widow, widower or surviving civil partner, in respect of the period of pensionable service to which the alteration relates, that are at least equal to the benefits that would have been

(**19**) Section 79 was amended by paragraph 20 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and paragraph 21 of Schedule 8 to the Public Service Pensions Act (Northern Ireland) 2014 (c. 2 (N.I.)). Section 80 was amended by Part III of Schedule 5 to the Pensions (Northern Ireland) Order 1995, Article 258 of the Pensions (Northern Ireland) Order 2005, section 20(1) to (3) of the Pensions Act (Northern Ireland) 2012 (c. 3 (N.I.)), paragraph 13 of the Schedule to S.R. 2005 No. 434 and regulation 2(2) of S.R. 2014 No. 213. Section 81 was amended by paragraph 21 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999

(**20**) Article 51 was amended by paragraph 40 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999, section 47(1) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000, Article 255 of, and Schedule 11 to, the Pensions (Northern Ireland) Order 2005, sections 20(8) and 21(2) and (3) of the Pensions Act (Northern Ireland) 2012 and Article 11(2) of S.I. 2006/745. Article 51ZA was inserted by Article 255(7) of the Pensions (Northern Ireland) Order 2005 and amended by paragraph 8 of Schedule 1 to the Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13 (N.I.)). Article 51ZB was inserted by section 21(4) of the Pensions Act (Northern Ireland) 2012. Article 51A was inserted by section 47(2) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and amended by Article 5(2) of S.R. 2012 No. 124. Article 53 was amended by paragraph 41 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999. Article 54 was amended by Article 255(8) of, and Schedule 11 to, the Pensions (Northern Ireland) Order 2005 and paragraph 9 of Schedule 1 to the Pensions (No. 2) Act (Northern Ireland) 2008

(**21**) *See* the definition of "EEA state" in section 176(1) of the Pension Schemes (Northern Ireland) Act 1993 as inserted by regulation 2(5) of S.R. 2007 No. 457

(**22**) 1993 c. 48; section 9(2) was substituted by section 136(3) of the Pensions Act 1995 (c. 26)

(**23**) S.R. 1985 No. 259; regulation 37 was amended by paragraph 3(29) of Schedule 2 to S.R. 1994 No. 300

(**24**) Section 20 was repealed by Schedule 5 to the Pensions (Northern Ireland) Order 1995