STATUTORY RULES OF NORTHERN IRELAND

2006 No. 149

PENSIONS

The Occupational Pension Schemes (Modification of Schemes) Regulations (Northern Ireland) 2006

Made - - - - 21st March 2006
Coming into operation in accordance with regulation 1(1)

The Department for Social Development makes the following Regulations in exercise of the powers conferred by Articles 67(1)(b) and (3)(b), 67C(7)(a)(ii), 67D(4) and (5), 68(2)(e) and (5) and 166(1) to (3) of the Pensions (Northern Ireland) Order 1995(**1**) and now vested in it(**2**).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Modification of Schemes) Regulations (Northern Ireland) 2006 and shall come into operation on 6th April 2006 except for regulations 6 and 7 and this regulation which shall come into operation on 30th March 2006.

(2) In these Regulations—

"the 2004 Act" means the Finance Act 2004(**3**);

"the 2006 Regulations" means the Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006(**4**);

"protected rights" has the same meaning as in section 6 of the Pension Schemes Act(**5**) (protected rights and money purchase benefits);

"public service pension scheme" has the same meaning as in section 1(1) of the Pension Schemes Act(**6**) (categories of pension schemes);

(**1**) S.I. 1995/3213 (N.I. 22); Articles 67 to 67I were substituted for Article 67 by Article 239 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)) and Article 68(2) was amended by paragraph 43 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and paragraph 50 of Schedule 10 to the Pensions (Northern Ireland) Order 2005

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

(**3**) 2004 c. 12

(**4**) S.I. 2006/364

(**5**) Section 6 was amended by paragraph 18 of Schedule 3 to the Pensions (Northern Ireland) Order 1995, Article 29(2) of the Welfare Reform and Pensions (Northern Ireland) Order 1999, paragraph 39 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) and paragraph 23(2) of Schedule 11 to the Proceeds of Crime Act 2002 (c. 29)

(**6**) *See* Article 216(2) of the Pensions (Northern Ireland) Order 2005

"registered pension scheme" means a scheme which is a registered pension scheme for the purposes of Part 4 of the 2004 Act (pension schemes etc);

"scheme" means an occupational pension scheme;

"the scheme administrator" has the same meaning as in section 270 of the 2004 Act (meaning of scheme administrator);

"the transitional period" has the same meaning as in regulation 1(2) of the 2006 Regulations (interpretation);

"unauthorised member payment" has the same meaning as in section 160(2) of the 2004 Act (payments by registered pension schemes).

(3) In these Regulations, any reference to a numbered Article is a reference to the Article of the Pensions (Northern Ireland) Order 1995 bearing that number.

Schemes exempted from the subsisting rights provisions

2. For the purposes of Article 67(1)(b) (the subsisting rights provisions), a scheme of a prescribed description is—

(a) a scheme with fewer than two members, or

(b) a scheme which is not a registered pension scheme.

Non-application of the subsisting rights provisions

3. For the purposes of Article 67(3)(b), the prescribed manner of the exercise of any modification power in relation to a scheme to which the subsisting rights provisions do not apply is any modification of a scheme—

(a) which provides for any or all of a member's or survivor's subsisting rights to—

(i) be assigned;

(ii) be commuted;

(iii) be surrendered;

(iv) be charged;

(v) have a lien exercised in respect of them, or

(vi) have a set-off exercised in respect of them,

provided that a modification in such a manner is not prohibited under Article 89 (**7**) (inalienability of occupational pension), any other statutory provision or other rule of law;

(b) which provides for any or all of a member's or survivor's subsisting rights to be forfeited provided that a modification in such a manner is not prohibited under Article 90(**8**) (forfeiture, etc.), any other statutory provision or other rule of law;

(c) to provide for the revaluation of an earner's earnings factors in accordance with section 12(1) or (2) of the Pension Schemes Act (revaluation of earnings factors for purposes of section 10: early leavers, etc.);

(d) which provides for the rate of pension or annuity provided in respect of subsisting rights which are protected rights—

(**7**) Article 89 was amended by paragraph 46 of Schedule 9 and Schedule 10 to the Welfare Reform and Pensions (Northern Ireland) Order 1999, Article 243 of the Pensions (Northern Ireland) Order 2005 and paragraph 24 of the Schedule to S.R. 2005 No. 434

(**8**) Article 90 was amended by paragraph 47 of Schedule 9 and Schedule 10 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 and paragraph 25 of the Schedule to S.R. 2005 No. 434

(i) to be calculated on the basis that the member will not, in the event of his death, be survived by a widow, widower or surviving civil partner, and

(ii) provides that the member must consent to the calculation of his pension or annuity being on that basis;

(e) which provides for the transfer of a member's or survivor's subsisting rights—

(i) with his consent, or

(ii) without his consent in accordance with the conditions specified in regulation 12 of the Occupational Pension Schemes (Preservation of Benefit) Regulations (Northern Ireland) 1991(**9**) (transfer of member's accrued rights without consent);

(f) which ensures that any payment made by the scheme, relating to rights which accrued on or after 6th April 2006, is not an unauthorised member payment;

(g) which ensures that the scheme administrator can pay—

(i) any short service refund lump sum charge or special lump sum death benefits charge under sections 205 and 206 of the 2004 Act (short service refund lump sum charge and special lump sum death benefits charge) for which it is liable,

(ii) any lifetime allowance charge for which, under section 217 of the 2004 Act (persons liable to charge), it is jointly and severally liable with the individual (to whom the charge relates);

(h) which has the same effect as any or all of the modifications in regulations 3 to 8 of the 2006 Regulations (modification of rules of existing schemes), but without limitation to the transitional period, or

(i) which provides in relation to all or part of a member's subsisting rights that after his death—

(i) a surviving civil partner is treated in the same way as a widow or widower, and

(ii) the rights of any other survivor of the member are determined as if the surviving civil partner were a widow or widower.

Qualifications or experience required for a person providing an actuarial equivalence statement

4. For the purposes of Article 67C(7)(a)(ii) (the actuarial equivalence requirements), a person with the prescribed qualifications or experience is—

(a) a Fellow of the Faculty of Actuaries(**10**), or

(b) a Fellow of the Institute of Actuaries(**11**).

Calculation of the actuarial value of affected member's subsisting rights

5.—(1) The prescribed requirements with which any calculation of the actuarial value of an affected member's subsisting rights must conform, for the purposes of the actuarial value requirement in Article 67C(5), are those specified in paragraph (2).

(2) The actuary—

(**9**) S.R. 1991 No. 37; regulation 12 was amended by regulation 35 of S.R. 1992 No. 304, regulation 2 of S.R. 1993 No. 324, paragraph 26(16) of Schedule 2 to S.R. 1994 No. 300, regulation 3(4) of S.R. 1995 No. 441, regulation 2(7) of S.R. 1996 No. 620, paragraph 3(3) of the Schedule to S.R. 1997 No. 160, regulation 2 of S.R. 1999 No. 378 and regulation 27 of S.R. 2000 No. 262

(**10**) The Faculty of Actuaries is located at Maclaurin House, 18 Dublin Street, Edinburgh, EH1 3PP

(**11**) The Institute of Actuaries is located at Staple Inn Hall, High Holborn, London, WC1V 7QJ