STATUTORY RULES OF NORTHERN IRELAND

2002 No. 127

PENSIONS
INSOLVENCY

The Occupational and Personal Pension Schemes (Bankruptcy) Regulations (Northern Ireland) 2002

Made - - - -	*27th March 2002*
Coming into operation	*6th April 2002*

The Department for Social Development, in exercise of the powers conferred by Articles 315C(4)(*a*) and (7) to (9) and 315F(6)(*a*) and (9) to (11) of the Insolvency (Northern Ireland) Order 1989(**1**) and Articles 12(2)(*h*), 13(1) to (3) and 73(3) and (4) of the Welfare Reform and Pensions (Northern Ireland) Order 1999(**2**), and now vested in it(**3**), and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational and Personal Pension Schemes (Bankruptcy) Regulations (Northern Ireland) 2002 and shall come into operation on 6th April 2002.

(2) In these Regulations—

"the 1989 Order" means the Insolvency (Northern Ireland) Order 1989;

"the 1999 Order" means the Welfare Reform and Pensions (Northern Ireland) Order 1999;

"the Taxes Act" means the Income and Corporation Taxes Act 1988(**4**);

"destination arrangement" has the meaning given in Article 315E(1)(*b*)(**5**) of the 1989 Order;

"exclusion order" has the meaning given in regulation 4(*a*);

"income-related benefit" has the meaning given in section 122(1) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**6**);

(**1**) S.I.1989/2405 (N.I. 19); Article 315C was substituted by Article 15 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)); Article 315F was inserted by paragraph 54 of Schedule 9 to that Order
(**2**) S.I. 1999/3147 (N.I. 11)
(**3**) *See* Article 8(*b*) of S.R. 1999 No. 481
(**4**) 1988 c. 1
(**5**) Article 315E was inserted by paragraph 54 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999
(**6**) 1992 c. 7; section 122(1) was amended by paragraphs 1 and 4 of Schedule 1 to the Tax Credits Act 1999 (c. 10); *see also* section 2(1)(*a*) of, and paragraph 3 of Schedule 2 to, that Act

"pension-sharing transaction" has the meaning given in Article 315D(9)(**7**) of the 1989 Order;

"relevant benefits" has the meaning given in section 612(1)(**8**) of the Taxes Act;

"responsible person" means the person responsible for a pension arrangement within the meaning of Article 315C(6) of the 1989 Order;

"restoration order" means an order made under Article 315A(**9**) of the 1989 Order;

"transferee" has the meaning given in Article 315D(9) of the 1989 Order;

"transferor" has the meaning given in Article 315D(9) of the 1989 Order;

"week" means a period of 7 days.

(3) For the purposes of these Regulations and notwithstanding section 39(2) of the Interpretation Act (Northern Ireland) 1954(**10**), 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.

Prescribed pension arrangements

2.—(1) The arrangements prescribed for the purposes of Article 12(2)(*h*) of the 1999 Order (pension arrangements which are "approved pension arrangements") are arrangements (including an annuity purchased for the purpose of giving effect to rights under any such arrangement)—

(a) to which—

(i) the holder of an office or employment has contributed by way of payments out of foreign emoluments which have been allowed as a deduction in computing the amount of those emoluments by virtue of section 192(3) of the Taxes Act (relief from tax for foreign emoluments);

(ii) Article 17A of the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Republic of Ireland) Order 1976(**11**) (pension scheme contributions) applies;

(b) made with a scheme which is a retirement benefits scheme—

(i) approved by the Commissioners of Inland Revenue pursuant to section 590(**12**) or 591(**13**) of the Taxes Act (conditions for approval of retirement benefit schemes, and discretionary approval) and which is not an exempt approved scheme under section 592(**14**) of that Act, or

(ii) to which section 608 of the Taxes Act (superannuation funds approved before 6th April 1980) applies;

(c) to which section 595(1) of the Taxes Act (charge to tax in respect of certain sums paid by the employer etc.) does not apply by virtue of section 596(2)(*b*)(**15**) of that Act (exceptions from section 595);

(**7**) Article 315D was inserted by paragraph 54 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999
(**8**) Definition of "relevant benefits" was amended by paragraph 10(1) of Schedule 10 to the Finance Act 1999 (c. 16)
(**9**) Article 315A was substituted by Article 15 of the Welfare Reform and Pensions (Northern Ireland) Order 1999
(**10**) 1954 c. 33 (N.I.)
(**11**) S.I. 1976/2151; Article 17A was inserted by Article I of the Protocol set out in the Schedule to S.I. 1995/764
(**12**) Section 590 was amended by paragraph 18 of Schedule 3 to the Finance Act 1988 (c. 39), paragraph 3 of Schedule 6 to the Finance Act 1989 (c. 26) (*see also* paragraph 18(2) and (3) of that Schedule), sections 34 and 36(2) and (3) of the Finance Act 1991 (c. 31) and paragraph 2 of Schedule 10 to the Finance Act 1999
(**13**) Section 591 was amended by paragraph 6 of Schedule 13 to the Finance Act 1988 (*see also* paragraph 1 of that Schedule), section 107 of the Finance Act 1994 (c. 9), section 59(2) of the Finance Act 1995 (c. 4) (*see also* section 60(1) of that Act) and paragraph 3 of Schedule 10 to the Finance Act 1999 (*see also* paragraph 18(1) and (3) of that Schedule)
(**14**) Section 592 was amended by paragraph 5 of Schedule 6 to the Finance Act 1989 (*see also* paragraph 18(4) of that Schedule) and sections 107(1) and (6) and 112(1) and (6) of the Finance Act 1993 (c. 34) (*see also* sections 107(8) and 112(2) of that Act)
(**15**) Section 596(2) was amended by paragraph 8(3) of Schedule 6 to the Finance Act 1989 (*see also* paragraph 18(5) of that Schedule)

(d) which are exempt or qualify for relief from, or are not liable to charge to, income tax by virtue of section 614(**16**), 615(**17**) or 616 of the Taxes Act (exemptions and reliefs in respect of income from investments etc. of certain pension schemes, exemptions from tax in respect of certain pensions, and other overseas pensions);

(e) made with—

(i) a public service pension scheme, or

(ii) an occupational pension scheme established under the auspices of a government department or by any person acting on behalf of the Crown;

(f) referred to in paragraph (*b*)(ii) of the definition of "approved" in section 630(1)(**18**) of the Taxes Act.

(2) Paragraph (1)(*e*) does not apply to an arrangement entered into on, or after, 14th March 1989 for the purpose of providing an employee with relevant benefits calculated by reference to so much of his annual remuneration as is in excess of the permitted maximum; and for these purposes "the permitted maximum" means the permitted maximum for any year of assessment during which such a person is a member of a scheme referred to in paragraph (1)(*e*) and shall be the figure specified—

(a) in section 590C(3)(**19**) of the Taxes Act for the years of assessment 1988-89 and 1989-90;

(b) by order in accordance with section 590C(6) of the Taxes Act for each year of assessment subsequent to 1989-90.

(3) For the purposes of this regulation—

(a) "foreign emoluments" has the meaning given in section 192(1) of the Taxes Act;

(b) "occupational pension scheme" has the meaning given in section 1 of the Pension Schemes (Northern Ireland) Act 1993(**20**);

(c) "public service pension scheme" has the meaning given in section 1 of the Pension Schemes (Northern Ireland) Act 1993;

(d) "year of assessment" has the meaning given in section 832(1) of the Taxes Act.

Unapproved pension arrangements

3.—(1) For the purposes of Article 13 of the 1999 Order (effect of bankruptcy on pension rights: unapproved arrangements), a pension arrangement—

(a) falling within Article 12(4) of the 1999 Order (which deals with a scheme which, at the date of the bankruptcy order, was being considered for approval under Chapter I of Part XIV of the Taxes Act but which was not subsequently approved);

(b) falling within Article 12(6) of the 1999 Order (which deals with a scheme which, after the date of the bankruptcy order, has its approval under Chapter I or, as the case may be, Chapter IV of Part XIV of the Taxes Act withdrawn from a date not later than the date of that order), or

(c) under—

(i) a funded unapproved retirement benefits scheme, or

(ii) an unfunded unapproved retirement benefits scheme,

(**16**) Section 614 was amended by Part V(22) of Schedule 26 to the Finance Act 1994 and paragraph 34 of Schedule 14 to the Finance Act 1996 (c. 8) (*see also* section 105(1)(*b*) of that Act)
(**17**) Section 615 was amended by section 2 of the Overseas Superannuation Act 1991 (c. 16) and paragraph 11 of Schedule 10 to the Finance Act 1999
(**18**) Section 630 was renumbered as section 630(1) by paragraph 2(1) and (2) of Schedule 11 to the Finance Act 1995 and definition of "approved" was amended by paragraph 5(1) and (2) of Schedule 13 to the Finance Act 2000 (c. 17)
(**19**) Section 590C was inserted by paragraph 4 of Schedule 6 to the Finance Act 1989 (*see also* paragraph 18(2) of that Schedule)
(**20**) 1993 c. 49

shall be an "unapproved pension arrangement" if it satisfies the conditions specified in paragraph (2).

(2) The conditions referred to in paragraph (1) are that the pension arrangement—

(a) is established under—

(i) an irrevocable trust, or

(ii) a contract, agreement or arrangement made with the bankrupt;

(b) has as its primary purpose the provision of relevant benefits, and

(c) is the bankrupt's sole pension arrangement or his main means of pension provision (other than a pension under Part II of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (contributory benefits) or Part II of the Social Security Contributions and Benefits Act 1992(**21**) (contributory benefits)).

(3) For the purposes of Article 13(2)(*c*) of the 1999 Order, the prescribed person shall be the responsible person.

Exclusion of rights under unapproved pension arrangements

4. For the purpose of excluding his rights under an unapproved pension arrangement from his estate for the purposes of Article 9 and Parts VIII to X of the 1989 Order (which cover individual voluntary arrangements, bankruptcy and individual insolvency), a bankrupt may—

(a) make an application to the High Court for an order ("an exclusion order") in accordance with the provisions of regulation 5;

(b) enter into a qualifying agreement with the trustee in bankruptcy in accordance with the provisions of regulation 6.

Exclusion orders

5.—(1) Subject to paragraph (2), an application for an exclusion order shall be made to the High Court within a period of—

(a) 13 weeks beginning with—

(i) the date on which the bankrupt's estate vests in the trustee in bankruptcy in accordance with the provisions of Article 279 of the 1989 Order (vesting of bankrupt's estate in trustee), or

(ii) in the case of a scheme referred to in regulation 3(1)(*a*) or (*b*), the date, if later than that referred to in head (i), on which any rights of the bankrupt vest in the trustee in bankruptcy in accordance with Article 12(5) or, as the case may be, (7) of the 1999 Order, or

(b) 30 days beginning with the date on which a qualifying agreement is revoked in accordance with the provisions of regulation 6.

(2) The High Court may, either before or after it has expired and where good cause is shown, extend the period referred to in paragraph (1)(*a*) or, as the case may be, (*b*).

(3) In deciding whether to make an exclusion order and, if so, whether to make it in respect of part or all (but not exceeding the total amount) of the excludable rights, the High Court shall have reference to—

(a) the future likely needs of the bankrupt and his family;

(**21**) 1992 c. 4