STATUTORY RULES OF NORTHERN IRELAND

2002 No. 109

PENSIONS

The Occupational and Personal Pension Schemes (Contracting-out) (Miscellaneous Amendments) Regulations (Northern Ireland) 2002

Made - - - -	*14th March 2002*
Coming into operation	*6th April 2002*

The Department for Social Development, in exercise of the powers conferred by the provisions set out in the Schedule and now vested in it(**1**), and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

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

(2) The Interpretation Act (Northern Ireland) 1954(**2**) shall apply to these Regulations as it applies to an Act of the Assembly.

Amendment of the Occupational Pension Schemes (Contracting-out) Regulations

2.—(1) The Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996(**3**) shall be amended in accordance with paragraphs (2) to (16).

(2) In regulation 3(2)(**4**) (notices by employers of intended election)—

(a) sub-paragraph (*c*) shall be omitted, and

(b) in sub-paragraph (*g*)—

(i) after head (i) there shall be inserted "and", and

(ii) head (iii) shall be omitted.

(**1**) *See* Article 8(*b*) of S.R. 1999 No. 481
(**2**) 1954 c. 33 (N.I.)
(**3**) S.R. 1996 No. 493; relevant amending regulations are S.R. 1997 No. 160 and S.R. 2000 No. 336. *See also*S.R. 1997 No. 95 and S.I. 1999/671
(**4**) Regulation 3 was amended by S.R. 1997 No. 160

(3) In regulation 6(2)(**5**) (information to be included in an election) sub-paragraphs (*e*) and (*f*) shall be omitted.

(4) In regulation 9(**6**) (making of elections by employers for variation or surrender of contracting-out certificates) for paragraph (1) there shall be substituted the following paragraph—

"(1) Subject to paragraphs (2), (3) and (7) and regulation 10, an election with a view to the variation or surrender of a contracting-out certificate—

(a) may be made only after notices of intention have been given in accordance with paragraphs (4) and (5), and

(b) shall be made in writing to the Inland Revenue.".

(5) In regulation 16(1) (requirement to confirm relevant requirements are satisfied) for "written confirmation and such" there shall be substituted "such written confirmation and any".

(6) In regulation 18(2) (requirement as to resources of the scheme) after "apply" (in the second place where it occurs) there shall be added "or to any scheme in respect of which any Minister of the Crown or government department has given a guarantee, or made any other arrangements, for the purpose of securing that the assets of the scheme are sufficient to meet its liabilities".

(7) For regulation 19 (lump sum benefits and salary related contracted-out schemes) there shall be substituted the following regulation—

"**Lump sum benefits and salary related contracted-out schemes**

19. A salary related contracted-out scheme may not provide for the payment of a lump sum instead of a pension except—

(a) in accordance with—

(i) regulation 20(**7**) (trivial commutation of benefits derived from section 5(2B) rights), or

(ii) regulation 60(**8**) (trivial commutation of guaranteed minimum pensions), or

(b) to the extent permitted—

(i) in the case of a scheme which is exempt approved within the meaning of section 592(1) of the Taxes Act or a scheme in respect of which an application for such approval has not yet been determined, under the rules of that scheme in accordance with that approval, or

(ii) in the case of a scheme which is a relevant statutory scheme within the meaning of section 611A of the Taxes Act(**9**), under the regulations or rules governing that scheme as a relevant statutory scheme.".

(8) In regulation 20 (trivial commutation of benefits derived from section 5(2B) rights)—

(a) the words from "For the purposes" to "commutation." shall be numbered as paragraph (1) of that regulation, and

(b) after that paragraph there shall be added the following paragraphs—

"(2) The condition specified in paragraph (1)(*a*) shall not apply where—

(a) the scheme is being wound up, or

(**5**) Regulation 6 was amended by S.R. 1997 No. 160
(**6**) Regulation 9 was amended by S.R. 1997 No. 160
(**7**) Regulation 20 was amended by S.R. 2000 No. 336
(**8**) Regulation 60 was amended by S.R. 1997 No. 160
(**9**) Section 611A was inserted by paragraph 15 of Schedule 6 to the Finance Act 1989 (c. 26) and amended by paragraph 5(2) of Schedule 5 to the Finance Act 1999 (c. 16)

(b) where the earner is a member of more than one scheme relating to the same employment, both or all of those schemes are being wound up,

but paragraph (3) shall apply instead.

(3) Where this paragraph applies, the aggregate amount of benefit which has accrued to the earner at the date of winding up shall be treated for the purposes of paragraph (1) (*b*) as the amount of all benefits payable to him under the scheme.".

(9) After regulation 20 there shall be inserted the following regulation—

"**Suspension of section 5(2B) rights**

20A.—(1) In so far as a person's accrued rights under an occupational pension scheme are section 5(2B) rights(**10**), the circumstances specified in paragraph (2) are prescribed for the purposes of Article 90(6) of the Order (forfeiture, etc.).

(2) The circumstances referred to in paragraph (1) are that—

(a) the person entitled to payments giving effect to those rights is, in the opinion of the trustees of the scheme, unable to act by reason of mental disorder, and

(b) there is provision in the scheme which requires that, while the person is so unable to act, amounts equivalent to those payments—

(i) must, except in so far as such amounts are not, in the opinion of the trustees, required for the maintenance of the pensioner, be paid or applied for his maintenance;

(ii) may, in so far as such amounts are not, in the opinion of the trustees, required for the maintenance of the pensioner, be paid or applied for the maintenance of any dependants of the pensioner;

(iii) must, in so far as such amounts are not, in the opinion of the trustees, required for the maintenance of the pensioner or of any dependant of his, be held by the trustees for the pensioner until he is again able to act or, if he should die before that happens, for his estate.".

(10) In regulation 23(**11**) (requirements for meeting the statutory standard)—

(a) after paragraph (*e*) the word "and" shall be omitted, and

(b) after paragraph (*f*) there shall be added—

"and

(g) must take no account of any provision made by the scheme for the suspension, in the circumstances specified in regulation 20A(2), of benefits derived from section 5(2B) rights.".

(11) In regulation 31 (deduction of minimum payments from earnings)—

(a) in paragraph (1) for "Every" there shall be substituted "Subject to paragraph (3A), every";

(b) in paragraph (3) for "paragraph (4)" there shall be substituted "paragraphs (3A) and (4)", and

(c) after paragraph (3) there shall be inserted the following paragraph—

"(3A) Where the payment of emoluments in respect of which minimum payments are payable does not exceed the amount specified in regulations under section 5 of

(**10**) The definition of "section 5(2B) rights" was substituted by paragraph 5(2) of the Schedule to S.R. 1997 No. 160 and amended by regulation 4(2) of S.R. 1999 No. 486

(**11**) Regulation 23 was amended by S.R. 2000 No. 336

the Contributions and Benefits Act(**12**) (earnings limits and thresholds for Class 1 contributions) as the primary threshold for the purposes of that Act (or the amount which is, in relation to that payment of emoluments, the amount prescribed under that section as the equivalent of that threshold) no amount shall be deducted from those emoluments under this regulation.".

(12) In regulation 60(4) (trivial commutation of guaranteed minimum pensions)—

(a) after "under Part VI" there shall be inserted "or the scheme has made the provisions mentioned in section 12(2) and (3) of the Act(**13**)";

(b) in sub-paragraph (*a*) for "or in either case" there shall be substituted "or, in a case where that section 12(2) and (3) applies,", and

(c) in sub-paragraph (*c*) after "premium" there shall be added "or have made the provisions mentioned in section 12(2) and (3) of the Act".

(13) In regulation 61(1)(*a*) (suspension and forfeiture of guaranteed minimum pension)—

(a) the words "or otherwise" shall be omitted, and

(b) for the words from "for amounts equivalent" to the end there shall be substituted

"which requires that, in those circumstances, amounts equivalent to the guaranteed minimum pension—

(i) must, except in so far as such amounts are not, in the opinion of the trustees, required for the maintenance of the pensioner, be paid or applied for his maintenance;

(ii) may, in so far as such amounts are not, in the opinion of the trustees, required for the maintenance of the pensioner, be paid or applied for the maintenance of any dependants of the pensioner;

(iii) must, in so far as such amounts are not, in the opinion of the trustees, required for the maintenance of the pensioner or of any dependant of his, be held by the trustees for the pensioner until he is again able to act or, if he should die before that happens, for his estate".

(14) In regulation 62(2) (fixed rate revaluation of guaranteed minimum pensions for early leavers)—

(a) in sub-paragraph (*d*) for ", 6.25 per cent. compound." there shall be substituted "but before 6th April 2002, 6.25 per cent. compound;", and

(b) after that sub-paragraph there shall be added the following sub-paragraph—

"(e) where that period of service terminates on or after 6th April 2002, 4.5 per cent. compound.".

(15) In regulation 63 (provision of information about guaranteed minimum pensions)—

(a) in paragraph (1) for the words from "The prescribed" to "that section)" there shall be substituted the following—

"As respects any occupational pension scheme, the persons prescribed for the purposes of section 152(2) of the Act(**14**) (information for purposes of contracting-out) are", and

(b) in paragraph (2) after sub-paragraph (*a*), but before the word "or" there shall be inserted—

(**12**) Section 5 was substituted by paragraph 1 of Schedule 10 to the Welfare Reform and Pensions Act 1999 (c. 30)

(**13**) Section 12(3) was amended by paragraph 21(*a*) of Schedule 3 to the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)). *See also*S.R. 1997 No. 192 (C. 10)

(**14**) Section 152 was substituted by paragraph 6 of Schedule 5 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4)

"(aa) whether the scheme is liable in respect of any section 5(2B) rights, protected rights or safeguarded rights;".

(16) In regulation 72(**15**) (transitional requirements as to sufficiency of resources of salary related schemes)—

(a) in paragraph (1)—

(i) the words "of 10 years" shall be omitted, and

(ii) for the words from "or such longer" to "class of case" there shall be substituted "and ending with the date of first certification";

(b) after paragraph (1) there shall be inserted the following paragraph—

"(1A) In paragraph (1), the date of first certification means the first occasion on which the actuary to the scheme certifies the rates of contributions shown in a schedule of contributions for the scheme for the purposes of Article 58 of the Order(**16**) (schedules of contributions).", and

(c) in paragraph (6) after "apply" (in the second place where it appears) there shall be added ", or to any scheme in respect of which any Minister of the Crown or government department has given a guarantee, or made any other arrangements, for the purposes of securing that the assets of the scheme are sufficient to meet its liabilities".

Amendment of the Protected Rights (Transfer Payment) Regulations

3.—(1) The Protected Rights (Transfer Payment) Regulations (Northern Ireland) 1996(**17**) shall be amended in accordance with paragraphs (2) and (3).

(2) After regulation 4 (transfer payments to salary related contracted-out schemes) there shall be inserted the following regulation—

"**Transfer payments to section 49 schemes**

4A.—(1) A transfer payment may be made to a section 49 scheme in the circumstances specified in paragraph (2) and subject to the conditions specified in paragraph (3).

(2) The circumstances referred to in paragraph (1) are that—

(a) the member consents in writing to the making of the transfer payment, and

(b) either—

(i) the member has entered employment with an employer who is or was a contributor to the section 49 scheme, or

(ii) the member was previously a member of the receiving scheme.

(3) The conditions referred to in paragraph (1) are that—

(a) the transfer payment (whether or not it forms part of a larger payment giving effect to both protected and other rights) is of an amount at least equal to the value of the protected rights to which effect is being given, and

(b) the transfer payment is approved by the Inland Revenue, whether or not subject to conditions.

(**15**) Regulation 72 was amended by S.R. 1997 No. 160

(**16**) Article 58 was amended by paragraph 12(1) of Schedule 2 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)). *See also*S.R. 1996 No. 570

(**17**) S.R. 1996 No. 509; relevant amending regulations are S.R. 1997 No. 160