STATUTORY RULES OF NORTHERN IRELAND

2000 No. 145

PENSIONS

The Pension Sharing (Implementation and Discharge of Liability) Regulations (Northern Ireland) 2000

Made - - - -	*26th April 2000*
Coming into operation	*1st December 2000*

The Department for Social Development, in exercise of the powers conferred by Articles 10(2)(*b*) and 166(1) to (3) of the Pensions (Northern Ireland) Order 1995(**1**) and Articles 30(2)(*a*) and (4), 31(4)(*c*), 32(2)(*b*) and 73(4) of, and paragraphs 1(2)(*b*) and (3)(*c*), 3(3)(*c*), 4(2)(*c*) and (4), 5(*b*), 6(2)(*b*), 7(1)(*b*), (2)(*a*) and (*b*), (3), (4) and (6), 8(1) and (2), 9, 10, and 13 of Schedule 5 to, 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:

Part I

General

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pension Sharing (Implementation and Discharge of Liability) Regulations (Northern Ireland) 2000 and shall come into operation on 1st December 2000.

(2) In these Regulations—

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

"the Safeguarded Rights Regulations" means the Pension Sharing (Safeguarded Rights) Regulations (Northern Ireland) 2000(**4**);

"the Transfer and Transfer Payment Regulations" means the Contracting-out (Transfer and Transfer Payment) Regulations (Northern Ireland) 1996(**5**);

(**1**) S.I. 1995/3213 (N.I. 22)
(**2**) S.I. 1999/3147 (N.I. 11)
(**3**) *See* Article 8(*b*) of S.R. 1999 No. 481
(**4**) S.R. 2000 No. 147
(**5**) S.R. 1996 No. 618; relevant amending regulations are S. R. 1997 No.160

"base rate" means the base rate for the time being quoted by the reference banks, or where there is for the time being more than one such base rate, the base rate which, when the base rate quoted by each bank is ranked in a descending sequence of seven, is fourth in the sequence;

"implementation period" has the meaning given by Article 31 of the 1999 Order;

"normal benefit age" has the meaning given by section 97B(**6**);

"occupational pension scheme" has the meaning given by section 1;

"pension arrangement" has the meaning given by Article 43(1) of the 1999 Order;

"pension credit" means a credit under Article 26(1)(*b*) of the 1999 Order;

"pension sharing order" means an order which is mentioned in Article 25(1);

"person responsible for a pension arrangement" has the meaning given to that expression in Article 43(2) of the 1999 Order;

"personal pension scheme" has the meaning given by section 1(**7**);

"reference banks" means the seven largest institutions for the time being which—

(a) are authorised by the Bank of England under the Banking Act 1987(**8**);

(b) are incorporated in and carrying on within the United Kingdom a deposit-taking business (as defined in section 6 of that Act, but subject to any order under section 7 of that Act(**9**)), and

(c) quote a base rate in sterling,

and for the purpose of this definition the size of an institution at any time is to be determined by reference to the gross assets denominated in sterling of that institution, together with any subsidiary (as defined in Article 4 of the Companies (Northern Ireland) Order 1986)(**10**)), as shown in the audited end of year accounts last published before that time;

"Regulatory Authority" means the Occupational Pensions Regulatory Authority;

"safeguarded rights" has the meaning given by section 64A(**11**);

"scheme actuary", in relation to a scheme to which Article 47(1)(*b*) of the 1995 Order applies, means the actuary mentioned in Article 47(1)(*b*) of that Order;

"section 5(2B) rights" has the meaning given by regulation 1(2) of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996(**12**);

"transferee" and "transferor" have the meanings given by Article 31(5);

"trustees or managers" has the meaning given by Article 43(1);

"valuation day" has the meaning given by Article 26(7).

(3) For the purposes of these Regulations and notwithstanding section 39(2) of the Interpretation Act (Northern Ireland) 1954(**13**), 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.

(4) In these Regulations—

(**6**) Section 97B is inserted by Article 34 of the Welfare Reform and Pensions (Northern Ireland) Order 1999
(**7**) The definition of "personal pension scheme" was amended by paragraph 2(1)(*a*) of Schedule 2 to the Welfare Reform and Pensions (Northern Ireland) Order 1999
(**8**) 1987 c. 22
(**9**) Section 7 was amended by section 23(1) of, and paragraphs 1 and 4 of Schedule 5 to, the Bank of England Act 1998 (c. 11)
(**10**) S.I. 1986/1032 (N.I. 6); Articles 4 and 4A were substituted for Article 4 by Article 62(1) of the Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10))
(**11**) Section 64A is inserted by Article 33 of the Welfare Reform and Pensions (Northern Ireland) Order 1999
(**12**) S.R. 1996 No. 493; 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)(*b*) of S.R. 1999 No. 486
(**13**) 1954 c. 33 (N.I.)

(a) any reference to a numbered section is a reference to the section of the Pension Schemes Act bearing that number, and

(b) any reference to a numbered Article or Schedule is a reference to the Article of, or Schedule to, the Welfare Reform and Pensions (Northern Ireland) Order 1999 bearing that number.

Part II

Extension, Postponement or Cessation of Implementation Period

Time period for notification to the Regulatory Authority of failure by the trustees or managers of an occupational pension scheme to discharge their liability in respect of a pension credit

2. The period prescribed for the purposes of Article 30(2)(*a*) (period within which notice must be given of non-discharge of pension credit liability) is the period of 21 days beginning with the day immediately following the end of the implementation period.

Circumstances in which an application for an extension of the implementation period may be made

3. The circumstances in which an application may be made for the purposes of Article 30(4) (application for extension of period within which pension credit liability is to be discharged) are that the application is made to the Regulatory Authority before the end of the implementation period, and—

(a) the Regulatory Authority are satisfied that—

(i) the scheme is being wound up or is about to be wound up;

(ii) the scheme is ceasing to be a contracted-out scheme;

(iii) the financial interests of the members of the scheme generally will be prejudiced if the trustees or managers do what is needed to discharge their liability for the pension credit within that period;

(iv) the transferor or the transferee has not taken such steps as the trustees or managers can reasonably expect in order to satisfy them of any matter which falls to be established before they can properly discharge their liability for the pension credit;

(v) the trustees or managers have not been provided with such information as they reasonably require properly to discharge their liability for the pension credit within the implementation period;

(vi) the transferor or the transferee has disputed the amount of the cash equivalent calculated and verified for the purposes of Article 26 (creation of pension debits and credits);

(b) the provisions of section 49(**14**) (supervision: former contracted-out schemes) apply, or

(c) the application has been made on one or more of the grounds specified in paragraph (*a*) or (*b*), and the Regulatory Authority's consideration of the application cannot be completed before the end of the implementation period.

(**14**) Section 49 applies to occupational pension schemes by virtue of section 48(1). Section 49 was amended by paragraph 40 of Schedule 3 to the Pensions (Northern Ireland) Order 1995 and paragraph 61 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.)(Northern Ireland) Order 1999 (S.I. 1999/671)

Postponement or cessation of implementation period when an application is made for leave to appeal out of time

4.—(1) The modifications to the operation of Article 31 (implementation period) where the pension credit depends on a pension sharing order and the order is the subject of an application for leave to appeal out of time are—

(a) where the implementation period has not commenced, its commencement shall be postponed, or

(b) where the implementation period has commenced, its operation shall cease and it shall not commence afresh until the person responsible for the pension arrangement has received the documents referred to in paragraph (2).

(2) The postponement or cessation referred to in paragraph (1)(*a*) or (*b*) shall continue until the person responsible for the pension arrangement is in receipt of—

(a) confirmation from the court that the order which was the subject of the application for leave to appeal out of time has not been varied or discharged, or

(b) a copy of the varied pension sharing order.

(3) Where the person responsible for the pension arrangement has discharged his liability in respect of the pension credit which depends on a pension sharing order and that person subsequently receives notification of an application for leave to appeal out of time in respect of that order, he shall inform the court within 21 days from the date on which he received the notification that liability in respect of that pension credit has been discharged.

Civil Penalties

5. For the purpose of Article 30(2)(*b*) or (3) (time for discharge of liability), the maximum amount of the penalty which may be imposed by the Regulatory Authority under Article 10(2)(*b*) of the 1995 Order is—

(a) £1,000 in the case of an individual, and

(b) £10,000 in any other case.

Part III

Death of Person entitled to a Pension Credit before Liability in Respect of the Pension Credit is Discharged

Discharge of liability in respect of a pension credit following the death of the person entitled to the pension credit

6.—(1) Where —

(a) the circumstances set out in paragraph (2) apply, and

(b) the rules or provisions of a pension arrangement provide that liability in respect of a pension credit may be discharged in accordance with this regulation,

the person responsible for the pension arrangement shall discharge his liability in respect of a pension credit in accordance with the provisions of paragraph 1(2), 2(2), 3(2) or 4(4) of Schedule 5 (pension credits: mode of discharge — funded pension schemes, unfunded public service pension schemes, other unfunded occupational pension schemes, or other pension arrangements) in favour of a person other than the person entitled to the pension credit, as if that person were the person entitled to the pension credit.

(2) The circumstances set out in this paragraph are that a person entitled to a pension credit dies before the person responsible for the pension arrangement has discharged his liability in respect of the pension credit.

(3) Paragraph (1) applies in relation to a pension arrangement to which paragraph 1, 3 or 4 of Schedule 5 applies, regardless of whether—

(a) the rules of that arrangement provide that appropriate rights may be conferred under that scheme on a person entitled to a pension credit, or

(b) in relation to the operation of paragraph 1(2) of Schedule 5, the person entitled to the pension credit has consented to the conferring of appropriate rights under that arrangement on him.

Part IV

Discharge of Liability in Respect of a Pension Credit

Funded pension schemes

7.—(1) The circumstances in which the trustees or managers of a scheme, to which paragraph 1 of Schedule 5 applies, may discharge their liability in respect of a pension credit in accordance with sub-paragraph (2)(*b*) of that paragraph are where—

(a) the person entitled to the credit has failed to provide his consent in accordance with paragraph 1(2)(*a*) and (4) of Schedule 5, and

(b) the circumstances set out in paragraph 1(3) of Schedule 5 do not apply.

(2) The circumstances in which the trustees or managers of a scheme, to which paragraph 1 of Schedule 5 applies, may discharge their liability in respect of a pension credit in accordance with sub-paragraph (3)(*c*) of that paragraph are where—

(a) the person entitled to the credit has failed to provide his consent in accordance with paragraph 1(2)(*a*) of Schedule 5, and

(b) the trustees or managers of the scheme have not discharged their liability in accordance with paragraph (1).

Unfunded occupational pension schemes other than public service pension schemes

8.—(1) The circumstances in which the trustees or managers of a scheme, to which paragraph 3 of Schedule 5 applies, may discharge their liability in respect of a pension credit in accordance with sub-paragraph (3)(*c*) of that paragraph are those specified in—

(a) sub-paragraphs (*a*) and (*b*) of paragraph (2), in the case of an approved scheme, and

(b) sub-paragraphs (*a*), (*b*) and (*c*) of paragraph (2), in the case of an unapproved scheme.

(2) The circumstances specified in this paragraph are—

(a) the liability of the trustees or managers has not been discharged in accordance with the provisions of paragraph 3(2) of Schedule 5;

(b) the person entitled to the pension credit has not consented to the discharge of liability in accordance with paragraph 3(3) of Schedule 5, and

(c) the employer who is associated with the scheme from which the pension credit derives—

(i) consents to the trustees or managers discharging their liability for the credit in accordance with paragraph 3(3) of Schedule 5, and