STATUTORY RULES OF NORTHERN IRELAND

1997 No. 159

PENSIONS

The Occupational Pension Schemes (Discharge of Liability) Regulations (Northern Ireland) 1997

Made - - - -	*14th March 1997*
Coming into operation	*6th April 1997*

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 8C, 15, 177(2) to (4) and 178(1) of the Pension Schemes (Northern Ireland) Act 1993(**1**) 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 Occupational Pension Schemes (Discharge of Liability) Regulations (Northern Ireland) 1997 and shall come into operation on 6th April 1997.

(2) In these Regulations—

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

"actuary" means—

(a) a Fellow of the Institute of Actuaries; or

(b) a Fellow of the Faculty of Actuaries; or

(c) a person with actuarial qualifications who is approved by the Department;

"the Order" means the Pensions (Northern Ireland) Order 1995(**2**);

"relevant scheme" has the same meaning as in section 8C(2);

"supplementary credits" has the same meaning as in section 71;

(**1**) 1993 c. 49; section 8C was inserted by Article 133(5) of the Pensions (Northern Ireland) Order 1995 (S.I.1995/3213 (N.I. 22))
(**2**) S.I. 1995/3213 (N.I. 22)

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

(3) The Interpretation Act (Northern Ireland) 1954(**3**) shall apply to these Regulations as it applies to a Measure of the Assembly.

(4) In these Regulations any reference—

(a) to a numbered section is a reference to the section of the Act bearing that number; and

(b) to a numbered Article is a reference to the Article of the Order bearing that number.

Part II

Discharge of Liability where Guaranteed Minimum Pensions, Short Service Benefits and Alternatives to Short Service Benefits are secured by Insurance Policies or Annuity Contracts

Requirements applying to policies of insurance and annuity contracts

2.—(1) The requirements referred to in section 15(4)(*a*)(ii) (requirements applying to policy of insurance or annuity contract for the purposes of discharging liability for guaranteed minimum pensions) are that the insurance policy is taken out, or the annuity contract is entered into, with an insurance company which is—

(a) authorised under section 3 or 4 of the Insurance Companies Act 1982(**4**) (authorised insurance companies) to carry on ordinary long term insurance business as defined in that Act;

(b) in the case of a friendly society, authorised under section 32 of the Friendly Societies Act 1992(**5**) (grant of authorisation by Commission: general) to carry on long term business under any of the Classes specified in Head A of Schedule 2 to that Act (activities of a friendly society: long term business); or

(c) an EC company as defined in section 2(6) of the Insurance Companies Act 1982(**6**) (restriction on carrying on insurance business) falling within paragraph (2).

(2) An EC company falls within this paragraph if it—

(a) carries on ordinary long term insurance business (as defined in the Insurance Companies Act 1982) in the United Kingdom through a branch in respect of which such of the requirements of Part I of Schedule 2F to that Act(**7**) (EC companies carrying on business etc. in the United Kingdom) as are applicable have been complied with; or

(b) provides ordinary long term insurance (within the meaning of that Act) in the United Kingdom and such of the requirements of Part I of Schedule 2F to that Act as are applicable have been complied with in respect of the insurance.

Conditions on which policies of insurance and annuity contracts may be assigned or surrendered

3. The conditions referred to in section 15(4)(*b*) (policy of insurance or annuity contract appropriate where assignment or surrender conditional on satisfying prescribed requirements) are—

(**3**) 1954 c. 33 (N.I.)
(**4**) 1982 c. 50
(**5**) 1992 c. 40; section 32(4) was substituted by regulation 4 of S.I. 1994/1984
(**6**) Section 2(6) was inserted by regulation 4(2) of S.I. 1994/1696
(**7**) Schedule 2F was inserted by regulation 45 of S.I. 1994/1696

(a) that the written consent of the earner or, if the earner has died, the consent of the earner's widow or widower to the assignment or surrender is obtained; and

(b) that in consideration of the assignment or surrender the benefits previously secured by the policy of insurance or annuity contract become secured, or are replaced by benefits which are secured, by one or more of the following means—

(i) another policy of insurance or annuity contract which is appropriate within the meaning of section 15(4);

(ii) subject to regulations 3, 5 and 6 of the Contracting-out (Transfer and Transfer Payment) Regulations (Northern Ireland) 1996(**8**) in the case of benefits which are, or include, guaranteed minimum pensions, the award of supplementary credits under an occupational pension scheme which applies to the employment of the earner at the time of the assignment or surrender or the granting of rights to money purchase benefits under a personal pension scheme;

(iii) in the case only of benefits which are not, and do not include, guaranteed minimum pensions, the award of rights to money purchase benefits under a self-employed pension arrangement within the meaning of regulation 12(6)(*a)* of the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996(**9**) (requirements to be met by receiving schemes, annuities and arrangements) or regulation 2A(3) of the Personal Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1987(**10**) (use of cash equivalents for subscribing to self-employed pension arrangements).

Conditions on which policies of insurance and annuity contracts may be commuted

4.—(1) The conditions referred to in section 15(4)(*c*) (policy of insurance or annuity contract appropriate where commutation conditional on satisfying prescribed requirements) are—

(a) that—

(i) the benefits secured by the policy of insurance or annuity contract have become payable, and the aggregate of those benefits and all other benefits currently payable or prospectively payable to the earner or, as the case may be, to the earner's widow or widower under all occupational pension schemes relating to employment with the same employer as the employment in respect of which the benefits secured by the policy of insurance or annuity contract are payable does not exceed £260 per annum;

(ii) an actuary certifies that the methods and assumptions to be used to calculate any benefit in a lump sum form will result in the benefit being broadly equivalent to the annual amount of benefits which would have been payable in pension; and

(iii) all of the earner's interest under the policy of insurance or annuity contract is discharged upon payment of a lump sum; or

(b) subject to paragraph (2), that the benefits secured by the policy of insurance or annuity contract have become payable and the earner requests or consents to the commutation, and the earner—

(i) has attained the age of 50; or

(ii) is suffering from an incapacity or serious ill-health prior to normal pension age.

(2) The commutation referred to in paragraph (1)(*b*) does not apply to that part of the benefits which consist of the earner's and the earner's widow's or widower's guaranteed minimum pensions.

(**8**) S.R. 1996 No. 618
(**9**) S.R. 1996 No. 619
(**10**) S.R. 1987 No. 290; regulation 2A was inserted by regulation 3(*c*) of S.R. 1988 No. 214 and amended by paragraph 15(5) of Schedule 2 to S.R. 1994 No. 300

(3) For the purposes of paragraph (1)(*a*)—

(a) any benefit in a lump sum shall be treated as an annual amount of benefit in pension;

(b) any benefit secured by means of another policy of insurance or annuity contract which is appropriate for the purposes of section 15(4) shall be treated as payable or prospectively payable under the occupational pension scheme which was liable to provide it before it was so secured; and

(c) any guaranteed minimum pension which is prospectively payable shall be reckoned as having the value that it will have (in accordance with the provisions of the occupational pension scheme in question) when the earner reaches pensionable age.

(4) For the purposes of paragraph (1)(*b*)(ii)—

"incapacity" means physical or mental deterioration which seriously impairs his earning capacity;

"serious ill-health" means ill-health which is such as to give rise to a life expectancy of less than one year.

Other requirements applying to policies of insurance and annuity contracts

5. The requirements referred to in section 15(4)(*d*) (policy of insurance or annuity contract appropriate where it satisfies such other prescribed requirements) are—

(a) that the insurance company with which the policy of insurance is taken out or the annuity contract entered into assumes an obligation to the earner in question or to the trustees of a trust for the benefit of the earner and, if appropriate, dependants of his, to pay the benefits secured by the policy or contract to him or, as the case may be, to dependants of his or to the trustees of such a trust;

(b) that the policy of insurance or annuity contract contains, or is endorsed with, terms so as to provide for any increase, which would have been applicable as a consequence of Articles 51 (annual increase in rate of pension) and 52 (restriction on increase where member is under 55) had the discharge of liability not taken place, to apply to the benefits which have become secured or been replaced by the policy or contract;

(c) that, if any guaranteed minimum pension is due or prospectively due to the earner in question, the policy of insurance or annuity contract contains, or is endorsed with, terms so as to provide—

(i) that the annuity to be paid thereunder to or for his benefit will be at least equal to the guaranteed minimum pension due to him or, as the case may be, prospectively due to him, at pensionable age subject to section 11 (increase of guaranteed minimum where commencement of guaranteed minimum pension postponed) or section 12 (revaluation of earnings factors for purposes of section 10: early leavers, etc.)(**11**);

(ii) in the case where the earner dies leaving a widow or widower, that the annuity payable for the widow's or widower's benefit will be at least equal to the guaranteed minimum pension due or prospectively due to the widow or widower; and

(iii) in each case mentioned in sub-paragraphs (i) and (ii), that any increase of guaranteed minimum pension under Chapter II of Part V of the Act(**12**) (guaranteed minimum pensions) results in a similar increase in the annuity.

(**11**) Section 12 is amended by paragraph 21 of Schedule 3 to the Pensions (Northern Ireland) Order 1995

(**12**) Chapter II of Part V is amended by Articles 53(4) and 55 of the Pensions (Northern Ireland) Order 1995

Further conditions on which liability may be discharged

6.—(1) The conditions referred to in section 15(5)(*c*)(ii) (further conditions on which liability for guaranteed minimum pensions may be discharged) are that the requirements of one or more of paragraphs (2) to (5) are satisfied.

(2) The requirements of this paragraph are satisfied if—

(a) the earner is dead and benefit is payable to a person other than the earner's widow or widower; and

(b) the arrangement for securing the benefit by means of the policy of insurance or annuity contract was made at the written request of the person entitled to it or with the consent of that person given in writing in the form set out in Schedule 1.

(3) The requirements of this paragraph are satisfied if the benefit is provided as an alternative to short service benefit by virtue of a provision that conforms with the requirements of regulation 9(4) of the Occupational Pension Schemes (Preservation of Benefit) Regulations (Northern Ireland) 1991(**13**) (bought out benefits without consent).

(4) In a case where an occupational pension scheme is being wound up and Articles 73 (preferential liabilities on winding up) and 74 (discharge of liabilities by insurance, etc.) and regulations made under those Articles do not apply, the requirements of this paragraph are satisfied if the earner is able to assign or surrender the policy of insurance or annuity contract and the conditions specified in regulation 3 are satisfied.

(5) The requirements of this paragraph are satisfied if—

(a) the benefit in question includes a guaranteed minimum pension that is payable to the earner's widow or widower; and

(b) the trustees—

(i) give the earner's widow or widower at least 30 days' written notice ("the notice") of their intention to take out the insurance policy or enter into the annuity contract; and

(ii) send the notice, by registered post, recorded delivery or ordinary post, to the widow or widower at her or his last known address or deliver the notice to the widow or widower personally.

Form of consent

7. For the purpose of section 15(5)(*a*)(ii) (form of consent to arrangements for securing benefits) the prescribed form is the form set out in Schedule 1.

Part III

Discharge of Liability to Provide Pensions Under a Relevant Scheme

Prohibition or restriction of the discharge of liability to provide pensions under a relevant scheme: exceptions

8. The trustees of a relevant scheme are prohibited or restricted from discharging any liability to provide pensions under a relevant scheme except—

(a) in the circumstances or on the conditions specified in this Part; or

(**13**) S.R. 1991 No. 37; relevant amending regulations are S.R. 1994 No. 300 and S.R. 1996 No. 620