STATUTORY RULES OF NORTHERN IRELAND

1997 No. 95

PENSIONS

The Occupational Pension Schemes (Mixed Benefit Contracted-out Schemes) Regulations (Northern Ireland) 1997

Made - - - - 24th February 1997

Coming into operation 6th April 1997

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 146 and 166(1) to (3) of the Pensions (Northern Ireland) Order 1995(**1**) 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 Pension Schemes (Mixed Benefit Contracted-out Schemes) Regulations (Northern Ireland) 1997 and shall come into operation on 6th April 1997.

(2) In these Regulations—

"the Contracting-out Regulations" means the Occupational Pensions Schemes (Contracting-out) Regulations (Northern Ireland) 1996(**2**);

"mixed benefit contracted-out scheme" means a scheme which is contracted-out by virtue of its being a relevant scheme;

"the principal appointed day" has the meaning given to that expression by section 3(2B)(**3**);

"relevant scheme" means a scheme to which Article 146(1) applies;

"section 5(2B) rights" has the same meaning as in the Contracting-out Regulations.

(3) A relevant scheme is to be treated for the purposes of these Regulations as if the pensions provided by the scheme falling within Article 146(1)(*a*), and the pensions provided by the scheme falling within Article 146(1)(*b*), were provided by separate parts of the scheme; and references in these Regulations to a separate part of such a scheme are to be read accordingly.

(4) In these Regulations any reference to the salary related part or the money purchase part of a relevant scheme is a reference to the separate part providing such pensions as are referred to in sub-paragraphs (*a*) and (*b*) respectively of Article 146(1).

(**1**) S.I. 1995/3213 (N.I. 22)
(**2**) S.R. 1996 No. 493
(**3**) Section 3(2B) was inserted by Article 133(1) of the Pensions (Northern Ireland) Order 1995

(5) For the purposes of these Regulations a separate part of a relevant scheme is inactive if—

(a) any member has accrued rights by reference to that part; and

(b) no further benefits may accrue in respect of any member's service by reference to that part.

(6) For the purposes of these Regulations and notwithstanding section 39(2) of the Interpretation Act (Northern Ireland) 1954(**4**), 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.

(7) In these Regulations—

(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 is a reference to the Article of the Pensions (Northern Ireland) Order 1995 bearing that number.

Parts of a relevant scheme to be treated as separate schemes for contracting-out purposes

2.—(1) Subject to paragraph (4), if the condition specified in paragraph (2) is satisfied, a relevant scheme is to be treated for the purposes of Part III of the Pension Schemes Act as if the separate parts of the scheme were separate schemes.

(2) The condition referred to in paragraph (1) is that the rules of the relevant scheme are such that a member's service in a single employment at any given time may be qualifying service by reference only to one of the separate parts.

(3) Where one separate part of a relevant scheme has become inactive, it is to continue to be treated as a separate scheme for the purposes of Part III of the Pension Schemes Act, notwithstanding that it has ceased to satisfy sub-section (2) or, as the case may be, subsection (3) of section 5(**5**).

(4) Part III of the Pension Schemes Act is to have effect, in relation to the separate parts of a relevant scheme, with the following modifications—

(a) any reference to a contracting-out certificate is to be read as a reference to a single certificate—

(i) relating to both separate parts of the relevant scheme and stating that the relevant scheme is contracted-out by virtue of subsections (2) and (3) of section 5; or

(ii) relating, if one of the separate parts is inactive, to the other part of the relevant scheme and stating that the relevant scheme is contracted-out by virtue of subsection (2) or, as the case may be, subsection (3) of section 5,

and section 8 (determination of basis on which scheme is contracted-out) does not apply;

(b) in section 7(**6**) (elections as to employments covered by contracting-out certificates) any reference to an election is to be read as a reference to an election in relation to the relevant scheme;

(c) in section 12(**7**) (revaluation of earnings factors: early leavers) any reference to scheme is to be read as reference to relevant scheme;

(d) sections 46, 48 and 49(**8**) (approval of arrangements for, and supervision of, formerly certified schemes) are to apply to an inactive part of the relevant scheme as if it were a scheme which had ceased to be certified as a contracted-out scheme;

(**4**) 1954 c. 33 (N.I.)
(**5**) Section 5(2) was substituted by Article 133(3) of the Pensions (Northern Ireland) Order 1995 and section 5(3) is amended by Article 133(4) of, and paragraph 17 of Schedule 3 to, that Order
(**6**) Section 7 is amended by paragraph 14 of Schedule 3 to the Pensions (Northern Ireland) Order 1995
(**7**) Section 12 is amended by paragraph 21 of Schedule 3 to the Pensions (Northern Ireland) Order 1995
(**8**) Section 46 is amended by paragraphs 14 and 37 of Schedule 3 to the Pensions (Northern Ireland) Order 1995; section 48 is amended by paragraph 39 of Schedule 3 to that Order and section 49 is amended by paragraph 40 of Schedule 3 to that Order

(e) in section 51(2)(**9**) (circumstances in which a contributions equivalent premium is payable) the reference to an occupational pension scheme is to be read as a reference to the relevant scheme and in sections 52(4), 53(3) and (4), 56(4), 57(1)(*b*), (8) and (11)(**10**) references to scheme are to be read as references to relevant scheme;

(f) in spite of sub-paragraph (*e*), in section 54(4) (amount of a contributions equivalent premium) the reference to the scheme in relation to an earner's contracted-out employment is to be read as a reference only to the salary related part of the relevant scheme.

(5) For the purposes of any regulations made under Part III of the Pension Schemes Act, a relevant scheme is also to be treated as if the separate parts of the scheme were separate schemes, subject to the modifications to that Part provided for in paragraph (4) and any modifications to such regulations provided for in regulations 3 and 4.

Modification of the Contracting-out Regulations

3.—(1) The Contracting-out Regulations are modified in relation to the separate parts of a relevant scheme in accordance with the following provisions of this regulation.

(2) In regulation 3 (notices by employers of intended election), in the case of an election with a view to the issue of a contracting-out certificate in respect of a relevant scheme, there is to be a further requirement that the notice referred to in that regulation must state that the employment would be contracted-out by reference to a mixed benefit contracted-out scheme and explain—

(a) in a case where all the earners in the employment fall only in one separate part, how benefits would accrue to an earner under that part if the employment were contracted-out; and

(b) in any other case, by reference to each separate part, how benefits would accrue to an earner if the employment were contracted-out,

and paragraph (2)(*g*)(i) of that regulation does not apply.

(3) In regulation 6 (information to be included in an election), in a case referred to in paragraph (2) of this regulation—

(a) there is to be added to the particulars specified in paragraph (1) of that regulation a statement as to whether all the earners in each employment may fall in either of the separate parts and, if not, the categories of earner which fall only in the salary related part or, as the case may be, only in the money purchase part;

(b) the requirements to provide the confirmation or evidence referred to in paragraphs (3) and (4) of that regulation are to apply in relation to each separate part.

(4) In regulation 9 (elections for the variation or surrender of contracting-out certificates)—

(a) in the case of an election with a view to the variation of a contracting-out certificate in the event of a scheme becoming a relevant scheme, the further requirement referred to in paragraph (2) of this regulation is to apply in relation to the notice referred to in paragraphs (4) and (5) of that regulation; and

(b) in the case of an election with a view to the variation of a contracting-out certificate in the event of a scheme becoming a relevant scheme or one separate part of a relevant scheme becoming inactive, paragraph (3) of that regulation does not apply.

(5) Regulation 10 (special provision with regard to elections for the issue, variation or surrender of certificates where the employment remains contracted out) does not apply in the case of an election

(**9**) Section 51(2) was substituted by Article 138(1) of the Pensions (Northern Ireland) Order 1995

(**10**) Section 53(4) is amended by paragraph 14 of Schedule 3 to the Pensions (Northern Ireland) Order 1995; section 56(4) is amended by paragraph 46(*b*) of Schedule 3 to that Order and section 57(8) is amended by paragraph 47(*b*) of Schedule 3 to that Order