STATUTORY RULES OF NORTHERN IRELAND

1997 No. 56

PENSIONS

The Personal and Occupational Pension Schemes (Protected Rights) Regulations (Northern Ireland) 1997

Made - - - - 11th February 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 5(3) and (5), 6(2)(*c*) and (3)(*c*), 23(3), 24(1A)(*a*) and (2) to (5), 24A(3)(*b*) and (5)(*a*), 25(1)(*b*), (3)(*b*) and (4), 28, 151, 176(1), 177(2) to (4) and 178(1) and (3) of the Pension Schemes (Northern Ireland) Act 1993(**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 Personal and Occupational Pension Schemes (Protected Rights) Regulations (Northern Ireland) 1997 and shall come into operation on 6th April 1997.

(2) In these Regulations—

"child benefit" has the same meaning as in the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**2**);

"member" means member of an occupational pension scheme or a personal pension scheme;

"pensionable age" has the meaning given by the rules in paragraph 1 of Schedule 2 to the Pensions (Northern Ireland) Order 1995(**3**);

"the principal appointed day" has the meaning given to that expression by section 3(2B)(**4**);

(**1**) 1993 c. 49; section 5(3) was amended by Article 133(4) of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)); section 24(1A) was inserted by Article 139(3) of that Order; section 24(3) was amended by Article 139(4) of that Order; section 24(4) was amended by Article 139(5) of, and paragraph 27(*b*) of Schedule 3 to, that Order; section 24(5) was amended by Article 139(6) of that Order; section 24A was inserted by Article 140 of that Order; section 25(1) was amended by Article 141(2) of, and paragraph 28 of Schedule 3 to, that Order; section 25(3) was amended by Article 141(3) of that Order; section 25(4) was amended by Article 141(4) of that Order and section 151 was amended by paragraph 55 of Schedule 3 to that Order

(**2**) 1992 c. 7. *See* Part IX of that Act

(**3**) S.I. 1995/3213 (N.I. 22)

(**4**) Section 3(2B) was inserted by Article 133(1) of the Pensions (Northern Ireland) Order 1995

"the Protected Rights Regulations" means the Personal and Occupational Pension Schemes (Protected Rights) Regulations 1996(**5**);

"scheme" means an occupational pension scheme or a personal pension scheme;

"section 5(2B) rights" are rights (other than rights attributable to voluntary contributions within the meaning of section 107) which are attributable to an earner's service on or after the principal appointed day in employment which is contracted-out in accordance with section 5(2B)(**6**).

(3) Subject to paragraph (4), the Interpretation Act (Northern Ireland) 1954(**7**) shall apply to these Regulations as it applies to a Measure of the Assembly.

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

(5) In these Regulations—

(a) any reference to a numbered section is a reference to the section of the Pension Schemes (Northern Ireland) Act 1993 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.

Manner of calculation and verification of protected rights

2.—(1) For the purposes of section 23(3) (identification and valuation of protected rights), the value of a member's protected rights shall, subject to paragraph (2), be calculated and verified—

(a) in such manner as may be approved in particular cases by the trustees or managers of the scheme; and

(b) by adopting methods consistent with the requirements of sections 5(3) and (5) and 22 to 28(**8**).

(2) In a case where a member's rights (as described in paragraph (1)) fall, either wholly or in part, to be valued in a manner which involves making estimates of the value of benefits, the value of those rights shall be calculated and verified—

(a) in such manner as may be approved in particular cases by—

(i) a Fellow of the Institute of Actuaries;

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

(iii) a person with other actuarial qualifications who is approved by the Department, at the request of the trustees or managers of the scheme in question, as being a proper person to act for the purposes of these Regulations in connection with that scheme,

and in this regulation "actuary" means any person such as is referred to in head (i), (ii) or (iii); and

(b) by adopting methods and making assumptions which—

(i) if not determined by the trustees or managers of the scheme in question, are notified to them by an actuary; and

(**5**) S.I. 1996/1537
(**6**) Section 5(2B) was substituted by Article 133(3) of the Pensions (Northern Ireland) Order 1995
(**7**) 1954 c. 33 (N.I.)
(**8**) Section 24 is amended by Articles 139 and 143(2) of, and paragraph 27 of Schedule 3 to, the Pensions (Northern Ireland) Order 1995; sections 24A and 24B were inserted by Article 140 of that Order; section 25 was amended by Article 141 of, and paragraph 28 of Schedule 3 to, that Order; section 26 is amended by paragraph 14(*a*) of Schedule 3 to that Order and section 27 was amended by paragraph 29 of Schedule 3 to that Order

(ii) are certified by an actuary to the trustees or managers of the scheme as being consistent with the requirements of sections 5(3) and (5), 6(**9**) and 22 to 28 and as being consistent with the guidance note "Retirement Benefit Schemes — Transfer Values (GN 11)" published by the Institute of Actuaries and the Faculty of Actuaries(**10**) and current at the date of the calculation.

Options under section 6(2) and (3) for schemes to designate which rights are protected rights

3. For the purposes of section 6(2) and (3) (scheme rules may provide that a member's protected rights are rights specified in section 6(2) and (3) and such other rights as may be prescribed), the prescribed rights are rights to money purchase benefits which derive from—

(a) guaranteed minimum pensions under an occupational pension scheme, or guaranteed minimum pensions appropriately secured by virtue of section 15, which have been the subject of a transfer payment to the trustees or managers of the scheme;

(b) section 5(2B) rights under an occupational pension scheme, or section 5(2B) rights secured in the circumstances and subject to the conditions prescribed in regulations made under section 8C(1)(*b*)(**11**), which have been the subject of a transfer payment to the trustees or managers of the scheme;

(c) in the case of a personal pension scheme, a payment made to the trustees or managers of the scheme in accordance with Article 9 of the Social Security (Northern Ireland) Order 1986(**12**) and regulation 3(10) of the Personal and Occupational Pension Schemes (Incentive Payments) Regulations (Northern Ireland) 1987(**13**);

(d) in the case of a personal pension scheme, a payment under section 38A(3)(**14**) made to the trustees or managers of the scheme in accordance with regulation 37(6) of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996(**15**);

(e) in the case of an occupational pension scheme, a payment of minimum contributions made to the trustees or managers of the scheme in accordance with regulation 14(3) of the Personal Pension Schemes (Appropriate Schemes) Regulations (Northern Ireland) 1988(**16**); and

(f) in the case of a personal pension scheme, a payment attributable to tax relief on the employee's share of minimum contributions, being the difference between that share and the grossed-up equivalent of that share; the expressions "employee's share" and "grossed-up equivalent" having the meanings given to them by section 649(2) of the Income and Corporation Taxes Act 1988(**17**).

(**9**) Section 6(2) is amended by paragraph 18 of Schedule 3 to the Pensions (Northern Ireland) Order 1995
(**10**) Copies of GN 11 may be obtained from the Faculty of Actuaries, 17 Thistle Street, Edinburgh EH2 1DF
(**11**) Section 8C was inserted by Article 133(5) of the Pensions (Northern Ireland) Order 1995
(**12**) S.I. 1986/1888 (N.I. 18); Article 9 was repealed by Part I of Schedule 4 to the Pension Schemes (Northern Ireland) Act 1993. *See also* paragraph 21 of Schedule 5 to that Act
(**13**) S.R. 1987 No. 293; to which there are amendments not relevant to these regulations
(**14**) Section 38A was inserted by Article 134(4) of the Pensions (Northern Ireland) Order 1995
(**15**) S.R. 1996 No. 493
(**16**) S.R. 1988 No. 34; regulation 14 was substituted by regulation 3(3) of S.R. 1996 No. 508
(**17**) 1988 c. 1; section 649 was amended by paragraph 20(3) to (5) of Schedule 8 to the Pension Schemes Act 1993 (c. 48) and paragraph 22(3) of Schedule 7 to the Pension Schemes (Northern Ireland) Act 1993 and is amended by paragraph 12(1) of Schedule 5 to the Pensions Act 1995 (c. 26) and paragraph 8 of Schedule 3 to the Pensions (Northern Ireland) Order 1995. *See* paragraph 73 of Schedule 3 to that Order which extends the amendment by paragraph 12(1) of Schedule 5 to the Pensions Act 1995 to Northern Ireland

Conditions applying to pensions and annuities which give effect to protected rights

4.—(1) For the purposes of subsections (2)(*a*) (effect may be given to protected rights by the provision by the scheme of a pension which among other things satisfies such conditions as may be prescribed) and (3) (effect may be given in certain circumstances to protected rights by the purchase by the scheme of an annuity which among other things satisfies such conditions as may be prescribed) of section 24, the prescribed conditions are that the pension or annuity gives effect to all the protected rights of the member, and that the terms on which the pension is provided, or the terms of the purchase of the annuity—

(a) satisfy the requirements of paragraphs (2) to (5); and

(b) make no provision other than such as—

(i) is necessary to establish what the initial rate and the method of payment of the pension or annuity are to be, and that it shall continue to be paid at that rate (subject only to paragraphs (3) and (6) and to the requirements of Articles 51 (annual increase in rate of occupational pension) and 158 (annual increase in rate of personal pension)) throughout the lifetime of the member;

(ii) is necessary to satisfy the requirements of paragraphs (2) to (5) and regulation 5; and

(iii) is permitted by paragraphs (6) to (9).

(2) The rate of the pension or annuity shall be determined—

(a) without regard to the sex of the member; and

(b) in the case of—

(i) protected rights derived from guaranteed minimum pensions by virtue of regulation 3(*a*) or payments or contributions in respect of employment in a tax year commencing before the principal appointed day, without regard to the marital status of the member;

(ii) a married member whose protected rights derived from section 5(2B) rights by virtue of regulation 3(*b*) or payments or contributions in respect of employment in a tax year commencing on or after the principal appointed day, on the basis that the member, in the event of his death, will leave a widow or widower; and

(iii) an unmarried member whose protected rights derived from section 5(2B) rights by virtue of regulation 3(*b*) or payments or contributions in respect of employment in a tax year commencing on or after the principal appointed day, as if in the event of that member's death he or she will leave a widow or widower, except where the member agreed to the rate being determined on his or her life only.

(3) In the case of protected rights which are derived from guaranteed minimum pensions by virtue of regulation 3(*a*) or payments or contributions in respect of employment in any tax year before the coming into operation of Article 51 or, as the case may be, Article 158, the rate of the pension or annuity shall—

(a) on a date ("the first date") not later than the first anniversary of the date on which it becomes payable; and

(b) on each anniversary of the first date,

be increased by the same percentage as that by which parts of guaranteed minimum pensions are increased by the order (if any) made by the Department under section 105(**18**) and coming into operation on the first day of the tax year in which the date of the increase falls.

(4) Except with the written consent of the person to whom the pension or annuity is payable, the pension or annuity, if paid in arrears, shall be paid no less frequently than by monthly instalments.

(**18**) Section 105 was amended by Article 55 of the Pensions (Northern Ireland) Order 1995

(5) The pension or annuity shall be paid no less frequently than by annual instalments.

(6) In the case of protected rights which are derived from guaranteed minimum pensions by virtue of regulation 3(*a*) or payments or contributions in respect of employment in any tax year before the coming into operation of Article 51, or as the case may be, Article 158, the pension or annuity may be increased, not more frequently than on the first date mentioned in paragraph (3) and on each of its anniversaries, but by larger percentages than paragraph (3) requires, so however that no increase is by more than 3 per cent.

(7) When the member has died, the pension or annuity may continue to be paid, at a rate which satisfies the requirements of paragraph (8), to or for the benefit of other persons if the requirements of paragraph (9) are satisfied.

(8) The requirements first referred to in paragraph (7) are that the rate shall not exceed—

(a) at any given time during the period which is within 5 years of the date on which the pension or annuity commenced, the rate at which it would have been payable if the member had been living at that time; and

(b) at any given time during any other period, one-half of the rate at which it would have been payable if the member had been living at that time.

(9) The requirements secondly referred to in paragraph (7) are that the pension or annuity shall be paid only—

(a) to the member's widow or widower, in a case where immediately after the member's death the pension or annuity is required by virtue of regulation 5 to be paid to her or him;

(b) to any one person, in a case to which sub-paragraph (*a*) does not apply;

(c) for the benefit of any child or children, if—

(i) sub-paragraph (*a*) does not apply;

(ii) the pension or annuity has not been paid in accordance with sub-paragraph (*b*); and

(iii) immediately before the member's death the member was entitled to child benefit in respect of that child or those children, or would have been so entitled if that child or one, some or all of those children had not been absent from Northern Ireland,

but only for so long as that child or at least one of those children is under the age of 18; and

(d) to any one person, during any period—

(i) which is within 5 years of the date on which the pension or annuity commenced; and

(ii) which immediately follows the death of a person who died while the pension or annuity was being paid to him in accordance with sub-paragraph (*a*) or (*b*) or in accordance with this sub-paragraph, or which begins on the date on which the child or the last of the children in respect of whom the pension or annuity has been paid in accordance with sub-paragraph (*c*) attained the age of 18 or died under that age.

Circumstances in which and periods for which pension or annuity is to be paid to widow or widower after being paid to member

5.—(1) For the purposes of section 25(1)(*b*)(i) (pension or annuity to be paid to member's widow or widower in prescribed circumstances and for the prescribed period) the prescribed circumstances are, subject to paragraph (4), that—

(a) the widow or widower is entitled to child benefit in respect of a child under the age of 18 who is, or is residing with a child under the age of 16 who is—

(i) a son or daughter of the widow or widower and the member;