STATUTORY RULES OF NORTHERN IRELAND

1996 No. 618

PENSIONS

The Contracting-out (Transfer and Transfer Payment) Regulations (Northern Ireland) 1996

Made - - - - 31st December 1996

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(1)(*a*), 16(1) to (3) and 177(2) to (4) 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 Contracting-out (Transfer and Transfer Payment) Regulations (Northern Ireland) 1996 and shall come into operation on 6th April 1997.

(2) In these Regulations—

"the 1985 Regulations" means the Contracting-out (Transfer) Regulations (Northern Ireland) 1985(**2**);

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

"accrued rights", for the purposes of Parts II and IV, has the meaning given to that expression in section 16(6);

"appropriate personal pension scheme" shall be construed in accordance with section 3(**3**);

"appropriate policy" means a policy of insurance or an annuity contract such as is described in section 15(4);

"appropriately secured" has the meaning given to that expression in section 15(3);

(**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.R. 1985 No. 243, as amended by S.R. 1985 No. 259, S.R. 1986 Nos. 57 and 342, S.R. 1987 Nos. 277 and 292, S.R. 1988 No. 108 and S.R. 1994 No. 300

(**3**) Section 3 is amended by Article 133(1) of, and paragraph 15 of Schedule 3 to, the Pensions (Northern Ireland) Order 1995

"connected employer transfer" and "connected employer transfer payment" mean respectively a transfer of guaranteed minimum pensions from a salary related contracted-out scheme to a salary related contracted-out scheme and a transfer payment in respect of section 5(2B) rights from a salary related contracted-out scheme to a salary related contracted-out scheme where either—

(a) the transferring scheme and the receiving scheme apply to employment with the same employer, or

(b) the transferring scheme and the receiving scheme apply to employment with different employers, the earner or person concerned is one of a group of persons in respect of whom transfers or transfer payments are being made from the transferring scheme to the receiving scheme, and either—

(i) the transfer or transfer payment is a consequence of a financial transaction between the employers;

(ii) each of the employers is one of a group of companies consisting of a holding company and one or more subsidiaries within the meaning of Article 4 of the Companies (Northern Ireland) Order 1986(**4**), or

(iii) the employers are associated employers within the meaning of section 590A(3) and (4) of the Income and Corporation Taxes Act 1988(**5**);

"earner" includes an earner who is not in employment at the time of the transfer or transfer payment;

"money purchase contracted-out scheme" means an occupational pension scheme which is contracted-out by virtue of satisfying section 5(3)(**6**);

"overseas arrangement" means a scheme or arrangement, other than an occupational pension scheme, which—

(a) has effect, or is capable of having effect, so as to provide benefits on termination of employment or on death or retirement to, or in respect of, earners;

(b) is not an appropriate personal pension scheme, and

(c) is administered wholly or primarily outside the United Kingdom;

"overseas scheme" means an occupational pension scheme which is administered wholly or primarily outside the United Kingdom but does not include one which is contracted-out within the meaning of section 3(3) nor one in respect of which section 49(**7**) applies;

"the principal appointed day" has the meaning given to that expression in section 3(2B)(**8**);

"salary related contracted-out scheme" means an occupational pension scheme which is contracted-out by virtue of satisfying section 5(2)(**9**);

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

"section 5(2B) rights" are—

(a) 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

(**4**) 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))

(**5**) 1988 c. 1; section 590A was inserted by paragraph 4 of Schedule 6 to the Finance Act 1989 (c. 26). *See also* paragraph 18(2) of Schedule 6 to that Act

(**6**) Section 5(3) is amended by Article 133(4) of, and paragraph 17 of Schedule 3 to, the Pensions (Northern Ireland) Order 1995

(**7**) Section 49 applies to occupational pension schemes by virtue of section 48(1) of the Pension Schemes (Northern Ireland) Act 1993. Section 49 is amended by paragraph 40 of Schedule 3 to the Pensions (Northern Ireland) Order 1995

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

(**9**) Section 5(2) to (2C) was substituted for section 5(2) by Article 133(3) of the Pensions (Northern Ireland) Order 1995

appointed day in employment which is contracted-out in accordance with section 5(2B), and

(b) where a transfer payment has been made to a salary related contracted-out scheme in respect of rights mentioned in paragraph (*a*) or of post-97 protected rights (as defined in regulation 1(2) of the Protected Rights (Transfer Payment) Regulations (Northern Ireland) 1996(**10**)), any rights arising under that scheme as a consequence of that payment, or, where only part of it was made in respect of such rights, of that part of it;

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

(3) The Interpretation Act (Northern Ireland) 1954(**11**) shall apply to these Regulations as it applies to a Measure of the Assembly.

(4) In these Regulations any reference to a numbered section is a reference to the section of the 1993 Act bearing that number.

Part II

Transfers of, and Transfer Payments in respect of, Guaranteed Minimum Pensions

General

2.—(1) A transfer or transfer payment from an occupational pension scheme of, or in respect of, the accrued rights of an earner to guaranteed minimum pensions may be made in accordance with whichever of regulations 3 to 6 is applicable and no such transfer or transfer payment may otherwise be made from such a scheme.

(2) A transfer or transfer payment from an appropriate policy of, or in respect of, the accrued rights of an earner to guaranteed minimum pensions which are appropriately secured may be made in accordance with whichever of regulations 3, 5 or 6 is applicable and no such transfer or transfer payment may otherwise be made from such a policy.

(3) A transfer of liability for the payment of guaranteed minimum pensions to, or in respect of, any person who has become entitled to them may be made from an occupational pension scheme in accordance with whichever of regulations 3 or 4 is applicable and no such transfer may otherwise be made.

(4) In regulations 3 to 6 "transfer" means a transfer, of accrued rights or liability, such as is described in this regulation and "transfer payment" means a payment in respect of accrued rights such as is described in this regulation.

Transfers of guaranteed minimum pensions to salary related contracted-out schemes

3. A transfer may be made to a salary related contracted-out scheme if—

(a) the earner or person concerned consents in writing;

(b) in the case of a transfer of the accrued rights of an earner—

(i) the earner is employed by an employer who is a contributor to the receiving scheme, or

(ii) the earner has previously been a member of the receiving scheme;

(**10**) S.R. 1996 No. 509.
(**11**) 1954 c. 33 (N.I.)

(c) in the case of a transfer of the accrued rights of an earner who is not in employment which is contracted-out by reference to the receiving scheme, the conditions specified in paragraphs 1 to 4 of Schedule 1 are satisfied, unless the transfer is from an appropriate policy in which case the condition set out in paragraph 5 of Schedule 1 must be satisfied;

(d) in the case of a transfer of the accrued rights of an earner from an appropriate policy, the receiving scheme does not make provision under section 12(2) and (3)(**12**) (revaluation of earnings factors for purposes of section 10: early leavers, etc.), or any analogous provision, in relation to the rights transferred where the effect would be to increase them at a different rate from that at which they would have been increased had the transfer not taken place, and

(e) in the case of a transfer of liability for the payment of guaranteed minimum pensions to, or in respect of, a person who has become entitled to them, the transfer is from a scheme and the conditions set out in paragraph 6 of Schedule 1 are satisfied.

Connected employer transfers of guaranteed minimum pensions

4. A connected employer transfer may be made to a salary related contracted-out scheme subject to the conditions set out in regulation 3(*c*) and (*e*).

Transfer payments in respect of guaranteed minimum pensions to money purchase contracted-out schemes and appropriate personal pension schemes

5. A transfer payment may be made to a money purchase contracted-out scheme or an appropriate personal pension scheme if—

(a) the earner consents in writing;

(b) the transfer payment is to a money purchase contracted-out scheme—

(i) the earner is employed by an employer who is a contributor to the receiving scheme, or

(ii) the earner has previously been a member of the receiving scheme;

(c) the transfer payment is applied so as to provide money purchase benefits under the receiving scheme for, or in respect of, the earner, and

(d) the transfer payment (whether or not it forms part of a larger payment in respect of both guaranteed minimum pensions and other rights) is of an amount at least equal to the cash equivalent of the earner's accrued rights to guaranteed minimum pensions, as calculated and verified in a manner consistent with regulations made under section 93(**13**) (calculation of cash equivalents).

Transfer payments in respect of guaranteed minimum pensions to overseas schemes

6. A transfer payment may be made to an overseas scheme if—

(a) the earner consents in writing;

(b) the trustees of the transferring scheme have taken reasonable steps to satisfy themselves that the earner has emigrated on a permanent basis and has entered employment to which the receiving scheme applies;

(c) the transfer payment (whether or not it forms part of a larger payment in respect of both guaranteed minimum pensions and other rights) is of an amount at least equal to the cash equivalent of the earner's accrued rights to guaranteed minimum pensions, as calculated and verified in a manner consistent with regulations made under section 93;

(**12**) Section 12(3) was amended by paragraph 21(*a*) of Schedule 3 to the Pensions (Northern Ireland) Order 1995
(**13**) Section 93 was amended by paragraph 6 of Schedule 4 to the Pensions (Northern Ireland) Order 1995

(d) the earner has acknowledged in writing that he accepts that the scheme to which the transfer payment is to be made may not be regulated in any way by the law of the United Kingdom and that as a consequence there may be no obligation under that law on the receiving scheme or its trustees or administrators to provide any particular value or benefit in return for the transfer payment, and

(e) the trustees of the transferring scheme have taken reasonable steps to satisfy themselves that the earner has received a statement from the receiving scheme showing the benefits to be awarded in respect of the transfer payment and the conditions (if any) on which these could be forfeited or withheld.

Part III

Transfers of Liability in Respect of Section 5(2B) Rights

General

7.—(1) A transfer of liability—

(a) from a salary related contracted-out scheme (or a scheme which was formerly a salary related contracted-out scheme) or from an appropriate policy in respect of the accrued section 5(2B) rights of an earner, or

(b) from a salary related contracted-out scheme (or a scheme which was formerly a salary related contracted-out scheme) for the payment to, or in respect of, a person who has become entitled to them of pensions under that scheme deriving from section 5(2B) rights,

may be made in accordance with arrangements which satisfy paragraph (2) and no such transfer may be made otherwise.

(2) The arrangements referred to in paragraph (1) must result in there being made—

(a) in the case of a transfer referred to in paragraph (1)(*a*), a transfer payment to the receiving scheme or overseas arrangement, in accordance with whichever of regulations 8 to 11 is applicable, of at least the cash equivalent of the accrued section 5(2B) rights in respect of which the transfer is being made, as calculated and verified in a manner consistent with regulations made under section 93, and

(b) in the case of a transfer referred to in paragraph (1)(*b*), a connected employer transfer payment to a salary related contracted-out scheme in accordance with regulation 9.

(3) In this regulation and regulations 8 to 11 "transfer payment" means a payment to effect a transfer of liability such as is referred to in paragraph (1).

Transfer payments to salary related contracted-out schemes in respect of section 5(2B) rights

8. A transfer payment in respect of an earner's accrued section 5(2B) rights may be made to a salary related contracted-out scheme if—

(a) the earner consents in writing;

(b) the earner—

(i) is employed by an employer who is a contributor to the receiving scheme, or

(ii) has previously been a member of the receiving scheme, and

(c) the transfer payment is applied to provide rights for the earner or person concerned which, had they accrued in the receiving scheme, would be provided in accordance with the rules of the receiving scheme relating to earners who are in employment which is contracted-out