STATUTORY RULES OF NORTHERN IRELAND

1996 No. 493

PENSIONS

The Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996

Made - - - -	*16th October 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 the provisions set out in Schedule 1 and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Part I

Preliminary

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996 and shall come into operation on 6th April 1997.

(2) In these Regulations—

"the Act" means the Pension Schemes (Northern Ireland) Act 1993(**1**);

"the actuary" means the actuary appointed for the scheme in pursuance of Article 47(1) of the Order or the actuary otherwise authorised by virtue of these Regulations to provide certification in accordance with section 8A(6) of the Act(**2**);

"the Administration Act" means the Social Security Administration (Northern Ireland) Act 1992(**3**);

"administrator", in relation to an occupational pension scheme, means the person resident in the United Kingdom having responsibility for the management of the scheme or, in the case of an overseas scheme, means the person resident in the United Kingdom appointed in accordance with section 590(2)(*c*) of the Taxes Act;

(**1**) 1993 c. 49
(**2**) Section 8A was inserted by Article 133(5) of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))
(**3**) 1992 c. 8

"age-related payment" means a payment made by the Department in accordance with section 38A(3) of the Act(**4**);

"the Contributions and Benefits Act" means the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**5**);

"earnings period" has the same meaning as in the Social Security (Contributions) Regulations (Northern Ireland) 1979(**6**);

"emoluments" means so much of a person's remuneration or profit derived from employed earner's employment as constitutes earnings for the purposes of the Contributions and Benefits Act;

"employer" includes a person who, under paragraphs (3) or (4) or regulations 12 to 14, is treated as an employer;

"income tax month" means a period beginning on the 6th day of any calendar month and ending on the 5th day of the following calendar month;

"independent trade union" means an independent trade union recognised to any extent for the purpose of collective bargaining;

"insured scheme" means a scheme in which the benefits are secured by one or more policies of insurance or annuity contracts and which is managed by an insurance company which issued the policy or contract;

"minimum funding requirement" shall be construed in accordance with Article 56 of the Order;

"the Occupational Pensions Board" means the Occupational Pensions Board established under section 66 of the Social Security Act 1973(**7**) and dissolved under section 150 of the Pensions Act 1995(**8**);

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

"overseas scheme" means an occupational pension scheme which is—

(a) established under irrevocable trust or by such other means as the Department may approve, and

(b) administered wholly or primarily,

outside the United Kingdom;

"principal appointed day" has the same meaning as in section 3(2B) of the Act(**9**);

"scheme" means an occupational pension scheme;

"section 5(2B) rights" are rights (other than rights attributable to voluntary contributions within the meaning of section 107 of the Act) 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) of the Act(**10**);

"the Taxes Act" means the Income and Corporation Taxes Act 1988(**11**);

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

(**4**) Section 38A was inserted by Article 134(4) of the Pensions (Northern Ireland) Order 1995
(**5**) 1992 c. 7
(**6**) S.R. 1979 No. 186; relevant amending regulations are S.R. 1980 No. 463, S.R. 1983 No. 8 and S.R. 1987 No. 143
(**7**) 1973 c. 38; section 66 was repealed by Part I of Schedule 5 to the Pension Schemes Act 1993 (c. 48), but the Occupational Pensions Board continued by virtue of section 2 of that Act
(**8**) 1995 c. 26
(**9**) Section 3(2B) was inserted by Article 133(1) of the Pensions (Northern Ireland) Order 1995
(**10**) Section 5(2B) was substituted by Article 133(3) of the Pensions (Northern Ireland) Order 1995
(**11**) 1988 c. 1

(3) For the purposes of these Regulations, any person, government department or public authority who, under Part I of the Contributions and Benefits Act or regulations made thereunder, is, or is to be treated as, the secondary Class 1 contributor shall be treated as the employer of the earner in respect of whom the Class 1 contributions are payable.

(4) For the purposes of the Regulations and without prejudice to paragraph (3), there shall be treated as the employer of a self-employed earner to whom a scheme applies any person (other than that self-employed earner), government department or public authority who makes or is liable to make payments towards the resources of the scheme in respect of that self-employed earner (either under actual or contingent legal obligation or in the exercise of power conferred, or duty imposed, on a Minister of the Crown, government department or any other person, being a power or duty which extends to the disbursement or allocation of public money).

(5) For the purposes of these Regulations, a person is to be regarded as a member of a scheme during a period when his service in relevant employment is such that at the time when it is given it either—

(a) qualifies him for benefits (in the form of a pension or otherwise, payable on the termination of his service or on his retirement or his death) under the scheme which in the opinion of the Department are referable to that period, or

(b) is certain so to qualify him subsequently if it continues for a sufficiently long time and the rules of the scheme and the terms of his contract of service remain unaltered during that time.

(6) Any document required or authorised to be sent to any person shall be deemed to have been sent if it was sent by post to that person's usual or last known address or (in the case only of a document required or authorised to be sent to an employer) to the address of the principal place at which any employment to which the document relates is last known to have been carried on.

(7) Subject to paragraph (8), the Interpretation Act (Northern Ireland) 1954(**12**) shall apply to these Regulations as it applies to a Measure of the Assembly.

(8) 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.

Part II

Certification of Employments

Making of elections for the issue of contracting-out certificates

2.—(1) Subject to regulation 10, an election with a view to the issue of a contracting-out certificate—

(a) may only be made—

(i) after notices to make such an election have been given by the employer in accordance with regulation 3, and

(ii) within the period after the expiry of those notices which is specified in regulation 5, and

(b) shall be made in writing to the Department and shall include the particulars specified in regulation 6.

(**12**) 1954 c. 33 (N.I.)

(2) An employer may elect that an employment of earners in an employment shall be contracted out by reference to a scheme in relation to all earners in that employment with the exception of those mentioned in either or both of sub-paragraphs (*a*) and (*b*)—

(a) where an earner in an employment to which the scheme relates opts in writing not to join or, as the case may be, not to remain as a member of any contracted-out employment to which the scheme relates, any earner who so opts, and

(b) in a case where it is possible for one or more earners to be unable to complete 5 years' service in that employment as members of that scheme before reaching the normal pension age of that scheme, the earner or earners whose length of service (consisting of service in that employment as a member of that scheme, or linked qualifying service in relation to such service, or both) falls short of a minimum length of service (not exceeding 5 years) specified in the rules of the scheme and who cannot (so far as is known when the contracting-out certificate is issued, or if later in the case of a particular earner, when he enters the employment) complete such a minimum length of service before reaching the normal pension age of the scheme.

Notices by employers of intended election

3.—(1) A notice of intention to make an election with a view to the issue of a contracting-out certificate shall be given by the employer, in the manner specified in paragraph (3), to—

(a) the earners in respect of whose employment the election is proposed to be made, and those (if any) in that employment in relation to whom the employer is not electing that the employment shall be treated as contracted out;

(b) the trustees and administrator of the scheme to which the election is to relate;

(c) where there is a policy of insurance or annuity contract as a means of securing the protected rights, guaranteed minimum pensions or any benefits arising in respect of section 5(2B) rights to be payable under the scheme, the insurance company or friendly society concerned, and

(d) all independent trade unions recognised in relation to the earners concerned.

(2) Notices given under this regulation shall be in writing and shall—

(a) specify the scheme and the employments concerned and, if the election is not intended to be in relation to all earners in those employments, the categories or descriptions of the earners to be so affected;

(b) specify the date from which it is intended that the contracting-out certificate shall have effect;

(c) describe (whether or not by reference to another document) the benefits payable under the scheme to, and the contributions (if any) payable to the scheme by, the earners to be covered by the election, and the changes (if any) which would be made to those benefits and contributions if the employment were contracted out;

(d) specify the date of expiry of the notice in accordance with paragraphs (4) and (5);

(e) specify the name and business address of the person to whom representations may be made with respect to the matters included in the notice;

(f) contain a statement that—

(i) such representations may also be made to the Department;

(ii) the Department may defer its determination to enable the election to be further considered in the light of representations made by or on behalf of the persons to whom the notice is given;

(iii) the Department has power to refuse to give effect to the election if it is not satisfied that the employer has undertaken consultations about the matters covered by the notice with all independent trade unions recognised in relation to the earners concerned, and

(g) explain (whether or not by reference to another document)—

(i) whether the employment would be contracted out by reference to a salary related or money purchase contracted-out scheme and how benefits would accrue to a member under the scheme if the employment were contracted out;

(ii) how, if the employment were contracted out, the additional pensions of state retirement pensions and widows' and widowers' benefits payable to or in respect of the earners in that employment under the Contributions and Benefits Act, and the rates at which contributions payable by those earners under Part I of that Act, would be affected;

(iii) where further information about the scheme, state retirement pensions and the benefits mentioned in head (ii) can be obtained.

(3) A notice under this regulation shall be given—

(a) to any earner concerned by—

(i) sending or delivering it to him, or

(ii) exhibiting it conspicuously at the place of work or employment so that it may be read conveniently by him and by drawing his attention to it in writing;

(b) to any other person, by sending or delivering it to that person.

(4) Subject to paragraph (5), a notice may specify a date of expiry which is not earlier than the date one month after that on which the notice is given.

(5) If any independent trade union recognised in relation to the earners concerned does not assent to the period of notice specified in accordance with paragraph (4), a notice must specify a date of expiry which is not earlier than the date 3 months after that on which the notice is given.

Consultation with trade unions

4.—(1) An employer who has given a notice under regulation 3 shall undertake consultations, if he has not already done so, about the matters covered by the notice with all independent trade unions recognised in relation to the earners concerned.

(2) Any question whether an organisation is an independent trade union recognised in relation to earners may be referred by the employer of those earners, or by the organisation, to an industrial tribunal.

(3) Any question whether an employer has complied with the requirements as to consultations specified in paragraph (1) may be referred by the employer, or by an independent trade union recognised in relation to the earners concerned, to an industrial tribunal.

Time for making an election

5. An election may be made only after the date of expiry of the notice given under regulation 3 and within 3 months of that date (or such longer period as the Department may in its discretion allow), but nothing in this regulation shall prevent an election from being made after the giving of further notices which comply with the requirements of that regulation.

Information to be included in an election

6.—(1) An election shall include the following particulars—