1991 No. 39

SOCIAL SECURITY

The Contracting-out (Protection of Pensions) Regulations (Northern Ireland) 1991

Made . . . . . 11th February 1991

Coming into operation . . 28th February 1991

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 2(4) and (5), 43B(3), 43C(7) and 43E(2)(*e*) of the Social Security Pensions (Northern Ireland) Order 1975(**a**) 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 Contracting-out (Protection of Pensions) Regulations (Northern Ireland) 1991 and shall come into operation on 28th February 1991.

(2) Any reference in these regulations to a numbered Article is a reference to the Article of the Social Security Pensions (Northern Ireland) Order 1975 bearing that number.

Hybrid benefits

2.—(1) This regulation applies where a scheme provides for the rate of a pension for the earner, or the earner's widow or widower, to be the greater of—

(*a*) a rate that is calculated by reference to the earner's earnings; and

(*b*) a rate that is not calculated by reference to the earner's earnings.

(2) For the purposes of Articles 43A(**b**) (earner's pensions) and 43B(**c**) (widows' pensions), "the relevant sum" means an amount equal to the rate

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(**a**) S.I. 1975/1503 (N.I. 15); by virtue of Article 2(3), definitions in Schedule 17 to the Social Security (Northern Ireland) Act 1975 (c. 15) apply to the exercise of certain powers conferred under this Order. Articles 43B, 43C and 43E were inserted by Schedule 4 to the Health and Social Security (Northern Ireland) Order 1984 (S.I. 1984/1158 (N.I. 8)). Article 43B(3) was amended by Article 8(5) of the Social Security (Northern Ireland) Order 1985 (S.I. 1985/1209 (N.I. 16)). *See also* Article 11(4)(*f*) of the Social Security (Northern Ireland) Order 1986 (S.I. 1986/1888 (N.I. 18))

(**b**) Article 43A was inserted by Schedule 4 to the Health and Social Security (Northern Ireland) Order 1984 and amended by Article 8(1) and (2) of, paragraphs 14 and 15 of Schedule 5 to, and Schedule 6 to, the Social Security (Northern Ireland) Order 1985, paragraph 7(1)(*d*) of Schedule 2 to, and paragraph 11 of Schedule 9 to, the Social Security (Northern Ireland) Order 1986, Schedule 9 to the Social Security (Northern Ireland) Order 1989 (S.I. 1989/1342 (N.I. 13)) and paragraph 7(1) to (4) and (8) of Schedule 4 to the Social Security (Northern Ireland) Order 1990 (S.I. 1990/1511 (N.I. 15))

(**c**) Article 43B was amended by Article 8(3) to (5) of, paragraph 16 of Schedule 5 to, and Schedule 6 to, the Social Security (Northern Ireland) Order 1985, Schedule 9 to the Social Security (Northern Ireland) Order 1989 and paragraph 7(1) and (5) to (7) of Schedule 4 to the Social Security (Northern Ireland) Order 1990. *See also* Article 11(4)(*f*) of the Social Security (Northern Ireland) Order 1986

that is calculated by reference to the earner's earnings, whether or not the rate of the pension is calculated by reference to those earnings. Articles 43A(3) and 43B(3) are modified accordingly.

Retirement benefits varied at pensionable age

3.—(1) This regulation applies where a scheme provides that the pension payable to an earner at normal pension age is to be reduced when, or after, the earner attains pensionable age.

(2) Where this regulation applies—

(*a*) Article 43A(1) is so modified as to allow the pension to be reduced; and

(*b*) Article 43A(3) is so modified as to allow the relevant sum to be recalculated, when the pension is reduced, without regard to the amount by which the pension is reduced.

Pensions for widows and widowers varied after commencement

4.—(1) This regulation applies where a scheme provides that an increased pension will be payable to the earner's widow or widower for a period ending not later than the later of—

(*a*) the date 6 months after the date of the earner's death; and

(*b*) if the earner dies after starting to receive a pension under the scheme, the date 10 years after the date on which the earner's pension became payable.

(2) For the purposes of Article 43B, the relevant sum is to be calculated as if the weekly rate at which the pension commences to be paid to the widow or widower did not include the increase referred to in paragraph (1). Article 43B(3) is modified accordingly.

The relevant sum for widows and widowers

5.—(1) This regulation prescribes the assumptions for the purpose of calculating "the relevant sum" defined in Article 43B(3).

(2) For the purposes of Article 43B, "the relevant sum" means an amount equal to the weekly rate at which a pension would have commenced to be paid to the widow or widower, on the assumptions that—

(*a*) the earner had died on the day after the termination of employment date being then married to the widow or widower; and

(*b*) the weekly rate of the pension was then calculated using the formula appropriate to the circumstances of the earner's actual death but excluding, where the earner dies in employment to which the scheme applies, any notional service after the termination of employment date.

Benefits other than short service benefit

6.—(1) This regulation applies where the earner reaches normal pension age after the termination of employment date and, on the termination of employment date, no short service benefit has accrued to the earner.

(2) For the purposes of Article 43C(**a**) (supplementary provisions), any provision contained in a scheme that would be a protected provision in relation to short service benefit, is to be treated as a protected provision in relation to any other benefit to which Article 43A(3)(*b*) applies. Article 43C is modified accordingly.

Transfers agreed but not implemented before 1st January 1985

7.—(1) This regulation applies where, before 1st January 1985, there was an enforceable agreement for the transfer of accrued rights to, or the liability for the payment of, benefits from one scheme to another. This regulation applies whether or not the enforceable agreement was subject to further agreements about the rates of benefit to be provided by the receiving scheme.

(2) For the purposes of Articles 43A(6) and 43B(5), the transfer pursuant to the enforceable agreement is to be treated as made before the commencement of those Articles. Articles 43A(6) and 43B(5) are modified accordingly.

The later earnings addition

8.—(1) This regulation applies where part of the pension for the earner, or the earner's widow or widower, accrues after the earner reaches normal pension age by reason of the earner's employment after that date.

(2) Articles 43A(2B) and 43B(3B) are so modified as to require the earner's later earnings level to be calculated as if the earner's termination of employment date had fallen on the earlier of—

(*a*) the earner's commencement of payment date; or

(*b*) the date on which the pension ceased to accrue under the scheme.

Applications to the Occupational Pensions Board

9.—(1) This regulation applies for the purposes of Article 43(E)(**b**) (which deals with applications to the Occupational Pensions Board for advice on any questions concerning the protection of pensions provisions).

(2) In Article 43E, ''employer'', ''member'' and ''prospective member'' mean the same as in regulations 2 and 3 of the Occupational Pension Schemes (Preservation of Benefit) Regulations (Northern Ireland) 1991(**c**).

(3) In addition to the persons referred to in Article 43E(2)(*a*) to (*d*), the widow or widower of any member of the scheme is competent to make an application under that Article in respect of the scheme.

(**a**) Article 43C was amended by paragraphs 3 and 7 of Schedule 3 to the Social Security (Northern Ireland) Order 1985, paragraph 4(1) of Schedule 6 to the Social Security (Northern Ireland) Order 1989 and paragraph 8(1), (2) and (4) of Schedule 4 to the Social Security (Northern Ireland) Order 1990

(**b**) Article 43E was amended by paragraph 7(3) of Schedule 2 to the Social Security (Northern Ireland) Order 1986

(**c**) S.R. 1991 No. 37