**1991 No. 37**

## SOCIAL SECURITY

# The Occupational Pension Schemes (Preservation of Benefit) Regulations (Northern Ireland) 1991

*Made* . . . . . *11th February 1991*

*Coming into operation* . . *28th February 1991*

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SCHEDULES

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The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 2(4) and (5), 53C(5), 58M, 60(1A) and 71(4) of, and paragraphs 14(3) and 20 of Schedule 1A to, and paragraphs 5(1), 6(5), 9(1), (2) and (3), 12(2), 13(5), 15(4) and 20 to 26 of Schedule 3 to, 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 Occupational Pension Schemes (Preservation of Benefit) Regulations (Northern Ireland) 1991 and shall come into operation on 28th February 1991.

(2) In these regulations—

"the Pensions Order" means the Social Security Pensions (Northern Ireland) Order 1975;

"the Board" means the Occupational Pensions Board.

(3) Any reference in these regulations to a numbered Article or Schedule is a reference to the Article of, or as the case may be, the Schedule to, the Pensions Order bearing that number.

*Meaning of "employer"*

**2.**—(1) This regulation applies for the purposes of Part V of the Pensions Order (occupational pensions).

(2) In relation to an employed earner, "employer" means the secondary contributor in relation to any payment of earnings in respect of the employment concerned.

(3) In relation to a self-employed earner, "employer" means any other person, government department or public authority who has made, or is to make, payments to the scheme in respect of the earner.

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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. Article 53C was inserted by paragraph 2 of Schedule 1 to the Social Security (Northern Ireland) Order 1985 (S.I. 1985/1209 (N.I. 16)) and amended by paragraph 17 of Schedule 9 to the Social Security (Northern Ireland) Order 1986 (S.I. 1986/1888 (N.I. 18)). *See also* paragraph 9 of Schedule 6 to the Social Security (Northern Ireland) Order 1989 (S.I. 1989/1342 (N.I. 13)). Article 58M was inserted by Article 13 of the Social Security (Northern Ireland) Order 1986 and Article 60(1A) was inserted by paragraph 19 of Schedule 9 to that Order. Schedule 1A was inserted by paragraph 3 of Schedule 1 to the Social Security (Northern Ireland) Order 1985 and paragraph 14(3) of that Schedule was substituted by paragraph 24(*d*)(iii) of Schedule 9 to the Social Security (Northern Ireland) Order 1986 and amended by paragraph 5 of Schedule 6 to S.R. 1987 No. 294. Paragraph 9(2) of Schedule 3 was amended by regulation 3(7) of S.R. 1987 No. 294 as amended by regulation 9(3) of S.R. 1990 No. 203 and paragraph 15(4) of that Schedule was amended by paragraph 12 of Schedule 6 to the Social Security (Northern Ireland) Order 1989 and is amended by paragraph 12(3) of Schedule 4 to the Social Security (Northern Ireland) Order 1990 with effect from 28th February 1991

(4) In this regulation, "employed earner" and "self-employed earner" mean the same as in section 2 of the principal Act (categories of earners) and "secondary contributor" means the same as in section 4 of the principal Act (Class 1 contributions — incidence).

*Meaning of "member" and "prospective member"*

**3.**—(1) This regulation applies for all the purposes of Part V of the Pensions Order.

(2) Any earners who are, or have been, in pensionable service under an occupational pension scheme are to be regarded as members of the scheme.

(3) There are to be regarded as prospective members of an occupational pension scheme—

(*a*) any earners who are able, at their own option, to become members of the scheme; and

(*b*) any earners who will become so able, if they continue in the same employment for a sufficiently long time and their contracts of service and the scheme rules remain unaltered during that time.

*Benefits included in supplementary credits*

**4.**—(1) For the purposes of paragraph 5(1)(*c*) of Schedule 3, in the circumstances set out in paragraph (2) "supplementary credits" include any increase of benefit or additional benefit that is of an amount, or at a rate, unrelated to length of pensionable service or to the number or amount of contributions paid by or for the member.

(2) The circumstances referred to in paragraph (1) are that the member becomes entitled to the increase of benefit or additional benefit in consequence of a provision made by or under the scheme after he becomes a member of it and before his pensionable service terminates.

*Short service benefit in lump sum form*

**5.**—(1) For the purposes of paragraph 6(5) of Schedule 3, a scheme may provide for payment of short service benefit in the form of a lump sum before normal pension age in the circumstances described in any of paragraphs (2) to (4) or any other circumstances where the Board consider it reasonable.

(2) The circumstances described in this paragraph are that the member's earning capacity is destroyed or seriously impaired by physical or mental infirmity.

(3) The circumstances described in this paragraph are that the member has become incapable of following his normal employment because of physical or mental infirmity.

(4) The circumstances described in this paragraph are that the member has attained age 50 or is within 10 years of normal pension age.

*Means of assuring short service benefit*

**6.**—(1) For the purposes of paragraph 9(1) of Schedule 3, short service benefit that is not payable directly out of the resources of the scheme may be assured to the member by means of a transaction to which Article 53C (cases

where a scheme's liability is discharged) applies, and which satisfies the requirements of paragraph (2).

(2) A transaction satisfies the requirements of this paragraph if—

(*a*) it results in the member's short service benefit being secured by one or more policies of insurance or annuity contracts that are appropriate for the purposes of Article 53C; and

(*b*) the member will be able to assign or surrender the insurance policies or annuity contracts on the conditions set out in regulation 2 of the Occupational Pension Schemes (Discharge of Liability) Regulations (Northern Ireland) 1985(**a**) (conditions on which policies of insurance and annuity contracts may be assigned or surrendered).

(3) For the purposes of paragraph (2), a policy of insurance or annuity contract which is taken out or entered into with an authorised friendly society, but which otherwise satisfies the conditions for being "appropriate" for the purposes of Article 53C, is to be treated as if it were appropriate for the purposes of Article 53C.

(4) In this regulation—

"friendly society" means a friendly society registered under—

(*a*) section 7(1)(*a*) of the Friendly Societies Act 1974(**b**) (societies which may be registered); or

(*b*) section 1(1)(*a*) of the Friendly Societies Act (Northern Ireland) 1970(**c**) (societies which may be registered); and

"authorised friendly society" means a friendly society—

(*a*) which is an authorised person, as defined in section 207(1) of the Financial Services Act 1986(**d**) (interpretation); and

(*b*) which is authorised under either regulation 5 or 6 of the Friendly Societies (Long Term Insurance Business) Regulations 1987(**e**) (authorisation of existing and new societies) to carry on long term business as defined in those regulations.

*Alternatives to short service benefit*

**7.**—(1) For the purposes of paragraph 9(2) of Schedule 3, a scheme may, instead of providing short service benefit, provide any of the alternatives to short service benefit described in regulations 8 to 10.

(2) The alternatives described in regulations 8 to 10 may be provided by way of complete or partial substitute for short service benefit, but (except in the cases specifically referred to) only with the member's consent.

(3) In addition to the alternatives to short service benefit described in regulations 8 to 10, the scheme may provide any other alternative to short

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(**a**) S.R. 1985 No. 356; relevant amending regulations are S.R. 1986 No. 362, S.R. 1987 No. 292 and S.R. 1988 No. 214
(**b**) 1974 c. 46
(**c**) 1970 c. 31 (N.I.)
(**d**) 1986 c. 60
(**e**) S.I. 1987/2132

service benefit that is consistent with paragraph 9(4) of Schedule 3 and is, in the Board's opinion, a suitable means of maintaining the provision of benefits in relation to a particular scheme or category of schemes.

(4) Any alternative provided by virtue of paragraph (3) may be provided by way of complete or partial substitute for short service benefit, but (except in any case where the Board consider it reasonable) only with the member's consent.

*Early retirement or deferred retirement*

**8.**—(1) The scheme may provide benefits that are different from those required to constitute short service benefit as regards amount, recipient and the time at which they are payable. The benefits must, however, include a benefit that is payable to the member.

(2) The member's benefit must not be payable before normal pension age except in the circumstances referred to in regulation 5.

(3) Benefits consisting of, or including, a benefit that becomes payable to the member before normal pension age may be provided without the member's consent where—

(*a*) the member's earning capacity is destroyed or seriously impaired by physical or mental infirmity; and

(*b*) in the opinion of the trustees or managers of the scheme, the member is incapable of deciding whether it is in his interests to consent.

(4) Any scheme rule that allows the alternative described in this regulation must require the trustees or managers of the scheme to be reasonably satisfied that, when the member's benefit becomes payable, the total value of the benefits to be provided under this regulation is at least equal to the amount described in regulation 11.

*Bought out benefits*

**9.**—(1) The scheme may provide for benefits different from those required to constitute short service benefit to be appropriately secured by a transaction to which Article 53C applies.

(2) Any scheme rule that allows the alternative described in this regulation must require the trustees or managers of the scheme to be reasonably satisfied that, except where paragraph (3) applies, the payment made to the insurance company is at least equal to the amount described in regulation 11.

(3) The exception to paragraph (2) is where the member is requiring the trustees or managers to provide the alternative by exercising a right to a cash equivalent, as described in Part II of Schedule 1A (transfer values).

(4) A scheme may allow the alternative described in this regulation to be provided without the member's consent where—

(*a*) the member will be able to assign or surrender the insurance policy or annuity contract on the conditions set out in regulation 2 of the Occupational Pension Schemes (Discharge of Liability) Regulations (Northern Ireland) 1985; and

(*b*) the requirements of paragraph (5) are satisfied.