1985 No. 259

SOCIAL SECURITY

The Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1985

Made . . . . . 25th September 1985

Coming into operation . . . 4th November 1985

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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), 32(4), 33(1), (4), (5) and (7), 34(2), 41(1) and (4)(*b*), 42, 43(1A), 45(4) and (6), 46(2), (3) and (6), 47(1) to (3), 48(7) and (11), 52, 52A(12), 53 and 71 (4) of, and paragraphs 1 to 3, 5 to 7 and 9 of Schedule 2 to, the Social Security Pensions (Northern Ireland) Order 1975(**a**) and Articles 17(1) and (2) and 18(9) and (13) of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977(**b**) and of all other powers enabling it in that behalf and for the purpose only of consolidating the regulations hereby revoked, 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) 1985 and shall come into operation on 4th November 1985.

(2) In these regulations—

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

"the Act" means the Social Security (Northern Ireland) Act 1975(**c**);

"the 1977 Order" means the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977;

"the 1960 Act" means the Companies Act (Northern Ireland) 1960(**d**);

"administrator", in relation to an occupational pension scheme, means the person or persons resident in the United Kingdom having the management of the scheme;

"the Board" means the Occupational Pensions Board;

"employer" includes a person who, by virtue of paragraphs (4) and (5) and regulations 14 and 15, is treated as an employer for the purposes of these regulations;

"relevant year", in relation to an earner, means any tax year in his working life (not being earlier than the first tax year for which lower and upper earnings limits are specified under Article 3);

"responsible paying authority" means—

(*a*) in relation to a public service scheme, the authority responsible for paying the benefits of that scheme;

(**a**) S.I. 1975/1503 (N.I. 15); Article 42 was amended by Article 18(8) of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977 (S.I. 1977/610 (N.I. 11)), paragraph (1A) was inserted into Article 43 by Article 4(5) of the Social Security (Northern Ireland) Order 1980 (S.I. 1980/870 (N.I. 8)), Article 46(6) was substituted by Article 4(7) of the Social Security (Northern Ireland) Order 1980, Article 47(1) was amended by Article 18(7) of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977, Article 47(3) was amended by Article 4(8) of the Social Security (Northern Ireland) Order 1980, Article 52A was inserted by Article 33 of the Social Security (Northern Ireland) Order 1982 (S.I. 1982/1084 (N.I. 16)), and paragraph 6 of Schedule 2 was amended by Article 4(11) of the Social Security (Northern Ireland) Order 1980

(**b**) S.I. 1977/610 (N.I. 11); Article 17(1) was amended by Article 4(3) of the Social Security (Northern Ireland) Order 1980, Article 18(13) was amended by Article 15(1) of, and paragraph 9 of Schedule 3 to, the Social Security (Northern Ireland) Order 1980

(**c**) 1975 c. 15

(**d**) 1960 c. 22 (N.I.); section 148 was amended by Article 34 of the Companies (Northern Ireland) Order 1978 (N.I. 12)

(*b*) in relation to a scheme where the benefits, or so much of the benefits as represents guaranteed minimum pensions, are secured by means of a policy of insurance or annuity contract in accordance with regulation 28, and at least one of the following conditions is fulfilled,

(i) the policy of insurance or annuity contract satisfies the conditions specified in regulation 36,

(ii) the policy of insurance is taken out or the annuity contract entered into in accordance with arrangements approved by the Board under Article 46, and

(iii) the scheme is not set up or established under an irrevocable trust,

the insurance company or friendly society with which the policy of insurance is taken out or the contract entered into;

(*c*) in relation to any other scheme, the trustees of the scheme;

"scheme" means an occupational pension scheme;

"trade union recognised to any extent", includes a trade union which is treated as recognised to any extent under Article 33(9)(**a**);

"trustees", in relation to a scheme which is not set up or established under a trust, and except in Part II of these regulations, means the administrator of the scheme.

(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.

(4) For the purposes of these regulations, any person, government department, public authority or body of persons who, under Part I of the Act 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.

(5) For the purposes of these regulations and without prejudice to paragraph (4), 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, public authority or body of persons who makes or is 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).

(6) For the purposes of these regulations, any 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 Board 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.

(7) Any document required or authorised under the provisions of these regulations to be sent to any person or body shall be deemed to have been sent if it was sent by registered post or by recorded delivery service to that person's or that body'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.

(a) Article 33(9) was inserted by Article 82(1) of, and Part III of Schedule 5 to, the Industrial Relations (Northern Ireland) Order 1976 (S.I. 1976/1043 (N.I. 16))

PART II

CERTIFICATION OF EMPLOYMENTS

Making of elections for the issue of contracting-out certificates

2.—(1) Subject to the provisions of regulation 11, every election with a view to the issue of a certificate that employment is contracted-out employment (a contracting-out certificate) shall be made—

(*a*) only after notices to make such an election have been given by the employer in accordance with regulation 3;

(*b*) within the period after the expiry of those notices which is specified in regulation 5; and

(*c*) in writing to the Board;

and shall include the particulars specified in regulation 6.

(2) In a case where it is possible for some of the earners in an employment who are members of a scheme 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 employer of those earners may elect that that employment shall be contracted-out by reference to that scheme in relation only to those 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) is as great as, or greater than, a minimum length of service (not exceeding 5 years) specified in the rules of the scheme, and to those earners who can (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) Notices of intention to make an election such as is mentioned in regulation 2 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, including those (if any) in relation to whom the employer is not electing that the employment shall be treated as contracted-out;

(*b*) the trustees (if any) 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 guaranteed minimum pensions to be payable under the scheme, the insurance company or friendly society concerned; and

(*d*) all independent trade unions recognised to any extent for the purpose of collective bargaining in relation to the earners concerned.

(2) Notices given under this regulation 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*) give a description (which may be a description by reference to another document) of 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 of the changes (if any) which would be made to those benefits and contributions if the employment were contracted-out;