1983 No. 55

SOCIAL SECURITY

The Contracted-out Employment (Miscellaneous Provisions) Regulations (Northern Ireland) 1983

Made . . . . . *22nd March 1983*

Coming into operation . . . *5th April 1983*

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 43(1A), 46(2), 47(1), 52A(12) and 71(4) of, and paragraphs 5, 6 and 9 of Schedule 2 to, the Social Security Pensions (Northern Ireland) Order 1975(**a**) and Articles 17(1) and (2) and 18(13) of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977(**b**), and of all other powers enabling it in that behalf, hereby makes the following regulations:

Citation and commencement

1. These regulations may be cited as the Contracted-out Employment (Miscellaneous Provisions) Regulations (Northern Ireland) 1983 and shall come into operation on 5th April 1983.

Sufficiency of the resources of occupational pension schemes

2. In a case where the Occupational Pensions Board are unable to be satisfied, for the purposes of paragraph (1) of Article 43 of the Social Security Pensions (Northern Ireland) Order 1975, that the resources of an occupational pension scheme are sufficient for meeting the requirements specified in that paragraph but they are satisfied (subject to such conditions as they may impose or otherwise) that the resources of the scheme are sufficient for meeting the requirements specified in sub-paragraph (*a*) (claims in respect of guaranteed minimum pensions) and sub-paragraph (*c*) (liabilities and expenses on winding up) of the said paragraph (1), that paragraph shall have effect as if sub-paragraph (*b*) thereof (payments in respect of state scheme premiums) were omitted.

Amendment of the Contracted-out Employment (Notifications, Premium Payment and Miscellaneous Provisions) Regulations (Northern Ireland) 1976

3.—(1) The Contracted-out Employment (Notifications, Premium Payment and Miscellaneous Provisions) Regulations (Northern Ireland) 1976(**c**) shall be amended in accordance with the following provisions.

(2) For regulation 3 there shall be substituted the following regulation—

"Liability for payment of state scheme premiums

3.—(1) For the purposes of Article 46(2) of the Order (payment of accrued rights premiums and pensioner's rights premiums) the prescribed person is—

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

(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, and Article 18(13) was amended by Article 15(1) of, and paragraph 9 of Schedule 3 to, that Order and repealed in part by Article 16 of, and Part I of Schedule 4 to, that Order

(c) S.R. 1976 No. 101; the relevant amending regulations are S.R. 1978 No. 74 and S.R. 1981 No. 32

(*a*) the trustees of the scheme; or

(*b*) in the case of a person to whom sub-paragraphs (*a*), (*b*) and (*d*)(ii) of regulation 8(5) apply and for the purpose only of enabling payment of the premium, that person.

(2) For the purposes of Articles 44 to 47 of the Order the person to be treated as the employer of an employed earner is—

(*a*) subject to sub-paragraphs (*b*) to (*f*), in the case of an employed earner, including an employed earner such as is mentioned in paragraph 6(2) of Schedule 2 to the Order, any person, government department, public authority or body of persons who, under Part I of the Social Security (Northern Ireland) Act 1975(**a**), is, or is to be treated as, the secondary Class 1 contributor in respect of that earner;

(*b*) in a case where the employer (within the meaning of sub-paragraph (*a*)) of an employed earner in contracted-out employment is insolvent, the trustees of the scheme by reference to which the earner's employment is contracted-out employment, so however that except in the case of a premium under Article 44(3) of the Order the trustees of the scheme shall be liable by virtue of this sub-paragraph only for so much of any state scheme premium as is not recovered from the insolvent employer as a priority debt by virtue of the provisions of paragraph 3 of Schedule 4 to the Order;

(*c*) in a case where a scheme ceases to be contracted-out, and by virtue of arrangements approved by the Board under Article 46(1) of the Order a limited revaluation premium is payable under Article 47(1) of the Order, the trustees of that scheme;

(*d*) in a case where an employed earner's employer (within the meaning of sub-paragraph (*a*)) dies or otherwise ceases to be his employer and the business is taken over by a new employer and the earner's employment in contracted-out employment is to be treated as continuing under the new employer by virtue of regulation 9(5) of the Contracting-out regulations, that new employer;

(*e*) in a case where a holding company within the meaning of section 148 of the Companies Act (Northern Ireland) 1960(**b**) or a company which is treated by the Board under regulation 13(1)(*b*)(ii) of the Occupational Pension Schemes (Certification of Employments) Regulations (Northern Ireland) 1976(**c**) as a holding company, has made an election to contract out in respect of earners employed by one or more subsidiary companies of that company, that holding company or, as the case may be, that company which is treated as a holding company; and

(*f*) in a case where Article 47(1) of the Order as modified by regulation 8B(*e*) applies, the employer of the earner in the employment by reference to the scheme from which the earner's accrued rights to requisite benefits have been transferred.

(3) Where the amount of a state scheme premium payable under the Order does not exceed £5 the person who would otherwise be liable to pay that premium shall not be so liable, but may nevertheless choose to pay it; and if any such premium is not paid, then for the purpose of extinguishing the earner's entitlement to the guaranteed minimum pension to which the premium relates the premium shall be treated as if it had been paid.

(a) 1975 c. 15
(b) 1960 c. 22 (N.I.)
(c) S.R. 1976 No. 5 to which there are amendments not relevant to the subject matter of these regulations

(4) For the purposes of Article 46 (accrued rights premiums and pensioner's rights premiums)(a) and Article 47 (limited revaluation premiums)(b) of the Order the Board shall certify to the Department—

(*a*) in the event of a contracted-out scheme ceasing to be contracted-out, whether or not an earner's accrued rights to or a pensioner's rights to guaranteed minimum pension (not being a pension which is the subject of a certificate issued by the Department under Article 18(9) of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977 and still in force) are subject to approved arrangements as mentioned in the said Article 46;

(*b*) in the event of a contracted-out scheme ceasing to be contracted-out and in the event thereafter of the withdrawal of such a certificate issued by the Department as aforesaid, whether or not the accrued rights or rights to the guaranteed minimum pension which was the subject of the certificate are subject to approved arrangements as mentioned in the said Article 46; and

(*c*) in the event of rights which are subject to approved arrangements as mentioned in the said Article 46 ceasing to be so subject, the date on which those rights ceased to be so subject.

(5) Any liability for the payment of a state scheme premium which is, by any provisions of these regulations, imposed on the trustees of a scheme shall be a liability to make that payment out of the resources of the scheme.''.

(3) For regulation 7 there shall be substituted the following regulation—

''*Alternative to limited revaluation premium*

7.—(1) For the purposes of Article 47(1)(*b*) of the Order (exclusion from liability to pay a limited revaluation premium), where a scheme provides, under Article 37(7) of the Order(c), for the earnings factors of an earner whose service in contracted-out employment by reference to the scheme is terminated before he attains pensionable age to be determined without reference to any order that comes into force under Article 23 of the Order after the relevant year in which his service is terminated, then, subject to the following provisions of this regulation, there shall be no liability to pay a limited revaluation premium in respect of such an earner if the provisions made by the scheme under the said Article 37(7) conform with the following additional requirement, namely that the rate of increase specified by the scheme for the purposes of the said Article 37(7) is at least 8½ per cent. compound for each relevant year after the year in which the earner's service is terminated, notwithstanding that the amount by which an earnings factor for that year equal to that weekly equivalent would be increased by the last order that comes into force under the said Article 23 before the end of the final relevant year is less than the amount produced by that rate.

(2) Paragraph (1) applies only so as to permit the same such provision to be made for all members of the scheme, so however that separate provision may be made for members as regards their accrued rights transferred in accordance with Article 40(1) of the Order(d).

(a) Article 46(6) was substituted by Article 4(7) of the Social Security (Northern Ireland) Order 1980
(b) Article 47(3) was substituted in part by Article 4(8) of the Social Security (Northern Ireland) Order 1980
(c) Article 37(7) was amended by Article 18(7) of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977 and by Article 16 of, and paragraph 19(*b*) of Schedule 3 to, the Social Security (Northern Ireland) Order 1979 (S.I. 1979/396 (N.I. 5))
(d) Article 40(1) was amended by Article 4(4) of the Social Security (Northern Ireland) Order 1980

(3) In a case to which regulation 8B applies, where a scheme provides, under Article 37(7) of the Order, for earnings factors of an earner whose accrued rights to requisite benefits including such rights derived from linked qualifying service have been transferred under Article 40(1) of the Order from another scheme to be determined without reference to any order that comes into force under Article 23 of the Order after the relevant year in which his service in the contracted-out employment to which that other scheme related was terminated, there shall be no liability to pay a limited revaluation premium in respect of such an earner if the provisions made by the scheme under the said Article 37(7) conform with the following additional requirement, namely that the rate of increase specified by the scheme for the purposes of the said Article 37(7) is at least 8½ per cent. compound for each relevant year—

(*a*) after the year in which that service was terminated, in any case where such earnings factors or weekly equivalent have previously fallen to be determined by reference to orders under the said Article 23, or

(*b*) from and including the year in which that service was terminated, in any other case,

notwithstanding that the amount by which an earnings factor for any such relevant year equal to that weekly equivalent would be increased by the last order that comes into force under the said Article 23 before the end of the final relevant year is less than the amount produced by that rate.''.

(4) For regulation 8 there shall be substituted the following regulations—

''*Miscellaneous provisions affecting state scheme premiums and guaranteed minimum pension rights*

8.—(1) Subject to paragraphs (2) and (3), where—

(*a*) an employer has elected to pay a contributions equivalent premium under Article 44(2) or (3) of the Order, or

(*b*) an accrued rights premium or a pensioner's rights premium is payable under Article 46(2) of the Order pursuant to certification by the Board to the Department under regulation 3(4),

the premium shall, for the purpose of extinguishing the earner's accrued rights to or, as the case may be, pensioner's rights to guaranteed minimum pensions under a scheme, be treated as having been paid, or paid in part in a case to which either paragraphs (5) and (6) or (7) apply, on the date on which the earner ceased to be in contracted-out employment by reference to that scheme or, where the premium is an accrued rights premium or a pensioner's rights premium, on the date on which that scheme ceased to be contracted-out or on any date certified by the Board under regulation 3(4)(*c*) in relation to those rights, whichever is the later.

(2) Where a premium has been treated as paid under paragraph (1), the effect of that paragraph shall, except as provided in paragraph (4), be disregarded if—

(*a*) the Board subsequently approve arrangements for the preservation or transfer of the earner's accrued rights to or, as the case may be, pensioner's rights to guaranteed minimum pensions, or

(*b*) the person who is liable to pay that premium fails to do so within the period prescribed by regulation 5(1) or such longer period as the Department may allow under regulation 5(2).

(3) Where by virtue of the operation of paragraphs (1) and (2) in relation to a person entitled to a benefit specified in Article 31(1)(*a*) of the Order an amount of such benefit, as certified by the Department, was paid to that person which would not otherwise have been paid—

(*a*) the Department shall be entitled to recover that amount from the scheme and any amount so recovered shall be paid into the National Insurance Fund, and

(*b*) the sums payable under the scheme to that person may be reduced by the amount so recovered by the Department.

(4) Paragraph (2)(*b*) shall not apply where the Department is satisfied that the failure to pay was not with the consent or connivance of, or attributable to any negligence on the part of, the person in respect of whom the premium is payable, and—

(*a*) where, subject to paragraphs (5) and (6), the scheme, being a scheme which is or has been contracted-out, is being or has been wound up; or

(*b*) where—

(i) a person, having elected to pay a contributions equivalent premium, has been sent a notice certifying that an increased amount of that premium is payable, and

(ii) the said increased amount either does not exceed £5 or, if it exceeds £5, remains unpaid to an extent not exceeding any such part of the increased amount as that person may be entitled to recover by virtue of Article 48 of the Order(**a**).

(5) In the case of a person—

(*a*) whose accrued rights to, or whose rights to receive, guaranteed minimum pension under a contracted-out scheme have been secured wholly or, to the extent of the scheme's resources, in part by an insurance policy or annuity contract which meets the approval of the Board or the conditions prescribed in regulation 2 of the Contracted-out Employment (Miscellaneous Provisions) Regulations (Northern Ireland) 1977(**b**), and

(*b*) in respect of whom a state scheme premium has become payable by reason of—

(i) the withdrawal by the Board of their approval of, or their inability to give their approval to, arrangements for the preservation or transfer of that person's said rights in pursuance of Article 46 of the Order, or

(ii) the cancellation by the Department of its certificate under Article 18(10) of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977(**c**), and either

(*c*) whose said rights cannot be extinguished by payment of that premium for the reason that the resources of the said scheme, being a scheme which is being or has been wound-up, are insufficient to meet the cost of that premium, or

(*d*) to whom, or for whose benefit, the Policyholders Protection Board, under the provisions of the Policyholders Protection Act 1975(**d**), have, where the said scheme has been wound up—

(i) secured a substituted policy of insurance or annuity contract, or

(ii) paid a cash sum in lieu of the benefits previously secured as specified in sub-paragraph (*a*),

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(**a**) Article 48(1) was amended by Article 18(14) of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977

(**b**) S.R. 1977 No. 286 to which there are amendments not relevant to the subject matter of these regulations

(**c**) Article 18(10) was amended by Article 4(6) of the Social Security (Northern Ireland) Order 1980

(**d**) 1975 c. 75