1976 No. 238

SOCIAL SECURITY

The Occupational Pension Schemes (Equal Access to Membership) Regulations (Northern Ireland) 1976

Made . . . . . *9th August* 1976

Coming into operation . . . *6th April* 1978

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 2(4) and (5), 55(3) and (6) and 57(2) 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 Occupational Pension Schemes (Equal Access to Membership) Regulations (Northern Ireland) 1976, and shall come into operation on 6th April 1978.

(2) In these regulations—

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

"the Board" means the Occupational Pensions Board;

"the Equal Pay Act" means the Equal Pay Act (Northern Ireland) 1970(b);

"maximum age for admission", in relation to a person and a scheme, means the highest age at which, under the rules of that scheme, that person can become a member of that scheme;

"relevant employment", in relation to a scheme, means any employment with an employer who contributes or is liable to contribute to the resources of the scheme, or with any successor to such an employer;

"replacing scheme", in relation to another scheme, means a scheme to which persons who would otherwise be admitted to that other scheme would be admitted if that other scheme were wound up or ceased to admit new members;

"scheme" means an occupational pension scheme.

Meaning of expressions "member", "prospective member" and "employer" in relation to a scheme

2.—(1) The following provisions of this regulation shall apply for the purposes of Articles 55 to 58 of the Order (equal access requirements).

(2) Any person is to be regarded as a member of a scheme during, or at any time after, a period when his service in relevant employment is or was such that at the time it is or was given it either—

(*a*) qualifies or qualified him for benefits under the scheme; or

(a) S.I. 1975/1503 (N.I. 15) (b) 1970 c. 32 (N.I.)

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

(3) There are to be regarded as prospective members of a scheme any persons in relevant employment who are not members but—

(*a*) who, by virtue of the terms of their contracts of service, are able to become members at their own option or the option of any other person; or

(*b*) who, by virtue of the terms of their contracts of service, will become so able, if their service in relevant employment continues for a sufficiently long time and the terms of their contracts of service remain unaltered during that time; or

(*c*) who, by virtue of the rules of the scheme or the terms of their contracts of service, will become members in any event, if their service in relevant employment continues for a sufficiently long time and the rules of the scheme or, as the case may be, the terms of their contracts of service remain unaltered during that time.

(4) Any person, government department, public authority or body of persons who under the Social Security (Northern Ireland) Act 1975(c) 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) 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 that scheme in respect of that self-employed earner (either under an actual or contingent legal obligation or in the exercise of a power conferred, or the discharge of a 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).

Persons competent to apply for determination

3. In relation to a scheme which makes different provision for men and women with regard to access to membership, any persons who, if they were of the opposite sex, would be members or prospective members of the scheme shall be proper persons to make an application for the purposes of Article 57 of the Order (determination of questions whether a scheme, other than a public service pension scheme, conforms with the equal access requirements).

Upper age limit for membership

4. The equal access requirements shall apply with the modification that, in a case where the rules of a scheme are such that the normal pension age applicable to a member of a scheme may be different from what it would be if he were of the opposite sex, membership of that scheme may be open to men and women on terms which differ as to the maximum age for admission, so however that where the normal pension age applicable to a person (if he becomes a member) is higher than it would be if he were of the opposite sex—

(*a*) the maximum age for admission for that person must not be lower than it would be if he were of the opposite sex; and

(c) 1975 c. 15

(*b*) the difference between the maximum age for admission applicable to that person and the maximum age for admission which would be applicable if he were of the opposite sex shall not exceed the difference between the normal pension age applicable to him and the normal pension age which would be applicable to him if he were of the opposite sex.

Interpretation of "age" and "length of service"

5. In the case of a scheme which provides for admission to membership to be by reference not to the attainment of a precise age or length of service but to the falling of a particular day of the week, month or year bearing some relationship to the date of attainment of an age or length of service, the equal access requirements shall apply with the modification that membership of the scheme must be open to men and women, not on terms which are the same as to the age and length of service needed for becoming a member, but on terms which are the same with regard to any qualification for becoming a member which is related to attainment of an age or a length of service.

Schemes to be considered together in certain cases

6. In a case where 2 or more schemes apply to employment with an employer, the equal access requirements shall apply with the modification that any one of those schemes which apart from this regulation does not comply with those requirements shall nevertheless be treated as doing so if that scheme and another or others of those schemes—

(*a*) were both or all set up on or before 5th April 1978;

(*b*) are both or all continuing to admit new members; and

(*c*) would comply with those requirements if treated as a single scheme.

Schemes with an overseas element

7.—(1) This regulation applies to any scheme which has any overseas element, that is to say, a scheme established, or relating to employment, or with parties domiciled, resident or carrying on business, in any part of the world outside Northern Ireland, or otherwise not confined in its operation to Northern Ireland (being a scheme to which the equal access requirements apply or but for the provisions of this regulation would apply).

(2) In the case of a scheme to which this regulation applies, the equal access requirements shall be so modified as not to apply to that scheme unless—

(*a*) at least one of its members is employed in the United Kingdom in employment to which the scheme relates; and

(*b*) either the scheme is established in Northern Ireland or it has a representative appointed to carry out the functions of a trustee or manager in Northern Ireland.

(3) In the case of a scheme to which this regulation applies and in respect of which conditions (*a*) and (*b*) in paragraph (2) are fulfilled, the equal access requirements shall be so modified as to apply only in relation to men and women whose employment is in the United Kingdom, or whose earnings give rise to liability for primary Class 1 contributions or would do so if the level of their earnings were not below the lower earnings limit.

Schemes closed to new members

8.—(1) This regulation applies to any scheme which has ceased to admit any new members.