1976 No. 153

SOCIAL SECURITY

The Occupational Pension Schemes (Preservation of Benefit) Regulations (Northern Ireland) 1976

Made	18*th May* 1976
Coming into operation	26*th July* 1976

The Department of Health and Social Services, in exercise of the powers conferred on it by Article 2(4) and (5) of, and paragraphs 5(1), 6(5), 9(1), (2) and (3), 12(2), 13(5), 15(4), 20, 21, 22, 23, 24, 25 and 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 and commencement

1. These regulations may be cited as the Occupational Pension Schemes (Preservation of Benefit) Regulations (Northern Ireland) 1976, and shall come into operation on 26th July 1976.

Interpretation

2.—(1) In these regulations—

"the Order" means the Social Security Pensions (Northern Ireland) Order 1975 and "Schedule 3" means Schedule 3 to the Order;

"the Board" means the Occupational Pensions Board;

"centralised scheme" means a scheme for whose benefits earners in employments under different employers qualify by virtue of their respective service in those employments;

"non-centralised scheme" means a scheme which is not a centralised scheme;

"qualifying service", in relation to a scheme, and except in the expression "linked qualifying service", includes pensionable service under the scheme, service in contracted-out employment by reference to the scheme, and linked qualifying service under another scheme.

(2) In the case of a scheme which is so framed as to apply to some, but not all, of the service in an employment, the preservation requirements shall be so modified as to have effect as if the definition of "relevant employment" in paragraph 2 of Schedule 3, in relation to such a scheme, were "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".

(3) In these regulations, the expression "the payment of a lump sum by way of a refund of contributions" means the payment of a lump sum to or in respect of a member of a scheme which is made under a provision made by that scheme, the amount of the lump sum being equal to the amount of the member's contributions to one or more schemes in respect of a particular period or periods; and for the purpose of deciding whether these amounts are equal there shall be disregarded any addition made to the latter amount in respect of interest, and any deduction made from it in order to do any or all of the following, namely—

(a) S.I. 1975/1503 (N.I. 15)

(*a*) to pay taxes arising out of the member's participation in the scheme or schemes to which he contributed;

(*b*) to reflect the cost of life insurance premiums paid or other provision made for benefits payable in the event of the member's death;

(*c*) to provide equivalent pension benefits for the purposes of the former legislation (within the meaning of Article 35(5) to (7) of the Order); and

(*d*) to pay sums which are payable under section 59(1) of the National Insurance Act (Northern Ireland) 1966(**b**), as continued in force and modified by the National Insurance (Non-participation—Transitional Provisions) (Northern Ireland) Regulations 1975(**c**), to persons liable for payments in lieu of contributions.

(4) In these regulations, the expression "the period in respect of which the contributions were made" means the period or periods in respect of which the contributions referred to in paragraph (3) were made by the member to the scheme or schemes in question, and any period or periods in respect of which he would have been required to make contributions to that scheme or any of those schemes but for the fact that—

(*a*) his contributions were waived by the trustees or managers of the scheme; or

(*b*) he was excused from making contributions under a specific provision in the rules of the scheme (other than a provision relating to a period at the beginning of a member's pensionable service during which long service benefit does not accrue to him).

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

3.—(1) The following provisions of this regulation shall apply for the purposes of Article 59 of and Schedule 3 to the Order (requirements relating to preservation of benefit).

(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 when it is or was given it either—

(*a*) qualifies or qualified him for benefits (in the form of a pension or otherwise, payable on the termination of his service otherwise than by his death, or on his retirement or his death thereafter) under the scheme which in the opinion of the Board are or were referable to that period; or

(*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

(**b**) 1966 c. 6 (N.I.) (**c**) S.R. 1975 No. 48

(*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 Part I of the Social Security (Northern Ireland) Act 1975(**d**) 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 actual or contingent legal obligation or in the exercise of a 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).

Supplementary credits

4. For the purposes of paragraph 5(1)(*c*) of Schedule 3 (circumstances in which increase of benefit or additional benefit constitutes "supplementary credits"), the prescribed circumstances shall be that a member of a scheme, in consequence of any provision made by or under the scheme after he becomes a member of it, becomes entitled, before the termination of his pensionable service in relation to that scheme, to any increase of benefit or additional benefit which 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.

Short service benefit in lump sum form

5. For the purposes of paragraph 6(5) of Schedule 3 (short service benefit in lump sum form not to be paid before normal pension age except in prescribed circumstances) the prescribed circumstances shall be—

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

(*b*) such other circumstances as the Board may consider suitable.

Means of assuring short service benefit

6. For the purposes of paragraph 9(1) of Schedule 3 (short service benefit to be payable directly out of the resources of a scheme or to be assured by such means as may be prescribed) a policy of insurance taken out, or an annuity contract entered into, with either—

(*a*) an insurance company to which Part III of the Insurance Companies (Northern Ireland) Order 1976(**e**) or Part II of the Insurance Companies Act 1974(**f**) applies and which is authorised by or under Article 7 of the Insurance Companies (Northern Ireland) Order 1976 or section 3 of the Insurance Companies Act 1974 to carry on ordinary long term insurance business as defined in that Order or that Act; or

(**d**) 1975 c. 15
(**e**) S.I. 1976/59 (N.I. 3)
(**f**) 1974 c. 49

(*b*) a friendly society enabled under regulations made under Article 67(1) of the Order or section 71(1) of the Social Security Act 1973(g) to conduct such business as is described in that Article or that section,

shall be a prescribed means of assuring short service benefit.

Alternatives to short service benefit

7.—(1) The prescribed alternatives to short service benefit for the purposes of paragraph 9(2) of Schedule 3 shall be the following benefits, where payable to the same member (or his wife, widow or dependant) as the one to whom (or to whose wife, widow or dependant) the short service benefit would have been payable:

(*a*) a benefit smaller than that which would be required to constitute short service benefit, becoming payable earlier than at normal pension age—

(i) where the member has attained the age of 50, or

(ii) where the member's earning capacity is destroyed or seriously impaired by physical or mental deterioration, or

(iii) in such other circumstances as the Board may consider suitable;

(*b*) a benefit larger than that which would be required to constitute short service benefit, becoming payable later than at normal pension age;

(*c*) subject to the provisions of paragraph (2), the payment, at any time after the termination of the service in relevant employment, of a lump sum (whether or not being or including a payment by way of refund of contributions) in respect of any period of qualifying service before 6th April 1975;

(*d*) subject to the provisions of paragraph (2), the payment, at any time after the termination of the service in relevant employment, of a lump sum in respect of any period of qualifying service after 5th April 1975, in the following circumstances, namely—

(i) that a payment under paragraph (1)(*c*) is being or has been made to the member in question under the scheme in question,

(ii) that if the lump sum in respect of the period after 5th April 1975 is or includes a payment by way of refund of contributions, so also is or does the lump sum in respect of the period before 6th April 1975, and

(iii) that the duration of the period described in paragraph (3), or, as the case may be, the aggregate duration of the periods described in paragraph (4), is less than 5 years, so however that for the purposes of this calculation no period shall be counted more than once;

(*e*) benefits under an insurance policy or annuity contract made with such an insurance company or such a friendly society as is mentioned in regulation 6, different from those required to constitute short service benefit, so however that such benefit shall not consist of or include a lump sum payable earlier than normal pension age, except—

(i) where the lump sum is paid in respect of a period of pensionable service before 6th April 1975, or

(ii) where the lump sum is paid in respect of a period of pensionable service after 5th April 1975 in the circumstances mentioned in paragraph (1)(*d*), or

(g) 1973 c. 38

(iii) where the member has attained the age of 50, or

(iv) where the member's earning capacity is destroyed or seriously impaired by physical or mental deterioration, or

(v) in such other circumstances as the Board may consider suitable; and

(*f*) any other alternative to short service benefit which complies with paragraph 9(4) of Schedule 3 and is in the opinion of the Board a suitable means of maintaining the provision of benefits in relation to a particular scheme or category of schemes.

(2) The payment of a lump sum by way of a refund of contributions shall be a prescribed alternative to the following descriptions of short service benefit (and no others), namely—

(*a*) short service benefit (excluding any transfer credits or bonus credits) in respect of the period in respect of which the contributions were made;

(*b*) short service benefit consisting of bonus credits which were awarded by reference to the period in respect of which the contributions were made;

(*c*) short service benefit consisting of bonus credits which were awarded by reference to any period of service which was not pensionable service in relation to any scheme applying to employment with either—

(i) the same employer as the one to whose employment of the person in question the scheme under whose provisions the lump sum is paid applies, or

(ii) his predecessor,

but only to the extent that, applying the assumptions mentioned in paragraph 13(3) of Schedule 3, the credits accrued during the period in respect of which the contributions were made;

(*d*) in a case where the period of service the termination of which gave rise to the payment of the lump sum included a waiting period within the meaning of regulation 10, short service benefit which is deemed in accordance with that regulation to accrue over, or short service benefit which consists of bonus credits awarded by reference to, the whole, or part or parts, of the waiting period, but only if—

(i) the total duration of the waiting period is less than 5 years,

(ii) during the period or periods over which that short service benefit was so deemed to accrue or (as the case may be) by reference to which it was awarded, any member of the scheme in question to whom long service benefit was (apart from regulation 10) accruing was required to contribute to it, except in the circumstances referred to in regulation 2(4)(*a*) and (*b*), and

(iii) the lump sum is by way of a refund of all the member's contributions (and for the purpose of deciding whether it is or not there shall be disregarded any such addition or deduction as is mentioned in regulation 2(3)) in respect of the period of service the termination of which gave rise to the payment of the lump sum; and

(*e*) short service benefit consisting of transfer credits, where and to the extent that, in the opinion of the trustees or managers of the scheme under whose provisions the lump sum is paid—

(i) the member is entitled to that benefit by virtue of having been entitled to benefit under another scheme (whether or not the scheme from which the member's accrued rights were transferred into the scheme under whose provisions the lump sum is paid), and