1976 No. 29

SOCIAL SECURITY

The Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1976

Made . . . . . 3*rd February* 1976

Coming into operation . . . 29*th March* 1976

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 34(2)(*b*), 40(1), 41(1) and (4)(*b*), 42(2) and (4) and 52 of, and paragraphs 1, 5, 6(1), 7(2)(*b*) and 9 of Schedule 2 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 (Contracting-out) Regulations (Northern Ireland) 1976, and shall come into operation on 29th March 1976.

(2) In these regulations—

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

"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;

"responsible paying authority" means—

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

(*b*) in relation to a scheme, not being a scheme set up or established under an irrevocable trust, where the benefits, or so much of the benefits as represent guaranteed minimum pensions, are secured by means of a policy of insurance or annuity contract in accordance with regulation 3, the insurance company or friendly society with which the policy of insurance is taken out or the contract entered into;

(*c*) in relation to a deferred annuity under regulation 3(3), the insurance company or friendly society with which the insurance policy is taken out or the contract entered into; and

(*d*) in any other case, the trustees or (in the event of there being no trustees) the administrator of the scheme;

"scheme" means an occupational pension scheme.

(a) S.I. 1975 No. 1503 (N.I. 15)

Specific scheme rules about guaranteed minimum pensions

2.—(1) For a scheme to be contracted-out in relation to an earner's employment it must include a specific rule to the effect that if an earner has a guaranteed minimum under Article 37 of the Order the weekly rate of his pension under the scheme at pensionable age shall not be less than that guaranteed minimum, and also to the effect that if a male earner has a guaranteed minimum under that Article the weekly rate of pension payable to his widow under the scheme shall be not less than half that guaranteed minimum, these rules to be expressed to override all other provisions of the scheme, except any that are in accordance with the provisions of the Order.

(2) In paragraph (1) "weekly rate" means, in cases where the pension is paid otherwise than at weekly intervals, a rate which is equivalent to the earner's guaranteed minimum having regard to the period in respect of which the pension is paid.

Means of securing guaranteed minimum pensions

3.—(1) Subject to the provisions of this regulation, for the purposes of Article 42(2)(*a*) of the Order (means by which guaranteed minimum pensions are secured), guaranteed minimum pensions under contracted-out schemes shall be secured by one or more of the following means, that is to say, irrevocable trust, policy of insurance or annuity contract which is a trust, policy or contract, as the case may be, established, taken out or entered into by a person resident, or having a place of business, in the United Kingdom, and which satisfies the conditions specified in paragraph (2).

(2) The conditions referred to in the preceding paragraph are—

(*a*) in the case of an irrevocable trust, that the trust is subject to the laws of any part of the United Kingdom;

(*b*) in the case of a policy of insurance or annuity contract, that the policy is taken out, or the contract is entered into, with either—

(i) an insurance company to which the Insurance Companies Act (Northern Ireland) 1968(**b**) or Part II of the Insurance Companies Act 1974(**c**) applies and which is authorised by or under section 4 of the former Act or section 3 of the latter Act to carry on ordinary long-term insurance business as defined in those Acts, or

(ii) a friendly society enabled under regulations made under section 71(1) of the Social Security Act 1973(**d**) as amended by section 4 of the Social Security Amendment Act 1974(**e**), or under Article 67 of the Order to conduct such business as is described in that section or that Article.

(3) Where a scheme is required, under Article 59 of and Schedule 3 to the Order, to preserve short service benefit for an earner (or, where such preservation is not required, but the employer has not elected or is not entitled to elect to pay a contributions equivalent premium under Article 44 of the Order), so much of any accrued rights to requisite benefits as represents the earner's or his widow's guaranteed minimum pension may be secured by the purchase of a deferred annuity in favour of the earner and, after his death, his widow, if—

(*a*) the policy of insurance or annuity contract satisfies the provisions of paragraph (2)(*b*)(i) or (ii); and

(**b**) 1968 c. 6 (N.I.)
(**c**) 1974 c. 49
(**d**) 1973 c. 38
(**e**) 1974 c. 58

(*b*) the policy of insurance or annuity contract contains, or is endorsed with, terms so as to provide that—

(i) the amount of the annuity is at least equal to the amount of the guaranteed minimum pension which is certified by the Department as having accrued to the earner at the date of termination of his contracted-out employment and as being prospectively due to him at pensionable age subject to any revaluation or increase under Article 23 or, as the case may be, Article 37(7) of the Order; and

(ii) the annuity (or such part of it as is related to the earner's guaranteed minimum pension) is (subject to the provisions of regulation 7) non-commutable and non-assignable.

(4) The provisions of paragraph (1) and of Article 42(3) of the Order (priority on winding-up) shall not apply to a scheme which is administered wholly or primarily outside the United Kingdom, but such a scheme shall not be capable of being contracted out unless such part of the benefits of the scheme as represents guaranteed minimum pensions is secured in such manner and subject to such conditions as the Board consider to be suitable.

Payment out of surrender values of policies of insurance

4. For the purposes of Article 42(4) of the Order a payment out of a sum representing the surrender value of a policy of insurance taken out for the purposes of a contracted-out scheme shall be admissible in relation to the guaranteed minimum pensions payable under the scheme if in all the circumstances the Board are satisfied that such a payment out would not prejudice the payment of those pensions.

Transfer of accrued rights between schemes

5. For the purposes of Article 40(1) of the Order (accrued rights to requisite benefits not to be transferred without member's consent and only to another contracted-out scheme, except where regulations otherwise provide) the prescribed exceptions are—

(*a*) that any part of the earner's accrued rights to requisite benefits which exceeds his or his widow's guaranteed minimum pension may, with his consent, be transferred to any other scheme whether contracted-out or not;

(*b*) that an earner's accrued rights to requisite benefits may be transferred without his consent—

(i) where the transfer of accrued rights to requisite benefits is to another contracted-out scheme which relates to employment with the same employer, or

(ii) where the accrued rights to requisite benefits of all of the members of the scheme, or of a specified group of members (of whom the earner is one) are being transferred to another contracted-out scheme:

Provided that the rights allowed to the earner in the scheme to which the transfer is made are, in the opinion of the trustees or administrator of that scheme, at least equal in value to the rights transferred; and

(*c*) that an earner's accrued rights to requisite benefits may, with his consent, be transferred to a scheme administered wholly or primarily outside the United Kingdom if the Board (whether or not subject to conditions) approve the arrangements made for the transfer.

Service that does not qualify for requisite benefits

6.—(1) This regulation applies in cases in which any description of benefit under a scheme is subject to a limit (however imposed) operating so as to prevent service beyond a particular length from qualifying for further benefits.

(2) Subject to the following provisions of this regulation, in cases to which this regulation applies the employment of an earner in employed earner's employment shall be treated as contracted-out employment in relation to him notwithstanding that his service in the employment did not, does not or will not (on the assumption that it continues for the appropriate period) qualify him for requisite benefits.

(3) Notwithstanding paragraph (2) unless the Board are satisfied that the total benefits payable under the scheme on termination of the employment to which the scheme applies include or comprise benefits which are in all respects (as to rate or amount and otherwise) the same as or more favourable than the guaranteed minimum pension to which the earner would be entitled having regard to the aggregate of the periods of service in that employment or in linked qualifying service during which the earner was in contracted-out employment and any periods of service in that employment which would be contracted-out employment by virtue of paragraph (2) they may determine that the employment of the earner in employed earner's employment shall not be treated as contracted-out employment in relation to him.

(4) For the purposes of paragraph (3) "total benefits" may include benefits which have accrued to the earner in respect of service in employment whether or not contracted-out employment and whether with the same or another employer:

Provided that any part of such benefits which are equivalent pension benefits for the purposes of the former legislation shall not be so included.

Commutation of pension

7.—(1) For the purposes of Article 41(1) of the Order (admissible provisions of a scheme relating to commutation), the prescribed circumstances are—

(*a*) that the Board are satisfied that the scheme provides a reasonable basis for ascertaining the sum to be paid on commutation;

(*b*) that a guaranteed minimum pension has become payable; and

(*c*) that the aggregate amount of all benefits currently payable to the earner or, as the case may be, the amount of the pension payable to his widow under all schemes relating to employment with the same employer as the employment in respect of which the guaranteed minimum pension is payable, does not exceed £52 per annum.

(2) Where, under paragraph (1) a scheme permits an earner to commute benefit in accordance with this regulation it may also permit him to commute any prospective widow's benefit payable under the scheme (provided that the aggregate amount of such benefit prospectively payable under all schemes relating to employment with the same employer as the employment in respect of which the benefit is payable does not exceed £52 per annum) and the value of any such widow's benefit shall not be taken into account for the purpose of the limit of £52 per annum mentioned in the said paragraph.