

1976 No. 101

## SOCIAL SECURITY

**The Contracted-out Employment (Notifications, Premium Payment and Miscellaneous Provisions) Regulations (Northern Ireland) 1976**

*Made* . . . . . 18th March 1976

*Coming into operation—*

*Regulation 9* . . . . . 28th March 1976

*Remainder* . . . . . 6th April 1978

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 41(1), 45(4) and (6), 46(2), (3) and (6), 47(1) to (3) and 48(7) and (11) of, and paragraphs 1, 3, 6 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 Contracted-out Employment (Notifications, Premium Payment and Miscellaneous Provisions) Regulations (Northern Ireland) 1976, and shall come into operation in the case of regulation 9 on 28th March 1976 and in the case of the remainder of the regulations on 6th April 1978.

(2) In these regulations—

“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;

“the Contracting-out regulations” means the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1976(b);

“employer” includes a person who, by virtue of regulation 3(2), is treated as an employer for the purposes of these regulations;

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

“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 of the Contracting-out regulations, the insurance company or friendly society with which the policy of insurance is taken out or the contract entered into;

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

(b) S.R. 1976 No. 29

- (c) in relation to a deferred annuity under regulation 3(3) of the Contracting-out regulations, 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 of the scheme;
- “scheme” means an occupational pension scheme;
- “trustees”, in relation to a scheme which is not set up or established under a trust, means the administrator of the scheme.

#### *Notifications to the Department*

2.—(1) Whenever an earner's service in contracted-out employment is treated as terminated under the provisions of regulation 9 of the Contracting-out regulations the employer of that earner in that service shall, except where the termination is due to the death of the earner or occurs on a date later than the end of the tax year preceding that in which he attains pensionable age, or where the amount of a contributions equivalent premium in respect of that service would not exceed £5, notify the Department of that termination.

(2) A notification required to be given under paragraph (1) may be given at any time within the period of one month before the expected date of termination but if not so given shall be given within 6 months from the date on which the service terminated or, if the Department is satisfied that the notification could not reasonably have been given within that period, such longer period as it may approve in a particular case or class of case.

(3) A notification required to be given under paragraph (1) shall be given in writing in such form as the Department may direct and shall contain such information as the Department may reasonably require for calculating guaranteed minimum pensions and state scheme premiums and for related purposes.

(4) In any case where, subsequent to the giving of a notification under paragraph (1), a responsible paying authority transfers its responsibility for a guaranteed minimum pension to another responsible paying authority, the responsible paying authority making the transfer shall, within one month from the date of such transfer, notify the Department in writing of the transfer giving such particulars as the Department may reasonably require to enable it to identify the new responsible paying authority.

(5) An employer to whom a contracting-out certificate has been issued or the trustees of the scheme to which the certificate relates shall, if required to do so by the Department, in such manner and at such times as the Department may reasonably require, furnish to the Department such information relating to members of the scheme to which the contracting-out certificate relates as it may reasonably require for the purpose of calculating guaranteed minimum pensions and for related purposes.

#### *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 the trustees of the scheme.

(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 (e), 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(c), 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; and
- (e) in a case where a holding company within the meaning of section 148 of the Companies Act (Northern Ireland) 1960(d) 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(e) 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.
- (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.
- (4) In the event of a contracted-out scheme ceasing to be contracted-out then for the purposes of Article 46 (accrued rights premiums and pensioner's rights premiums) and Article 47 (limited revaluation premiums) of the Order the Board shall certify to the Department whether or not an earner's accrued rights to guaranteed minimum pension or a person's rights to guaranteed minimum pension are subject to approved arrangements as mentioned in the said Article 46 and in the event of rights which are so subject ceasing to be so subject the Board shall certify to the Department 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.

(c) 1975 c. 15  
(d) 1960 c. 22 (N.I.)

(e) S.R. 1976 No. 5

*Elections to pay state scheme premiums*

4.—(1) An employer's obligation under Article 45(4) of the Order (not to discriminate between different earners when making or abstaining from making elections to pay contributions equivalent premiums) shall not apply to—

- (a) cases where an earner's accrued rights are transferred under Article 40 of the Order;
- (b) married women and widows who, by virtue of regulations made under Article 5(2) of the Order, have elected to pay primary Class 1 contributions under the Social Security (Northern Ireland) Act 1975 at a reduced rate;
- (c) cases where a refund of the earner's contributions to the scheme is precluded to enable the scheme to qualify for the approval of the Commissioners of Inland Revenue for the purposes of section 208 of the Income and Corporation Taxes Act 1970(f) or of Chapter II of Part II of the Finance Act 1970(g);
- (d) cases where, on the death of an earner, his widow becomes entitled to a widow's pension which comprises an amount of pension which has accrued by reference to the earner's service in employment which was not contracted-out employment and a widow's guaranteed minimum pension by reference to the earner's service in contracted-out employment; and
- (e) cases where the earner has completed less than 5 years' qualifying service for the purposes of Schedule 3 to the Order (preservation) but where, nevertheless, he is entitled under the rules of the scheme to elect, and he has elected, that his accrued rights shall be preserved:

Provided that in respect of any of the classes of case mentioned in this paragraph an employer shall not discriminate between different earners falling within the same class of case.

(2) An election under Article 44(2) or (3), or Article 46(6) or 47(3) of the Order shall be notified to the Department in writing in such form as the Department may reasonably require for the purpose of identifying the earner to whom the election relates, and such notification shall be given—

- (a) in the case of an election under Article 44(2) of the Order, within the period beginning one month before the date of termination of the contracted-out employment to which the election relates and ending 6 months after that date;
- (b) in the case of an election under Article 44(3) of the Order, within a period of 6 months from the date of death in respect of which the election is made; and
- (c) in the case of an election under Article 46(6) or 47(3) of the Order, within a period ending 6 months after the date on which the Board certify to the Department, under regulation 3(4), that the earner's accrued rights to guaranteed minimum pension or as the case may be the person's rights to guaranteed minimum pension are not, or, as the case may be, have ceased to be, subject to approved arrangements.

(3) On application being made to it for that purpose the Department may, in any particular case or class of case, extend the periods mentioned in paragraph (2) for the making of an election to pay a state scheme premium if it appears to it that the circumstances are such that an election could not reasonably be made within the specified period.

*Time for payment of state scheme premiums*

5.—(1) Subject to paragraph (3) any state scheme premium payable under the Order shall be paid on or before whichever is the later of the following days—

- (a) the day 6 months after the date of termination of contracted-out employment in respect of which the premium is payable; and
- (b) the day one month after the day on which the Department sends to the person liable to pay the premium a notice certifying the amount of the premium payable.

(2) On application made to it for that purpose the Department may, in any particular case or class of case, extend the period within which, under paragraph (1), a state scheme premium is required to be paid—

- (a) by up to 6 months if it is satisfied that the circumstances are such that payment of the premium could not reasonably be required to be made within that period; and
- (b) by such further period as it considers reasonable if it is satisfied that to require earlier payment of the premium would be prejudicial to the interests of the earner in respect of whom the premium is payable or of the generality of members of the scheme.

(3) In cases where a state scheme premium has become payable by reason of the fact that a contracted-out scheme has ceased to be contracted-out and an earner's accrued rights to guaranteed minimum pension or a person's rights to guaranteed minimum pension under that scheme which are not the subject of approved arrangements under Article 46 of the Order or, having been so subject, have ceased to be so subject, references in paragraph (1)(a) to the date of termination of contracted-out employment shall be read as references to the date on which the Board certify under regulation 3(4) that the earner's rights are not subject to approved arrangements or have ceased to be so subject.

*Payment in lieu of benefit and delay in refund for purposes of employer's right of recovery*

6.—(1) For the purposes of Article 48(10) of the Order (payments in lieu of benefit) a payment in lieu of benefit shall include a payment made or to be made out of the resources of the scheme in or towards the provision of deferred benefits for the earner.

(2) Where on the coming to an end of an employed earner's service in contracted-out employment he (or, by virtue of a connection with him, any other person) is or may be entitled to a refund of any payments made under a contracted-out scheme by or in respect of him towards the provision of benefits under the scheme, the following provisions of this regulation shall apply for the purpose of enabling any right of recovery conferred by Article 48 of the Order to be exercised.

(3) Where in such a case a state scheme premium falls to be paid in respect of the earner under the Order, the person liable for the refund shall not, after he has been given such notice for the purpose of this regulation as is hereinafter described (hereafter in this regulation called a "notice of delay"), make the refund in whole or in part until the expiration of the period of delay specified in paragraph (4):

Provided that this paragraph shall not apply to so much, if any, of the refund as exceeds the amount certified by the Department under Article 48(2) of the Order.

(4) The period of delay referred to in paragraph (3) shall be the period beginning with the giving of the notice of delay and ending with the expiration of 4 weeks after the payment of the state scheme premium or any part of it, or 4 weeks after the end of the prescribed period for the payment of the state scheme premium, whichever first occurs.

(5) A notice of delay shall be a notice in writing given by the person who is liable for the payment of the state scheme premium (hereafter in this regulation called "the liable person"), relating either to a particular case or to a class or classes of case and containing the following particulars:

- (a) the name of the earner or such particulars as will sufficiently identify the class or classes of case concerned;
- (b) such particulars as will sufficiently identify the refund or refunds concerned; and
- (c) a memorandum in a form approved by the Department giving brief particulars of the effect of paragraphs (3) and (4).

(6) Every liable person who has given a notice of delay shall from time to time inform any person to whom he has given that notice of the ending of the period of delay in relation to any refund affected by the notice.

#### *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, for the earnings factors of an earner whose service in contracted-out employment by reference to the scheme is terminated before he attains the scheme's normal pension 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 Article 37(7) of the Order 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  $8\frac{1}{2}$  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 any order or orders that come into force under Article 23 of the Order 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.

(3) Regulation 8(7) applies for the purposes of this regulation as it applies for the purposes of Article 37(7) of the Order.

#### *Miscellaneous provisions*

8.—(1) Where a contracted-out scheme is being wound up and the person who is liable to pay an accrued rights premium or a pensioner's rights premium fails to pay that premium within the period prescribed by regulation 5(1), or such longer period as the Department may allow under regulation 5(2), then, if 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, that premium shall, for the purpose of extinguishing the earner's accrued rights to guaranteed minimum pension or the person's rights to guaranteed minimum pension under the scheme, be treated as having been paid within the prescribed period.

(2) Where a state scheme premium is wrongly paid, or paid as to the wrong amount, the Department may treat all or part of that premium as paid (wholly or in part) in discharge of a liability for another premium or (where the premium was paid by the employer within the meaning of regulation 3(2)(a) for contributions under Part I of the Social Security (Northern Ireland) Act 1975.

(3) Subject to paragraph (2) the Department shall refund a state scheme premium if—

- (a) that premium was paid in error; or
- (b) it is satisfied that the employment to which the premium relates will be linked with another employment in the circumstances set out in regulation 9(2) and (3) of the Contracting-out regulations; or
- (c) it is satisfied that the earner in respect of whom the premium was paid has entered into employment which is contracted-out employment by reference to the same contracted-out scheme as that by which the employment to which the premium relates was contracted-out employment, and that for the purpose of calculating the earner's accrued rights under the scheme the 2 employments will be linked; or
- (d) it is satisfied that a transfer of the earner's accrued rights will be made in accordance with Article 40 of the Order,

and where a premium is refunded under the provisions of this paragraph the earner's accrued rights under the scheme, which were extinguished by payment of the premium, shall be restored.

(4) A refund shall be made under paragraph (3) only if an application is made in writing, in such form as the Department may reasonably require for the purpose.

(5) In paragraph (3) "error" means, and means only, an error which—

- (a) is made at the time of the payment, and
- (b) relates to some present or past matter.

(6) Where an earner has been employed concurrently in 2 or more contracted-out employments, on the termination of one or more of which one or more contributions equivalent premiums are paid the amount, or the aggregate amount, of which has the effect that the National Insurance Fund has gained in all, by reference to the employment or employments in respect of which the premium or premiums have been paid, a greater amount than it would have gained from Class 1 contributions under the Social Security (Northern Ireland) Act 1975 if the employment or employments had not been contracted-out, there shall be paid out of the National Insurance Fund to the earner (or his estate) an amount equal to that amount which bears the same proportion to the amount of the excess as the reduction, under Article 29(2) of the Order, in the normal percentage of primary Class 1 contributions bears to the total reduction under that paragraph in the total normal percentage of Class 1 contributions.

(7) Where, under Article 40 of the Order, a transfer of an earner's accrued rights under a contracted-out scheme is made, or is to be made, to another contracted-out scheme the earner's service in contracted-out employment by reference to the first mentioned scheme shall, for the purposes of Article 37(7) of the Order (exclusion of guaranteed minimum pension from full revaluation) be treated as not having terminated, notwithstanding that, by virtue of the provisions of regulation 9 of the Contracting-out regulations, it is otherwise treated as having terminated.

*Amendment of the Contracting-out regulations*

9.—(1) The Contracting-out regulations shall be amended in accordance with the following provisions of this regulation.

(2) Regulation 7 of the Contracting-out regulations shall be amended by adding at the end the following new paragraph—

“(4) The condition in paragraph (1)(b) shall not apply in cases where the scheme is being wound up or an earner retires before the age of 65 if a man or 60 if a woman and if a premium under Article 44 (contributions equivalent), Article 46 (accrued rights) or Article 47 (limited revaluation) of the Order has been paid, or is treated under regulation 3(3) of the Contracted-out Employment (Notifications, Premium Payment and Miscellaneous Provisions) Regulations (Northern Ireland) 1976 as having been paid, or where provision has been made under regulation 7 of those regulations, provided that—

- (a) for the purpose of paragraph (1)(c) the aggregate amount of benefit which has accrued to the earner at the date of winding up or, as the case may be, of his retirement, increased, where appropriate, in accordance with Article 37(7) of the Order or in accordance with provision made under regulation 7 of the Contracted-out Employment (Notifications, Premium Payment and Miscellaneous Provisions) Regulations (Northern Ireland) 1976, in either case to the amount that would have been payable at pensionable age, shall be treated as the amount of benefit currently payable to him under the scheme;
- (b) in the case of early retirement commutation is not permitted before the date on which the pension would otherwise become payable; and
- (c) in cases where the earner is a member of more than one scheme relating to the same employment all those schemes are being wound up or, as the case may be, he is treated by all those schemes as having retired and, in each case, all those schemes have paid a contributions equivalent premium, accrued rights premium or a limited revaluation premium, or have made provision under regulation 7 of the Contracted-out Employment (Notifications, Premium Payment and Miscellaneous Provisions) Regulations (Northern Ireland) 1976.”

(3) Regulation 9 of the Contracting-out regulations shall be amended as follows—

- (a) in the first line of paragraph (1) for “paragraph” substitute “paragraphs”, and after “(2)” insert “and (7)”;
- (b) at the end add the following new paragraph—

“(7) In cases where an earner is employed concurrently in 2 or more contracted-out employments by reference to the same scheme and with the same employer his employment in any one of those employments shall not be treated as having terminated by reason only of the circumstances mentioned in paragraph (1)(a) and (b) until both or all such employments are treated as having so terminated.”

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 18th March 1976.

(L.S.)

C. G. Oakes

Assistant Secretary

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### EXPLANATORY NOTE

*(This note is not part of the regulations but is intended to indicate their general purport.)*

These regulations contain provisions relating to the giving to the Department of notification of various matters connected with contracted-out employment under the Social Security Pensions (Northern Ireland) Order 1975; liability for, and payment of, state scheme premiums, and miscellaneous matters arising, under that Order. These regulations also amend the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1976.

Regulation 2 contains provisions as to the circumstances, time and manner in or within which a notification of termination of contracted-out employment is to be given. Regulation 3 relates to liability for payment of state scheme premiums. Regulation 4 relates to the making of elections to pay state scheme premiums. Regulation 5 prescribes the period within which a state scheme premium must be paid. Regulation 6 contains provisions as to payments in lieu of benefit and to delay in making refunds for the purposes of an employer's right of recovery under the Order. Regulation 7 provides an alternative to limited revaluation premiums under Article 47 of the Order. Regulation 8 contains miscellaneous provisions and regulation 9 amends the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1976.