

1976 No. 153

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

Made 18th May 1976

Coming into operation 26th 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) 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

(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

(ii) a lump sum by way of a refund of contributions, if it had been paid under the provisions of that other scheme, would have been a prescribed alternative under the foregoing provisions of this paragraph to the benefit to which he was entitled under that other scheme (assuming, if it is not so, that that benefit was short service benefit).

(3) The period referred to in paragraph (1)(d)(iii), where the scheme in question is a centralised scheme, is any period after 5th April 1975 during which the member was in qualifying service in relation to the scheme in question.

(4) The periods referred to in paragraph (1)(d)(iii), where the scheme in question is a non-centralised scheme, are—

(a) any period before 6th April 1975 during which the member in question was in qualifying service relevant to another non-centralised scheme (not being a scheme which, by virtue of regulation 17(2), was not required to provide short service benefit for or in respect of that member in respect of that period) which applied to the same employment as the scheme in question, no payment being or having been made under paragraph (1)(c) under that scheme in respect of that service; and

(b) any period after 5th April 1975 during which the member was in qualifying service in relation to the scheme in question or another non-centralised scheme applying to the same employment as the scheme in question.

(5) A scheme rule may make provision, in cases where the Board consider it reasonable for such provision to be made, for any of the alternatives mentioned in paragraph (1)(a)(ii), (e) or (f) to be substituted for short service benefit without the member's consent.

Computation of benefit

8.—(1) A scheme which provides for long service benefit to be related to a member's earnings during a period of a specified length shall provide for the short service benefit of a member whose total pensionable service is less than that length to be correspondingly related to his earnings throughout his pensionable service.

(2) In a case where—

(a) short service benefit falls to be calculated in accordance with paragraph 11 (uniform accrual) of Schedule 3; and

(b) a lump sum is paid as mentioned in regulation 7(1)(c), (d), (e)(i) or (e)(ii) in substitution for part of that benefit,

any remaining short service benefit shall be calculated in accordance with paragraph 11 of Schedule 3, so however that the period in respect of which the lump sum is paid shall be left out of account in calculating the length of the first period (but not the second period) mentioned in that paragraph.

(3) A scheme may, for the purposes of the calculations mentioned in paragraph 11 of Schedule 3, reckon both the periods mentioned in that paragraph (or neither, but not only one) to the nearest, next highest or next lowest calendar month.

(4) A scheme may, for the purposes of the calculations mentioned in paragraph 13(2)(b) of Schedule 3, reckon both the periods mentioned in that paragraph (or neither, but not only one) to the nearest, next highest or next lowest calendar month.

Computation of benefit in money purchase and analogous schemes

9.—(1) This regulation applies to money purchase schemes (that is to say, schemes which provide benefits the amount or rate of which is calculated by reference to contributions paid from time to time by the member, or by his employer in respect of him, and to the member's age at the time when contributions are paid) and to other schemes which the Board consider appropriate to be treated as analogous to money purchase schemes.

(2) In the case of schemes to which this regulation applies, the preservation requirements shall be so modified that paragraph 10(1) of Schedule 3 shall apply where the Board consider it appropriate notwithstanding that otherwise paragraph 11 of that Schedule would have applied.

(3) In the case of schemes to which this regulation applies, where—

(a) short service benefit falls to be calculated under paragraph 10(1) of Schedule 3; and

(b) long service benefit is related to bonuses which have been declared at or before the time when the member attains normal pension age,

short service benefit must be correspondingly related to bonuses which have been declared at or before the time when the member's pensionable service is terminated.

(4) In the case of schemes to which this regulation applies, where—

(a) short service benefit falls to be calculated under paragraph 10(1) of Schedule 3; and

(b) long service benefit is related to the value of securities at, or in a specified period before, the time when the member attains normal pension age,

short service benefit must be correspondingly related to the value of securities at, or in the same period before, either the time when the member's pensionable service is terminated or (if the trustees or managers of the scheme so decide before, or not more than one month after, the member's pensionable service is terminated) the time when the benefit becomes payable.

Computation of benefit in cases of waiting periods

10. In a case where—

(a) long service benefit does not accrue to a member during a period ("the waiting period") at the beginning of his pensionable service and

(b) in the opinion of the Board a specific part of long service benefit is referable to that period,

for the purpose of computing short service benefit that part of long service benefit shall be deemed not to consist of supplementary credits but to have accrued, or to be accruing, at such a rate as to accrue in full over the whole of the waiting period, so however that if that rate is lower than the rate at which the remainder of long service benefit accrues, paragraph 10(1) of Schedule 3 shall apply where the Board consider it appropriate notwithstanding that otherwise paragraph 11 of that Schedule would have applied.

Assumptions to be made in computing benefit

11. For the purpose of computing short service benefit under paragraph 11 (uniform accrual) of Schedule 3, it shall be assumed that the member's earnings would have remained constant during the time between the termination of his pensionable service and his attaining normal pension age; and the trustees or managers of the scheme may make such assumptions about—

- (a) the level at which they would have remained constant;
 - (b) the dates of declaration and rates of bonuses; and
 - (c) the value of, and rate of interest on, securities,
- during that time as the Board may consider reasonable.

Commutation of benefit

12.—(1) For the purposes of paragraph 15(4) of Schedule 3 (short service benefit and any alternative benefit permitted under regulation 7 not to be commuted except in prescribed circumstances) the prescribed circumstances shall be those described in paragraphs (2) and (3).

(2) In the case of benefit for the member, the prescribed circumstances shall be—

- (a) that the aggregate of that benefit and all other benefits currently or prospectively payable to him under all schemes relating to employment with the same employer as the employment in respect of which that benefit is payable does not exceed £52 per annum, and either the scheme is being wound up, or that benefit has become payable; or
- (b) that the benefit has become payable and the commutation is at the member's option, and—
 - (i) he has attained the age of 50, or
 - (ii) his earning capacity is destroyed or seriously impaired by physical or mental deterioration; or
- (c) such other circumstances as the Board consider suitable.

(3) In the case of benefit for a member's widow or dependant, the prescribed circumstances shall be—

- (a) that the aggregate of that benefit and all other benefits currently or prospectively payable to that widow or dependant (excluding any which may be or become payable to her or him as a member) under all schemes relating to employment with the same employer as the employment in respect of which that benefit is payable does not exceed £52 per annum; and
- (b) that either the benefit has become payable or the benefit payable to the member is being commuted (as mentioned in paragraph (2)(a)) at the same time.

(4) For the purpose of calculating the aggregate of the benefits mentioned in paragraphs (2)(a) and (3)(a), there shall be substituted for the amount of any benefit which is in lump sum form the annual amount of a benefit in pension form which is its equivalent in the opinion of the trustees or managers of the scheme in question.

Scheme rules to make express provision for certain matters

13. A scheme is not to be treated as conforming with the preservation requirements unless it contains express rules giving effect to (but not necessarily in the words of) the following paragraphs of Schedule 3, to the extent to which they apply to the scheme in question:

- (a) paragraph 6(1) (basic principle of qualification);
- (b) paragraph 6(2) and (3) (age or time at which short service benefit is payable);
- (c) paragraphs 10 to 12 (computation of benefit);

- (d) paragraph 13 (computation of credits); and
- (e) paragraph 14 (pension increases).

Termination of service

14.—(1) For the purposes of Part I of Schedule 3 and subject to the provisions of this regulation, a person's service in any employment is to be treated as terminated when his contract of service expires or is terminated, or, in a case where there is no contract, when the service itself ends.

(2) When a person is successively in a series of employments in the circumstances set out in paragraph (3), his service in each of those employments except the last shall (except so far as is provided by paragraph (5)) be treated as terminated when, and not until, either of the following events occurs:

- (a) his service in the last of those employments is treated as terminated under paragraph (1); or
- (b) his service in any subsequent employment in the series is treated as terminated for the purpose of the application of Part I of Schedule 3 to a non-centralised scheme under paragraph (5).

(3) The circumstances referred to in paragraph (2) are that—

(a) every 2 consecutive employments in the series are either —

- (i) employments with the same employer, or
- (ii) employments with an employer and his successor, or
- (iii) relevant employment in relation to the same scheme; and

(b) there is between every 2 consecutive employments in the series either—

- (i) no interval, or
- (ii) an interval not exceeding one month, or
- (iii) an interval of any length if it is between 2 employments both of which are relevant employment in relation to the same centralised scheme, and when the interval begins the member has 5 years' qualifying service in relation to that scheme, subject to paragraph (4).

(4) In reckoning the 5 years' qualifying service for the purposes of paragraph (3)(b)(iii), there shall be excluded any period of service if all the member's accrued rights in respect of that period have been either—

- (a) transferred to another scheme; or
- (b) satisfied by the payment of a lump sum.

(5) In a case where—

- (a) a person's service in an employment has included service in relation to both a non-centralised scheme and a centralised scheme; and
- (b) while the centralised scheme continues to apply his contract of service expires or is terminated, or, in a case where there is no contract, the service itself ends; and
- (c) the contract is not renewed (or, as the case may be, the service resumed) within a month with the same employer or his successor,

then for the purpose of the application of Part I of Schedule 3 to the non-centralised scheme the service shall then be treated as terminated.

More than one scheme applying to the same or related employment

15.—(1) Where an earner has been employed in pensionable service under, or in contracted-out employment by reference to, different non-centralised schemes relating to employment with the same employer or with an employer and his successor, the following paragraphs shall apply for the purpose of deciding whether each of those schemes must provide for him to be entitled to short service benefit under paragraph 6(1) of Schedule 3.

(2) Without prejudice to paragraph 7(2) of Schedule 3, but subject to paragraph (3) of this regulation, paragraph 7(1) of Schedule 3 shall apply subject to the modification that the words “the scheme” are to be treated as including a series of non-centralised schemes of which—

- (a) one is the scheme in question; and
- (b) every 2 consecutive schemes in the series have applied (not necessarily at the same time, and whether or not they applied to other employments) to—
 - (i) a single employment of the earner, or
 - (ii) 2 employments of him by the same employer, or
 - (iii) 2 employments of him by an employer and his successor respectively.

(3) No period during which the earner is employed in service under or by reference to 2 or more schemes concurrently shall be counted more than once.

(4) In cases where the rules of a scheme or the terms of a member's contract of service provide that on attaining a specified age or length of service he must become a member of another scheme in addition to or instead of the first scheme, the preservation requirements shall be modified so that for the purposes of computing the benefit payable to or in respect of that member the 2 schemes are treated as one scheme with a normal pension age of whichever is the lower of the normal pension ages of the 2 schemes.

Transfer credits to be treated in part as bonus credits in certain cases

16. In cases where a person is a member of 2 or more schemes relating to employment with the same employer or with an employer and his successor or successors, and under the rules of one of those schemes the person is entitled to transfer credits by reference to a transfer to that scheme of his accrued rights from another of those schemes, and the transfer credits are greater in value than those accrued rights, short service benefit shall be computed under paragraph 13(3) of Schedule 3 as if the difference in value between those credits and those rights were a bonus credit awarded on the date when the transfer was made.

Special provision for schemes to which no contributions are made by a particular member

17.—(1) This regulation applies to cases where—

- (a) a person is a member of 2 or more schemes relating to the same employment;
- (b) payment of a lump sum by way of a refund of contributions made to one of the schemes (referred to in paragraph (2) as “the contributory scheme”) is made as an alternative to the provision of short service benefit; and

- (c) that person has made no contributions to the other schemes, or to at least one of the others if there are more than one (the scheme or schemes to which he has made no contributions being referred to in paragraph (2) as "the non-contributory scheme").
- (2) In a case to which this regulation applies, the preservation requirements shall apply subject to the exception that there need not be provided for that person—

- (a) short service benefit of any of the descriptions specified in sub-paragraphs (a) to (c) of regulation 7(2); or
- (b) short service benefit in respect of any period or periods which was, or were, in relation to that person and his membership of the contributory scheme, a waiting period or part or parts thereof within the meaning of regulation 10, but only if the conditions specified in regulation 7(2)(d) are fulfilled,

under the non-contributory scheme, or short service benefit under any scheme to the extent that it would consist of transfer credits allowed, in the opinion of the trustees or managers of the latter scheme, by reference to that person's rights under the non-contributory scheme to short service benefit of the descriptions specified in sub-paragraphs (a) and (b).

Bonus credits to be extinguished in certain cases of refunds

18.—(1) This regulation applies to cases where—

- (a) a person is a member of 2 or more schemes relating to the same employment; and
- (b) payment of a lump sum by way of a refund of contributions is made under a provision of one of the schemes as an alternative to the provision of short service benefit.

(2) In a case to which this regulation applies, the preservation requirements shall apply subject to the exception that the other scheme or schemes need not provide for the inclusion in short service benefit of any bonus credits to which that person has become entitled to the extent that those credits were awarded by reference to any period of service which coincided with the whole or any part of—

- (a) the period in respect of which the contributions were made; and
- (b) if the conditions specified in regulation 7(2)(d) are fulfilled, a period which was, in relation to that person and his membership of the scheme under the provisions of which the lump sum is paid, a waiting period within the meaning of regulation 10.

Preservation of benefit on winding up of schemes

19.—(1) With a view to securing that the preservation requirements include requirements for provision to be made in a scheme as to the preservation of a member's benefit in the event of the scheme being wound up, paragraph 6(1) of Schedule 3 shall be so modified as to require schemes to make the same provision for that event as for the termination before normal pension age of a member's service in relevant employment, subject to paragraph (2).

(2) In a case where a scheme is being wound up—

- (a) the member's consent shall not be required to the transfer of his accrued rights to another scheme relating to—
- (i) the same employment, or

- (ii) another employment with the same employer or his successor, with a view to the acquisition for him of transfer credits under that other scheme; and
- (b) sub-paragraphs (c), (d), (e)(i) and (e)(ii) of regulation 7(1) shall not apply.

Value of benefits to compare reasonably with contributions

20.—(1) In a case such as is described in paragraph (2), the preservation requirements shall apply with the modification described in paragraph (3).

(2) The case mentioned in paragraph (1) is a case where—

(a) a member of a scheme is liable under its terms to contribute towards the provision of any of its benefits; and

(b) the scheme does not increase the short service benefit payable to or in respect of the member between the date on which his service in relevant employment is terminated and the date as from which the benefit becomes payable either—

(i) at a rate of not less than 3 per cent a year compound, or

(ii) in such a manner that the Board are satisfied that, taking one year with another, any person who may become entitled to payment of the benefit is likely to be protected to the same extent as he would have been if it had been increased at a rate of not less than 3 per cent a year compound, or

(iii) at a rate which appears to the Board to correspond with that adopted in relation to official pensions under section 2 of the Pensions (Increase) Act (Northern Ireland) 1971(h) (increase by reference to rise in cost of living); and

(c) the scheme does not give the member an option to receive either—

(i) such lump sums as are mentioned in regulation 7(1)(c) and (d), or

(ii) such lump sums as are mentioned in regulation 7(1)(e)(i) and (ii).

(3) The modification of the preservation requirements mentioned in paragraph (1) is that when the member becomes entitled to short service benefit the value of at least one of the benefits specified in paragraph (4) must, to the reasonable satisfaction of the trustees or managers of the scheme, exceed or compare reasonably with the amount contributed by him, in accordance with the terms of the scheme, towards the provision of benefits (less any amount so contributed which has been refunded to him).

(4) The benefits mentioned in paragraph (3) are—

(a) the short service benefit provided by the scheme for the member; and

(b) an alternative to short service benefit provided by the scheme as mentioned in regulation 7(1)(a), (b), (e) or (f) and available to the member.

(5) In a case such as is described in paragraph (2), the scheme is not to be treated as conforming with the preservation requirements unless it contains an express rule giving effect to (but not necessarily in the words of) paragraphs (3) and (4).

Application of preservation requirements to schemes with an overseas element

21.—(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.

(h) 1971 c. 35 (N.I.)

(2) In the case of a scheme to which this regulation applies, Part I of Schedule 3 shall be so modified that the preservation requirements do not 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, paragraph 6(1) of Schedule 3 shall be so modified that the scheme must provide short service benefit only where a member's service in relevant employment is terminated before normal pension age and, when it is terminated—

- (a) he has attained the age of 26;
- (b) he has at least 5 years' qualifying service; and
- (c) either that employment is in the United Kingdom, or, if it is not, the most recent payment of earnings to him in respect of it gave rise to liability for primary Class 1 contributions or would have done so had the level of his earnings not been below the lower earnings limit.

Transfer of accrued rights to schemes overseas

22. A scheme may, instead of providing short service benefit, provide for a transfer of accrued rights (such as is mentioned in paragraph 9(2)(a) of Schedule 3) to another scheme which is administered primarily or wholly outside Northern Ireland only if that other scheme is one which is approved (whether or not subject to conditions) for the purpose of this regulation by the Board.

Modification of preservation requirements for schemes funded by level annual premiums

23.—(1) In the case of a scheme which on 6th April 1974 was of the description set out in paragraph (4) and has not, in the opinion of the Board, been materially altered since that date, the preservation requirements shall apply subject to the modification set out in paragraph (5).

(2) In the following paragraphs the word "policy" means a policy of insurance or an annuity contract, so however that any increase in the benefit assured is to be deemed to have been effected by a separate policy of insurance or annuity contract, as the case may be; and the word "premium" includes any payment analogous to a premium made or to be made in relation to any means of assuring benefit as a consideration for the assurance of that benefit.

(3) For the purposes of paragraph (1), where the evidence of the existence of a scheme on 6th April 1974 consists of or includes the payment of a premium, the Board shall not be required to treat that scheme as materially altered by reason only of its being set out in a written document after that date.

- (4) A scheme was of the description mentioned in paragraph (1) if—
 - (a) the benefit it provided for each member was related to his earnings at a specified time or over a specified period not being longer than 5 years;
 - (b) the benefit was assured by means of one or more policies;

- (c) each policy provided in respect of each member separate assurance, the proceeds of which were to go to that member at least to the extent that they were not greater than the benefits to which he was entitled at normal pension age; and
 - (d) the premium payable under each policy in respect of each member was payable at least annually, and the amount of it (expressed as an annual rate) remained unchanged except in consequence of—
 - (i) the declaration of a bonus, or
 - (ii) a change in the premium rate of the insurer.
- (5) The modification of the preservation requirements referred to in paragraph (1) is that the short service benefit provided by the scheme for or in respect of each member who was in qualifying service in relation to that scheme before 6th April 1975 shall be whichever is the greater of—
- (a) the total benefit payable to or in respect of that member, in accordance with the terms of the policy or policies, on the basis that no further premiums are to fall due after the date on which his service in relevant employment is terminated; and
 - (b) the aggregate of—
 - (i) the benefits which respectively bear the same ratio to the benefits (excluding any bonuses) which would have been payable to or in respect of him in accordance with the terms of each policy if his service in relevant employment had been terminated when he attained normal pension age, as the number of premiums which have fallen due in respect of each policy does to the number of premiums which would have fallen due if that service had been terminated when he attained that age, and
 - (ii) any bonuses declared before that service was terminated.

Miscellaneous

24.—(1) The Board may decide that a scheme conforms with the preservation requirements (notwithstanding that it is one which they would otherwise treat as not conforming) if it is set up or amended under an interim trust deed or other interim arrangement, and—

- (a) if the trust deed or other document giving interim effect to the scheme or to the amendment contains a requirement that the trustees or managers shall operate the scheme in conformity with those requirements; and
- (b) if in the opinion of the Board adequate steps have been taken to notify employees of the general purport of the proposed permanent scheme rules on the matters mentioned in regulation 13.

(2) Schemes which provide long service benefit payable to a member's widow or dependant (being, as the case may be, a wife to whom he was married or a person who was dependent upon him when he attained normal pension age) shall be required to provide short service benefit payable to a member's widow or dependant who was (as the case may be) a wife to whom he was married or a person who was dependent upon him both when his pensionable service terminated and when he attained normal pension age.

(3) In the case of a member some of whose service in relevant employment is service in respect of which a contributions equivalent premium has been paid under Article 44 of the Order, paragraph 6(1) of Schedule 3 shall apply subject to the modification that a scheme shall not be required to provide for the payment of any short service benefit in respect of the period in respect of which the contributions equivalent premium was paid, except to the extent (if any) that it provides for long service benefit to be paid in respect of that period.

(4) With a view to securing the orderly implementation of the provisions of Article 59 of the Order, paragraph 6(1) of Schedule 3 shall be modified so that it applies only where a member is or has been in qualifying service after 5th April 1975 in relation to either the scheme in question or another scheme which applies or applied to—

- (a) the employment which is relevant employment in relation to the scheme in question; or
- (b) employment with the same employer as that employment; or
- (c) employment with that employer's successor.

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

(L.S.)

C. G. Oakes
Assistant Secretary

EXPLANATORY NOTE

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

These regulations make provision for matters which need to be prescribed under the Social Security Pensions (Northern Ireland) Order 1975 with regard to preservation of benefit under occupational pension schemes. They prescribe for Northern Ireland purposes those provisions relating to preservation of benefit previously existing on a United Kingdom basis under section 63 of and Schedule 16 to the Social Security Act 1973.

Regulation 3 defines "member", "prospective member" and "employer" in relation to occupational pension schemes. Regulation 4 sets out some circumstances in which an increase of benefit or additional benefit is to constitute "supplementary credits". Regulation 5 prescribes circumstances in which short service benefit in lump sum form may be paid before normal pension age. Regulation 6 prescribes means of assuring short service benefit. Regulation 7 sets out some permissible alternatives to short service benefit. Regulations 8 to 11 modify the requirements for computation of short service benefit.

Regulation 12 prescribes some circumstances in which short service benefit may be commuted. Regulation 13 requires schemes to contain express rules dealing with certain aspects of preservation of benefit. Regulation 14 prescribes circumstances in which a person's employment is treated as terminated or not terminated.

Regulation 15 provides for the treatment of cases where two or more schemes relate to the same or related employment. Regulation 16 deals with certain cases where a person's accrued rights to retirement benefits have been transferred from one scheme to another, both schemes relating to employment with the same employer or with an employer and his successor. Regulations 17 and 18 deal with cases where a lump sum is paid to or in respect of a scheme member by way of a refund of his contributions to the scheme.

Regulation 19 provides for the application of the preservation requirements on the winding up of a scheme. Regulations 20 to 23 make miscellaneous modifications to the preservation requirements: regulation 20 with regard to relationship between the value of contributions and the value of benefits; regulations 21 and 22 with regard to schemes with an overseas element and regulation 23 with regard to schemes funded by level annual premiums.

Regulation 24 provides that the preservation requirements apply only to cases where a member is in qualifying service in the relevant scheme or a related scheme after 5th April 1975, and also makes miscellaneous provisions dealing with interim trust documents, dependants and state scheme premiums.