

1987 No. 281

SOCIAL SECURITY

**The Occupational Pension Schemes (Contracted-out
Protected Rights Premiums) Regulations
(Northern Ireland) 1987**

Made 10th July 1987

Coming into operation 6th April 1988

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 46ZA (4), (6), (7), (9) and (13) and 53 of, and paragraph 6 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 (Contracted-out Protected Rights Premiums) Regulations (Northern Ireland) 1987 and shall come into operation on 6th April 1988.

(2) In these regulations—

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

“the principal regulations” means the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1985(b).

Manner of calculation and verification of cash equivalents mentioned in Article 46ZA(7) and (9)(a)(i) of the Pensions Order

2.—(1) Except in a case to which paragraph (3) applies, the cash equivalent mentioned in Article 46ZA(7) of the Pensions Order of protected rights (being those rights under a scheme, which has ceased to be a money purchase contracted-out scheme, whose cash equivalent is to be the amount of a contracted-out protected rights premium) shall be calculated and verified—

(a) in such manner as may be approved in particular cases by the trustees or managers of the scheme; and

(a) S.I. 1975/1503 (N.I. 15); Article 46ZA is inserted by paragraph 8 of Schedule 2 to the Social Security (Northern Ireland) Order 1986 (S.I. 1986/1888 (N.I. 18)); paragraph 6 of Schedule 2 was amended by Article 4(11) of the Social Security (Northern Ireland) Order 1980 (S.I. 1980/870 (N.I. 8)) and is modified by regulation 3(5) of the Personal and Occupational Pension Schemes (Modification of Enactments) Regulations (Northern Ireland) 1987 (S.R. 1987 No. 294)

(b) S.R. 1985 No. 259; the relevant amending regulations are S.R. 1985 No. 355

(b) by adopting methods consistent with the requirements of Schedule 1 to the Social Security (Northern Ireland) Order 1986(a) as modified by Article 34(2B) of the Pensions Order(b).

(2) Except in a case to which paragraph (3) applies, the cash equivalent mentioned in Article 46ZA(9)(a)(i) of the Pensions Order of a person's rights (being those rights under a scheme, which has ceased to be a money purchase contracted-out scheme, whose cash equivalent is to be used to supplement a contracted-out protected rights premium) shall be calculated and verified in such manner as may be approved in particular cases by the trustees or managers of the scheme.

(3) In a case where the rights under a scheme mentioned in paragraph (1) or (2) fall, either wholly or in part, to be valued in a manner which involves making estimates of the value of benefits, the cash equivalent of those rights shall be calculated and verified—

(a) in such manner as may be approved in particular cases by—

- (i) a Fellow of the Institute of Actuaries,
- (ii) a Fellow of the Faculty of Actuaries, or
- (iii) a person with other actuarial qualifications who is approved by the Department, at the request of the trustees or managers of the scheme in question, as being a proper person to act for the purposes of these regulations in connection with that scheme, and in this regulation “actuary” means any person such as is referred to in head (i), (ii) or (iii); and

(b) by adopting methods and making assumptions which—

- (i) if not determined by the trustees or managers of the scheme in question, are notified to them by an actuary, and
- (ii) are certified by an actuary to the trustees or managers of the scheme as being consistent with “Retirement Benefit Schemes — Transfer Values (GN11)” published by the Institute of Actuaries and the Faculty of Actuaries and current at the date of the calculation, and, in the case of protected rights, as being consistent with the requirements of Schedule 1 to the Social Security (Northern Ireland) Order 1986 as modified by Article 34(2B) of the Pensions Order.

Amendment of regulation 1 of the principal regulations

3. In regulation 1(2) of the principal regulations (interpretation) immediately after the definition of “employer” there shall be inserted the following definition—

“ “qualifying widow or widower” means a widow or widower of the earner who at the date of the earner's death either—

- (a) is aged 45 or over; or
- (b) is entitled to child benefit in respect of a child under 18 who is, or residing with a child under 16 who is—

(a) S.I. 1986/1888 (N.I. 18)

(b) Article 34(2B) is inserted by paragraph 6(b) of Schedule 2 to the Social Security (Northern Ireland) Order 1986

- (i) a son or daughter of the widow or widower and the earner,
- (ii) a child in respect of whom the earner immediately before his death was, or would have been if the child had not been absent from Northern Ireland, entitled to child benefit, or
- (iii) if the widow or widower and the earner were residing together immediately before the earner's death, a child in respect of whom the widow or widower then was, or would have been if the child had not been absent from Northern Ireland, entitled to child benefit;''.

Amendment of regulation 17 of the principal regulations

4.—(1) Regulation 17 of the principal regulations (liability for payment of state scheme premiums) shall be amended in accordance with paragraphs (2) and (3).

- (2) After paragraph (1) there shall be inserted the following paragraph—
- “(1ZA) For the purposes of Article 46ZA(6) (payment of contracted-out protected rights premiums) the prescribed person is—
- (a) in a case where regulation 22A(7)(a) and (c) applies, the person to whom the cash sum mentioned in regulation 22A(7)(c) has been paid; and
 - (b) in any other case, the trustees of the scheme.”.

- (3) After paragraph (2) there shall be inserted the following paragraph—
- “(2A) A contracted-out protected rights premium shall not be payable—
- (a) in a case where the protected rights in question are in respect of an earner who has died and either—
 - (i) the earner is not survived by a qualifying widow or widower, or
 - (ii) the earner is survived by a qualifying widower, and the earner or the widower or both were under pensionable age when the earner died; or
 - (b) in a case where the person in respect of whom it otherwise would be payable is not treated, under Article 6 of the Social Security (Northern Ireland) Order 1986 or under Article 31(2) or (2A) of the Pensions Order(a), as entitled to any guaranteed minimum pension which derives from the minimum contributions, minimum payments, or transfer payment or payments from which the protected rights in question derive, or is treated as entitled to such a guaranteed minimum pension at a nil rate.”.

Amendment of regulation 19 of the principal regulations

5.—(1) Regulation 19 of the principal regulations (time for payment of state scheme premiums) shall be amended in accordance with paragraphs (2) to (4).

(a) Article 31(2) is amended by paragraph 5(b) of Schedule 9 to the Social Security (Northern Ireland) Order 1986 and Article 31(2A) is inserted by paragraph 4 of Schedule 2 to that Order

(2) In paragraph (1)(b) at the end there shall be inserted “, or, in the case of a contracted-out protected rights premium, certifying that the premium is payable”.

(3) After paragraph (3) there shall be inserted the following paragraph—

“(3A) 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 a person’s protected rights are not the subject of approved arrangements under Article 46ZA 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 17(4) that the protected rights in question are not subject to approved arrangements or have ceased to be so subject.”.

(4) After paragraph (4) there shall be inserted the following paragraph—

“(4A) 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 a person’s protected rights are, in part only, subject to approved arrangements under Article 46ZA, 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 17(4) that the protected rights in question are, in part only, subject to approved arrangements.”.

Insertion of regulation 22A to the principal regulations

6. After regulation 22 of the principal regulations there shall be inserted the following regulation—

“Miscellaneous provisions affecting contracted-out protected rights premiums

22A.—(1) Subject to paragraphs (3) and (4), where a contracted-out protected rights premium is payable under Article 46ZA(4) pursuant to certification by the Board to the Department under regulation 17(4), the premium shall, for the purpose of extinguishing protected rights and reducing any guaranteed minimum pension to which a person is treated as being entitled, be treated as having been paid, or paid in part in a case to which either paragraphs (6) to (8) apply or paragraph (9) applies, on the date specified in paragraph (2).

(2) The date mentioned in paragraph (1) is whichever is the later of—

- (a) the date on which the scheme ceased to be contracted-out; and
- (b) any date certified by the Board under regulation 17(4)(c) in relation to the rights mentioned in paragraph (1).

(3) Where a contracted-out protected rights premium has been treated as paid under paragraph (1), the effect of that paragraph shall, except as provided in paragraph (5), be disregarded if—

- (a) the Board subsequently approve arrangements for the preservation or transfer of the protected rights; or
- (b) the person who is liable to pay the premium fails to do so within the period prescribed by regulation 19(1) or such longer period as the Department may allow under regulation 19(2).

(4) Where by virtue of the operation of paragraphs (1) and (3) in relation to a person entitled to a benefit specified in Article 31(1)(a)(a) an amount of that benefit, as certified by the Department, was paid to that person which would not otherwise have been paid—

- (a) the Department shall be entitled to recover that amount from the scheme and any amount so recovered shall be paid into the National Insurance Fund; and
- (b) the sums payable under the scheme to that person may be reduced by the amount so recovered by the Department.

(5) Paragraph (3)(b) shall not apply where 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, and where, subject to paragraphs (6) and (8), the scheme, being a scheme which is or has been contracted-out, is being or has been wound up.

(6) In a case where the circumstances specified in paragraph (7)(a) and either (b) or (c) obtain, the contracted-out protected rights premium in question shall be treated as paid under paragraph (1) only in accordance with the provisions of paragraph (8).

(7) The circumstances mentioned in paragraph (6) are that—

- (a) a contracted-out protected rights premium has become payable in respect of that person by reason of the withdrawal by the Board of their approval of, or their inability to give their approval to, arrangements for the preservation or transfer of the protected rights in question under Article 46ZA;
- (b) the scheme is being or has been wound up, its resources are insufficient to meet the cost of that premium, and the Board are satisfied that no arrangements have been made to meet that cost, or, as the case may be, such part of that cost as cannot be met from the resources of the scheme;
- (c) the scheme has been wound up and a cash sum in lieu of the protected rights in question has been paid to or for the benefit of the person concerned.

(8) In a case to which paragraph (6) applies, where the Department is satisfied that the part of the premium that the resources of the scheme are sufficient to meet or the amount of the cash sum referred to in paragraph (7)(c) is less than the value of the protected rights in question, such part of the contracted-out protected rights premium as represents, in the opinion of the Department, the difference between the lesser and greater amounts shall be treated as having been paid.

(9) Where a person in respect of whom a contracted-out protected rights premium is payable is a person to whom regulation 17(1ZA)(a) applies and that person pays part only of that premium, that part of the premium shall be treated as having been paid under paragraph (1).

(10) Where part of a contracted-out protected rights premium is treated as having been paid under paragraph (1)—

(a) Article 31(1)(a) is amended by paragraph 5(a) of Schedule 9 to the Social Security (Northern Ireland) Order 1986

- (a) Article 46ZA(8) shall be modified so as to have effect as if there were inserted at the end thereof “and payment of part of the premium shall operate to extinguish such part of those rights as corresponds, in the opinion of the Department, to that part of the premium” and Article 46ZA(9)(a) shall have effect as if for “the premium” there were substituted “that part of the premium which has been paid”; and
- (b) in a case to which paragraph (6) applies, Article 46ZA shall be modified so as to have effect as if—
- (i) in paragraph (1) of that Article after “protected rights” there were inserted “or part thereof”,
 - (ii) in each of sub-paragraphs (a) and (b) of paragraph (4) of that Article after “are not” there were inserted “or are in part only”, and
 - (iii) in paragraph (7) of that Article after “in question” there were inserted “to the extent that those rights are not subject to approved arrangements”.

Insertion of regulation 25A to the principal regulations

7. After regulation 25 of the principal regulations there shall be inserted the following regulation—

“Prescribed person and prescribed periods for the purposes of Article 46ZA(9)(a)

25A. For the purposes of Article 46ZA(9)(a)—

- (a) the prescribed person is the Department; and
- (b) the prescribed period—
 - (i) for the purpose of giving notice to the Department,
 - (ii) for the purpose of the payment referred to in Article 46ZA(9)(a)(i), and
 - (iii) for the purpose of the payment referred to in Article 46ZA(9)(a)(ii),

is the period allowed for the payment of the premium under paragraphs (1) and (2) to (4) of regulation 19.”.

Sealed with the Official Seal of the Department of Health and Social Services on 10th July 1987.

(L.S.)

A. N. Burns

Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These regulations are made under Article 46ZA of the Social Security Pensions (Northern Ireland) Order 1975 (“the Pensions Order”), which is brought into operation on 6th April 1988 by virtue of the Social Security (1986 Order) (Commencement No. 5) Order (Northern Ireland) 1987 (S.R. 1987 No. 161 (C. 6)) or provisions of the Pensions Order as modified with effect from 6th April 1988 in relation to occupational pension schemes by the Personal and Occupational Pension Schemes (Modification of Enactments) Regulations (Northern Ireland) 1987.

The amendments made to the Pensions Order by Schedule 2 to the Social Security (Northern Ireland) Order 1986 introduced into the Pensions Order the concept of the “money purchase contracted-out scheme”. When such a scheme ceases to be a contracted-out scheme, a “contracted-out protected rights premium” may become payable under Article 46ZA of the Pensions Order in respect of each person in the categories described in paragraph (4) of that Article.

Under paragraph (7) of that Article, the amount of a contracted-out protected rights premium is the cash equivalent of the protected rights of the person concerned, calculated and verified in the prescribed manner.

Regulation 2 provides for the manner in which protected rights, and other rights under the scheme, are to be calculated and verified.

Regulations 3 to 7 make various amendments, in order to deal with the case of contracted-out protected rights premiums, to the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1985, and in particular to regulations 17 (liability for payment of state scheme premiums), 19 (time for payment of premiums) and 22 (treating premiums as paid).

The publication “Retirement Benefit Schemes — Transfer Values (GN11)”, referred to in regulation 2(3)(b)(ii), may be obtained from the Institute of Actuaries, Staple Inn Hall, High Holborn, London WC1V 7QJ, and from the Faculty of Actuaries, 23 St. Andrew Square, Edinburgh EH2 1AQ.