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STATUTORY RULES OF NORTHERN IRELAND

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**1997 No. 159**

**PENSIONS**

**The Occupational Pension Schemes (Discharge of Liability) Regulations (Northern Ireland) 1997**

*Made* - - - - *14th March 1997*  
*Coming into operation* *6th April 1997*

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 8C, 15, 177(2) to (4) and 178(1) of the Pension Schemes (Northern Ireland) Act 1993<sup>(1)</sup> and of all other powers enabling it in that behalf, hereby makes the following Regulations:

**Part I**

**General**

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Discharge of Liability) Regulations (Northern Ireland) 1997 and shall come into operation on 6th April 1997.

(2) In these Regulations—

“the Act” means the Pension Schemes (Northern Ireland) Act 1993;

“actuary” means—

(a) a Fellow of the Institute of Actuaries; or

(b) a Fellow of the Faculty of Actuaries; or

(c) a person with actuarial qualifications who is approved by the Department;

“the Order” means the Pensions (Northern Ireland) Order 1995<sup>(2)</sup>;

“relevant scheme” has the same meaning as in section 8C(2);

“supplementary credits” has the same meaning as in section 71;

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(1) 1993 c. 49; section 8C was inserted by Article 133(5) of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))  
(2) S.I. 1995/3213 (N.I. 22)

“trustees”, in relation to an occupational pension scheme which is not set up or established under a trust, means the managers of that scheme.

(3) The Interpretation Act (Northern Ireland) 1954<sup>(3)</sup> shall apply to these Regulations as it applies to a Measure of the Assembly.

(4) In these Regulations any reference—

- (a) to a numbered section is a reference to the section of the Act bearing that number; and
- (b) to a numbered Article is a reference to the Article of the Order bearing that number.

## Part II

### Discharge of Liability where Guaranteed Minimum Pensions, Short Service Benefits and Alternatives to Short Service Benefits are secured by Insurance Policies or Annuity Contracts

#### Requirements applying to policies of insurance and annuity contracts

2.—(1) The requirements referred to in section 15(4)(a)(ii) (requirements applying to policy of insurance or annuity contract for the purposes of discharging liability for guaranteed minimum pensions) are that the insurance policy is taken out, or the annuity contract is entered into, with an insurance company which is—

- (a) authorised under section 3 or 4 of the Insurance Companies Act 1982<sup>(4)</sup> (authorised insurance companies) to carry on ordinary long term insurance business as defined in that Act;
  - (b) in the case of a friendly society, authorised under section 32 of the Friendly Societies Act 1992<sup>(5)</sup> (grant of authorisation by Commission: general) to carry on long term business under any of the Classes specified in Head A of Schedule 2 to that Act (activities of a friendly society: long term business); or
  - (c) an EC company as defined in section 2(6) of the Insurance Companies Act 1982<sup>(6)</sup> (restriction on carrying on insurance business) falling within paragraph (2).
- (2) An EC company falls within this paragraph if it—
- (a) carries on ordinary long term insurance business (as defined in the Insurance Companies Act 1982) in the United Kingdom through a branch in respect of which such of the requirements of Part I of Schedule 2F to that Act<sup>(7)</sup> (EC companies carrying on business etc. in the United Kingdom) as are applicable have been complied with; or
  - (b) provides ordinary long term insurance (within the meaning of that Act) in the United Kingdom and such of the requirements of Part I of Schedule 2F to that Act as are applicable have been complied with in respect of the insurance.

#### Conditions on which policies of insurance and annuity contracts may be assigned or surrendered

3. The conditions referred to in section 15(4)(b) (policy of insurance or annuity contract appropriate where assignment or surrender conditional on satisfying prescribed requirements) are—

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(3) 1954 c. 33 (N.I.)  
(4) 1982 c. 50  
(5) 1992 c. 40; section 32(4) was substituted by regulation 4 of S.I. 1994/1984  
(6) Section 2(6) was inserted by regulation 4(2) of S.I. 1994/1696  
(7) Schedule 2F was inserted by regulation 45 of S.I. 1994/1696

- (a) that the written consent of the earner or, if the earner has died, the consent of the earner's widow or widower to the assignment or surrender is obtained; and
- (b) that in consideration of the assignment or surrender the benefits previously secured by the policy of insurance or annuity contract become secured, or are replaced by benefits which are secured, by one or more of the following means—
  - (i) another policy of insurance or annuity contract which is appropriate within the meaning of section 15(4);
  - (ii) subject to regulations 3, 5 and 6 of the Contracting-out (Transfer and Transfer Payment) Regulations (Northern Ireland) 1996<sup>(8)</sup> in the case of benefits which are, or include, guaranteed minimum pensions, the award of supplementary credits under an occupational pension scheme which applies to the employment of the earner at the time of the assignment or surrender or the granting of rights to money purchase benefits under a personal pension scheme;
  - (iii) in the case only of benefits which are not, and do not include, guaranteed minimum pensions, the award of rights to money purchase benefits under a self-employed pension arrangement within the meaning of regulation 12(6)(a) of the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996<sup>(9)</sup> (requirements to be met by receiving schemes, annuities and arrangements) or regulation 2A(3) of the Personal Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1987<sup>(10)</sup> (use of cash equivalents for subscribing to self-employed pension arrangements).

#### **Conditions on which policies of insurance and annuity contracts may be commuted**

4.—(1) The conditions referred to in section 15(4)(c) (policy of insurance or annuity contract appropriate where commutation conditional on satisfying prescribed requirements) are—

- (a) that—
  - (i) the benefits secured by the policy of insurance or annuity contract have become payable, and the aggregate of those benefits and all other benefits currently payable or prospectively payable to the earner or, as the case may be, to the earner's widow or widower under all occupational pension schemes relating to employment with the same employer as the employment in respect of which the benefits secured by the policy of insurance or annuity contract are payable does not exceed £260 per annum;
  - (ii) an actuary certifies that the methods and assumptions to be used to calculate any benefit in a lump sum form will result in the benefit being broadly equivalent to the annual amount of benefits which would have been payable in pension; and
  - (iii) all of the earner's interest under the policy of insurance or annuity contract is discharged upon payment of a lump sum; or
- (b) subject to paragraph (2), that the benefits secured by the policy of insurance or annuity contract have become payable and the earner requests or consents to the commutation, and the earner—
  - (i) has attained the age of 50; or
  - (ii) is suffering from an incapacity or serious ill-health prior to normal pension age.

(2) The commutation referred to in paragraph (1)(b) does not apply to that part of the benefits which consist of the earner's and the earner's widow's or widower's guaranteed minimum pensions.

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<sup>(8)</sup> S.R. 1996 No. 618

<sup>(9)</sup> S.R. 1996 No. 619

<sup>(10)</sup> S.R. 1987 No. 290; regulation 2A was inserted by regulation 3(c) of S.R. 1988 No. 214 and amended by paragraph 15(5) of Schedule 2 to S.R. 1994 No. 300

- (3) For the purposes of paragraph (1)(a)—
- (a) any benefit in a lump sum shall be treated as an annual amount of benefit in pension;
  - (b) any benefit secured by means of another policy of insurance or annuity contract which is appropriate for the purposes of section 15(4) shall be treated as payable or prospectively payable under the occupational pension scheme which was liable to provide it before it was so secured; and
  - (c) any guaranteed minimum pension which is prospectively payable shall be reckoned as having the value that it will have (in accordance with the provisions of the occupational pension scheme in question) when the earner reaches pensionable age.
- (4) For the purposes of paragraph (1)(b)(ii)—
- “incapacity” means physical or mental deterioration which seriously impairs his earning capacity;
- “serious ill-health” means ill-health which is such as to give rise to a life expectancy of less than one year.

#### **Other requirements applying to policies of insurance and annuity contracts**

5. The requirements referred to in section 15(4)(d) (policy of insurance or annuity contract appropriate where it satisfies such other prescribed requirements) are—
- (a) that the insurance company with which the policy of insurance is taken out or the annuity contract entered into assumes an obligation to the earner in question or to the trustees of a trust for the benefit of the earner and, if appropriate, dependants of his, to pay the benefits secured by the policy or contract to him or, as the case may be, to dependants of his or to the trustees of such a trust;
  - (b) that the policy of insurance or annuity contract contains, or is endorsed with, terms so as to provide for any increase, which would have been applicable as a consequence of Articles 51 (annual increase in rate of pension) and 52 (restriction on increase where member is under 55) had the discharge of liability not taken place, to apply to the benefits which have become secured or been replaced by the policy or contract;
  - (c) that, if any guaranteed minimum pension is due or prospectively due to the earner in question, the policy of insurance or annuity contract contains, or is endorsed with, terms so as to provide—
    - (i) that the annuity to be paid thereunder to or for his benefit will be at least equal to the guaranteed minimum pension due to him or, as the case may be, prospectively due to him, at pensionable age subject to section 11 (increase of guaranteed minimum where commencement of guaranteed minimum pension postponed) or section 12 (reevaluation of earnings factors for purposes of section 10: early leavers, etc.)(11);
    - (ii) in the case where the earner dies leaving a widow or widower, that the annuity payable for the widow’s or widower’s benefit will be at least equal to the guaranteed minimum pension due or prospectively due to the widow or widower; and
    - (iii) in each case mentioned in sub-paragraphs (i) and (ii), that any increase of guaranteed minimum pension under Chapter II of Part V of the Act(12) (guaranteed minimum pensions) results in a similar increase in the annuity.

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(11) Section 12 is amended by paragraph 21 of Schedule 3 to the Pensions (Northern Ireland) Order 1995

(12) Chapter II of Part V is amended by Articles 53(4) and 55 of the Pensions (Northern Ireland) Order 1995

### **Further conditions on which liability may be discharged**

6.—(1) The conditions referred to in section 15(5)(c)(ii) (further conditions on which liability for guaranteed minimum pensions may be discharged) are that the requirements of one or more of paragraphs (2) to (5) are satisfied.

(2) The requirements of this paragraph are satisfied if—

- (a) the earner is dead and benefit is payable to a person other than the earner's widow or widower; and
- (b) the arrangement for securing the benefit by means of the policy of insurance or annuity contract was made at the written request of the person entitled to it or with the consent of that person given in writing in the form set out in Schedule 1.

(3) The requirements of this paragraph are satisfied if the benefit is provided as an alternative to short service benefit by virtue of a provision that conforms with the requirements of regulation 9(4) of the Occupational Pension Schemes (Preservation of Benefit) Regulations (Northern Ireland) 1991<sup>(13)</sup> (bought out benefits without consent).

(4) In a case where an occupational pension scheme is being wound up and Articles 73 (preferential liabilities on winding up) and 74 (discharge of liabilities by insurance, etc.) and regulations made under those Articles do not apply, the requirements of this paragraph are satisfied if the earner is able to assign or surrender the policy of insurance or annuity contract and the conditions specified in regulation 3 are satisfied.

(5) The requirements of this paragraph are satisfied if—

- (a) the benefit in question includes a guaranteed minimum pension that is payable to the earner's widow or widower; and
- (b) the trustees—
  - (i) give the earner's widow or widower at least 30 days' written notice ("the notice") of their intention to take out the insurance policy or enter into the annuity contract; and
  - (ii) send the notice, by registered post, recorded delivery or ordinary post, to the widow or widower at her or his last known address or deliver the notice to the widow or widower personally.

### **Form of consent**

7. For the purpose of section 15(5)(a)(ii) (form of consent to arrangements for securing benefits) the prescribed form is the form set out in Schedule 1.

## **Part III**

### **Discharge of Liability to Provide Pensions Under a Relevant Scheme**

#### **Prohibition or restriction of the discharge of liability to provide pensions under a relevant scheme: exceptions**

8. The trustees of a relevant scheme are prohibited or restricted from discharging any liability to provide pensions under a relevant scheme except—

- (a) in the circumstances or on the conditions specified in this Part; or

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<sup>(13)</sup> S.R. 1991 No. 37; relevant amending regulations are S.R. 1994 No. 300 and S.R. 1996 No. 620

- (b) where the requirements imposed by the Occupational Pension Schemes (Winding Up) Regulations (Northern Ireland) 1996<sup>(14)</sup> or Part V of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996<sup>(15)</sup> (further requirements (all schemes) and overseas schemes) apply.

### **Circumstances in which liability to provide pensions under a relevant scheme may be discharged**

9.—(1) The trustees of a relevant scheme may discharge any liability to provide pensions under a relevant scheme where the circumstances specified in paragraph (2) or (3) apply.

(2) The member or, if the member has died, the member's widow or widower, or if there is no such widow or widower, any person who may be entitled to payment of the pension under the scheme consents in writing to the discharge of liability, and the transaction to discharge the liability—

- (a) is to be carried out not earlier than the time when the member's pensionable service terminates; and  
(b) satisfies all the conditions specified in regulation 11.

(3) The member's employment is to cease to be contracted-out under section 5(2B)<sup>(16)</sup> (requirements for certification of schemes: general) and the transaction to discharge the liability satisfies all the conditions specified in regulation 11.

### **Meaning of "transaction"**

10. For the purposes of regulation 9, "transaction" means—

- (a) the taking out of a policy of insurance or a number of such policies;  
(b) the entry into an annuity contract or a number of such contracts; or  
(c) the transfer of pensions and accrued rights to such a policy or policies or such a contract or contracts.

### **Conditions on which liability to provide pensions under a relevant scheme may be discharged**

11.—(1) The conditions referred to in regulation 9(2)(b) and (3) which must be satisfied are specified in paragraphs (2) and (3).

(2) The policy of insurance or annuity contract must be taken out or entered into with an insurance company such as is described in section 15(4)(a) (requirements applying to policy of insurance or annuity contract for the purposes of discharging liability for guaranteed minimum pensions).

(3) The policy of insurance or annuity contract contains provision to the effect that, or is endorsed so as to provide that—

- (a) except in the circumstances specified in paragraph (4), where a pension or annuity is in payment at the date of the beneficiary's death at least 50 per cent. of the annual rate attributable to pensions and accrued rights under the relevant scheme which was in payment at the date of death shall be payable to the beneficiary's widow or widower;  
(b) except in the circumstances specified in paragraph (4)(b) and (c), where a pension or annuity is not in payment at the date of the beneficiary's death at least 50 per cent. of the accumulated value of the policy or contract at the date of death attributable to pension and

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<sup>(14)</sup> S.R. 1996 No. 621

<sup>(15)</sup> S.R. 1996 No. 493

<sup>(16)</sup> Section 5(2B) was substituted by Article 133(3) of the Pensions (Northern Ireland) Order 1995

- accrued rights under the relevant scheme shall be applied so as to provide a pension or annuity for the beneficiary's widow or widower;
- (c) payments to a beneficiary's widow or widower under the policy or contract which derive from a pension or accrued rights under the relevant scheme shall be subject to the same rate of an annual increase and restrictions which would have applied as a consequence of Articles 51 (annual increase in rate of pension) and 52 (restriction on increase where member is under 55) had the discharge of liability not taken place;
  - (d) the benefits secured under the policy or contract shall become payable with the beneficiary's consent, and the beneficiary—
    - (i) has attained the age of 50 and is under the age of 75; or
    - (ii) is suffering from an incapacity or serious ill-health prior to normal pension age;
  - (e) any rights of a beneficiary to a payment under the policy or contract which derive from a pension or accrued rights under the relevant scheme shall be treated as if—
    - (i) section 8C(1) (transfer, commutation, etc.) and regulations made under that section; and
    - (ii) Articles 51 and 52 and regulations made under those Articles, were applicable to them.
- (4) The circumstances referred to in paragraph (3)(a) are—
- (a) that the beneficiary marries after having received benefits under the policy of insurance or annuity contract;
  - (b) that the beneficiary's widow or widower remarries or lives together as husband and wife with another person to whom she or he is not married after having received benefits under the policy of insurance or annuity contract;
  - (c) that the beneficiary's widow or widower is living together as husband and wife with another person to whom she or he is not married at the time of the member's death.
- (5) For the purposes of paragraph (3)(d), "incapacity" and "serious ill-health" have the same meaning as in regulation 4(4).
- (6) For the purposes of paragraph (3)(e), the provisions of the Act and the Order shall be construed as if—
- (a) the policy of insurance or annuity contract were a relevant scheme;
  - (b) the insurance company were the trustee of the relevant scheme;
  - (c) the beneficiary were the member of the relevant scheme; and
  - (d) the terms of the policy of insurance or annuity contract were the rules of the relevant scheme.

## Part IV

### Revocations

#### Revocations

**12.** The Regulations specified in column (1) of Schedule 2 are hereby revoked to the extent mentioned in column (3) of that Schedule.

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**Status:** This is the original version (as it was originally made). Northern  
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Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland  
on

14th March 1997.

*John O'Neill*  
Assistant Secretary

## SCHEDULE 1

Regulations 6 and 7

## Form of Consent to Arrangement for Securing Benefits

To the trustees/managers\* of the .....†

Full name of earner/widow/widower\*:

Present address of earner/widow/widower\*:

Benefits to be provided by the proposed policy/contract\*:

Name of insurer with whom benefits are to be secured:

I consent to the securing, under an insurance policy taken out/annuity contract entered into\* with the insurer named above, of the benefits specified above in substitution for benefits which would otherwise have fallen to be provided for or in respect of me under the pension scheme named above.

Signed .....

Date .....

\*delete whichever is inapplicable

†insert name of pension scheme

## SCHEDULE 2

Regulation 12

## Revocations

Column (1) Citation	Column (2) Reference	Column (3) Extent of revocation
The Occupational Pension Schemes (Discharge of Liability) Regulations (Northern Ireland) 1985	S.R. <a href="#">1985 No. 356</a>	The whole Regulations
The Occupational Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 1986	S.R. <a href="#">1986 No. 362</a>	The whole Regulations
The Occupational Pension Schemes (Qualifying Service — Consequential and Other Provisions) Regulations (Northern Ireland) 1987	S.R. <a href="#">1987 No. 284</a>	Regulation 4
The Personal and Occupational Pension Schemes (Consequential Provisions) Regulations (Northern Ireland) 1987	S.R. <a href="#">1987 No. 292</a>	Regulation 6

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Column (1) Citation	Column (2) Reference	Column (3) Extent of revocation
The Occupational Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 1988	S.R. <a href="#">1988 No. 109</a>	Regulation 4
The Personal and Occupational Pension Schemes (Transfer to Self-employed Pension Arrangements) Regulations (Northern Ireland) 1988	S.R. <a href="#">1988 No. 214</a>	Regulation 4
The Occupational Pension Schemes (Preservation of Benefit) Regulations (Northern Ireland) 1991	S.R. <a href="#">1991 No. 37</a>	In Schedule 1, paragraph 1
The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 1992	S.R. <a href="#">1992 No. 304</a>	Regulation 3
The Occupational and Personal Pension Schemes (Consequential Amendments) Regulations (Northern Ireland) 1994	S.R. <a href="#">1994 No. 300</a>	In Schedule 2, paragraph 4
The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 1995	S.R. <a href="#">1995 No. 7</a>	Regulation 3

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### EXPLANATORY NOTE

*(This note is not part of the Regulations.)*

These Regulations consolidate (with amendments) the Occupational Pension Schemes (Discharge of Liability) Regulations (Northern Ireland) 1985. In addition to minor and drafting amendments, they make provision in respect of the discharge of liability in respect of pensions and accrued rights under a scheme contracted out by virtue of section 5(2B) of the Pension Schemes (Northern Ireland) Act 1993 (“a relevant scheme”) so far as is attributable to an earner’s service on or after 6th April 1997. Regulations 2 and 5 prescribe requirements which apply to policies of insurance and annuity contracts for the purposes of discharging liability.

Regulations 3 and 4 prescribe conditions on which policies of insurance and annuity contracts may be assigned, surrendered or commuted.

Regulation 6 prescribes further conditions on which liability may be discharged.

Regulation 7 and Schedule 1 set out the form of consent to the arrangements for securing benefits.

Regulations 8, 9 and 11 provide the circumstances in which and conditions on which the discharge of liability to provide pensions under a relevant scheme may occur.

Regulation 10 defines the meaning of “transaction” for the purposes of regulation 9.

Regulation 12 and Schedule 2 provide for revocations.

Section 8C of the Act, one of the enabling provisions under which these Regulations are made, was inserted by Article 133(5) of the Pensions (Northern Ireland) Order 1995 (“the Order”). The Pensions (1995 Order) (Commencement No. 2) Order (Northern Ireland) 1996 (S.R. [1996 No. 91](#) (C. 4)) provides for the coming into operation of Article 133(5) of the Order, for the purpose only of authorising the making of regulations, on 6th April 1996 and, in so far as it is not already in operation, on 6th April 1997.