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STATUTORY RULES OF NORTHERN IRELAND

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**1997 No. 95**

**PENSIONS**

**The Occupational Pension Schemes (Mixed Benefit Contracted-out Schemes) Regulations (Northern Ireland) 1997**

*Made* - - - - *24th February 1997*

*Coming into operation* *6th April 1997*

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 146 and 166(1) to (3) of the Pensions (Northern Ireland) Order 1995(1) 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 (Mixed Benefit Contracted-out Schemes) Regulations (Northern Ireland) 1997 and shall come into operation on 6th April 1997.

(2) In these Regulations—

“the Contracting-out Regulations” means the Occupational Pensions Schemes (Contracting-out) Regulations (Northern Ireland) 1996(2);

“mixed benefit contracted-out scheme” means a scheme which is contracted-out by virtue of its being a relevant scheme;

“the principal appointed day” has the meaning given to that expression by section 3(2B)(3);

“relevant scheme” means a scheme to which Article 146(1) applies;

“section 5(2B) rights” has the same meaning as in the Contracting-out Regulations.

(3) A relevant scheme is to be treated for the purposes of these Regulations as if the pensions provided by the scheme falling within Article 146(1)(a), and the pensions provided by the scheme falling within Article 146(1)(b), were provided by separate parts of the scheme; and references in these Regulations to a separate part of such a scheme are to be read accordingly.

(4) In these Regulations any reference to the salary related part or the money purchase part of a relevant scheme is a reference to the separate part providing such pensions as are referred to in subparagraphs (a) and (b) respectively of Article 146(1).

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(1) [S.I. 1995/3213 \(N.I. 22\)](#)

(2) [S.R. 1996 No. 493](#)

(3) Section 3(2B) was inserted by Article 133(1) of the Pensions (Northern Ireland) Order 1995

- (5) For the purposes of these Regulations a separate part of a relevant scheme is inactive if—
- (a) any member has accrued rights by reference to that part; and
  - (b) no further benefits may accrue in respect of any member's service by reference to that part.
- (6) For the purposes of these Regulations and notwithstanding section 39(2) of the Interpretation Act (Northern Ireland) 1954(4), where a period of time is expressed to begin on, or to be reckoned from, a particular day, that day shall be included in the period.
- (7) In these Regulations—
- (a) any reference to a numbered section is a reference to the section of the Pension Schemes Act bearing that number; and
  - (b) any reference to a numbered Article is a reference to the Article of the Pensions (Northern Ireland) Order 1995 bearing that number.

### **Parts of a relevant scheme to be treated as separate schemes for contracting-out purposes**

2.—(1) Subject to paragraph (4), if the condition specified in paragraph (2) is satisfied, a relevant scheme is to be treated for the purposes of Part III of the Pension Schemes Act as if the separate parts of the scheme were separate schemes.

(2) The condition referred to in paragraph (1) is that the rules of the relevant scheme are such that a member's service in a single employment at any given time may be qualifying service by reference only to one of the separate parts.

(3) Where one separate part of a relevant scheme has become inactive, it is to continue to be treated as a separate scheme for the purposes of Part III of the Pension Schemes Act, notwithstanding that it has ceased to satisfy sub-section (2) or, as the case may be, subsection (3) of section 5(5).

(4) Part III of the Pension Schemes Act is to have effect, in relation to the separate parts of a relevant scheme, with the following modifications—

- (a) any reference to a contracting-out certificate is to be read as a reference to a single certificate—
  - (i) relating to both separate parts of the relevant scheme and stating that the relevant scheme is contracted-out by virtue of subsections (2) and (3) of section 5; or
  - (ii) relating, if one of the separate parts is inactive, to the other part of the relevant scheme and stating that the relevant scheme is contracted-out by virtue of subsection (2) or, as the case may be, subsection (3) of section 5,
 and section 8 (determination of basis on which scheme is contracted-out) does not apply;
- (b) in section 7(6) (elections as to employments covered by contracting-out certificates) any reference to an election is to be read as a reference to an election in relation to the relevant scheme;
- (c) in section 12(7) (revaluation of earnings factors: early leavers) any reference to scheme is to be read as reference to relevant scheme;
- (d) sections 46, 48 and 49(8) (approval of arrangements for, and supervision of, formerly certified schemes) are to apply to an inactive part of the relevant scheme as if it were a scheme which had ceased to be certified as a contracted-out scheme;

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(4) 1954 c. 33 (N.I.)

(5) Section 5(2) was substituted by Article 133(3) of the Pensions (Northern Ireland) Order 1995 and section 5(3) is amended by Article 133(4) of, and paragraph 17 of Schedule 3 to, that Order

(6) Section 7 is amended by paragraph 14 of Schedule 3 to the Pensions (Northern Ireland) Order 1995

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

(8) Section 46 is amended by paragraphs 14 and 37 of Schedule 3 to the Pensions (Northern Ireland) Order 1995; section 48 is amended by paragraph 39 of Schedule 3 to that Order and section 49 is amended by paragraph 40 of Schedule 3 to that Order

- (e) in section 51(2)(9) (circumstances in which a contributions equivalent premium is payable) the reference to an occupational pension scheme is to be read as a reference to the relevant scheme and in sections 52(4), 53(3) and (4), 56(4), 57(1)(b), (8) and (11)(10) references to scheme are to be read as references to relevant scheme;
- (f) in spite of sub-paragraph (e), in section 54(4) (amount of a contributions equivalent premium) the reference to the scheme in relation to an earner's contracted-out employment is to be read as a reference only to the salary related part of the relevant scheme.

(5) For the purposes of any regulations made under Part III of the Pension Schemes Act, a relevant scheme is also to be treated as if the separate parts of the scheme were separate schemes, subject to the modifications to that Part provided for in paragraph (4) and any modifications to such regulations provided for in regulations 3 and 4.

### **Modification of the Contracting-out Regulations**

**3.—**(1) The Contracting-out Regulations are modified in relation to the separate parts of a relevant scheme in accordance with the following provisions of this regulation.

(2) In regulation 3 (notices by employers of intended election), in the case of an election with a view to the issue of a contracting-out certificate in respect of a relevant scheme, there is to be a further requirement that the notice referred to in that regulation must state that the employment would be contracted-out by reference to a mixed benefit contracted-out scheme and explain—

- (a) in a case where all the earners in the employment fall only in one separate part, how benefits would accrue to an earner under that part if the employment were contracted-out; and
- (b) in any other case, by reference to each separate part, how benefits would accrue to an earner if the employment were contracted-out,

and paragraph (2)(g)(i) of that regulation does not apply.

(3) In regulation 6 (information to be included in an election), in a case referred to in paragraph (2) of this regulation—

- (a) there is to be added to the particulars specified in paragraph (1) of that regulation a statement as to whether all the earners in each employment may fall in either of the separate parts and, if not, the categories of earner which fall only in the salary related part or, as the case may be, only in the money purchase part;
- (b) the requirements to provide the confirmation or evidence referred to in paragraphs (3) and (4) of that regulation are to apply in relation to each separate part.

(4) In regulation 9 (elections for the variation or surrender of contracting-out certificates)—

- (a) in the case of an election with a view to the variation of a contracting-out certificate in the event of a scheme becoming a relevant scheme, the further requirement referred to in paragraph (2) of this regulation is to apply in relation to the notice referred to in paragraphs (4) and (5) of that regulation; and
- (b) in the case of an election with a view to the variation of a contracting-out certificate in the event of a scheme becoming a relevant scheme or one separate part of a relevant scheme becoming inactive, paragraph (3) of that regulation does not apply.

(5) Regulation 10 (special provision with regard to elections for the issue, variation or surrender of certificates where the employment remains contracted out) does not apply in the case of an election

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(9) Section 51(2) was substituted by Article 138(1) of the Pensions (Northern Ireland) Order 1995

(10) Section 53(4) is amended by paragraph 14 of Schedule 3 to the Pensions (Northern Ireland) Order 1995; section 56(4) is amended by paragraph 46(b) of Schedule 3 to that Order and section 57(8) is amended by paragraph 47(b) of Schedule 3 to that Order

made in the event of a scheme becoming a relevant scheme or one separate part of a relevant scheme becoming inactive.

(6) In regulation 16 (requirement to confirm relevant requirements are satisfied) the requirement to provide confirmation and evidence in accordance with that regulation is to be read as a requirement to provide such confirmation or evidence—

- (a) as to the matters referred to in paragraph (1)(a) of that regulation in respect of the salary related part (if it is not inactive) and as to the matters referred to in paragraph (1)(b) of that regulation in respect of the money purchase part (if it is not inactive); and
- (b) if either of those separate parts is inactive, as to the matters referred to in paragraph (1)(c) or, as the case may be, (d) of that regulation, as if that separate part were a scheme which had ceased to be contracted-out.

(7) Part III (salary related contracted-out schemes) is to have effect only in relation to the salary related part of the relevant scheme save that, in regulation 18, the references to the scheme (apart from the first) are to be read as references to the relevant scheme.

(8) Part IV (money purchase contracted-out schemes) is to have effect only in relation to the money purchase part of the relevant scheme.

(9) Part V (further requirements (all schemes) and overseas schemes) is to have effect in relation to each separate part of the relevant scheme save that, in regulation 44, there shall be added a further requirement that, in a case where—

- (a) a transfer payment is made in respect of a guaranteed minimum pension, section 5(2B) rights or protected rights between the separate parts of the relevant scheme; or
- (b) there is a change in relation to any member so that service which qualified for benefits under one separate part of the relevant scheme becomes service which qualifies for benefits under the other separate part and, in relation to the first-mentioned part, that member has accrued rights to a guaranteed minimum pension or protected rights which have accrued in respect of service before the principal appointed day,

the trustees must, within 5 weeks of the date of the transfer payment or of the change, notify the Department of its occurrence, giving such particulars as the Department may reasonably require.

(10) In regulation 49 (insolvent schemes)—

- (a) subject to sub-paragraphs (b) and (c) of this paragraph, any reference to scheme in that regulation, except in the expression “state scheme rights”, is to be read as a reference to relevant scheme;
- (b) the condition in paragraph (3)(a) of that regulation (requirement, in the case of a money purchase contracted-out scheme, for a determination by the Compensation Board) is to apply only in relation to the money purchase part of the relevant scheme and where—
  - (i) there has been no determination such as is mentioned in that paragraph; or
  - (ii) there has been such a determination but, in the opinion of the Department, it is not attributable to the money purchase part,

paragraph (1) of that regulation is to apply only in relation to any rights which a member has in the salary related part;

- (c) in paragraph (4)(a)(ii) of that regulation the reference to a money purchase scheme is to be read as a reference to the money purchase part of the relevant scheme.

(11) Part VII (guaranteed minimum pensions) is to have effect only in relation to the salary related part of the relevant scheme.

(12) The provision in regulation 70(1) (transitional arrangements for certification of schemes) for the continuation of a contracting-out certificate issued before the principal appointed day is to apply in the case of a relevant scheme which was a salary related contracted-out scheme immediately

before that day, save that the relevant scheme must satisfy the requirements of subsections (2) and (3) of section 5 during the period referred to in that regulation.

(13) Regulation 71 (elections for replacement certificates by salary related schemes during transitional period) is also to apply during the period referred to in that regulation in the case of an election made with a view to a scheme which is contracted-out under section 5(2) becoming a mixed benefit contracted-out scheme.

(14) In regulation 72 (transitional requirements as to sufficiency of resources of salary related schemes) references to the resources and liabilities of a scheme are to be read as references to the resources and liabilities of the relevant scheme.

### **Transfer of guaranteed minimum pensions, section 5(2B) rights and protected rights between parts of a relevant scheme**

4.—(1) The following Regulations are to be modified in relation to the separate parts of a relevant scheme in accordance with paragraph (2)—

- (a) the Protected Rights (Transfer Payment) Regulations (Northern Ireland) 1996<sup>(11)</sup>;
- (b) the Contracting-out (Transfer and Transfer Payment) Regulations (Northern Ireland) 1996<sup>(12)</sup>.

(2) In a case where a transfer payment in respect of an earner's protected rights, accrued rights to a guaranteed minimum pension or accrued section 5(2B) rights is between the separate parts of the relevant scheme, there is to be added to any requirements which, by virtue of the Regulations specified in paragraph (1), must be satisfied before a transfer payment may be made, the following further requirements—

- (a) that the cash equivalent of—
  - (i) those rights; or
  - (ii) where the transfer payment forms part of a larger payment giving effect to those and other rights, all the rights to which the payment is to give effect,has been calculated in a manner consistent with section 93<sup>(13)</sup>, as at a date which is not more than 3 months before the date on which the payment is made;
- (b) the earner has been notified in writing of the amount of that cash equivalent; and
- (c) in a case where the transfer payment is in respect of guaranteed minimum pensions or section 5(2B) rights, that amount has not been reduced since he was so notified.

### **Transitional arrangements for the certification of relevant schemes which were formerly contracted-out money purchase schemes**

5. In the case of a scheme which, immediately before the 6th April 1997 or at any time during the period beginning with that day and ending on 5th April 1998, is a money purchase contracted-out scheme, any variation or issue of a contracting-out certificate in the event of that scheme becoming a relevant scheme may not have effect before that period has expired.

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<sup>(11)</sup> S.R. 1996 No. 509

<sup>(12)</sup> S.R. 1996 No. 618

<sup>(13)</sup> Section 93 was amended by paragraph 6 of Schedule 4 to the Pensions (Northern Ireland) Order 1995

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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Sealed with the Official Seal of the Department of Health and Social Services on

L.S.

24th February 1997.

*John O'Neill*  
Assistant Secretary

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## EXPLANATORY NOTE

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

These Regulations enable certain schemes which provide both salary related and money purchase benefits to be contracted-out under Part III of the Pension Schemes (Northern Ireland) Act 1993 (c. 49) (“the Pension Schemes Act”) after 6th April 1997.

Regulation 1 provides for the citation, commencement and interpretation of the Regulations. In particular it provides for a scheme to which Article 146 of the Pensions (Northern Ireland) Order 1995 (“the Order”) applies, being a scheme which provides both such pensions as would satisfy section 5(2) of the Pension Schemes Act and such pensions as would satisfy section 5(3) of that Act (a “relevant scheme”), to be treated as if those pensions were provided by separate parts of the scheme.

Regulation 2 provides for a relevant scheme to be treated, for the purposes of Part III of the Pension Schemes Act, as if the separate parts of the scheme were separate schemes. It also modifies Part III of that Act and provides for the separate parts of a relevant scheme to be treated as though they were separate schemes for the purposes of any regulations made under that Part.

Regulation 3 modifies the Occupational Pensions Schemes (Contracting-out) Regulations (Northern Ireland) 1996 in relation to the separate parts of a relevant scheme.

Regulation 4 modifies the Protected Rights (Transfer Payment) Regulations (Northern Ireland) 1996 and the Contracting-out (Transfer and Transfer Payment) Regulations (Northern Ireland) 1996 by providing for further requirements in a case where a transfer payment to which those Regulations apply is between the separate parts of a relevant scheme.

Regulation 5 makes transitional provision relating to the variation or issue of a contracting-out certificate in respect of a relevant scheme which has previously been a money purchase scheme contracted-out under section 5(3) of the Pension Schemes Act.

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 166, in so far as it was not already in operation, on 6th April 1996 and Article 146, for the purpose only of authorising the making of regulations, on 1st June 1996.