

1999 No. 486

PENSIONS

The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 1999

Made 10th December 1999

Coming into operation 30th December 1999

The Department for Social Development, in exercise of the powers conferred by sections 3(2), 5(2B), (2C), (3) and (6)(a), 6(2), 7(5), 8C(1)(a) and (b), 15(4), 24(2), 109, 164(4) and 177(2) to (4) of the Pension Schemes (Northern Ireland) Act 1993(a) and Articles 17(4), 19(4), 21(5), 47(9), 49(1), 50(3), 58(2), 59(1), 67(5), 73(7), 75(10), 85(3), 86(1) and 166(1) to (3) of the Pensions (Northern Ireland) Order 1995(b), and now vested in it(c), 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 Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 1999 and shall come into operation on 30th December 1999.

(2) In these Regulations “the Disclosure Regulations” means the Occupational Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 1997(d).

(3) The Interpretation Act (Northern Ireland) 1954(e) shall apply to these Regulations as it applies to an Act of the Assembly.

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- (a) 1993 c. 49; section 5(2) to (2C) was substituted for section 5(2) by Article 133(3) of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)) and section 5(2B) was amended by paragraph 38 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671); section 5(3) was amended by Article 133(4) of the Pensions (Northern Ireland) Order 1995 and paragraph 38 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999; section 6(2) was amended by paragraph 18 of Schedule 3 to the Pensions (Northern Ireland) Order 1995 and paragraph 39 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999; section 7(5) was amended by paragraph 14 of Schedule 3 to the Pensions (Northern Ireland) Order 1995 and paragraph 40 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999; section 8C was inserted by Article 133(5) of the Pensions (Northern Ireland) Order 1995, and section 164 was substituted by Article 151(1) of that Order
- (b) S.I. 1995/3213 (N.I. 22)
- (c) See Article 8(b) of S.R. 1999 No. 481
- (d) 1997 No. 98; relevant amending regulations are S.R. 1997 No. 544
- (e) 1954 c. 33 (N.I.)

Amendment of the Occupational Pension Schemes (Internal Dispute Resolution Procedures) Regulations

2.—(1) The Occupational Pension Schemes (Internal Dispute Resolution Procedures) Regulations (Northern Ireland) 1996^(a) shall be amended in accordance with paragraphs (2) and (3).

(2) In regulation 5(2) (notice of a decision)—

(a) after sub-paragraph (c) “and” shall be omitted;

(b) after sub-paragraph (d) there shall be inserted—

“and

(e) a statement that OPAS (the Pensions Advisory Service) is available to assist members and beneficiaries of the scheme in connection with any difficulty with the scheme which remains unresolved and the address at which OPAS may be contacted^(b).”

(3) In regulation 7(2)(d) (notice of decision from trustees or managers)—

(a) for “the Occupational Pensions Advisory Service” there shall be substituted “OPAS (the Pensions Advisory Service)”;

(b) for the words from “difficulties” to “scheme” there shall be substituted “any difficulty with the scheme which remains unresolved”;

(c) for “it” there shall be substituted “OPAS”.

Amendment of the Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations

3.—(1) The Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations (Northern Ireland) 1996^(c) shall be amended in accordance with paragraphs (2) to (5).

(2) In regulation 2(1) (interpretation) in the definition of “relevant self-administered scheme”—

(a) in paragraph (b)—

(i) for “satisfies paragraph (b)” there shall be substituted “satisfies paragraphs (b) and (c)”;

(ii) after “Taxes Act” there shall be inserted “, or”;

(b) after paragraph (b) there shall be inserted the following paragraph—

“(c) a scheme which satisfies paragraphs (b) and (c) of that definition^(d) and, if it satisfied paragraph (a) of that definition, would be a scheme which the Commissioners of Inland Revenue would not have been prohibited from approving under section 591 of the Taxes Act before 7th April 1998^(e).”

(a) S.R. 1996 No. 203

(b) OPAS’s address for correspondence is 11 Belgrave Road, London SW1V 1RB

(c) S.R. 1996 No. 431; amended by S.R. 1997 No. 160

(d) The definition of “small self-administered scheme”, in regulation 2(1) of S.I. 1991/1614, was substituted by regulation 3(b) of S.I. 1998/728

(e) 7th April is the date of commencement of S.I. 1998/728, which amended S.I. 1991/1614, and of S.I. 1998/729

(3) In regulation 10(2)(a) (time limits for making alternative arrangements under Article 17) for “the alternative arrangements are approved” there shall be substituted “the employer gives notice to the trustees under regulation 9(1)(b)(ii) in respect of the approval of the arrangements”.

(4) In regulation 16(2)(a) (time limits for making alternative arrangements under Article 19) for “the alternative arrangements are approved” there shall be substituted “the employer gives notice to the company under regulation 15(1)(b)(ii) in respect of the approval of the arrangements”.

(5) In Schedule 3 (Modifications of the Pensions (Northern Ireland) Order 1995 and these Regulations)—

(a) in paragraph 2(4) for “regulation 10(2)(b)(i)” there shall be substituted “regulation 10(2)(a) and (b)(i)”;

(b) in paragraph 3(4) for “regulation 16(2)(b)(i)” there shall be substituted “regulation 16(2)(a) and (b)(i)”.

Amendment of the Occupational Pension Schemes (Contracting-out) Regulations

4.—(1) The Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996(a) shall be amended in accordance with paragraphs (2) to (4).

(2) In regulation 1(2) (interpretation)—

(a) in the definition of “overseas scheme” after “the United Kingdom” there shall be inserted “; but does not include a scheme which is contracted-out in the Isle of Man by virtue of satisfying section 9(2) or (3) of the Pension Schemes Act 1993 as it has effect in the Isle of Man(b)”;

(b) in the definition of “section 5(2B) rights”(c), in paragraph (b)(ii) “contracted-out” shall be omitted.

(3) In regulation 12(2)(c) (special provision for holding companies and subsidiaries), in the definition of “subsidiary” for “an employer in the scheme who is” there shall be substituted “a body corporate which is an employer in the scheme and is”.

(4) In regulation 48(7) (special provision for overseas schemes) for “any members who are resident in Northern Ireland” there shall be substituted “rights which have accrued as a result of contracted-out employment in the scheme in Northern Ireland”.

(a) S.R. 1996 No. 493; relevant amending regulations are S.R. 1997 No. 160. *See also* Article 3(2) of, and Schedule 2 to, S.I. 1999/671 which relates to the transfer of functions of the Department to the Commissioners of Inland Revenue

(b) *See* Article 3 of, and the Schedule to, the Pension Schemes Act 1993 (Application) Order 1995, Statutory Document No. 531/95, which applies (with modifications) section 9 of the Pension Schemes Act 1993 (c. 48) to the Isle of Man; and *see* Article 3(1)(b) of, and Schedule 1 to, the Pensions Act 1995 (Application) Order 1997, Statutory Document No. 501/97, which applies to the Isle of Man the amendments to that section 9 in section 136 of the Pensions Act 1995 (c. 26)

(c) The definition of “section 5(2B) rights” was substituted by paragraph 5(2) of the Schedule to S.R. 1997 No. 160

Amendment of the Protected Rights (Transfer Payment) Regulations

5. In regulation 1(2) of the Protected Rights (Transfer Payment) Regulations (Northern Ireland) 1996(a) (interpretation), in the definition of “section 5(2B) rights”, in paragraph (b)(ii) “contracted-out” shall be omitted.

Amendment of the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations

6.—(1) The Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations (Northern Ireland) 1996(b) shall be amended in accordance with paragraphs (2) and (3).

(2) In regulation 16(2) (periods covered by schedules of contributions) after “effective date” there shall be inserted “, or the date on which the rates of contributions shown in the schedule are certified.”.

(3) In regulation 23 (failure to pay contributions due under schedule of contributions)—

(a) in paragraph (1)(a) before “shall be given to the Authority” there shall be inserted “subject to paragraph (1A).”;

(b) after paragraph (1) there shall be inserted the following paragraph—

“(1A) No notice need be given under paragraph (1)(a) if—

(a) payment has been made before the end of the period of 10 days beginning with the due date, and

(b) the default is only the first or second such default in the period of 12 months ending on the due date.”;

(c) in paragraph (3) for “for the purposes of paragraphs (1) and (2)” there shall be substituted “for the purposes of paragraphs (1) to (2)”.

Amendment of the Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations

7.—(1) The Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations (Northern Ireland) 1996(c) shall be amended in accordance with paragraphs (2) and (3).

(2) In regulation 5(3)(b) (former employers) for “and has been paid before the applicable time” there shall be substituted—

“and—

(i) has been paid before the applicable time, or

(ii) if not so paid, was not so paid solely because he was not notified of the debt, and of the amount of it, sufficiently in advance of the applicable time for it to be paid before the applicable time”.

(3) In regulation 6(2)(b) (ceasing to participate: transitional provision) for “and has been paid before the applicable time” there shall be substituted—

“and—

(a) S.R. 1996 No. 509, the definition of “section 5(2B) rights” was substituted by paragraph 6(2) of the Schedule to S.R. 1997 No. 160

(b) S.R. 1996 No. 570, to which there are amendments not relevant to these regulations

(c) S.R. 1996 No. 585, to which there are amendments not relevant to these regulations

- (i) has been paid before the applicable time, or
- (ii) if not so paid, was not so paid solely because he was not notified of the debt, and of the amount of it, sufficiently in advance of the applicable time for it to be paid before the applicable time”.

Amendment of the Contracting-out (Transfer and Transfer Payment) Regulations

8. In regulation 1(2) of the Contracting-out (Transfer and Transfer Payment) Regulations (Northern Ireland) 1996(**a**) (interpretation), in the definition of “section 5(2B) rights”, in paragraph (b)(ii) “contracted-out” shall be omitted.

Amendment of the Occupational Pension Schemes (Winding Up) Regulations 1996

9. In regulation 3 of the Occupational Pension Schemes (Winding Up) Regulations (Northern Ireland) 1996(**b**) (modification of Article 73)—

- (a) in paragraph (1)(c) for “modification” there shall be substituted “modifications”;
- (b) for paragraph (7) there shall be substituted the following paragraph—
 - “(7) In—
 - (a) Article 73(3)(d) after “sub-paragraphs” there shall be inserted “(aa),”, and
 - (b) the words following sub-paragraph (d) of Article 73(3) for “sub-paragraphs (b) to (d)” there shall be substituted “sub-paragraphs (aa) to (d)”.”.

Amendment of the Personal and Occupational Pension Schemes (Protected Rights) Regulations

10. In regulation 1(2) of the Personal and Occupational Pension Schemes (Protected Rights) Regulations (Northern Ireland) 1997(**c**) (interpretation), in the definition of “section 5(2B) rights”, in paragraph (b)(ii) “contracted-out” shall be omitted.

Amendment of the Occupational Pension Schemes (Scheme Administration) Regulations

11.—(1) The Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997(**d**) shall be amended in accordance with paragraphs (2) to (5).

(2) In regulation 5 (manner and terms of appointment and removal of professional advisers) for paragraph (10) there shall be substituted the following paragraph—

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- (a) S.R. 1996 No. 618; the definition of “section 5(2B) rights” was substituted by paragraph 10(2) of the Schedule to S.R. 1997 No. 160
 - (b) S.R. 1996 No. 621; to which there are amendments not relevant to these regulations
 - (c) S.R. 1997 No. 56; the definition of “section 5(2B) rights” was substituted by paragraph 15(2) of the Schedule to S.R. 1997 No. 160. *See also* Article 3(2) of, and Schedule 2 to, S.I. 1999/671 which relates to the transfer of functions of the Department to the Commissioners of Inland Revenue
 - (d) S.R. 1997 No. 94; to which there are amendments not relevant to these regulations

“(10) Where a statement or declaration is made in accordance with paragraph (4) or (7), the trustees or managers shall—

(a) furnish the remaining auditor or actuary to the scheme with a copy of the statement or declaration no later than 14 days after the trustees or managers receive it; and

(b) furnish the succeeding auditor or actuary with a copy of the statement or declaration—

(i) no later than 14 days after the date on which the trustees or managers receive it; or

(ii) no later than the date of the succeeding auditor’s or actuary’s appointment,

whichever is the later.”.

(3) In regulation 11 (requirement for money to be kept by trustees: exception)—

(a) in paragraph (1)(a) for “a separate account held by that person” there shall be substituted “an account held by that person and separate from one held by or on behalf of the employer as employer”;

(b) in paragraph (1)(b) for the words from “a separate account” to the end there shall be substituted—

“an account—

(i) kept by them at any of the institutions specified in paragraphs 1 to 6 of Schedule 2 to the Banking Act 1987(a);

(ii) separate from one held by or on behalf of the employer as employer; and

(iii) in which the money received by them is to be held.”.

(4) In regulation 19(1)(a) (requirements which a payment schedule must satisfy) for the words from “amounts payable” to the end there shall be substituted “amounts prescribed in regulation 18 payable in the scheme year; and”.

(5) In regulation 21 (circumstances where notice of non-payment of any amount payable to a scheme need not be given) after paragraph (2) there shall be inserted the following paragraph—

“(3) Notice need not be given under regulation 20(a) if—

(a) payment has been made no later than 10 days after the due date; and

(b) the default is only the first or second such default in the period of 12 months ending on the due date.”.

Amendment of the Occupational Pension Schemes (Modification of Schemes) Regulations

12. In the Occupational Pension Schemes (Modification of Schemes) Regulations (Northern Ireland) 1997(b) for regulation 6 (restriction on

(a) 1987 c. 22

(b) S.R. 1997 No. 97; to which there are amendments not relevant to these regulations

powers to modify schemes: exception) there shall be substituted the following regulation—

“6.—(1) For the purposes of Article 67(5) (restriction on the power to modify schemes does not apply to the exercise of a power in a prescribed manner) the prescribed manner is—

- (a) subject to paragraph (2), any alteration to scheme rules to provide, or make further or different provision, for an entitlement or accrued right to a pension under an occupational pension scheme—
 - (i) to be assigned, commuted or surrendered;
 - (ii) to be charged or to have a lien exercised in respect of it;
 - (iii) to have a set-off exercised in respect of it;
 - (iv) to be forfeited;
- (b) any alteration to scheme rules to provide, or make further or different provision, under section 69(2)(a)(i), by virtue of section 69(4)(b), of the Pension Schemes Act for a transfer of accrued rights, where the alteration results in a provision which is expressed in the scheme rules to be conditional upon compliance with regulation 12 of the Occupational Pension Schemes (Preservation of Benefit) Regulations (Northern Ireland) 1991(a) (transfer of member’s accrued rights without consent);
- (c) in the case of a trust scheme, any alteration to scheme rules, or (for the avoidance of doubt) to practice under the scheme, or to both, to provide for the revaluation of earnings factors for the purposes of section 10(2) of the Pension Schemes Act (earner’s guaranteed minimum) in accordance with section 12(1) or (2) of that Act (revaluation of earnings factors for purposes of s. 10: early leavers, etc.);
- (d) an amendment to scheme rules where the amendment is one that the Inland Revenue requires so that the scheme continues to be approved under section 590 or 591 of the Taxes Act 1988 (conditions for approval of retirement benefit schemes and discretionary approval);
- (e) in the case of an occupational pension scheme which is not a trust scheme, the exercise of the power by the managers with the member’s consent, except in relation to alterations for the purposes mentioned in sub-paragraphs (a) and (b).

(2) An alteration does not fall within paragraph (1)(a) if the transaction provided for (or any part of it) is prohibited by, or by regulations under(b), any of Articles 89 to 92 or any other statutory provision, or by any other rule of law.”

(a) S.R. 1991 No. 37; relevant amending regulations are S.R. 1992 No. 304, S.R. 1993 No. 324, S.R. 1994 No. 300, S.R. 1995 No. 441, S.R. 1996 No. 620, S.R. 1997 No. 160 and S.R. 1999 No. 378

(b) See S.R. 1997 No. 153, amended by S.R. 1999 No. 309

Amendment of the Disclosure Regulations

13.—(1) The Disclosure Regulations shall be amended in accordance with paragraphs (2) to (4).

(2) In regulation 5(5) (information to be made available to individuals) for the words from “within 9 months of the end of the first scheme year” to the end there shall be substituted “within 12 months of the end of each scheme year.”.

(3) In regulation 11(1) (penalties) after “to (12)” there shall be inserted “, (14)”.

(4) In Schedule 1, in paragraph 26(a) for the words from “is available” to the end there shall be substituted—

“is available at any time to assist members and beneficiaries of the scheme in connection with any—

(a) pensions query they may have; or

(b) difficulty which they have failed to resolve with the trustees or administrators of the scheme,

and the address at which OPAS may be contacted.”.

Amendment of the Occupational Pension Schemes (Discharge of Liability) Regulations

14.—(1) The Occupational Pension Schemes (Discharge of Liability) Regulations (Northern Ireland) 1997(b) shall be amended in accordance with paragraphs (2) and (3).

(2) In regulation 4(1)(b) (conditions on which policies of insurance and annuity contracts may be commuted) for the words from “, and the earner—” to the end there shall be substituted—

“, 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,

and the commutation would not prevent approval of the scheme under section 591 of the Income and Corporation Taxes Act 1988(c) (discretionary approval), or continuing approval of the scheme under section 590 (conditions for approval of retirement benefit schemes) or 591 of that Act.”.

(3) For paragraph (5) of regulation 11 there shall be substituted the following paragraph—

“(5) For the purposes of paragraph 3(d)—

(a) Regulation 4(2) of the Disclosure Regulations, which is relevant to paragraph 26 of Schedule 1, was amended by S.R. 1997 No. 544

(b) S.R. 1997 No. 159

(c) 1988 c. 1

“incapacity” means physical or mental deterioration which is sufficiently serious to prevent a person from following his normal employment or which seriously impairs his earning capacity; “serious ill-health” has the same meaning as in regulation 4(4).”

Transitional provision

15.—(1) Nothing in regulation 13, or in the Disclosure Regulations as amended by regulation 13(4), shall require the information specified in paragraph 26 of Schedule 1 to those Regulations, as amended by regulation 13(4), to be supplied to a person or trade union if the condition in paragraph (2) is met.

(2) The condition referred to in paragraph (1) is that, at the date of commencement of these Regulations, the information specified in that paragraph 26 as in operation immediately prior to commencement of these Regulations has already been supplied to that person or trade union in compliance with regulation 4 or 8, as the case may be, of the Disclosure Regulations in relation to the event or circumstances which would, apart from this regulation, give rise to a requirement for such compliance.

Sealed with the Official Seal of the Department for Social Development
on 10th December 1999.

(L.S.)

John O’Neill

Senior Officer of the Department for Social Development

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations amend a number of sets of Regulations related to the Pension Schemes (Northern Ireland) Act 1993 and the Pensions (Northern Ireland) Order 1995 (“the Order”).

Regulation 1 relates to citation, commencement and interpretation.

Regulations 2 to 14 contain miscellaneous amendments to the following sets of regulations, the—

Occupational Pension Schemes (Internal Dispute Resolution Procedures) Regulations (Northern Ireland) 1996

Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations (Northern Ireland) 1996

Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996

Protected Rights (Transfer Payment) Regulations (Northern Ireland) 1996

Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations (Northern Ireland) 1996

Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations (Northern Ireland) 1996

Contracting-out (Transfer and Transfer Payment) Regulations (Northern Ireland) 1996

Occupational Pension Schemes (Winding Up) Regulations (Northern Ireland) 1996

Personal and Occupational Pension Schemes (Protected Rights) Regulations (Northern Ireland) 1997

Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997

Occupational Pension Schemes (Modification of Schemes) Regulations (Northern Ireland) 1997

Occupational Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 1997 (“the Disclosure Regulations”)

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

Regulations 2 to 14 include amendments which—

require complainants to be reminded of the existence of OPAS (the Pensions Advisory Service) earlier in the complaints procedure;

clarify the position of schemes contracted-out in the Isle of Man within the UK contracting-out regime;

clarify the definition of “section 5(2B) rights”;

provide for an additional case where, even if a debt (which arose when they ceased to be employers in relation to the scheme) is unpaid, former employers of a multi-employer scheme are not liable for debts arising at a later applicable time. This will apply where the sole reason the debt was not paid is that the employer was not informed of it in time;

allow some flexibility in reporting to the Occupational Pensions Regulatory Authority late payment of contributions;

extend the exemption to Article 67 of the Order.

Regulation 15 is a transitional provision to ensure that the amendment in regulation 13(4) of these Regulations does not result in schemes having to comply afresh with regulation 4 or 8 of the Disclosure Regulations simply due to that amendment.

As these Regulations make in relation to Northern Ireland only provision corresponding to provision contained in Regulations made by the Secretary of State for Social Security in relation to Great Britain, the requirement for consultation under Article 117(1) of the Order does not apply by virtue of paragraph (2)(e) of that Article.

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