
STATUTORY RULES OF NORTHERN IRELAND

2002 No. 127

**PENSIONS
INSOLVENCY**

**The Occupational and Personal Pension Schemes
(Bankruptcy) Regulations (Northern Ireland) 2002**

Made - - - - *27th March 2002*

Coming into operation *6th April 2002*

The Department for Social Development, in exercise of the powers conferred by Articles 315C(4) (a) and (7) to (9) and 315F(6)(a) and (9) to (11) of the Insolvency (Northern Ireland) Order 1989(1) and Articles 12(2)(h), 13(1) to (3) and 73(3) and (4) of the Welfare Reform and Pensions (Northern Ireland) Order 1999(2), and now vested in it(3), 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 and Personal Pension Schemes (Bankruptcy) Regulations (Northern Ireland) 2002 and shall come into operation on 6th April 2002.

(2) In these Regulations—

“the 1989 Order” means the Insolvency (Northern Ireland) Order 1989;

“the 1999 Order” means the Welfare Reform and Pensions (Northern Ireland) Order 1999;

“the Taxes Act” means the Income and Corporation Taxes Act 1988(4);

“destination arrangement” has the meaning given in Article 315E(1)(b)(5) of the 1989 Order;

“exclusion order” has the meaning given in regulation 4(a);

“income-related benefit” has the meaning given in section 122(1) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(6);

(1) S.I.1989/2405 (N.I. 19); Article 315C was substituted by Article 15 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)); Article 315F was inserted by paragraph 54 of Schedule 9 to that Order

(2) S.I. 1999/3147 (N.I. 11)

(3) See Article 8(b) of S.R. 1999 No. 481

(4) 1988 c. 1

(5) Article 315E was inserted by paragraph 54 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999

(6) 1992 c. 7; section 122(1) was amended by paragraphs 1 and 4 of Schedule 1 to the Tax Credits Act 1999 (c. 10); see also section 2(1)(a) of, and paragraph 3 of Schedule 2 to, that Act

“pension-sharing transaction” has the meaning given in Article 315D(9)(7) of the 1989 Order;
 “relevant benefits” has the meaning given in section 612(1)(8) of the Taxes Act;
 “responsible person” means the person responsible for a pension arrangement within the meaning of Article 315C(6) of the 1989 Order;
 “restoration order” means an order made under Article 315A(9) of the 1989 Order;
 “transferee” has the meaning given in Article 315D(9) of the 1989 Order;
 “transferor” has the meaning given in Article 315D(9) of the 1989 Order;
 “week” means a period of 7 days.

(3) For the purposes of these Regulations and notwithstanding section 39(2) of the Interpretation Act (Northern Ireland) 1954(10), 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.

Prescribed pension arrangements

2.—(1) The arrangements prescribed for the purposes of Article 12(2)(h) of the 1999 Order (pension arrangements which are “approved pension arrangements”) are arrangements (including an annuity purchased for the purpose of giving effect to rights under any such arrangement)—

- (a) to which—
 - (i) the holder of an office or employment has contributed by way of payments out of foreign emoluments which have been allowed as a deduction in computing the amount of those emoluments by virtue of section 192(3) of the Taxes Act (relief from tax for foreign emoluments);
 - (ii) Article 17A of the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Republic of Ireland) Order 1976(11) (pension scheme contributions) applies;
- (b) made with a scheme which is a retirement benefits scheme—
 - (i) approved by the Commissioners of Inland Revenue pursuant to section 590(12) or 591(13) of the Taxes Act (conditions for approval of retirement benefit schemes, and discretionary approval) and which is not an exempt approved scheme under section 592(14) of that Act, or
 - (ii) to which section 608 of the Taxes Act (superannuation funds approved before 6th April 1980) applies;
- (c) to which section 595(1) of the Taxes Act (charge to tax in respect of certain sums paid by the employer etc.) does not apply by virtue of section 596(2)(b)(15) of that Act (exceptions from section 595);

(7) Article 315D was inserted by paragraph 54 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999

(8) Definition of “relevant benefits” was amended by paragraph 10(1) of Schedule 10 to the Finance Act 1999 (c. 16)

(9) Article 315A was substituted by Article 15 of the Welfare Reform and Pensions (Northern Ireland) Order 1999

(10) 1954 c. 33 (N.I.)

(11) S.I. 1976/2151; Article 17A was inserted by Article I of the Protocol set out in the Schedule to S.I. 1995/764

(12) Section 590 was amended by paragraph 18 of Schedule 3 to the Finance Act 1988 (c. 39), paragraph 3 of Schedule 6 to the Finance Act 1989 (c. 26) (see also paragraph 18(2) and (3) of that Schedule), sections 34 and 36(2) and (3) of the Finance Act 1991 (c. 31) and paragraph 2 of Schedule 10 to the Finance Act 1999

(13) Section 591 was amended by paragraph 6 of Schedule 13 to the Finance Act 1988 (see also paragraph 1 of that Schedule), section 107 of the Finance Act 1994 (c. 9), section 59(2) of the Finance Act 1995 (c. 4) (see also section 60(1) of that Act) and paragraph 3 of Schedule 10 to the Finance Act 1999 (see also paragraph 18(1) and (3) of that Schedule)

(14) Section 592 was amended by paragraph 5 of Schedule 6 to the Finance Act 1989 (see also paragraph 18(4) of that Schedule) and sections 107(1) and (6) and 112(1) and (6) of the Finance Act 1993 (c. 34) (see also sections 107(8) and 112(2) of that Act)

(15) Section 596(2) was amended by paragraph 8(3) of Schedule 6 to the Finance Act 1989 (see also paragraph 18(5) of that Schedule)

- (d) which are exempt or qualify for relief from, or are not liable to charge to, income tax by virtue of section 614(16), 615(17) or 616 of the Taxes Act (exemptions and reliefs in respect of income from investments etc. of certain pension schemes, exemptions from tax in respect of certain pensions, and other overseas pensions);
- (e) made with—
 - (i) a public service pension scheme, or
 - (ii) an occupational pension scheme established under the auspices of a government department or by any person acting on behalf of the Crown;
- (f) referred to in paragraph (b)(ii) of the definition of “approved” in section 630(1)(18) of the Taxes Act.

(2) Paragraph (1)(e) does not apply to an arrangement entered into on, or after, 14th March 1989 for the purpose of providing an employee with relevant benefits calculated by reference to so much of his annual remuneration as is in excess of the permitted maximum; and for these purposes “the permitted maximum” means the permitted maximum for any year of assessment during which such a person is a member of a scheme referred to in paragraph (1)(e) and shall be the figure specified—

- (a) in section 590C(3)(19) of the Taxes Act for the years of assessment 1988-89 and 1989-90;
- (b) by order in accordance with section 590C(6) of the Taxes Act for each year of assessment subsequent to 1989-90.

(3) For the purposes of this regulation—

- (a) “foreign emoluments” has the meaning given in section 192(1) of the Taxes Act;
- (b) “occupational pension scheme” has the meaning given in section 1 of the Pension Schemes (Northern Ireland) Act 1993(20);
- (c) “public service pension scheme” has the meaning given in section 1 of the Pension Schemes (Northern Ireland) Act 1993;
- (d) “year of assessment” has the meaning given in section 832(1) of the Taxes Act.

Unapproved pension arrangements

3.—(1) For the purposes of Article 13 of the 1999 Order (effect of bankruptcy on pension rights: unapproved arrangements), a pension arrangement—

- (a) falling within Article 12(4) of the 1999 Order (which deals with a scheme which, at the date of the bankruptcy order, was being considered for approval under Chapter I of Part XIV of the Taxes Act but which was not subsequently approved);
- (b) falling within Article 12(6) of the 1999 Order (which deals with a scheme which, after the date of the bankruptcy order, has its approval under Chapter I or, as the case may be, Chapter IV of Part XIV of the Taxes Act withdrawn from a date not later than the date of that order), or
- (c) under—
 - (i) a funded unapproved retirement benefits scheme, or
 - (ii) an unfunded unapproved retirement benefits scheme,

(16) Section 614 was amended by Part V(22) of Schedule 26 to the Finance Act 1994 and paragraph 34 of Schedule 14 to the Finance Act 1996 (c. 8) (see also section 105(1)(b) of that Act)

(17) Section 615 was amended by section 2 of the Overseas Superannuation Act 1991 (c. 16) and paragraph 11 of Schedule 10 to the Finance Act 1999

(18) Section 630 was renumbered as section 630(1) by paragraph 2(1) and (2) of Schedule 11 to the Finance Act 1995 and definition of “approved” was amended by paragraph 5(1) and (2) of Schedule 13 to the Finance Act 2000 (c. 17)

(19) Section 590C was inserted by paragraph 4 of Schedule 6 to the Finance Act 1989 (see also paragraph 18(2) of that Schedule)

(20) 1993 c. 49

shall be an “unapproved pension arrangement” if it satisfies the conditions specified in paragraph (2).

- (2) The conditions referred to in paragraph (1) are that the pension arrangement—
- (a) is established under—
 - (i) an irrevocable trust, or
 - (ii) a contract, agreement or arrangement made with the bankrupt;
 - (b) has as its primary purpose the provision of relevant benefits, and
 - (c) is the bankrupt’s sole pension arrangement or his main means of pension provision (other than a pension under Part II of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (contributory benefits) or Part II of the Social Security Contributions and Benefits Act 1992(21) (contributory benefits)).
- (3) For the purposes of Article 13(2)(c) of the 1999 Order, the prescribed person shall be the responsible person.

Exclusion of rights under unapproved pension arrangements

4. For the purpose of excluding his rights under an unapproved pension arrangement from his estate for the purposes of Article 9 and Parts VIII to X of the 1989 Order (which cover individual voluntary arrangements, bankruptcy and individual insolvency), a bankrupt may—

- (a) make an application to the High Court for an order (“an exclusion order”) in accordance with the provisions of regulation 5;
- (b) enter into a qualifying agreement with the trustee in bankruptcy in accordance with the provisions of regulation 6.

Exclusion orders

5.—(1) Subject to paragraph (2), an application for an exclusion order shall be made to the High Court within a period of—

- (a) 13 weeks beginning with—
 - (i) the date on which the bankrupt’s estate vests in the trustee in bankruptcy in accordance with the provisions of Article 279 of the 1989 Order (vesting of bankrupt’s estate in trustee), or
 - (ii) in the case of a scheme referred to in regulation 3(1)(a) or (b), the date, if later than that referred to in head (i), on which any rights of the bankrupt vest in the trustee in bankruptcy in accordance with Article 12(5) or, as the case may be, (7) of the 1999 Order, or
- (b) 30 days beginning with the date on which a qualifying agreement is revoked in accordance with the provisions of regulation 6.

(2) The High Court may, either before or after it has expired and where good cause is shown, extend the period referred to in paragraph (1)(a) or, as the case may be, (b).

(3) In deciding whether to make an exclusion order and, if so, whether to make it in respect of part or all (but not exceeding the total amount) of the excludable rights, the High Court shall have reference to—

- (a) the future likely needs of the bankrupt and his family;

- (b) whether any benefits by way of pension or otherwise (other than a pension under Part II of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 or Part II of the Social Security Contributions and Benefits Act 1992, or an income-related benefit) are likely to be received by virtue of rights of the bankrupt which have already accrued under any other pension arrangements at the date on which the application for an exclusion order is made and the extent to which they appear likely to be adequate for meeting any such needs.

Qualifying agreements

6.—(1) A qualifying agreement shall be made within a period of 9 weeks beginning with the later of the following—

- (a) the date on which the bankrupt's estate vests in the trustee in bankruptcy in accordance with the provisions of Article 279 of the 1989 Order, and
- (b) in the case of a scheme referred to in regulation 3(1)(a) or (b), the date, if later than that referred to in sub-paragraph (a), on which any rights of the bankrupt vest in the trustee in bankruptcy in accordance with Article 12(5) or, as the case may be, (7) of the 1999 Order.

(2) A qualifying agreement made between the bankrupt and the trustee in bankruptcy shall be by deed and incorporate all the terms which they have expressly agreed.

(3) Where—

- (a) the bankrupt has failed to make full disclosure of all material facts in respect of any pension arrangement which is the subject of a qualifying agreement, and
- (b) has failed to do so for the purpose of enabling his rights under such an arrangement to be excluded from his estate for the purposes of Article 9 and Parts VIII to X of the 1989 Order where they would not have otherwise been excluded,

the trustee in bankruptcy may revoke that qualifying agreement by giving the bankrupt notice of revocation.

(4) A notice of revocation shall—

- (a) be dated;
- (b) be in writing;
- (c) specify the reasons for revocation of the qualifying agreement;
- (d) specify the date on which the qualifying agreement shall be revoked, such date not being a date falling within a period of 30 days beginning with the date of the notice, and
- (e) inform the bankrupt that he has the right to apply for an exclusion order within a period of 30 days beginning with the date referred to in sub-paragraph (d).

(5) Where a qualifying agreement has been made or revoked in accordance with the provisions of this regulation, the trustee in bankruptcy shall, within a period of 30 days beginning with the date on which that qualifying agreement was made or, in the case of a notice of revocation, the date required under paragraph (4)(a), notify the responsible person in writing of that fact.

Calculation and verification of rights under pension arrangements

7.—(1) For the purposes of Article 315B(4)(b)(22) of the 1989 Order, the value of the individual's rights under an approved pension arrangement or of his excluded rights under an unapproved pension arrangement, shall be the cash equivalent of those rights as calculated and verified in accordance with paragraph (2).

(2) In calculating and verifying the cash equivalent of the rights referred to in paragraph (1), regulation 3 of the Pensions on Divorce etc. (Provision of Information) Regulations (Northern Ireland) 2000⁽²³⁾ (information about pensions on divorce: valuation of pension benefits) shall have effect for the purposes of this regulation in like manner to that in which it has effect for the valuation of benefits in connection with the supply of information in connection with domestic and overseas divorce etc. in Northern Ireland, England and Wales for the purposes of those Regulations; and for these purposes the words “the date on which the request for the valuation was received”, in each place where they occur, in that regulation shall be read as “the date on which the trustee in bankruptcy’s request for the valuation was received”.

Time for compliance with restoration order

8. The responsible person shall comply with the restoration order before the end of a period of 17 weeks beginning with the date of service of that order.

Calculation and verification of rights under destination arrangements

9.—(1) Where Article 315E of the 1989 Order applies, the value of a transferee’s rights under a destination arrangement, derived directly or indirectly from a pension-sharing transaction, shall be—

- (a) the cash equivalent of those rights at the date on which the trustee in bankruptcy’s request for that valuation is received by the responsible person, and
- (b) calculated and verified in accordance with paragraph (2).

(2) In calculating and verifying the cash equivalent of the rights referred to in paragraph (1), regulation 24 of the Pension Sharing (Pension Credit Benefit) Regulations (Northern Ireland) 2000⁽²⁴⁾ (manner of calculation and verification of cash equivalents) shall have effect for the purposes of this regulation in like manner to that in which it has effect for the calculation and verification of pension credit for the purposes of those Regulations.

Time for compliance with request for information

10.—(1) Subject to paragraph (2), where a request for information has been made to the responsible person by—

- (a) the trustee in bankruptcy or the bankrupt in connection with the making of an application for an exclusion order;
- (b) the bankrupt for, or in connection with, the making of a qualifying agreement referred to in regulation 6, or
- (c) the trustee in bankruptcy—
 - (i) pursuant to Article 315C(1) of the 1989 Order (which enables the trustee in bankruptcy to request the responsible person to provide information which he may reasonably need for the making of an application for a restoration order) and relating to the cash equivalent of a bankrupt’s rights or excluded rights;
 - (ii) pursuant to Article 315F(1) to (3) of the 1989 Order (which enables the transferor’s trustee in bankruptcy to request the responsible person to provide information which he may reasonably need for the making of an application under Articles 312 and 313 of the 1989 Order) and relating to the cash equivalent of a transferee’s rights under a destination arrangement,

he shall comply with that request within a period of 9 weeks beginning with the date on which it is received.

⁽²³⁾ S.R. 2000 No. 142

⁽²⁴⁾ S.R. 2000 No. 146; regulation 24(5) was amended by regulation 12(5) of S.R. 2000 No. 335

(2) In the case of a request for information falling within sub-paragraph (a) of paragraph (1), the High Court may, either before or after it has expired and where good cause is shown, extend the period referred to in that paragraph.

Sealed with the Official Seal of the Department for Social Development on 27th March 2002.

L.S.

John O'Neill
Senior Officer of the
Department for Social Development

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EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations make provision for the treatment of rights under certain pension arrangements in the event of a person's bankruptcy.

Regulation 1 provides for citation, commencement and interpretation.

Regulation 2 prescribes pension arrangements for the purposes of Article 12(2)(h) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 ("the 1999 Order") to allow pension rights of a bankrupt under such arrangements to be excluded from his estate for the purposes of Article 12(1) of the 1999 Order.

Regulation 3 prescribes pension arrangements which qualify as "unapproved pension arrangements" for the purposes of Article 13 of the 1999 Order. It also prescribes the person responsible for providing information for the purpose of making applications to the High Court or entering into agreements to have rights under an unapproved pension arrangement excluded from the bankrupt's estate.

Regulation 4 sets out the ways in which an unapproved pension arrangement can be excluded from a bankrupt's estate.

Regulation 5 makes provision, in relation to a prescribed unapproved pension arrangement, relating to the making of an "exclusion order" excluding the rights of a bankrupt under such an arrangement from his estate. Paragraph (1) sets out the time limits for applying to the High Court for an exclusion order. Paragraph (2) allows the High Court to extend the time limits for an application of an exclusion order where good cause is shown. Paragraph (3) specifies the matters to be considered by the High Court in deciding whether or not to make an exclusion order.

Regulation 6 provides, in relation to a prescribed unapproved pension arrangement, for the making of a "qualifying agreement" between the bankrupt and the trustee in bankruptcy excluding the rights of a bankrupt under an unapproved pension arrangement from his estate. Paragraph (1) sets out the time limits for the making of a qualifying agreement. Paragraph (2) specifies the form and content of a qualifying agreement. Paragraph (3) provides, in certain circumstances, for the revocation of a qualifying agreement by the trustee in bankruptcy by giving the bankrupt a "notice of revocation". Paragraph (4) specifies the form and content of a notice of revocation. Paragraph (5) requires the trustee in bankruptcy to notify, within a set time limit, the person responsible for the pension arrangement that a qualifying agreement has been made or revoked.

Regulation 7 provides for the calculation and verification of the cash equivalent of a bankrupt's rights under an approved pension arrangement, or his excluded rights under an unapproved pension arrangement, for the purpose of enabling the High Court to determine whether to make an order ("a restoration order") under Article 315A of the Insolvency (Northern Ireland) Order 1989.

Regulation 8 provides that where a restoration order has been made the person responsible for the pension arrangement in question shall comply with that order within the prescribed time.

Regulation 9 provides for the calculation and verification of the cash equivalent of a person's pension rights where those rights are derived directly, or indirectly, from a pension-sharing transaction.

Regulation 10 prescribes the periods within which the person responsible for the pension arrangement in question has to comply with a request for information.

Articles 315C(4)(a) and (8) and 315F(6)(a) and (10) of the Insolvency (Northern Ireland) Order 1989, some of the enabling provisions under which these Regulations are made, were substituted

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and inserted respectively by Article 15 of, and paragraphs 53 and 54 of Schedule 9 to, the 1999 Order. Article 2(a) of the Welfare Reform and Pensions (1999 Order) (Commencement No. 10) Order (Northern Ireland) 2002 (S.R. 2002 No. 25 (C. 2)) provides for the coming into operation of Article 15 of the 1999 Order, in so far as it is not already in operation, on 6th April 2002. Article 2 of the Welfare Reform and Pensions (1999 Order) (Commencement No. 12) Order (Northern Ireland) 2002 (S.R. 2002 No. 126 (C. 9)) provides for the coming into operation of paragraphs 53 and 54 of Schedule 9 to the 1999 Order, for the purpose only of authorising the making of regulations, on 27th March 2002 and, for all other purposes, on 6th April 2002.