

2006 No. 149

PENSIONS

**The Occupational Pension Schemes (Modification of Schemes)
Regulations (Northern Ireland) 2006**

Made - - - - - *21st March 2006*

Coming into operation in accordance with regulation 1(1)

The Department for Social Development makes the following Regulations in exercise of the powers conferred by Articles 67(1)(b) and (3)(b), 67C(7)(a)(ii), 67D(4) and (5), 68(2)(e) and (5) and 166(1) to (3) of the Pensions (Northern Ireland) Order 1995(a) and now vested in it(b).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Modification of Schemes) Regulations (Northern Ireland) 2006 and shall come into operation on 6th April 2006 except for regulations 6 and 7 and this regulation which shall come into operation on 30th March 2006.

(2) In these Regulations—

“the 2004 Act” means the Finance Act 2004(c);

“the 2006 Regulations” means the Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006(d);

“protected rights” has the same meaning as in section 6 of the Pension Schemes Act(e) (protected rights and money purchase benefits);

“public service pension scheme” has the same meaning as in section 1(1) of the Pension Schemes Act(f) (categories of pension schemes);

“registered pension scheme” means a scheme which is a registered pension scheme for the purposes of Part 4 of the 2004 Act (pension schemes etc);

“scheme” means an occupational pension scheme;

“the scheme administrator” has the same meaning as in section 270 of the 2004 Act (meaning of scheme administrator);

(a) S.I. 1995/3213 (N.I. 22); Articles 67 to 67I were substituted for Article 67 by Article 239 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)) and Article 68(2) was amended by paragraph 43 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and paragraph 50 of Schedule 10 to the Pensions (Northern Ireland) Order 2005

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

(c) 2004 c. 12

(d) S.I. 2006/364

(e) Section 6 was amended by paragraph 18 of Schedule 3 to the Pensions (Northern Ireland) Order 1995, Article 29(2) of the Welfare Reform and Pensions (Northern Ireland) Order 1999, paragraph 39 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) and paragraph 23(2) of Schedule 11 to the Proceeds of Crime Act 2002 (c. 29)

(f) See Article 216(2) of the Pensions (Northern Ireland) Order 2005

“the transitional period” has the same meaning as in regulation 1(2) of the 2006 Regulations (interpretation);

“unauthorised member payment” has the same meaning as in section 160(2) of the 2004 Act (payments by registered pension schemes).

(3) In these Regulations, any reference to a numbered Article is a reference to the Article of the Pensions (Northern Ireland) Order 1995 bearing that number.

Schemes exempted from the subsisting rights provisions

2. For the purposes of Article 67(1)(b) (the subsisting rights provisions), a scheme of a prescribed description is—

- (a) a scheme with fewer than two members, or
- (b) a scheme which is not a registered pension scheme.

Non-application of the subsisting rights provisions

3. For the purposes of Article 67(3)(b), the prescribed manner of the exercise of any modification power in relation to a scheme to which the subsisting rights provisions do not apply is any modification of a scheme—

- (a) which provides for any or all of a member’s or survivor’s subsisting rights to—
 - (i) be assigned;
 - (ii) be commuted;
 - (iii) be surrendered;
 - (iv) be charged;
 - (v) have a lien exercised in respect of them, or
 - (vi) have a set-off exercised in respect of them,provided that a modification in such a manner is not prohibited under Article 89 (a) (inalienability of occupational pension), any other statutory provision or other rule of law;
- (b) which provides for any or all of a member’s or survivor’s subsisting rights to be forfeited provided that a modification in such a manner is not prohibited under Article 90(b) (forfeiture, etc.), any other statutory provision or other rule of law;
- (c) to provide for the revaluation of an earner’s earnings factors in accordance with section 12(1) or (2) of the Pension Schemes Act (revaluation of earnings factors for purposes of section 10: early leavers, etc.);
- (d) which provides for the rate of pension or annuity provided in respect of subsisting rights which are protected rights—
 - (i) to be calculated on the basis that the member will not, in the event of his death, be survived by a widow, widower or surviving civil partner, and
 - (ii) provides that the member must consent to the calculation of his pension or annuity being on that basis;
- (e) which provides for the transfer of a member’s or survivor’s subsisting rights—
 - (i) with his consent, or

(a) Article 89 was amended by paragraph 46 of Schedule 9 and Schedule 10 to the Welfare Reform and Pensions (Northern Ireland) Order 1999, Article 243 of the Pensions (Northern Ireland) Order 2005 and paragraph 24 of the Schedule to S.R. 2005 No. 434

(b) Article 90 was amended by paragraph 47 of Schedule 9 and Schedule 10 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 and paragraph 25 of the Schedule to S.R. 2005 No. 434

- (ii) without his consent in accordance with the conditions specified in regulation 12 of the Occupational Pension Schemes (Preservation of Benefit) Regulations (Northern Ireland) 1991(a) (transfer of member's accrued rights without consent);
- (f) which ensures that any payment made by the scheme, relating to rights which accrued on or after 6th April 2006, is not an unauthorised member payment;
- (g) which ensures that the scheme administrator can pay—
 - (i) any short service refund lump sum charge or special lump sum death benefits charge under sections 205 and 206 of the 2004 Act (short service refund lump sum charge and special lump sum death benefits charge) for which it is liable,
 - (ii) any lifetime allowance charge for which, under section 217 of the 2004 Act (persons liable to charge), it is jointly and severally liable with the individual (to whom the charge relates);
- (h) which has the same effect as any or all of the modifications in regulations 3 to 8 of the 2006 Regulations (modification of rules of existing schemes), but without limitation to the transitional period, or
- (i) which provides in relation to all or part of a member's subsisting rights that after his death—
 - (i) a surviving civil partner is treated in the same way as a widow or widower, and
 - (ii) the rights of any other survivor of the member are determined as if the surviving civil partner were a widow or widower.

Qualifications or experience required for a person providing an actuarial equivalence statement

4. For the purposes of Article 67C(7)(a)(ii) (the actuarial equivalence requirements), a person with the prescribed qualifications or experience is—

- (a) a Fellow of the Faculty of Actuaries(b), or
- (b) a Fellow of the Institute of Actuaries(c).

Calculation of the actuarial value of affected member's subsisting rights

5.—(1) The prescribed requirements with which any calculation of the actuarial value of an affected member's subsisting rights must conform, for the purposes of the actuarial value requirement in Article 67C(5), are those specified in paragraph (2).

(2) The actuary—

- (a) shall calculate the value of the subsisting rights of an affected member by adopting methods and making assumptions which—
 - (i) have been notified to the trustees of the scheme;
 - (ii) are consistent with methods and assumptions used by the trustees as at the date of the modification to calculate a cash equivalent transfer value in accordance with regulation 7(3)(b) of the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996(d) (manner of calculation and verification of cash equivalents), and

(a) S.R. 1991 No. 37; regulation 12 was amended by regulation 35 of S.R. 1992 No. 304, regulation 2 of S.R. 1993 No. 324, paragraph 26(16) of Schedule 2 to S.R. 1994 No. 300, regulation 3(4) of S.R. 1995 No. 441, regulation 2(7) of S.R. 1996 No. 620, paragraph 3(3) of the Schedule to S.R. 1997 No. 160, regulation 2 of S.R. 1999 No. 378 and regulation 27 of S.R. 2000 No. 262

(b) The Faculty of Actuaries is located at Maclaurin House, 18 Dublin Street, Edinburgh, EH1 3PP

(c) The Institute of Actuaries is located at Staple Inn Hall, High Holborn, London, WC1V 7QJ

(d) S.R. 1996 No. 619; regulation 7(3)(b) was amended by paragraph 11 of the Schedule to S.R. 1997 No. 160, regulation 15(2) of S.R. 2005 No. 171 and paragraph 2(3)(a) of Schedule 3 to S.R. 2005 No. 568

- (iii) exclude any provisions relating to a reduction in the value of an affected member's cash equivalent transfer value due to the funding position of the scheme;
- (b) shall ensure that the calculation of the actuarial value of an affected member's subsisting rights is made in accordance with any guidance that is prepared by the Faculty and Institute of Actuaries which is current on the date that the actuarial equivalence statement is obtained by the trustees;
- (c) shall exclude from the subsisting rights calculation—
 - (i) the value of any subsisting rights that have been surrendered, commuted or forfeited before the date on which the modification of the scheme takes effect;
 - (ii) the value of any amounts paid, or due to be paid, in respect of any pension or other benefit in payment to an affected member in respect of a period prior to the date on which the modification takes effect;
 - (iii) the value of discretionary benefits that have not been awarded to an affected member or are not in payment on the date on which the modification takes effect;
 - (iv) any subsisting rights which consist wholly or partly of rights to money purchase benefits where—
 - (aa) those benefits are not valued in a manner which involves making estimates of the value of the rights, and
 - (bb) the modification has no effect on the value of those rights.

Modification of schemes: 2004 Act

6.—(1) The trustees of a trust scheme may by resolution passed before 6th April 2011 modify the scheme for the purposes of—

- (a) achieving the same effect as all of the modifications in regulations 3 to 8 of the 2006 Regulations, but without limitation as to the transitional period, and
- (b) amending the scheme rules so that the 2006 Regulations no longer apply in relation to the scheme with effect from the date on which the modifications referred to in sub-paragraph (a) take effect.

(2) Modifications made by resolution under paragraph (1) may have effect from a date before the date the resolution is passed but not before 6th April 2006.

(3) Modifications made under paragraph (1) shall have effect from any date on or after 6th April 2006.

(4) Without prejudice to Article 67, modifications made by resolution under paragraph (1)(a) may be modified by exercise of any power conferred on any person by a scheme to modify the scheme.

Modification of schemes: surviving civil partners

7.—(1) Subject to paragraph (2), the trustees of a trust scheme may by resolution modify the scheme in relation to all or part of a member's subsisting rights so that after his death—

- (a) a surviving civil partner is treated in the same way as a widow or widower, and
- (b) the rights of any other survivor are determined as if the surviving civil partner were a widow or widower.

(2) A modification under paragraph (1) which confers rights on surviving civil partners which are in excess of what is required to comply with the relevant requirements of the Civil Partnership Act 2004(a) shall not be made unless—

- (a) the employer in relation to the scheme consents, or

(a) 2004 c. 33

- (b) in the case of a scheme where there is more than one employer—
- (i) a person nominated by the employers, or otherwise in accordance with the scheme rules, to act as the employers’ representative (the “nominee”) consents, or
 - (ii) where there is no such nominee, all of the employers in relation to the scheme consent other than any employer who has waived his right to give such consent.

Modification of schemes: prescribed schemes

8. For the purposes of Article 68(5) (power of trustees to modify schemes by resolution does not apply to trust schemes within a prescribed class or description), the prescribed class or description of trust schemes is any scheme—

- (a) in respect of which any Minister of the Crown or government department has given a guarantee or made arrangements for the purposes of securing that the assets of the scheme are sufficient to meet its liabilities, and
- (b) which is a public service pension scheme.

Revocations

9. The statutory rules specified in column (1) of the Schedule are revoked to the extent specified in column (3).

Sealed with the Official Seal of the Department for Social Development on 21st March 2006.



John O'Neill

A senior officer of the Department for Social Development

SCHEDULE

Regulation 9

Revocations

<i>Column (1) Citation</i>	<i>Column (2) Reference</i>	<i>Column (3) Extent of revocation</i>
The Occupational Pension Schemes (Modification of Schemes) Regulations (Northern Ireland) 1997	S.R. 1997 No. 97	The whole Regulations
The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 1997	S.R. 1997 No. 160	In the Schedule, paragraph 18
The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 1999	S.R. 1999 No. 486	Regulation 12
The Occupational and Personal Pension Schemes (Contracting-out) (Miscellaneous Amendments) Regulations (Northern Ireland) 2002	S.R. 2002 No. 109	Regulation 6

The Civil Partnership (Contracted-out Occupational and Appropriate Personal Pension Schemes) (Surviving Civil Partners) Order (Northern Ireland) 2005	S.R. 2005 No. 433	Schedule 2, paragraph 36
The Civil Partnership (Pensions, Social Security and Child Support) (Consequential, etc. Provisions) Order (Northern Ireland) 2005	S.R. 2005 No. 536	Schedule 2, paragraph 5

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe certain requirements which must be met where an occupational pension scheme is modified using a power conferred on any person by a scheme and where the subsisting rights provisions apply. The subsisting rights provisions are contained in Articles 67 to 67I of the Pensions (Northern Ireland) Order 1995 (“the 1995 Order”) and require that modifications to which they apply must either comply with the consent requirements or the actuarial equivalence requirements, as well as, the trustee approval and reporting requirements. These Regulations also enable trustees, in prescribed circumstances, to modify a trust scheme by way of a resolution.

Regulation 2 exempts categories of schemes from the subsisting rights provisions.

Regulation 3 exempts from the subsisting rights provisions modifications made in a prescribed manner. In particular paragraphs (f) and (g) exempt certain modifications which may be made as a result of provisions of the Finance Act 2004 which relate to unauthorised member payments or which relate to certain charges. Paragraph (h) exempts modifications which have the same effect as any or all the modifications in regulations 3 to 8 of the Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006 (“the 2006 Regulations”). Paragraph (i) exempts modifications which deal with providing benefits to surviving civil partners so that they may be treated in the same way as widows or widowers.

Regulation 4 prescribes the qualifications or experience required for a person providing an actuarial equivalence statement, where a modification of a scheme must comply with the actuarial equivalence requirements.

Regulation 5 prescribes requirements for calculating the actuarial value of an affected member’s subsisting rights, where the actuarial equivalence requirements apply to a modification of a scheme.

Regulation 6 prescribes that the trustees of a trust scheme may by resolution modify the scheme for the purposes of achieving the same effect as all of the modifications in regulations 3 to 8 of the 2006 Regulations. Such a resolution must be passed before 6th April 2011 and it may only have effect on or after 6th April 2006.

Regulation 7 prescribes that the trustees of a trust scheme may by resolution modify the scheme for the purposes of providing benefits to surviving civil partners so that they may be treated in the same way as widows or widowers. Such modifications must not be made without the consent of the employer where the modification confers rights in excess of what is required to comply with the Civil Partnership Act 2004. In the case of a multi-employer scheme such consent must be given by all of the employers, however, a person may be nominated to give such consent or an employer may waive his consent.

Regulation 8 exempts certain schemes from the provisions which allow trustees of trust schemes to modify the scheme by resolution.

Regulation 9 revokes the Occupational Pension Schemes (Modification of Schemes) Regulations (Northern Ireland) 1996 and makes consequential revocations.

The Pensions (2005 Order) (Commencement No. 6) Order (Northern Ireland) 2005 (S.R. 2005 No. 411 (C. 32)) provides for the coming into operation of Article 239 of the Pensions (Northern Ireland) Order 2005, which substituted Articles 67(1)(b) and (3)(b), 67C(7)(a)(ii) and 67D(4) and (5) of the 1995 Order, some of the enabling provisions under which these Regulations are made, for the purposes only of authorising the making of regulations, on 1st November 2005 and for all other purposes on 6th April 2006.

As these Regulations make in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Work and Pensions in relation to Great Britain, the requirement to consult under Article 117(1) of the 1995 Order does not apply by virtue of paragraph (2)(e) of that Article.