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STATUTORY RULES OF NORTHERN IRELAND

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**2016 No. 107**

The Occupational Pension Schemes  
(Schemes that were Contracted-out)  
Regulations (Northern Ireland) 2016

PART 4

ADDITIONAL REQUIREMENTS IN RELATION  
TO GUARANTEED MINIMUM PENSIONS

**Alteration of scheme rules**

**11.** The rules of a scheme may be altered in relation to a guaranteed minimum under section 10(1) (earner's guaranteed minimum) or 13(2) (minimum pensions for widows and widowers) of the 1993 Act only if the alteration would not—

- (a) affect any of the matters dealt with in Part 3(3) of the 1993 Act (schemes that were contracted-out etc. and effects on members' state scheme rights), or any regulations made under that Part, that relate to guaranteed minimum pensions, in a manner that would or might adversely affect any entitlement or accrued rights of any member of the scheme acquired before the alteration takes effect;
- (b) affect any of the matters dealt with in sections 83 to 88(4) of the 1993 Act (protection of increases in guaranteed minimum pensions) or sections 105 and 106(5) of the 1993 Act (annual increases of guaranteed minimum pensions) or any matters dealt with in regulations made under any of those provisions.

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- (1) Section 10 was amended by paragraph 20 of Schedule 3 to the Pensions (Northern Ireland) Order 1995 and paragraph 41 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 ([S.I. 1999/671](#)) and is amended by paragraph 15 of Schedule 13 to the Pensions Act (Northern Ireland) 2015
  - (2) Section 13 was amended by paragraph 42 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999, paragraph 1 of Schedule 5 and Schedule 9 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000, Article 261(2) of the Pensions (Northern Ireland) Order 2005, section 12(2) of the Pensions Act (Northern Ireland) 2008 and paragraph 5 of Schedule 1 to [S.R. 2005 No. 433](#) and is amended by paragraph 17 of Schedule 13 to the Pensions Act (Northern Ireland) 2015
  - (3) The heading for Part 3 is amended by paragraph 3 of Schedule 13 to the Pensions Act (Northern Ireland) 2015
  - (4) Section 83 was amended by paragraph 28 of Schedule 4 to the Pensions Act (Northern Ireland) 2008 and paragraph 18 of Schedule 1 to [S.R. 2005 No. 433](#). Section 84 was amended by paragraph 19 of Schedule 1 to [S.R. 2005 No. 433](#). Section 85 was amended by paragraph 20 of Schedule 1 to [S.R. 2005 No. 433](#). Section 86 was amended by paragraph 21 of Schedule 1 to [S.R. 2005 No. 433](#)
  - (5) Section 105 was amended by Article 55 of the Pensions (Northern Ireland) Order 1995 and paragraph 22 of Schedule 1 to [S.R. 2005 No. 433](#). Section 106 was amended by Article 53(4) of the Pensions (Northern Ireland) Order 1995 and paragraph 23 of Schedule 1 to [S.R. 2005 No. 433](#)

**Circumstances for the purposes of section 13(6) of the 1993 Act in which widower's or surviving civil partner's guaranteed minimum pension is payable**

12.—(1) In addition to providing for a widower's, widow's or surviving civil partner's pension to be payable in the circumstances specified in section 13(4A)(6) of the 1993 Act (minimum pensions for widows and widowers), a scheme that was a salary related contracted-out scheme is to make provision for a pension to be payable to a widower or surviving civil partner if—

- (a) the widower or surviving civil partner and the earner were both over pensionable age when the earner died;
- (b) the widower or surviving civil partner is either residing with a child, or is entitled to child benefit in respect of a child, who is—
  - (i) a child of the widower or surviving civil partner and the earner;
  - (ii) a child in respect of whom the earner was, immediately before the earner's death, entitled to child benefit, or would have been so entitled, if the child had not been absent from Northern Ireland, or
  - (iii) if the widower or surviving civil partner and the earner were residing together immediately before the earner's death, a child in respect of whom the widower or surviving civil partner was, at that time, entitled to child benefit, or would have been so entitled, if the child had not been absent from Northern Ireland, or
- (c) the widower or surviving civil partner attained the age of 45—
  - (i) before the earner died, or
  - (ii) during a period when the circumstances mentioned in sub-paragraph (b) existed.

(2) For the purposes of this regulation "child benefit" has the same meaning as in the Contributions and Benefits Act(7).

**Period for the purposes of section 13(6) of the 1993 Act for which widower's or surviving civil partner's guaranteed minimum pension is payable**

13.—(1) Where a pension is payable by virtue of regulation 12(1)(a), the scheme is to make provision for the pension to be payable for the remainder of the widower's or surviving civil partner's life.

(2) Subject to paragraph (4), where a pension is payable by virtue of regulation 12(1)(b) but not by virtue of regulation 12(1)(a) or (c), the scheme is to make provision for the pension to be payable for the period during which the circumstances described in regulation 12(1)(b) continue to exist.

(3) Subject to paragraph (4), where a pension is payable by virtue of regulation 12(1)(c), but not by virtue of regulation 12(1)(a), the scheme is to make provision for the pension to be payable for the remainder of the widower's or surviving civil partner's life.

(4) Subject to paragraph (5), there is excluded from the periods prescribed by paragraphs (2) and (3) any period—

- (a) after the widower has remarried whilst under pensionable age, or the surviving civil partner has married whilst under that age;
- (b) after the formation of a civil partnership by the widower whilst under pensionable age, or the formation of a subsequent civil partnership by the surviving civil partner whilst under that age;

(6) Section 13(4A) was inserted by paragraph 1(1) of Schedule 5 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and amended by paragraph 5(d) of Schedule 1 to S.R. 2005 No. 433 and is amended by paragraph 17(2) of Schedule 13 to the Pensions Act (Northern Ireland) 2015

(7) See section 137

- (c) during which the widower or surviving civil partner is under pensionable age and—
    - (i) he or, as the case may be, she and a person of the opposite sex are living together as husband and wife, or
    - (ii) he or, as the case may be, she and a person of the same sex are living together as if they were civil partners;
  - (d) after the widower has attained pensionable age if immediately before he attained that age—
    - (i) he and a woman to whom he was not married were living together as husband and wife, or
    - (ii) he and a man were living together as if they were civil partners, or
  - (e) after the surviving civil partner has attained pensionable age if immediately before he or she attained that age—
    - (i) he or she and a person of the opposite sex to whom he or she was not married were living together as husband and wife, or
    - (ii) he or she and a person of the same sex were living together as if they were civil partners.
- (5) The following provisions do not apply where a man became a widower before 5th December 2005—
- (a) paragraph (4)(b);
  - (b) paragraph (4)(c)(ii), and
  - (c) paragraph (4)(d)(ii).

#### **Fixed rate revaluation of guaranteed minimum pensions secured by insurance policies or annuity contracts**

**14.** A scheme may make provision by virtue of section 12(2)(8) of the 1993 Act (revaluation of earnings factors for the purposes of section 10: early leavers, etc.) for those of its members whose guaranteed minimum pensions are, or are to be, appropriately secured (within the meaning of section 15(3) of the 1993 Act), even though the same provision is not made for other members of the scheme.

#### **Fixed rate revaluation of guaranteed minimum pensions for early leavers**

**15.—(1)** This regulation applies where a scheme provides, in accordance with section 12(2) of the 1993 Act (as substituted by paragraph 16 of Schedule 13 to the Pensions Act (Northern Ireland) 2015), for a person's earnings factors to be determined for the purposes of section 10(2) of the 1993 Act by reference to the last order to come into operation under section 130 of the Social Security Administration (Northern Ireland) Act 1992(9) before the end of the last service tax year.

(2) Subject to paragraph (3), in a case to which this regulation applies, the scheme is to provide for the weekly equivalent mentioned in section 10(2) of the 1993 Act to be increased by at least 4.75 per cent. compound in relation to the period of service in respect of which accrued rights to a guaranteed minimum pension have been acquired under, or transferred to, the scheme, where the period of pensionable service under the scheme terminates on or after 6th April 2016.

(3) The scheme may make provision which is different to that made by virtue of paragraph (2) with respect to—

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(8) Section 12(2) is substituted by paragraph 16 of Schedule 13 to the Pensions Act (Northern Ireland) 2015, but saved for certain purposes, *see* S.R. 2016 No. 106

(9) 1992 c. 8; section 130 was amended by paragraph 40 of Schedule 7 to the Pension Schemes (Northern Ireland) Act 1993 and Article 125(3) of the Pensions (Northern Ireland) Order 1995

- (a) members whose rights to guaranteed minimum pensions under the scheme arise in respect of a transfer or transfer payment made in accordance with section 16(1)(10) of the 1993 Act or regulations made under that provision;
- (b) members whose guaranteed minimum pensions are, or are to be, appropriately secured within the meaning of section 15(3) of the 1993 Act.

### **Payment of a lump sum instead of a pension**

**16.**—(1) The scheme may provide for the payment of a lump sum instead of a pension that the scheme is required to provide in accordance with section 9(11) or 13 of the 1993 Act if—

- (a) a guaranteed minimum pension has become payable (but see also paragraph (3)), and
  - (b) the payment of a lump sum is authorised under section 164 of the 2004 Act and the payment fulfils the conditions in paragraph (2).
- (2) The conditions are that the payment is—
- (a) permitted by the lump sum rule in section 166 of the 2004 Act and qualifies as—
    - (i) a trivial commutation lump sum for the purposes of paragraph 7 of Schedule 29 to the 2004 Act, or
    - (ii) a winding-up lump sum for the purposes of paragraph 10 of that Schedule;
  - (b) permitted by the lump sum death benefit rule in section 168 of the 2004 Act and qualifies as a trivial commutation lump sum death benefit for the purposes of paragraph 20 of Schedule 29 to the 2004 Act, or
  - (c) made by a registered pension scheme (within the meaning of section 150(2) of the 2004 Act), is a payment that is described in Part 2 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 and is made to or in respect of a member.
- (3) The condition in paragraph (1)(a) does not apply in cases where—
- (a) the scheme is being wound up or an earner retires before pensionable age;
  - (b) a premium under section 51(2)(12) of the 1993 Act (contributions equivalent premium) has been paid or treated as paid or the scheme has made the provision mentioned in section 12(2) and (3)(13) of the 1993 Act, and
  - (c) the conditions in paragraph (4) are met.
- (4) The conditions are—
- (a) the aggregate amount of the benefits that have accrued to the earner at the date of winding-up or, as the case may be, of the earner's retirement, increased—
    - (i) in accordance with section 12(2) and (3) of the 1993 Act, or
    - (ii) in a case where section 12(2) and (3) applies, to the amount that would have been payable at pensionable age,
 is to be treated as the amount of benefits currently payable to the earner under the scheme;

(10) Section 16(1) was amended by paragraph 2(1) of Schedule 5 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and is amended by paragraph 18 of Schedule 13 to the Pensions Act (Northern Ireland) 2015

(11) Section 9 was amended by paragraph 19 of Schedule 3 to the Pensions (Northern Ireland) Order 1995 and section 12(1) of the Pensions Act (Northern Ireland) 2008

(12) Section 51(2) was substituted by Article 138(1) of the Pensions (Northern Ireland) Order 1995 and amended by paragraph 7(2)(a) of Schedule 2 to the Welfare Reform and Pensions Act 1999 (c. 30) and paragraph 26 of Schedule 4 to the Pensions Act (Northern Ireland) 2008

(13) Section 12(3) was amended by paragraph 21(a) of Schedule 3 to the Pensions (Northern Ireland) Order 1995

- (b) in the case of an earner who retires before normal pension age, commutation is not permitted before the date on which benefits become payable to the earner under the scheme's early retirement provisions;
  - (c) in cases where the earner is a member of more than one scheme relating to the same employment, all those schemes are being wound up or, as the case may be, the earner is treated by all those schemes as having retired and, in each case, all those schemes have paid a contributions equivalent premium or have made the provisions mentioned in section 12(2) and (3) of the 1993 Act.
- (5) Subject to paragraph (6), the scheme may provide for the payment of a lump sum instead of a pension that the scheme is required to provide in accordance with section 9 or 13 of the 1993 Act if the payment—
- (a) is authorised under section 164 of the 2004 Act;
  - (b) is permitted by the lump sum rule in section 166 of the 2004 Act, and
  - (c) qualifies as a serious ill-health lump sum for the purposes of paragraph 4 of Schedule 29 to the 2004 Act.
- (6) Where—
- (a) under the scheme, an earner qualifies for a lump sum payment on the ground of serious ill-health, and
  - (b) the scheme also provides for the payment of a guaranteed minimum pension to the widow, widower or surviving civil partner of the earner ("a survivor's pension"),

the scheme is to continue to include provision for a survivor's pension notwithstanding the payment of a lump sum to the earner.

### **Suspension and forfeiture of guaranteed minimum pension**

17.—(1) The scheme may provide for an earner's or an earner's widow's, widower's or surviving civil partner's guaranteed minimum pension to be suspended if—

- (a) the person entitled to payments giving effect to those rights ("the pensioner") is, in the opinion of the trustees of the scheme, unable to act by reason of mental disorder, and there is provision in the scheme that requires that, in those circumstances, sums equivalent to the guaranteed minimum pension—
  - (i) must be paid or applied for the maintenance of the pensioner, except in so far as they are not, in the opinion of the trustees, required for that purpose;
  - (ii) may, in so far as they are not in the opinion of the trustees required for the maintenance of the pensioner, be paid or applied for the maintenance of any dependants of the pensioner;
  - (iii) must, in so far as such sums are not in the opinion of the trustees required for the maintenance of the pensioner or of any dependant of the pensioner, be held by the trustees for the pensioner until the pensioner is again able to act, or if the pensioner dies before that happens, for the pensioner's estate;
- (b) the pensioner is in prison or detained in legal custody and there is provision in the scheme for sums equivalent to the guaranteed minimum pension to be paid or applied during such circumstances for the maintenance of such one or more of the pensioner's dependants as the trustees of the scheme may in their discretion determine;
- (c) the earner is re-employed by the employer by whom the earner was previously employed in contracted-out employment in respect of which the guaranteed minimum pension became payable and there is provision in the scheme for the guaranteed minimum pension

that becomes payable when the suspension is lifted to be increased in accordance with section 11(1) of the 1993 Act.

(2) The scheme may provide for an earner's or an earner's widow's, widower's or surviving civil partner's guaranteed minimum pension (whether current or prospective) to be forfeited if—

- (a) the person entitled to that pension has been convicted of—
  - (i) an offence of treason, or
  - (ii) one or more offences under the Official Secrets Acts 1911 to 1989<sup>(14)</sup> for which the person has been sentenced on the same occasion to a term of imprisonment of, or to 2 or more consecutive terms amounting in aggregate to, at least 10 years;
- (b) in the case of a widow's, widower's or surviving civil partner's guaranteed minimum pension, the earner by reference to whose contracted-out employment that pension is payable has been convicted of an offence of treason, or has been convicted of an offence or offences and has been sentenced to a term or terms of imprisonment as set out in subparagraph (a)(ii);
- (c) in the case of any payment of guaranteed minimum pension for which a claim has not been made, a period of at least 8 years has elapsed from the date on which that payment became due;
- (d) in the case of a widow's, widower's or surviving civil partner's guaranteed minimum pension, that person is convicted of the offence of murder or manslaughter of the earner by reference to whose contracted-out employment that pension is payable, or any other offence of which unlawful killing of that member is an element.

(3) For the purposes of paragraph (2)(d), “unlawful killing” includes unlawfully aiding, abetting, counselling or procuring the death of a person.

### **Conversion into other benefits: actuarial equivalence**

**18.**—(1) For the purposes of Condition 1 of section 20B<sup>(15)</sup> of the 1993 Act (the conversion conditions), actuarial equivalence is to be determined in accordance with this regulation.

- (2) The trustees are responsible for determining actuarial equivalence.
- (3) In determining actuarial equivalence, the trustees must—
  - (a) obtain advice from the actuary appointed for the scheme in accordance with Article 47(1)(b) of the 1995 Order (“the actuary”) about what assumptions are appropriate at the conversion date;
  - (b) consider that advice;
  - (c) decide what assumptions are appropriate at the conversion date and, if the trustees later think it is necessary, change that decision, and
  - (d) arrange for the actuary to calculate the actuarial values of the post-conversion benefits and the pre-conversion benefits in accordance with paragraph (4).
- (4) In calculating the actuarial values mentioned in paragraph (3)(d), the actuary must—
  - (a) use the assumptions chosen by the trustees under paragraph (3)(c), and
  - (b) ignore the value of any—
    - (i) benefits that have been commuted;
    - (ii) amounts that have been paid in respect of any benefits;

<sup>(14)</sup> 1911 c. 28; 1920 c. 75; 1939 c. 121; 1989 c. 6

<sup>(15)</sup> Section 20B was inserted by section 12(3) of the Pensions Act (Northern Ireland) 2008

(iii) amounts in respect of any benefits that, before the conversion date, became due to be paid, and

(iv) discretionary benefits that might be awarded in the future.

(5) When the actuarial values mentioned in paragraph (3)(d) have been calculated, the actuary must send the trustees a certificate if the post-conversion benefits are actuarially at least equivalent to the pre-conversion benefits.

(6) The certificate is to—

(a) state that—

(i) the calculations have been completed, and

(ii) the post-conversion benefits are actuarially at least equivalent to the pre-conversion benefits, and

(b) be sent to the trustees no later than 3 months after the calculations have been completed.

### **Conversion into other benefits: survivors' benefits**

**19.**—(1) For the purposes of Condition 4 of section 20B of the 1993 Act (the conversion conditions), the circumstances in which, and periods during which, the converted scheme must provide survivors' benefits are the circumstances set out in paragraph (2) and the periods set out in paragraph (3).

(2) The circumstances are—

(a) an earner's pre-conversion benefits include a guaranteed minimum pension, and

(b) the scheme before conversion provided that—

(i) if the earner died (whether before or after attaining pensionable age) leaving a widow, widower or surviving civil partner, the widow, widower or surviving civil partner would be entitled to a guaranteed minimum pension, and

(ii) in a case where section 13(6)(**16**) of the 1993 Act applies, a widower's or surviving civil partner's guaranteed minimum pension would be payable in the circumstances set out in regulation 12(1).

(3) The periods are—

(a) for widows, widowers and surviving civil partners, any period mentioned in section 13(4A)(a), (aa), (ab) or (b) of the 1993 Act;

(b) subject to paragraph (4), for widows, widowers and surviving civil partners whose entitlement by virtue of the earner's contributions to a widowed parent's allowance or bereavement allowance has come to an end at a time after the widow, widower or surviving civil partner attained the age of 45, so much of the period beginning with the time when that entitlement came to an end as neither—

(i) comprises a period during which the widow, widower or surviving civil partner and—

(aa) a person of the opposite sex are living together as husband and wife, or

(bb) a person of the same sex are living together as if they were civil partners, nor

(ii) falls after the time of any—

(aa) marriage, or

(bb) formation of a civil partnership,

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(16) Section 13(6) was amended by paragraph 1(3) of Schedule 5 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and paragraph 5(f) of Schedule 1 to [S.R. 2005 No. 433](#)

by the widow, widower or surviving civil partner which takes place after the earner's death;

- (c) for widows, any period for which a widowed mother's allowance or widow's pension is payable to the widow by virtue of the earner's contributions, and
  - (d) for widowers and surviving civil partners, any period for which a scheme must make provision for the payment of a widower's or surviving civil partner's pension by virtue of section 13(6) of the 1993 Act and regulation 13.
- (4) The following provisions do not apply where the earner died before 5th December 2005—
- (a) paragraph (3)(b)(i)(bb), and
  - (b) paragraph (3)(b)(ii)(bb).