

**2016 No. 107**

**PENSIONS**

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

*Made* - - - - *4th March 2016*

*Coming into operation in accordance with regulation 1*

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The Department for Social Development makes the following Regulations in exercise of the powers conferred by the provisions set out in Schedule 1 and now vested in it(a).

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

# PART 1

## GENERAL

### Citation and commencement

1. These Regulations may be cited as the Occupational Pension Schemes (Schemes that were Contracted-out) Regulations (Northern Ireland) 2016 and shall come into operation—

- (a) for the purposes of this regulation and regulations 2 to 24, on 6th April 2016, and
- (b) for the purposes of regulation 25, on 6th April 2019.

### Interpretation

2.—(1) In these Regulations—

“the 1993 Act” means the Pension Schemes (Northern Ireland) Act 1993(a);

“the 1995 Order” means the Pensions (Northern Ireland) Order 1995(b);

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

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

“administrator” means the person resident in the United Kingdom having responsibility for the management of an occupational pension scheme or, in the case of an overseas scheme (within the meaning of regulation 6), the person who is appointed in accordance with section 270(e) of the 2004 Act;

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992(f);

“section 5(2B) rights” are—

- (a) rights to the payment of pensions and accrued rights to pensions (other than rights attributable to voluntary contributions) under a scheme that was a salary related contracted-out scheme(g), so far as attributable to an earner’s service in contracted-out employment on or after the principal appointed day(h), and
- (b) where a transfer payment has been made (other than a payment made in accordance with regulation 10 of the Contracting-out (Transfer and Transfer Payment) Regulations (Northern Ireland) 1996(i) (transfer payments in occupational and personal pension schemes in respect of section 5(2B) rights)) to such a scheme, whether before or after the second abolition date(j), any rights arising under the scheme as a consequence of that payment which are derived directly or indirectly from—
  - (i) such rights as are referred to in paragraph (a) under another scheme that was a salary related contracted-out scheme, or

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(a) 1993 c. 49

(b) S.I. 1995/3213 (N.I. 22)

(c) S.R. 1996 No. 493

(d) 2004 c. 12

(e) Section 270 was amended by paragraph 9 of Schedule 7 to the Finance Act 2014 (c. 26)

(f) 1992 c. 7

(g) See section 3B of the Pension Schemes (Northern Ireland) Act 1993 as inserted by paragraph 6 of Schedule 13 to the Pensions Act (Northern Ireland) 2015

(h) See section 176(1) of the Pension Schemes (Northern Ireland) Act 1993 as amended by paragraph 42(9) of Schedule 13 to the Pensions Act (Northern Ireland) 2015 (c. 5 (N.I.))

(i) S.R. 1996 No. 618; regulation 10 was substituted by regulation 7(4) of S.R. 2012 No. 120 and is amended by regulation 22(3) of these Regulations

(j) See section 3A of the Pension Schemes (Northern Ireland) Act 1993 as inserted by paragraph 6 of Schedule 13 to the Pensions Act (Northern Ireland) 2015

- (ii) protected rights under another occupational pension scheme or under a personal pension scheme attributable to payments or contributions in respect of employment on or after the principal appointed day where that transfer payment was made before the first abolition date<sup>(a)</sup>;

“trustees” in relation to a scheme which is not set up or established under a trust, means the managers or administrators of the scheme.

(2) For the purposes of these Regulations, 2 people of the same sex are to be regarded as living together as if they were civil partners if, but only if, they would be regarded as living together as husband and wife were they instead 2 people of the opposite sex.

(3) For the purposes of these Regulations—

- (a) any person, government department or public authority who, under or by virtue of Part 1 of the Contributions and Benefits Act is, or is to be treated as, the secondary Class 1 contributor, is to be treated as the employer of the earner in respect of whom the Class 1 contributions are payable;
- (b) without prejudice to sub-paragraph (a), there is to be treated as the employer of a self-employed earner to whom a scheme that was a salary related contracted-out scheme applies any person (other than the self-employed earner), government department or public authority who makes or is liable to make payments towards the resources of the scheme in respect of the self-employed earner (either under actual or contingent legal obligation or in the exercise of power conferred, or duty imposed, on a Minister of the Crown, government department or any other person, being a power or duty which extends to the disbursement or allocation of public money).

(4) Subject to paragraphs (5) and (6), the Interpretation Act (Northern Ireland) 1954<sup>(b)</sup> shall apply to these Regulations as it applies to an Act of the Assembly.

(5) Without prejudice to any other method of service authorised under section 24 of the Interpretation Act (Northern Ireland) 1954, the requirement to send any document under these Regulations may be met by sending it by ordinary post.

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

## PART 2

### GENERAL PROVISIONS RELATING TO SCHEMES THAT WERE SALARY RELATED CONTRACTED-OUT SCHEMES

#### Alteration of scheme rules

**3.** For the purposes of section 33(1)(c) of the 1993 Act (prohibition on alteration of rules of schemes that were contracted-out unless alteration is of a prescribed description), the alterations which are prescribed are any alterations which are allowed by regulations 8 and 11.

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(a) See section 3A of the Pension Schemes (Northern Ireland) Act 1993 as inserted by paragraph 6 of Schedule 13 to the Pensions Act (Northern Ireland) 2015

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

(c) Section 33(1) was substituted by paragraph 24 of Schedule 13 to the Pensions Act (Northern Ireland) 2015

## **Determination that an earner was in contracted-out employment**

**4.**—(1) This regulation applies where—

- (a) an earner (“E”) has been in employment, during a period in which employment of the same description as E’s employment was contracted-out(**a**), but E’s employment was not (apart from this regulation) contracted-out in relation to E, and
- (b) the Commissioners are satisfied—
  - (i) that the employment was not contracted-out in relation to E solely because E was not, during that period, a member of the relevant scheme(**b**), and
  - (ii) that E, during that period, was not a member of that scheme solely because of inadvertence.

(2) Where this regulation applies, the Commissioners may determine that E was in contracted-out employment by reference to that scheme during that period.

## **Provision of information**

**5.**—(1) The Department or the Commissioners may give any information that they could give to the trustees of an occupational pension scheme, under section 152(1)(c) of the 1993 Act (information for purposes of contracting-out), to the following persons—

- (a) an earner, or widow, widower or surviving civil partner of an earner, to whom the information relates;
- (b) the employer in relation to the contracted-out employment of an earner to whom the information relates;
- (c) any independent trade union recognised in relation to earners who are members of a scheme that was a salary related contracted-out scheme, and
- (d) any person who is or who, in the opinion of the Commissioners, is likely to become, responsible for paying guaranteed minimum pensions, or pensions in respect of section 5(2B) rights, in accordance with the pension scheme.

(2) Paragraph (1)(c) is subject to the condition that the information to be given is either—

- (a) as to—
  - (i) the total amount of the guaranteed minimum pensions to which it appears to the Commissioners that all persons entitled under the scheme (whether immediately or prospectively) are so entitled, or
  - (ii) whether the scheme is liable in respect of any section 5(2B) rights, or
- (b) given with the consent of the earner, widow, widower or surviving civil partner to whom it relates, such consent being given in writing, or by means of an electronic communication in such form as the Commissioners may approve.

(3) For the purposes of this regulation, “independent trade union” means an independent trade union which is recognised to any extent for the purpose of collective bargaining.

## **Overseas schemes**

**6.**—(1) The rules of an overseas scheme are to provide—

- (a) that, if the scheme is wound up, the assets of the scheme are to be applied first towards satisfying the amounts of the liabilities mentioned in Article 73(4)(**d**) of the 1995 Order

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(a) See section 4 of the Pension Schemes (Northern Ireland) Act 1993 as amended by paragraph 7 of Schedule 13 to the Pensions Act (Northern Ireland) 2015

(b) See section 33A(2) of the Pension Schemes (Northern Ireland) Act 1993 as inserted by paragraph 25 of Schedule 13 to the Pensions Act (Northern Ireland) 2015

(c) Section 152 was substituted by paragraph 6 of Schedule 5 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)) and subsection (1) was amended by Article 4(17) of S.R. 2012 No. 124

(d) Article 73 was substituted by Article 247(1) of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1))

(preferential liabilities on winding up) and, if they are insufficient to satisfy those amounts in full, then—

- (i) they are to be applied first towards satisfying the amounts of the liabilities mentioned in earlier sub-paragraphs of that Article before those mentioned in later sub-paragraphs, and
  - (ii) where the amounts of the liabilities mentioned in one of those sub-paragraphs cannot be satisfied in full, all such liabilities are to be satisfied in the same proportions;
- (b) that not more than 5 per cent. of the current market value of the scheme’s resources are invested in a person who is an employer, or connected with an employer, in relation to the scheme if such investments are required to meet the liabilities specified in sub-paragraph (a) and the value of such investments is to be calculated and determined in a manner approved by the Commissioners, and
- (c) in respect of rights that have accrued as a result of contracted-out employment in the scheme in Northern Ireland, for revaluation of accrued rights in accordance with sections 79 to 82(a) of the 1993 Act and for indexation of pensions in accordance with Articles 51 to 54(b) of the 1995 Order.

(2) In this regulation “overseas scheme” means an occupational pension scheme that was a salary related contracted-out scheme and that has its main administration outside the EEA states(c), but does not include a scheme that was contracted-out in the Isle of Man by virtue of satisfying section 9(2) of the Pension Schemes Act 1993(d) as it had effect in the Isle of Man before the second abolition date.

### **Continuation of transitional arrangements for schemes that began winding up before 6th April 1997**

7. Where a scheme that was a salary related contracted-out scheme began winding up before the principal appointed day—

- (a) regulation 37 of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1985(e) (priorities on the winding-up of a scheme) continues to have effect in relation to that scheme, and
- (b) the resources of the scheme must be sufficient to meet the liabilities specified in section 20(1)(c)(f) of the 1993 Act (as it had effect on the day the scheme began winding up), such resources being calculated, determined and verified in a manner approved by the Commissioners.

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(a) Section 79 was amended by paragraph 20 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and paragraph 21 of Schedule 8 to the Public Service Pensions Act (Northern Ireland) 2014 (c. 2 (N.I.)). Section 80 was amended by Part III of Schedule 5 to the Pensions (Northern Ireland) Order 1995, Article 258 of the Pensions (Northern Ireland) Order 2005, section 20(1) to (3) of the Pensions Act (Northern Ireland) 2012 (c. 3 (N.I.)), paragraph 13 of the Schedule to S.R. 2005 No. 434 and regulation 2(2) of S.R. 2014 No. 213. Section 81 was amended by paragraph 21 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999

(b) Article 51 was amended by paragraph 40 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999, section 47(1) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000, Article 255 of, and Schedule 11 to, the Pensions (Northern Ireland) Order 2005, sections 20(8) and 21(2) and (3) of the Pensions Act (Northern Ireland) 2012 and Article 11(2) of S.I. 2006/745. Article 51ZA was inserted by Article 255(7) of the Pensions (Northern Ireland) Order 2005 and amended by paragraph 8 of Schedule 1 to the Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13 (N.I.)). Article 51ZB was inserted by section 21(4) of the Pensions Act (Northern Ireland) 2012. Article 51A was inserted by section 47(2) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and amended by Article 5(2) of S.R. 2012 No. 124. Article 53 was amended by paragraph 41 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999. Article 54 was amended by Article 255(8) of, and Schedule 11 to, the Pensions (Northern Ireland) Order 2005 and paragraph 9 of Schedule 1 to the Pensions (No. 2) Act (Northern Ireland) 2008

(c) See the definition of “EEA state” in section 176(1) of the Pension Schemes (Northern Ireland) Act 1993 as inserted by regulation 2(5) of S.R. 2007 No. 457

(d) 1993 c. 48; section 9(2) was substituted by section 136(3) of the Pensions Act 1995 (c. 26)

(e) S.R. 1985 No. 259; regulation 37 was amended by paragraph 3(29) of Schedule 2 to S.R. 1994 No. 300

(f) Section 20 was repealed by Schedule 5 to the Pensions (Northern Ireland) Order 1995

## PART 3

### ADDITIONAL REQUIREMENTS IN RELATION TO RIGHTS ATTRIBUTABLE TO CONTRACTED-OUT EMPLOYMENT ON AND AFTER 6TH APRIL 1997

#### Alteration of scheme rules

- 8.—(1) The rules of a scheme may be altered in relation to section 5(2B) rights only if—
- (a) following the alteration, the scheme provides benefits for the earner and for the earner's widow, widower or surviving civil partner, in respect of the period of pensionable service to which the alteration relates, that are at least equal to the benefits that would have been provided by a reference scheme (within the meaning of section 8B(2)(a) of the 1993 Act as it had effect immediately before the second abolition date);
  - (b) the alteration is one to which the subsisting rights provisions (within the meaning of Article 67(4)(b) of the 1995 Order) do not apply, by virtue of Article 67 of the 1995 Order;
  - (c) the alteration is one that is not a protected modification or a detrimental modification (within the meaning of Article 67A(c) of the 1995 Order) and the requirement in paragraph (2) is met, or
  - (d) the alteration is a detrimental modification (within the meaning of Article 67A of the 1995 Order) and—
    - (i) the actuarial equivalence requirements provided for in Articles 67C and 67D(d) of the 1995 Order are met in relation to the proposed modification of those rights, and
    - (ii) the requirement in paragraph (2) is met.
- (2) Subject to paragraph (3), the requirement is that the altered scheme is to provide for a pension to be paid to the earner's widow, widower or surviving civil partner (referred to in this regulation as the "relevant survivor's section 5(2B) pension") that is at least as generous, either as regards the amount of the pension or as regards the circumstances in which it shall be paid, as it would have been before the alteration.
- (3) In relation to an earner who is in pensionable service under the scheme immediately before the alteration takes effect, the requirement in paragraph (2) is to be deemed to be satisfied if the relevant survivor's section 5(2B) pension that the scheme would provide in respect of the earner if the earner left pensionable service immediately after the alteration is at least as generous as the relevant survivor's section 5(2B) pension that the scheme would have provided in respect of the earner had the earner left service immediately before the alteration.

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- (a) Section 8B was inserted by Article 133(5) of the Pensions (Northern Ireland) Order 1995 and is repealed by paragraph 11 of Schedule 13 to the Pensions Act (Northern Ireland) 2015, but saved for certain purposes, *see* S.R. 2016 No. 106
  - (b) Article 67 was substituted by Article 239 of the Pensions (Northern Ireland) Order 2005
  - (c) Article 67A was inserted by Article 239 of the Pensions (Northern Ireland) Order 2005 and amended by section 66(2) of, and paragraph 75 of Schedule 4 to, the Pension Schemes Act 2015 (c. 8)
  - (d) Articles 67C and 67D were inserted by Article 239 of the Pensions (Northern Ireland) Order 2005. Article 67D was amended by paragraph 5 of Schedule 5 to the Pensions Act (Northern Ireland) 2008 (c. 1 (N.I.))

## Payment of a lump sum instead of a pension

9.—(1) A relevant scheme(a) may not provide for the payment of a lump sum instead of a pension that is attributable to section 5(2B) rights, unless the payment to be made is authorised under section 164(b) of the 2004 Act (authorised member payments) and the payment is—

- (a) permitted by the lump sum rule in section 166(c) of the 2004 Act and qualifies as—
  - (i) a pension commencement lump sum for the purposes of paragraph 1(d) of Schedule 29 to the 2004 Act;
  - (ii) a serious ill-health lump sum for the purposes of paragraph 4(e) of that Schedule;
  - (iii) an uncrystallised funds pension lump sum for the purposes of paragraph 4A(f) of that Schedule;
  - (iv) a trivial commutation lump sum for the purposes of paragraph 7(g) of that Schedule, or
  - (v) a winding-up lump sum for the purposes of paragraph 10(h) of that Schedule;
- (b) permitted by the lump sum death benefit rule in section 168(i) of the 2004 Act and qualifies as a trivial commutation lump sum death benefit for the purposes of paragraph 20(j) 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(k) (commutation payments), and is made to or in respect of a member.

(2) Where, under the scheme—

- (a) an earner qualifies for a lump sum payment on the ground of serious ill-health, and
- (b) the earner's widow, widower or surviving civil partner qualifies for a pension ("a survivor's pension"),

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

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- (a) See section 33A(2) of the Pension Schemes (Northern Ireland) Act 1993 as inserted by paragraph 25 of Schedule 13 to the Pensions Act (Northern Ireland) 2015
  - (b) Section 164 was amended by paragraph 6 of Schedule 23 to the Finance Act 2006 (c. 25), paragraph 1(2) of Schedule 29 to the Finance Act 2008 (c. 9), section 75(2)(a) of the Finance Act 2009 (c. 10), paragraph 63 of Schedule 16 to the Finance Act 2011 (c. 11) and paragraph 85 of Schedule 1 to the Taxation of Pensions Act 2014 (c. 30)
  - (c) Section 166 was amended by paragraph 9 of Schedule 20 to the Finance Act 2007 (c. 11), paragraphs 2(2) and 5(1) of Schedule 5 to the Finance Act 2014, paragraphs 54 and 55 of Schedule 1 to the Taxation of Pensions Act 2014 and Article 25(3) of S.I. 2006/572
  - (d) Paragraph 1 was amended by paragraph 34 of Schedule 10 to the Finance Act 2005 (c. 7), paragraph 21 of Schedule 23 to the Finance Act 2006, paragraph 11(2) and (3) of Schedule 20 to the Finance Act 2007, paragraphs 24 and 79(2) of Schedule 16 to the Finance Act 2011 and section 51(3) of the Finance Act 2013 (c. 29) and is modified by Articles 18, 23C (as inserted by Article 3 of S.I. 2009/1172) and 28(3) of S.I. 2006/572
  - (e) Paragraph 4 was amended by paragraph 28 of Schedule 16 to the Finance Act 2011
  - (f) Paragraph 4A was inserted by paragraph 57 of Schedule 1 to the Taxation of Pensions Act 2014
  - (g) Paragraph 7 was amended by paragraph 29 of Schedule 16 and paragraph 4 of Schedule 18 to the Finance Act 2011, paragraph 71 of Schedule 1 to the Taxation of Pensions Act 2014 and section 42(1) of the Finance Act 2014
  - (h) Paragraph 10 was amended by paragraph 12 of Schedule 20 to the Finance Act 2007 and paragraph 30 of Schedule 16 and paragraph 5 of Schedule 18 to the Finance Act 2011
  - (i) Section 168 was amended by paragraph 5 of Schedule 19 to the Finance Act 2007, paragraph 65 of Schedule 16 to the Finance Act 2011 and paragraph 7 of Schedule 1 to the Taxation of Pensions Act 2014
  - (j) Paragraph 20 is amended by paragraph 6 of Schedule 18 to the Finance Act 2011 and paragraph 74 of Schedule 1 to the Taxation of Pensions Act 2014
  - (k) S.I. 2009/1171 as amended by regulation 8 of S.I. 2011/1751 and regulation 2 of S.I. 2012/522

## **Forfeiture of accrued rights**

**10.** Article 90(1)(a) of the 1995 Order (no forfeiture of entitlement under an occupational pension scheme) does not prevent forfeiture of section 5(2B) rights under a relevant scheme 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
- (b) there is provision in the scheme that requires that, in those circumstances, sums equivalent to those payments—
  - (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, and
  - (iii) must, in so far as they are not, in the opinion of the trustees, required for the maintenance of the pensioner or 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.

## **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(b) (earner’s guaranteed minimum) or 13(c) (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(d) 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(e) of the 1993 Act (protection of increases in guaranteed minimum pensions) or sections 105 and 106(f) 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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- (a) Article 90(1) was amended by paragraph 47(2) of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999
  - (b) 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
  - (c) 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
  - (d) The heading for Part 3 is amended by paragraph 3 of Schedule 13 to the Pensions Act (Northern Ireland) 2015
  - (e) 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
  - (f) 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)(a) 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(b).

**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;

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(a) 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

(b) 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)(a) 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(b) 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.

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(a) 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  
 (b) 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

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

- (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)(a) 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(b) 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)(c) 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)(d) 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;

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(a) 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

(b) 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

(c) 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

(d) 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>(a)</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>(b)</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;
    - (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.

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(a) 1911 c. 28; 1920 c. 75; 1939 c. 121; 1989 c. 6

(b) Section 20B was inserted by section 12(3) of the Pensions Act (Northern Ireland) 2008

- (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)(a) 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,
 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

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(a) 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

- (b) paragraph (3)(b)(ii)(bb).

## PART 5

### AMENDMENT OF THE 1996 REGULATIONS

#### **Amendments relating to certification of employments for a period before the second abolition date**

- 20.**—(1) The 1996 Regulations are amended in accordance with paragraphs (2) to (9).
- (2) In regulation 1(2) (interpretation)—
- (a) in the definition of “the Act” after “Act 1993” insert “as it had effect immediately before the second abolition date(a) (except where otherwise stated)”;
- (b) in the definition of “overseas scheme”(b)—
- (i) for “is contracted-out” substitute “was contracted-out”;
- (ii) for “has effect” substitute “had effect”;
- (c) in the definition of “section 5(2B) rights”(c) in paragraph (b)(ii) for “the abolition date” substitute “the first abolition date”.
- (3) In regulation 3(2)(b) (notices of employers of intended election) after “specify the date” insert “(being a date before the second abolition date)”.
- (4) In regulation 6 (information to be included in an election)—
- (a) in paragraph (1)(d) after “shall have effect” insert “(being a date before the second abolition date)”;
- (b) in paragraph (3) for sub-paragraph (a) substitute—
- “(a) unless the scheme is a public service pension scheme to which Part 4 of the 2005 Order (scheme funding) does not apply, or a scheme in respect of which any Minister of the Crown or government department has given a guarantee, or made any other arrangements for the purpose of securing that the assets of the scheme are sufficient to meet its liabilities, written confirmation or evidence that the actuary is satisfied that the resources of the scheme are sufficient to meet the requirement prescribed in regulation 18 (as it had effect immediately before the second abolition date), and”.
- (5) In regulation 8 (issue of contracting-out certificates)—
- (a) in paragraph (2)(d) for the words after “is to have effect,” substitute “being a date before the second abolition date”;
- (b) after paragraph (2) add—
- “(3) The Commissioners for Her Majesty’s Revenue and Customs are not to issue a contracting-out certificate unless they consider it appropriate to do so and the scheme satisfied any contracting-out conditions or requirements which applied to the scheme from the date on which the certificate is to have effect.”.
- (6) In regulation 9(5)(b) (making of elections by employers for the variation or surrender of contracting-out certificates) after “specify the date” insert “(being a date before the second abolition date)”.

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- (a) See section 3A of the Pension Schemes (Northern Ireland) Act 1993 as inserted by paragraph 6 of Schedule 13 to the Pensions Act (Northern Ireland) 2015
- (b) The definition of “overseas scheme” was substituted by regulation 4(2) of S.R. 2007 No. 185 and amended by regulation 6(b) of S.R. 2007 No. 457 and regulation 6(2) of S.R. 2012 No. 120
- (c) The definition of “section 5(2B) rights” was substituted by paragraph 5(2) of the Schedule to S.R. 1997 No. 160 and amended by regulation 4(2)(b) of S.R. 1999 No. 486 and Article 12(2)(b) of S.R. 2012 No. 124

(7) In regulation 10(a) (special provision with regard to elections for the issue, variation or surrender of certificates where the employment remains contracted out)—

- (a) in the heading after “where” insert “(before the second abolition date)”;
- (b) in paragraph (1)—
  - (i) omit “regulation 71 (elections for replacement certificates by salary related schemes during transitional period) and to”;
  - (ii) in sub-paragraph (c) after “same scheme” insert “when the election takes effect”;
- (c) in paragraph (3)(c) after “the date” insert “(being a date before the second abolition date)”.

(8) In regulation 15 (further information and change of circumstances) omit the words from “or an employer” to “issued.”.

(9) In regulation 23(g)(b) (requirements for meeting the statutory standard) after “regulation 20A(2)” insert “(as it had effect immediately before the second abolition date)”.

### **Amendments relating to cessation of contracting-out before the second abolition date**

**21.**—(1) The 1996 Regulations are amended in accordance with paragraphs (2) to (7).

(2) In regulation 44 (notifications)—

- (a) in paragraph (1)—
  - (i) after “treated as terminated” insert “before the second abolition date”;
  - (ii) after “regulation 43” insert “(as it had effect immediately before that date)”;
- (b) in paragraph (2) for “A notification required to be given under paragraph (1) may be given at any time within the period of one month before the expected date of termination but if not so given” substitute “If a notification required to be given under paragraph (1) was not given before the expected date of termination it”;
- (c) in paragraph (4) after “In any case where” insert “, before the second abolition date,”;
- (d) in paragraph (7)(c)—
  - (i) for “has been issued” substitute “was issued”;
  - (ii) for “relates”, in both places where it occurs, substitute “related”.

(3) In regulation 45 (approval of arrangements for schemes ceasing to be contracted out)—

- (a) in paragraph (1)—
  - (i) for “Subject to regulation 74 (transitional arrangements relating to schemes ceasing to contract out before the principal appointed day), for” substitute “For”;
  - (ii) for “arrangements shall not” substitute “arrangements for cessation of contracting-out before the second abolition date shall not”;
- (b) in paragraph (2)(d) for “section 8C of the Act (transfer or discharge of section 5(2B) rights)” substitute “section 33A(e) of the Act (transfer of liabilities etc: schemes contracted-out on or after 6 April 1997)”;
- (c) in paragraph (3)(a)(f) for “the scheme must continue” substitute “the scheme must, until the second abolition date, continue”.

(4) In regulation 46 (supervision of schemes that have ceased to contract out) in the heading after “contract out” add “before the second abolition date”.

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(a) Regulation 10 was amended by regulation 6(6) of S.R. 2012 No. 120 and Article 12(4) of S.R. 2012 No. 124

(b) Paragraph (g) was added by regulation 2(10)(b) of S.R. 2002 No. 109

(c) Paragraph (7) was amended by Article 12(8) of S.R. 2012 No. 124

(d) Paragraph (2) was amended by regulation 6(15) of S.R. 2012 No. 120 and Article 12(9)(a) of S.R. 2012 No. 124

(e) Section 33A is inserted by paragraph 25 of Schedule 13 to the Pensions Act (Northern Ireland) 2015

(f) Paragraph (3) was amended by regulation 3(3)(a) of S.R. 1997 No. 162 and Article 12(9)(b) of S.R. 2012 No. 124

(5) In regulation 47 (circumstances in which the Commissioners for Her Majesty’s Revenue and Customs may vary or cancel a contracting-out certificate)—

(a) in paragraph (1)—

(i) for “applies” substitute “applied”;

(ii) after “from such date” insert “(being a date before the second abolition date)”;

(b) in paragraph (2)(a) and (b) after “in a case of a” insert “scheme that was a”.

(6) In regulation 76(1) (prevention of recovery by employers of Class 1 contributions where certificate cancelled under section 32(3) of the Act) after “the Act” insert “before the second abolition date”.

(7) In regulation 79 (revocations) for “regulations 73, 77 and 78” substitute “regulation 43 of the Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015(a) and regulation 7 of the Occupational Pension Schemes (Schemes that were Contracted-out) Regulations (Northern Ireland) 2016”.

## PART 6

### AMENDMENT OF THE CONTRACTING-OUT (TRANSFER AND TRANSFER PAYMENT) REGULATIONS (NORTHERN IRELAND) 1996

#### Revaluation after transfer from another scheme

**22.**—(1) The Contracting-out (Transfer and Transfer Payment) Regulations (Northern Ireland) 1996(b) are amended in accordance with paragraphs (2) to (4).

(2) In regulation 1(2) (interpretation) after the definition of “accrued rights” insert—

““the Administration Act” means the Social Security Administration (Northern Ireland) Act 1992(c);”.

(3) In regulation 10(d) (transfer payments in occupational and personal pension schemes in respect of section 5(2B) rights) omit “a salary related contracted-out scheme,”.

(4) After regulation 13A(e) (modification of section 8C where transfer payments are made to salary related contracted-out schemes) insert—

#### “Modification of section 12: revaluation after transfer from another scheme

**13B.**—(1) This regulation applies where the following conditions are satisfied—

(a) on or after 5th April 1983, a transfer of the earner’s accrued rights to guaranteed minimum pensions under a scheme (“scheme A”) was made (under or by virtue of section 16(1)) to another scheme (“scheme B”) that was at the time a contracted-out scheme;

(b) the earner commenced employment that was contracted-out by reference to scheme B;

(c) by virtue of section 10(1), as modified by regulation 12(a), the calculation, under the provisions of scheme B, of the earner’s guaranteed minimum pension for the purposes of section 10(2) falls to include earnings factors arising out of contracted-

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(a) S.I. 2015/1677

(b) S.R. 1996 No. 618; relevant amending Regulations are S.R. 1997 No. 160

(c) 1992 c. 8

(d) Regulation 10 was substituted by regulation 7(4) of S.R. 2012 No. 120

(e) Regulation 13A was inserted by paragraph 10(6) of the Schedule to S.R. 1997 No. 160

out employment in any period of linked qualifying service<sup>(a)</sup> that was contracted-out employment by reference to scheme A, and

(d) either—

- (i) scheme B provides for the earnings factors to be increased at the rate by which they fell to be increased under the provisions of scheme A, or would have fallen to be increased under the provisions of that scheme relating to an earner whose pensionable service under the scheme terminated before the earner attained pensionable age;
- (ii) if scheme A provided for those earning factors to be increased by reference to orders under section 130 of the Administration Act, scheme B provides for them to be increased in accordance with the provisions of section 12(2) and (3);
- (iii) if scheme A provided for those earnings factors to be increased in accordance with the provisions of section 12(2) and (3), scheme B includes provision for them to be increased by reference to orders under section 130 of the Administration Act from the date of termination of the earner's pensionable service under the scheme, or
- (iv) if a transfer of the earner's accrued rights to scheme B is not one to which head (iii) applies and those rights were previously being increased at a rate calculated by reference to orders under section 130 of the Administration Act, scheme B includes provision for those earnings factors to be increased at a rate calculated otherwise than by reference to orders under that section.

(2) In paragraph (1), references to earnings factors include the weekly equivalent mentioned in section 10(2).

(3) Where this regulation applies section 12(1) applies as if there were added at the end “or, in respect of the earner's earnings factor (or the weekly equivalent mentioned in section 10(2)) for any relevant year in a period of linked qualifying service, shall be taken to be that factor (or weekly equivalent) as increased in accordance with the provisions of the scheme under regulations made under subsection (3)”.

(4) Where this regulation applies, the modifications of section 12(2) and (3) contained in paragraph (5) apply where earnings factors of an earner whose accrued rights to guaranteed minimum pensions, including such rights derived from linked qualifying service, have been transferred under or by virtue of section 16(1) to another scheme that was contracted-out.

(5) The modifications referred to in paragraph (4) are that section 12(2) and (3) applies as if it permitted that scheme to provide for those earnings factors to be determined for the purpose of section 10(2) without reference to any order coming into operation under section 130 of the Administration Act—

- (a) where such earnings factors had previously fallen to be determined by reference to orders under section 130 of the Administration Act, after the relevant year in which the earner's pensionable service under the scheme, from which those rights were transferred, was terminated, or
- (b) in any other case, in and after the relevant year in which that service was terminated,

and as if section 12(3) had effect accordingly, save, in a case to which paragraph (b) applies, for treating the reference to the amount of the increase in section 12(3) as a reference to the amount by which the earnings factors relevant to the weekly equivalent would be increased.”.

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(a) See section 174 of the Pension Schemes (Northern Ireland) Act 1993 as amended by paragraph 25 of Schedule 10 to the Pensions (Northern Ireland) Order 2005 and paragraph 72 of Schedule 4 to the Pension Schemes Act 2015

**PART 7**  
**REVOCATIONS AND SAVINGS**

**Revocations taking effect on the second abolition date**

**23.** Subject to regulation 24, the provisions specified in column (1) of Schedule 2 are revoked to the extent specified in column (3).

**Saving of provisions relating to the revaluation of guaranteed minimum pensions**

**24.** Regulations 62(a) (fixed rate revaluation of guaranteed minimum pensions for early leavers), 65 (modification of section 12 of the 1993 Act) and 66 (circumstances in which the modifications in regulation 65 apply) of the 1996 Regulations are saved for the purposes of an earner whose service in contracted-out employment ended before the second abolition date.

**Revocations taking effect on 6th April 2019**

**25.** The provisions specified in column (1) of Schedule 3 are revoked to the extent specified in column (3).

Sealed with the Official Seal of the Department for Social Development on 4th March 2016

(L.S.)

*Anne McCleary*  
A senior officer of the Department for Social Development

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(a) Regulation 62 was amended by regulation 2(14) of S.R. 2002 No. 109, regulation 4(3) of S.R. 2007 No. 185, regulation 6(18) of S.R. 2012 No. 120 and regulation 2 of S.R. 2012 No. 125

**SCHEDULE 1**

**PROVISIONS CONFERRING POWERS EXERCISED IN MAKING  
THESE REGULATIONS**

<i>Column (1)</i>	<i>Column (2)</i>
Pension Schemes (Northern Ireland) Act 1993 <b>(a)</b>	section 3 <b>(b)</b> section 5 <b>(c)</b> section 7(5) <b>(d)</b> section 8A(4) <b>(e)</b> section 8D section 12(3) and (4) <b>(f)</b> section 13(6) <b>(g)</b> section 16(1) and (3) <b>(h)</b> section 17 <b>(i)</b> section 20B(5) <b>(j)</b> section 20C section 21(2) <b>(k)</b> section 30 <b>(l)</b> section 32(6) <b>(m)</b> section 33(1) <b>(n)</b> section 33A(1)(c) <b>(o)</b>

- (a)** 1993 c. 49
- (b)** Section 3 was amended by Article 133(1) of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)) and paragraph 2 of Schedule 4 to the Pensions Act (Northern Ireland) 2008 (c. 1 (N.I.)) and is repealed by paragraph 5 of Schedule 13 to the Pensions Act (Northern Ireland) 2015 (c. 5 (N.I.)), but saved for certain purposes, *see* S.R. 2016 No. 106
- (c)** Section 5 was amended by Article 133(3) of, and paragraph 14(a) of Schedule 3 to, the Pensions (Northern Ireland) Order 1995, paragraph 38 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671), Article 260 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), section 12(4) of, and paragraph 4 of Schedule 4 to, the Pensions Act (Northern Ireland) 2008 and Article 8(2) of S.I. 2006/745 and is repealed by paragraph 9 of Schedule 13 to the Pensions Act (Northern Ireland) 2015, but saved for certain purposes, *see* S.R. 2016 No. 106
- (d)** Section 7(5) was amended by paragraph 40(3) of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 and section 7 is repealed by paragraph 9 of Schedule 13 to the Pensions Act (Northern Ireland) 2015, but saved for certain purposes, *see* S.R. 2016 No. 106
- (e)** Sections 8A to 8D were inserted by Article 133(5) of the Pensions (Northern Ireland) Order 1995 and are repealed by paragraph 11 of Schedule 13 to the Pensions Act (Northern Ireland) 2015, but saved for certain purposes, *see* S.R. 2016 No. 106
- (f)** Section 12(3) was amended by paragraph 21(a) of Schedule 3 to the Pensions (Northern Ireland) Order 1995
- (g)** Section 13(6) was amended by paragraph 1(3) of Schedule 5 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)) and paragraph 5(f) of Schedule 1 to S.R. 2005 No. 433
- (h)** Section 16 was amended by paragraph 2 of Schedule 5 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000, paragraph 7 of Schedule 1 to S.R. 2005 No. 433 and Article 31(2) of S.R. 2012 No. 124 and is amended by paragraph 18 of Schedule 13 to the Pensions Act (Northern Ireland) 2015
- (i)** Section 17 was amended by Article 261(1) of the Pensions (Northern Ireland) Order 2005 and paragraph 8 of Schedule 1 to S.R. 2005 No. 433
- (j)** Sections 20B and 20C were inserted by section 12(3) of the Pensions Act (Northern Ireland) 2008
- (k)** Section 21(2) was substituted by paragraph 26(b) of Schedule 3 to the Pensions (Northern Ireland) Order 1995 and amended by paragraph 43 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 and is amended by paragraph 21 of Schedule 13 to the Pensions Act (Northern Ireland) 2015
- (l)** Section 30 was amended by paragraph 30 of Schedule 3 to the Pensions (Northern Ireland) Order 1995, paragraph 48 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 and paragraph 15 of Schedule 4 to the Pensions Act (Northern Ireland) 2008 and is repealed by paragraph 22 of Schedule 13 to the Pensions Act (Northern Ireland) 2015, but saved for certain purposes, *see* S.R. 2016 No. 106
- (m)** Section 32 is repealed by paragraph 22 of Schedule 13 to the Pensions Act (Northern Ireland) 2015, but saved for certain purposes, *see* S.R. 2016 No. 106
- (n)** Section 33 was substituted by paragraph 32 of Schedule 3 to the Pensions (Northern Ireland) Order 1995 and subsection (1) was amended by Article 4(5)(a) of S.R. 2012 No. 124 and is amended by paragraph 24 of Schedule 13 to the Pensions Act (Northern Ireland) 2015
- (o)** Section 33A is inserted by paragraph 25 of Schedule 13 to the Pensions Act (Northern Ireland) 2015

<i>Column (1)</i>	<i>Column (2)</i>
	section 46(1B)(a) section 47(2) and (4) section 49(3)(b) section 151(c) section 152(2)(d) section 177(2) to (4) section 178(1)(e) Schedule 1, paragraphs 1 to 3(f)
Pensions (Northern Ireland) Order 1995(g)	Article 90(6) Article 166(3)

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- (a) Section 46(1B) was inserted by paragraph 37(b) of Schedule 3 to the Pensions (Northern Ireland) Order 1995 and section 46 is repealed by paragraph 33 of Schedule 13 to the Pensions Act (Northern Ireland) 2015
  - (b) Section 49(3) was substituted by paragraph 40(c) of Schedule 3 to the Pensions (Northern Ireland) Order 1995 and amended by paragraph 61 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 and Article 4(12) of S.R. 2012 No. 124 and is omitted by paragraph 36 of Schedule 13 to the Pensions Act (Northern Ireland) 2015, but saved for certain purposes, *see* S.R. 2016 No. 106
  - (c) Section 151 was substituted by paragraph 70 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 and amended by Article 4(16) of S.R. 2012 No. 124
  - (d) Section 152 was substituted by paragraph 6 of Schedule 5 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000
  - (e) Section 178(1) was amended by Schedule 5 to the Pensions (Northern Ireland) Order 1995
  - (f) Paragraphs 2 and 3 were amended by paragraph 77(2) and (3) of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 and are omitted by paragraph 45(2) of Schedule 13 to the Pensions Act (Northern Ireland) 2015, but saved for certain purposes, *see* S.R. 2016 No. 106
  - (g) S.I. 1995/3213 (N.I. 22)

SCHEDULE 2

Regulation 23

REVOCATIONS TAKING EFFECT ON THE SECOND ABOLITION DATE

<i>Column (1)</i> <i>Citation</i>	<i>Column (2)</i> <i>Reference</i>	<i>Column (3)</i> <i>Extent of revocation</i>
The Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996	S.R. 1996 No. 493	Regulations 11, 16 to 21, 41 to 43, 48(5) to (7), 55 to 63, 65 to 74 and 77 to 78
The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 1997	S.R. 1997 No. 160	Paragraph 5(8) to (15) of the Schedule
The Occupational Pension Schemes (Reference Scheme and Miscellaneous Amendments) Regulations (Northern Ireland) 1997	S.R. 1997 No. 162	Regulation 3(5)
The Personal and Occupational Pension Schemes (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 1997	S.R. 1997 No. 544	Regulation 2
The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 1999	S.R. 1999 No. 486	Regulation 4(4)
The Occupational and Personal Pension Schemes (Contracting-out) (Miscellaneous Amendments) Regulations (Northern Ireland) 2002	S.R. 2002 No. 109	Regulation 2(5) to (9), (12), (13), (15) and (16)
The Occupational Pension Schemes (Winding up, etc.) Regulations (Northern Ireland) 2005	S.R. 2005 No. 171	Paragraph 8 of the Schedule
The Civil Partnership (Contracted-out Occupational and Appropriate Personal Pension Schemes) (Surviving Civil Partners) Order (Northern Ireland) 2005	S.R. 2005 No. 433	Paragraphs 12 and 17 to 23 of Schedule 2
The Occupational Pension Schemes (Scheme Funding) Regulations (Northern Ireland) 2005	S.R. 2005 No. 568	Paragraph 1(4) and (5) of Schedule 3
The Occupational Pension Schemes (Contracting-out) (Amendment) Regulations (Northern Ireland) 2006	S.R. 2006 No. 223	The whole Regulations
The Pensions (2008 Acts) (Consequential Provisions) Order (Northern Ireland) 2009	S.R. 2009 No. 113	Regulation 3(5) to (7)
The Occupational Pension Schemes (Contracting-out) (Amendment) Regulations (Northern Ireland) 2009	S.R. 2009 No. 149	The whole Regulations

<i>Column (1) Citation</i>	<i>Column (2) Reference</i>	<i>Column (3) Extent of revocation</i>
The Occupational and Personal Pension Schemes (Authorised Payments) Regulations (Northern Ireland) 2009	S.R. 2009 No. 365	Regulation 4
The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 2010	S.R. 2010 No. 108	Regulation 2
The Pensions (2008 Act) (Abolition of Contracting-out for Defined Contribution Pension Schemes) (Consequential Provisions) Regulations (Northern Ireland) 2012	S.R. 2012 No. 120	Regulation 6(7), (13), (14), (16) and (17)
The Occupational and Stakeholder Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 2013	S.R. 2013 No. 72	Regulation 3

### SCHEDULE 3

Regulation 25

#### REVOCATIONS TAKING EFFECT ON 6TH APRIL 2019

<i>Column (1) Citation</i>	<i>Column (2) Reference</i>	<i>Column (3) Extent of revocation</i>
The Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996	S.R. 1996 No. 493	Regulations 12 to 14, 48(1) to (4) and 75
The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 1999	S.R. 1999 No. 486	Regulation 4(3)
The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 2009	S.R. 2009 No. 115	Regulation 4(3)

## EXPLANATORY NOTE

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

These Regulations revoke and replace most of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996 (“the 1996 Regulations”) in consequence of provision made by the Pensions Act (Northern Ireland) 2015 (“the 2015 Act”).

The 2015 Act creates a new state pension for people reaching pensionable age after implementation on 6th April 2016. This date is referred to in the Pension Schemes (Northern Ireland) Act 1993 (“the 1993 Act”) (as amended by the 2015 Act) as “the second abolition date”. The new pension will be a single pension, replacing the current state pension which has 2 components: a basic state pension and an additional state pension. The 2015 Act therefore also makes amendments to existing primary legislation to abolish contracting-out of the state additional pension for salary related pension schemes. Much of the provision made by the 1996 Regulations is revoked with effect from the second abolition date by regulation 23.

Some provisions of the 1993 Act and the 1996 Regulations will remain in operation until 6th April 2019, in accordance with savings provisions contained in the Pensions (2015 Act) (Savings) Order (Northern Ireland) 2016 (S.R. 2016 No. 106). In particular, provisions relating to the issue, variation and surrender of contracting-out certificates remain in operation to enable the Commissioners for Her Majesty’s Revenue and Customs (“the Commissioners”) to issue certificates relating to a period before the second abolition date, and to deal with any variation or surrender of such a certificate which is to take effect from a date preceding that date. Provisions relating to schemes which have ceased to contract-out before the second abolition date also remain in operation, to ensure that the Commissioners are notified of the termination of contracted-out employment in these circumstances and that earner’s pension rights are protected.

Provisions of the 1996 Regulations which are to continue to have effect after the second abolition date are, where necessary, amended by regulations 20 and 21 (Part 5) to reflect the abolition of contracting-out.

Provisions of the 1996 Regulations which are to continue to apply indefinitely to pension schemes which were contracted-out prior to the second abolition date are re-enacted, with modifications reflecting the abolition of contracting-out, in these Regulations. Part 2 contains provisions relating to all pension schemes which were salary related contracted-out schemes, Part 3 carries forward additional requirements relating to section 5(2B) rights, and Part 4 continues additional requirements in relation to guaranteed minimum pensions. “Section 5(2B) rights” are rights attributable to employment which was contracted-out on and after 6th April 1997 under section 5(2B) of the 1993 Act. Guaranteed minimum pensions relate to contracted-out employment before that date where, under scheme rules, the weekly rate of the pension is to be not less than the guaranteed minimum under sections 10 to 12 of the 1993 Act.

In Part 2, regulation 3 imposes limitations on the alteration of scheme rules, regulation 4 deals with correction of errors as to whether an earner was in contracted-out employment, regulation 5 provides for the disclosure of certain information by the Department and the Commissioners and regulation 6 continues requirements as to the rules of overseas schemes. Regulation 7 carries forward certain transitional provisions and savings from the 1996 Regulations.

In Part 3, regulation 8 sets out the circumstances in which scheme rules may be altered in relation to section 5(2B) rights and regulation 9 carries forward requirements for the payment of lump sums and commutation of benefits. Regulation 10 governs the circumstances in which section 5(2B) rights may be forfeited.

In Part 4, regulation 11 continues limitations on the alteration of scheme rules in relation to guaranteed minimum pensions and regulations 12 and 13 carry forward requirements as to the payment of pensions to surviving spouses and civil partners. Regulations 14 and 15 deal with revaluation of guaranteed minimum pensions and regulation 16 describes the circumstances in which a lump sum may be paid instead of a pension. Provision as to suspension and forfeiture of guaranteed minimum pensions is carried forward by regulation 17; regulations 18 and 19 deal with conversion of guaranteed minimum pensions into other benefits.

Part 6 carries forward modifications of section 12 of the 1993 Act in relation to revaluation after transfer from another scheme previously located in the 1996 Regulations, by inserting those provisions into the Contracting-out (Transfer and Transfer Payment) Regulations (Northern Ireland) 1996.

Part 7 provides for revocations and savings of the 1996 Regulations. Regulations 62, 65 and 66 of the 1996 Regulations are saved for the purposes of maintaining the current provisions for fixed rate revaluation of guaranteed minimum pensions where an earner ceased contracted-out employment before the second abolition date.

As these Regulations, in so far as they are made under the Pensions (Northern Ireland) Order 1995, 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 that Order does not apply by virtue of paragraph (2)(e) of that Article.

An assessment of the impact of this legislation is included in the Regulatory Impact Assessment which accompanied the Pensions Act (Northern Ireland) 2015, a copy of which has been laid in the Business Office and the Library of the Northern Ireland Assembly. Copies of that Assessment are available from the Department for Social Development, Social Security Policy and Legislation Division, Level 1, James House, 2-4 Cromac Avenue, Gasworks Business Park, Ormeau Road, Belfast BT7 2JA or from the website: <https://www.dsdni.gov.uk/articles/pension-information>.

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