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STATUTORY RULES OF NORTHERN IRELAND

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**1996 No. 493**

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

**Part VIII**

**Transitional Arrangements and Savings**

**Transitional arrangements for certification of schemes**

**70.**—(1) In the case of a scheme contracted out under section 5(2) of the Act<sup>(1)</sup>, a contracting-out certificate issued before the principal appointed day shall continue to have effect during the period beginning with that day and ending on either—

(a) whichever is the earlier of—

(i) the day before the effective date of a replacement contracting-out certificate issued by the Department, and

(ii) 31st January 1998, or

(b) such later date as the Department may in its discretion permit in any particular case,

provided that it is not otherwise cancelled or surrendered and the scheme satisfies all contracting-out conditions or requirements which apply to the scheme from the principal appointed day by virtue of its being a scheme to which section 5(2) of the Act applies.

(2) In the case of a scheme contracted out under section 5(3) of the Act<sup>(2)</sup>, a contracting-out certificate issued before the principal appointed day shall continue to have effect on and after that date provided that it is not cancelled or surrendered and the scheme satisfies all contracting-out conditions or requirements which apply to the scheme from the principal appointed day by virtue of its being a scheme to which section 5(3) of the Act applies.

(3) A contracting-out certificate having effect on or after the principal appointed day by virtue of this regulation, shall have effect in relation to any earner's service on and after that day as if the certificate were issued by the Department on or after that day.

**Elections for replacement certificates by salary related schemes during transitional period**

**71.** During the period beginning with the principal appointed day and ending on 31st January 1998 or such later date as the Department may allow in relation to a particular case or class of case, an election made with a view to the issue of a contracting-out certificate in relation to an employment which is to remain contracted out under section 5(2) of the Act on or after the principal appointed day must be made in compliance with regulation 2 and regulation 10 shall not apply.

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(1) Section 5(2) was substituted by Article 133(3) of the Pensions (Northern Ireland) Order 1995

(2) Section 5(3) was amended by Article 133(4) of the Pensions (Northern Ireland) Order 1995

### **Transitional requirements as to sufficiency of resources of salary related schemes**

72.—(1) Except in cases to which regulation 73 applies (schemes which have begun winding up before the principal appointed day), for the purposes of section 5(2B)(c)(i) of the Act<sup>(3)</sup> (requirement as to the amount of the resources of the scheme) and section 21(2) of the Act<sup>(4)</sup> (scheme to comply with prescribed requirements in relation to securing that the resources of the scheme are brought to and maintained at satisfactory level in respect of any earner's service before the principal appointed day) at any time during the period of 10 years beginning with the principal appointed day or such longer period as the Department may specify in a particular case or class of case, the amount of resources of the scheme must be sufficient to meet the liabilities specified in paragraph (2).

- (2) The liabilities referred to in paragraph (1) are any liability for—
- (a) pensions or other benefits which, in the opinion of the trustees, are derived from the payment by any member of the scheme of voluntary contributions;
  - (b) where a person's entitlement to payment of a pension or other benefit has arisen, liability for that pension or benefit and for any pension or other benefit which will be payable to dependants of that person on his death and any increases to such pensions;
  - (c) equivalent pension benefits, guaranteed minimum pensions and protected rights which have accrued to or in respect of any members of the scheme and any increases to such pensions;
  - (d) pensions or other benefits which have accrued after the principal appointed day to or in respect of members whose employment is contracted out by reference to the scheme and any increases to such pensions, and
  - (e) in respect of members with less than 2 years' pensionable service who are not entitled to accrued rights under the scheme, the return of contributions.

(3) Subject to paragraphs (4) and (5), the liabilities specified in paragraph (2) and the resources required to meet such liabilities shall be calculated, determined and verified in accordance with regulations made under Article 56(3) of the Order (minimum funding requirement).

(4) In calculating the amount of resources of a scheme for the purposes of paragraph (1) during the period of 5 years beginning with the principal appointed day there shall be excluded any employer-related investments within the meaning of Article 40 of the Order (other than any such investments to which the restrictions imposed by regulations made under that Article do not apply) which are—

- (a) prohibited by regulations made under that Article, or
- (b) in excess of 5 per cent. of the current market value of the scheme's resources,

and at any later time, there shall be excluded from the amount of resources of a scheme any such employer-related investments which are excluded at that time from the calculation of the assets of a scheme for the purposes of the minimum funding requirement in accordance with regulations made under Article 56(3) of the Order.

(5) During the period beginning with the principal appointed day and ending on the date on which the first actuarial valuation is required to be obtained in relation to a scheme in accordance with regulations made under Article 57(1)(a) of the Order (minimum funding requirement: valuation and certification of assets and liabilities), the resources and liabilities specified in this regulation shall be calculated, determined and verified in a manner approved by the Department.

(6) This regulation does not apply to a public service pension scheme to which Article 56 of the Order does not apply.

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(3) Section 5(2B) was substituted by Article 133(3) of the Pensions (Northern Ireland) Order 1995

(4) Section 21(2) was substituted by paragraph 26(b) of Schedule 3 to the Pensions (Northern Ireland) Order 1995

### **Transitional arrangements and savings for salary related schemes which have begun winding up before the principal appointed day**

73. Notwithstanding the revocations in Schedule 2, in the case of a scheme to which section 19(2) and (3) of the Act<sup>(5)</sup> applies (securing of benefits on winding up)—

- (a) regulation 37 of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1985<sup>(6)</sup> (priorities on the winding-up of a scheme) shall continue to have effect, and
- (b) the resources of the scheme must be sufficient to meet the liabilities specified in section 20(1)(c) of the Act, such resources and liabilities being calculated, determined and verified in a manner approved by the Department.

### **Transitional arrangements in relation to the powers of the Department to approve arrangements for schemes ceasing to contract out before the principal appointed day**

74. In the case of a scheme which ceased to be certified as contracted out before the principal appointed day, the Department may approve arrangements under section 46(1) or (1A) of the Act<sup>(7)</sup>, notwithstanding that the conditions prescribed under section 46(1B) of the Act are not met.

### **Transitional modifications to sections 31 and 32 of the Act**

75. Sections 31 and 32 of the Act (surrender and cancellation of contracting-out certificates: issue and cancellation of further certificates) shall be modified for transitional purposes until the coming into operation of an order under Article 1 of the Order repealing those provisions as follows—

- (a) in section 31(1)(a) of the Act, after “the Board” there shall be added “or the Department”;
- (b) in sections 31 and 32 of the Act in each other place where the word occurs, for “Board” there shall be substituted “Department”;
- (c) in section 31(3) of the Act, for “they consider” there shall be substituted “it considers”;
- (d) in section 32(1)(c) of the Act, for “have formed” there shall be substituted “has formed”, for “had they been aware” there shall be substituted “had it been aware” and for “they would have been prevented” there shall be substituted “it would have been prevented”, and
- (e) in section 32(6) of the Act, for “have cancelled” there shall be substituted “has cancelled”.

### **Prevention of recovery by employers of Class 1 contributions where certificate cancelled under section 32(3) of the Act**

76.—(1) This regulation shall apply in any case where the Occupational Pensions Board or the Department has cancelled a contracting-out certificate under section 32(3) of the Act.

(2) An employer shall not be entitled to recover (whether by deduction from emoluments or otherwise) any arrears which he is required to pay to the Department in respect of an earner’s liability under section 6(3) of the Contributions and Benefits Act (liability for Class 1 contributions) in so far as those arrears comprise the difference between the amount of the primary Class 1 contributions payable at the normal rate in respect of the emoluments from the employed earner’s employment and the amount of the primary Class 1 contributions that were paid while the employment was regarded as contracted out to the cancellation of the further contracting-out certificate.

(3) This regulation shall apply notwithstanding the terms of any contract to the contrary.

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(5) See paragraph 24 of Schedule 3 to the Pensions (Northern Ireland) Order 1995

(6) S.R. 1985 No. 259; regulation 37 was amended by S.R. 1994 No. 300

(7) Section 46(1A) and (1B) was inserted by paragraph 37(b) of Schedule 3 to the Pensions (Northern Ireland) Order 1995

### **Transitional arrangements for schemes contracted out under section 5(2) of the Act to become contracted out under section 5(3) of the Act**

77.—(1) This regulation applies where a scheme, which is a salary related contracted-out scheme immediately before the principal appointed day, satisfies the requirements of section 5(3) of the Act in respect of all earners' service on or immediately after that day.

(2) The circumstances referred to in paragraph (1) shall, for the purposes of section 8(3) of the Act (determination of basis on which a scheme is contracted out) be circumstances in which a scheme which has been contracted out by virtue of section 5(2) of the Act may become contracted out by virtue of section 5(3) of the Act.

(3) Where this regulation applies, sections 46, 48 and 49 of the Act shall be modified so as to have effect as if the guaranteed minimum pensions provided by the scheme were provided by a separate scheme which has ceased to be certified as a contracted-out scheme.

(4) Where this regulation applies, a contracting-out certificate issued before the principal appointed day shall be cancelled at the end of the period beginning with that day and ending on either—

- (a) whichever is the earlier of—
  - (i) the day before the effective date of the replacement contracting-out certificate issued by the Department;
  - (ii) 31st January 1998, or
- (b) such later date as the Department may in its discretion permit in any particular case,

but shall continue to have effect during that period if it is not otherwise cancelled or surrendered and the scheme satisfies the conditions of section 5(3) of the Act.

### **Savings in respect of State Scheme Premiums**

78. Notwithstanding the revocations in Schedule 2, the following regulations shall continue to have effect in relation to any state scheme premium which has been paid before the principal appointed day or is payable immediately before that day—

- (a) regulations 17 to 25, 31, 41, 42, and 44 to 46 of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1985<sup>(8)</sup>;
- (b) the Occupational Pension Schemes (Contracted-out Protected Rights Premiums) Regulations (Northern Ireland) 1987<sup>(9)</sup>.

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<sup>(8)</sup> S.R. 1985 No. 259; relevant amending regulations are S.R. 1985 No. 355, S.R. 1986 Nos. 57 and 342, S.R. 1987 Nos. 281, 284 and 292, S.R. 1988 No. 108, S.R. 1989 No. 105, S.R. 1990 No. 203, S.R. 1992 No. 304, S.R. 1993 No. 126 and S.R. 1994 No. 300

<sup>(9)</sup> S.R. 1987 No. 281 as amended by S.R. 1994 No. 300