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STATUTORY RULES OF NORTHERN IRELAND

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**1996 No. 509**

**PENSIONS**

**The Protected Rights (Transfer Payment)  
Regulations (Northern Ireland) 1996**

*Made* - - - - *28th October 1996*

*Coming into operation* *6th April 1997*

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 24(2)(b) and 177(2) to (4) of, and paragraph 17(1) of Schedule 5 to, the Pension Schemes (Northern Ireland) Act 1993(1) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Protected Rights (Transfer Payment) Regulations (Northern Ireland) 1996 and shall come into operation on 6th April 1997.

(2) In these Regulations—

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

“the 1987 Regulations” means the Protected Rights (Transfer Payment) Regulations (Northern Ireland) 1987(2);

“appropriate personal pension scheme” shall be construed in accordance with section 3(3);

“money purchase contracted-out scheme” means an occupational pension scheme which is contracted-out by virtue of satisfying section 5(3)(4);

“overseas scheme” means an occupational pension scheme which is administered wholly or primarily outside the United Kingdom but does not include one which is contracted-out within the meaning of section 3(3) nor one in respect of which section 49(5) applies;

“post-97 protected rights” means—

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(1) 1993 c. 49

(2) S.R. 1987 No. 296, amended by S.R. 1994 Nos. 261 and 300

(3) Section 3 is amended by Article 133(1) of, and paragraph 15 of Schedule 3 to, the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))

(4) Section 5(3) is amended by Article 133(4) of, and paragraph 17 of Schedule 3 to, the Pensions (Northern Ireland) Order 1995

(5) Section 49 applies to occupational pension schemes by virtue of section 48(1) of the Pension Schemes (Northern Ireland) Act 1993. Section 49 is amended by paragraph 40 of Schedule 3 to the Pensions (Northern Ireland) Order 1995

- (a) protected rights which are attributable to payments or contributions in respect of employment carried on on or after the principal appointed day, and
- (b) protected rights which derive from section 5(2B) rights which have been the subject of a transfer payment;

“pre-97 protected rights” means—

- (a) protected rights which are attributable to payments or contributions in respect of employment carried on before the principal appointed day, and
- (b) protected rights which derive from guaranteed minimum pensions which have been the subject of a transfer payment;

“the principal appointed day” has the meaning given to that expression by section 3(2B)(6);

“protected rights” has the meaning given to that expression by section 6(7);

“salary related contracted-out scheme” means an occupational pension scheme which is contracted-out by virtue of satisfying section 5(2)(8);

“scheme” means an occupational pension scheme or a personal pension scheme;

“section 5(2B) rights” are—

- (a) rights (other than rights attributable to voluntary contributions within the meaning of section 107) which are attributable to an earner’s service on or after the principal appointed day in employment which is contracted-out in accordance with section 5(2B), and
- (b) where a transfer payment has been made to a salary related contracted-out scheme in respect of rights mentioned in paragraph (a) or of post-97 protected rights, any rights arising under that scheme as a consequence of that payment, or, where only part of it was made in respect of such rights, of that part of it;

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

(3) The Interpretation Act (Northern Ireland) 1954(9) shall apply to these Regulations as it applies to a Measure of the Assembly.

(4) In these Regulations any reference to a numbered section is a reference to the section of the 1993 Act bearing that number.

## General

2. A money purchase contracted-out scheme or an appropriate personal pension scheme (or a scheme which was formerly a money purchase contracted-out scheme or an appropriate personal pension scheme) may give effect to the protected rights of a member by the making of a transfer payment—

- (a) to an appropriate personal pension scheme, or
- (b) to an occupational pension scheme,

in accordance with regulations 3 to 5, and in these Regulations a “transfer payment” means a transfer payment such as is described in this regulation.

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(6) Section 3(2B) was inserted by Article 133(1) of the Pensions (Northern Ireland) Order 1995

(7) Section 6 is amended by paragraph 18 of Schedule 3 to the Pensions (Northern Ireland) Order 1995

(8) Section 5(2) to (2C) was substituted for section 5(2) by Article 133(3) of the Pensions (Northern Ireland) Order 1995

(9) 1954 c. 33 (N.I.)

### **Transfer payments to money purchase contracted-out schemes and appropriate personal pension schemes**

3. A transfer payment may be made to a money purchase contracted-out scheme or an appropriate personal pension scheme if—

- (a) the member consents in writing;
- (b) the transfer payment (or, if it forms part of a larger payment giving effect to both protected and other rights, that part of it which gives effect to protected rights) is of an amount at least equal to the cash equivalent of the protected rights to which effect is being given, as calculated and verified in a manner consistent with regulations made under section 93(10) (calculation of cash equivalents);
- (c) in the case of a transfer payment to a money purchase contracted-out scheme, the member—
  - (i) is employed by an employer who is a contributor to the receiving scheme, or
  - (ii) has previously been a member of the receiving scheme, and
- (d) the transfer payment is applied so as to provide money purchase benefits under the receiving scheme for, or in respect of, the member.

### **Transfer payments to salary related contracted-out schemes**

4. A transfer payment may be made to a salary related contracted-out scheme if—

- (a) the member consents in writing;
- (b) the transfer payment (or, if it forms part of a larger payment giving effect to both protected and other rights, that part of it which gives effect to protected rights) is of an amount at least equal to the cash equivalent of the protected rights to which effect is being given, as calculated and verified in a manner consistent with regulations made under section 93;
- (c) the member—
  - (i) is employed by an employer who is a contributor to the receiving scheme, or
  - (ii) has previously been a member of the receiving scheme;
- (d) where the transfer payment or any part of it gives effect to pre-97 protected rights, the receiving scheme, in consequence of that payment (or, where only part of it gives effect to such rights, of that part), provides for the member and the member's widow or widower to be entitled, without prejudice to any other rights which the member receives under that scheme, to guaranteed minimum pensions equal to those to which they would have been treated as entitled by virtue of—
  - (i) section 43(2) or (5) (further provisions concerning entitlement to guaranteed minimum pensions for the purposes of section 42), or
  - (ii) section 44(2)(11) (reduced benefits where minimum payments or minimum contributions paid),had the transfer payment not been made, except that the receiving scheme may make provision that any earnings factor of the member is to be revalued in accordance with section 12(2) (revaluation of earnings factors for purposes of section 10: early leavers, etc.), as modified by regulation 6, and
- (e) where the transfer payment or any part of it gives effect to post-97 protected rights, the transfer payment (or, where only part of it gives effect to post-97 protected rights, that

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(10) Section 93 was amended by paragraph 6 of Schedule 4 to the Pensions (Northern Ireland) Order 1995

(11) Section 44(2) was amended by paragraph 56 of Schedule 1 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12)) and Article 137(2) of the Pensions (Northern Ireland) Order 1995

part) is applied to provide rights for the member which, had they accrued in the receiving scheme, would be provided in accordance with the rules of the receiving scheme relating to earners who are in employment which is contracted-out in relation to the receiving scheme or have been in employment which was so contracted-out.

### **Transfer payments to overseas schemes**

5. A transfer payment may be made to an overseas scheme if—
- (a) the member consents in writing;
  - (b) the trustees of the transferring scheme have taken reasonable steps to satisfy themselves that the member has emigrated on a permanent basis and has entered employment to which the receiving scheme applies;
  - (c) the transfer payment (or, if it forms part of a larger payment giving effect to both protected and other rights, that part which gives effect to protected rights) is of an amount at least equal to the cash equivalent of the protected rights to which effect is being given, as calculated and verified in a manner consistent with regulations made under section 93;
  - (d) the member has acknowledged in writing that he accepts that the scheme to which the transfer payment is to be made may not be regulated in any way by the law of the United Kingdom and that as a consequence there may be no obligation under that law on the receiving scheme or its trustees to provide any particular value or benefit in return for the transfer payment, and
  - (e) the trustees of the transferring scheme have taken reasonable steps to satisfy themselves that the member has received a statement from the receiving scheme showing the benefits to be awarded in respect of the transfer payment and the conditions (if any) on which these could be forfeited or withheld.

### **Modifications of Part III of the 1993 Act where transfer payments are made to salary related contracted-out schemes**

6.—(1) Where a transfer payment has been made to a salary related contracted-out scheme in accordance with regulation 4 (or in accordance with regulations 2 and 3 of the 1987 Regulations<sup>(12)</sup>) the 1993 Act shall have effect as modified by this regulation.

- (2) The definition of “guaranteed minimum pension” in section 4(2)<sup>(13)</sup> shall have effect as if—
- (a) after “sections 9 and 13” there were inserted “or in compliance with the requirement set out in regulation 4(d) of the Protected Rights (Transfer Payment) Regulations (Northern Ireland) 1996 (or, as the case may be, with the requirement set out in paragraph 2 of Schedule 3 to the Protected Rights (Transfer Payment) Regulations (Northern Ireland) 1987<sup>(14)</sup>)”, and
  - (b) at the end there were added “or, as the case may be, of that requirement”.

(3) Section 43(2)(b) (further provisions concerning entitlement to guaranteed minimum pensions for the purposes of section 42) shall have effect as if after sub-paragraph (ii) there were added “unless he is entitled to that guaranteed minimum pension by reason of regulation 4(d) of the Protected Rights (Transfer Payment) Regulations (Northern Ireland) 1996 (or of paragraph 2 of Schedule 3 to the Protected Rights (Transfer Payment) Regulations (Northern Ireland) 1987).”.

- (4) Section 10(1)<sup>(15)</sup> (earner’s guaranteed minimum) shall have effect as if—

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<sup>(12)</sup> Regulations 2 and 3 were amended by paragraph 18(4) of Schedule 2 to [S.R. 1994 No. 300](#)

<sup>(13)</sup> Section 4(2) is amended by paragraph 16(a) of Schedule 3 to the Pensions (Northern Ireland) Order 1995

<sup>(14)</sup> Paragraph 2 was amended by paragraph 18(14) of Schedule 2 to [S.R. 1994 No. 300](#)

<sup>(15)</sup> Section 10 is amended by paragraph 20 of Schedule 3 to the Pensions (Northern Ireland) Order 1995

- (a) after “guaranteed minimum” there were inserted “both”, and
  - (b) at the end there were added “and in relation to any pension provided by a scheme in compliance with the requirement set out in regulation 4(d) of the Protected Rights (Transfer Payment) Regulations (Northern Ireland) 1996 (or, as the case may be, with the requirement set out in paragraph 2 of Schedule 3 to the Protected Rights (Transfer Payment) Regulations (Northern Ireland) 1987)”.
- (5) In a case to which regulation 2(1) of the Personal and Occupational Pension Schemes (Abatement of Benefit) Regulations (Northern Ireland) 1987<sup>(16)</sup> applies, section 12(1) (revaluation of earnings factors for purposes of section 10: early leavers, etc.) shall have effect as if any earnings factor to which regulation 2(2)(b) of those Regulations applies were, before being increased as mentioned in section 12(1), equal to the amount mentioned in regulation 2(2)(b) of those Regulations.
- (6) Section 12(2) shall have effect—
- (a) if the scheme from which the transfer payment was made was a personal pension scheme, in respect only of each relevant year after the year in which minimum contributions were last payable, and
  - (b) if the scheme from which the transfer payment was made was, or had formerly been, a money purchase contracted-out scheme, in respect only of each relevant year after the year in which contracted-out employment by reference to that scheme terminated.

#### **Revocations and transitional provisions**

7.—(1) Subject to paragraphs (2) and (3) and to Schedule 2, the regulations specified in column (1) of Schedule 1 are revoked to the extent mentioned in column (3) of Schedule 1.

(2) Where a transfer payment has been made to a salary related contracted-out scheme in accordance with regulations 2 and 3 of the 1987 Regulations, then regulation 4(8) and (9) of those Regulations (as in operation immediately before the coming into operation of these 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.

(3) Where an application under section 91 (ways of taking right to cash equivalent) has been made before the principal appointed day, for the purposes of dealing with that application regulations 2 to 5 of these Regulations shall not apply and regulations 1 to 3 of the 1987 Regulations<sup>(17)</sup> (as in operation immediately before the coming into operation of these Regulations) shall continue to apply subject to the modifications to the 1987 Regulations set out in Schedule 2.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland  
on

28th October 1996.

*John O'Neill*  
Assistant Secretary

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<sup>(16)</sup> S.R. 1987 No. 291; regulation 2 was amended by paragraph 16(4) to (7) of Schedule 2 to S.R. 1994 No. 300

<sup>(17)</sup> Regulations 1 to 3 were amended by paragraph 18(2) to (4) of Schedule 2 to S.R. 1994 No. 300

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

## SCHEDULE 1

Regulation 7(1)

## Regulations revoked

Column (1) <i>Citation</i>	Column (2) <i>Reference</i>	Column (3) <i>Extent of revocation</i>
The Protected Rights (Transfer Payment) Regulations (Northern Ireland) 1987	<a href="#">S.R. 1987 No. 296</a>	The whole Regulations
The Protected Rights (Transfer Payment) (Amendment) Regulations (Northern Ireland) 1994	<a href="#">S.R. 1994 No. 261</a>	The whole Regulations
The Occupational and Personal Pension Schemes (Consequential Amendments) Regulations (Northern Ireland) 1994	<a href="#">S.R. 1994 No. 300</a>	In Schedule 2, paragraph 18

## SCHEDULE 2

Regulation 7(3)

## Transitional Provisions

In a case such as is mentioned in regulation 7(3) of these Regulations, the 1987 Regulations are modified as follows:

- (a) in regulation 1(2)—
- (i) the definition of “the Board” shall be omitted;
  - (ii) for the definition of “overseas scheme” there shall be substituted the definition of “overseas scheme” in regulation 1(2) of these Regulations, and
  - (iii) for the definitions of “section 49 money purchase scheme” and “section 49 salary related scheme”(18) there shall be substituted respectively the following definitions—
    - ““section 49 money purchase scheme” means a scheme which was formerly a money purchase contracted-out scheme and in respect of which section 49 applies;
    - “section 49 salary related scheme” means a scheme which was formerly a salary related contracted-out scheme and in respect of which section 49 applies;”, and
- (b) in paragraph 2 of Schedule 2 for “the Board” there shall be substituted “the Department”.

(18) These definitions were substituted by paragraph 18(2)(c) of Schedule 2 to [S.R. 1994 No. 300](#)

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## EXPLANATORY NOTE

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

These Regulations replace the Protected Rights (Transfer Payment) Regulations (Northern Ireland) 1987 (“the 1987 Regulations”) which are, subject to transitional provisions, now revoked. The Regulations supplement the changes introduced by the Pensions (Northern Ireland) Order 1995 (“the 1995 Order”) to Part III of the Pension Schemes (Northern Ireland) Act 1993 (“the 1993 Act”) (although they are made under powers in the 1993 Act which have not been amended by the 1995 Order). They also consolidate and amend those provisions of the 1987 Regulations which remain relevant. In addition to minor and drafting amendments the Regulations make the following changes of substance—

they provide for treating separately protected rights in respect of any period before 6th April 1997 and in respect of any period from 6th April 1997;

they set out revised conditions for the making of a transfer payment to an overseas scheme, and they no longer require the Occupational Pensions Board, which is being dissolved, to approve transfer payments.

Regulation 1 provides for the citation, commencement and interpretation of the Regulations.

Regulations 2 to 5 make provision for the circumstances in which and the conditions subject to which effect may be given to the protected rights of a member of a scheme which is or was a money purchase contracted-out scheme or an appropriate personal pension scheme by the making of a transfer payment to another pension scheme.

Regulation 6 modifies Part III of the 1993 Act, where a transfer payment has been made to a scheme which is contracted-out under section 5(2) of that Act (a salary related contracted-out scheme), in order to accommodate the guaranteed minimum pensions to which a member of such a scheme becomes entitled in consequence of that payment.

Regulation 7 makes consequential revocations and transitional provisions.