STATUTORY RULES OF NORTHERN IRELAND

1997 No. 56

PENSIONS

The Personal and Occupational Pension Schemes (Protected Rights) Regulations (Northern Ireland) 1997

Made - - - -	*11th February 1997*
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 5(3) and (5), 6(2)(*c*) and (3)(*c*), 23(3), 24(1A)(*a*) and (2) to (5), 24A(3)(*b*) and (5)(*a*), 25(1)(*b*), (3)(*b*) and (4), 28, 151, 176(1), 177(2) to (4) and 178(1) and (3) of 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 Personal and Occupational Pension Schemes (Protected Rights) Regulations (Northern Ireland) 1997 and shall come into operation on 6th April 1997.

(2) In these Regulations—

"child benefit" has the same meaning as in the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**2**);

"member" means member of an occupational pension scheme or a personal pension scheme;

"pensionable age" has the meaning given by the rules in paragraph 1 of Schedule 2 to the Pensions (Northern Ireland) Order 1995(**3**);

"the principal appointed day" has the meaning given to that expression by section 3(2B)(**4**);

(**1**) 1993 c. 49; section 5(3) was amended by Article 133(4) of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)); section 24(1A) was inserted by Article 139(3) of that Order; section 24(3) was amended by Article 139(4) of that Order; section 24(4) was amended by Article 139(5) of, and paragraph 27(*b*) of Schedule 3 to, that Order; section 24(5) was amended by Article 139(6) of that Order; section 24A was inserted by Article 140 of that Order; section 25(1) was amended by Article 141(2) of, and paragraph 28 of Schedule 3 to, that Order; section 25(3) was amended by Article 141(3) of that Order; section 25(4) was amended by Article 141(4) of that Order and section 151 was amended by paragraph 55 of Schedule 3 to that Order

(**2**) 1992 c. 7. *See* Part IX of that Act

(**3**) S.I. 1995/3213 (N.I. 22)

(**4**) Section 3(2B) was inserted by Article 133(1) of the Pensions (Northern Ireland) Order 1995 "the Protected Rights Regulations" means the Personal and Occupational Pension Schemes (Protected Rights) Regulations 1996(**5**);

"scheme" means an occupational pension scheme or a personal pension scheme;

"section 5(2B) rights" are 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)(**6**).

(3) Subject to paragraph (4), the Interpretation Act (Northern Ireland) 1954(**7**) shall apply to these Regulations as it applies to a Measure of the Assembly.

(4) 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.

(5) In these Regulations—

(a) any reference to a numbered section is a reference to the section of the Pension Schemes (Northern Ireland) Act 1993 bearing that number; and

(b) any reference to a numbered Article is a reference to the Article of the Pensions (Northern Ireland) Order 1995 bearing that number.

Manner of calculation and verification of protected rights

2.—(1) For the purposes of section 23(3) (identification and valuation of protected rights), the value of a member's protected rights shall, subject to paragraph (2), be calculated and verified—

(a) in such manner as may be approved in particular cases by the trustees or managers of the scheme; and

(b) by adopting methods consistent with the requirements of sections 5(3) and (5) and 22 to 28(**8**).

(2) In a case where a member's rights (as described in paragraph (1)) fall, either wholly or in part, to be valued in a manner which involves making estimates of the value of benefits, the value of those rights shall be calculated and verified—

(a) in such manner as may be approved in particular cases by—

(i) a Fellow of the Institute of Actuaries;

(ii) a Fellow of the Faculty of Actuaries; or

(iii) a person with other actuarial qualifications who is approved by the Department, at the request of the trustees or managers of the scheme in question, as being a proper person to act for the purposes of these Regulations in connection with that scheme,

and in this regulation "actuary" means any person such as is referred to in head (i), (ii) or (iii); and

(b) by adopting methods and making assumptions which—

(i) if not determined by the trustees or managers of the scheme in question, are notified to them by an actuary; and

(**5**) S.I. 1996/1537
(**6**) Section 5(2B) was substituted by Article 133(3) of the Pensions (Northern Ireland) Order 1995
(**7**) 1954 c. 33 (N.I.)
(**8**) Section 24 is amended by Articles 139 and 143(2) of, and paragraph 27 of Schedule 3 to, the Pensions (Northern Ireland) Order 1995; sections 24A and 24B were inserted by Article 140 of that Order; section 25 was amended by Article 141 of, and paragraph 28 of Schedule 3 to, that Order; section 26 is amended by paragraph 14(*a*) of Schedule 3 to that Order and section 27 was amended by paragraph 29 of Schedule 3 to that Order

(ii) are certified by an actuary to the trustees or managers of the scheme as being consistent with the requirements of sections 5(3) and (5), 6(**9**) and 22 to 28 and as being consistent with the guidance note “Retirement Benefit Schemes — Transfer Values (GN 11)” published by the Institute of Actuaries and the Faculty of Actuaries(**10**) and current at the date of the calculation.

Options under section 6(2) and (3) for schemes to designate which rights are protected rights

3. For the purposes of section 6(2) and (3) (scheme rules may provide that a member’s protected rights are rights specified in section 6(2) and (3) and such other rights as may be prescribed), the prescribed rights are rights to money purchase benefits which derive from—

(a) guaranteed minimum pensions under an occupational pension scheme, or guaranteed minimum pensions appropriately secured by virtue of section 15, which have been the subject of a transfer payment to the trustees or managers of the scheme;

(b) section 5(2B) rights under an occupational pension scheme, or section 5(2B) rights secured in the circumstances and subject to the conditions prescribed in regulations made under section 8C(1)(*b*)(**11**), which have been the subject of a transfer payment to the trustees or managers of the scheme;

(c) in the case of a personal pension scheme, a payment made to the trustees or managers of the scheme in accordance with Article 9 of the Social Security (Northern Ireland) Order 1986(**12**) and regulation 3(10) of the Personal and Occupational Pension Schemes (Incentive Payments) Regulations (Northern Ireland) 1987(**13**);

(d) in the case of a personal pension scheme, a payment under section 38A(3)(**14**) made to the trustees or managers of the scheme in accordance with regulation 37(6) of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996(**15**);

(e) in the case of an occupational pension scheme, a payment of minimum contributions made to the trustees or managers of the scheme in accordance with regulation 14(3) of the Personal Pension Schemes (Appropriate Schemes) Regulations (Northern Ireland) 1988(**16**); and

(f) in the case of a personal pension scheme, a payment attributable to tax relief on the employee’s share of minimum contributions, being the difference between that share and the grossed-up equivalent of that share; the expressions “employee’s share” and “grossed-up equivalent” having the meanings given to them by section 649(2) of the Income and Corporation Taxes Act 1988(**17**).

(**9**) Section 6(2) is amended by paragraph 18 of Schedule 3 to the Pensions (Northern Ireland) Order 1995
(**10**) Copies of GN 11 may be obtained from the Faculty of Actuaries, 17 Thistle Street, Edinburgh EH2 1DF
(**11**) Section 8C was inserted by Article 133(5) of the Pensions (Northern Ireland) Order 1995
(**12**) S.I. 1986/1888 (N.I. 18); Article 9 was repealed by Part I of Schedule 4 to the Pension Schemes (Northern Ireland) Act 1993. *See also* paragraph 21 of Schedule 5 to that Act
(**13**) S.R. 1987 No. 293; to which there are amendments not relevant to these regulations
(**14**) Section 38A was inserted by Article 134(4) of the Pensions (Northern Ireland) Order 1995
(**15**) S.R. 1996 No. 493
(**16**) S.R. 1988 No. 34; regulation 14 was substituted by regulation 3(3) of S.R. 1996 No. 508
(**17**) 1988 c. 1; section 649 was amended by paragraph 20(3) to (5) of Schedule 8 to the Pension Schemes Act 1993 (c. 48) and paragraph 22(3) of Schedule 7 to the Pension Schemes (Northern Ireland) Act 1993 and is amended by paragraph 12(1) of Schedule 5 to the Pensions Act 1995 (c. 26) and paragraph 8 of Schedule 3 to the Pensions (Northern Ireland) Order 1995. *See* paragraph 73 of Schedule 3 to that Order which extends the amendment by paragraph 12(1) of Schedule 5 to the Pensions Act 1995 to Northern Ireland

Conditions applying to pensions and annuities which give effect to protected rights

4.—(1) For the purposes of subsections (2)(*a*) (effect may be given to protected rights by the provision by the scheme of a pension which among other things satisfies such conditions as may be prescribed) and (3) (effect may be given in certain circumstances to protected rights by the purchase by the scheme of an annuity which among other things satisfies such conditions as may be prescribed) of section 24, the prescribed conditions are that the pension or annuity gives effect to all the protected rights of the member, and that the terms on which the pension is provided, or the terms of the purchase of the annuity—

(a) satisfy the requirements of paragraphs (2) to (5); and

(b) make no provision other than such as—

(i) is necessary to establish what the initial rate and the method of payment of the pension or annuity are to be, and that it shall continue to be paid at that rate (subject only to paragraphs (3) and (6) and to the requirements of Articles 51 (annual increase in rate of occupational pension) and 158 (annual increase in rate of personal pension)) throughout the lifetime of the member;

(ii) is necessary to satisfy the requirements of paragraphs (2) to (5) and regulation 5; and

(iii) is permitted by paragraphs (6) to (9).

(2) The rate of the pension or annuity shall be determined—

(a) without regard to the sex of the member; and

(b) in the case of—

(i) protected rights derived from guaranteed minimum pensions by virtue of regulation 3(*a*) or payments or contributions in respect of employment in a tax year commencing before the principal appointed day, without regard to the marital status of the member;

(ii) a married member whose protected rights derived from section 5(2B) rights by virtue of regulation 3(*b*) or payments or contributions in respect of employment in a tax year commencing on or after the principal appointed day, on the basis that the member, in the event of his death, will leave a widow or widower; and

(iii) an unmarried member whose protected rights derived from section 5(2B) rights by virtue of regulation 3(*b*) or payments or contributions in respect of employment in a tax year commencing on or after the principal appointed day, as if in the event of that member's death he or she will leave a widow or widower, except where the member agreed to the rate being determined on his or her life only.

(3) In the case of protected rights which are derived from guaranteed minimum pensions by virtue of regulation 3(*a*) or payments or contributions in respect of employment in any tax year before the coming into operation of Article 51 or, as the case may be, Article 158, the rate of the pension or annuity shall—

(a) on a date ("the first date") not later than the first anniversary of the date on which it becomes payable; and

(b) on each anniversary of the first date,

be increased by the same percentage as that by which parts of guaranteed minimum pensions are increased by the order (if any) made by the Department under section 105(**18**) and coming into operation on the first day of the tax year in which the date of the increase falls.

(4) Except with the written consent of the person to whom the pension or annuity is payable, the pension or annuity, if paid in arrears, shall be paid no less frequently than by monthly instalments.

(**18**) Section 105 was amended by Article 55 of the Pensions (Northern Ireland) Order 1995

(5) The pension or annuity shall be paid no less frequently than by annual instalments.

(6) In the case of protected rights which are derived from guaranteed minimum pensions by virtue of regulation 3(*a*) or payments or contributions in respect of employment in any tax year before the coming into operation of Article 51, or as the case may be, Article 158, the pension or annuity may be increased, not more frequently than on the first date mentioned in paragraph (3) and on each of its anniversaries, but by larger percentages than paragraph (3) requires, so however that no increase is by more than 3 per cent.

(7) When the member has died, the pension or annuity may continue to be paid, at a rate which satisfies the requirements of paragraph (8), to or for the benefit of other persons if the requirements of paragraph (9) are satisfied.

(8) The requirements first referred to in paragraph (7) are that the rate shall not exceed—

(a) at any given time during the period which is within 5 years of the date on which the pension or annuity commenced, the rate at which it would have been payable if the member had been living at that time; and

(b) at any given time during any other period, one-half of the rate at which it would have been payable if the member had been living at that time.

(9) The requirements secondly referred to in paragraph (7) are that the pension or annuity shall be paid only—

(a) to the member's widow or widower, in a case where immediately after the member's death the pension or annuity is required by virtue of regulation 5 to be paid to her or him;

(b) to any one person, in a case to which sub-paragraph (*a*) does not apply;

(c) for the benefit of any child or children, if—

(i) sub-paragraph (*a*) does not apply;

(ii) the pension or annuity has not been paid in accordance with sub-paragraph (*b*); and

(iii) immediately before the member's death the member was entitled to child benefit in respect of that child or those children, or would have been so entitled if that child or one, some or all of those children had not been absent from Northern Ireland,

but only for so long as that child or at least one of those children is under the age of 18; and

(d) to any one person, during any period—

(i) which is within 5 years of the date on which the pension or annuity commenced; and

(ii) which immediately follows the death of a person who died while the pension or annuity was being paid to him in accordance with sub-paragraph (*a*) or (*b*) or in accordance with this sub-paragraph, or which begins on the date on which the child or the last of the children in respect of whom the pension or annuity has been paid in accordance with sub-paragraph (*c*) attained the age of 18 or died under that age.

Circumstances in which and periods for which pension or annuity is to be paid to widow or widower after being paid to member

5.—(1) For the purposes of section 25(1)(*b*)(i) (pension or annuity to be paid to member's widow or widower in prescribed circumstances and for the prescribed period) the prescribed circumstances are, subject to paragraph (4), that—

(a) the widow or widower is entitled to child benefit in respect of a child under the age of 18 who is, or is residing with a child under the age of 16 who is—

(i) a son or daughter of the widow or widower and the member;

(ii) a child in respect of whom the member, immediately before his or her death, was, or would have been if the child had not been absent from Northern Ireland, entitled to child benefit; or

(iii) if the widow or widower and the member were residing together immediately before the member's death, a child in respect of whom the widow or widower then was, or would have been if the child had not been absent from Northern Ireland, entitled to child benefit; or

(b) the widow or widower had attained the age of 45 either—

(i) when the member died; or

(ii) during a period when the circumstances mentioned in sub-paragraph (*a*) existed.

(2) For the purposes of section 25(1)(*b*)(i) the prescribed period is—

(a) in a case to which the circumstances described in sub-paragraph (*a*) but not sub-paragraph (*b*) of paragraph (1) exist, the period (subject to paragraph (3)) during which the circumstances described in sub-paragraph (*a*) of paragraph (1) continue to exist; and

(b) in a case to which the circumstances described in sub-paragraph (*b*) of paragraph (1) exist, the remainder of the widow's or widower's life (subject to paragraph (3)).

(3) There is excluded from the periods prescribed under paragraph (2) any period after the widow's or widower's remarriage under pensionable age.

(4) The prescribed circumstances referred to in paragraph (1) in which a pension or annuity is to be paid to the member's widow or widower do not include circumstances where the rate of the pension or annuity paid to the member has, in accordance with regulation 4(2)(*b*)(iii), been determined by reference to his or her life only.

Interim arrangements

6. For the purposes of section 24(1A) (in the case of a personal pension scheme effect may be given to protected rights by the making of payments under an interim arrangement which among other things satisfies such conditions as may be prescribed) the prescribed conditions are that—

(a) payments are to be made to the member throughout the interim period at monthly intervals unless, subject to section 24A(1) (payments to be made at intervals not exceeding 12 months), the member elects for those payments to be made less frequently than by monthly payments;

(b) the interim arrangement provides for the member to be able to elect to terminate the interim arrangement at any time during the interim period; and

(c) the interim arrangement provides for, in the event of the death of an unmarried member or, where section 24A(2) would apply, the death of the widow or widower, the balance of the value of the protected rights to be paid to any person in accordance with directions given by that member, widow or widower in writing, or where no such directions are given, to his or her estate.

Payments made under interim arrangements

7.—(1) For the purposes of section 24A(3)(*b*) (aggregate amount of payments made to a person under an interim arrangement in each successive period of 12 months must not be less than the prescribed percentage of the annual amount of the annuity which would have been purchasable by him on the relevant reference date) the prescribed percentage is 35 per cent.

(2) For the purposes of section 24A(5)(*a*) (the annual amount of the annuity which would have been purchasable by a person on any date shall be calculated in the prescribed manner) the prescribed manner is—

(a) in the case of payments to be made to a member in respect of protected rights which derive from minimum contributions and other amounts payable to the scheme in respect of any tax year up to and including the tax year 1996-1997, by reference to the current published table prepared by the Government Actuary in accordance with regulation 7(3)(*a*) of the Protected Rights Regulations;

(b) in the case of payments to be made to a widow or widower of a member in respect of protected rights which derive from minimum contributions and other amounts payable to the scheme in respect of any tax year up to and including the tax year 1996-1997, by reference to the current published table prepared by the Government Actuary in accordance with regulation 7(3)(*b*) of the Protected Rights Regulations;

(c) in the case of payments to be made—

(i) to a married member; or

(ii) on the first day of a succeeding period of 3 years beginning on the starting date to a member who marries during the interim period,

in respect of protected rights which derive from minimum contributions and other amounts payable to the scheme in respect of any tax year after the tax year 1996-1997, by reference to the current published table prepared by the Government Actuary in accordance with regulation 7(3)(*c*) of the Protected Rights Regulations;

(d) in the case of payments to be made—

(i) to an unmarried member;

(ii) to a widow or widower of a member;

(iii) on the first day of a succeeding period of 3 years beginning on the starting date to a member who becomes a widow or widower and remains so during the interim period; or

(iv) on the first day of a succeeding period of 3 years beginning on the starting date to a member whose marriage is dissolved and remains unmarried during the interim period,

in respect of protected rights which derive from minimum contributions and other amounts payable to the scheme in respect of a tax year after the tax year 1996-1997 by reference to the current published table prepared by the Government Actuary in accordance with regulation 7(3)(*d*) of the Protected Rights Regulations.

Giving effect to protected rights by the provision of a lump sum

8.—(1) For the purposes of section 24(4)(*b*) (effect may be given to protected rights by the provision of a lump sum where the annual rate of the pension or annuity would not exceed the prescribed amount) the prescribed amount is £260.

(2) For the purposes of section 24(4)(*c*) (effect may be given to protected rights by the provision of a lump sum in prescribed circumstances) the prescribed circumstances are that—

(a) effect is given to all the member's protected rights by the provision of a lump sum; and

(b) either—

(i) the member has no rights under the scheme other than his protected rights; or

(ii) effect is given to all those of his rights under the scheme which are not protected rights by the provision of a lump sum.

Suspension and forfeiture of payments giving effect to protected rights

9.—(1) For the purposes of section 28, the circumstances in which the rules of a scheme may provide for payments giving effect to a member's protected rights to be suspended are—

(a) that the person who is entitled to payments giving effect to those rights is, in the opinion of the trustees or managers of the scheme, unable to act by reason of mental disorder or otherwise, so however that there is provision in the scheme for equivalent sums to be paid or applied, while that person is so unable, for the maintenance of that person or, at the discretion of the trustees or managers, of that person together with his dependants or of his dependants only, and, to the extent that they are not so applied, to be held for that person until he is again able to act or, as the case may be, for his estate;

(b) that that person is undergoing a period of imprisonment or detention in legal custody, so however that there is provision in the scheme for equivalent sums to be paid or applied during such a period for the maintenance of such one or more of that person's dependants as the trustees or managers of the scheme may in their discretion determine.

(2) For the purposes of section 28, the circumstances in which the rules of a scheme may provide for a payment giving effect to a member's protected rights to be forfeited are—

(a) that the trustees or managers of the scheme do not know the address of the person to whom the payment should be made; and

(b) that a period of at least 6 years has elapsed from the date on which that payment became due.

Choice of insurance company by annuitant

10. For the purposes of section 25(4) (scheme member to be taken to have chosen an insurance company to provide his annuity only if he gives notice in the prescribed manner and within the prescribed period) the prescribed manner is in writing, and the prescribed period is—

(a) where the trustees or managers of the scheme know of no reason to suppose that the pension or annuity will not commence on the date on which the member will attain—

(i) in the case of a money purchase contracted-out scheme the normal pension age if that age is not less than 60 years; or

(ii) in the case of a personal pension scheme, the agreed age at which he is entitled to receive benefits under the scheme if that age is not less than 60 years,

a period of 5 months (or such longer period as the rules of the scheme may allow) beginning on the date which is 6 months earlier than that on which he will attain that age; and

(b) in any other case—

(i) if the date of the agreement in respect of when the pension or annuity is to commence ("the date of agreement") is more than one month before the agreed date for commencement of payment ("the agreed date"), a period beginning on the date of agreement and ending one month before the agreed date; and

(ii) if the date of agreement is not more than one month before the agreed date, a period consisting only of the date of agreement,

or such longer period as the rules of the scheme may allow.

Insurance companies that may provide protected rights by way of annuities

11. For the purposes of section 25(3) (annuity complies with the annuity requirements if it is provided by an insurance company which satisfies prescribed conditions) the prescribed conditions are that the insurance company—

(a) (i) is authorised under section 3 or 4 of the Insurance Companies Act 1982(**19**) to carry on ordinary long term insurance business as defined in that Act;

(ii) is an EC company as defined in section 2(6) of that Act(**20**) which carries on ordinary long term insurance business in the United Kingdom through a branch in respect of which such of the requirements of Part I of Schedule 2F to that Act(**21**) as are applicable have been complied with;

(iii) is an EC company as defined in section 2(6) of that Act which provides ordinary long term insurance in the United Kingdom and has complied with such of the requirements of Part I of Schedule 2F to that Act as are applicable in respect of the insurance; or

(iv) is a friendly society which is authorised under section 32 of the Friendly Societies Act 1992(**22**) to carry on long term business under any of the Classes specified in Head A of Schedule 2 to that Act;

(b) offers annuities, with a view to purchase of those annuities by schemes in order to give effect to the protected rights of their members, without having regard to the sex or, except to the extent allowed under regulation 4(2)(*b*), to the marital status of the members either in making the offers or in determining the rates at which the annuities are paid; and

(c) where annuities are issued by a friendly society as described in paragraph (*a*)(iv), provides that the terms of the annuities are not capable of being amended, revoked or rescinded.

Death of scheme member before effect given to his protected rights

12.—(1) In this regulation “qualifying widow or widower” means a widow or widower of the member who immediately after the member’s death either—

(a) is aged 45 or over; or

(b) is entitled to child benefit in respect of a child under the age of 18 who is, or is residing with a child under the age of 16 who is—

(i) a son or daughter of the widow or widower and the member;

(ii) a child in respect of whom the member, immediately before his death, was, or would have been if the child had not been absent from Northern Ireland, entitled to child benefit; or

(iii) if the widow or widower and the member were residing together immediately before the member’s death, a child in respect of whom the widow or widower then was, or would have been if the child had not been absent from Northern Ireland, entitled to child benefit.

(2) Subject to regulation 13, for the purposes of section 24(5) (if member has died without effect being given to protected rights effect may be given in prescribed manner), in a case where—

(a) the member is not survived by a qualifying widow or widower;

(b) the trustees or managers of the scheme, having taken reasonable steps to ascertain whether the member was survived by a qualifying widow or widower, conclude in good faith that he or she was not; or

(c) the member is survived by a qualifying widow or widower who dies before the value of the member’s protected rights are paid to or for the benefit of her or him by virtue of paragraphs (3) to (8),

(**19**) 1982 c. 50
(**20**) Section 2(6) was inserted by regulation 4(2) of S.I.1994/1696
(**21**) Schedule 2F was inserted by regulation 45 of S.I.1994/1696
(**22**) 1992 c. 40; subsection (4) was substituted by regulation 4 of S.I. 1994/1984

the prescribed manner is by the payment, as soon as practicable, of the value of the member's protected rights to or for the benefit of any person or persons in accordance with directions given by the member in writing, or to the member's estate.

(3) Subject to regulation 13, for the purposes of section 24(5), in a case where the member is survived by a qualifying widow or widower, and the circumstances mentioned in paragraph (2)(*b*) do not exist, the prescribed manner is—

(a) by the provision, as soon as practicable, of a pension such as is described in paragraph (4);

(b) by the purchase by the scheme, as soon as practicable, of an annuity such as is described in paragraph (4), which is provided by an insurance company such as is described in paragraph (12); or

(c) by the provision, as soon as practicable, of a lump sum such as is described in paragraph (14).

(4) The pension or annuity referred to in paragraph (3) is one that gives effect to all the protected rights of the member, and that the terms on which the pension is provided, or the terms of the purchase of the annuity—

(a) satisfy the requirements of paragraphs (5) to (7); and

(b) make no provision about the payment of the pension or annuity, or about the rate at which, or the categories of persons to whom, it is to be paid, other than such as—

(i) is necessary to establish what the initial rate and method of payment of the pension or annuity are to be, and that it shall continue to be paid to the widow or widower at that rate (subject only to paragraphs (6) and (8) and the requirements of Article 51, or as the case may be, Article 158) throughout the period described in paragraph (5);

(ii) is necessary to satisfy the requirements of paragraphs (5) to (7); and

(iii) is permitted by paragraphs (8) to (11).

(5) The pension or annuity shall be paid to the qualifying widow or widower during the period which begins on a date which is as soon as practicable after the member's death and ends when the widow or widower—

(a) dies;

(b) remarries while under pensionable age; or

(c) ceases while under the age of 45 to be as described in paragraph (1)(*b*).

(6) In the case of protected rights which are derived from guaranteed minimum pensions by virtue of regulation 3(*a*) or payments or contributions in respect of employment in any tax year before the coming into operation of Article 51 or, as the case may be, Article 158, the rate of the pension or annuity shall be increased as described in regulation 4(3).

(7) The pension or annuity shall be paid as described in regulation 4(4) and (5).

(8) In the case referred to in paragraph (6), the pension or annuity may be increased, not more frequently than on the first date mentioned in regulation 4(3) and on each of its anniversaries, but by larger percentages than paragraph (6) requires, so however that no increase is by more than 3 per cent.

(9) When the qualifying widow or widower has—

(a) died;

(b) remarried while under pensionable age; or

(c) ceased while under the age of 45 to be as described in paragraph (1)(*b*),

the pension or annuity may be paid, at a rate which satisfies the requirements of paragraph (10), to or for the benefit of the persons specified in paragraph (11) if the requirements of that paragraph are satisfied.

(10) The requirements first referred to in paragraph (9) are that the rate shall not exceed the rate at which the pension or annuity would have been payable if it had still been payable under paragraph (5).

(11) The requirements secondly referred to in paragraph (9) are that the pension or annuity shall be paid only—

(a) to the person who was the qualifying widow or widower;

(b) for the benefit of any child or children, if a person has died while the pension or annuity was being paid to him in accordance with paragraph (5) or sub-paragraph (*a*) and immediately before his death he was entitled to child benefit in respect of that child or those children, or would have been so entitled if that child or one, some or all of those children had not been absent from Northern Ireland, but only for so long as that child or at least one of those children is under the age of 18; and

(c) to any one person during any period—

(i) which is within 5 years of the date on which the pension or annuity commenced; and

(ii) which immediately follows the death of a person who died while the pension or annuity was being paid to him in accordance with paragraph (5) or sub-paragraph (*a*) or this sub-paragraph, or which begins on the date on which the child or the last of the children in respect of whom the pension or annuity has been paid in accordance with sub-paragraph (*b*) attained the age of 18 or died under that age.

(12) The insurance company referred to in paragraph (3) is one which satisfies the conditions described in regulation 11(*a*) and (*c*), and which has, subject to paragraph (13), been chosen by the widow or widower.

(13) A widow or widower is only to be taken to have chosen an insurance company if she or he gives notice in writing of her or his choice to the trustees or managers of the scheme during a period which begins on the date of the member's death and ends on the date which is 3 months after the date on which the trustees or managers notify her or him of her or his right to choose; and if she or he does not do so, the trustees or managers may themselves choose the insurance company instead.

(14) The lump sum referred to in paragraph (3) is one which is paid to the qualifying widow or widower in the following circumstances—

(a) the annual rate of the pension or annuity which would have been provided or purchased for her or him if the lump sum had not been provided does not exceed £260;

(b) effect is given to all the member's protected rights by the provision of a lump sum; and

(c) either—

(i) the member, when he died, had no rights under the scheme other than his protected rights; or

(ii) effect is given to all those of his rights under the scheme which are not protected rights by the provision of a lump sum.

Death before effect given to protected rights: interim arrangements for widow or widower

13.—(1) Where the member has died without effect being given to his protected rights and that member is survived by—

(a) a qualifying widow or widower; or

(b) a non-qualifying widow or widower who, in accordance with the member's written directions is nominated to receive the value of that member's protected rights,

effect shall be given to those rights if that widow or widower so elects by the making of payments, as soon as practicable, under an interim arrangement such as is described in paragraph (2).

(2) The interim arrangement referred to in paragraph (1) is one which—

(a) complies with—

(i) the requirements of subsections (3) and (5) of section 24A and regulations made under those subsections; and

(ii) the conditions referred to in regulation 6 as if the widow or widower were the member; and

(b) at the end of the interim period, enables effect to be given to the deceased's protected rights in such ways as are permitted by the provisions of section 24 as the rules of the scheme may specify.

(3) In this regulation "qualifying widow or widower" shall have the same meaning as in regulation 12.

Enforceable entitlement after death of member

14. Without prejudice to any other requirements, a personal pension scheme can be an appropriate scheme and an occupational pension scheme can be a money purchase contracted-out scheme only if the provision it makes for giving effect to the protected rights of a member who has died is such that any widow, widower or other person who is entitled to any payment giving effect to those rights is able to enforce that entitlement.

Further requirements in respect of giving effect to protected rights

15. Without prejudice to other requirements, a scheme which offers pensions with a view to giving effect, under section 24(2)(*a*), to protected rights by means of those pensions, can be (in the case of a personal pension scheme) an appropriate scheme or (in the case of an occupational pension scheme) a money purchase contracted-out scheme only if it offers those pensions without having regard to the sex or, except to the extent allowed under regulation 4(2)(*b*), to the marital status of the persons to whom it offers them, both in making those offers and in determining the rates at which those pensions are paid.

Personal pension schemes — notifications to the Department

16.—(1) Within 5 weeks after effect has been given to the protected rights of a member of a personal pension scheme, the trustees or managers of that scheme shall notify the Department in writing that effect has been given to those rights, giving such particulars as the Department may require to enable it—

(a) to identify the means by which effect has been given to them;

(b) where effect has been given to them by means of a pension, annuity or by the making of payments under an interim arrangement or lump sum, to identify the recipient of it;

(c) where effect has been given to them by means of an annuity, to identify the insurance company responsible for paying the annuity;

(d) where effect has been given to them by means of a transfer payment, to identify the personal or occupational pension scheme to which the transfer payment was made; and

(e) where effect has been given to them by means of a payment under an interim arrangement, to identify the appropriate scheme in respect of the interim arrangement and the starting date.

(2) The trustees or managers of a personal pension scheme which is or has been an appropriate scheme shall, if required to do so by the Department, in such manner and at such times as it may require, furnish to it such information relating to members of the scheme as it may require in order

to know for what, if any, protected rights the scheme is responsible, and from what minimum contributions, minimum payments or transfer payments they derive.

Tax-exemption and tax-approval

17. For the purposes of section 29 (nothing in sections 22 to 28 to be taken to prejudice any requirements with which a scheme must comply if it is to qualify for tax-exemption or tax-approval) “tax-exemption” and “tax-approval” mean respectively exemption from tax and approval of the Inland Revenue under Chapter I or Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988(**23**).

Revocations

18. The Regulations specified in column (1) of the Schedule are revoked to the extent mentioned in column (3) of that Schedule.

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

L.S.

John O'Neill

11th February 1997.

Assistant Secretary

(**23**) 1988 c. 1

SCHEDULE

Regulation 18

Regulations Revoked

Column (1) Citation	Column (2) Reference	Column (3) Extent of revocation
The Personal and Occupational Pension Schemes (Protected Rights) Regulations (Northern Ireland) 1987	S.R. 1987 No. 295	The whole Regulations
The Personal and Occupational Pension Schemes (Tax Approval and Miscellaneous Provisions) Regulations (Northern Ireland) 1988	S.R. 1988 No. 107	Regulation 9
The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 1990	S.R. 1990 No. 203	Regulation 10
The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 1992	S.R. 1992 No. 304	In regulation 1(2) the definition of "the Protected Rights Regulations", and regulations 25 and 26
The Occupational and Personal Pension Schemes (Consequential Amendments) Regulations (Northern Ireland) 1994	S.R. 1994 No. 300	In Schedule 2, paragraph 17
The Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 1995	S.R. 1995 No. 7	Regulation 6
The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 1996	S.R. 1996 No. 95	Regulation 5

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations consolidate the Personal and Occupational Pension Schemes (Protected Rights) Regulations (Northern Ireland) 1987 which are now revoked. They also make provisions which are consequential upon Part IV of the Pensions (Northern Ireland) Order 1995 ("the Order"). In addition to minor and drafting amendments the Regulations make the following changes of substance—

they provide that all accrued rights in respect of any period from 6th April 1997 will become protected rights on a transfer;

they allow unmarried members to purchase single life annuities in order to give effect to protected rights in respect of any period from 6th April 1997;

they provide that the indexation requirements in Articles 51 and 158 of the Order apply to protected rights in respect of any period from 6th April 1997.

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

Regulation 2 prescribes the manner of calculation and verification of protected rights.

Regulation 3 sets out the rights which a scheme may designate as protected rights, in addition to those so designated by the Pension Schemes (Northern Ireland) Act 1993.

Regulation 4 sets out the conditions which are to apply to pensions and annuities which give effect to protected rights.

Regulation 5 prescribes the circumstances in which and periods for which a pension or annuity is to be paid to a widow or widower after a scheme member's death.

Regulation 6 prescribes the conditions which are to apply to payments under an interim arrangement.

Regulation 7 prescribes the requirements which interim arrangements must satisfy.

Regulation 8 prescribes the circumstances in which a lump sum benefit may be provided.

Regulation 9 sets out the circumstances in which protected rights may be suspended or forfeited.

Regulation 10 prescribes the manner in which and the period within which an insurance company may be chosen by an annuitant.

Regulation 11 prescribes the conditions that an insurance company must satisfy if it is to provide an annuity which is to give effect to protected rights.

Regulations 12 and 13 set out the provision that is to be made if a scheme member dies before effect is given to his protected rights.

Regulation 14 requires that a scheme's provision for giving effect to the protected rights of a member who has died must be such that the person entitled to any payment giving effect to those rights must be able to enforce that entitlement.

Regulation 15 requires that the scheme should not, in offering pensions which are to give effect to protected rights, discriminate on grounds of sex or, except as permitted by the regulation, marital status.

Regulation 16 provides that, when effect has been given to protected rights under a personal pension scheme, certain information must be given to the Department of Health and Social Services.

Regulation 17 defines the meaning of "tax-exemption" and "tax-approval".

Regulation 18 makes consequential revocations.

Some of the enabling provisions under which these Regulations are made were amended, or inserted, by Articles 133(4) and 139 to 141 of, and paragraphs 27(*b*), 28 and 55 of Schedule 3 to, the Order. The Pensions (1995 Order) (Commencement No. 2) Order (Northern Ireland) 1996 (S.R. 1996 No. 91 (C. 4)) provides for the coming into operation of—

Articles 139 to 141, for the purpose only of authorising the making of regulations on 14th March 1996, and, for all other purposes, on 6th April 1996;

paragraphs 27(*b*), 28 and 55 of Schedule 3, for the purpose only of authorising the making of regulations, on 6th April 1996; and

Article 133(4), for the purpose only of authorising the making of regulations, on 6th April 1996, and, in so far as it is not already in operation, on 6th April 1997.