
STATUTORY RULES OF NORTHERN IRELAND

1996 No. 493

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

Part VII

Guaranteed Minimum Pensions

Scheme rules about guaranteed minimum pensions

55.—(1) For a scheme to be contracted out in relation to an earner's employment it must include a rule to the effect that if the earner has a guaranteed minimum under section 10 of the Act (earner's guaranteed minimum)(1)—

- (a) the weekly rate of his pension under the scheme at pensionable age in respect of his service before the principal appointed day shall not be less than that guaranteed minimum;
- (b) the weekly rate of pension payable to any widow of the earner under the scheme in respect of the earner's service before the principal appointed day shall be not less than half that guaranteed minimum, and
- (c) the weekly rate of pension payable to any widower of the earner under the scheme in respect of the earner's service before the principal appointed day shall be not less than half of that part of the earner's guaranteed minimum which is attributable to earnings factors for the tax year 1988-89 and subsequent tax years up to and including the tax year 1996-97,

that rule to be expressed to override all other provisions of the scheme, except any that are in accordance with the Act.

(2) In paragraph (1) "weekly rate" means, in cases where the pension is paid otherwise than at weekly intervals, a rate which is equivalent to the earner's guaranteed minimum having regard to the period in respect of which the pension is paid.

Special provision for revaluation of guaranteed minimum pensions secured by insurance policies or annuity contracts

56. A scheme may make provision under section 12(2) of the Act (revaluation of guaranteed minimum pensions under section 130 of the Administration Act by reference to last service year(2)) for the case of those of its members whose guaranteed minimum pensions are, or are to be, appropriately secured within the meaning of section 15(3) of the Act, notwithstanding that it makes no such provision for any other case.

(1) Section 10 is amended by paragraph 20 of Schedule 3 to the Pensions (Northern Ireland) Order 1995

(2) Section 130 was amended by paragraph 40 of Schedule 7 to the Pension Schemes (Northern Ireland) Act 1993. *See also* Article 125(3) and (4) of the Pensions (Northern Ireland) Order 1995

Circumstances in which widower's guaranteed minimum pension is to be payable

57. For the purposes of section 13(6) of the Act (for a scheme to be contracted out it must provide for a widower's guaranteed minimum pension to be payable in prescribed circumstances and for a prescribed period) the prescribed circumstances are that—

- (a) the widower and the earner were both over pensionable age when the earner died;
- (b) the widower is entitled to child benefit (which expression has in this regulation the same meaning as in the Contributions and Benefits Act) in respect of a child who is, or residing with a child under 16 who is—
 - (i) a son or daughter of the widower and the earner;
 - (ii) a child in respect of whom the earner, immediately before 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 widower and the earner were residing together immediately before the earner's death, a child in respect of whom he then was, or would have been if the child had not been absent from Northern Ireland, entitled to child benefit, or
- (c) the widower had attained the age of 45 either—
 - (i) when the earner died, or
 - (ii) during a period when the circumstances mentioned in paragraph (b) existed.

Period for which widower's guaranteed minimum pension is to be payable

58.—(1) For the purposes of section 13(6) of the Act the prescribed period is—

- (a) in a case where the circumstances described in regulation 57(a) exist, the remainder of the widower's life;
 - (b) in a case where the circumstances described in paragraph (b), but not either paragraph (a) or paragraph (c), of regulation 57 exist, the period (subject to paragraph (2)) during which the circumstances described in paragraph (b) of regulation 57 continue to exist, and
 - (c) in a case where the circumstances described in paragraph (c), but not paragraph (a), of regulation 57 exist, the remainder of the widower's life (subject to paragraph (2)).
- (2) There is excluded from the periods prescribed under paragraph (1)(b) and (c) any period—
- (a) after the widower's remarriage under pensionable age;
 - (b) during which he is under pensionable age and he and a woman to whom he is not married are living together as husband and wife, or
 - (c) after the widower has attained pensionable age if immediately before he attained that age he and a woman to whom he was not married were living together as husband and wife.

Statutory references to persons entitled to guaranteed minimum pensions — application to widowers

59. Sections 46(1)(a)(ii)(3) and 48(2A)(a)(i) of the Act(4) shall be construed as if the reference to a person entitled to receive a guaranteed minimum pension included a reference to a person so entitled by virtue of being the widower of an earner only in the case where the earner and the widower were both over pensionable age when the earner died.

(3) Section 46(1)(a)(ii) is amended by paragraph 37 of Schedule 3 to the Pensions (Northern Ireland) Order 1995

(4) Section 48(2A) is substituted by paragraph 39 of the Schedule 3 to the Pensions (Northern Ireland) Order 1995

Trivial commutation of guaranteed minimum pensions

60.—(1) For the purposes of section 17(1) of the Act (provisions of a scheme relating to commutation), the prescribed circumstances are—

- (a) that a guaranteed minimum pension has become payable;
- (b) that the aggregate amount of all benefits currently payable to the earner or, as the case may be, the amount of the pension payable to his widow or her widower under all schemes relating to employment with the same employer as the employment in respect of which the guaranteed minimum pension is payable, does not exceed £260 per annum, and
- (c) that the Department is satisfied that the scheme provides a reasonable basis for ascertaining the amount to be paid on commutation.

(2) Where, under paragraph (1), a scheme permits an earner to commute benefit in accordance with this regulation it may also permit him or her to commute any prospective widow's or widower's benefit payable under the scheme (provided that the aggregate amount of such benefit prospectively payable under all schemes relating to employment with the same employer as the employment in respect of which the benefit is payable does not exceed £260 per annum) and the value of any such widow's or widower's benefit shall not be taken into account for the purpose of the limit of £260 per annum mentioned in paragraph (1).

(3) For the purposes of paragraph (1)(c), any benefit in lump sum form payable to the earner (but excluding for this purpose any benefit by way of a refund of the earner's contributions to the scheme) shall be treated as the annual amount of benefit in pension form which, in the opinion of the trustees or administrator of the scheme, is its equivalent.

(4) The condition in paragraph (1)(b) shall not apply in cases where the scheme is being wound up or an earner retires before pensionable age, and a contributions equivalent premium has been paid or treated as paid under Part VI, provided that—

- (a) for the purposes of paragraph (1)(c) the aggregate amount of benefit which has accrued to the earner at the date of winding up or, as the case may be, of his retirement, increased, where appropriate, in accordance with section 12(2) and (3) of the Act⁽⁵⁾ or in either case to the amount that would have been payable at pensionable age, shall be treated as the amount of benefit currently payable to him under the scheme;
- (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, he is treated by all those schemes as having retired and, in each case, all those schemes have paid a contributions equivalent premium.

Suspension and forfeiture of guaranteed minimum pensions

61.—(1) For the purposes of section 17(2) of the Act (suspension and forfeiture of guaranteed minimum pension) the circumstances in which a scheme may provide for an earner's or an earner's widow's or widower's guaranteed minimum pension to be suspended are—

- (a) that the pensioner is, in the opinion of the trustees of the scheme, unable to act by reason of mental disorder or otherwise and there is provision in the scheme for amounts equivalent to the guaranteed minimum pension to be paid or applied, while the pensioner is so unable, for the maintenance of the pensioner or, at the discretion of the trustees, of the pensioner together with his dependants or of his dependants only, and to the extent that they are not

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

so applied, to be held for the pensioner until he is again able to act or, as the case may be, for his estate;

- (b) that the pensioner is in prison or detained in legal custody, and there is provision in the scheme for amounts 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, and
- (c) that the earner is re-employed by the employer who had previously employed him in contracted-out employment in respect of which the guaranteed minimum pension became payable or in any other employment to which the scheme paying the guaranteed minimum pension applies and there is provision in the scheme for the guaranteed minimum pension which becomes payable when the suspension is lifted to be increased in accordance with section 11(1) of the Act.

(2) For the purposes of section 17(2) of the Act the circumstances in which a scheme may provide for an earner's or an earner's widow's or widower's guaranteed minimum pension (whether current or prospective) to be forfeited are—

- (a) that 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(6) for which he has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in the aggregate to, at least 10 years;
- (b) in the case of a widow's or widower's guaranteed minimum pension, that 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 offences and has been sentenced to terms of imprisonment as set out in sub-paragraph (a)(ii);
- (c) in the case of any payment of guaranteed minimum pension for which a claim has not been made, that a period of at least 6 years has elapsed from the date on which that payment became due.

Fixed rate revaluation of guaranteed minimum pensions for early leavers

62.—(1) This regulation applies to a case where a scheme provides, under section 12(2) of the Act (revaluation of earnings factors), for the earnings factors of an earner whose service in contracted-out employment by reference to the scheme is terminated before he attains pensionable age to be determined by reference to the last order that comes into force under section 130 of the Administration Act before the end of the tax year in which his service is terminated.

(2) Subject to paragraph (3), in a case to which this regulation applies, the prescribed percentage for the purpose of section 12(3) of the Act is, in relation to each period of service in respect of which accrued rights to guaranteed minimum pension have been acquired under, or transferred to, the scheme—

- (a) where the period of service terminated before 6th April 1988, 8.5 per cent. compound;
- (b) where that period of service terminated on or after 6th April 1988 but before 6th April 1993, 7.5 per cent. compound;
- (c) where that period of service terminated on or after 6th April 1993 but before 6th April 1997, 7 per cent. compound;
- (d) where that period of service terminates on or after 6th April 1997, 6.25 per cent. compound.

(3) Paragraph (2) only applies so as to permit the same provision to be made for all members of the scheme, so however that separate provision may be made for members as regards their rights to guaranteed minimum pensions under the scheme arising in respect of a transfer or transfer payment made in accordance with section 16(1) (transfer of accrued rights) or section 24 (ways of giving effect to protected rights) of the Act⁽⁷⁾ or regulations made under those provisions or for members whose guaranteed minimum pensions are, or are to be, appropriately secured within the meaning of section 15(3) of the Act.

Provision of information about guaranteed minimum pensions

63.—(1) The prescribed persons to whom, under section 152 of the Act, the Department may furnish information as to the amount of guaranteed minimum pension to which it appears to the Department a person is immediately or prospectively entitled under a scheme or as to any other matter required for calculating that amount, are (in addition to the persons mentioned in that section) —

- (a) the earner or widow or widower 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 those earners who are members of a contracted-out scheme, and
- (d) any person who is, or who in the opinion of the Department is likely to become, the responsible paying authority.

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

- (a) as to the total amount of the guaranteed minimum pensions to which it appears to the Department that all persons immediately or prospectively entitled under the scheme are so entitled, or
- (b) to be furnished with the written consent of the earner or widow or widower to whom the information relates.

Meaning of “connected employer”

64.—(1) The cases in which employers are to be treated as connected for the purposes of section 31 of the Act (surrender and cancellation: issue of further certificates) are those specified in paragraph (2).

(2) The cases referred to in paragraph (1) are those where any 2 employers are or were, at the relevant time—

- (a) a holding company and a subsidiary within the meaning of regulation 12(2);
- (b) subsidiaries of the same holding company within the meaning of that regulation, or
- (c) partnerships each having the same persons as at least half of its partners.

(3) In this regulation an employer is to be regarded as an employer at the relevant time where, as the case may require, he is the employer at the time of the surrender or cancellation of the first certificate or the employer at the time of the making of an election with a view to the issue of a further contracting-out certificate.

(7) Section 24 was amended by Article 139 of, and paragraph 27(b) of Schedule 3 to, the Pensions (Northern Ireland) Order 1995 and is amended by Article 143(2) of that Order

Modification of section 12 of the Act

65. In such a case as is specified in regulation 66—

- (a) section 12(1) of the Act shall be modified so as to have effect as if there were added at the end thereof “or, in respect of the earner’s earnings factor or the weekly equivalent mentioned in section 10(2) of the Act 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 section 12(3)”, and
- (b) 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 section 16(1) of the Act or regulations made thereunder to another contracted-out scheme, section 12(2) and (3) of the Act shall be modified so as to have effect as if it permitted that scheme to provide for those earnings factors to be determined for the purpose of section 10(2) of the Act without reference to any order coming into force under section 130 of the Administration Act—
 - (i) after the relevant year in which his service in the contracted-out employment, by reference to the scheme from which those rights were transferred, was terminated where such earnings factors have previously fallen to be determined by reference to orders under section 130 of the Administration Act, or
 - (ii) in and after the relevant year in which that service was terminated in any other case, and as if section 12(3) of the Act had effect accordingly, save, in a case to which sub-paragraph (ii) applies, for treating the reference to the amount of the increase in section 12(3) of the Act as a reference to the amount by which the earnings factors relevant to the weekly equivalent would be increased.

Circumstances in which the modifications to the Act set out in regulation 65 apply

66. The case referred to in regulation 65 is where, following the termination of an earner’s service in contracted-out employment by reference to a scheme the following conditions are satisfied—

- (a) a transfer under section 16(1) of the Act, or regulations made thereunder, of the earner’s accrued rights to guaranteed minimum pensions under that scheme (in this regulation called the “transferring scheme”) to another contracted-out scheme (in this regulation called the “receiving scheme”) is made, or if already begun is completed, on or after 5th April 1983;
- (b) the earner commences or has commenced employment which is contracted out by reference to the receiving scheme;
- (c) by virtue of section 10(1) of the Act as modified by regulations made under section 16 of the Act, the calculation, under the provisions of the receiving scheme, of the earner’s guaranteed minimum pension for the purposes of section 10(2) of the Act falls to include earnings factors, or the weekly equivalent derived therefrom, arising out of contracted-out employment in any period of linked qualifying service which was contracted-out employment by reference to the transferring scheme, and
- (d) either—
 - (i) the receiving scheme provides for the earnings factors or weekly equivalent derived therefrom to be increased at the rate by which they, or it, fell to be increased under the provisions of the transferring scheme or would have fallen to be increased under the provisions of that scheme relating to an earner whose service in contracted-out employment by reference to the scheme is terminated before he attains pensionable age;

- (ii) if the provisions of the transferring scheme provided for those earnings factors to be increased by reference to orders under section 130 of the Administration Act, the receiving scheme provides for those earnings factors or the weekly equivalent derived therefrom to be increased in accordance with section 12(2) and (3) of the Act, or regulations made under section 12(3) of the Act;
- (iii) if the transferring scheme provided for those earnings factors or the weekly equivalent derived therefrom to be increased in accordance with either section 12(2) and (3) of the Act or of regulations made under section 12(3) of the Act, the receiving scheme includes provision for those earnings factors to be increased by reference to orders under section 130 of the Administration Act from the date of termination of the earner's service in the period of contracted-out employment from which those earnings factors arose, or
- (iv) if a transfer of the earner's accrued rights to the receiving scheme is not one to which sub-paragraph (d)(iii) applies and those rights were previously being increased at a rate calculated by reference to orders under section 130 of the Administration Act, the receiving scheme includes provision for those earnings factors or the weekly equivalent derived therefrom to be increased at a rate calculated otherwise than by reference to orders under section 130 of the Administration Act.

Modification of section 47(1) of the Act in relation to revaluation and schemes which have ceased to be contracted out

67. Subject to regulation 68, in relation to a scheme which has ceased to be contracted out and, immediately before it so ceased, contained provision authorised by section 12(2) and (3) of the Act, section 47(1) to (3) of the Act(8) shall be modified so as to provide that, in the case of an earner whose service in contracted-out employment by reference to the scheme is terminated before he attains pensionable age—

- (a) if it is so terminated before the period of 5 years ending with the tax year in which the scheme ceases to be contracted out, the provision for taking his earnings factor for any relevant year to be that factor as increased by 12 per cent. for some or all of those tax years shall not apply, and
- (b) if it is so terminated within that period of 5 years, the provision for taking his earnings factor for any relevant year to be that factor as increased by 12 per cent. for some or all of those tax years shall apply, but his weekly equivalent shall not be increased pursuant to any provision required by section 12(2) and (3) of the Act for the years for which that factor is taken to be that factor as increased by 12 per cent.

Additional modifications relating to transfers and increases of earnings factors by 12 per cent.

68.—(1) Subject to the provisions of paragraphs (2) and (3), in any case where an earner's accrued rights to guaranteed minimum pensions are or have been transferred under section 16 of the Act or regulations made under that section to another contracted-out scheme, or have arisen in such a scheme by reason of a transfer payment giving effect to his protected rights in accordance with regulations made under section 24(2)(b) of the Act, references in regulation 67(b) to an increase of 12 per cent. of an earner's earnings factor for any year shall be construed as references only to the increase of earnings factors arising from the earner's service in employment by reference to which the scheme ceasing to contract out was contracted out.

(8) Section 47(1) was amended by paragraph 38 of Schedule 3 to the Pensions (Northern Ireland) Order 1995

(2) For the purposes of paragraph (1), any service of the earner which is linked qualifying service shall be included in that service only where the earnings factors to which it relates are being increased by reference to orders under section 130 of the Administration Act.

(3) For the purposes of paragraph (1), where an earner has a guaranteed minimum pension in consequence of a transfer payment made in accordance with regulations made under section 24(2) of the Act—

- (a) that pension shall be treated as if it had arisen as a result of his service in the employment by reference to which the scheme ceasing to be contracted out was contracted out, and
- (b) the reference to earnings factors, to the extent that they relate to that pension, shall be construed so as to include only those which do not fall to be revalued in accordance with section 12(2) and (3) of the Act as modified by those regulations.

Miscellaneous provisions affecting section 47 of the Act

69.—(1) Section 47(1) to (3) of the Act shall not apply where an earner’s accrued rights to guaranteed minimum pensions under the scheme which is ceasing to be contracted out are transferred to another contracted-out scheme in accordance with arrangements approved by the Department, and the same employer is the earner’s employer in relation to both the first and second schemes or the employers in relation to those schemes are connected employers.

(2) In paragraph (1), “connected employers” means employers who would fall within any of the cases referred to in regulation 64(2) if the words “, at the relevant time” and regulation 64(3) were disregarded.