

1985 No. 243

SOCIAL SECURITY**The Contracting-out (Transfer) Regulations (Northern Ireland) 1985***Made* 6th September 1985*Coming into operation* 23rd September 1985

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 34(2)(a), 40(1) to (1C), 46(1A) and (1B), 47(1)(b) and 71(4) of, and paragraphs 1, 6 and 9 of Schedule 2 and paragraph 9(3) of Schedule 3 to, the Social Security Pensions (Northern Ireland) Order 1975(a), and Articles 17(2) and 18(13) of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977(b) 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 Contracting-out (Transfer) Regulations (Northern Ireland) 1985 and shall come into operation on 23rd September 1985.

(2) In these regulations—

“the Pensions Order” means the Social Security Pensions (Northern Ireland) Order 1975;

“scheme” means an occupational pension scheme as defined in Article 2(2);

“overseas scheme” means a scheme which is administered wholly or primarily outside the United Kingdom;

“receiving scheme” means a scheme to which rights are, or liability is, transferred in accordance with regulation 2 or in accordance with arrangements approved under Article 46;

“transferring scheme” means a scheme from which rights are, or liability is, transferred to a receiving scheme;

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

(3) Any reference in these regulations to a numbered Article is to the Article of the Pensions Order bearing that number.

Transfers of accrued rights to and liability for payment of requisite benefits from contracted-out schemes

2.—(1) There may be transferred from a contracted-out scheme to another scheme—

(a) S.I. 1975/1503 (N.I. 15); Article 40(1) was substituted, and Articles 40(1A) to (1C) and 46(1A) and (1B) were inserted, by Article 13 of the Health and Social Security (Northern Ireland) Order 1984 (S.I. 1984/1158 (N.I. 8)). Article 47 was amended by Article 18(7) of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977 (S.I. 1977/610 (N.I. 11)) and by Article 4(8) of the Social Security (Northern Ireland) Order 1980 (S.I. 1980/870 (N.I. 8)). Paragraph 6 of Schedule 2 was amended by Article 4(11) of the Social Security (Northern Ireland) Order 1980

(b) S.I. 1977/610 (N.I. 11); Article 18(13) was amended by Article 15 of, and paragraph 9 of Schedule 3 to, the Social Security (Northern Ireland) Order 1980

- (a) the accrued rights of an earner (including, except where the context otherwise requires, an earner who is not in employment at the time of the transfer) to the requisite benefits under the former scheme; or
- (b) the liability for the payment of such benefits to or in respect of any person who has become entitled to them,

in the circumstances and subject to the conditions mentioned in paragraphs (2) to (5), and in those paragraphs "a transfer" means a transfer such as is described in this paragraph.

(2) A transfer may be made to another contracted-out scheme in the circumstances specified in either of the paragraphs in Part I of Schedule 1.

(3) A transfer may be made to a scheme which is not a contracted-out scheme in the circumstances described in either of the paragraphs in Part II of Schedule 1.

(4) A transfer to another contracted-out scheme, insofar as it is a transfer of the accrued rights to guaranteed minimum pensions of an earner who has not entered employment which is contracted-out by reference to the receiving scheme, may be made to that scheme only on the conditions specified in Part I of Schedule 2.

(5) A transfer to another contracted-out scheme, insofar as it is a transfer of the liability for the payment of a guaranteed minimum pension to or in respect of a person who has become entitled to it, may be made only on the condition specified in Part II of Schedule 2.

(6) References in Schedules 1 and 2 to "the earner" and "person concerned" are respectively references to the earner referred to in paragraph (1)(a) and the person referred to in paragraph (1)(b).

Modifications of Part IV of the Pensions Order on transfers from contracted-out and formerly contracted-out schemes

3. Where a transfer referred to in this regulation has taken place from a contracted-out scheme in accordance with regulation 2, or from a formerly contracted-out scheme in accordance with arrangements approved under Article 46, Part IV of the Pensions Order shall have effect subject to the following modifications—

- (a) where the transfer was of the accrued rights to guaranteed minimum pensions of an earner who had entered employment which was contracted-out by reference to the receiving scheme, the modifications of Article 37(1) and (8) specified in paragraphs 3 and 4 of Schedule 3;
- (b) in the case of any other transfer to a contracted-out scheme of the accrued rights of an earner to guaranteed minimum pensions, the modifications of Articles 28(2), 37(8), 40(3)(a), 47 and 49 specified in paragraphs 1 and 4 to 7 of Schedule 3;
- (c) in the case of any transfer to a contracted-out scheme of the liability for payment of a guaranteed minimum pension to or in respect of a person who had become entitled to it, the modifications of Articles 28(2), 40(3) and 49 specified in paragraphs 1, 5 and 7 of Schedule 3;
- (d) in the case of any transfer to an overseas scheme (not being a contracted-out scheme) of accrued rights to, or the liability for payment of, guaranteed minimum pensions, the modifications of Articles 31 and 47 specified in paragraphs 2 and 6 of Schedule 3.

(a) Article 40(3) was amended by Article 17 of, and Schedule 6 to, the Health and Social Security (Northern Ireland) Order 1984

Amendment of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1976

4.—(1) The Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1976(a) shall be amended in accordance with the following provisions.

(2) Regulation 5 is hereby revoked.

(3) In regulation 9(3)(a)(iii) immediately after “Article 40(1) of the Order” there shall be inserted “or regulations made thereunder”.

Amendment of the Contracted-out Employment (Notifications, Premium Payment and Miscellaneous Provisions) Regulations (Northern Ireland) 1976

5.—(1) The Contracted-out Employment (Notifications, Premium Payment and Miscellaneous Provisions) Regulations (Northern Ireland) 1976(b) shall be amended in accordance with the following provisions.

(2) In regulations 7(2) and (3), 8A(3)(d) and (4), 8B(b) and (e)(i) and 8C(a) immediately after the words “Article 40 of the Order” or “Article 40(1) of the Order” (as the case may be) at each place where they occur there shall be inserted “or regulations made thereunder”.

(3) Regulation 8B(c) is hereby revoked.

(4) In regulation 8C(c) for “Article 40(2) of the Order” there shall be substituted “Article 37(1) of the Order as modified by paragraph 3 of Schedule 3 to the Contracting-out (Transfer) Regulations (Northern Ireland) 1985”.

Amendment of the Contracted-out Employment (Miscellaneous Provisions) Regulations (Northern Ireland) 1977

6. In regulation 4A(1) of the Contracted-out Employment (Miscellaneous Provisions) Regulations (Northern Ireland) 1977(c) immediately after “Article 40(1) of the Pensions Order” there shall be inserted “or regulations made thereunder”.

Amendment of the Contracted-out Employment (Miscellaneous Provisions) Regulations (Northern Ireland) 1978

7. In sub-paragraph (iv) of the proviso to paragraph (1) of regulation 2 of the Contracted-out Employment (Miscellaneous Provisions) Regulations (Northern Ireland) 1978(d) immediately after “Article 40(1) of the Order” there shall be inserted “or regulations made thereunder”.

Amendment of the Contracting-out (Modification) Regulations (Northern Ireland) 1983

8. Regulation 2 of the Contracting-out (Modification) Regulations (Northern Ireland) 1983(e) shall be amended in accordance with the following provisions—

(a) in the heading, for “Articles 35 to 41, other than Article 37” there shall be substituted “Articles 35, 36, 38, 39 and 41”;

(b) in paragraph (2), for “Articles 35 to 41 (contracting-out requirements for earner’s and widow’s pensions), other than Article 37 (earner’s guaranteed minimum),” there shall be substituted “Articles 35, 36, 38, 39 and 41 (contracting-out requirements)”;

(a) S.R. 1976 No. 29; the relevant amending regulations are S.R. 1977 No. 23 and S.R. 1983 No. 55
 (b) S.R. 1976 No. 101; the relevant amending regulations are S.R. 1983 No. 55
 (c) S.R. 1977 No. 286; the relevant amending regulations are S.R. 1983 No. 55
 (d) S.R. 1978 No. 74; the relevant amending regulations are S.R. 1983 No. 55
 (e) S.R. 1983 No. 135

(c) in paragraph (2)(b), for “Articles 35 to 41, other than Article 37 (and the provisions modified by sub-paragraph (a)),” there shall be substituted “Article 35, 38 or 41”.

Amendment of the Occupational Pension Schemes (Preservation of Benefit) Regulations (Northern Ireland) 1984

9. In regulation 12(4)(b)(i) of the Occupational Pension Schemes (Preservation of Benefit) Regulations (Northern Ireland) 1984(a), for “regulation 5(b) of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1976” there shall be substituted “regulations made under Article 40 of the Pensions Order”.

Sealed with the Official Seal of the Department of Health and Social Services on
6th September 1985.

(L.S.)

R. J. Minnis

Assistant Secretary

SCHEDULE 1

Regulation 2

PART I

CIRCUMSTANCES IN WHICH A TRANSFER MAY BE MADE UNDER
REGULATION 2 TO ANOTHER CONTRACTED-OUT SCHEME

1. The earner or person concerned consents to the transfer, and, if the transfer is of the accrued rights of an earner, the earner has entered employment with an employer who is a contributor to the receiving scheme.

2. The rights allowed in the receiving scheme to the earner or person concerned are, in the opinion of the trustees of the transferring scheme, at least equal in value to the rights transferred and either—

- (a) the 2 schemes apply to employment with the same employer, or
- (b) the 2 schemes apply to employment with different employers, the earner or person concerned is one of a group of persons in respect of whom transfers are being made from the transferring scheme to the receiving scheme, and either—
 - (i) the transfer is a consequence of a financial transaction between the employers, or
 - (ii) the employers are companies or partnerships bearing a relationship to each other such as is described in any of sub-paragraphs (a) to (f) of regulation 2(2) of the Occupational Pension Schemes (Connected Employers) Regulations (Northern Ireland) 1982(a).

PART II

CIRCUMSTANCES IN WHICH A TRANSFER MAY BE MADE UNDER REGULATION 2
TO A SCHEME WHICH IS NOT A CONTRACTED-OUT SCHEME

3. The earner or person concerned consents to the transfer, and the transfer is only of accrued rights to, or the liability for the payment of, the whole or part of the excess of the requisite benefits of the earner or person concerned over his or his widow's guaranteed minimum pension.

4. The earner or person concerned consents to the transfer, the receiving scheme is an overseas scheme, the earner or person concerned has entered employment to which the receiving scheme applies, that employment is outside the United Kingdom, and the transfer is approved by the Occupational Pensions Board, whether or not subject to conditions.

SCHEDULE 2

Regulation 2

PART I

CONDITIONS SUBJECT TO WHICH A TRANSFER MAY BE MADE UNDER
REGULATION 2 OF THE ACCRUED RIGHTS TO GUARANTEED MINIMUM
PENSIONS OF AN EARNER WHO HAS NOT ENTERED EMPLOYMENT
WHICH IS CONTRACTED-OUT BY REFERENCE TO THE RECEIVING SCHEME

1. Subject to paragraphs 2 to 4, the receiving scheme must in respect of the rights transferred—

- (a) provide for pensions payable at the rates at which guaranteed minimum pensions would have been payable by the transferring scheme if the transfer had not taken place; and
- (b) contain the same provision for commencement and continuation of payment of those pensions, and (if any) for commutation, suspension and forfeiture as for guaranteed minimum pensions provided by the receiving scheme in accordance with Articles 35 and 38.

2. Subject to paragraphs 3 and 4, the arrangements for the transfer (in this Schedule called “the arrangements”) must contain provision that the earner’s earnings factors which are attributable to any particular period of service, or the weekly equivalent derived therefrom, will be increased at the same rate under the receiving scheme as that at which they or it would have fallen to be increased under the transferring scheme if—

- (a) his service in contracted-out employment by reference to the transferring scheme had been terminated; but
- (b) the transfer had not taken place.

3. If the weekly equivalent derived from the earnings factors which are attributable to any particular period of service were not, before the transfer, affected by a provision made, or a provision analogous to one made, under Article 37(7)(a), the arrangements may contain a provision analogous to one made under Article 37(7) in relation to it.

4. If the weekly equivalent derived from the earnings factors which are attributable to any particular period of service were, before the transfer, affected by a provision made, or a provision analogous to one made, under Article 37(7), the arrangements may contain a provision that those earnings factors will be increased under the receiving scheme at the same rate as that at which they would have fallen to be increased if—

- (a) there never had been a provision made, or a provision analogous to one made; or
- (b) in the case only of the first transfer of the rights in question, a different provision had been made,

under Article 37(7) relating to that weekly equivalent.

PART II

CONDITION SUBJECT TO WHICH A TRANSFER MAY BE MADE UNDER
REGULATION 2 OF THE LIABILITY FOR THE PAYMENT OF A
GUARANTEED MINIMUM PENSION TO OR IN RESPECT OF A
PERSON WHO HAS BECOME ENTITLED TO IT

5. The date of commencement of the pension the liability for which is transferred—

- (a) if payable to the person who has become entitled to it, must be the date from which liability for payment is assumed by the receiving scheme; and
- (b) if payable to his widow, must be the same as it would have been under the provisions of the transferring scheme, and

the receiving scheme must contain the same provision (if any) for suspension and forfeiture of that pension as for guaranteed minimum pensions provided by the receiving scheme in accordance with Article 35 or (as the case may be) 38.

(a) Article 37(7) was amended by Article 18(7) of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977 and by Article 16 of, and paragraph 19(b) of Schedule 3 to, the Social Security (Northern Ireland) Order 1979

SCHEDULE 3

Regulation 3

MODIFICATIONS OF PROVISIONS OF PART IV OF THE
PENSIONS ORDER, APPLYING IN CASES SPECIFIED IN REGULATION 3

1. Article 28(2) shall have effect as if—

- (a) after “Articles 35 and 38” there were inserted “or with arrangements approved by the Occupational Pensions Board under Article 46, or in compliance with the condition set out in paragraph 1 or 5 (as the case may be) of Schedule 2 to the Contracting-out (Transfer) Regulations (Northern Ireland) 1985”; and
- (b) at the end there were added “or, as the case may be, of those arrangements or that condition”.

2. Article 31 shall have effect as if the reference in paragraph (1)(b) of that Article to one or more guaranteed minimum pensions included the guaranteed minimum pensions which would have been payable if they had been preserved in and paid by the transferring scheme but (where the transfer is of the accrued rights of an earner who has not attained pensionable age) if the earnings factors of the earner concerned or the weekly equivalent derived therefrom nevertheless fell to be increased under provisions contained in the arrangements for the transfer, to the exclusion of any other provisions.

3. Article 37(1) shall have effect as if the reference to contracted-out employment by reference to the scheme included a reference to employment in any period of linked qualifying service which was contracted-out employment by reference to the transferring scheme.

4. Article 37(8) shall have effect as if there were added at the end “so however that separate provision may be made for members as regards their accrued rights transferred in accordance with regulations made under Article 40(1)”.

5. Article 40(3) shall have effect as if, in the definition of “accrued rights”, after “Articles 35 and 38” there were inserted “or with arrangements approved by the Occupational Pensions Board under Article 46, or in compliance with the condition set out in paragraph 1 or 5 (as the case may be) of Schedule 2 to the Contracting-out (Transfer) Regulations (Northern Ireland) 1985”.

6. Article 47 shall have effect as if—

- (a) the application of paragraphs (1) and (3) of that Article were extended to include cases where an earner’s accrued rights to guaranteed minimum pensions have been transferred in accordance with regulation 2 or in accordance with arrangements approved by the Occupational Pensions Board under Article 46 before the earner has attained pensionable age, whether or not the transferring scheme is ceasing to be contracted-out;
- (b) the references in paragraphs (1) and (2) of that Article to provisions included in the scheme by virtue of Article 37(7) were references to provisions, included in the arrangements for the transfer by virtue of paragraph 2 or 3 of Schedule 2, which are analogous to provisions made under Article 37(7);
- (c) the reference in paragraph (1) of that Article to such additional requirements as may be prescribed were a reference to the additional requirement set out in regulation 7(1) of the Contracted-out Employment (Notifications, Premium Payment and Miscellaneous Provisions) Regulations (Northern Ireland) 1976 with the substitution for “by the scheme” of “in the arrangements for the transfer”;
- (d) the reference in paragraph (1) of that Article to the earner’s employer were a reference to the trustees of the receiving scheme (where agreement to that effect has been reached between the trustees of the transferring scheme and the trustees of the receiving scheme) or to the trustees of the transferring scheme (in the absence of such an agreement); and
- (e) the requirement in sub-paragraphs (a) and (b) of paragraph (3) of that Article applied only to earnings factors which are not affected by a provision made under Article 37(7), or by a provision, made by virtue of paragraph 3 of Schedule 2, which is analogous to a provision made under Article 37(7).

7. Article 49 shall have effect as if there were omitted—

- (a) in paragraph (1) of that Article, “and the person’s entitlement is in respect of his or another person’s service in employment which was contracted-out by reference to that scheme”;
- (b) paragraph (2) of that Article.

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These regulations make provision, by regulation 2 and Schedule 1, for the circumstances in which, and, by regulation 2 and Schedule 2, for the conditions subject to which, an earner's accrued rights to the requisite benefits under a contracted-out occupational pension scheme, or the liability for the payment of such benefits to or in respect of any person who has become entitled to them, may be transferred from one scheme to another; and make provision, by regulation 3 and Schedule 3, for Part IV of the Social Security Pensions (Northern Ireland) Order 1975 to have effect subject to modifications where such a transfer has been made, or where arrangements have been approved by the Occupational Pensions Board, under Article 46 of that Order, for the transfer of accrued rights to, and liability for the payment of, guaranteed minimum pensions under an occupational pension scheme in the event of its ceasing to be contracted-out.

The provisions of the regulations mentioned above are made in exercise of the powers conferred by Articles 40(1) and 46(1A) of the Social Security Pensions (Northern Ireland) Order 1975 as substituted or inserted by Article 13 of the Health and Social Security (Northern Ireland) Order 1984, and by virtue of Articles 40(1C) and 46(1B) they apply to transfers whenever made and arrangements whenever approved.

Regulations 4 to 9 make consequential amendments of existing regulations.