STATUTORY RULES OF NORTHERN IRELAND

1997 No. 56

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

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),

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.