
STATUTORY RULES OF NORTHERN IRELAND

1997 No. 97

PENSIONS

The Occupational Pension Schemes (Modification of Schemes) Regulations (Northern Ireland) 1997

Made - - - - *24th February 1997*

Coming into operation *6th April 1997*

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 10(3), 67(4), (5) and (6), 68(5), 122(4)(a) and 166(1) to (3) of the Pensions (Northern Ireland) Order 1995(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 Occupational Pension Schemes (Modification of Schemes) Regulations (Northern Ireland) 1997 and shall come into operation on 6th April 1997.

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

(3) For the purposes of these Regulations and notwithstanding section 39(2) of the Interpretation Act (Northern Ireland) 1954(2), 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.

Extension of meaning of “member”

2. In a case where a member has died, the meaning of “member” (as defined in Article 121(1)) shall, for the purposes of Article 67 and these Regulations, be extended to include the widow or widower of the member or, in the case where there is no widow or widower, any other person who has an entitlement to a payment under the scheme in respect of the deceased member.

Certification requirement in respect of a power which would or might affect any entitlement or accrued right

3.—(1) For the purposes of Article 67(4)(a) (certification requirements in respect of any power conferred on any person by an occupational pension scheme to modify that scheme) the prescribed requirement is that an actuary shall certify to the trustees of the scheme that, in his opinion, the exercise of the power in the proposed manner to modify the scheme would not adversely affect any

(1) S.I. 1995/3213 (N.I. 22)
(2) 1954 c. 33 (N.I.)

member of the scheme (without his consent) in respect of his entitlement, or accrued rights, acquired before that power is exercised.

- (2) The reference to an actuary in paragraph (1) means—
- (a) in a case where the requirement of Article 47(1)(b) (appointment of professional advisers) applies, the individual appointed by the trustees or managers as actuary in accordance with the requirements of Article 47;
 - (b) in any other case—
 - (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.

Consent requirement in respect of a power which would or might affect any entitlement or accrued right

4. For the purposes of Article 67(4)(b) (consent requirements in respect of any power conferred on any person by an occupational pension scheme to modify that scheme) the prescribed requirement is that the consent of the member to the proposed exercise of the power to modify the scheme shall be in writing.

Circumstances where consent to the exercise of a power to modify shall be treated as given

5. Where a power to which Article 67 applies may not (apart from that Article) be exercised without the consent of any person, such consent may be treated as given where—

- (a) the trustees have sent written notification (“the first notification”) to the member’s last known address of the proposed exercise of the power to modify the scheme;
- (b) a further written notification (“the second notification”) was sent by the trustees at least 2 months after the date the first notification was sent; and
- (c) no response was received from the member in respect of the first notification or the second notification before the end of a period of one month from the date the second notification was sent.

Restriction on powers to modify schemes: exception

6. For the purposes of Article 67(5) (restriction on the power to modify schemes does not apply to the exercise of a power in a prescribed manner) the prescribed manner is, in the case of an occupational pension scheme which is not a trust scheme, the exercise of the power by the managers with the member’s consent.

Power of trustees to modify trust scheme by resolution: exception

7. For the purposes of Article 68(5) (power to modify schemes by resolution does not apply to trust schemes falling within a prescribed class or description) the prescribed class or description is any trust scheme—

- (a) in respect of which any Minister of the Crown or government department has given a guarantee or made arrangements for the purpose of securing that the assets of the scheme are sufficient to meet its liabilities; or
- (b) which is a public service pension scheme.

Civil penalties

8. Where any person fails to comply with the requirements in a case where regulation 3, 4 or 5 applies, the Authority may require that person to pay, within 28 days, a penalty which—

- (a) in the case of an individual, shall not exceed £5,000; and
- (b) in any other case, shall not exceed £50,000.

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

L.S.

24th February 1997.

John O'Neill
Assistant Secretary

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

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations make provision relating to the modification of occupational pension schemes under Articles 67 and 68 of the Pensions (Northern Ireland) Order 1995 (“the Order”) and related civil penalties under Article 10 of the Order.

Regulation 1 relates to citation, commencement and interpretation.

Regulation 2 extends the meaning of “member” for the purposes of Article 67 of the Order and these Regulations.

Regulation 3 makes provision in respect of the certification requirements which an actuary must provide before any person can exercise a power to modify the scheme.

Regulation 4 makes provision in respect of obtaining the consent of a member before any person can exercise a power to modify the scheme.

Regulation 5 makes provision in respect of the circumstances in which the consent of a member may be treated as given in respect of a power to modify the scheme.

Regulation 6 provides that the restriction on the power to modify does not apply to the exercise of the power in a prescribed manner.

Regulation 7 exempts certain schemes from the provisions which allow trustees of trust schemes to modify the scheme by resolution.

Regulation 8 provides for civil penalties to be imposed by the Occupational Pensions Regulatory Authority where the requirements of regulation 3, 4 or 5 have not been complied with.

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 10(3), 67 and 68 of the Order, for the purpose only of authorising the making of regulations, on 6th April 1996 and Article 166 of the Order, in so far as it was not already in operation, on 6th April 1996. The Pensions (1995 Order) (Commencement No. 5) Order (Northern Ireland) 1996 ([S.R. 1996 No. 534 \(C. 25\)](#)) provides for the coming into operation of Article 122(2) to (4) of the Order, in so far as it was not already in operation, on 19th November 1996.

As these Regulations make in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Social Security in relation to Great Britain, the requirement for consultation under Article 117(1) of the Order does not apply by virtue of paragraph (2)(e) of that Article.