

2005 No. 94

PENSIONS

**The Transfer of Employment (Pension Protection)
Regulations (Northern Ireland) 2005**

Made - - - - - *11th March 2005*

Coming into operation *6th April 2005*

The Department for Social Development, in exercise of the powers conferred on it by Article 235(2)(c)(ii) and (7) of the Pensions (Northern Ireland) Order 2005(a), and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Transfer of Employment (Pension Protection) Regulations (Northern Ireland) 2005 and shall come into operation on 6th April 2005.

(2) These Regulations apply in the case of a person (“the employee”) in relation to whom Article 234 (conditions for pension protection) applies, that is to say a person who, in the circumstances described in paragraph (1) of that Article, ceases to be employed by the transferor of an undertaking or part of an undertaking and becomes employed by the transferee.

(3) In these Regulations any reference to a numbered Article is a reference to the Article of the Pensions (Northern Ireland) Order 2005 bearing that number.

Requirements concerning a transferee’s pension scheme

2.—(1) In a case where these Regulations apply, and the transferee is the employer in relation to a pension scheme which is not a money purchase scheme, that scheme complies with Article 235(2)(c)(ii) (alternative standard for a scheme which is not a money purchase scheme) if it provides either –

- (a) for members to be entitled to benefits the value of which equals or exceeds 6 per cent. of pensionable pay for each year of employment together with the total amount of any contributions made by them and, where members are required to make contributions to the scheme, for them to contribute at a rate which does not exceed 6 per cent. of their pensionable pay, or
- (b) for the transferee to make relevant contributions to the scheme on behalf of each employee of his who is an active member of it.

(2) In this regulation “pensionable pay” means that part of the remuneration payable to a member of a scheme by reference to which the amount of contributions and benefits are determined under the rules of the scheme.

(a) S.I. 2005/255 (N.I. 1)

Requirements concerning a transferee's pension contributions

3.—(1) In a case where these Regulations apply, the transferee's pension contributions are relevant contributions for the purposes of Article 235(2)(b) in the case of a money purchase scheme, Article 235(3) to (5) in the case of a stakeholder pension scheme, and regulation 2(1)(b) in the case of a scheme which is not a money purchase scheme, if –

- (a) the contributions are made in respect of each period for which the employee is paid remuneration, provided that the employee also contributes to the scheme in respect of that period, and
 - (b) the amount contributed in respect of each such period is –
 - (i) in a case where the employee's contribution in respect of that period is less than 6 per cent. of the remuneration paid to him, an amount at least equal to the amount of the employee's contribution;
 - (ii) in a case where the employee's contribution in respect of that period equals or exceeds 6 per cent. of the remuneration paid to him, an amount at least equal to 6 per cent. of that remuneration.
- (2) In calculating the amount of an employee's remuneration for the purposes of paragraph (1) –
- (a) only payments made in respect of basic pay shall be taken into account, and bonus, commission, overtime and similar payments shall be disregarded, and
 - (b) no account shall be taken of any deductions which are made in respect of tax, national insurance or pension contributions.

(3) In calculating the amount of a transferee's pension contributions for the purposes of paragraph (1) in the case of a scheme which is contracted-out by virtue of section 5 of the Pension Schemes Act(a), minimum payments within the meaning of that Act shall be disregarded.

Sealed with the Official Seal of the Department for Social Development on 11th March 2005.

(L.S.)

John O'Neill

A senior officer of the Department for Social Development

(a) Section 5 was amended by Article 133(3) and (4) of, and paragraphs 14 and 17 of Schedule 3 to, the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)) and paragraph 38 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) and is amended by Article 260 of the Pensions (Northern Ireland) Order 2005; *see also* regulation 27 of S.R. 1996 No. 493

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations concern the obligations of an employer under Article 235 of the Pensions (Northern Ireland) Order 2005 (“the Order”) towards a person in relation to whom Article 234 of the Order applies.

Article 234 of the Order applies to a person (“the employee”) who becomes the employee of a new employer (“the transferee”) by virtue of a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 1981 apply, and who had actual or contingent rights in relation to an occupational pension scheme immediately before the transfer.

Under Article 235 of the Order, the transferee is required to secure that the employee is, or is eligible to become, an active member of an occupational pension scheme (as defined in section 1 of the Pension Schemes (Northern Ireland) Act 1993 (“the Pension Schemes Act”) as substituted by Article 216 of the Order) in relation to which the transferee is the employer and, if it is a money purchase scheme, to make “relevant contributions” to it. Alternatively, the transferee must make such contributions to a stakeholder pension scheme of which the employee is a member (or offer to contribute to a stakeholder scheme of which he is eligible to be a member).

Article 235(2)(c) of the Order provides that a scheme in relation to which the transferee is the employer, if it is not a money purchase scheme, must satisfy a standard provided for in the Pension Schemes Act or, if regulations so provide, comply with prescribed requirements. For the purposes of this provision, regulation 2 requires that either the value of the benefits provided for by the transferee’s scheme must be at least 6 per cent. of pensionable pay for each year of employment in addition to any contributions made by him or that the scheme must provide for the employer to make relevant contributions on behalf of his employees.

Article 235(7) of the Order provides for “relevant contributions” to be defined in regulations. Regulation 3 provides that such contributions must be made in respect of each period for which the employee contributes to the pension scheme, and that the amount contributed must equal the employee’s contribution subject to an upper limit of 6 per cent. of basic pay.

Article 235 of the Order, under which these Regulations are made, was brought into operation, for the purpose only of authorising the making of regulations, on 25th February 2005 and for all other purposes on 6th April 2005, by virtue of the Pensions (2005 Order) (Commencement No. 1 and Consequential and Transitional Provisions) Order (Northern Ireland) 2005 (S.R. 2005 No. 48 (C. 5)).

As these Regulations are made before the end of the period of six months beginning with the coming into operation of the provisions of the Order by virtue of which they are made, the requirement to consult under Article 289(1) of the Order does not apply by virtue of paragraph (2)(c) of that Article.

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Published and printed in the UK by The
Stationery Office Limited
under the authority and
superintendence of Carol
Tullo, Controller of
Her Majesty's Stationery
Office being the Government
Printer for Northern Ireland and
the Officer appointed to print the
Acts of the Northern Ireland Assembly

Dd. N1978. C2. 3/05. Gp. 130. 14567.

£3.00

ISBN 0-337-95873-4



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