

2009 No. 149

PENSIONS

**The Occupational Pension Schemes (Contracting-out)
(Amendment) Regulations (Northern Ireland) 2009**

Made - - - - - *2nd April 2009*

Coming into operation - - - - - *6th April 2009*

Approved by resolution of the Assembly on 16th June 2009

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 20B(5), 20C, 177(2) to (4) and 178(1) of the Pension Schemes (Northern Ireland) Act 1993(a) and now vested in it(b).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Contracting-out) (Amendment) Regulations (Northern Ireland) 2009 and shall come into operation on 6th April 2009.

(2) The Interpretation Act (Northern Ireland) 1954(c) shall apply to these Regulations as it applies to an Act of the Assembly.

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

2. After regulation 69 of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996(d) (miscellaneous provisions affecting section 47 of the Act) insert—

“Conversion of guaranteed minimum pensions into other benefits: actuarial equivalence

69A.—(1) For the purpose of Condition 1 of section 20B of the Act (the conversion conditions), actuarial equivalence is to be determined in accordance with this regulation.

(2) The trustees are responsible for determining actuarial equivalence.

(3) In determining actuarial equivalence, the trustees must—

(a) obtain advice from the actuary about what assumptions are appropriate at the conversion date;

(b) consider that advice;

(a) 1993 c. 49; sections 20B and 20C are inserted by section 12(3) of the Pensions Act (Northern Ireland) 2008 (c. 1 (N.I.)); section 178(1) was amended by Parts III and IV of Schedule 5 to the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)); *see also* section 181(2) as amended by section 12(12) of the Pensions Act (Northern Ireland) 2008

(b) *See* Article 8(b) of S.R. 1999 No. 481

(c) 1954 c. 33 (N.I.)

(d) S.R. 1996 No. 493; relevant amending Regulations are S.R. 2005 No. 433

- (c) decide what assumptions are appropriate at the conversion date and, if the trustees later think it is necessary, change that decision, and
 - (d) arrange for the actuary to calculate the actuarial values of the post-conversion benefits and the pre-conversion benefits in accordance with paragraph (4).
- (4) In calculating the actuarial values mentioned in paragraph (3)(d), the actuary must—
- (a) use the assumptions chosen by the trustees under paragraph (3)(c), and
 - (b) ignore the value of any—
 - (i) benefits which have been commuted;
 - (ii) amounts which have been paid in respect of any benefits;
 - (iii) amounts in respect of any benefits which, before the conversion date, became due to be paid, and
 - (iv) discretionary benefits which might be awarded in the future.
- (5) When the actuarial values mentioned in paragraph (3)(d) have been calculated, the actuary must send the trustees a certificate if the post-conversion benefits are actuarially at least equivalent to the pre-conversion benefits.
- (6) The certificate must—
- (a) state that—
 - (i) the calculations have been completed, and
 - (ii) the post-conversion benefits are actuarially at least equivalent to the pre-conversion benefits, and
 - (b) be sent to the trustees no later than 3 months after the calculations have been completed.

Conversion of guaranteed minimum pensions into other benefits: survivors' benefits

69B.—(1) For the purposes of Condition 4 of section 20B of the Act (the conversion conditions), the circumstances in which, and periods during which, the converted scheme must provide survivors' benefits are prescribed in this regulation.

- (2) The circumstances are that—
- (a) an earner's pre-conversion benefits include a guaranteed minimum pension, and
 - (b) the scheme before conversion provided that—
 - (i) if such an earner dies leaving a widow, widower or surviving civil partner (whether before or after attaining pensionable age), the widow, widower or surviving civil partner will be entitled to a guaranteed minimum pension, and
 - (ii) such a widower or surviving civil partner's guaranteed minimum pension will be payable in the circumstances set out in regulation 57(a) to (c)(a).
- (3) The periods are—
- (a) for widows, widowers and surviving civil partners, any period mentioned in section 13(4A)(a) and (b)(b) of the Act (minimum pensions for survivors);
 - (b) for widows, widowers and surviving civil partners whose entitlement by virtue of the earner's contributions to a widowed parent's allowance or bereavement allowance has come to an end at a time after the widow, widower or surviving civil partner attained the age of 45, so much of the period beginning with the time when that entitlement came to an end as neither—

(a) Regulation 57 was amended by paragraph 18 of Schedule 2 to S.R. 2005 No. 433

(b) Section 13(4A) was inserted by paragraph 1(1) of Schedule 5 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)) and amended by paragraph 5(d) of Schedule 1 to S.R. 2005 No. 433

- (i) comprises a period during which the widow, widower or surviving civil partner and—
 - (aa) a person of the opposite sex are living together as husband and wife, or
 - (bb) a person of the same sex are living together as if they were civil partners, nor
 - (ii) falls after the time of any—
 - (aa) marriage, or
 - (bb) formation of a civil partnership,
by the widow, widower or surviving civil partner which takes place after the earner's death;
 - (c) for widows, any period for which a widowed mother's allowance or widow's pension is payable to the widow by virtue of the earner's contributions, and
 - (d) for widowers and surviving civil partners, any period which is, by virtue of regulation 58(a), a prescribed period for the purposes of section 13(6)(b) of the Act.
- (4) Paragraph (3)(b)(i)(bb) and (ii)(bb) does not apply where the earner died before 5th December 2005.”.

Sealed with the Official Seal of the Department for Social Development on 2nd April 2009

(L.S.)

John O'Neill
A senior officer of the Department for Social Development

(a) Regulation 58 was amended by paragraph 19 of Schedule 2 to S.R. 2005 No. 433
(b) Section 13(6) was amended by paragraph 1(3) of Schedule 5 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and paragraph 5(f) of Schedule 1 to S.R. 2005 No. 433

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996 (“the 1996 Regulations”).

Guaranteed minimum pensions (“GMPs”) can be converted into other pension benefits under new provisions introduced by section 12 of the Pensions Act (Northern Ireland) 2008 (“the 2008 Act”). These Regulations relate to two conditions in connection with that conversion.

Regulation 2 inserts regulation 69A into the 1996 Regulations to make provision for how trustees are to determine whether the value of a pension scheme member’s benefits after the conversion of their GMPs are actuarially at least equivalent to their value before the conversion. The trustee must take advice from the actuary and decide the assumptions to be used. The assumptions should be appropriate at the date on which the conversion takes effect. The actuary must use the assumptions and ignore certain amounts to calculate the actuarial values of the benefits. If the benefits are actuarially at least equivalent, the actuary must send the trustees a certificate.

Regulation 2 also inserts regulation 69B into the 1996 Regulations to prescribe the circumstances in which, and the periods during which, survivors’ benefits must be provided after conversion. The circumstances and periods are the same as the requirements for survivors’ benefits in existing legislation relating to GMPs.

The Pensions (2008 Act) (Commencement No. 2) Order (Northern Ireland) 2009 (S.R. 2009 No. 75 (C. 4)) provides for the coming into operation of section 12 of the 2008 Act, which inserts sections 20B and 20C into the Pension Schemes (Northern Ireland) Act 1993, two of the enabling provisions under which these Regulations are made, for the purpose only of authorising the making of regulations, on 3rd March 2009 and for all other purposes on 6th April 2009.

An assessment of the impact of the provisions in these Regulations is included in the Regulatory Impact Assessment which accompanied the 2008 Act, copies of which have been laid in the Business Office and the Library of the Northern Ireland Assembly. Copies of that assessment are available from the Department for Social Development, Social Security Policy and Legislation Division, Level 1, James House, 2-4 Cromac Avenue, Gasworks Business Park, Ormeau Road, Belfast BT7 2JA or from the website: <http://www.dsdni.gov.uk/index/ssa/ssani-publications/ssani-pensions-publications.htm>.

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£4.00

Dd. N4069. C1. 6/09. Gp. 130. 14567.