

2015 No. 155

PENSIONS

**The Occupational Pension Schemes (Consequential and
Miscellaneous Amendments) Regulations (Northern Ireland)
2015**

Made - - - - *12th March 2015*

Coming into operation - *6th April 2015*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 8C(1)(c), 67(6), 177(2) to (4) and 178(1) of the Pension Schemes (Northern Ireland) Act 1993(a) and Articles 67(3)(b), 68(2)(e), 89(5)(c)(iii) and 166(2) and (3) of the Pensions (Northern Ireland) Order 1995(b), and now vested in it(c).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Consequential and Miscellaneous Amendments) Regulations (Northern Ireland) 2015 and shall come into operation on 6th April 2015.

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

Amendment of the Occupational Pension Schemes (Preservation of Benefit) Regulations

2. In regulation 5(a) of the Occupational Pension Schemes (Preservation of Benefit) Regulations (Northern Ireland) 1991(e) (short service benefit in lump sum form) after “(a), (b),” insert “(ba),”.

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

3. In regulation 20(1)(a) of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996(f) (payment of a lump sum instead of a pension payable under a relevant scheme) after head (ii) insert—

“(iia) an uncrystallised funds pension lump sum for the purposes of paragraph 4A of that Part;”.

(a) 1993 c. 49. Section 8C was inserted by Article 133(5) of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)). Section 178(1) was amended by Schedule 5 to that Order
(b) S.I. 1995/3213 (N.I. 22). Article 67 was substituted by Article 239 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1))
(c) See Article 8(b) of S.R. 1999 No. 481
(d) 1954 c. 33 (N.I.)
(e) S.R. 1991 No. 37. Regulation 5 was substituted by regulation 2 of S.R. 2009 No. 365
(f) S.R. 1996 No. 493. Regulation 20(1) was amended by regulation 4(2) of S.R. 2009 No. 365

Amendment of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations

4. In regulation 2(1B)(b) of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations (Northern Ireland) 1997(a) (commutation of a pension under an occupational pension scheme) after “paragraph (a)” insert “, (ba)”.

Amendment of the Occupational Pension Schemes (Modification of Schemes) Regulations

5.—(1) The Occupational Pension Schemes (Modification of Schemes) Regulations (Northern Ireland) 2006(b) are amended in accordance with paragraphs (2) to (4).

(2) In regulation 1(2) (interpretation) after the definition of “the 2006 Regulations” insert—
““the 2015 Act” means the Pension Schemes Act 2015;”.

(3) In regulation 3(c) (non-application of the subsisting rights provisions) after paragraph (g) insert—

“(ga) which provides for the option specified in regulation 8B(3)(b) to be made available under the scheme to any person referred to in sub-paragraph (a) or (b) of paragraph (2) of that regulation;”.

(4) After regulation 8A(d) (modification of schemes: reduction in the rate of pension) insert—

“Modification of schemes: drawdown pensions, uncrystallised funds pension lump sums and death benefits

8B.—(1) Subject to paragraph (5), the trustees of a trust scheme may by resolution modify the scheme for either or both of the following purposes—

- (a) providing for the nomination, in relation to a member of the scheme, of a nominee or successor of the member, as defined by paragraphs 27A and 27F of Schedule 28 to the 2004 Act (supplementary provision about authorised pensions – pension death benefit rules)(e);
- (b) providing for the payment of a drawdown pension fund lump sum death benefit or a flexi-access drawdown fund lump sum death benefit, as defined by paragraphs 17 and 17A of Schedule 29 to the 2004 Act (supplementary provision about authorised lump sums – lump sum death benefit rule)(f).

(2) Subject to paragraph (5), the trustees of a trust scheme may by resolution modify the scheme for the purpose of offering one or more of the options specified in paragraph (3) to any person who is—

- (a) a member who has attained normal minimum pension age (as defined by section 279(1) of the 2004 Act) or who meets the ill-health condition specified in paragraph 1 of Schedule 28 to the 2004 Act, or
- (b) a survivor of a member.

(3) The options referred to in paragraph (2) are—

- (a) designation of sums or assets held for the purpose of providing money purchase benefits as available for the payment of—

(a) S.R. 1997 No. 153. Regulation 2(1B) was inserted by Article 33(3)(b) of S.I. 2006/744

(b) S.R. 2006 No. 149; relevant amending provisions are S.R. 2012 No. 124 and S.R. 2013 Nos. 72 and 213

(c) Regulation 3 was amended by Article 23(3) of S.R. 2012 No. 124 and regulation 9 of S.R. 2013 No. 72

(d) Regulation 8A was inserted by regulation 3 of S.R. 2013 No. 213

(e) Paragraphs 27A and 27F of Schedule 28 were inserted by paragraph 3(1) of Schedule 2 to the Taxation of Pensions Act 2014 (c.30)

(f) Paragraph 17 of Schedule 29 was amended by paragraph 37 of Schedule 16 to the Finance Act 2011 (c.11) and paragraph 23 of Schedule 1 to the Taxation of Pensions Act 2014. Paragraph 17A of Schedule 29 was inserted by paragraph 24 of Schedule 1 to the Taxation of Pensions Act 2014

- (i) drawdown pension (as defined by paragraph 4 of Schedule 28 to the 2004 Act^(a));
 - (ii) dependants' drawdown pension (as defined by paragraph 18 of Schedule 28 to the 2004 Act^(b));
 - (iii) nominees' drawdown pension (as defined by paragraph 27B of Schedule 28 to the 2004 Act^(c)), or
 - (iv) successors' drawdown pension (as defined by paragraph 27G of Schedule 28 to the 2004 Act^(d));
- (b) conversion of flexible benefits which are not money purchase benefits into money purchase benefits for the purpose of the exercise of an option specified in sub-paragraph (a);
- (c) in the case of a member, payment of an uncrystallised funds pension lump sum (as defined by paragraph 4A of Schedule 29 to the 2004 Act^(e)).
- (4) A modification under paragraph (2) may include conditions on the exercise of an option specified in paragraph (3), including in particular—
- (a) provision for payment of a fee by the member or survivor on exercising an option specified in sub-paragraph (a) or (c) of paragraph (3);
 - (b) where a member—
 - (i) has not attained normal pension age (as defined by section 76(1) of the 2015 Act) under the scheme, and
 - (ii) exercises an option specified in sub-paragraph (b) or (c) of paragraph (3) in relation to subsisting rights to flexible benefits which are not money purchase benefits,
 provision for a reduction in the value or amount of the portion of the member's subsisting rights in respect of which the option is exercised.
- (5) No modification under this regulation may be made unless—
- (a) the employer in relation to the scheme consents, or
 - (b) in the case of a scheme where there is more than one employer—
 - (i) a person nominated by the employers, or otherwise appointed in accordance with the scheme rules, to act as the employers' representative (the "employer representative") consents, or
 - (ii) where there is no such employer representative, all of the employers in relation to the scheme consent other than any employer who has waived his right to give such consent.
- (6) In this regulation "flexible benefit" has the meaning given by section 74 of the 2015 Act.

Modification of schemes: independent advice requirement in respect of transfers

8C.—(1) The trustees of a trust scheme may by resolution modify the scheme for the purpose of providing that, where the circumstances specified in paragraph (2) apply, the trustees are not required to make the proposed transfer payment referred to in paragraph (2)(a).

(2) The circumstances specified for the purpose of paragraph (1) are—

(a) Paragraph 4 of Schedule 28 was amended by paragraph 3 of Schedule 16 to the Finance Act 2011
 (b) Paragraph 18 of Schedule 28 was amended by paragraph 13 of Schedule 16 to the Finance Act 2011
 (c) Paragraph 27B of Schedule 28 was inserted by paragraph 3(1) of Schedule 2 to the Taxation of Pensions Act 2014
 (d) Paragraph 27G of Schedule 28 was inserted by paragraph 3(1) of Schedule 2 to the Taxation of Pensions Act 2014
 (e) Paragraph 4A of Schedule 29 was inserted by paragraph 57 of Schedule 1 to the Taxation of Pensions Act 2014

- (a) the rules of the scheme would, in the absence of any modification made under this regulation, require the trustees to make a transfer payment in respect of a member's or survivor's subsisting rights to benefits ("the proposed transfer payment");
- (b) section 51 of the 2015 Act (independent advice in respect of conversions and transfers: Northern Ireland) requires the trustees to check that the member or survivor has received appropriate independent advice (as defined by subsection (8) of that section) before making the proposed transfer payment, and
- (c) the trustees—
 - (i) are unable to carry out the check by reason of factors outside their control, or
 - (ii) have carried out the check but the check did not confirm that the member or survivor had received appropriate independent advice."

Sealed with the Official Seal of the Department for Social Development on 12th March 2015

(L.S.)

Anne MCleary
A senior officer of the Department for Social Development

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to secondary legislation on occupational pension schemes in consequence of the Taxation of Pensions Act 2014 (“the 2014 Act”) and the Pension Schemes Act 2015 (“the 2015 Act”). The 2014 Act introduced new types of authorised payments by registered pension schemes, and amended conditions applying to some existing categories of authorised payments. Part 4 of the 2015 Act makes provisions consequential on, or connected with, the changes introduced by the 2014 Act.

Regulation 2 amends the Occupational Pension Schemes (Preservation of Benefit) Regulations (Northern Ireland) 1991. The amendment is consequential on the changes made by the 2014 Act. It ensures that an occupational pension scheme can provide a short service benefit (which is a benefit paid for a member whose pensionable service terminates before normal pension age) using one of the new types of authorised payment (an uncrystallised funds pension lump sum).

Regulation 3 amends regulation 20(1)(a) of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996 consequential on the changes made by the 2014 Act. The amendment ensures that an occupational pension scheme which is, or has been, contracted-out since April 1997 can pay an uncrystallised funds pension lump sum in respect of pension rights accrued since April 1997 when the scheme was contracted-out.

Regulation 4 amends the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations (Northern Ireland) 1997 in consequence of the changes made by the 2014 Act. The amendment ensures that the prohibition on commutation of a pension under an occupational pension scheme does not apply to payment of an uncrystallised funds pension lump sum.

Regulation 5 amends the Occupational Pension Schemes (Modification of Schemes) Regulations (Northern Ireland) 2006 (“the Modification Regulations”). The amendment made by regulation 5(3) provides that statutory restrictions on the modification of subsisting rights under occupational pension schemes do not apply to a modification which enables members or their survivors to access new types of authorised payments by converting benefits into money purchase benefits. Regulation 5(4) inserts regulation 8B into the Modification Regulations, providing a power for trustees to modify their scheme for the purpose of offering the new types of authorised payments. Consent of the scheme’s employer or employers is required for such a modification, and conditions may be placed in relation to accessing the new types of authorised payments.

Regulation 5(4) also inserts regulation 8C, providing a power for trustees to modify their scheme to ensure that they are not required to make a transfer payment under the scheme rules if they are unable to carry out a check required by section 51 of the 2015 Act, or the check does not confirm that the person seeking the transfer has received appropriate independent advice.

As these Regulations, in so far as they are made under Part 2 of the Pensions (Northern Ireland) Order 1995, make in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Work and Pensions in relation to Great Britain, the requirement for consultation does not apply by virtue of Article 117(2)(e) of that Order.

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