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STATUTORY RULES OF NORTHERN IRELAND

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**2016 No. 107**

**The Occupational Pension Schemes  
(Schemes that were Contracted-out)  
Regulations (Northern Ireland) 2016**

**PART 3**

**ADDITIONAL REQUIREMENTS IN RELATION TO RIGHTS ATTRIBUTABLE  
TO CONTRACTED-OUT EMPLOYMENT ON AND AFTER 6TH APRIL 1997**

**Alteration of scheme rules**

- 8.**—(1) The rules of a scheme may be altered in relation to section 5(2B) rights only if—
- (a) following the alteration, the scheme provides benefits for the earner and for the earner’s widow, widower or surviving civil partner, in respect of the period of pensionable service to which the alteration relates, that are at least equal to the benefits that would have been provided by a reference scheme (within the meaning of section 8B(2)(1) of the 1993 Act as it had effect immediately before the second abolition date);
  - (b) the alteration is one to which the subsisting rights provisions (within the meaning of Article 67(4)(2) of the 1995 Order) do not apply, by virtue of Article 67 of the 1995 Order;
  - (c) the alteration is one that is not a protected modification or a detrimental modification (within the meaning of Article 67A(3) of the 1995 Order) and the requirement in paragraph (2) is met, or
  - (d) the alteration is a detrimental modification (within the meaning of Article 67A of the 1995 Order) and—
    - (i) the actuarial equivalence requirements provided for in Articles 67C and 67D(4) of the 1995 Order are met in relation to the proposed modification of those rights, and
    - (ii) the requirement in paragraph (2) is met.

(2) Subject to paragraph (3), the requirement is that the altered scheme is to provide for a pension to be paid to the earner’s widow, widower or surviving civil partner (referred to in this regulation as the “relevant survivor’s section 5(2B) pension”) that is at least as generous, either as regards the amount of the pension or as regards the circumstances in which it shall be paid, as it would have been before the alteration.

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- (1) Section 8B was inserted by Article 133(5) of the Pensions (Northern Ireland) Order 1995 and is repealed by paragraph 11 of Schedule 13 to the Pensions Act (Northern Ireland) 2015, but saved for certain purposes, *see* S.R. 2016 No. 106
- (2) Article 67 was substituted by Article 239 of the Pensions (Northern Ireland) Order 2005
- (3) Article 67A was inserted by Article 239 of the Pensions (Northern Ireland) Order 2005 and amended by section 66(2) of, and paragraph 75 of Schedule 4 to, the Pension Schemes Act 2015 (c. 8)
- (4) Articles 67C and 67D were inserted by Article 239 of the Pensions (Northern Ireland) Order 2005. Article 67D was amended by paragraph 5 of Schedule 5 to the Pensions Act (Northern Ireland) 2008 (c. 1 (N.I.))

(3) In relation to an earner who is in pensionable service under the scheme immediately before the alteration takes effect, the requirement in paragraph (2) is to be deemed to be satisfied if the relevant survivor's section 5(2B) pension that the scheme would provide in respect of the earner if the earner left pensionable service immediately after the alteration is at least as generous as the relevant survivor's section 5(2B) pension that the scheme would have provided in respect of the earner had the earner left service immediately before the alteration.

#### Commencement Information

**II** Reg. 8 in operation at 6.4.2016, see **reg. 1(a)**

#### Payment of a lump sum instead of a pension

**9.—(1)** A relevant scheme<sup>(5)</sup> may not provide for the payment of a lump sum instead of a pension that is attributable to section 5(2B) rights, unless the payment to be made is authorised under section 164<sup>(6)</sup> of the 2004 Act (authorised member payments) and the payment is—

- (a) permitted by the lump sum rule in section 166<sup>(7)</sup> of the 2004 Act and qualifies as—
  - (i) a pension commencement lump sum for the purposes of paragraph 1<sup>(8)</sup> of Schedule 29 to the 2004 Act;
  - (ii) a serious ill-health lump sum for the purposes of paragraph 4<sup>(9)</sup> of that Schedule;
  - (iii) an uncrystallised funds pension lump sum for the purposes of paragraph 4A<sup>(10)</sup> of that Schedule;
  - (iv) a trivial commutation lump sum for the purposes of paragraph 7<sup>(11)</sup> of that Schedule, or
  - (v) a winding-up lump sum for the purposes of paragraph 10<sup>(12)</sup> of that Schedule;
- (b) permitted by the lump sum death benefit rule in section 168<sup>(13)</sup> of the 2004 Act and qualifies as a trivial commutation lump sum death benefit for the purposes of paragraph 20<sup>(14)</sup> of Schedule 29 to the 2004 Act, or
- (c) made by a registered pension scheme (within the meaning of section 150(2) of the 2004 Act), is a payment that is described in Part 2 of the Registered Pension Schemes

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- (5) See section 33A(2) of the Pension Schemes (Northern Ireland) Act 1993 as inserted by paragraph 25 of Schedule 13 to the Pensions Act (Northern Ireland) 2015
  - (6) Section 164 was amended by paragraph 6 of Schedule 23 to the Finance Act 2006 (c. 25), paragraph 1(2) of Schedule 29 to the Finance Act 2008 (c. 9), section 75(2)(a) of the Finance Act 2009 (c. 10), paragraph 63 of Schedule 16 to the Finance Act 2011 (c. 11) and paragraph 85 of Schedule 1 to the Taxation of Pensions Act 2014 (c. 30)
  - (7) Section 166 was amended by paragraph 9 of Schedule 20 to the Finance Act 2007 (c. 11), paragraphs 2(2) and 5(1) of Schedule 5 to the Finance Act 2014, paragraphs 54 and 55 of Schedule 1 to the Taxation of Pensions Act 2014 and Article 25(3) of S.I. 2006/572
  - (8) Paragraph 1 was amended by paragraph 34 of Schedule 10 to the Finance Act 2005 (c. 7), paragraph 21 of Schedule 23 to the Finance Act 2006, paragraph 11(2) and (3) of Schedule 20 to the Finance Act 2007, paragraphs 24 and 79(2) of Schedule 16 to the Finance Act 2011 and section 51(3) of the Finance Act 2013 (c. 29) and is modified by Articles 18, 23C (as inserted by Article 3 of S.I. 2009/1172) and 28(3) of S.I. 2006/572
  - (9) Paragraph 4 was amended by paragraph 28 of Schedule 16 to the Finance Act 2011
  - (10) Paragraph 4A was inserted by paragraph 57 of Schedule 1 to the Taxation of Pensions Act 2014
  - (11) Paragraph 7 was amended by paragraph 29 of Schedule 16 and paragraph 4 of Schedule 18 to the Finance Act 2011, paragraph 71 of Schedule 1 to the Taxation of Pensions Act 2014 and section 42(1) of the Finance Act 2014
  - (12) Paragraph 10 was amended by paragraph 12 of Schedule 20 to the Finance Act 2007 and paragraph 30 of Schedule 16 and paragraph 5 of Schedule 18 to the Finance Act 2011
  - (13) Section 168 was amended by paragraph 5 of Schedule 19 to the Finance Act 2007, paragraph 65 of Schedule 16 to the Finance Act 2011 and paragraph 7 of Schedule 1 to the Taxation of Pensions Act 2014
  - (14) Paragraph 20 is amended by paragraph 6 of Schedule 18 to the Finance Act 2011 and paragraph 74 of Schedule 1 to the Taxation of Pensions Act 2014

(Authorised Payments) Regulations 2009(15) (commutation payments), and is made to or in respect of a member.

- (2) Where, under the scheme—
- (a) an earner qualifies for a lump sum payment on the ground of serious ill-health, and
  - (b) the earner’s widow, widower or surviving civil partner qualifies for a pension (“a survivor’s pension”),

the scheme is to continue to provide for a survivor’s pension notwithstanding the payment of a lump sum to the earner.

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**Commencement Information**

**I2** [Reg. 9](#) in operation at 6.4.2016, see [reg. 1\(a\)](#)

**Forfeiture of accrued rights**

**10.** Article 90(1)(16) of the 1995 Order (no forfeiture of entitlement under an occupational pension scheme) does not prevent forfeiture of section 5(2B) rights under a relevant scheme if—

- (a) the person entitled to payments giving effect to those rights (“the pensioner”) is, in the opinion of the trustees of the scheme, unable to act by reason of mental disorder, and
- (b) there is provision in the scheme that requires that, in those circumstances, sums equivalent to those payments—
  - (i) must be paid or applied for the maintenance of the pensioner, except in so far as they are not, in the opinion of the trustees, required for that purpose;
  - (ii) may, in so far as they are not, in the opinion of the trustees, required for the maintenance of the pensioner, be paid or applied for the maintenance of any dependants of the pensioner, and
  - (iii) must, in so far as they are not, in the opinion of the trustees, required for the maintenance of the pensioner or any dependant of the pensioner, be held by the trustees for the pensioner until the pensioner is again able to act, or if the pensioner dies before that happens, for the pensioner’s estate.

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**Commencement Information**

**I3** [Reg. 10](#) in operation at 6.4.2016, see [reg. 1\(a\)](#)

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(15) [S.I. 2009/1171](#) as amended by regulation 8 of [S.I. 2011/1751](#) and regulation 2 of [S.I. 2012/522](#)  
(16) Article 90(1) was amended by paragraph 47(2) of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999

**Changes to legislation:**

There are currently no known outstanding effects for the The Occupational Pension Schemes (Schemes that were Contracted-out) Regulations (Northern Ireland) 2016, PART 3.