

2018 No. 51

PENSIONS

The Contracting-out (Transfer and Transfer Payment) (Amendment) Regulations (Northern Ireland) 2018

Made - - - - - *14th March 2018*

Coming into operation - - - - - *6th April 2018*

The Department for Communities makes the following Regulations in exercise of the powers conferred by sections 8C, 16(1)(a) and (3), 33A and 177(2) to (4) 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 Contracting-out (Transfer and Transfer Payment) (Amendment) Regulations (Northern Ireland) 2018 and shall come into operation on 6th April 2018.

(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 Contracting-out (Transfer and Transfer Payment) Regulations

2.—(1) The Contracting-out (Transfer and Transfer Payment) Regulations (Northern Ireland) 1996(d) are amended in accordance with paragraphs (2) to (8).

(2) In regulation 1(2) (interpretation)—

- (a) in the definition of “connected employer transfer” and “connected employer transfer payment”(e)—
 - (i) for “from a scheme that was a salary related contracted-out scheme to a scheme that was a salary related contracted-out scheme”, in both places where it occurs, substitute “from one salary related scheme to another”;
 - (ii) in paragraph (b)(ii) for “each of the employers is one” substitute “the employers are members”;

(a) 1993 c. 49; sections 8A to 8D were inserted by Article 133(5) of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)) and repealed by paragraph 11 of Schedule 13 to the Pensions Act (Northern Ireland) 2015 (c. 5 (N.I.)), but saved for certain purposes, *see* S.R. 2016 No. 106; section 16(1) was amended by paragraph 2(1) of Schedule 5 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)) and paragraph 18 of Schedule 13 to the Pensions Act (Northern Ireland) 2015; section 16(3) was amended by Article 31(2) of S.R. 2012 No. 124; section 33A was inserted by paragraph 25 of Schedule 13 to the Pensions Act (Northern Ireland) 2015

(b) *See* Article 8(b) of S.R. 1999 No. 481 and section 1(7) of the Departments Act (Northern Ireland) 2016 (c. 5 (N.I.))

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

(d) S.R. 1996 No. 618; relevant amending provisions are S.R. 1997 No. 160, S.R. 2005 No. 433, S.R. 2013 No. 72, S.R. 2016 No. 158 and S.R. 2017 No. 111

(e) The definition of “connected employer transfer” and “connected employer transfer payment” was substituted by regulation 4(2) of S.R. 2013 No. 72 and amended by Article 5(2)(a) of S.R. 2016 No. 158

- (b) after the definition of “regulated apportionment arrangement”(a) insert—
 - ““salary related scheme” means a scheme which—
 - (a) is not a scheme under which all the benefits that may be provided are money purchase benefits, and
 - (b) does not fall within a class prescribed in regulations made by the Department under section 96D(b) (interpretation of Chapter);”.
- (3) In regulation 7(c) (general)—
 - (a) in paragraph (1) for “a scheme that was a salary related contracted-out scheme”, in both places where it occurs, substitute “a salary related scheme”;
 - (b) in paragraph (2A)—
 - (i) for “an occupational pension scheme that was a salary related contracted-out scheme” substitute “a salary related scheme”;
 - (ii) for “that occupational pension scheme” substitute “that scheme”.
- (4) For regulation 9(d) (connected employer transfer payments) substitute—

“Connected employer transfer payments

9. A connected employer transfer payment may be made subject to the condition set out in regulation 12(3) of the Occupational Pension Schemes (Preservation of Benefit) Regulations (Northern Ireland) 1991(e) (transfer of member’s accrued rights without consent), irrespective of whether that condition would otherwise apply to the member concerned, and either—

- (a) for a transfer to a scheme that was a salary related contracted-out scheme, the condition set out in regulation 8(c)(f), or
- (b) for a transfer to a scheme that has never been a contracted-out scheme, the condition that the benefits (including benefits for the earner’s widow, widower or surviving civil partner) to be credited in the receiving scheme in respect of that part of the transfer payment which relates to the earner’s accrued section 5(2B) rights(g), or pensions in payment deriving from section 5(2B) rights, must be such as would have complied with section 8A(1)(h) (the statutory standard) as it had effect immediately before 6th April 2016.”.

(5) In regulation 11A(1)(i) (transfers in respect of section 5(2B) rights in the case of a regulated apportionment arrangement or where an assessment period has commenced) for “an occupational pension scheme that was a salary related contracted-out scheme” substitute “a salary related scheme”.

(6) In regulation 12(j) (modifications of Part III of the 1993 Act on transfers of, and transfer payments in respect of, guaranteed minimum pensions from occupational pension schemes)—

- (a) for “a scheme that was a salary related contracted-out scheme” substitute “a salary related scheme”;

(a) The definition of “regulated apportionment arrangement” was inserted by regulation 2(2)(b) of S.R. 2017 No. 111
 (b) Section 96D was inserted by paragraph 60 of Schedule 4 to the Pension Schemes Act 2015 (c. 8). See the definition of “salary related occupational pension scheme” in that section
 (c) Regulation 7 was amended by paragraph 10(4) of the Schedule to S.R. 1997 No. 160 and Article 5(5) of S.R. 2016 No. 158
 (d) Regulation 9 was amended by regulation 4(3) of S.R. 2013 No. 72
 (e) S.R. 1991 No. 37; regulation 12(3) was substituted by regulation 3(2)(a) of S.R. 2011 No. 89
 (f) Regulation 8(c) was amended by Article 5(6)(c) of S.R. 2016 No. 158
 (g) The definition of “section 5(2B) rights” was substituted by Article 5(2)(e) of S.R. 2016 No. 158
 (h) Section 8A(1) was amended by paragraph 3 of Schedule 1 to S.R. 2005 No. 433
 (i) Regulation 11A was inserted by regulation 2(6) of S.R. 2017 No. 111
 (j) Regulation 12 was amended by Article 5(7) of S.R. 2016 No. 158

- (b) in paragraph (b)—
 - (i) after “(transfer of accrued rights: meaning of “accrued rights”)” insert “, 20A(1)(a)(a) (conversion of guaranteed minimum pension into other benefits: introduction)”;
 - (ii) for “paragraphs 1, 3 and 5” substitute “paragraphs 1, 1A(b), 3 and 5”;
 - (c) in paragraph (c)—
 - (i) for “sections 4(2) and 155” substitute “sections 4(2), 20A(1)(a) and 155”;
 - (ii) for “paragraphs 1 and 5” substitute “paragraphs 1, 1A and 5”.
- (7) In Schedule 1 (further conditions for transfers of guaranteed minimum pensions)—
- (a) in the heading to Part 1(c) for “a Scheme that was a Salary Related Contracted-out Scheme” substitute “a Salary Related Scheme”;
 - (b) in paragraph 1—
 - (i) in sub-paragraph (a) for “place, and” substitute “place;”;
 - (ii) in sub-paragraph (b) for “sections 9 and 13.” substitute “section 9 or (as the case may be) 13, and”;
 - (iii) after sub-paragraph (b) add—
 - “(c) comply with sections 9 to 20E in respect of accrued rights.”;
 - (c) for paragraph 6 substitute—
 - “6.—(1) The date of commencement of the pension the liability for which is transferred—
 - (a) if the pension is payable to the person who has become entitled to it, must be the date from which liability for payment is assumed by the receiving scheme, and
 - (b) if the pension is payable to the widow, widower or surviving civil partner of that person, must be the same as it would have been under the provisions of the transferring scheme.
 - (2) The receiving scheme must contain the same provision (if any) for suspension and forfeiture of that pension as for guaranteed minimum pensions provided by the receiving scheme in accordance with section 9 or (as the case may be) 13.
 - (3) The receiving scheme must provide for the payment of guaranteed minimum pensions to or in respect of a person who has become entitled to them at a rate that is no lower than the rate at which they would have been paid by the transferring scheme, taking into account any increases to the rate which are required by virtue of section 105(d).”.
- (8) In Schedule 2 (modifications of Part III of the 1993 Act)—
- (a) in paragraph 1(e) for the definition of “guaranteed minimum pension” substitute—
 - ““guaranteed minimum pension” means any pension which is provided—
 - (a) by a scheme that was a salary related contracted-out scheme in accordance with the requirements of sections 9 and 13, or
 - (b) by a salary related scheme in compliance with the condition set out in paragraph 1 or 6 of Schedule 1 to the Contracting-out (Transfer and Transfer Payment) Regulations (Northern Ireland) 1996 (or, as the case may be, in paragraph 1 or 5 of

(a) Sections 20A to 20H were inserted by section 12(3) of the Pensions Act (Northern Ireland) 2008 (c. 1 (N.I.)) and section 20A was amended by paragraph 20 of Schedule 13 to the Pensions Act (Northern Ireland) 2015

(b) Paragraph 1A is inserted by regulation 2(8)(b) of these Regulations

(c) The heading was substituted by Article 5(10)(a) of S.R. 2016 No. 158

(d) Section 105 was amended by Article 55 of the Pensions (Northern Ireland) Order 1995 and paragraph 22 of Schedule 1 to S.R. 2005 No. 433

(e) Paragraph 1 was substituted by paragraph 10(7)(a) of the Schedule to S.R. 1997 No. 160

Schedule 2 to the Contracting-out (Transfer) Regulations (Northern Ireland) 1985(a)),

to the extent to which its weekly rate is equal to the earner's or, as the case may be, the earner's widow's, widower's or surviving civil partner's guaranteed minimum, as determined for the purposes of those sections or, as the case may be, conditions;";

(b) after paragraph 1 insert—

“1A. Section 20A(1)(a) shall have effect as if after “13(1)” there were inserted “and in paragraphs 1 and 6 of Schedule 1 to the Contracting-out (Transfer and Transfer Payment) Regulations (Northern Ireland) 1996.”.

Amendment of the Occupational Pension Schemes (Schemes that were Contracted-out) Regulations

3. In regulation 2(1) of the Occupational Pension Schemes (Schemes that were Contracted-out) Regulations (Northern Ireland) 2016(b) (interpretation) in the definition of “section 5(2B) rights”—

(a) for paragraph (a) substitute—

“(a) rights to the payment of pensions and accrued rights to pensions (other than rights attributable to voluntary contributions)—

(i) under a scheme that was a salary related contracted-out scheme, or

(ii) under a salary related scheme, as defined in regulation 1(2)(c) of the Contracting-out (Transfer and Transfer Payment) Regulations (Northern Ireland) 1996, that has never been a contracted-out scheme, following a transfer in accordance with regulation 9 of those Regulations,

so far as attributable to an earner's service in contracted-out employment on or after 6th April 1997, and”;

(b) in paragraph (b)(i) for “another scheme that was a salary related contracted-out scheme” substitute “another salary related scheme”.

Sealed with the Official Seal of the Department for Communities on 14th March 2018

(L.S.)

Anne McCleary

A senior officer of the Department for Communities

(a) S.R. 1985 No. 243

(b) S.R. 2016 No. 107 to which there are amendments not relevant to these Regulations

(c) The definition of “salary related scheme” was inserted by regulation 2(2)(b) of these Regulations

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations amend the Contracting-out (Transfer and Transfer Payment) Regulations (Northern Ireland) 1996 (“the 1996 Regulations”) and the Occupational Pension Schemes (Schemes that were Contracted-out) Regulations (Northern Ireland) 2016 (“the 2016 Regulations”) to allow contracted-out pension rights to be transferred without members’ consent to schemes which have never been contracted-out of the additional state pension.

Regulation 2 amends the 1996 Regulations to enable transfers and transfer payments between connected employers to be made to and from schemes that have never been contracted-out, and to specify the circumstances in which such transfers can be made without a member’s consent. It also amends the modified definition of “guaranteed minimum pension” in the Pension Schemes (Northern Ireland) Act 1993 as it applies following a transfer under the 1996 Regulations.

Regulation 3 amends the definition of “section 5(2B) rights” in the 2016 Regulations to include rights accrued under a salary related scheme that has never been contracted-out, following a transfer in accordance with amended regulation 9 of the 1996 Regulations.

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