1977 No. 286

SOCIAL SECURITY

The Contracted-out Employment (Miscellaneous Provisions) Regulations (Northern Ireland) 1977

Made . . . . . *5th October* 1977

Coming into operation . . . *6th April* 1978

The Department of Health and Social Services, in exercise of the powers conferred on it by Article 42(2) and (3) of the Social Security Pensions (Northern Ireland) Order 1975(**a**) and Articles 17(1) and (2) and 18(9) and (13) of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977(**b**) and of all other powers enabling it in that behalf, hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Contracted-out Employment (Miscellaneous Provisions) Regulations (Northern Ireland) 1977 and shall come into operation on 6th April 1978.

(2) In these regulations—

"the 1977 Order" means the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977;

"the Pensions Order" means the Social Security Pensions (Northern Ireland) Order 1975;

"relevant year", in relation to an earner, means any tax year in his working life (not being earlier than the first tax year for which lower and upper earnings limits are specified under Article 3 of the Pensions Order);

"trustees", in relation to a scheme which is not set up or established under a trust, means the administrator of the scheme.

Policies of insurance and annuity contracts

2. For the purposes of Article 18(9) of the 1977 Order, which makes provisions dependent upon the existence in force of a certificate issued by the Department stating that in its opinion the payment of a guaranteed minimum pension to which a person is entitled or has accrued rights is secured by means of a policy of insurance or annuity contract which satisfies prescribed conditions, the prescribed conditions are—

(*a*) that the policy is taken out, or the contract entered into, with an insurance company to which the Insurance Companies (Northern Ireland) Order 1976(**c**) or Part II of the Insurance Companies Act 1974(**d**) applies and which is authorised by or under Article 7 of that Order or section 3 of that Act to carry on ordinary long-term insurance business as defined in that Order or that Act; and

(*b*) that the policy or contract contains, or is endorsed with, terms so as to provide—

(**a**) S.I. 1975/1503 (N.I. 15)
(**b**) S.I. 1977/610 (N.I. 11)
(**c**) S.I. 1976/59 (N.I. 3)
(**d**) 1974 c. 49

(i) that the annuity to be paid thereunder to or for the benefit of that person will be at least equal to the guaranteed minimum pension due to him, or, as the case may be, prospectively due to him at pensionable age, subject to any revaluation or increase under Article 37(7) of the Pensions Order as amended by Article 18(7) of the 1977 Order,

(ii) if that person is a man, that if he dies leaving a widow the annuity to be paid thereunder to her or for her benefit will be at least equal to the guaranteed minimum pension prospectively due to her in the event of her being left as that person's widow,

(iii) that the annuity or annuities (or such part of it or them as relates to the guaranteed minimum pensions of that person and, if he is a man, his widow) is or are (subject to the provisions of Article 41(1) of the Pensions Order and regulations from time to time made thereunder(e)) non-commutable and non-assignable, and

(iv) that the insurance company assumes an enforceable obligation to pay the guaranteed minimum pensions either to that person and, if appropriate, his widow, or, as the case may be, to trustees of a trust for the benefit of that person and, if appropriate, his widow, under the terms of which the sums paid by the insurance company in respect of those guaranteed minimum pensions can be used for no other purpose.

Modification of Article 46(6) *of the Pensions Order*

3. In relation to a scheme which has ceased to be contracted-out and, immediately before it so ceased, contained provisions authorised by Article 37(7) of the Pensions Order as amended by Article 18(7) of the 1977 Order, Article 46(6) of the Pensions Order as amended by Article 18(12) of the 1977 Order shall have effect with the modification that, where under the provisions authorised by the said Article 37(7) an earner's earnings factors are determined for the purposes of Article 37(2) of the Pensions Order without reference to any order made under Article 23 of the Pensions Order, that order shall also be disregarded for the purpose of calculating the costs, referred to in Article 46(5)(*a*) and (*b*) of the Pensions Order, of providing guaranteed minimum pensions for or in respect of that earner, so however that those costs shall be calculated on the basis that the weekly equivalent mentioned in the said Article 37(2) has been increased, in the manner for which the scheme is required to provide by the said Article 37(7), for each relevant year after the year in which the earner's service is terminated except those years (if any) for which his earnings factors are increased by 12 per cent. in accordance with the said Article 46(6).

Modification of Article 17(1) *of the* 1977 *Order*

4. In relation to a scheme which has ceased to be contracted-out and, immediately before it so ceased, contained provisions authorised by Article 37(7) of the Pensions Order as amended by Article 18(7) of the 1977 Order, Article 17(1) of the 1977 Order shall be so modified as to provide that, in the case of an earner whose service in contracted-out employment by reference to the scheme is terminated before he attains pensionable age—

(*a*) if it is so terminated before the period of 5 years ending with the tax year in which the scheme ceases to be contracted-out, the provision for taking his earnings factor for any relevant year to be that factor as increased by 12 per cent. for some or all of those tax years shall not apply; and

(e) *See* regulation 7 of S.R. 1976 No. 29

(*b*) if it is so terminated within that period of 5 years and unless an election is made as provided in Article 17(1) of the 1977 Order, the provision for taking his earnings factor for any relevant year to be that factor as increased by 12 per cent. for some or all of those tax years shall apply, so however that his weekly equivalent shall not be increased, pursuant to any provision required by Article 37(7) of the Pensions Order, for the years for which that factor is taken to be that factor as increased by 12 per cent.

Miscellaneous provisions affecting Article 17 of the 1977 Order

5.—(1) For the purposes of Article 17 of the 1977 Order the prescribed person is the trustees of the scheme.

(2) An election under Article 17 of the 1977 Order shall be notified to the Department in writing in such form as the Department may reasonably require for the purpose of identifying the earner to whom the election relates.

(3) Article 17 of the 1977 Order shall not apply where the arrangements approved by the Occupational Pensions Board in respect of an earner's accrued rights to guaranteed minimum pensions under the scheme which is ceasing to be contracted-out consist of or include the transfer of those rights to another contracted-out scheme.

Priorities on the winding-up of a scheme

6. An occupational pension scheme (not being a public service pension scheme) which contains provision for the payment of pensions or other benefits (not being pensions or other benefits payable by reason of a death) to persons who have not attained normal pension age shall be exempt from the requirements of Article 42(3) of the Pensions Order (as amended by Article 18(8) of the 1977 Order) to the following extent only, namely that it shall not be required to accord priority on a winding-up to the liabilities specified in paragraphs (*a*) to (*d*) of the said Article 42(3) over liabilities of the scheme in respect of pensions and other benefits to which the widow or widower or any dependant of a person who is already entitled to payment of a pension or benefit under the scheme but has not attained normal pension age will be entitled on that person's death.

Revocations

7. Regulation 3(3) of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1976(f), sub-paragraph (*c*) in the definition of "responsible paying authority" in regulation 1(2) of those regulations, and sub-paragraph (*c*) in the definition of "responsible paying authority" in regulation 1(2) of the Contracted-out Employment (Notifications, Premium Payment and Miscellaneous Provisions) Regulations (Northern Ireland) 1976(g), are hereby revoked.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 5th October 1977.

(L.S.) *W. J. Sloane*
Assistant Secretary

(f) S.R. 1976 No. 29 (g) S.R. 1976 No. 101

EXPLANATORY NOTE

(This note is not part of the regulations but is intended to indicate their general purport.)

These regulations make miscellaneous provisions regarding the contracting-out of occupational pension schemes pursuant to Part IV of the Social Security Pensions (Northern Ireland) Order 1975 ("the Pensions Order") as amended by the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977 ("the 1977 Order").

Regulation 2 sets out the conditions which a policy of insurance or annuity contract must satisfy in order that a Department's certificate may be issued under Article 18(9) of the 1977 Order, thereby bringing about a relaxation of some of the requirements of Articles 43 and 46 of the Pensions Order. This regulation supersedes regulation 3(3) of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1976, which is revoked by regulation 7.

Regulation 3 modifies the provisions of Article 46(6) of the Pensions Order as amended by Article 18(12) of the 1977 Order (which provides for state scheme premiums to be calculated as if earnings factors were increased for certain years by 12 per cent. instead of in accordance with orders made under Article 23 of the Pensions Order) as they apply to schemes which contain special provisions, authorised under Article 37(7) of the Pensions Order as amended by Article 18(7) of the 1977 Order, for the calculation of guaranteed minimum pensions of earners whose service in contracted-out employment by reference to the scheme is terminated before they reach pensionable age.

Regulation 4 modifies the provisions of Article 17(1) of the 1977 Order (which provides for guaranteed minimum pensions, in the case of schemes which cease to be contracted-out, to be calculated as if earnings factors were increased for certain years by 12 per cent.) as they apply to schemes containing provisions authorised by Article 37(7) of the Pensions Order.

Regulation 5 makes ancillary provisions for the purposes of Article 17 of the 1977 Order, and provides that it shall not apply in cases where accrued rights to guaranteed minimum pensions are transferred from one contracted-out scheme to another.

Regulation 6 provides a limited exemption for certain schemes from the requirements of Article 42(3) of the Pensions Order (which relate to priorities among liabilities on the winding-up of a scheme).