
STATUTORY RULES OF NORTHERN IRELAND

1996 No. 493

The Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996

Part VI

Restoration of State Scheme Rights

Insolvent schemes

49.—(1) Where paragraph 5(3B) of Schedule 1 to the Act⁽¹⁾ applies in relation to a member of a contracted-out scheme which is being wound up and the conditions set out in paragraph (3) are satisfied, the member shall be treated as if sections 42 to 44⁽²⁾ or, as the case may be, 44A⁽¹⁾ of the Act⁽³⁾—

- (a) except as provided in sub-paragraph (b), did not apply,
- (b) in a case where the cash equivalent of the member's rights is less than the amount required for restoring his state scheme rights, applied only in so far as they extinguish such part of the member's state scheme rights as, in the opinion of the Department, corresponds to that shortfall.

(2) For the purposes of paragraph 5(3B)(b) of Schedule 1 to the Act, the debt due from the trustees of the scheme to the Department shall be only such part of the amount required for restoring the member's state scheme rights as does not exceed the amount which, in the opinion of the Department, is the amount available from the resources of the scheme to meet the liability for the cash equivalent of the member's rights.

(3) The conditions referred to in paragraph (1) are that—

- (a) in the case of a money purchase contracted-out scheme, there has been a determination by the Compensation Board that the conditions set out in Article 79(1) of the Order (cases where compensation provisions apply) are satisfied, and
- (b) no later than 3 months after the date on which the trustees notify the member in accordance with regulation 50, or such further period as the Department may allow in a particular case, the Department has received from—
 - (i) the member, or
 - (ii) where the Department is satisfied that the member cannot be traced, the trustees, a written application for the member's state scheme rights to be restored in accordance with this regulation.

(1) Paragraph 5(3B) of Schedule 1 was inserted by Article 138(2) of the Pensions (Northern Ireland) Order 1995

(2) Section 42 was amended by paragraph 54 of Schedule 1 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 and is amended by paragraph 19 of Schedule 2 to, and paragraph 36 of Schedule 3 to, the Pensions (Northern Ireland) Order 1995; section 43 was amended by paragraph 55 of Schedule 1 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994; section 44 was amended by paragraph 56 of Schedule 1 to that Order and Article 137(2) of the Pensions (Northern Ireland) Order 1995

(3) Section 44A was inserted by Article 137(1) of the Pensions (Northern Ireland) Order 1995

- (4) For the purposes of this regulation and paragraph 5(3A) to (3D) of Schedule 1 to the Act⁽⁴⁾—
- (a) the cash equivalent of a member’s rights under a scheme shall be determined—
 - (i) in the case of a scheme to which Article 56 of the Order applies (minimum funding requirement) as if the requirement of Article 56(1) were satisfied, or
 - (ii) in the case of a money purchase scheme, as if there had been no reduction in the value of its assets attributable to an act or omission constituting a prescribed offence for the purposes of Article 79(1)(c) of the Order;
 - (b) the extent (if any) to which the resources of the scheme are insufficient to meet that cash equivalent shall be determined—
 - (i) on the assumption that those resources include any payment to the trustees under the compensation provisions, and
 - (ii) where Article 73 of the Order (preferential liabilities on winding up) applies, in accordance with the requirements of that Article;
 - (c) the amount required for restoring the member’s state scheme rights shall be an amount determined in accordance with regulations made under paragraph 5(3C)(c) of Schedule 1 to the Act.
- (5) In this regulation “Compensation Board” and “compensation provisions” have the same meaning as in Article 121(1) of the Order.

Member to be informed of the option to restore state scheme rights

50. Where the Department has advised the trustees of a scheme that it is of the opinion that the conditions referred to in paragraph 5(3A) of Schedule 1 to the Act are satisfied in respect of any member, the trustees must inform the member in writing of that fact—

- (a) when they give notice of any proposal to discharge a liability of the scheme in respect of the member in accordance with regulations under Article 74 of the Order (discharge of liabilities by insurance, etc.) or under section 28A of the Act⁽⁵⁾ (discharge of protected rights on winding up: insurance policies);
- (b) if no notice is given by the trustees in accordance with paragraph (a), when the member is advised of any other option available to discharge a liability of the scheme in respect of him.

Election to pay contributions equivalent premium

51.—(1) For the purposes of section 51(2) of the Act⁽⁶⁾ (which provides for the prescribed person to elect to pay a contributions equivalent premium on termination of certified status) the prescribed person is the trustees of the scheme.

(2) The obligation under section 53(2) of the Act (not to discriminate between different earners when making or abstaining from making elections to pay contributions equivalent premiums) shall not apply to—

- (a) cases where an earner’s rights are transferred in accordance with regulations under section 16 (transfer of accrued rights) or under section 8C (transfer, commutation, etc.) of the Act;

(4) Paragraph 5(3A) to (3D) of Schedule 1 was inserted by Article 138(2) of the Pensions (Northern Ireland) Order 1995

(5) Section 28A was inserted by Article 143(1) of the Pensions (Northern Ireland) Order 1995

(6) Section 51(2) was substituted by Article 138(1) of the Pensions (Northern Ireland) Order 1995

- (b) married women and widows who, by virtue of regulations made under section 19(4) and (5) of the Contributions and Benefits Act, have elected to pay contributions under that Act at a reduced rate;
- (c) cases where, on the death of an earner, there arises an entitlement to a widow's or widower's pension which comprises amounts of pension which have accrued by reference to the earner's service in employment which was not contracted-out employment and to his service in employment which was contracted-out;
- (d) cases where the earner has completed less than 2 years' qualifying service for the purposes of Chapter I of Part IV of the Act (preservation) but where, nevertheless, he is entitled under the rules of the scheme to elect, and he has elected, that his accrued rights shall be preserved, and
- (e) cases where an earner's accrued rights to guaranteed minimum pensions are appropriately secured within the meaning of section 15 of the Act (discharge of liability for guaranteed minimum pensions) or where any liability to provide pensions to that earner has been discharged in accordance with regulations under section 8C of the Act,

but in respect of any of the classes of case mentioned in this paragraph an employer shall not discriminate between different earners falling within the same class of case.

(3) An election under section 51(2) of the Act shall be notified to the Department in writing in such form as it may reasonably require for the purpose of identifying the earner to whom the election relates. Such notification shall be given—

- (a) where the circumstances specified in section 51(2A)(d) of the Act(7) apply (the scheme is wound up), within 2 years of the cessation of the scheme, or
- (b) where the circumstances specified in section 51(2A)(a) to (c) or (e) of the Act apply, within the period beginning one month before, and ending 6 months after, the date on which the person ceases to serve in employment which is contracted-out employment by reference to the scheme.

(4) The Department may, in any particular case or class of case, extend the periods mentioned in paragraph (3) for the making of an election to pay a contributions equivalent premium if it appears to the Department that the circumstances are such that an election could not reasonably be made within the specified period.

Payment of a contributions equivalent premium

52.—(1) A contributions equivalent premium which the trustees have elected to pay shall be paid on or before whichever is the later of the following days—

- (a) the day 6 months after the date of termination of contracted-out employment in respect of which the premium is payable, or
- (b) the day one month after the day on which the Department sends to the trustees a notice certifying the amount of the premium payable.

(2) Where the amount of any contributions equivalent premium which is payable does not exceed £17, the trustees shall not be liable to pay it and, accordingly, if it is not paid, it shall be treated as paid for the purposes of section 44A(2) (additional pension and other benefits) and section 56 (effect of payment of premium on rights) of the Act.

(3) Any liability for a contributions equivalent premium shall be a liability to make payment out of the resources of the scheme.

(7) Section 51(2A) was substituted by Article 138(1) of the Pensions (Northern Ireland) Order 1995

Payment in lieu of benefit and delay in refund for the purposes of employer's right of recovery

53.—(1) For the purposes of section 57(10) of the Act (payments in lieu of benefit) a payment in lieu of benefit shall include a payment made or to be made out of the resources of the scheme towards the provision of deferred benefits for the earner.

(2) Where on the coming to an end of an employed earner's service in contracted-out employment, he (or, by virtue of a connection with him, any other person) is or may be entitled to a refund of any payments made under a contracted-out scheme by or in respect of him towards the provision of benefits under the scheme, paragraphs (3) to (6) shall apply for the purpose of enabling any right of recovery conferred by section 57 of the Act to be exercised.

(3) Where in such a case a contributions equivalent premium falls to be paid in respect of the earner under the Act, the person liable for the refund shall not, after he has been given notice in accordance with paragraph (5) ("notice of delay"), make the refund in whole or in part until the expiration of the period of delay specified in paragraph (4), but this paragraph shall not apply to so much, if any, of the refund as exceeds the amount certified by the Department under section 59(1)(d) of the Act (further provisions concerning calculations relating to premiums).

(4) The period of delay referred to in paragraph (3) shall be the period beginning with the notice of delay and ending with the expiration of 4 weeks after the payment of the contributions equivalent premium or any part of it, or 4 weeks after the end of the prescribed period for the payment of the premium, whichever first occurs.

(5) A notice of delay shall be a notice in writing given by the trustees of the scheme concerned relating either to a particular case or class of case and containing the following particulars—

- (a) the name of the earner or such particulars as will sufficiently identify the class of case concerned;
- (b) such particulars as will sufficiently identify the refund concerned, and
- (c) a memorandum in a form approved by the Department giving brief particulars of the effect of paragraphs (3) and (4).

(6) Where the trustees of a scheme have given notice of delay they shall from time to time inform any person to whom they have given notice of the ending of the period of delay in relation to any refund affected by the notice.

Refund of a contributions equivalent premium

54.—(1) The Department shall refund a contributions equivalent premium if—

- (a) that premium was paid in error;
- (b) it is satisfied that the employment to which that premium relates will be linked with another employment in the circumstances set out in regulation 43(2) and (3);
- (c) it is satisfied that the earner in respect of whom that premium was paid has entered into employment which is contracted-out employment by reference to the same contracted-out scheme as that by reference to which the employment to which that premium relates was contracted-out employment, and that for the purpose of calculating the earner's accrued rights under the scheme the two employments will be linked;
- (d) it is satisfied that a transfer of the earner's accrued rights will be made in accordance with regulations under section 16 (transfer of accrued rights) or under section 8C (transfer, commutation etc.) of the Act, or
- (e) the scheme is one under which a member may qualify for benefits by virtue of service either in employed earner's employment or as a self-employed earner (within the meaning of section 2 of the Contributions and Benefits Act) or both and the Department is satisfied

that the earner in respect of whom that premium was paid has completed a period of membership of the scheme as a self-employed earner which, when aggregated with his service in employed earner's employment, amounts to not less than 2 years,

and, where a contributions equivalent premium is refunded under this paragraph the earner's accrued rights under the scheme, which were extinguished by payment of the premium, shall be restored.

(2) A refund under paragraph (1) shall only be made if an application is made in writing, in such form as the Department may reasonably require for the purpose.

(3) In paragraph (1)(a) "error" means an error which—

- (a) is made at the time of payment, and
- (b) relates to some present or past matter.

(4) Where—

- (a) an earner has been employed concurrently in two or more contracted-out employments, on the termination of one or more of which, a contributions equivalent premium has been paid, and
- (b) the aggregate amount of any such payments has the effect that the National Insurance Fund has gained, by reference to any employment in respect of which such a payment has been made, a greater amount than it would have gained from Class 1 contributions under the Contributions and Benefits Act if those employments had not been contracted out,

there shall be paid out of the National Insurance Fund to the earner (or his estate) an amount which bears the same proportion to the amount of the excess as the reduction under paragraph (a) of subsection (1A) of section 37 of the Act⁽⁸⁾ (reduced rates of Class 1 contributions for earners in contracted-out employment), in the normal percentage of primary Class 1 contributions bears to the total reduction under that subsection in the total normal percentage of Class 1 contributions.

(5) The Department shall refund a contributions equivalent premium if it is satisfied that—

- (a) where that premium was paid in the circumstances mentioned in section 51(2A)(a), (b), (d) or (e) of the Act, the person in respect of whom it was paid has died, without leaving a widow or widower, on or before the later of the days first mentioned in sub-paragraphs (a) and (b) respectively of regulation 52(1), or
- (b) where that premium was paid in the circumstances mentioned in section 51(2A)(c) of the Act, there are no accrued rights to guaranteed minimum pensions or section 5(2B) rights under the scheme in question in respect of the widow or widower in question.

(8) Section 37(1A) was substituted by Article 134(2) of the Pensions (Northern Ireland) Order 1995