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STATUTORY RULES OF NORTHERN IRELAND

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**2006 No. 48**

**PENSIONS**

**TERMS AND CONDITIONS OF EMPLOYMENT**

**The Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006**

*Made - - - - 16th February 2006*

*Coming into operation 6th April 2006*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by Articles 2(5)(a) and (6), 7(5)(a), 236(1) and (2), 237(1), 238(2) and (4) and 287(1) and (3) of the Pensions (Northern Ireland) Order 2005(1).

*Introductory*

**Citation and commencement**

1. These Regulations may be cited as the Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006 and shall come into operation on 6th April 2006.

**Interpretation**

2. In these Regulations—

“the Information and Consultation Regulations” means the Information and Consultation of Employees Regulations (Northern Ireland) 2005(2)

“the Order” means the Pensions (Northern Ireland) Order 2005;

“active member”—

(a) in relation to an occupational pension scheme, has the meaning given by Article 121 of the 1995 Order(3) (interpretation of Part II), and

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(1) S.I.2005/255 (N.I. 1); Articles 236 and 238 are modified in respect of multi-employer schemes by regulation 2 of S.R. 2006 No. 4

(2) S.R. 2005 No. 47

(3) S.I. 1995/3213 (N.I. 22)

- (b) in relation to a personal pension scheme, means any member in respect of whom employer contributions fall to be paid;
- “affected members” has the meaning given by regulation 7(4);
- “employer contributions”, in relation to an occupational or personal pension scheme, means contributions payable by or on behalf of the employer in relation to the scheme on his own account (but in respect of one or more employees);
- “member contributions”, in relation to an occupational or personal pension scheme, means contributions, other than voluntary contributions, by or on behalf of active members of the scheme which are payable out of deductions from the member’s earnings;
- “listed change” has the meaning given by regulation 6(2);
- “multi-employer scheme” has the meaning given by Article 280 of the Order (modification of this Order in relation to certain categories of schemes);
- “personal pension scheme” has the meaning given by regulation 3(3);
- “prospective member”—
- (a) in relation to an occupational pension scheme, means any person who, under the terms of his contract of service or the rules of the scheme—
- (i) is able, at his own option, to become a member of the scheme,
  - (ii) will become so able if he continues in the same employment for a sufficiently long period,
  - (iii) will be admitted to the scheme automatically unless he makes an election not to become a member, or
  - (iv) may be admitted to it subject to the consent of his employer;
- (b) in relation to a personal pension scheme, means any person who, under the terms of his contract of service, is eligible if he becomes a member of the scheme for employer contributions to be paid in respect of him;
- “relevant employer” has the meaning given by regulation 3(2).

### *Application of Regulations*

#### **Application**

- 3.—(1)** These Regulations apply to—
- (a) in the case of an occupational pension scheme which is not a multi-employer scheme—
    - (i) any relevant employer, and
    - (ii) if there is a relevant employer, the trustees or managers of the scheme;
  - (b) in the case of a multi-employer scheme in relation to which there are one or more relevant employers—
    - (i) each relevant employer,
    - (ii) the trustees or managers of the scheme, and
    - (iii) any other person who, under the rules of the scheme, has the power to make a listed change affecting the scheme<sup>(4)</sup>, and

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(4) The persons referred to in regulation 3(1)(b)(iii) are specified by virtue of modifications of Articles 236 and 238 of the Pensions (Northern Ireland) Order 2005 made by regulation 2 of [S.R. 2006 No. 4](#)

- (c) in the case of a personal pension scheme where direct payment arrangements exist in respect of one or more members of the scheme who are his employees, a relevant employer.
- (2) For the purposes of these Regulations “relevant employer”—
  - (a) in the case of an occupational pension scheme, means an employer in relation to the scheme other than one who is excluded by regulation 4, and
  - (b) in the case of a personal pension scheme, means an employer in relation to the scheme other than one who is excluded by regulation 5.
- (3) In these Regulations references to a personal pension scheme are to a personal pension scheme falling within paragraph (1)(c).

**Excluded employers: occupational pension schemes**

- 4.—(1) This regulation excludes—
  - (a) any employer in relation to a public service pension scheme;
  - (b) any employer in relation to a small occupational pension scheme;
  - (c) any employer in relation to an occupational pension scheme with fewer than two members;
  - (d) any employer in relation to an occupational pension scheme which is an employer-financed retirement benefits scheme;
  - (e) any employer in relation to an unregistered occupational pension scheme which has its main administration outside the member States, and
  - (f) any employer employing in Northern Ireland a number of employees which does not exceed the maximum number specified in paragraph (2).
- (2) The maximum number is—
  - (a) 150 with effect from 6th April 2006 to 5th April 2007;
  - (b) 100 with effect from 6th April 2007 to 5th April 2008, and
  - (c) 50 with effect from 6th April 2008 onwards.
- (3) For the purposes of paragraph (1)(f)—
  - (a) the number of people employed by an employer is to be determined using the same method of calculation as is set out in regulation 4 of the Information and Consultation Regulations (calculation of number of employees), but
  - (b) references in that regulation to the previous twelve months are to be taken as references to the period of twelve months ending with the date of the proposal to make a listed change to which regulation 6 of these Regulations applies.
- (4) In this regulation—
  - “employer-financed retirement benefits scheme” has the meaning given by section 393A of the Income Tax (Earnings and Pensions) Act 2003(5);
  - “public service pension scheme” has the meaning given by section 1(1) of the Pension Schemes Act(6);
  - “small occupational pension scheme” means—
    - (a) a scheme with fewer than twelve members where all of the members are trustees of the scheme and either—

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(5) 2003 c. 1; section 393A was inserted by section 249(3) of the Finance Act 2004 (c. 12)

(6) 1993 c. 49; section 1 is amended by Article 216(2) of the Pensions (Northern Ireland) Order 2005

- (i) the provisions of the scheme provide that all decisions which fall to be made by the trustees are made by unanimous agreement by the trustees who are members of the scheme, or
- (ii) the scheme has a trustee who is independent in relation to the scheme for the purposes of Article 23 of the 1995 Order<sup>(7)</sup> (power to appoint independent trustees) and is registered in the register maintained by the Regulator in accordance with regulations made under paragraph (4) of that Article;
- (b) a scheme with fewer than twelve members where a company is a trustee of the scheme, and all the members of the scheme are directors of the company and either—
  - (i) the provisions of the scheme provide that any decision made by the company in its capacity as trustee are made by the unanimous agreement of all the directors who are members of the scheme, or
  - (ii) one of the directors is a trustee who is independent in relation to the scheme for the purposes of Article 23 of the 1995 Order and is registered in the register maintained by the Regulator in accordance with regulations made under paragraph (4) of that Article, and

“unregistered occupational pension scheme” means an occupational pension scheme which is not registered under section 153 of the Finance Act 2004<sup>(8)</sup> (registration of pension schemes).

#### **Excluded employers: personal pension schemes**

- 5.—(1) This regulation excludes—
- (a) any employer in relation to a personal pension scheme where no employer contributions fall to be paid towards the scheme, and
  - (b) any employer employing in Northern Ireland a number of employees which does not exceed the maximum number specified in regulation 4(2).
- (2) Regulation 4(3) also applies for the purposes of paragraph (1)(b).

#### *Restriction on decision-making pending completion of consultation*

#### **Consultation required before decisions to make listed changes affecting schemes**

6.—(1) No person falling within regulation 3(1) may decide to make a listed change that affects an occupational or personal pension scheme unless such consultation as is required by regulation 7(3) has been carried out.

(2) For the purposes of these Regulations, a change affecting an occupational or personal pension scheme is a “listed change” if—

- (a) in relation to an occupational pension scheme, it is listed in regulation 8, or
- (b) in relation to a personal pension scheme, it is listed in regulation 9,

and it is not excluded by virtue of regulation 10.

(3) Paragraph (1) does not require consultation to be carried out in any of the four cases described in paragraphs (4) to (7).

(4) The first case is where the active or prospective members of the scheme to whom the listed change relates were notified before 6th April 2006 of the proposal to make the change.

(5) The second case is where, in relation to an occupational pension scheme—

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(7) Article 23 was substituted by Article 32(3) of the Pensions (Northern Ireland) Order 2005

(8) 2004 c. 12; section 153 was amended by paragraphs 2 and 3 of Schedule 10 to the Finance Act 2005 (c. 7)

- (a) consultation has already been carried out under these Regulations in respect of a proposal to prevent the future accrual of benefits, as described in regulation 8(1)(c), and
  - (b) there is a further proposal as a result of that consultation to make a decision to reduce the rate of such accrual, as described in regulation 8(3)(d).
- (6) The third case is where, in relation to an occupational pension scheme—
- (a) consultation has already been carried out under these Regulations in respect of a proposal to remove the liability to make employer contributions, as described in regulation 8(1)(d), and
  - (b) there is a further proposal as a result of that consultation to make a decision to reduce such contributions, as described in regulation 8(2).
- (7) The fourth case is where, in relation to a personal pension scheme—
- (a) consultation has already been carried out under these Regulations in respect of a proposal to cease employer contributions, as described in regulation 9(a), and
  - (b) there is a further proposal as a result of that consultation to make a decision to reduce such contributions, as described in regulation 9(b).

#### **Notifications to employers and duty to consult**

7.—(1) Any person falling within regulation 3(1) who proposes to make a listed change affecting an occupational or personal pension scheme must give written notice of that change to each employer in relation to the scheme.

- (2) Paragraph (1) does not apply—
- (a) in any of the four cases described in regulation 6(4) to (7), or
  - (b) where the person proposing the change is a relevant employer in relation to—
    - (i) an occupational pension scheme which is not a multi-employer scheme, or
    - (ii) a personal pension scheme.
- (3) If his employees appear to him to include affected members—
- (a) any employer notified under paragraph (1) who is a relevant employer, and
  - (b) any relevant employer falling within paragraph (2)(b),

must consult about the listed change in accordance with regulations 11 to 16.

(4) For the purposes of these Regulations “affected members”, in relation to a proposal to make a listed change affecting an occupational or personal pension scheme, means the active or prospective members of the scheme to whom the listed change relates.

#### **Listed changes: occupational pension schemes**

- 8.—(1) Listed changes that affect occupational pension schemes are—
- (a) to increase the normal pension age specified in the scheme rules for members or members of a particular description;
  - (b) to prevent new members, or new members of a particular description, from being admitted to the scheme;
  - (c) to prevent the future accrual of benefits under the scheme for or in respect of members or members of a particular description;
  - (d) to remove the liability to make employer contributions towards the scheme in respect of members or members of a particular description;

- (e) to introduce member contributions in any circumstances in which no such contributions were previously payable;
  - (f) to make any increase in member contributions by or on behalf of members or members of a particular description;
  - (g) to make any change specified in paragraph (2) or (3).
- (2) A listed change affecting only money purchase benefits is to make any reduction in the amount of employer contributions towards the scheme in respect of members or members of a particular description.
- (3) Listed changes affecting only benefits which are not money purchase benefits are—
- (a) to change to money purchase benefits some or all of the benefits that may be provided under the scheme to or in respect of members or members of a particular description;
  - (b) to change, in whole or in part, the basis for determining the rate of future accrual of benefits under the scheme for or in respect of members or members of a particular description;
  - (c) to modify the scheme under Article 208(2) of the Order (matters requiring agreement of the employer) so as to reduce the rate of future accrual of benefits under the scheme for or in respect of members or members of a particular description;
  - (d) to make any other reduction in the rate of future accrual of benefit under the scheme for or in respect of members or members of a particular description.
- (4) “Normal pension age” has the meaning given by section 175 of the Pension Schemes Act.

#### **Listed changes: personal pension schemes**

9. Listed changes that affect personal pension schemes are—
- (a) to cease employer contributions towards the scheme in respect of members or members of a particular description;
  - (b) to make any reduction in the amount of employer contributions towards the scheme in respect of members or members of a particular description;
  - (c) to make any increase in member contributions by or on behalf of members or members of a particular description.

#### **Listed changes: exclusions**

- 10.—(1) For the purposes of regulations 8 and 9, no account is to be taken of any change which—
- (a) is made for the purposes of complying with a statutory provision;
  - (b) is made for the purposes of complying with a determination made by the Regulator, or
  - (c) has no lasting effect on a person’s rights to be admitted to a scheme or on the benefits that may be provided under it.
- (2) No change which is—
- (a) a regulated modification within the meaning of the subsisting rights provisions, and
  - (b) subject to the requirements of those provisions,
- falls within regulation 8.
- (3) “Subsisting rights provisions” has the meaning given by Article 67 of the 1995 Order<sup>(9)</sup>.

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(9) S.I. 1995/3213 (N.I. 22); Article 67 is substituted by Article 239 of the Pensions (Northern Ireland) Order 2005

### *Information provision and consultation*

#### **Requirement to provide information**

**11.**—(1) In relation to a proposal to make a listed change affecting an occupational or personal pension scheme, each relevant employer to whom regulation 7(3) applies must provide information about the proposal to—

- (a) such of his employees as appear to him to be affected members of the scheme, and
  - (b) any representatives of such members who are to be consulted under regulation 12(2)(a) or (3) or 13(2).
- (2) The information provided under paragraph (1) must—
- (a) be in writing;
  - (b) be provided before the start of consultation under regulation 12 or 13;
  - (c) describe the listed change and state what effects it would (or would be likely to) have on the scheme and its members;
  - (d) be accompanied by any relevant background information;
  - (e) indicate the timescale on which measures giving effect to the change are proposed to be introduced, and
  - (f) be given in such fashion and with such content as are appropriate to enable, in particular, representatives of affected members to consider, conduct a study of, and give their views to the employer on, the impact of the listed change on such members.

#### **Consultation under existing arrangements**

**12.**—(1) If arrangements specified in paragraph (2) or (3) exist in relation to his employees, each relevant employer to whom regulation 7(3) applies must consult about a listed change in accordance with such one or more of those arrangements as he may choose.

(2) The specified arrangements are arrangements under which employees appearing to the employer to be affected members—

- (a) are represented by—
  - (i) in the case of employees of a description in respect of which an independent trade union is recognised by the employer, the representatives of the trade union,
  - (ii) in the case of employees of a description which has elected or appointed information and consultation representatives, those representatives, or
  - (iii) where there exists one or more pre-existing agreements which apply to any of the employees, any representatives identified in accordance with such agreement or agreements, or
- (b) are to be consulted directly in accordance with the terms of a negotiated agreement or a pre-existing agreement.

(3) In any case where—

- (a) an election of representatives as described in regulation 13(2) has taken place before any arrangements referred to in paragraph (2) are made, and
  - (b) the interests of affected members are represented by such representatives,
- the specified arrangements also include arrangements for consultation of those representatives.

(4) “Independent trade union” and “recognised”, in relation to an independent trade union, have the same meaning as in the Industrial Relations (Northern Ireland) Order 1992<sup>(10)</sup>.

(5) “Information and consultation representatives” and “negotiated agreement” have the same meaning as in regulation 2(2) of the Information and Consultation Regulations <sup>(11)</sup> (interpretation).

(6) “Pre-existing agreement”—

- (a) means an agreement between an employer and his employees or their representatives which satisfies the conditions set out in regulation 8(1)(a) to (d) of the Information and Consultation Regulations and which has not been superseded, but
- (b) does not include an agreement concluded in accordance with the regulations 17 or 42 to 45 of the Transnational Information and Consultation of Employees Regulations 1999<sup>(12)</sup> or a negotiated agreement.

### **Consultation in cases not covered by regulation 12**

**13.**—(1) This regulation applies to a relevant employer to whom regulation 7(3) applies if (and only if) any of the employees who appear to the employer to be affected members are not covered by consultation arrangements referred to in regulation 12.

(2) Where, for the purposes of engaging in consultations under these Regulations, representatives of any affected members have been elected in an election which satisfies the requirements of regulation 14(1), the relevant employer must consult with those representatives about a listed change.

(3) If the interests of any affected members are not represented by representatives who are consulted under paragraph (2), the relevant employer must also consult directly with those members.

(4) If no representatives have been elected as described in paragraph (2), the relevant employer must consult directly with the affected members about a listed change.

(5) Consultation under this regulation—

- (a) is required only in relation to the affected members falling within paragraph (1), and
- (b) is additional to any consultation in relation to other affected members which is required by regulation 12.

### **Election of representatives**

**14.**—(1) The requirements of this paragraph are that—

- (a) the employer must make such arrangements as are reasonably practicable to ensure that the election is fair;
- (b) the employer must determine the number of representatives to be elected so that there are sufficient representatives to represent the interests of active members and the interests of prospective members;
- (c) the employer must determine whether the active and prospective members should be represented by representatives of all such members or by representatives of particular descriptions of such members;
- (d) before the election the employer must determine the term of office as representative of active and prospective members;
- (e) the candidates for election must be active or prospective members of the scheme on the date of the election;

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<sup>(10)</sup> S.I. 1992/807 (N.I. 5); see Articles 2(2) and 39(2)

<sup>(11)</sup> S.R. 2005 No. 47

<sup>(12)</sup> S.I. 1999/3323



- (f) no active or prospective member may unreasonably be excluded from standing for election;
  - (g) all active or prospective members on the date of the election are entitled to vote for member representatives;
  - (h) the members entitled to vote may vote for as many candidates as there are representatives to be elected to represent them or, if there are to be classes of representative for particular descriptions of member, may vote for as many candidates as there are representatives to be elected to represent their particular description of member;
  - (i) the election is conducted so as to secure that—
    - (i) so far as is reasonably practicable, those voting do so in secret, and
    - (ii) the votes given at the election are accurately counted.
- (2) Where, after an election of representatives satisfying the requirements of paragraph (1) has been held—
- (a) one of those elected ceases to act as a representative, and
  - (b) the active or prospective members (or any description of them) are no longer represented,
- those members must elect another representative by an election satisfying the requirements of paragraph (1)(a), (e), (f) and (i).
- (3) The relevant employer must from time to time review the number of representatives determined under paragraph (1)(b) and the number of representatives elected must be adjusted accordingly (whether by members electing one or more other representatives by an election satisfying the requirements of paragraph (1)(a), (e), (f) and (i), by not holding an election under paragraph (2) or otherwise).

### **Conduct of consultation**

- 15.**—(1) Each relevant employer who carries out a consultation must make such arrangements with respect to the persons to be consulted as appear to him to secure that, so far as is reasonably practicable, the consultation covers all affected members.
- (2) In the course of consultation, the relevant employer and any person consulted are under a duty to work in a spirit of co-operation, taking into account the interests of both sides.
- (3) At the start of any consultation required by these Regulations, the relevant employer must notify the persons to be consulted of any date set for the end of the consultation or for the submission of written comments.
- (4) An appropriate period must be allowed for carrying out the consultation which in any event must not be less than 60 days.
- (5) If no responses to the consultation are received before the end of the period allowed for the consultation in accordance with paragraphs (3) and (4), the consultation is to be regarded as complete.

### **End of consultation**

- 16.**—(1) Where the relevant employer who carries out a consultation is not the person who proposed the listed change (“P”), the relevant employer must, as soon as reasonably practicable after the consultation is complete—
- (a) report to P on the views (if any) which were expressed to the relevant employer otherwise than in writing;
  - (b) where the responses include written comments, forward those comments to P, and

(c) in any case where no responses were received, notify P accordingly.

(2) In a case falling within paragraph (1), P must take reasonable steps to satisfy himself that each consultation required by these Regulations in relation to the scheme was carried out in accordance with regulations 11 to 15.

(3) After the end of the period allowed for the consultation, the person who proposed the listed change must consider the responses (if any) received in the course of consultation before making his decision as to whether or not to make a listed change.

### *Miscellaneous*

#### **Employment rights and protections in connection with consultation**

17. The Schedule contains provision as to employment rights and protections which, in connection with consultation under these Regulations, apply to the employees of an employer in relation to an occupational or personal pension scheme.

#### **Exclusivity of remedy**

18.—(1) The remedy for a failure to comply with any obligations under regulations 6 to 16 in respect of any proposal or decision to make a listed change is by way of complaint to the Regulator.

(2) A complaint may be made by—

- (a) any representative of affected members who falls within regulation 12(2)(a) or (3) or 13(2) (including any such representative who is not consulted), and
- (b) any active or prospective member of an occupational or personal pension scheme who considers that he is or may be an affected member.

#### **Powers of the Regulator to waive or relax requirements**

19.—(1) The Regulator may by order waive or relax any of the requirements of regulations 6 to 16.

(2) The power under paragraph (1) may be exercised only if the Regulator is satisfied that it is necessary to do so in order to protect the interests of the generality of the members of the scheme.

#### **Waiver or relaxation of requirements: amendment of Schedule 2 to the Order**

20. In Schedule 2 to the Order (the reserved regulatory functions), after paragraph 44 there shall be added the following—

#### “PART 5

#### OTHER FUNCTIONS

45. The power to make an order under regulation 19 of the Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006 to waive or relax any of the requirements of regulations 6 to 16 of those Regulations.”.

#### **Waiver or relaxation of requirements: prescribed regulatory function**

21. The Regulator’s power to make an order under regulation 19 to waive or relax any of the requirements of regulations 6 to 16 is prescribed for the purposes of Article 92(5)(u) of the Order (special procedure: applicable cases).

Sealed with the Official Seal of the Department for Social Development on 16th February 2006.

L.S.

*John O'Neill*  
A senior officer of the  
Department for Social Development

## SCHEDULE

Regulation 17

## Employment rights and protections in connection with consultation

## 1. In this Schedule—

- “the 1996 Order” means the Employment Rights (Northern Ireland) Order 1996<sup>(13)</sup>;
- “the Tribunals Order” means the Industrial Tribunals (Northern Ireland) Order 1996<sup>(14)</sup>;
- “consulted representative” has the meaning given by paragraph 2(2);
- “contract of employment” means a contract of service or apprenticeship whether express or implied and (if it is express) whether oral or in writing;
- “employee” means an individual who has entered into or works under a contract of employment and includes, where the employment has ceased, an individual who worked under a contract of employment;
- “employment”, in relation to an employee, means employment under a contract of employment (and “employed” has a corresponding meaning);
- “employer”, in relation to an employee, means the person by whom the employee is (or where employment has ceased, was) employed.

*Right to time off and remuneration*

## 2.—(1) An employee who—

- (a) is a representative falling within regulation 12(2)(a) or (3) or 13(2), and
- (b) is consulted under these Regulations about a listed change by a relevant employer,

is entitled to be permitted by his employer to take reasonable time off during the employee’s working hours in order to perform his functions as such a representative.

(2) In this Schedule “consulted representative” means an employee who satisfies the conditions specified in sub-paragraph (1)(a) and (b).

(3) For the purposes of this paragraph, the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, the employee is required to be at work.

3.—(1) An employee who is permitted to take time off under paragraph 2 is entitled to be paid remuneration by his employer for the time taken off at the appropriate hourly rate.

(2) Chapter IV of Part 1 of the 1996 Order (a week’s pay) shall apply in relation to this paragraph as it applies in relation to Article 90 of that Order (right to remuneration for time off under Article 89).

(3) The appropriate hourly rate, in relation to an employee, is the amount of one week’s pay divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the time is taken off.

(4) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week’s pay shall be divided instead by—

- (a) the average number of normal working hours calculated by dividing by twelve the total number of the employee’s normal working hours during the period of twelve weeks ending with the last complete week before the day when the time is taken off, or
- (b) where the employee has not been employed for a sufficient period to enable the calculations to be made under head (a), a number which fairly represents the number of

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<sup>(13)</sup> S.I. 1996/1919 (N.I. 16)

<sup>(14)</sup> S.I. 1996/1921 (N.I. 18)

normal working hours in a week having regard to such of the considerations specified in sub-paragraph (5) as are appropriate in the circumstances.

- (5) The considerations referred to in sub-paragraph (4)(b) are—
- (a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of his contract, and
  - (b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer.

(6) A right to any amount under sub-paragraph (1) does not affect any right of an employee in relation to remuneration under his contract of employment (“contractual remuneration”).

(7) Any contractual remuneration paid to an employee in respect of a period of time off under paragraph 2 goes towards discharging any liability of the employer to pay remuneration under sub-paragraph (1) in respect of that period and, conversely, any payment of remuneration under sub-paragraph (1) in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

- 4.—(1) An employee may present a complaint to an industrial tribunal that his employer—
- (a) has unreasonably refused to permit him to take time off as required by paragraph 2, or
  - (b) has failed to pay the whole or part of any amount to which the employee is entitled under paragraph 3.

- (2) A tribunal shall not consider a complaint under this paragraph unless it is presented—
- (a) before the end of the period of three months beginning with the day on which the time off was taken or on which it is alleged the time off should have been permitted, or
  - (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where a tribunal finds a complaint under this paragraph well-founded, it shall make a declaration to that effect.

(4) If the complaint is that the employer has unreasonably refused to permit the employee to take time off, the tribunal shall also order the employer to pay to the employee an amount equal to the remuneration to which he would have been entitled under paragraph 3 if the employer had not refused.

(5) If the complaint is that the employer has failed to pay the employee the whole or part of any amount to which he is entitled under paragraph 3, the tribunal shall also order the employer to pay to the employee the amount it finds due to him.

#### *Protections against unfair dismissal*

5.—(1) An employee who is dismissed and to whom sub-paragraph (2) or (4) applies shall be regarded, if the reason (or if more than one, the principal reason) for the dismissal is a reason specified in, respectively, sub-paragraph (3) or (5), as unfairly dismissed for the purposes of Part XI of the 1996 Order (which makes provision as to rights and remedies relating to unfair dismissal).

- (2) This sub-paragraph applies to an employee who is—
- (a) a consulted representative, or
  - (b) a candidate in an election in which any person elected will, on being elected, be a representative of such description as is referred to in regulation 13(2).

(3) The reasons are that—

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- (a) the employee performed or proposed to perform any functions or activities under these Regulations in his capacity as such a representative or candidate;
  - (b) the employee exercised or proposed to exercise an entitlement conferred on the employee by paragraph 2 or 3, or
  - (c) the employee (or a person acting on his behalf) made or proposed to make a request to exercise such an entitlement.
- (4) This sub-paragraph applies to any employee who is an active or prospective member of an occupational or personal pension scheme, whether or not he is an employee to whom sub-paragraph (2) applies.
- (5) The reasons are that the employee—
- (a) took, or proposed to take, any proceedings before an industrial tribunal to enforce a right or secure an entitlement conferred on him by this Schedule;
  - (b) complained or proposed to complain to the Regulator that any person falling within regulation 3(1)—
    - (i) has decided to make a listed change affecting an occupational or personal pension scheme in contravention of regulation 6(1), or
    - (ii) has failed to comply with the requirements of regulation 16(2) or (3);
  - (c) complained or proposed to complain to the Regulator that any consultation required by these Regulations was not carried out in accordance with the requirements of these Regulations;
  - (d) stood as a candidate in an election in which any person elected would, on being elected, be a representative of such description as is referred to in regulation 13(2);
  - (e) influenced or sought to influence by lawful means the way in which votes were to be cast by other employees in an election arranged under regulation 14;
  - (f) voted in such an election;
  - (g) expressed doubts, whether to an election supervisor or otherwise, as to whether such an election had been properly conducted, or
  - (h) proposed to do, failed to do, or proposed to decline to do any of the things mentioned in heads (d) to (g).
- (6) It is immaterial for the purpose of sub-paragraph (5)(a)—
- (a) whether or not the employee has the right or entitlement, or
  - (b) whether or not the right has been infringed,

but for that provision to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.

6.—(1) The 1996 Order shall be amended in accordance with sub-paragraphs (2) to (4).

(2) In Article 137 (redundancy as unfair dismissal)—

- (a) in paragraph (1)(15), for sub-paragraph (c) there shall be substituted the following sub-paragraph—
  - “(c) it is shown that any of paragraphs (2A)(16) to (7G) apply.”, and
- (b) after paragraph (7F)(17) there shall be inserted the following paragraph—

(15) Paragraph (1) was amended by Article 20(4) of the Employment Relations (Northern Ireland) Order 2004 (S.I. 2004/3078 (N.I. 19)) and regulation 43(1)(a) of S.R. 2004 No. 417

(16) Paragraph (2A) was inserted by Article 20(5) of the Employment Relations (Northern Ireland) Order 2004

(17) Paragraph (7F) was inserted by regulation 31(1)(b) of S.R. 2005 No. 47

“(7G) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph 5(3) or (5) of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006 (read with paragraph 5(6) of that Schedule).”

(3) In Article 140(3) (exclusion of right: qualifying period of employment)—

(a) at the end of sub-paragraph (n)(18) “or” shall be omitted, and

(b) after sub-paragraph (o)(19) there shall be inserted—

“, or

(p) paragraph 5(3) or (5) of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006 (read with paragraph 5(6) of that Schedule) applies.”

(4) In Article 141(2) (exclusion of right: upper age limit)—

(a) at the end of sub-paragraph (n)(20) “or” shall be omitted, and

(b) after sub-paragraph (o)(21) there shall be inserted—

“, or

(p) paragraph 5(3) or (5) of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006 (read with paragraph 5(6) of that Schedule) applies.”

#### *Protections from suffering other detriment in employment*

7.—(1) An employee to whom sub-paragraph (2) or (4) applies has the right not to be subjected to any detriment by any act, or deliberate failure to act, by his employer done on a ground specified in, respectively, sub-paragraph (3) or (5).

(2) This sub-paragraph applies to an employee who is—

(a) a consulted representative, or

(b) a candidate in an election in which any person elected will, on being elected, be a representative of such description as is referred to in regulation 13(2).

(3) The grounds are that—

(a) the employee performed or proposed to perform any functions or activities under these Regulations in his capacity as such a representative or candidate;

(b) the employee exercised or proposed to exercise an entitlement conferred on the employee by paragraph 2 or 3, or

(c) the employee (or a person acting on his behalf) made or proposed to make a request to exercise such an entitlement.

(4) This sub-paragraph applies to any employee who is an active or prospective member of an occupational or personal pension scheme, whether or not he is an employee to whom sub-paragraph (2) applies.

(5) The grounds are that the employee—

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(18) Sub-paragraph (n) was inserted by regulation 43(2)(b) of S.R. 2004 No. 417

(19) Sub-paragraph (o) was inserted by regulation 31(2)(b) of S.R. 2005 No. 47

(20) Sub-paragraph (n) was inserted by regulation 43(3)(b) of S.R. 2004 No. 417

(21) Sub-paragraph (o) was inserted by regulation 31(3)(b) of S.R. 2005 No. 47

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- (a) took, or proposed to take, any proceedings before an industrial tribunal to enforce a right or secure an entitlement conferred on him by this Schedule;
  - (b) complained or proposed to complain to the Regulator that any person falling within regulation 3(1)—
    - (i) has decided to make a listed change affecting an occupational or personal pension scheme in contravention of regulation 6(1), or
    - (ii) has failed to comply with the requirements of regulation 16(2) or (3);
  - (c) complained or proposed to complain to the Regulator that any consultation required by these Regulations was not carried out in accordance with the requirements of these Regulations;
  - (d) stood as a candidate in an election in which any person elected would, on being elected, be a representative of such description as is referred to in regulation 13(2);
  - (e) influenced or sought to influence by lawful means the way in which votes were to be cast by other employees in an election arranged under regulation 14;
  - (f) voted in such a election;
  - (g) expressed doubts, whether to an election supervisor or otherwise, as to whether such an election had been properly conducted, or
  - (h) proposed to do, failed to do, or proposed to decline to do any of the things mentioned in heads (d) to (g).
- (6) It is immaterial for the purpose of sub-paragraph (5)(a)—
- (a) whether or not the employee has the right or entitlement, or
  - (b) whether or not the right has been infringed,
- but for that provision to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.
- (7) This paragraph does not apply where the detriment in question amounts to dismissal.

8.—(1) An employee may present a complaint to an industrial tribunal that he has been subjected to a detriment in contravention of paragraph 7.

(2) The provisions of Articles 71(2) to (4) and 72 of the 1996 Order<sup>(22)</sup> (complaints to industrial tribunals and remedies) shall apply in relation to a complaint under this paragraph as they apply in relation to a complaint under Article 71 of that Order.

#### *Conciliation and appeals*

9. In Article 20(1) of the Tribunals Order (which specifies the proceedings and claims in which conciliation procedures are available)—

- (a) at the end of sub-paragraph (m)<sup>(23)</sup> “or” shall be omitted, and
- (b) after sub-paragraph (n)<sup>(24)</sup> there shall be inserted—
  - “, or
  - (o) under paragraph 4 or 8 of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006.”.

<sup>(22)</sup> Articles 71(2) and 72 were amended respectively by Articles 6(3) and 7 of the Public Interest Disclosure (Northern Ireland) Order 1998 (S.I. 1998/1763 (N.I. 17))

<sup>(23)</sup> Sub-paragraph (m) was inserted by regulation 46 of S.R. 2004 No. 417

<sup>(24)</sup> Sub-paragraph (n) was inserted by regulation 34(b) of S.R. 2005 No. 47



### Miscellaneous

10. Any provision in any agreement (whether an employee's contract or not) is void in so far as it purports to exclude or limit the operation of any provision of regulations 6 to 16.

11.—(1) Any provision in any agreement (whether an employee's contract or not) is void in so far as it purports—

- (a) to exclude or limit the operation of any provision of this Schedule, or
- (b) to preclude a person from bringing any proceedings before an industrial tribunal under this Schedule.

(2) Sub-paragraph (1) does not apply to any agreement to refrain from instituting or continuing proceedings before an industrial tribunal where the Labour Relations Agency has taken action under Article 20 of the Tribunals Order (conciliation).

(3) Sub-paragraph (1) does not apply to any agreement to refrain from instituting or continuing before an industrial tribunal proceedings within Article 20(1) of the Tribunals Order (which specifies proceedings under these Regulations as being proceedings where conciliation is available<sup>(25)</sup>) if the conditions specified in paragraph 12 regulating compromise agreements are satisfied in relation to the agreement.

12.—(1) For the purposes of paragraph 11(3) the conditions regulating compromise agreements are that—

- (a) the agreement must be in writing;
- (b) the agreement must relate to the particular proceedings;
- (c) the employee must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and, in particular, its effect on his ability to pursue his rights before an industrial tribunal;
- (d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or a professional body, covering the risk of a claim by the employee in respect of loss arising in consequence of the advice;
- (e) the agreement must identify the adviser, and
- (f) the agreement must state that the conditions in heads (a) to (e) are satisfied.

(2) A person is a relevant independent adviser for the purposes of sub-paragraph (1)(c) if he—

- (a) is a qualified lawyer;
- (b) is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union, or
- (c) works at an advice centre (whether as an employee or as a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre.

(3) A person is not a relevant independent adviser for the purposes of sub-paragraph (1)(c)—

- (a) if he is, is employed by or is acting in the matter for the employer or an associated employer;
- (b) in the case of a person within sub-paragraph (2)(b) or (c), if the trade union or advice centre is the employer or an associated employer, or

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(25) See paragraph 9 of the Schedule to these Regulations

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- (c) in the case of a person within sub-paragraph (2)(c), if the employee makes a payment for the advice received from him.
- (4) In sub-paragraph (2)(a) “qualified lawyer” means a barrister (whether in practice as such or employed to give legal advice) or a solicitor who holds a practising certificate.
- (5) In this paragraph—
  - (a) “independent trade union” has the same meaning as in Article 2(2) of the Industrial Relations (Northern Ireland) Order 1992(26) (interpretation), and
  - (b) for the purposes of sub-paragraph (3) any two employers shall be treated as associated if—
    - (i) one is a company of which the other (directly or indirectly) has control, or
    - (ii) both are companies of which a third person (directly or indirectly) has control, and “associated employer” shall be construed accordingly.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations prohibit the making of certain changes to occupational or personal pension schemes unless consultation about the change is carried out beforehand.

Regulation 1 provides for the citation and commencement and regulation 2 defines certain phrases used in the Regulations.

Regulations 3 to 5 specify the persons to whom the Regulations apply. For all occupational or personal pension schemes, these are relevant employers. For occupational pension schemes which have at least one relevant employer, the Regulations also apply to trustees or managers of the scheme and, if the scheme is a multi-employer scheme, to any other person who has power to change the scheme.

Regulation 6 prohibits the making of any change specified in regulation 8 or 9 (“listed changes”) without consultation having been carried out by each relevant employer in relation to the scheme. Regulation 7 requires the person who proposes the change to notify all employers in relation to the scheme. If an employer is a relevant employer and has employees who are affected by the change, regulation 7(3) requires him to consult in accordance with regulations 11 to 16. Regulation 10 specifies certain changes that are excluded from the listed changes in regulation 8 or 9.

Regulations 11 to 16 provide for the way in which consultations are to be conducted. Information must be provided under regulation 11. Under regulation 12, where arrangements for consultation already exist, a relevant employer must consult in accordance with those arrangements. He is able to choose one or more of those arrangements and, if any affected members are not covered by such arrangements, he must also consult in accordance with regulation 13. If no consultation arrangements already exist, the employer has to consult in accordance with regulation 13 only. Regulation 13 provides that, where representatives have been specially elected for the purposes of consultation under the Regulations, the employer must consult with them. Regulation 14 sets out the requirements for such an election. If no representatives have been elected, or if the representatives do not represent

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(26) S.I. 1992/807 (N.I. 5)

the interests of all the members who are not covered by any consultation required under regulation 12, the employer must consult directly with the members.

Regulation 15 requires the employer to ensure that the consultation covers all affected members so far as is reasonably practicable and outlines a duty of co-operation that applies to those engaged in it. Once the period allowed for consultation is ended, responses to the consultation must be considered under regulation 16.

Regulation 17 introduces the Schedule to the Regulations which makes provision for employment rights and protections in relation to persons who are consulted. Paragraphs 2 to 4 of the Schedule provide that consulted representatives are entitled to time off and remuneration when acting as a representative. Paragraphs 5 to 8 of the Schedule make provision protecting employees, and any representatives who are consulted, against unfair dismissal and other detriment. Paragraph 9 provides for conciliation procedures to be available in any proceedings before an industrial tribunal brought under the Schedule. Paragraphs 10 to 12 place restrictions on contracting out of the requirements imposed by these Regulations.

Regulations 18 and 19 make provision as to the role of the Pensions Regulator in enforcing the Regulations. Regulation 20 amends the Pensions (Northern Ireland) Order 2005 (“the Order”) so that any decision whether to make an order to waive or relax a requirement of the Regulations (*see* power under regulation 19) must be taken by the Determinations Panel established under section 9 of the Pensions Act 2004 (c. 35) (*see also* section 323(2)(a)(i) of that Act). Regulation 21 adds the power under regulation 19 to the list of regulatory functions which are eligible to be carried out under the special procedure in cases of urgency.

The Pensions (2005 Order) (Commencement No. 7) Order (Northern Ireland) (S.R. 2005 No. 543 (C. 37)) provides for the coming into operation of Articles 236(1) and (2), 237(1) and 238(2) and (4), some of the enabling provisions under which these Regulations are made, for the purposes only of authorising the making of regulations, on 1st January 2006 and for all other purposes on 6th April 2006.

As these Regulations are made before the end of the period of six months beginning with the coming into operation of the provisions of the Order by virtue of which they are made, the requirement to consult under Article 289(1) of the Order does not apply by virtue of paragraph (2)(c) of that Article.