

2008 No. 130

HEALTH AND PERSONAL SOCIAL SERVICES

The Health and Personal Social Services (Superannuation Scheme, Injury Benefits, Additional Voluntary Contributions and Compensation for Premature Retirement) (Amendment) Regulations (Northern Ireland) 2008

Made - - - - - *14th March 2008*

Coming into operation *31st March 2008*

The Department of Health, Social Services and Public Safety^(a) makes the following Regulations in exercise of the powers conferred by Articles 12 and 14 of, and Schedule 3 to the Superannuation (Northern Ireland) Order 1972^(b), with the consent of the Department of Finance and Personnel.

In accordance with Article 12(4) of that Order, the Department has consulted with representatives of persons likely to be affected by these Regulations, as appeared to it to be appropriate.

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Health and Personal Social Services (Superannuation Scheme, Injury Benefits, Additional Voluntary Contributions and Compensation for Premature Retirement) (Amendment) Regulations (Northern Ireland) 2008.

(2) These Regulations shall come into operation on 31st March 2008 and subject to subparagraphs (a) to (d) shall have effect from 14th December 2007—

- (a) regulation 3(5), (6), (7) and (16)(a) shall have effect from 1st April 1995;
- (b) regulation 3(11)(b)(i), (c) and (d) shall have effect from 1st April 2007;
- (c) regulation 3(12)(a) and (b) shall have effect from 10th May 2000; and
- (d) regulation 3(12)(c) shall have effect from 5th December 2005.

Interpretation

2. In these Regulations—

“the Superannuation Scheme Regulations” means the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995^(c);

“the Injury Benefits Regulations” means the Health and Personal Social Services (Injury Benefits) Regulations (Northern Ireland) 2001^(d);

(a) See S.I. 1999/283 (N.I. 1): Article 3(6)

(b) S.I. 1972/1073 (N.I. 10) as amended by S.I. 1990/1509 (N.I. 13), 1993 c. 49 (N.I.) and S.I. 2002/1555

(c) S.R. 1995 No. 95 as amended by S.R. 1997 Nos. 217 and 390; S.R. 1998 No. 299; S.R. 1999 No. 293; S.R. 2002 No. 69; S.R. 2004 Nos. 103 and 104; S.R. 2005 Nos. 155, 533, 534 and 565; S.R. 2006 Nos. 159 and 410

(d) S.R. 2001 No. 367 as amended by S. R. 2005 Nos. 533 and 565; S.R. 2006 Nos. 159 and 410

“the AVC Regulations” means the Health and Personal Social Services (Superannuation) (Additional Voluntary Contributions) Regulations (Northern Ireland) 1999(a);

Amendments to the Health and Personal Social Services (Superannuation) Scheme Regulations (Northern Ireland) 1995

3.—(1) The Superannuation Scheme Regulations shall be amended as provided by paragraphs (2) to (21).

(2) In regulation 2 (Interpretation)—

(a) insert the following definition in the appropriate place in alphabetical order—

““Scheme Actuary” means the actuary appointed from time to time by the Department to provide advice in connection with the scheme;”;

(b) in the definition of “employing authority”—

(i) after paragraph (g) add—

“; and

(h) as regards a person who is subject to a direction made under Article 12(6) of the Superannuation (Northern Ireland) Order 1972 and subject to such modifications to these Regulations as the Department may in any particular case direct, any employer of such a person that the Department agrees to treat as an employing authority for the purposes of these Regulations.”

(3) In regulation 11 (Contributions by employing authorities)—

(a) in paragraphs (2), (3)(f), (5)(b)(i), (5)(b)(ii), (6)(a), (6)(b), (7)(a) and (7)(b), for “the Government Actuary” substitute “the Scheme Actuary”;

(b) after paragraph (8) add—

“(9) In any particular case the Department may direct that, for the purposes of this regulation, “employing authority” includes one or more of—

(a) a successor, transmittee or assignee of an employing authority’s business or functions; and

(b) the last employing authority of a person to whom these Regulations apply.”.

(4) In regulations 16(2) and (4) (Early retirement pension (with actuarial reduction)) and 17(7)(b) (Lump sum on retirement), for “the Government Actuary” substitute “the Scheme actuary”.

(5) After regulation 18(1) (Lump Sum on Death - Member dies in superannuable employment) insert—

“(1A) A lump sum on death shall be payable in accordance with regulation 22 (Payment of lump sum) where, on the day they died, the member is—

(a) under the age of 70;

(b) in HPSS employment;

(c) no longer required to pay contributions pursuant to regulation 10(3) or (4) (Contributions by members); and

(d) except where regulation 13(11) (Early retirement pension(ill health)) or 77(6) (Members doing more than one job) applies, not in receipt of a pension under any of regulations 12 to 16.”.

(6) After regulation 24(5) (Widows and Widowers - Member dies in superannuable employment) add—

“(6) The widow’s pension payable on a member’s death if, on the day they died, the member is—

(a) under the age of 70;

(b) in HPSS employment;

(c) no longer required to pay contributions pursuant to regulation 10(3) or (4) (Contributions by members); and

(a) S.R. 1999 No. 294 as amended by S.R. 2002 No. 129; S.R. 2004 No. 104; S.Rs 2005 No. 154 and 533 and S.R. 2006 No. 410

- (d) except where regulation 77(6) (Members doing more than one job) applies, not in receipt of a pension under any of regulations 12 to 16,
will be as described in paragraph (2) and (3), but with the modifications set out in paragraph (7).
- (7) The modifications referred to in paragraph (6) are—
- (a) in paragraph (2), for “member’s superannuable pay when he died” substitute “member’s final year’s superannuable pay”; and
 - (b) in paragraph (3), for “on the day he died” substitute “on his last day of superannuable employment”.”.
- (7) After regulation 34(8) (Child Allowance — Member dies in superannuable employment) add—
- “(9) The child allowance payable on a member’s death if, on the day they died, the member is—
- (a) under the age of 70;
 - (b) in HPSS employment;
 - (c) no longer required to pay contributions pursuant to regulation 10(3) or (4) (Contributions by members); and
 - (d) except where regulation 77(6) (Members doing more than one job) applies, not in receipt of a pension under any of regulations 12 to 16,
will be as described in paragraphs (2) to (8), but with the modifications set out in paragraph (10).
- (10) The modifications referred to in paragraph (9) are—
- (a) in paragraph (2), for “on the day he died” substitute “on his last day of superannuable employment”.; and
 - (b) in each of paragraphs (6) and (7), for “member’s superannuable pay when he died” substitute “member’s final year’s superannuable pay”.”.
- (8) In regulation 39 (Allocation of pension)—
- (a) in paragraph (3), for “the Government Actuary” substitute “the Scheme actuary”;
 - (b) for paragraph (4)(a) substitute—

“(a) on making a claim for payment of his benefits under regulation 88 (Claims for benefits), or at any time after making such a claim but before the date on which a pension payable to him under the scheme is put into payment; or”.
- (9) In paragraphs (1) and (2) of regulation 58 (Transfers in respect of more than one member), for “the Government Actuary” substitute “the Scheme actuary”.
- (10) In regulations 62A(2)(iii) (Transfers that are not made under the Public Sector Transfer Arrangements) and 63(2) and (3) (Transfers in respect of more than one member), for “the Government Actuary” substitute “the Scheme actuary”.
- (11) In regulation 65 (Absence because of illness or injury or maternity leave)—
- (a) in paragraph (1), for “or paternity leave” substitute “, paternity leave or parental leave”;
 - (b) in paragraph (4)(b)—
 - (i) before “in the case” insert “subject to paragraph (4A),”; and
 - (ii) for “or paternity leave” substitute “, paternity leave or parental leave”;
 - (c) after paragraph (4) insert—

“(4A) For the purposes of paragraph (4)(b), the rate of contributions payable shall be the rate that would have been payable on the basis of reduced earnings in accordance with paragraph (3)(a) had the member’s reduced earnings excluded any earnings for a day during which the member returned to work for the purposes of keeping in touch with the workplace.”;

and
 - (d) after paragraph (7) add—

“(8) For the purposes of this regulation, “maternity leave” includes any day during which the member returns to work for the purposes of keeping in touch with the workplace.”.
- (12) In regulation 67 (Right to buy additional service)—

- (a) in paragraph (7), for “The” substitute “Subject to paragraph (10), the”;
- (b) after paragraph (9) add—

“(10) Except in the case of a pension debit member who is a moderate earner, a member may not replace any rights debited as a consequence of a pension sharing order with any rights which he would not have been able to acquire (in addition to the debited rights) had the pension sharing order not been made.

- (11) For the purposes of paragraph (10)—

“moderate earner” means a member whose superannuable pay during the tax year preceding the tax year in which his marriage is dissolved or annulled is not more than 25 per cent. of the permitted maximum for the tax year in which the dissolution or annulment occurred;

“pension debit member” means a person whose shareable rights under the scheme are subject to a debit under Article 26(1)(a) of the Welfare Reform and Pensions (Northern Ireland) (Order) 1999(a);

“permitted maximum” means the same as in section 590C of the Income and Corporation Taxes Act 1988(b) (earnings cap); and

“tax year” means any year beginning on 6th April and ending on 5th April the following year.”.

- (c) in the definition of “moderate earner” in newly inserted paragraph (11), after “his marriage” insert “or civil partnership”.

(13) In regulation 73(6) (Part payment for additional service or unreduced retirement lump sum) for “the Government Actuary” substitute “the Scheme actuary”.

(14) In regulation 74(3) (Practitioners and trainee practitioners), after “Board” insert “with the modifications described in paragraphs 3, 4, 5, 10 and 23 of Schedule 2”.

(15) In regulation 78(4) (Part-time employment), after “whole-time employment” insert “and any amount by which the member’s actual final year’s superannuable pay in respect of part time employment exceeds the amount determined will be ignored”.

(16) In regulation 87 (Benefits on death in superannuable employment after pension becomes payable)—

- (a) after paragraph (1) insert—

“(1A) This regulation shall also apply to a member in respect of whom a pension is payable under regulation 13 (Early retirement pension (ill-health)) who—

- (a) returns to superannuable employment after that pension becomes payable; and

- (b) on the day they die, is—

- (i) under the age of 70;

- (ii) in HPSS employment;

- (iii) no longer required to pay contributions pursuant to regulation 10(3) or (4) (contributions by members); and

- (iv) except where regulation 77(6) (Members doing more than one job) applies, not in receipt of a pension under any of regulations 12 to 16 in respect of his later service.”;

- (b) for paragraph (3) substitute—

“(3) If this regulation applies, a lump sum payable on the member’s death shall be payable in addition to any lump sum payable under regulation 19 (Member dies after pension becomes payable).

(3A) The additional lump sum referred to in paragraph (3) shall be equal to 5 times the amount of the pension that would have been payable to the member had he left HPSS

(a) 1999/3147 (N.I. 11)
(b) 1988 c. 1

employment and been entitled to a pension based on his later service under regulation 12 (Normal retirement pension) on the date of the member's death.”;

(c) in paragraphs (6) and (8), for “paragraph (3)” substitute “paragraph (3A)”.

(17) For regulation 88 (Claims for benefits) substitute—

“A person claiming to be entitled to benefits under these Regulations and his employing authority, including any previous employing authority of his, shall provide such—

(a) evidence of entitlement; and

(b) authority or permission as may be necessary for the release by third parties of information in their possession relating to the person so claiming,

as the Department may from time to time require for the purposes of these Regulations.”.

(18) In regulation 89A (Deduction of tax — further provisions), omit paragraphs (3), (4), (5) and (6).

(19) In regulation 94(2) (Commutation of trivial pensions), for “the Government Actuary” substitute “the Scheme actuary”.

(20) In regulation 96 (Determination of questions) after “Department” insert “and any dispute shall be resolved by the Department in accordance with the dispute resolution procedure issued from time to time by it in conformity with Article 50 of the Pensions (Northern Ireland) Order 1995(a)”.

(21) In regulation 97 (Accounts and actuarial reports), in paragraphs (3) and (4), for “the Government Actuary” substitute “the Scheme actuary”.

Amendments to the Health and Personal Social Services (Injury Benefits) Regulations

4.—(1) The Injury Benefits Regulations shall be amended as provided by paragraphs (2) to (7);

(2) In regulation 2(1) (Interpretation) in the definition of “employing authority” after paragraph (g) add—

“; and

(h) as regards a person who is subject to a direction made under Article 12(6) of the Superannuation (Northern Ireland) Order 1972, and subject to such modifications to these Regulations as the Department may in any particular case direct, any employer of such a person that the Department agrees to treat as an employing authority for the purposes of these Regulations.”

(3) In regulation 4(4)(b) (Scale of benefit) omit “permanent”.

(4) In regulation 5(2) (Recovery of costs)—

(a) for “claim is made for” substitute “person is entitled to”; and

(b) omit “pursuant to that claim”.

(5) After regulation 5(7) (Recovery of costs) add—

“(8) In any particular case the Department may direct that, for the purposes of this regulation, “employing authority” includes one or more of—

(a) a successor, transmittee or assignee of an employing authority's business or functions; and

(b) the last employing authority of a person to whom these Regulations apply.”.

(6) For regulation 19A (Claim for benefits) substitute—

“**19A.** A person claiming to be entitled to benefits under these Regulations and his employing authority, including any previous employing authority of his, shall provide such—

(a) evidence of entitlement; and

(b) authority or permission as may be necessary for the release by third parties of information in their possession relating to that person or that entitlement,

(a) S.I. 1995/ 213 (N.I. 22)

as the Department may from time to time require for the purposes of these Regulations.”.

(7) In regulation 23 (Determination of questions) after “Department” insert “and any dispute shall be resolved by the Department in accordance with the dispute resolution procedure issued from time to time by it in conformity with Article 50 of the Pensions (Northern Ireland) Order 1995”.

Amendments to the Health and Personal Social Services (Superannuation) (Additional Voluntary Contributions) Regulations (Northern Ireland) 1999

5.—(1) The AVC Regulations shall be amended as provided by paragraphs (2) and (3).

(2) In regulation 2(1) (Interpretation)

(a) the definition of “authorised fund”, after “Regulations” insert “, or any successor, transmittee or assignee of an authorised provider selected by the Department”; and

(b) for the definition of “authorised provider” substitute—

““authorised provider” in relation to any benefit means a person listed in section 154(1)(a) to (g) of the Finance Act 2004(a) in relation to the provision of that benefit;”.

(3) In regulation 21 (Determination of questions), after “Department” insert “and any dispute shall be resolved by the Department in accordance with the dispute resolution procedure issued from time to time by it in conformity with Article 50 of the Pensions (Northern Ireland) 1995 Order”.

Amendments to the Health and Personal Social Services (Compensation for Premature Retirement) Regulations (Northern Ireland) 1983

6.—(1) The Health and Personal Social Services (Compensation for Premature Retirement) Regulations (Northern Ireland) 1983(b) shall be amended as provided by paragraphs (2) and (3).

(2) In regulation 2(1) (Interpretation), in the definition of “employing authority” after paragraph (g) add—

“; and

(h) as regards a person who is subject to a direction made under Article 12 of the Superannuation (Northern Ireland) Order 1972 and subject to such modifications to these Regulations as the Department may in any particular case direct, any employer of such a person that the Department agrees to treat as an employing authority for the purposes of these Regulations.”

(3) In regulation 12 (Determination of questions), after “these regulations” insert “and any dispute shall be resolved by the Department in accordance with the dispute resolution procedure issued from time to time by it in conformity with Article 50 of the Pensions (Northern Ireland) Order 1995”.

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 14th March 2008.

(L.S.)

D. C. Bingham

A senior officer of the Department of Health, Social Services and Public Safety

The Department of Finance and Personnel consents to the foregoing Regulations.

Sealed with the Official Seal of the Department of Finance and Personnel on 14th March 2008.

(L.S.)

M. McIvor

A senior officer of the Department of Finance and Personnel

(a) 2004 c. 12

(b) S.R. 1983 No. 155 as amended by S.R. 1986 No. 322; S.R. 1991 No. 506; S.R. 2005 No. 533

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995 (S.R. 1995 No. 95) (“the Superannuation Scheme Regulations”), the Health and Personal Social Services (Injury Benefits) Regulations (Northern Ireland) 2001 (S.R. 2001 No. 367) (“the Injury Benefits Regulations”), the Health and Personal Social Services (Superannuation) (Additional Voluntary Contributions) Regulations (Northern Ireland) 1999 (S.R. 1999 No.294) (“the AVC Regulations”) and the Health and Personal Social Services (Compensation for Premature Retirement) Regulations (Northern Ireland) 1983 (S.R. 1983 No. 155) (“the Compensation Regulations”).

Regulation 1 provides for citation, commencement and retrospective effect, including that certain provisions of this instrument are to take effect from various dates. Retrospective effect is provided for by Article 14(1) of the Superannuation (Northern Ireland) Order 1972.

Regulation 2 provides for interpretation.

Regulation 3 makes the following principal changes to the Superannuation Scheme Regulations by—

- providing that certain employers of people subject to a direction made under Article 12(6) of the Superannuation (Northern Ireland) Order 1972 and subject to such modifications to these Regulations as the Department may in any particular case direct, any employer of such a person that the Department agrees to treat as an employing authority for the purposes of these Regulations;
- inserting a new definition of “Scheme Actuary” and replacing references to “Government Actuary” with “Scheme actuary”;
- clarifying regulation 11 (contributions by employing authorities) so that it is clear that amounts due to the Department pursuant to the Regulations may be recovered from the transferee or successor of a person’s employing authority or his last employing authority;
- extending death in service benefits where members whose HPSS employment had ceased to be superannuable solely by virtue of having the maximum amount of reckonable service under the scheme;
- clarifying that any request for allocation of pension under regulation 39 (allocation of pension) should be made after making the claim for payment of benefits but before the pension is put into payment;
- providing that parental leave and “keeping in touch” days during maternity leave fall within the scope of regulation 65 (absence because of illness or injury or certain types of leave);
- providing that members who are moderate earners and who have reduced service as a result of dissolution or annulment of marriage (or, after 5th December 2005, civil partnership) may re-build their service under regulation 67 (right to buy additional service);
- clarifying that the regulations apply to non-GP Providers with the modifications set out in paragraphs 3, 4, 5, 10 and 23 of Schedule 2 to the Superannuation Scheme Regulations;
- clarifying for regulation 78(4) (comparable whole-time employment) that in respect of a part-time member a greater amount of earnings than a comparable whole-time employment will be ignored for the purpose of determining a member’s actual final year’s superannuable pay;
- providing for a lump sum to be payable on death in superannuable re-employment under regulation 87 (benefits on death in superannuable employment after pension becomes payable);
- providing in regulation 88 (claims for benefits) that an applicant must provide the Department with permission to see information relating to that person or their entitlement where such information is held by a third party;

- removing the benefit waiver provisions in regulation 89A (deduction of tax: further provisions);
- providing that any dispute relating to the operation of the Regulations shall be resolved by the Department in accordance with a dispute resolution procedure issued from time to time in conformity with Article 50 of the Pensions (Northern Ireland) Order 1995.

Regulation 4 amends the Injury Benefits Regulations by—

- providing that certain employers of people subject to a direction made under Article 12(6) of the Superannuation (Northern Ireland) Order 1972 and subject to such modifications to these Regulations as the Department may in any particular case direct, any employer of such a person that the Department agrees to treat as an employing authority for the purposes of these Regulations;
- removing the requirement for the reduction in emoluments of an employment to be permanent for the purposes of regulation 4(4) (allowance on reduction in emoluments);
- clarifying regulation 5 (recovery of costs) so that it is clear that benefits paid by the Department pursuant to the Regulations may be recharged to the transferee or successor of a person's employing authority or his last employing authority;
- providing in regulation 19A (claims for benefits) that an applicant must provide the Department with permission to see information relating to that person or their entitlement where such information is held by a third party; and
- providing that any dispute relating to the operation of the Regulations shall be resolved by the Department in accordance with a dispute resolution procedure issued from time to time in conformity with Article 50 of the Pensions (Northern Ireland) Order 1995.

Regulation 5 amends the AVC Regulations by—

- providing that an authorised fund includes a fund managed by a successor or assignee of the authorised provider selected by the Department;
- amending the definition of “authorised provider” to refer to the provisions of section 154(1)(a) to (g) of the Finance Act 2004 (c. 12); and
- providing that any dispute relating to the operation of the Regulations shall be resolved by the Department in accordance with a dispute resolution procedure issued from time to time in conformity with Article 50 of the Pensions (Northern Ireland) Order 1995.

Regulation 6 amends the Compensation for Premature Retirement Regulations by—

- removing obsolete definitions from regulation 2 (interpretation);
- providing that certain employers of people subject to a direction made under Article 12(6) of the Superannuation (Northern Ireland) Order 1972 and subject to such modifications to these Regulations as the Department may in any particular case direct, any employer of such a person that the Department agrees to treat as an employing authority for the purposes of these Regulations; and
- providing that any dispute relating to the operation of the Regulations shall be resolved by the Department in accordance with a dispute resolution procedure issued from time to time in conformity with Article 50 of the Pensions (Northern Ireland) Order 1995.