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STATUTORY RULES OF NORTHERN IRELAND

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**2008 No. 256**

**The Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008**

**PART 2**

**BENEFITS FOR OFFICERS**

**CHAPTER 1**

**INTRODUCTION**

*Reckonable pay*

**Meaning of “reckonable pay”: general**

**15.—(1)** This regulation applies for the purpose of determining the meaning of “reckonable pay”, in relation to—

- (a) a member whose active membership ceases, <sup>F1</sup>...
- (b) a member becoming entitled to the immediate payment of a pension during the member's active membership period—
  - (i) on the exercise of the option under regulation 49 (partial retirement: members aged at least 55), or
  - (ii) under regulation 45(1)(b)(ii)<sup>F2</sup>; or
- (c) a non-contributing member.]

(2) This regulation is subject to regulations 16 to 19 <sup>F3</sup>, 136G and 136I to 136K].

<sup>F4</sup>(3) A member's “reckonable pay” is determined by the formula—

$IRPx(RPa/RPi)$

Where—

IRP is the interim reckonable pay determined in paragraph (4), (6) or (7), as appropriate, before any adjustment for inflation in accordance with regulation 16,

RPa is the annual rate of retirement pension the member would be entitled to if the reckonable pay used to calculate it was the interim reckonable pay, including any adjustment for inflation described in regulation 16, and

RPi is the annual rate of retirement pension the member would be entitled to if the reckonable pay used to calculate it was the interim reckonable pay, excluding any adjustment for inflation described in regulation 16, but instead including any increases that pay would attract if it was the annual rate of an official pension within the meaning of section 5(1) of the Pensions (Increase) Act (Northern Ireland) 1971.]

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(4) If the period of the member's pensionable service ending with the relevant day equals 365 days, “interim reckonable pay” means the member's pensionable pay for that period.

(5) In this regulation—

(a) “the relevant day” means—

(i) in a case within paragraph (1)(a), the day on which the member's active membership ceases, <sup>F5</sup>...

(ii) in a case within paragraph (1)(b), the day before that on which the member becomes entitled to the pension;

[<sup>F6</sup>(iii) in a case within paragraph (1)(c), the member’s last day of pensionable service.]

(b) “the best consecutive 1095 day period” shall be determined by comparing—

(i) the period of 1095 days immediately preceding the relevant day (Period 1);

(ii) the period of 1095 days which overlaps Period 1 by 730 days (Period 2);

(iii) the period of 1095 days which overlaps Period 2 by 730 days,

and so on.

(6) Except where paragraph (4) or (7) applies, in this regulation “interim reckonable pay” means one-third of the member's pensionable pay for the period of 1095 days—

(a) that begins—

(i) during the member's pensionable service, and

(ii) within the period of 10 years ending with the relevant day, and

(b) for which the member's pensionable pay was the highest (“the best consecutive 1095 day period”).

(7) If the member's pensionable service within the period of 10 years ending with the relevant day—

(a) is less than 365 days, or

(b) exceeds 365 days but is less than 1095 days,

“interim reckonable pay” means the member's pensionable pay for the period of the member's pensionable service, divided by the number of days in that period and multiplied by 365.

(8) If two or more periods of pensionable service are treated as a single continuous period of pensionable service under—

(a) regulation 9(5) (pensionable service: breaks in service), or

(b) regulation 111(2) (exception to general rule in regulation 110),

the references in—

(i) paragraph (4) to a period of pensionable service equalling 365 days,

(ii) paragraph (5) to a period of 1095 days,

(iii) paragraph (7) to the period of pensionable service less than 365 days or more than 365 days but less than 1095 days,

are references to periods together amounting to periods of that length, disregarding any breaks during the single period.

(9) Paragraph (8) does not apply if the other employment is an employment in respect of which the member continues to accrue benefits in accordance with regulation 57 despite being entitled to a pension under regulation 55.

(10) If—

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- (a) a person's reckonable pay in respect of an employment that the person has left falls to be determined under this regulation by reference to the person's pensionable pay for any period in respect of an employment, and
- (b) the person held that employment concurrently during that period with another employment in which the person was an active member,

the member's pensionable pay for that period in the other employment must be taken into account in that determination.

[<sup>F7</sup>(11) For the purposes of this regulation, pensionable service does not include—

- (a) any period of pensionable service that a member is entitled to count under Chapter 6 of this Part unless the transfer value payment in respect of that service is accepted from a corresponding 2008 scheme;
- (b) any period of pensionable service that a Section 2008 Optant is entitled to count under—
  - (i) regulation 136C,
  - (ii) regulation 136E, or
  - (iii) regulation 136M.]

#### Textual Amendments

- F1** Word in reg. 15(1)(a) omitted (with effect in accordance with reg. 1(2) of the amending Rule) by virtue of The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **16(2)(a)**
- F2** Reg. 15(1)(c) and word added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **16(2)(b)**
- F3** Words in reg. 15(2) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **19(2)**
- F4** Reg. 15(3) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/286), **Pt. 3 reg. 18**, reg. 1(2)
- F5** Word in reg. 15(5)(a)(i) omitted (with effect in accordance with reg. 1(2) of the amending Rule) by virtue of The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **16(3)(a)**
- F6** Reg. 15(5)(a)(iii) added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **16(3)(b)**
- F7** Reg. 15(11) added (with effect in accordance with reg. 1(3)(c) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **19(4)**

## Adjustments for inflation in determining reckonable pay under regulation 15

16.—(1) In determining—

- (a) the pensionable pay for the period of pensionable service referred to in regulation 15(4),
- (b) the period of 1095 days for which the member's pensionable pay was the highest for the purposes of regulation 15(6), or
- (c) the pensionable pay for either of the periods of pensionable service referred to in regulation 15(7),

the amount of pensionable pay is adjusted for inflation.

(2) The reference in paragraph (1) to adjusting the amount of pensionable pay for inflation, is a reference to increasing the member's pensionable pay (for a specified period or periods) by an amount equal to the amount by which, at the relevant day, an official pension within the meaning of section 5(1) of the Pensions (Increase) Act (Northern Ireland) 1971 first qualifying for an increase under that Act on the same day as the specified period, or periods, ended, would have been increased (if at all).

(3) In this regulation—

- (a) “specified period” means any single scheme year falling in the period, or periods, referred to in regulation 15(4), (6) or (7), and
- (b) “the relevant day” has the meaning given in regulation 15(5).

## Restriction on pensionable pay used for calculating benefits in respect of capped transferred-in service

17.—(1) This regulation applies for determining the amount of a member's pensionable pay for the purposes of calculating so much of any benefit under [<sup>F8</sup>this Section of] the Scheme as falls to be calculated by reference to capped transferred-in service.

(2) If a member's pensionable pay exceeds the permitted maximum, the excess is disregarded for the purposes of any such calculation as is mentioned in paragraph (1).

(3) In this regulation “permitted maximum” means—

- (a) in relation to the tax year 2008-09, £117,600, and
- (b) in relation to any later tax year, the figure found for that year under paragraphs (5) and (6).

(4) If the retail prices index for the month of September preceding the tax year 2009-10 or any later tax year is higher than it was for the previous September, the figure for that year is an amount arrived at by—

- (a) increasing the figure for the previous tax year by the same percentage as the percentage increase in the retail prices index, and
- (b) if the result is not a multiple of £600, rounding it up to the nearest amount which is such a multiple.

(5) If the retail prices index for the month of September preceding the tax year 2009-10 or any later tax year is not higher than it was for the previous September, the figure for that year is the same as for the previous tax year.

(6) In this regulation—

- (a) “capped transferred-in service” has the meaning given by regulation 104; and
- (b) “pensionable pay” has the meaning given by regulation 13.

#### Textual Amendments

- F8** Words in [reg. 17\(1\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

#### [<sup>F9</sup>Restriction of reckonable pay where the Department considers the amount is inordinate

**17A.—(1)** Where, having regard to the matters referred to in paragraph (2), the Department considers that the amount which would otherwise constitute the member's interim reckonable pay for the purposes of regulation 15 is inordinate, the Department may, determine what the amount of a member's interim reckonable pay is to be and the date from which any change in the amount of that pay as a result of that determination is to take effect.

(2) Those matters are—

- (a) any variations in the level of the member's pensionable pay during a period not exceeding ten years and ending with the earlier of the date the member ceases to be in pensionable employment or the date the member dies;
- (b) the general level of pensionable pay pertaining in HSC employment for members of the same or an equivalent grade or post during the period under consideration for the purposes of paragraph (a);
- (c) promotion and re-grading prospects in HSC employment for members of the same or an equivalent grade or post during the period under consideration for the purposes of paragraph (a);
- (d) any other matters the Department considers relevant.

(3) Where the Department determines the amount of a member's interim pensionable pay pursuant to paragraph (1)—

- (a) the difference between the amount which would, but for the determination pursuant to paragraph (1), be the member's interim reckonable pay and the amount so determined pursuant to that paragraph and adjusted for the purposes of regulation 16, must be ignored for the purposes of this regulation (“the ignored amount”);
- (b) any contributions referable to the ignored amount and paid by the member pursuant to regulation 27 must, net of any tax payable, be refunded to that member;
- (c) any contributions referable to the ignored amount and paid by the employing authority pursuant to regulation 31 are to be refunded to that employing authority.]

#### Textual Amendments

- F9** [Reg. 17A](#) inserted (1.4.2015) by [The Health and Personal Social Services \(Superannuation Scheme, Additional Voluntary Contributions and Injury Benefits\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2015 \(S.R. 2015/121\)](#), [regs. 1\(2\)](#), **20**

#### Meaning of “reckonable pay”: non-concurrent part-time employment

**18.—(1)** This regulation applies if a member's reckonable pay falls to be determined under regulation 15 by reference to the member's pensionable pay for any period for a part-time employment that was not held concurrently with any other such employment in which the member was an active member.

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(2) The member's reckonable pay for that period in respect of the part-time employment is the amount, subject to paragraph (4), that would have been paid in respect of that employment for that period if it had been a whole-time employment not held concurrently with any other employment.

(3) For the purposes of paragraph (2) it is assumed that the same rate of pay per hour or session (or part of an hour or session) is paid for the whole-time employment as is paid per hour or session (or part of an hour or session) for the part-time employment.

(4) If, in a case where, apart from this paragraph, paragraph (2) would apply, it appears to the Department that, by reason of exceptional circumstances, the application of the assumptions in paragraph (3) for the purposes of paragraph (2) would result in an excessive amount being given by paragraph (2), that amount must be reduced by such amount as is in the opinion of the Department appropriate having regard to what would have been paid for that period in respect of a comparable whole-time employment.

(5) This regulation does not apply to the calculation of the reckonable pay of an active member or a pensioner member for the purposes of regulation 83(1) or (2) (lump sum payable on death of active or pensioner member).

#### **Meaning of “reckonable pay”: concurrent part-time employments**

**19.—**(1) This regulation applies if under regulation 15(10) a member's reckonable pay falls to be determined by reference to the member's pensionable pay for any period for two or more part-time employments held concurrently during that period.

(2) The member's reckonable pay for that period is calculated as follows—

Step 1

Calculate the reckonable pay for each of the employments under regulation 18 as if it were not held concurrently with any other such employment.

Step 2

Find the appropriate fraction for each of the employments (see paragraph (3)).

Step 3

Add together the appropriate fraction of the reckonable pay for each of the employments as calculated at Step 1.

(3) Except where paragraph (4) applies, the appropriate fraction for an employment is—

$$\frac{\text{HPW}}{\text{THPW}}$$

where—

HPW is the number of hours per week of the employment, and  
THPW is the total hours per week of both or all the employments.

(4) The appropriate fraction for an employment for a specified number of sessions per week is—

$$\frac{\text{SPW}}{\text{TSPW}}$$

where—

SPW is the number of sessions per week of the employment, and  
TSPW is the total sessions per week of both or all the employments.

(5) If—

- (a) one or more of the employments is an employment for a specified number of sessions per week, and
- (b) one or more of the employments is not such an employment,

the denominator for the fractions given in paragraphs (3) and (4) is calculated on the basis that a session is 3.5 hours or such number of hours as the Department may in any particular case determine.

### **Out of hours providers**

**20.**—(1) For the purposes of these Regulations, an OOH provider is—

- (a) a company limited by guarantee (which is not otherwise an employing authority)—
  - (i) in which all the members of the company are registered medical practitioners, APMS contractors or GMS practices and the majority of those members are—
    - (aa) APMS contractors, GMS practices whose APMS contracts or GMS contracts require them to provide OOH services; or
    - (bb) registered medical practitioners who are partners or shareholders in an APMS contractor or a GMS practice which is a partnership or a company limited by shares and which is required to provide OOH services under its GMS contract or APMS contract,
  - (ii) which has a contract with a Health and Social Services Board, an APMS contractor or a GMS practice for the provision of OOH services, and
  - (iii) in respect of which a Health and Social Services Board appointed by the Department to act on its behalf—
    - (aa) is satisfied that the provision of OOH services by the company is wholly or mainly a mutual trading activity;
    - (bb) is satisfied that the company has met all the conditions for being an OOH provider in this regulation; and
    - (cc) has, pursuant to a written application made by the company to it for that purpose, approved the company as an employing authority; or
- (b) some other body corporate (which is not otherwise an employing authority) which—
  - (i) operates in the interests of those who are the recipients of the primary medical services it provides or of the general public;
  - (ii) operates on a not-for-profit basis;
  - (iii) is not an associated company in relation to another person;
  - (iv) has memorandum or articles or rules that—
    - (aa) prohibit the payment of dividends to its members; and
    - (bb) require its profits (if any) or other income to be applied to promoting its objects, and
    - (cc) require all the assets which would otherwise be available to its members generally to be transferred on its winding up either to another body which operates on a not-for-profit basis and whose purpose is to provide health or social care for the benefit of the community or to another body the objects of which are the promotion of charity and anything incidental or conducive thereto,
  - (v) has at least one member who is—
    - (aa) an APMS contractor or a GMS practice; or

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- (bb) a partner in a partnership that is an APMS contractor or a GMS practice; or
  - (cc) a shareholder in a company limited by shares that is an APMS contractor or a GMS practice,
  - (vi) has a contract with a Health and Social Services Board, an APMS contractor or a GMS practice, for the provision of OOH services; and
  - (vii) is approved as an employing authority by a Health and Social Services Board appointed by the Department to act on its behalf—
    - (aa) pursuant to a written application made by the body to it for that purpose; and
    - (bb) that Health and Social Services Board being satisfied that the body has met all the conditions for being an OOH provider in this regulation.
- (2) For the purposes of paragraph (1)(b)(iii)—
- (a) a body corporate is to be treated as another person's associated company if that person has control of it, except if that person is an employing authority; and
  - (b) a person shall be taken to have control of a body corporate if he exercises, or is able to exercise, or is entitled to acquire, direct or indirect control over its affairs.
- (3) A company limited by guarantee or other body corporate which provides or is to provide OOH services and which wishes to be approved as an employing authority must make a written application to a Health and Social Services Board appointed by the Department to act on its behalf (“the appointed Board”).
- (4) An application referred to in paragraph (3) may specify the date from which approval by the appointed Board (if given) shall have effect (“the nominated date”).
- (5) If a company limited by guarantee or other body corporate makes an application and—
- (a) the appointed Board is satisfied that the company or other body corporate meets the conditions for approval or will do so at any nominated date which is later than the approval date; and
  - (b) it approves that application, that approval shall take effect on the later of the nominated date and the approval date.
- (6) If paragraph (5) applies, HSC employment shall be treated as commencing on the later of the nominated date (if any) and the approval date.
- (7) For the purposes of this regulation the conditions for approval are those referred to in paragraph (1)(a) or (b) as the case may be.
- (8) The appointed Board may give an OOH provider a notice in writing terminating its participation in <sup>F10</sup>this Section of] the Scheme where that provider—
- (a) does not have in force a guarantee, indemnity or bond as required by the Department in accordance with regulation 33;
  - (b) has ceased to satisfy the conditions for approval;
  - (c) has notified the Health and Social Services Board that any one of the following events has occurred in respect of it—
    - (i) a proposal for a voluntary arrangement has been made or approved under Part II of the Insolvency (Northern Ireland) Order 1989 <sup>M1</sup> (“the 1989 Order”); or
    - (ii) an administration application has been made, or a notice of intention to appoint an administrator has been filed with the court, or an administrator has been appointed under Part III of the 1989 Order; or
    - (iii) a receiver, manager or administrative receiver has been appointed under Part IV of the 1989 Order; or



- (iv) a winding-up petition has been presented, a winding-up order has been made or a resolution for voluntary winding-up has been passed under Part V or Part VI of the 1989 Order or an instrument of dissolution has been drawn up in accordance with section 67 of the Industrial and Provident Societies (Northern Ireland) Act 1969<sup>M2</sup>; or
  - (v) notice has been received by it that it may be struck off the register of companies, or an application to strike it off has been made, under Part XX of the Companies (Northern Ireland) Order 1986<sup>M3</sup>.
- (9) An OOH provider—
- (a) must give the appointed Board notice in writing upon the occurrence of any of the events referred to in paragraph (8)(c) and must give such notice on the same day as that event;
  - (b) that wishes to cease to participate in [<sup>F11</sup>this Section of] the Scheme must give the appointed Board and its employees not less than 3 months notice in writing (to commence with the date of the notice) of that fact.
- (10) An OOH provider must cease to participate in [<sup>F12</sup>this Section of] the Scheme on—
- (a) such date as the appointed Board may specify in a notice under paragraph (8);
  - (b) the day upon which the period referred to in paragraph (9)(b) expires if a notice under that provision has been given.

#### Textual Amendments

- F10** Words in [reg. 20\(8\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**
- F11** Words in [reg. 20\(9\)\(b\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**
- F12** Words in [reg. 20\(10\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

#### Marginal Citations

- M1** [S.I. 1989/2405 \(N.I. 19\)](#)
- M2** [1969 c. 24](#)
- M3** [S.I. 1986/1032 \(N.I. 6\)](#)

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**Changes and effects yet to be applied to the whole Rule associated Parts and Chapters:**

Whole provisions yet to be inserted into this Rule (including any effects on those provisions):

- [reg. 49\(9A\)](#) inserted by [S.R. 2024/117 reg. 12\(6\)](#)