
STATUTORY RULES OF NORTHERN IRELAND

2009 No. 65

HEALTH AND PERSONAL SOCIAL SERVICES

**The Health and Personal Social Services (Superannuation),
Health and Social Care (Pension Scheme) and Health and
Personal Social Services (Injury Benefits) (Amendment and
Transitional Provisions) Regulations (Northern Ireland) 2009**

*Made - - - - 25th February 2009
Coming into operation in accordance with
regulation 1(2)*

The Department of Health, Social Services and Public Safety makes the following Regulations in exercise of the powers conferred by Articles 12(1) and (2), 14(1) and (2) of, and Schedule 3 to, the Superannuation (Northern Ireland) Order 1972⁽¹⁾, 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 the Department to be appropriate.

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009.

(2) These Regulations shall come into operation on 20th March 2009.

(3) Save as provided in paragraphs (4) to (6), these Regulations shall have effect from 1st October 2008.

(4) Regulation 3(i) and (k) shall have effect from 1st April 2004.

(5) The following regulations shall have effect from 1st April 2008—

- (a) regulation 3(b) and (d);
- (b) regulation 4;
- (c) regulation 19;
- (d) regulation 20(4)(b);

- (e) regulation 22;
 - (f) regulation 27(3);
 - (g) regulation 28(5);
 - (h) regulation 32(3);
 - (i) regulation 34;
 - (j) regulation 35;
 - (k) regulation 40(5);
 - (l) regulation 46;
 - (m) regulation 47;
 - (n) regulation 52(g) and (i);
 - (o) regulation 55(3);
 - (p) regulation 60;
 - (q) regulation 65;
 - (r) regulation 66;
 - (s) regulation 71(5); and
 - (t) regulation 74(3) and (4).
- (6) The following regulations shall have effect from 1st August 2008—
- (a) regulation 3(e), (f) and (j); and
 - (b) regulation 52(c), (d) and (h).

PART 1

AMENDMENT OF THE HEALTH AND PERSONAL SOCIAL SERVICES (SUPERANNUATION) REGULATIONS (NORTHERN IRELAND) 1995

Amendment of the 1995 Regulations

2. The Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995(2) shall be amended as provided by regulations 3 to 22.

Amendment of regulation 2

3. In regulation 2 (Interpretation)—

(a) at the appropriate place in alphabetical order, insert—

““the 2008 scheme” means the provisions of the Health and Social Care Superannuation Scheme the rules of which are set out in the Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008;

“electronic communication” has the meaning given in section 15 of the Electronic Communications Act 2000(3);”;

(b) after the definition of “contracting-out requirements” insert—

(2) 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 and S.R. 2008 Nos. 96, 130 and 163

(3) 2000 c. 7

- “dentist performer” means a dentist who has undertaken to provide general dental services (GDS) and whose name is included in a list of dentists prepared by the Agency under regulation 4 of the Health and Personal Social Services General Dental Services Regulations (Northern Ireland) 1993(4);”;
- (c) in the definition of “employing authority”, omit paragraph (g);
- (d) after the definition of “final years superannuable pay” insert—
- ““GDS arrangements” means arrangements for the provision of general dental services under Article 61 of the 1972 Order;”
- ““GDS provider” is a person who is party to GDS arrangements;”;
- (e) after the newly inserted definition of “GDS provider”, insert—
- ““general ophthalmic services” has the meaning given by regulation 2(1) of the General Ophthalmic Services Regulations (Northern Ireland) 2007(5);”;
- (f) after the definition of “GMS Practice” insert—
- ““GOS arrangements” has the meaning given by regulation 13 of the General Ophthalmic Services Regulations (Northern Ireland) 2007;”;
- (g) in the definition of “host Health and Social Services Board”, for paragraph (b) substitute—
- “(b) in respect of a registered medical practitioner means each Health and Social Services Board with whom the practitioner is contracted, or has entered into an agreement, to provide GMS or APMS services and, where appropriate, on whose medical performers list the practitioner’s name appears;”;
- (h) in the definition of “OOH services”, for “GMS practice to patients to whom the practice is required by its GMS contract” substitute “GMS practice or an APMS contractor to patients to whom the practice or contractor is required by his contract or agreement”;
- (i) after the definition of “OOH services”, insert—
- ““ophthalmic provider” means a registered medical practitioner who is included in an ophthalmic list kept and published by the Agency pursuant to regulation 8(1) of the General Ophthalmic Services Regulations (Northern Ireland) 2007 (ophthalmic list);”;
- (j) for the newly inserted definition of “ophthalmic provider”, substitute—
- ““ophthalmic provider” means a registered medical practitioner who is included in an ophthalmic list prepared and kept by the Agency pursuant to regulation 8(1) of the General Ophthalmic Services Regulations (Northern Ireland) 2007 and is a party to GOS arrangements;”;
- (k) in the definition of “practitioner” in paragraph (a) after “locum practitioner” insert “, ophthalmic provider.”.

Insertion of new regulation 2B

4. After regulation 2A insert—

“Change of name of HPSS employment

2B. In these Regulations for the words “HPSS employment” in every place where they occur substitute “HSC employment”.

(4) S.R. 1993 No. 326
(5) S.R. 2007 No. 436

Amendment of regulation 7

5.—(1) Regulation 7 (Restrictions on membership) is amended as provided by paragraphs (2) to (6).

(2) In paragraph (1), for sub-paragraph (i) substitute—

- “(i) that person is a person who has been a member of the 2008 scheme;
- (j) that person is a person who—
 - (i) ceased to be in superannuable employment on or before 31st March 2008,
 - (ii) on so ceasing was entitled to a preserved pension in accordance with regulation 49,
 - (iii) returns to HSC employment on or after 1st October 2008 and before returning exercises the member’s right to transfer out all of that person’s benefits in the scheme in accordance with regulation 53,
 - (iv) has had a break in superannuable employment for any one period of five years or more beginning with the day immediately following the cessation of employment referred to in paragraph (i) and ending on the day immediately before the employment referred to in paragraph (iii) commences, and
 - (v) is not in receipt of a pension under regulation 13 or 13A;
- (k) that person is a person who—
 - (i) is entitled to a preserved pension in accordance with regulation 49,
 - (ii) returns to HSC employment on or after 1st October 2008,
 - (iii) has had a break in superannuable employment for any one period of five years or more beginning with the day immediately following the cessation of the superannuable employment in respect of which that person is entitled to the pension referred to in paragraph (i) and ending on the day immediately before the employment referred to in paragraph (ii) commences, and
 - (iv) is not in receipt of a pension under regulations 13 or 13A.”.

(3) In paragraph (2)—

- (a) in paragraph (a), for “HSC Pension Scheme 2008” substitute “2008 scheme”;
- (b) after sub-paragraph (b) add—
 - “(c) a reference to regulations 49, 50, 53 and 54 includes the equivalent of those regulations in a health service scheme the provisions of which correspond to the provisions of the superannuation scheme as set out in these Regulations.”.

(4) For paragraph (3) substitute—

- “(3) The Department may permit a person who would otherwise not be permitted to join the scheme in accordance with sub-paragraph (1)(f), (g), (h) or (k) to do so if—
 - (a) that person’s HSC employment was transferred to another employer by virtue of—
 - (i) a transfer of undertakings or arrangements equivalent to a transfer of undertakings, and
 - (ii) at no time since that transfer (or the last of them if more than one) has the person had a break in superannuable employment for any one period of five years or more; or
 - (b) that person’s employment is transferred to an employing authority by virtue of—
 - (i) a transfer of undertakings, or
 - (ii) arrangements equivalent to a transfer of undertakings,

- (whether or not the transferring employer is in the public sector provided that person's employment was originally transferred out of the public sector); and
- (c) the employment from which the member is transferred—
- (i) qualified the member for benefits under an occupational pension scheme, and
 - (ii) the rules of that scheme (in the opinion of the Department) entitle the member to receive benefits on retirement upon, or prior to, attaining the age of 60 years.”.
- (5) In paragraph (4) for “(3)(a)”, substitute “(3)”.
- (6) In paragraph (5) for “(3)(b)(ii)”, substitute “(3)(c)(ii)”.

Amendment of regulation 10

6. In regulation 10 (Contributions by members), in paragraph (2), after “may” insert “, with the consent of the Department of Finance and Personnel,”.

Amendment of regulation 13B

7. For paragraph (2)(b) of regulation 13B (Re-assessment of ill health condition determined under regulation 13A), substitute—

- “(b) the member provides further medical evidence to the Department relating to the satisfaction of the tier 2 condition at the date of the Department's consideration and that further medical evidence is provided—
- (i) in the case of a member who does not engage in further HSC employment during the three year period referred to in sub-paragraph (a), before the end of that period,
 - (ii) in the case of a member who does engage in further HSC employment during the three year period referred to in sub-paragraph (a), before the first anniversary of the day on which that employment commences or before the end of that period if sooner, and”.

Amendment of regulation 19

8.—(1) Regulation 19 (Member dies after pension becomes payable) is amended as provided by paragraphs (2) and (3).

(2) In paragraph (1), for “If” substitute “Subject to paragraph (7), if”.

(3) After paragraph (6) add—

“(7) Where a member referred to in paragraph (1) has attained the age of 75 at the date of the member's death—

- (a) the lump sum referred to in that paragraph shall cease to be payable; and
 - (b) shall instead be converted into an annual pension to be determined and paid in accordance with paragraph (8).
- (8) The pension referred to in paragraph (7) shall be—
- (a) determined in accordance with guidance and tables provided by the Scheme actuary for the purpose of converting the amount of the lump sum into an annual pension;
 - (b) paid to the person who would otherwise be entitled to receive the lump sum in accordance with regulation 22; and

(c) paid to that person from the day after the member's death until the fifth anniversary of the day the member's pension under the scheme became payable.

(9) If, in accordance with regulation 22, a member has given notice that more than one person is to receive a share of the lump sum, each such person shall receive the same percentage of the annual pension as was specified for that person in the member's notice.

(10) If, in accordance with regulation 22, the annual pension is to be paid to the member's personal representatives, they may, as part of the distribution of the member's estate, give irrevocable notice to the Department—

(a) specifying—

(i) one or more individuals, or

(ii) one incorporated or unincorporated body,

to whom the benefit of the pension under this regulation from the date of the receipt of the notice by the Department is to be assigned; and

(b) where two or more individuals are specified, specifying the percentage of the pension payable to each of them,

and the pension (or, as the case may be, the percentage of it specified in respect of the person) may be paid to the person or body, unless paragraph (11) applies.

(11) This paragraph applies if—

(a) the person specified in the notice has died before payment has been made;

(b) payment to the person or body specified in the notice is not, in the opinion of the Department, reasonably practicable; or

(c) the person to whom the pension (or a specified percentage of the pension) would otherwise be payable has been convicted of an offence specified in regulation 93(1A) and the Department has directed, as a consequence of that conviction, that the person's right to a payment in respect of the member's death is forfeited.

(12) The prohibition on assignment of benefits in regulation 90 (Benefits not assignable) shall not apply to an assignment by personal representatives under this regulation.”

Amendment of regulation 36

9.—(1) Regulation 36 (Member dies with preserved pension) is amended as provided by paragraphs (2) and (3).

(2) In paragraph (2), for “34(2)” substitute “34(2A)”.

(3) In paragraphs (4) and (5), omit “or (3)”.

Amendment of regulation 49

10. In regulation 49(14) (Preserved pension), insert (at the appropriate place in the alphabetical order)—

““HSC employment” does not include employment with an employing authority in respect of which the member is eligible to join the 2008 scheme;”.

Amendment of regulation 50

11. After regulation 50(2) (Refund of contributions), insert—

“(2A) An application in writing referred to in paragraph (2) may be—

- (a) made or given by means of an electronic communication that is approved by the Department for that purpose;
- (b) given to the Department by a person other than the member.”.

Amendment of regulation 55

12.—(1) Regulation 55 (Amount of member’s cash equivalent) is amended as provided by paragraphs (2) and (3).

(2) In paragraph (1), omit the words “, calculated and verified as required by Chapter IV of Part IV of the Pension Schemes (Northern Ireland) Act 1993 (transfer values)”.

(3) After paragraph (1), insert—

“(1A) The Department shall—

- (a) take advice from the Scheme actuary before determining the factors to be used in the calculation of the member’s guaranteed cash equivalent; and
- (b) calculate and verify the amount of the guaranteed cash equivalent in accordance with the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996(6).”.

Insertion of new regulation 59

13. After regulation 58 (Special terms for transfers out (bulk transfers etc)) add—

“Member’s right to transfer a preserved pension to the 2008 Scheme

59.—(1) If a member meets the conditions referred to in paragraph (3), and subject to the following provisions of this regulation, a member may require the Department to use the cash equivalent of the member’s rights under the scheme referred to in these Regulations to acquire rights in the 2008 scheme.

(2) A member’s right to require the Department to use the cash equivalent of the member’s rights in the way referred to in paragraph (1) may only be exercised once.

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

- (a) is entitled to a deferred benefit under regulation 49;
- (b) may not join the scheme in respect of any further HSC employment by virtue of regulation 7(1)(k); and
- (c) becomes an active member of the 2008 scheme before attaining the age of 60.

(4) The Department shall provide a member to whom this regulation applies with a statement of the amount of the cash equivalent of the member’s benefits accrued in accordance with these Regulations at the guarantee date (“a statement of entitlement”).

(5) In this regulation “the guarantee date” means any date that—

- (a) falls within the required period;
- (b) is chosen by the Department;
- (c) is specified in the statement of entitlement; and
- (d) is within the period of 10 days ending with the date on which the member is provided with the statement of entitlement.

(6) In counting the period of 10 days referred to in paragraph (5)(d), Saturdays, Sundays, Christmas Day, New Year's Day and Good Friday are excluded.

(7) In paragraph (5), "the required period" means—

- (a) the period of three months beginning with the date that the Department receives notification from the member's employing authority that the member has joined the 2008 scheme; or
- (b) such longer period beginning with that date (but not exceeding six months) as may be reasonably required if, for reasons beyond the control of the Department, the requisite information cannot be obtained to calculate the amount of the cash equivalent.

(8) Subject to paragraphs (9) to (11), the member's guaranteed cash equivalent shall be equal to the capitalised value of all of the member's rights to benefits accrued under these Regulations and any associated rights under Part I of the Pensions (Increase) Act (Northern Ireland) 1971(7).

(9) The Department shall—

- (a) take advice from the Scheme actuary before determining the factors to be used in the calculation of the member's guaranteed cash equivalent; and
- (b) calculate and verify the amount of the guaranteed cash equivalent in accordance with the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996.

(10) Except in the case of a transfer payment accepted under regulation 62A (Transfers in respect of members to whom regulation 9A applies who elect to join or re-join the scheme), a member's cash equivalent will be at least equal to the amount of any transfer payments accepted in respect of the member under regulation 60(4) (which deals with the crediting of additional service upon transfer), plus the amount of the member's contributions to the scheme.

(11) Any part of the cash equivalent that relates to the service before 6th September 1988 will be calculated as described in the previous Regulations as applicable immediately before that date, if this would be more favourable to the member.

(12) A member who has received a statement of entitlement in accordance with paragraph (4) may apply to the Department for the cash equivalent of the member's rights under the scheme to be used to acquire rights under the 2008 scheme.

(13) An application under this regulation must be made in respect of each and every portion of the cash equivalent and shall be—

- (a) made in writing on the form provided for this purpose by the Department;
- (b) made before the end of the period of three months beginning with the guarantee date;
- (c) irrevocable.

(14) On the making of such an application—

- (a) a member becomes entitled to be credited with a period of pensionable service or an equivalent increase to the member's pensionable earnings in the 2008 scheme in respect of the cash equivalent value of the member's benefits under the scheme calculated in accordance with whichever of regulations 108A or 235A of the 2008 scheme apply to the member; and

- (b) the member's rights under the scheme are extinguished on the day that the member is credited with a period of pensionable service or pensionable earnings in accordance with regulation 108A or 235A (as the case may be) of the 2008 scheme.”.

Amendment of regulation 66

14. For paragraphs (1) and (2) of regulation 66 (Other leave of absence) substitute—

“(1) If, on or after 1st April 2008, a member is on a leave of absence for reasons other than those referred to in regulation 65 the maximum period of such leave that will count as superannuable employment under this paragraph is—

- (a) where the member, for a continuous period of six months commencing with the member's first day of leave of absence, pays to the scheme contributions due from the member in accordance with regulation 10, six months;
- (b) where the member, for a continuous period of less than six months commencing with the member's first day of leave of absence, pays to the scheme contributions due from the member in accordance with regulation 10, the period in respect of which those contributions were paid.

(2) If, having paid contributions for the period referred to in paragraph (1)(a), a member remains on leave of absence for reasons other than those referred to in regulation 65 the maximum period of such leave that will count as superannuable employment under this paragraph is—

- (a) where the member pays to the scheme both contributions due from the member in accordance with regulation 10 and contributions due from the member's employer in accordance with regulation 11 for a continuous period of 18 months commencing immediately after the expiry of the period referred to in paragraph (1)(a), 18 months;
- (b) where the member pays to the scheme both contributions due from the member in accordance with regulation 10 and contributions due from the member's employer in accordance with regulation 11 for a continuous period of less than 18 months commencing immediately after the expiry of the period referred to in paragraph (1)(a), the period in respect of which those contributions were paid.”.

Amendment of regulation 85

15. For paragraph (2) of regulation 85 (Reduction of pension on return to HSC employment) substitute—

“(2) A member to whom this regulation applies must—

- (a) inform the member's employer, and any other person that the Department may specify, that the member's pension under the scheme has become payable; and
- (b) if requested to do so, provide any information (or authorise any other person to provide information) about the member's pay from HSC employment to the Department or to any other person the Department may specify.”.

Amendment of regulation 87

16.—(1) Regulation 87 (Benefits on death in superannuable employment after pension under regulation 13 becomes payable) is amended as provided by paragraphs (2) and (3).

(2) In paragraph (1A)—

- (i) for “This regulation”, substitute “Subject to the modifications set out in paragraph (1B), this regulation”,
- (ii) in sub-paragraph (b)(iii), after “members)” insert “on or before 1st April 2008”.
- (3) After paragraph (1A), add—
 - “(1B) The modifications referred to in paragraph (1A) are—
 - (a) in paragraph (3A), for “on the date of the member’s death” substitute “on the member’s last day of superannuable employment”;
 - (b) in paragraph (7), for “superannuable pay when the member died” substitute “final year’s superannuable pay”;
 - (c) in paragraph (8), for “the 6 months immediately following the member’s death” substitute “the 3 months immediately following the member’s death or the 6 months immediately following the member’s death if he leaves a dependent child”;
 - (d) in paragraph (11), for “the 6 month period” substitute “the 3 month or, as the case may be, the 6 month period”;
 - (e) in paragraph (12)—
 - (i) for “rate of superannuable pay when he died” substitute “final year’s superannuable pay”, and
 - (ii) for “at that time” substitute “when he died”.
 - (1C) Subject to the modifications set out in paragraph (1D), this regulation shall also apply to a member in respect of whom a pension is payable under regulation 13 (early retirement on grounds of ill-health) who—
 - (a) returns to superannuable employment after that pension becomes payable; and
 - (b) on the day the member dies, the member is—
 - (i) under the age of 75,
 - (ii) in HSC employment,
 - (iii) no longer required to pay contributions pursuant to regulation 10(3) or (4) (Contributions by members) on, or after, 2nd April 2008, and
 - (iv) except where regulation 77(6) applies, not in receipt of a pension under any of regulations 12 to 16 in respect of the member’s later service.
 - (1D) The modifications referred to in paragraph (1C) are—
 - (a) in paragraph (3A), for “on the date of the member’s death” substitute “on the member’s last day of superannuable employment”;
 - (b) in paragraph (7), for “superannuable pay when the member died” substitute “final year’s superannuable pay”;
 - (c) in paragraph (12)—
 - (i) for “rate of superannuable pay when he died” substitute “final year’s superannuable pay”, and
 - (ii) for “at that time” substitute “when he died”.

Amendment of regulation 87A

17. In regulation 87A (Benefits on death in superannuable employment after pension under regulation 13A becomes payable) after paragraph (1), insert—

“(1A) Subject to the modifications set out in paragraph (1B), this regulation shall also apply to a member in respect of whom a pension is payable under regulation 13A who—

- (a) returns to superannuable employment after that pension becomes payable; and
- (b) on the day the member dies, the member is—
 - (i) under the age of 75,
 - (ii) in HSC 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) applies, not in receipt of a pension under any of regulations 12 to 16 in respect of the member’s later service.

(1B) The modifications referred to in paragraph (1A) are—

- (a) in paragraph (6), for “on the date of the member’s death” substitute “on the member’s last day of superannuable employment”;
- (b) in paragraph (10), for “rate of superannuable pay when the member died” substitute “final year’s superannuable pay”;
- (c) in paragraph (15)(a), for “rate of superannuable pay when the member died” substitute “final year’s superannuable pay”;
- (d) in paragraph (15)(b), for “at that time” substitute “when he died”.

Amendment of regulation 88

18. For regulation 88 (Claims for benefits), substitute—

“Claims for benefits

88.—(1) A person claiming to be entitled to benefits under these Regulations (“the claimant”) shall make a claim in writing to the Department in such form as it may from time to time require.

(2) Pursuant to such a claim, the claimant and the member’s employing authority (including any previous employing authority of the member) shall provide such—

- (a) evidence of entitlement;
- (b) authority or permission as may be necessary for the release by third parties of information in their possession relating to the member or, where relevant, the claimant; and
- (c) other information the Department considers is relevant to the claim,

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

(3) A claim referred to in paragraph (1) may be given to the Department by a person other than the claimant.

(4) The Department may accept any claim for benefits in relation to which this regulation applies, and any evidence, authority or permission given in connection with that claim, if it is made or given by means of an electronic communication that is approved by the Department for that purpose.”.

Amendment of regulation 93

19. In regulation 93(1A)(Loss of rights to benefits)—

- (a) in sub-paragraph (a), after “widower” insert “, surviving nominated partner”;

- (b) in sub-paragraph (c)—
 - (i) after “notice” insert “or nomination”, and
 - (ii) for “22(3A)” substitute “22”.

Amendment of Schedule 2

20.—(1) Schedule 2 (Medical and dental practitioners) is amended as provided by paragraphs (2) to (5).

(2) In paragraph 3 (Meaning of superannuable earnings), in sub-paragraph (2)(a)(vi), after “OOH provider” insert “or other employing authority providing OOH services”.

(3) In paragraph 9 (Officer service treated as practitioner service)—

(a) for sub-paragraph (1), substitute—

“(1) Subject to sub-paragraph (3), if a member does not have more than 10 years' officer service on first becoming a principal practitioner, the member's officer service before first becoming a principal practitioner will be treated as practitioner service.”;

(b) in sub-paragraph (5), omit “(Early retirement pension (ill-health))”;

(c) in sub-paragraph (5A), omit paragraph (b);

(d) in sub-paragraph (8), omit the words from “or a practitioner” to “a Health and Social Services Board”.

(4) In paragraph 10 (Contributions to the scheme)—

(a) in sub-paragraphs (2L) and (2U), for “determined in accordance with paragraph (2J)” substitute “as that which applied to the earlier employment”;

(b) in sub-paragraph (3)(a), for “70” substitute “75”.

(5) In sub-paragraph (2) of paragraph 23 (Accounts and actuarial reports)—

(a) for “provide the host”, substitute “provide each relevant host”;

(b) for “Inland Revenue” in each place, substitute “HM Revenue and Customs”.

21. In Schedule 2A (Pension sharing on divorce or nullity of marriage), after sub-paragraph (4) of paragraph 7 (Pension credit member dies after pension credit benefit becomes payable) add—

“(5) Where a pension credit member referred to in sub-paragraph (1) has attained the age of 75 at the date of pension credit member's death—

(a) the lump sum referred to in that paragraph shall cease to be payable; and

(b) shall instead be converted into an annual pension to be determined and paid in accordance with sub-paragraph (6).

(6) The pension referred to in sub-paragraph (5) shall be—

(a) determined in accordance with guidance and tables provided by the Scheme actuary for the purpose of converting the amount of lump sum into an annual pension;

(b) paid to the person who would otherwise be entitled to receive the lump sum in accordance with regulation 22; and

(c) paid to the person from the day after the pension credit member's death until the fifth anniversary of the day the pension credit member's pension under the scheme became payable.

(7) If, in accordance with regulation 22, a pension credit member has given notice that more than one person is to receive a share of the lump sum, each such person shall receive the same percentage of the annual pension as was specified for that person in the pension credit member's notice.

(8) If, in accordance with regulation 22, the annual pension is to be paid to the pension credit member's personal representatives they may, as part of the distribution of the credit member's estate, give irrevocable notice to the Department—

(a) specifying—

(i) one or more individuals, or

(ii) one incorporated or unincorporated body, to whom the benefit of the pension under this regulation from the date of receipt of the notice by the Department is to be assigned; and

(b) where two or more individuals are specified, specifying the percentage of the pension payable to each of them, and the pension (or, as the case may be, the percentage of it specified in respect of the person) may be paid to the person or body, unless subparagraph (9) applies.

(9) This paragraph applies if—

(a) the person specified in the notice has died before payment can be made;

(b) payment to the person or body specified in the notice is not, in the opinion of the Department, reasonably practicable; or

(c) the person to whom the pension (or a specified percentage of the pension) would otherwise be payable has been convicted of an offence specified in regulation 93(1A) and the Department has directed, as a consequence of that conviction, that the person's right to a payment in respect of the pension credit member's death is forfeited.

(10) The prohibition on assignment of benefits in regulation 90 (Benefits not assignable) shall not apply to an assignment by personal representatives under this regulation.”.

Revocation

22. In the Health and Personal Social Services (Superannuation) (Amendment) Regulations (Northern Ireland) 2008⁽⁸⁾, regulation 2(4) is revoked.

PART 2

AMENDMENT OF THE HEALTH AND SOCIAL CARE (PENSION SCHEME) REGULATIONS (NORTHERN IRELAND) 2008

Amendment of the 2008 Regulations

23. The Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008⁽⁹⁾ shall be amended as provided by regulations 24 to 83.

Amendment of regulation 6

24. In Regulation 6 (Interpretation: general)—

(a) before the definition of “corresponding health service scheme” insert—

““corresponding 1995 scheme” means a corresponding health service scheme the provisions of which the Department has determined correspond to the provisions of the 1995 Regulations;

⁽⁸⁾ S.R. 2008 No. 163

⁽⁹⁾ S.R. 2008 No. 256

“corresponding 2008 scheme” means a corresponding health service scheme the provisions of which the Department has determined correspond to the provisions of these Regulations;”;

(b) for the definition of “corresponding health service scheme” substitute—

““corresponding health service scheme” means—

- (a) a superannuation scheme provided under regulations made under section 10 of the Superannuation Act 1972⁽¹⁰⁾ and having effect in England, Wales and Scotland,
- (b) a scheme made under section 2 of the Superannuation Act 1984⁽¹¹⁾ (an Act of Tynwald) applies, and
- (c) any other occupational pension scheme approved for the purposes of this regulation by the Department;”;

(c) for the definition of “host Board” substitute—

““host Board”, in respect of a person who is a registered medical practitioner or non-GP provider who is—

- (a) a partner in a partnership—
 - (i) that is a GMS practice, or
 - (ii) that is an APMS contractor that has entered into an APMS contract for the provision of primary medical services;
- (b) a shareholder in a company limited by shares that is a GMS practice or an APMS contractor that has entered into an APMS contract for the provision of primary medical services;
- (c) an individual who is a GMS practice or an APMS contractor,

means each Health and Social Services Board with which that partnership (in the case of paragraph (a)), company (in the case of paragraph (b)) or practice or contractor (in the case of paragraph (c)) has entered into an agreement or contract referred to in those provisions and (in the case of a registered medical practitioner) the relevant Health and Social Services Board on whose medical performers' list that practitioner's name appears, and such a person shall be deemed to be employed by the appropriate Health and Social Services Board for the purposes of this Part;”;

(d) for the definition of “OOH services” substitute—

““OOH services” means services which are required to be provided in the out of hours period and which, if provided during core hours by a GMS practice or APMS contractor to patients to whom the practice or contractor is required by its GMS contract or APMS contract to provide essential services, would be or would be similar to essential services”.

Amendment of regulation 7

25. In regulation 7 (Meaning of “pensionable service”), after paragraph (7) add—

“(8) Where a member is also a member of the HPSS Superannuation Scheme 1995, any reference in this Part to “45 years” shall be taken to be a reference to a shorter period determined by the formula—

⁽¹⁰⁾ 1972 c. 11

⁽¹¹⁾ 1984 c. 8 (Tynwald)

SP = 45 years – LSS

where—

SP is the shorter period, measured in years and days, and

LSS is the length of superannuable service (within the meaning of the 1995 Regulations), measured in years and days, giving rise to membership of the HPSS Superannuation Scheme 1995 and, in the case of a member of that Scheme who has become entitled to a pension (including a preserved pension) under that Scheme, including any period that was taken into account for the purpose of determining whether the member was entitled to that pension, or for the purpose of calculating the amount of that pension.”

Amendment of regulation 9

26. In regulation 9 (Pensionable service: breaks in service), for paragraph (3) substitute—

“(3) If a member is on leave of absence but does not fall within paragraph (1)(a) to (e), and contributes to the Scheme under regulation 27 by contributions made at the same intervals as those made by the member before the absence, the maximum period of such leave that can be counted as pensionable service under this paragraph is—

- (a) where the member contributes for a continuous period of 6 months commencing with the first day of the member’s leave of absence, 6 months; and
- (b) where the member contributes for a continuous period of less than 6 months commencing with the first day of the member’s leave of absence, the period in respect of which the member pays those contributions.

(3A) If, having paid contributions for the period mentioned in paragraph (3)(a) a member remains on a leave of absence that does not fall within paragraph (1)(a) to (e) and contributes to the Scheme both member contributions under regulation 27 and employer contributions under regulation 31 by contributions made at the same intervals as those made by the member before the absence, the maximum period of such leave that can be counted as pensionable service under this paragraph is—

- (a) where the member contributes for a continuous period of 18 months commencing immediately after the expiry of the period mentioned in paragraph (3)(a), 18 months; and
- (b) where the member contributes for a continuous period of less than 18 months commencing immediately after the expiry of the period mentioned in paragraph (3)(a), the period in respect of which the member pays those contributions.”

Amendment of regulation 10

27.—(1) Regulation 10 (Meaning of “qualifying service”) is amended as provided by paragraphs (2) and (3).

(2) In paragraph (1)(b), after “pension arrangement” insert “(including the HPSS Superannuation Scheme 1995)”.

(3) After paragraph (1)(e) add—

“; and

(f) in the case of a person—

- (i) who is eligible to join the Scheme by virtue of regulation 21(5)(c), and

- (ii) for whom the interval between leaving the HPSS Superannuation Scheme 1995 and joining the Scheme is less than one month,
 a period equal to the period of qualifying service (within the meaning of the 1995 Regulations), measured in years and days, that the member was entitled to count under regulation 5 of the 1995 Regulations when the member left that scheme.”

Amendment of regulation 14

28.—(1) Regulation 14 (Pensionable pay: breaks in service) is amended as provided by paragraphs (2) to (10).

(2) In paragraph (2), after “paragraph (3)” insert “in the case of a member who is not a non-GP provider and paragraph (7) in the case of a member who is a non-GP provider”.

(3) In paragraph (3), before “falling” insert “who is not a non-GP provider”.

(4) In paragraph (6), for “(up to 6” substitute “or (3A) (up to 24”.

(5) In paragraph (7), for “13(9)” substitute “13(8)”.

(6) For paragraph (8), substitute—

“(8) If the earnings used to calculate a member’s pensionable pay cease during a period of absence to which this regulation applies—

- (a) a non-GP provider falling within paragraph (1)(a) will, subject to subparagraph (b), be treated as having continued in pensionable employment for a period of 12 months from the date on which the member’s earnings ceased and the member will not be treated as having left pensionable employment until the end of that 12 month period;
- (b) a non-GP provider falling within paragraph (1)(b) to (e) who paid contributions on the basis of reduced earnings in accordance with paragraph (4)(b) will, subject to paragraph (9), continue to pay contributions at that rate, except that no refund of contributions or other benefit will be payable until the member actually leaves pensionable employment;
- (c) a member other than a non-GP provider will, subject to paragraph (5), be treated as having left pensionable employment except that no refund of contributions or other benefit will be payable until the member actually leaves pensionable employment.

(8A) For the purposes of paragraph (8)(a)—

- (a) during the 12 month period, the non-GP provider’s pensionable earnings will be calculated as described in paragraph (7)(a) or (b);
- (b) at the end of the 12 month period, when the member is regarded as having left pensionable employment, no refund of contributions or other benefit will be payable until the member actually leaves employment.”

(7) In paragraph (9), after “paragraph (8)” insert “(b)”.

(8) In paragraph (10), for “non-GP provider” in each place substitute “member”.

(9) In paragraph (11)—

- (a) for “non-GP provider” in each place substitute “member”;
- (b) for “paragraph (7)” substitute “this regulation”;
- (c) for “paragraph (10)” substitute “paragraph (8)(c), (8A)(b) or (10)”.

(10) In paragraph (12), for “non-GP provider” in each place substitute “member”.

Amendment of regulation 21

29.—(1) Regulation 21(5) (Eligibility: general) is amended as provided by paragraphs (2) and (3).

(2) After sub-paragraph (d) add—

“(e) the person—

- (i) ceased to be an active member of the HPSS Superannuation Scheme 1995 on leaving HSC employment,
- (ii) became a deferred member of that Scheme on leaving that employment and has not become a pensioner member of that Scheme between the date of leaving that employment and joining the Scheme, and
- (iii) re-entered HSC employment on or after 1st October 2008 and 5 or more years since last leaving HSC employment; or

(f) the person—

- (i) ceased to be an active member of the HPSS Superannuation Scheme 1995 before 1st April 2008 on leaving HSC employment,
- (ii) became a deferred member of that Scheme on leaving that employment,
- (iii) re-entered HSC employment on or after 1st October 2008 and 5 or more years since last leaving HSC employment, and
- (iv) before the person re-entered such employment—
 - (aa) a transfer payment was made in respect of the person under Part VI of that Scheme, or
 - (bb) the person made an application under regulation 54 of that Scheme (Exercising a right to transfer or buy-out) from which the person may not withdraw.”.

(3) In the full-out words, for “sub-paragraph (d)” substitute “sub-paragraphs (d) to (f)”.

Amendment of regulation 22

30. For paragraph (2)(b) of regulation 22 (Restrictions on eligibility: general), substitute—

“(b) became a pensioner member of that Scheme on or after that date; or

(c) is a deferred member of that Scheme, but is not a deferred member—

- (i) to whom regulation 21(5)(e) or (f) applies, and
- (ii) in respect of whom permission of the Department to rejoin the HPSS Superannuation Scheme 1995 has not been granted pursuant to regulation 7(3) of the 1995 Regulations.”.

Amendment of regulation 28

31. In regulation 28(3) (Members' contribution rate), after “may” insert “, with the consent of the Department of Finance and Personnel,”.

Amendment of regulation 31

32.—(1) Regulation 31 (Contributions by employing authorities: general), is amended as provided by paragraphs (2) and (3).

(2) For paragraph (2) substitute—

“(2) In specifying such a rate, the Department must—

- (a) obtain the consent of the Department of Finance and Personnel; and
 - (b) take account of the advice of the Scheme actuary and the cost of providing for any increase in pensions under the Scheme as a result of orders made under the provisions of the Pensions (Increase) Act (Northern Ireland) 1971⁽¹²⁾ and Article 69 of the Social Security Pensions (Northern Ireland) Order 1975⁽¹³⁾.”
- (3) After paragraph (5) add—
- “(6) In any particular case the Department may direct that, for the purposes of this Chapter, “employing authority” includes one or more of—
- (a) the transferee under a transfer of staff order pursuant to—
 - (i) Article 3(4)(b) of the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990⁽¹⁴⁾, or
 - (ii) paragraph 24(2) of Schedule 3 to the Health and Personal Social Services (Northern Ireland) Order 1991⁽¹⁵⁾;
 - (b) without limiting sub-paragraph (a), a successor, transmittee or assignee of an employing authority’s business or functions; and
 - (c) the last employing authority of a person to whom these Regulations apply.”

Amendment of regulation 53

33. In Regulation 53 (Re-assessment of entitlement to an ill-health pension determined under regulation 52) for paragraph (2)(a), substitute—

- “(a) in the case of a member who does not engage in further HSC employment during the period of three years referred to in paragraph (1)(b), the member makes the application in writing before the end of that period;
- (aa) in the case of a member who does engage in further HSC employment during the period of three years referred to in paragraph (1)(b), the member makes the application in writing before the first anniversary of the day on which that employment commences or before the end of that period if sooner;”

Amendment of regulation 54

34.—(1) Regulation 54 (Early retirement on ill-health (deferred members)) is amended as provided by paragraphs (2) and (3).

- (2) In paragraph (1)(a), before “incapable” insert “permanently”.
- (3) In paragraph (2)(a)(ii), for “impairment” substitute “infirmity”.

Amendment of regulation 76

35. In regulation 76(7) (Amount of children’s pension under regulation 74: deceased active members), for “paragraph (4)(b) or (c)” substitute “paragraph (5)(b) or (c)”.

Insertion of new regulation 86A

36. After regulation 86 (Amount of lump sum: pension credit members), insert—

(12) 1971 c. 35 (N.I.)
 (13) S.I. 1975/1503 (N.I. 15)
 (14) S.I. 1990/247 (N.I. 3)
 (15) S.I. 1991/194 (N.I. 1)

“Pension payable when member dies on or after reaching age 75

86A.—(1) If a pensioner member or a pension credit member dies—

- (a) on or after reaching age 75; and
- (b) before the fifth anniversary of the date on which the member’s pension became payable,

an annual pension, calculated in accordance with paragraph (2), may be payable from the day following the date of the member’s death until the anniversary referred to in sub-paragraph (b).

(2) The pension payable under paragraph (1) is determined by—

- (a) calculating the amount of the lump sum that would have been payable in respect of the pensioner member or pension credit member under regulation 83(2) or, as the case may be, 86 as if on the day the member died the member had not reached the age of 75; and
- (b) converting any amount determined in sub-paragraph (a) to an annual pension payable for the period specified in paragraph (1), by reference to guidance and tables provided by the Scheme actuary for the purpose.

(3) The “beginning date” of the pension calculated in paragraph (2) will, for the purposes of the Pensions (Increase) Act (Northern Ireland) 1971, be the day immediately following the date of death of the pensioner member or pension credit member.

(4) The pension calculated under this regulation will be payable in accordance with regulation 87.”.

Amendment of regulation 87

37.—(1) Regulation 87 (Payment of lump sums on death) is amended as provided by paragraphs (2) to (7).

- (2) In the heading to that regulation, after “lump sums” insert “or pensions”.
- (3) In paragraph (1), after “regulation 82” insert “or a pension payable under regulation 86A”.
- (4) In paragraph (2)—
 - (i) after “lump sum” insert “or pension”, and
 - (ii) for “under paragraph (4) or (6)” substitute “or body under paragraph (4), (6) or (10)”.
- (5) In paragraphs (3), (4) and (6), after “lump sum” in each paragraph insert “or pension”.
- (6) In paragraph (7), after “lump sum” in each place insert “or pension”.
- (7) After paragraph (9), add—

“(10) The member’s personal representatives may, as part of the distribution of the member’s estate, give irrevocable notice to the Department—

- (a) specifying—
 - (i) one or more individuals, or
 - (ii) one incorporated or unincorporated body,to whom the benefit of the pension under regulation 86A from the date of receipt of the notice by the Department is to be assigned; and
- (b) where two or more individuals are specified, specifying the percentage of the pension payable to each of them,

and the pension (or, as the case may be, the percentage of it specified in respect of the person) may be paid to the person or body, unless paragraph (11) applies.

(11) This paragraph applies if—

- (a) the person specified in the notice has died before the payment can be made;
- (b) payment to that person is not, in the opinion of the Department, reasonably practicable; or
- (c) the person to whom the pension (or a specified percentage of the pension) would otherwise be payable has been convicted of an offence specified in regulation 130 (4) (Forfeiture of rights to benefit) and the Department has directed, as a consequence of that conviction, that the person's right to a payment in respect of the member's death is forfeited.

(12) The prohibition on assignment of benefits in regulation 135 (Prohibition on assignment or charging of benefits) shall not apply to an assignment by personal representatives under this regulation.”.

Amendment of regulation 91

38. In regulation 91(5) (Dual capacity membership: death benefits), after sub-paragraph (h) insert—

“(hh) regulation 86A (Pension payable when member dies on or after age 75);”.

Amendment of regulation 98

39. In regulation 98 (Calculating amounts of transfer value payments), for paragraphs (1) and (2) substitute—

“(1) The amount of the guaranteed cash equivalent transfer value payment is to be calculated and verified by the Department in accordance with the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996(16). This is subject to paragraphs (2), (3) and (5).

(2) Before determining the factors to be used in the calculation of the member's guaranteed cash equivalent, the Department shall take advice from the Scheme actuary.”.

Amendment of regulation 100

40.—(1) Regulation 100 (Right to apply for acceptance of transfer value payment from another scheme) is amended as provided by paragraphs (2) to (5).

(2) In paragraph (2)(a), after “scheme” insert “other than a corresponding health service scheme”.

(3) For paragraph (2)(d) substitute—

“(d) a corresponding 1995 scheme, and

(e) a corresponding 2008 scheme.”.

(4) After paragraph (2) insert—

(2A) A member who makes an application for a transfer value to be accepted by the Department in respect of his rights under a corresponding 2008 scheme may not also make an application for a transfer value to be accepted in respect of his rights under a corresponding 1995 scheme.”;

(5) In paragraph (4)(a)(ii), for “purposes of that Act” substitute “purposes of the Finance Act 2004”.

Amendment of regulation 101

41.—(1) Regulation 101 (Procedure for applications under regulation 100) is amended as provided by paragraphs (2) to (4).

(2) In paragraph (1)(d)(ii), after “those arrangements” insert “(including a transfer of rights from a corresponding 1995 scheme)”.

(3) In paragraph (2), for “a such a” substitute “such a”.

(4) After paragraph (2) add—

“(3) A statement given to the member of a corresponding 1995 scheme in pursuance of such a request as is mentioned in paragraph (1)(d) must inform the member of the amount of pensionable service that will count under this Scheme for the purposes of—

(a) calculating benefits payable to or in respect of the member; and

(b) determining whether or not the member has reached 45 years of pensionable service for the purposes of regulations 7 and 8.”.

Amendment of regulation 102

42. In regulation 102 (Acceptance of transfer value payments), after paragraph (3) insert—

“(3A) If the Department accepts the payment from the member of a corresponding 1995 scheme, the relevant period of pensionable service shall count when determining whether or not the member has reached 45 years of pensionable service for the purposes of regulations 7 and 8.

(3B) In paragraph (3A) “the relevant period” means the period calculated in accordance with regulation 103.”.

Amendment of regulation 103

43.—(1) Regulation 103 (Calculation of transferred-in pensionable service) is amended as provided by paragraphs (2) and (3).

(2) In paragraph (6), for “corresponding health service scheme” substitute “corresponding 2008 scheme”.

(3) Omit paragraph (7).

Insertion of new regulation 108A

44. After regulation 108 (EU and other overseas transfers), insert—

“Transfers across

Transfers across from the HPSS Superannuation Scheme 1995

108A.—(1) An active member who is entitled to have a cash equivalent value calculated in respect of the entirety of the member’s rights under the HPSS Superannuation Scheme 1995, pursuant to regulation 59 of the 1995 Regulations, may apply to convert that cash equivalent value into rights under this Scheme.

(2) An application under paragraph (1)—

(a) must be made in writing using an application form provided for the purpose by the Department;

- (b) may only be made before the end of the period of three months beginning with the guarantee date established under regulation 59 of the 1995 Regulations;
 - (c) may only be made if the member has first been furnished with a statement of the pensionable service that the member will be entitled to count under this Scheme if the application is accepted by the Department;
 - (d) must meet such other conditions as the Department may require; and
 - (e) is irrevocable.
- (3) The statement mentioned in paragraph (2)(c) must—
- (a) inform the member of the amount of pensionable service that will count under this Scheme for the purposes of calculating benefits payable to or in respect of the member;
 - (b) inform the member of the amount of pensionable service that will count under this Scheme when determining whether or not the member has reached 45 years of pensionable service for the purposes of regulations 7 and 8; and
 - (c) be calculated in accordance with any guidance, tables and other relevant factors provided by the Scheme actuary for that purpose.
- (4) If the Department accepts an application under paragraph (1)—
- (a) the member is entitled to count under this Scheme the periods of pensionable service mentioned in sub-paragraphs (a) and (b) of paragraph (3) for the purposes specified therein; and
 - (b) those periods of pensionable service shall be credited to the member on the day that the Department received the member’s application.”.

Amendment of regulation 116

45. For regulation 116 (Information), substitute—

- “(1) A person who becomes an employed pensioner must—
- (a) inform the person’s employer in the new employment and any other person that the Department may specify that the old service pension is payable; and
 - (b) where requested, provide any information about their relevant income in the new employment to the Department or to any other person that the Department may specify.
- (2) A person who ceases to be an employed pensioner in one new employment and becomes an employed pensioner in another new employment must—
- (a) inform the person’s employer in the other new employment, and any other person that the Department may specify, that the old service pension is payable; and
 - (b) where requested, provide any information about their relevant income in the other new employment to the Department or to any person that the Department may specify.
- (3) In this regulation “relevant income” has the same meaning as in regulation 118.”.

Amendment of regulation 119

46. In regulation 119(1) (Meaning of “previous pay”: general), for “regulation 120” substitute “regulations 120 and 121”.

Amendment of regulation 121

47. In regulation 121 (Application of this chapter to part-time employment), for paragraph (2) substitute—

“(2) The amount of the employed pensioner’s reckonable pay for the purposes of the old service pension, as referred to in regulation 119(1)(a), shall be determined without reference to regulation 18 or 19 (reckonable pay for non-concurrent and concurrent part-time workers).”.

Amendment of regulation 125

48. For regulation 125 (Claims for benefits), substitute—

“(1) A person claiming to be entitled to benefits under this Part (“the claimant”) shall make a claim in writing to the Department.

(2) Pursuant to such a claim, the claimant and, where appropriate, the member’s employing authority (including any previous employing authority of the member) shall provide such—

- (a) evidence of entitlement;
- (b) information required in order to deal with the claim; and
- (c) authority or permission as may be necessary for the release by third parties of information in their possession relating to the claimant or member,

as the Department may from time to time require for the purposes of this Part.

(3) A claim referred to in paragraph (1) may be made by a person or persons other than the claimant where the Department so provides.

(4) Any claim for benefit required in writing under this Part, and any evidence, information, authority or permission given in connection with that claim, may be made or given by means of an electronic communication where such method of communication is approved by the Department from time to time.

(5) In this regulation, “electronic communication” has the same meaning as in section 15(1) of the Electronic Communications Act 2000(17).”.

Amendment of regulation 130

49. In regulation 130(5)(c) (Forfeiture of rights to benefits), after “87(3)” insert “or (10)”.

Amendment of regulation 132

50.—(1) Regulation 132(5) (Interest on late payment of benefits and refunds of contributions) is amended as provided by paragraphs (2) and (3).

(2) In sub-paragraph (b), after “member’s death” insert “, other than a pension payable under regulation 86A (Pension payable when member dies on or after reaching age 75)”.

(3) After sub-paragraph (e) add—

“; and

- (f) in the case of an amount in respect of a pension under regulation 86A that is payable to—
 - (i) the member’s personal representatives, the date on which probate or letters of administration were produced to the Department,

- (ii) any person or body to whom the pension has been assigned by the member's personal representatives, the date on which the notice under regulation 87(10) was received by the Department, and
- (iii) any person or body other than those referred to in heads (i) and (ii), the day immediately following the day of the member's death."

Amendment of regulation 136

51.—(1) Regulation 136 (Employing authority record keeping and contribution estimates) is amended as provided by paragraphs (2) and (3).

- (2) In the heading to that regulation, after "employing authority" insert "and certain members".
- (3) In paragraph (1), for "the host" substitute "each relevant host".

Amendment of regulation 137

52. In regulation 137 (Interpretation of Part 3: general)—

- (a) before the definition of "corresponding health service scheme" insert—
 - ““corresponding 1995 scheme” means a corresponding health service scheme, the provisions of which the Department has determined correspond to the provisions of the 1995 Regulations;
 - “corresponding 2008 scheme” means a corresponding health service scheme, the provisions of which the Department has determined correspond to the provisions of these Regulations;”;
- (b) for the definition of "corresponding health service scheme" substitute—
 - ““corresponding health service scheme” means—
 - (a) a superannuation scheme provided under regulations made under section 10 of the Superannuation Act 1972(18) and having effect in England, Wales and Scotland,
 - (b) a scheme made under section 2 of the Superannuation Act 1984(19) (an Act of Tynwald) applies, and
 - (c) any other occupational pension scheme approved for the purposes of this regulation by the Department;”;
- (c) after the definition of "GDS provider" insert—
 - ““general ophthalmic services” has the meaning given by regulation 2(1) of the General Ophthalmic Services Regulations (Northern Ireland) 2007(20);”;
- (d) after the definition of "GMS practice" insert—
 - ““GOS arrangements” has the meaning given by regulation 13 of General Ophthalmic Services Regulations (Northern Ireland) 2007;”;
- (e) for the definition of "host Board" substitute—
 - ““host Board”, in respect of a person who is a registered medical practitioner or non-GP provider who is—
 - (a) a partner in a partnership—
 - (i) that is a GMS practice, or

(18) 1972 c. 11

(19) 1984 c. 8 (Tynwald)

(20) S.R. 2007 No. 436

- (ii) that is an APMS contractor that has entered into an APMS contract for the provision of primary medical services;
- (b) a shareholder in a company limited by shares that is a GMS practice or an APMS contractor that has entered into an APMS contract for the provision of primary medical services;
- (c) an individual who is a GMS practice or an APMS contractor,
means the Health and Social Services Board with which that partnership (in the case of paragraph (a)), company (in the case of paragraph (b)) or practice or contractor (in the case of paragraph (c)) has entered into an agreement or contract referred to in those provisions and (in the case of a registered medical practitioner) the relevant Board on whose medical performers' list that practitioner's name appears, and such a person shall be deemed to be employed by the appropriate Board for the purposes of this Part;";
- (f) for definition of "OOH services" substitute—
"“OOH services” means services which are required to be provided in the out of hours period and which, if provided during core hours by a GMS practice or APMS contractor to patients to whom the practice or contractor is required by its GMS contract or APMS contract to provide essential services, would be or would be similar to essential services;”;
- (g) after the definition of "OOH services" insert—
"“ophthalmic provider” means a registered medical practitioner who is included in an ophthalmic list kept and published by the Agency pursuant to regulation 8(1) of the General Ophthalmic Services Regulations (Northern Ireland) 2007 (ophthalmic list);”;
- (h) for the newly inserted definition of "ophthalmic provider", substitute—
"“ophthalmic provider” means a registered medical practitioner who is included in an ophthalmic performers list kept by the Agency pursuant to regulation 8(1) of the General Ophthalmic Services Regulations (Northern Ireland) 2007 and is a party to GOS arrangements;”;
- (i) in the definition of "practitioner", in paragraph (a) after "a registered medical practitioner" insert "or ophthalmic provider,".

Amendment of regulation 139

- 53.** In regulation 139 (Meaning of "pensionable service"), after paragraph (8) add—

"(9) Where a member is also a member of the HPSS Superannuation Scheme 1995 any reference in this Part to "45 years" shall be taken to be a reference to a shorter period determined by the formula—

$$SP = 45 \text{ years} - LSS$$

where—

SP is the shorter period, measured in years and days, and

LSS is the length of superannuable service (within the meaning of the 1995 Regulations), measured in years and days, giving rise to membership of the HPSS Superannuation Scheme 1995 and, in the case of a member of that Scheme who has become entitled to a pension (including a preserved pension) under that Scheme, including any period that was taken into account for the purpose of determining

whether the member was entitled to that pension, or for the purpose of calculating the amount of that pension.”.

Amendment of regulation 140

54.—(1) Regulation 140 (Pensionable service: breaks in service) is amended as provided by paragraphs (2) and (3).

(2) In paragraph (2)—

(a) for “Subject to paragraph (5), a” substitute “A”;

(b) for “Scheme” substitute “Scheme under regulation 160 in respect of the period of absence”.

(3) For paragraph (3) substitute—

“(3) If a member is on leave of absence but does not fall within paragraph (1)(a) to (e), and contributes to the Scheme under regulation 160 by contributions made at the same intervals as those made by the member before the absence, the maximum period of such leave that can be counted as pensionable service under this paragraph is—

(a) where the member contributes for a continuous period of 6 months commencing with the first day of the member’s leave of absence, 6 months; and

(b) where the member contributes for a continuous period of less than 6 months commencing with the first day of the member’s leave of absence, the period in respect of which the member pays those contributions.

(3A) If, having paid contributions for the period mentioned in paragraph (3)(a) a member remains on a leave of absence that does not fall within paragraph (1)(a) to (e) and contributes to the Scheme both member contributions under regulation 160 and employer contributions under regulation 162 by contributions made at the same intervals as those made by the member before the absence, the maximum period of such leave that can be counted as pensionable service under this paragraph is—

(a) where the member contributes for a continuous period of 18 months commencing immediately after the expiry of the period mentioned in paragraph (3)(a), 18 months; and

(b) where the member contributes for a continuous period of less than 18 months commencing immediately after the expiry of the period mentioned in paragraph (3)(a), the period in respect of which the member pays those contributions.”.

Amendment of regulation 141

55.—(1) Regulation 141 (Meaning of “qualifying service”), is amended as provided by paragraphs (2) to (4).

(2) In paragraph (1)(b), after “pension arrangement” insert “(including the HPSS Superannuation Scheme 1995)”.

(3) After paragraph (1)(d) add—

“(e) in the case of a person—

(i) who is eligible to join the Scheme by virtue of regulation 153(5)(c), and

(ii) for whom the interval between leaving the HPSS Superannuation Scheme 1995 and joining the Scheme is less than one month,

a period equal to the period of qualifying service (within the meaning of the 1995 Regulations), measured in years and days, that the member was entitled to count under regulation 5 of the 1995 Regulations when the member left that scheme.”.

(4) After paragraph (3) add—

“(4) For the other rules applying where there is a short break in service, see regulation 142.”.

Amendment of regulation 143

56. In regulation 143(2)(a)(vi) (Meaning of “pensionable earnings”), after “OOH provider” insert “or other employing authority providing OOH services”.

Amendment of regulation 144

57.—(1) Regulation 144 (Pensionable earnings breaks in service) is amended as provided by paragraphs (2) and (3).

(2) In paragraph (2)(a), for “regulation 160” substitute “regulations 160 and 161”.

(3) After paragraph (9) add—

“(10) For the purposes of making contributions to the Scheme under regulations 160 and 162, during any period of absence which counts as pensionable service under regulation 140(3) or (3A), amounts equal to the rate of the member’s pensionable earnings calculated as described in paragraph (3)(a) or (b) will be treated as pensionable earnings.”.

Amendment of regulation 153

58.—(1) Regulation 153(5) (Eligibility: general), is amended as provided by paragraphs (2) and (3).

(2) In sub-paragraph (d) omit the words from “but this sub-paragraph” to “the 1995 Regulations”.

(3) After sub-paragraph (d) add—

“(e) the person—

(i) ceased to be an active member of the HPSS Superannuation Scheme 1995 on leaving HSC employment,

(ii) became a deferred member of that Scheme on leaving that employment and has not become a pensioner member of that Scheme between the date of leaving that employment and joining the Scheme, and

(iii) re-entered HSC employment on or after 1st October 2008 and 5 or more years since last leaving HSC employment; or

(f) the person—

(i) ceased to be an active member of the HPSS Superannuation Scheme 1995 before 1st April 2008 on leaving HSC employment,

(ii) became a deferred member of that Scheme on leaving that employment,

(iii) re-entered HSC employment on or after 1st October 2008 and 5 or more years since last leaving HSC employment, and

(iv) before the person re-entered such employment—

(aa) a transfer payment was made in respect of the person under Part VI of that Scheme, or

(bb) the person made an application under regulation 54 of that Scheme (Exercising a right to transfer or buy-out) from which the person may not withdraw,

but sub-paragraphs (d) to (f) will not apply if the Department has permitted such a person to rejoin the HPSS Superannuation Scheme 1995 in the circumstances described in regulation 7(3) of the 1995 Regulations .”.

Amendment of regulation 154

59. In regulation 154 (Restrictions on eligibility: general), for paragraph (1)(b) substitute—

- “(b) became a pensioner member of that Scheme on or after that date; or
- (c) is a deferred member of that Scheme, but is not a deferred member—
 - (i) to whom regulation 153(5)(e) or (f) applies, and
 - (ii) in respect of whom permission of the Department to rejoin the HPSS Superannuation Scheme 1995 has not been granted pursuant to regulation 7(3) of that Scheme.”.

Amendment of regulation 157

60.—(1) Regulation 157(7) (Opting out of the scheme) is amended as provided by paragraphs (2) and (3).

(2) After “contribute to the Scheme” insert “in respect of one or more employments as a practitioner under this Part must do so”.

(3) Before “may” insert “but”.

Amendment of regulation 161

61.—(1) Regulation 161 (Members' contribution rate) is amended as provided by paragraphs (2) to (5).

(2) In paragraph (3), after “may” insert “, with the consent of the Department of Finance and Personnel,”.

(3) In the full-out words of paragraph (8), for “paragraph (6) in respect of the earlier service” substitute “paragraph (12) in respect of the earlier dentist performer service”.

(4) In the full-out words of paragraph (9), for “paragraph (6) in respect of the earlier service” substitute “regulation 28 in respect of the earlier officer service”.

(5) In the full-out words of paragraph (14), for “paragraph (12) in respect of the earlier service” substitute “paragraph (6) in respect of the earlier service as a practitioner (other than a dentist performer)”.

Amendment of regulation 162

62. In regulation 162 (Contributions by employing authorities: general), for paragraph (2) substitute—

- “(2) In specifying such a rate, the Department must—
 - (a) obtain the consent of the Department of Finance and Personnel; and
 - (b) take account of the advice of the Scheme actuary and the cost of providing for any increase in pensions under the Scheme as a result of orders made under the provisions of the Pensions (Increase) Act (Northern Ireland) 1971(21) and Article 69 of the Social Security Pensions (Northern Ireland) Order 1975(22).”.

(21) 1971 c. 35 (N.I.)

(22) S.I. 1975/1503 (N.I. 15)

Amendment of regulation 181

63. In the heading to regulation 181 (Increase in pensionable earnings following exercise of option under regulation 180), for “pensionable earnings” substitute “level of engagement”.

Amendment of regulation 183

64. In regulation 183 (Re-assessment of entitlement to an ill-health pension determined under regulation 182), for paragraph (2)(a) substitute—

- “(a) in the case of a member who does not engage in further HSC employment during the period of three years referred to in paragraph (1)(b), the member makes the application in writing before the end of that period;
- (aa) in the case of a member who does engage in further HSC employment during the period of three years referred to in paragraph (1)(b), the member makes the application in writing before the first anniversary of the day on which that employment commences or before the end of that period if sooner.”

Amendment of regulation 184

65.—(1) Regulation 184 (Early retirement on ill-health (deferred members)) is amended as provided by paragraphs (2) and (3).

- (2) In paragraph (1)(a), before “incapable” insert “permanently”.
- (3) In paragraph (2)(a)(ii), for “impairment” substitute “infirmary”.

Amendment of regulation 203

66. In regulation 203(2) (Amount of children’s pension under regulation 201: deceased active members), for “paragraphs (6) and (7)” substitute “paragraphs (5) and (6)”.

Insertion of new regulation 213A

67. After regulation 213 (Amount of lump sum: pension credit members), insert—

“Pension payable when member dies on or after reaching age 75

213A.—(1) If a pensioner member or a pension credit member dies—

- (a) on or after reaching age 75; and
- (b) before the fifth anniversary of the date on which the member’s pension became payable,

an annual pension, calculated in accordance with paragraph (2), may be payable from the day following the date of the member’s death until the anniversary referred to in sub-paragraph (b).

(2) The pension payable under paragraph (1) is determined by—

- (a) calculating the amount of the lump sum that would have been payable to the pensioner member or pension credit member under regulation 210(2) or, as the case may be, 213 as if on the day the member died the member had not reached the age of 75; and
- (b) converting any amount determined in sub-paragraph (a) to an annual pension payable for the period specified in paragraph (1), by reference to guidance and tables provided by the Scheme actuary for the purpose.

(3) The “beginning date” of the pension calculated in paragraph (2) will, for the purposes of the Pensions (Increase) Act (Northern Ireland) 1971, be the day immediately following the date of death of the pensioner member or pension credit member.

(4) The pension calculated under this regulation will be payable in accordance with regulation 214.”.

Amendment of regulation 214

68.—(1) Regulation 214 (Payment of lump sums on death) is amended as provided by paragraphs (2) to (7).

(2) In the heading to that regulation, after “lump sums” insert “or pensions”.

(3) In paragraph (1), after “regulation 209” insert “or a pension payable under regulation 213A”.

(4) In paragraph (2)—

(a) after “lump sum” insert “or pension”; and

(b) for “under paragraph (4) or (6)” substitute “or body under paragraph (4), (6) or (10)”.

(5) In paragraphs (3), (4) and (6), after “lump sum” in each paragraph insert “or pension”.

(6) In paragraph (7), after “lump sum” in each place insert “or pension”.

(7) After paragraph (9), add—

“(10) The member’s personal representatives may, as part of the distribution of the member’s estate, give irrevocable notice to the Department—

(a) specifying—

(i) one or more individuals, or

(ii) one incorporated or unincorporated body,

to whom the benefit of the pension under regulation 213A from the date of receipt of the notice by the Department is to be assigned; and

(b) where two or more individuals are specified, specifying the percentage of the pension payable to each of them,

and the pension (or, as the case may be, the percentage of it specified in respect of the person) may be paid to the person or body, unless paragraph (11) applies.

(11) This paragraph applies if—

(a) the person specified in the notice has died before the payment can be made;

(b) payment to that person or body is not, in the opinion of the Department, reasonably practicable; or

(c) the person to whom the pension (or a specified percentage of the pension) would otherwise be payable has been convicted of an offence specified in regulation 254 (4) (Forfeiture of rights to benefit) and the Department has directed, as a consequence of that conviction, that the person’s right to a payment in respect of the member’s death is forfeited.

(12) The prohibition on assignment of benefits in regulation 259 (Prohibition on assignment or charging of benefits) shall not apply to an assignment by personal representatives under this regulation.”.

Amendment of regulation 218

69. In regulation 218(5) (Dual capacity membership: death benefits), after sub-paragraph (h) insert—

“(hh) regulation 213A (Pension payable when member dies on or after age 75);”.

Amendment of regulation 225

70. In regulation 225 (Calculating amounts of transfer value payments), for paragraphs (1) and (2) substitute—

“(1) The amount of the guaranteed cash equivalent transfer value payment is to be calculated and verified by the Department in accordance with the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996(23).

This is subject to paragraphs (2), (3) and (5).

(2) Before determining the factors to be used in the calculation of the member’s guaranteed cash equivalent, the Department shall take advice from the Scheme actuary.”.

Amendment of regulation 227

71.—(1) Regulation 227 (Right to apply for acceptance of transfer value payment from another scheme) is amended as provided by paragraphs (2) to (5).

(2) In paragraph (2)(a), after “scheme” insert “other than a corresponding health service scheme”.

(3) For paragraph (2)(d) substitute—

“(d) a corresponding 1995 scheme; and

(e) a corresponding 2008 scheme.”.

(4) After paragraph (2) insert—

“(2A) A member who makes an application for a transfer value to be accepted by the Department in respect of his rights under a corresponding 2008 scheme may not also make an application for a transfer value to be accepted in respect of his rights under a corresponding 1995 scheme.”.

(5) In paragraph (4)(a)(ii), for “purposes of that Act” substitute “purposes of the Finance Act 2004”.

Amendment of regulation 228

72.—(1) Regulation 228 (Procedure for applications under regulation 227), is amended as provided by paragraphs (2) and (3).

(2) In paragraph (1)(d)(ii), after “those arrangements” insert “(including a transfer of rights from a corresponding 1995 scheme)”.

(3) After paragraph (2) add—

“(3) A statement given to the member of a corresponding 1995 scheme in pursuance of such a request as is mentioned in paragraph (1)(d) must inform the member of the amount of pensionable service that will count under this Scheme for the purposes of—

(a) calculating benefits payable to or in respect of the member; and

(b) determining whether or not the member has reached 45 years of pensionable service for the purpose of regulation 139.”.

Amendment of regulation 229

73. In regulation 229 (Acceptance of transfer value payments), after paragraph (3) insert—

“(3A) If the Department accepts the payment from the member of a corresponding 1995 scheme, the relevant period of pensionable service shall count when determining whether or not the member has reached 45 years of pensionable service for the purposes of regulation 139.

(3B) In paragraph (3A) “the relevant period” means the period calculated in accordance with any guidance, tables and other relevant factors provided by the Scheme actuary for that purpose, having regard to the period of employment that qualified the member for the rights in the corresponding 1995 scheme.”.

Amendment of regulation 230

74.—(1) Regulation 230 (Calculation of transferred-in pensionable service) is amended as provided by paragraphs (2) to (7).

(2) For paragraph (2) substitute—

“(2) Subject to paragraph (4), for the purposes of the calculation under paragraph (1), the benefits in respect of the transfer payment will be calculated by increasing the member’s pensionable earnings for—

- (a) the financial year in which the member joined the Scheme; or
- (b) the financial year in which the transfer payment is received if the payment is received more than 12 months after the member joined the Scheme.”.

(3) In paragraph (3)(b), for “final year’s pensionable” substitute “reckonable”.

(4) In paragraph (3)(c), for “final year’s pensionable” substitute “reckonable”.

(5) In paragraph (4), for “paragraph (3)” substitute “paragraph (2)(b)”.

(6) In paragraph (6), for “corresponding health service scheme” substitute “corresponding 2008 scheme”.

(7) Omit paragraph (7).

Insertion of new regulation 235A

75. After regulation 235 (EU and other overseas transfers), insert—

“Transfers across

Transfers across from the HPSS Superannuation Scheme 1995

235A.—(1) An active member who is entitled to have a cash equivalent value calculated in respect of the entirety of the member’s rights under the HPSS Superannuation Scheme 1995, pursuant to regulation 59 of the 1995 Regulations, may apply to convert that cash equivalent value into rights under this Scheme.

(2) An application under paragraph (1)—

- (a) must be made in writing using an application form provided for the purpose by the Department;
- (b) may only be made before the end of the period of three months beginning with the guarantee date established under regulation 59 of the 1995 Regulations;
- (c) may only be made if the member has first been furnished with a statement of the pensionable service and increase in pensionable earnings that the member will be entitled to count under this Scheme if the application is accepted by the Department;

- (d) must meet such other conditions as the Department may require; and
 - (e) is irrevocable.
- (3) The statement mentioned in paragraph (2)(c) must—
- (a) inform the member of the amount of increase in pensionable earnings that will count under this Scheme for the purposes of calculating benefits payable to or in respect of the member; and
 - (b) inform the member of the amount of pensionable service that will count under this Scheme when determining whether or not the member has reached 45 years of pensionable service for the purposes of regulation 139.
- (4) The amount of the increase in pensionable earnings mentioned in paragraph (3)(a) will be calculated by—
- (a) treating the member as entitled to a period of officer service equal to the period of employment that qualified the member for the rights in the HPSS Superannuation Scheme 1995;
 - (b) calculating the reckonable pay that would have given rise to a cash equivalent in respect of that officer service under regulation 98 (Calculating amounts of transfer value payments); and
 - (c) increasing the member's pensionable earnings by an amount equal to the pensionable pay that the member would have received during that period of officer service if the member's pensionable pay had been equal to the reckonable pay mentioned in sub-paragraph (b) throughout that period.
- (5) The amount of pensionable service mentioned in paragraph (3)(b) will be calculated in accordance with any guidance, tables and other relevant factors provided by the Scheme actuary for that purpose, having regard to the period of employment that qualified the member for the rights in the HPSS Superannuation Scheme 1995.
- (6) If the Department accepts an application under paragraph (1)—
- (a) the member is entitled to count under this Scheme the period of pensionable service mentioned in paragraph (3)(b) for the purpose specified therein;
 - (b) that period of pensionable service shall be credited to the member on the day that the Department received the member's application;
 - (c) the member is entitled to count the increase in pensionable earnings calculated under paragraph (4) for the purposes of calculating benefits payable to or in respect of the member under this Scheme; and
 - (d) that increase in pensionable earnings shall be credited to the member in the financial year during which the day that the Department received the member's application falls.”.

Amendment of regulation 242

76. For regulation 242 (Information), substitute—

- “(1) A person who becomes an employed pensioner must—
- (a) inform the person's employer in the new employment, and any other person that the Department may specify, that the old service pension is payable; and
 - (b) where requested, provide any information about their relevant income in the new employment to the Department or to any other person that the Department may specify.

- (2) A person who ceases to be an employed pensioner in one new employment and becomes an employed pensioner in another new employment must—
- (a) inform the person’s employer in the other new employment, and any other person that the Department may specify, that the old service pension is payable; and
 - (b) where requested, provide any information about their relevant income in the new employment to the Department or to any other person that the Department may specify.
- (3) In this regulation “relevant income” has the same meaning as in regulation 244.”.

Amendment of regulation 249

77. For regulation 249 (Claims for benefits), substitute—

“(1) A person claiming to be entitled to benefits under this Part (“the claimant”) shall make a claim in writing to the Department.

(2) Pursuant to such a claim, the claimant, and where appropriate, the member’s employing authority (including any previous employing authority of the member) shall provide such—

- (a) evidence of entitlement;
- (b) information required in order to deal with the claim; and
- (c) authority or permission as may be necessary for the release by third parties of information in their possession relating to the claimant or member,

as the Department may from time to time require for the purposes of this Part.

(3) A claim referred to in paragraph (1) may be made by a person or persons other than the claimant where the Department so provides.

(4) Any claim for benefit required in writing under this Part, and any evidence, information, authority or permission given in connection with that claim, may be made or given by means of an electronic communication where such method of communication is approved by the Department from time to time.

(5) In this regulation, “electronic communication” has the same meaning as in section 15(1) of the Electronic Communications Act 2000(24).”.

Amendment of regulation 254

78. In Regulation 254(5)(c) (Forfeiture of rights to benefits) after “214(3)” insert “or (10)”.

Amendment of regulation 256

79.—(1) Regulation 256(5) (Interest on late payment of benefits and refunds of contributions) is amended as provided by paragraphs (2) and (3).

(2) In sub-paragraph (b), after “member’s death” insert “, other than a pension payable under regulation 213A (Pension payable when member dies on or after reaching age 75)”.

(3) After sub-paragraph (e) add—

“; and

- (f) in the case of an amount in respect of a pension under regulation 213A that is payable to—
 - (i) the member’s personal representatives, the date on which probate or letters of administration were produced to the Department, and

- (ii) any person or body to whom the pension has been assigned by the member's personal representatives, the date on which the notice under regulation 214(10) was received by the Department, and
- (iii) any person or body other than those referred to in heads (i) and (ii), the day immediately following the day of the member's death.”.

Amendment of regulation 260

80. For regulation 260(1) (Employing authority and certain member record keeping and contribution estimates) substitute—

“(1) As regards a member who is a principal medical practitioner, in respect of each financial year—

- (a) the member shall provide each relevant host Board with a certificate of their pensionable earnings based on—
 - (i) the accounts drawn up in accordance with generally accepted accounting practice by the practice of which the member is a member, and
 - (ii) the return that member has made to Her Majesty's Revenue & Customs in respect of their earnings for that year,
no later than 1 month from the date on which that return was required to be submitted to Her Majesty's Revenue & Customs;
- (b) a host Board shall forward to the Department a copy of the records maintained under regulation 164(17)(b) within 1 month of the end of the financial year immediately following the financial year to which the return in paragraph (1)(a) (ii) relates.”.

Amendment of regulation 262

81. In regulation 262 (Interpretation: general), for the definition of “principal medical practitioner” substitute—

““principal medical practitioner” has the same meaning as in Part 3;”.

Amendment of regulation 275

82. In regulation 275 (Pensionable service limit), after paragraph (4) add—

“(5) Where a member is also a member of the HPSS Superannuation Scheme 1995, any reference in this Part to “45 years” shall be taken to be a reference to a shorter period determined by the formula—

$$SP = 45 \text{ years} - LSS$$

where—

SP is the shorter period, measured in years and days, and

LSS is the length of superannuable service (within the meaning of the 1995 Regulations), measured in years and days, giving rise to membership of the HPSS Superannuation Scheme 1995 and, in the case of a member of that Scheme who has become entitled to a pension (including a preserved pension) under that Scheme, including any period that was taken into account for the purpose of determining whether the member was entitled to that pension, or for the purpose of calculating the amount of that pension.”.

Amendment of regulation 276

83. In regulation 276 (Applications, claims and notices), for the table substitute—

<i>“Column 1 Regulation in Part 2</i>	<i>Column 2 Regulation in Part 3</i>
45	176
52	182
54	184
58	185
59	186
62	189
68	195
87	214
94	221
95	222”

PART 3

AMENDMENT OF THE HEALTH AND PERSONAL SOCIAL SERVICES (INJURY BENEFITS) REGULATIONS (NORTHERN IRELAND) 2001

Amendment of the Injury Benefit Regulations

84. The Health and Personal Social Services (Injury Benefits) Regulations (Northern Ireland) 2001(25) shall be amended as provided by regulations 85 to 88.

Amendment of regulation 4

85. In regulation 4 (Scale of benefits), for paragraph (6)(a) substitute—

- “(a) any pension payable to the person under a relevant pension scheme, disregarding any—
- (i) reduction in the amount of that pension under regulation 92 or 93 of the 1995 Regulations (Offset for crime, negligence or fraud and Loss of rights to benefits) or regulation 129, 130, 253 or 254 (Reduction in benefits in cases where loss caused by member’s crime, negligence or fraud and Forfeiture of right to benefits) of the 2008 Regulations,
 - (ii) reduction in the amount of that pension under regulation 13A(7), 17A or 49(5) (lump sum for members in serious ill-health, general option to exchange part of pension for lump sum and lump sum for deferred members in serious ill-health) of the 1995 Regulations or regulation 58, 59, 185 or 186 (General option to exchange part of pension for lump sum and option for members in serious ill-health to exchange whole pension for lump sum) of the 2008 Regulations, and

- (iii) increase in the amount of that pension, under the Pensions (Increase) Act (Northern Ireland) 1971(26), after the date at which the average remuneration used in the calculation of the allowance was calculated.”.

Amendment of regulation 5

86. In regulation 5 (Recovery of costs), after paragraph (8) add—

“(9) Where a person has more than one employing authority, the Department may direct what proportion, if any, of the contribution due under this regulation shall be payable by each of those employing authorities.”.

Amendment of regulation 19A

87.—(1) Regulation 19A (Claims for benefits) is amended as provided by paragraphs (2) and (3).

(2) Before “A person claiming to be entitled”, insert “(4)”.

(3) Before the newly numbered paragraph (4), insert—

“(1) A person shall not be entitled to any benefit under these Regulations unless, in addition to any other conditions relating to that benefit being satisfied, that person makes a claim for it—

(a) in writing (or in such manner as the Department may from time to time accept); and

(b) within—

(i) 6 months commencing with the day on which the other conditions relating to the benefit in question are satisfied, or

(ii) such other longer period as the Department may from time to time accept.

(2) If during the whole or part of the period mentioned in paragraph (1)(b) the person—

(a) lacks capacity; or

(b) is prevented by fraud or concealment from discovering the facts entitling that person to apply for a benefit,

a claim may be made at any time before the end of the period of 6 months from the date on which that person no longer lacks capacity or, as the case may be, could with reasonable diligence have discovered those facts.

(3) A person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment or of a disturbance in the functioning of his mind or brain.”.

Insertion of new regulation 22B

88. After regulation 22A (Decisions by employing authorities) insert—

“Notification requirements

22B.—(1) Where an employing authority makes a payment of a benefit pursuant to regulation 4(5), that employing authority shall—

(a) within 14 days of making such payment, provide the Department with—

- (i) the full name and national insurance number of the person in respect of whom the payment is being made, and
- (ii) the date on which that individual first became entitled to the benefit;
- (b) within 14 days of making the last such payment, provide the Department with—
 - (i) the full name and national insurance number of the person in respect of whom the payment has been made,
 - (ii) the date on which that individual ceased to be entitled to the benefit, and
 - (iii) a statement of the total amount paid to the person pursuant to regulation 4(5) during that period of absence from employment.
- (2) Where a person recovers any damages or compensation mentioned in regulation 18, that person shall, within 14 days of a right to and the amount of such damages or compensation finally being determined, provide written notice to the Department containing—
 - (a) the person’s full name;
 - (b) the person’s national insurance number; and
 - (c) the total amount of damages or compensation recovered.
- (3) Where a person fails to provide the notice provided by paragraph (2), no benefits shall be payable under these Regulations in respect of the period from the expiry of the 14th day mentioned in paragraph (2) until the date on which the notice is received by the Department, and where benefits have been paid to the person before the failure to give notice has been determined by the Department, the Department shall withhold all or part of any further benefits payable to the person under these Regulations until the amount of the payments made by the Department in respect of that period has been recovered.”.

PART 4

MISCELLANEOUS

Option to persons detrimentally affected by these Regulations

89.—(1) This regulation applies in relation to any benefit which is being paid or may become payable under the regulations amended by these Regulations to or in respect of a person who, having served in an employment or office, service in which qualified the person to participate in the benefits provided under the regulations amended by these Regulations, ceased to serve therein before these Regulations came into operation.

(2) Where, in a case to which this regulation applies, any provision of these Regulations would operate in relation to any person so as to place that person in a worse position than that person would have been if that provision had not applied, that person may elect that the provision shall not apply by giving notice in accordance with paragraph (3).

(3) A notice given pursuant to paragraph (2) shall be in writing and shall be delivered to the Department within 6 months of the coming into operation of these Regulations or such longer period as the Department may allow.

(4) An election pursuant to paragraph (2) shall have effect in relation to the benefit referred to in paragraph (1) only to the extent that such benefit has accrued by virtue of periods of service rendered prior to the cessation referred to in paragraph (1) (or, if there has been more than one such cessation, the last of them before the coming into operation of these Regulations) and in determining entitlement to, and the amount of, the benefit to that extent, such person shall be treated as if that

person had never recommenced service at any time after that cessation (or, as the case may be, the last such cessation).

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 25th February 2009.

L.S.

David 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 25th February 2009.

L.S.

Mary McIvor
A senior officer of the
Department of Finance and Personnel

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995 (S.R. 1995 No. 95) (“the 1995 Regulations”), the Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008 (S.R. 2008 No. 256) (“the 2008 Regulations”) and the Health and Personal Social Services (Injury Benefits) Regulations (Northern Ireland) 2001 (S.R. 2001 No. 367) (“the Injury Benefits Regulations”).

Regulation 1 provides for citation, commencement and effect, including that certain provisions of this instrument are to take effect from various dates before commencement.

The remainder of the Regulations are divided into four Parts, with Parts 1 to 3 amending the 1995 Regulations, the 2008 Regulations and the Injury Benefits Regulations respectively, and Part 4 providing that certain persons detrimentally affected by these Regulations may elect for the provisions not to apply to them.

Parts 1 and 2 make similar amendments in respect of both the 1995 Regulations and the 2008 Regulations. They also introduce amendments specific to either the 1995 Regulations or the 2008 Regulations.

The changes dealing with similar issues in Parts 1 and 2—

- exclude certain returning deferred members from the 1995 Regulations (regulation 5);
- provide for an option to transfer out their benefits to the 2008 Regulations (regulations 3(a), 10 and 13);
- include in the 2008 Regulations certain deferred members excluded from the 1995 Regulations (regulations 29, 30, 58 and 59);
- provide for an option to transfer their benefits into the 2008 Regulations (regulations 44 and 75);
- adjust the definition of “qualifying service” in the 2008 regulations (regulations 27(2) and 55(2));
- ensure that the 45 year service limit takes account of service in both the 1995 Regulations and 2008 Regulations (regulations 25, 53 and 82);
- ensure that similar principles apply to transfers from corresponding NHS schemes in England & Wales, Scotland and the Isle of Man (regulations 24(a) and (b), 40(2), (3) and (4), 41 to 43, 52(a) and (b), 71(2) to (4), 72, 73 and 74(6) and (7));
- continue provision of pension benefits for ophthalmic medical practitioners (regulations 3(e), (f), (i), (j) and (k), 52(c), (d), (g), (h) and (i));
- cater for practitioners who have an agreement with more than one host Board (regulations 3(g), 20(5)(a), 24(c), 51(3), 52(e) and 80);
- update the definition of Out of Hours Services to cater for Alternative Provider Medical Services contracts and contractors (regulations 3(h), 24(d) and 52(f));
- allow the use of electronic communications (regulations 3(a), 11, 18, 48 and 77);
- require the consent of the Department of Finance and Personnel before the members' contribution rate is adjusted (regulations 6, 31, 32(2)(a), 61(2) and 62);
- adjust the period for ill-health reviews (regulations 7, 33 and 64);

provide for lump sums on death of a pensioner over age 75 to be converted to a pension (regulations 8, 21, 36 to 38, 49, 50, 67 to 69, 78 and 79);

require the Department to be responsible for the calculation and verification of cash equivalent transfer values (regulations 12, 39 and 70);

allow authorised unpaid leave to be pensionable for up to 24 months (regulations 14, 26, 28(4), 54(2)(ii) and (3) and 57(3));

provide that pensioners returning to work in the HSC must provide information about their new HSC pay (regulations 15, 45 and 76).

The changes specific to Part 1—

amend cross-references in provisions dealing with child allowances (regulation 9);

amend the benefits payable on death in pensionable service where the member returns after leaving on ill-health under the old rules (regulation 16);

amend the benefits payable on death in pensionable service where the member returns after leaving on ill-health under the new rules (regulation 17);

amend the rules on forfeiture of pension to cater for nominated surviving partners (regulation 19);

make various minor amendments to Schedule 2 of the 1995 Regulations and change the age to which contributions must be paid (regulation 20).

The changes specific to Part 2—

provide for qualifying service under the 1995 Regulations to count where a former member of the scheme under the 1995 Regulations re-joins under the 2008 Regulations within one month of leaving (regulations 27(3) and 55(3) and (4));

clarify the arrangements for non-GP providers on breaks of service (regulation 28(2), (3) and (5) to (10));

allow for employer contributions to be recovered from successor and assignee employers (regulation 32(3));

remove references to “impairment” and insert a reference to permanence in ill-health provisions (regulations 34 and 65);

change cross-references in provisions relating to children’s pensions (regulations 35 and 66);

replace references to the Income and Corporation Taxes Act 1988 with references to the Finance Act 2004 (regulation 40(5) and 71(5));

clarify the rules on previous pay for abatement purposes (regulation 46 and 47);

change the heading to regulation 136 to make it consistent with the equivalent regulation in Part 3 of the 2008 Regulations (regulation 51(2));

omit an unnecessary cross-reference in the provision on breaks in pensionable service (regulation 54(2)(a));

clarify the pensionable earnings of a principal practitioner performing Out of Hours Services (regulation 56);

bring the cross-references in regulation 144 into line with the equivalent regulation in Part 2 of the 2008 Regulations (regulation 57(2));

clarify the provisions on opting-out of the Scheme (regulation 60);

make changes to the level of contributions due from a member in respect of later employments (regulation 61(3) to (5));

amend the heading to regulation 181 of the 2008 Regulations (regulation 63);

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

changes the point at which credit is given in respect of transferred-in pensionable service (regulation 74);

simplify the definition of “principal practitioner” (regulation 81);

update the table of equivalent regulations in regulation 276 of the 2008 Regulations (regulation 83).

The changes made to the Injury Benefits Regulations by Part 3—

provide that the unreduced amount of a pension under the 1995 Regulations or the 2008 Regulations (before any pension is converted to lump sum) is used for the purposes of the Injury Benefits Regulations (regulation 85);

amend the provisions on re-charging benefits to employers to deal with situations of multiple employers (regulation 86);

amend the provisions on claiming benefits to require a claim in writing within 6 months of becoming entitled (regulation 87);

provide for new notification requirements, obliging employers to notify the Department when temporary injury allowance is paid under the Injury Benefits Regulations, and obliging claimants to notify the Department if they recover damages in respect of the injury for which they receive benefits under the scheme (regulation 88).

Part 4 provides that deferred members, or members in receipt of a relevant benefit, who are detrimentally affected by these Regulations may elect for the provisions not to apply to them by giving notice within six months of the coming into force of these Regulations (regulation 89).

A full impact assessment has not been produced for this instrument as it has no impact on the costs of business, charities or the voluntary sector.