EXPLANATORY MEMORANDUM TO

The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010

S.R. 2010 No.420

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Health, Social Services and Public Safety to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under Articles 12(1), (2), 14(1), (2) and (3) of, and Schedule 3 to, the Superannuation (Northern Ireland) Order 1972 and is subject to the negative resolution procedure.

2. Purpose

2.1. The main purpose of this rule is to introduce amendments that address issues raised by the Examiner of Statutory Rules in connection with regulations providing for the rate of member and employer contributions to the HSC Pension Scheme.

2.2. The rule also inserts the provision for the payment of interest on the late payment of pension, lump sum, refund of contributions, interim or substitute awards where payment of such benefits is subject to certain delays.

2.3. This rule also makes further technical changes relating to pensions provided to Health and Social Care staff.

3. Background

3.1. **Part 2** of the S.R. amends the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995 (S.R.1995 No.95) **(the 1995 Regulations).**

3.2. **Part 3** of the S.R. amends the Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008 (S.R. 2008 No.256) **(the 2008 Regulations).**

3.3. **Part 4** of the S.R. provides an option to persons detrimentally affected by these Regulations to elect for those provisions not to apply in certain circumstances.

Member and Employer Contributions - Overview

3.4 From 1 April 2008, four member contribution tiers have operated in both Sections of the HSC Pension Scheme. Rates range from 5% to 8.5% and members are allocated to a tiered rate according to the band into which their pay falls. The pay bands are uprated annually based on increases made to the NHS Agenda for Change pay scales. Currently, the regulations permit the Department to implement the uprated bands and alter member contribution rates by making a determination outside of the regulations.

3.5 S.R. 2009 No.188 (effective from 1 April 2009) amended the regulations providing for tiered contribution rates. The Examiner of Statutory Rules drew special attention to that S.R. because there was doubt that regulations providing for the Department to implement uprated bands via a direction were intra vires. The remedy is for the uprated bands to be implemented annually via further amending regulations. The uprated pay/earnings bands for the scheme year 1 April 2010 to 31 March 2011 are being implemented via this amending S.R.

3.6 As a consequence the current employer contribution rate of 13.3% is also to be specified in regulations.

3.7 In addition, we have taken the opportunity to better marshal 2008 Section regulations that deal with the member and employer contributions due in respect of members who are non-GP providers.

Member and Employer Contributions - in detail

3.8 **Members other than practitioners and non-GP providers**
Amending regulation 3 amends 1995 Regulation 10 (Contributions by members),
Amending regulations 12 and 13 amend 2008 Regulations 28 (Members' contribution rate) and 29 (Employees) respectively.

- ***Mechanism for changing the pay bands***

(1) Provisions that provided for the Department to amend the pay bands and contribution rates by making a determination have been removed. The bands and rates applicable to each scheme year may only be changed via amending regulations.

- ***Insertion of two updated tables containing pay bands and contribution rates***

Group 1 – members other than practitioners and non-GP providers who are employed by the same employer at the end of the last scheme year and the beginning of the current scheme year

(2) Each scheme year the tiered rate set for members (other than practitioners and non GP-providers) depends on whether the member was employed with the same employer at the end of the last scheme year and the beginning of the current scheme year. If so, the contribution rates are set by comparing the member's superannuable/pensionable pay during the last scheme year with the pay bands that applied to that year. For example, in these circumstances pay and pay bands for 2009/10 are used to set the rate for the scheme year 2010/11.

Group 2 – members other than practitioners and non-GP providers who start a new job in the current scheme year or whose rate of pay for an existing job changes (except if unplanned or unlikely to last for 12 months or more)

(3) Alternatively, if a member starts a new HSC job or has a change to their rate of pay after 1 April in the current scheme year, the contribution rate for the remainder of that year is set by calculating an annual pay figure and comparing that amount to the uprated pay bands that apply from 1 April in that current scheme year. For example, in these circumstances pay and pay bands for 2010/11 are used to set the rate for the scheme year 2010/11.This means that two tables containing pay bands and rates are required for each scheme year. The two tables that apply to the current 2010/11 scheme year have been inserted at 1995 regulation 10(2B)(c) and 2008 regulation 28(4).

- ***Calculating superannuable/pensionable pay for the purpose of setting a tiered contribution rate***

(4) Various paragraphs in 1995 Regulation 10 ((2E) to (2R) and (2V)) and 2008 Regulation 29 ((4) to (17) and (21)) deal with the calculation of the superannuable/pensionable pay which is to be compared to the pay bands in order to set a tiered rate. These paragraphs are amended so that they now refer to the pay bands in the "relevant table".

3.9 **Marshalling of 2008 Section's non-GP provider regulations**

Amending regulations 11, 14 and 15 amend, respectively, 2008 Regulations 27 (Contributions by members), 30 (Non-GP Providers) and 31 (Contributions by employing authorities: general).

(1) Provisions formerly contained in regulation 27 which related specifically to member contributions in respect of non-GP Providers have been moved to renamed regulation 30 (Contribution rate and determination of pensionable earnings for non-GP providers).

(2) Provisions formerly contained in that regulation which related specifically to employer contributions in respect of non-GP Providers have been moved to regulation 31 (Contributions by employing authorities general). The result is a streamlined regulation 27 which is now focused on generic provisions relating to member contributions for all members other than practitioners.

Members who are practitioners or non-GP providers

3.10 **Amending regulation 8** amends paragraph 10 of Schedule 2 to the 1995 Regulations
Amending regulation 14 amends 2008 Regulation 30 (Non-GP Providers)
Amending regulations 16 and 17 amend 2008 Regulations 160 (Contributions by members) and 161 (Members' contribution rate) respectively.

- ***Mechanism for changing the earnings bands***

(1) Provisions that provided for the Department to amend the earnings bands and contribution rates for practitioners and non-GP provider members by making a determination have been removed. The bands and rates applicable to each scheme year may only be changed via amending regulations.

- ***Insertion of two updated tables containing earnings bands and contribution rates***

(2) Practitioner and non-GP provider earnings can vary significantly from year to year and are only finalised following completion of their tax return, sometime after the end of the scheme year. This means that from the 2009/10 scheme year onwards, the tiered rates for practitioner and non-GP provider members for any year have been set on a provisional basis using a 'best estimate' of likely earnings. The estimate can be based on finalised earnings and the relevant earnings bands for an earlier year, or an estimate of future earnings and the earnings bands for the current year. Once the actual earnings for the scheme year are known, the final tier is set and, if necessary, the contributions made on a provisional basis are adjusted retrospectively.

(3) This means that the earnings bands for any scheme year are only required to set the final tiered rate. However, to cater for this two-stage process for practitioners and non-GP providers, the earnings bands and rates that apply to both the 2009/10 and 2010/11 scheme years have been included in regulations. The 2010/11 earnings bands may of course be used to set a provisional contribution rate for the 2011/12 scheme year, until the earnings bands and amending regulations for that year become available. (See 1995 Regulations, Schedule 2, Paragraph 10 new (1A), and 2008 Regulation 30, new (14) and 2008 Regulation 161, new (17)).

- ***Pensionable earnings to be used for the purpose of setting a tiered contribution rate***

(4) Various paragraphs in 1995 regulations Schedule 2 (paragraph 10 (2H), (2I), (2K) and (2L)), and in 2008 regulations 30 ((6) and (7)) and 161 ((5), (6), (8) and (9)) deal with the two stage process for setting a contribution rate for practitioners or non-GP providers. These paragraphs have been amended so that they refer to pensionable earnings and contribution rates in the "relevant table".

Employer contribution rates

3.11 **Amending regulation 4** amends 1995 Regulation 11 (Contributions by employing authorities), and
Amending regulations 15, and 18 amend 2008 Regulations 31 (Contributions by employing authorities: general), and 162 (Contributions by employing authorities: general)

(1) Regulations across both Sections of the Scheme that provide for contributions to be made by employers have been amended so that they now uniformly refer to "the employer's standard rate" of 13.3 per cent of superannuable/pensionable pay or earnings.

(2) In addition, 2008 Regulation 31 has been amended so that it includes provisions relating to employer contributions for non-GP providers which have been moved from regulation 27.

Regulations dealing with actuarial reports and accounts - overview

3.12 The Scheme Actuary is required to prepare an actuarial report of the scheme liabilities and benefits every four years. Regulations have been amended to better reflect the role of the Department, the Department of Finance and Personnel, the Scheme Actuary, and representatives of employees and employing authorities in the setting of actuarial assumptions on which that report is to be based.

Regulations dealing with actuarial reports and accounts – in detail

3.13 **Amending regulation 6** amends 1995 Regulation 97 (Accounts and actuarial reports), and
Amending regulation 10 amends 2008 Regulation 3 (Actuarial reports and accounts)

Two new paragraphs are inserted into each of the above regulations. The first paragraph ((3A) of 97 and (5) of 3) provides for the assumptions on which the Scheme Actuary's report is based to be determined by the Department following the consent of the Department of Finance and Personnel. The second paragraph ((3B) of 97 and (6) of 3) permits the Department to consult representatives of employers and members and the Scheme Actuary before determining those assumptions.

Regulations dealing with the "contracted out" status of the 1995 Section - overview

3.14 The HSC Pension Scheme contracts its members out of the second state pension and, as a result, the Scheme must reach specific standards in respect of the benefits it will pay. In respect of service up to 5 April 1997, the Scheme must pay benefits at State Pension Age (SPA) that are at least equal in value to the benefits the member would have earned from the State Earnings Related Pension Scheme (SERPS). This is known as a guaranteed minimum pension (GMP). However, whilst changes to SPA are being phased in from 6 April 2010, the obligations of occupational pension schemes in respect of GMPs will remain linked to age 60 for women and age 65 for men. Relevant amendments in this S.R. adjust the terminology used in the 1995 Regulations accordingly from 6 April 2010.

Regulations dealing with the "contracted out" status of the 1995 Section – in detail

3.15 **Amending regulation 5** amends Part IV (Contracting-out requirements) of the 1995 Regulations. This amendment introduces the term "guaranteed minimum pension age" into **regulation 42 (Contracting-out conditions to be overriding)** and defines it as meaning the age of 65 for men and the age of 60 for women. It also replaces various references to "state pension age" with references to "guaranteed minimum pension age" in regulations **43 (Guaranteed minimum pensions), 44 (Late retirement), 45 (Early**

leavers) and 46 (Guaranteed minimum pensions transferred to this Section of the scheme).

Payment of interest on late payment of benefits and refunds of contributions

3.16 **Amending regulation 7** inserts new regulation 97B (Interest on late payment of benefits and refunds of contributions) to the 1995 Regulations.

This new regulation provides for the payment of interest on the late payment of pension, lump sum, refund of contributions, interim or substitute award where payment of such benefits is not made within one month of the due date for payment providing the Department is in possession of all the information necessary for the calculation of such benefits.

If at the due date for payment the Department is not in possession of all the information necessary for the calculation of such benefits, then the due date shall be the first day on which the Department does have possession of all the information necessary for the calculation of benefit.

3.17 **Amending regulation 19 - Persons detrimentally affected by the changes** provides for a deferred member, or a member in receipt of a relevant benefit, whose position under these regulations would be worsened by any retrospective provision, to elect that that provision will not apply to them.

4. Consultation

4.1. An initial formal consultation exercise on the amending regulations began on 2 June 2010 and ended on 2 July 2010**. A further consultation exercise began on the 27 September 2010 and ended on 04 October 2010.** These shortened consultation periods reflect the technical and compulsory nature of the changes made in respect of contributions and GMP.

4.2. Amongst those consulted were: HSC Trades Union representatives, HSC Employers; HSC Pension Service (the Scheme Administrators); other public service pension schemes; Government Actuary’s Department; and HM Treasury

4.3. One response was received. The responder made no comment on the draft regulations.

5. Equality Impact

5.1. The Department concluded that the new arrangements were not likely to have a significant impact on equality of opportunity for any group referred to in section 75 of the Northern Ireland Act 1998 and therefore a full EQIA was not recommended.

6. Regulatory Impact

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

7. Financial Implications

7.1. There may be some additional scheme costs resulting from the payment of interest, however these costs are not expected to be significant.

8. Section 24 of the Northern Ireland Act 1998

8.1. Legal advice confirms that the provisions of this rule comply with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not appropriate

10. Parity or Replicatory Measure

10.1. It is general policy to mirror arrangements in GB in relation to pensions legislation. This rule mirrors The National Health Service Pension Scheme (Amendment) Regulations 2010 (S.I. 2010/1634) for NHS employees in England and Wales. Similar provisions will also be provided for NHS employees in Scotland.

11. Additional Information

11.1. Not applicable