

**2012 No. 42**

**HEALTH AND PERSONAL SOCIAL SERVICES**

**The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2012**

*Made* - - - - - *10th February 2012*

*Coming into operation* - *14th March 2012*

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

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.

**PART 1**

**Introductory**

**Citation, commencement and effect**

1.—(1) These Regulations may be cited as the Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2012.

(2) These Regulations come into operation on 14th March 2012 and, save as provided in paragraphs (3) to (5), shall have effect from that date.

(3) Regulations 16 and 26 have effect from 1st April 2008.

(4) Regulations 13 and 21 have effect from 9th February 2011.

(5) Regulations 5(3), 6, 8, 11, 15, 17, 20, 25, 27 and 29 have effect from 6th April 2011.

## PART 2

### Amendment of the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995

2. The Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995(a) are amended as provided by regulations 3 to 11.

#### Amendment of regulation 2

3. In Regulation 2 (Interpretation), in the definition of “host Health and Social Services Board”(b), for paragraph (b) substitute—

- “(b) in respect of a principal practitioner, who has contracted, or entered into an agreement, to provide GMS or APMS means the Regional Health and Social Care Board on whose medical performers list the practitioner’s name appears;
- (c) in respect of a principal practitioner, 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 means the Regional Health and Social Care Board;”.

#### Amendment of regulation 7

4. In regulation 7 (Restrictions on membership)(c), in sub-paragraph (q)(iv) of paragraph (1), after “contributions” insert “under regulation 50”.

#### Amendment of regulation 17

5.—(1) Regulation 17 (Lump sum on retirement) is amended as provided by paragraphs (2) and (3).

(2) In paragraph (2)(d), for “the yearly rate of the pension” substitute “that part of the yearly rate of the pension which is attributable to contributions paid under Part II”.

(3) In paragraph (8)(e), for “has attained the age of 75” substitute “attained the age of 75 on or before 5th April 2011”.

#### Amendment of regulation 19

6. In paragraph (7)(f) of regulation 19 (Member dies after pension becomes payable), after “paragraph (1)”, insert “dies on or before 5th April 2011 and”, and for “has” substitute “had”.

#### Amendment of regulation 85

7. In regulation 85 (Reduction of pension on return to HSC employment), in sub-paragraph (c)(ii) of paragraph (1A), after “(Nurses, physiotherapists, midwives and health visitors)” insert “or regulation 76(9) (Mental health officers)”.

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- (a) 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; S.R. 2008 Nos.96, 130 and 163; S.R. 2009 Nos.65 and 188; S.R. 2010 Nos.22, 286 and 420
  - (b) Definition of “host Health and Social Services Board” inserted by S.R. 2005 No.565, regulation 3(b) and amended by S.R. 2009 No.65 regulation 3(g)
  - (c) Regulation 7 was substituted by S.R. 2008 No.163 regulation 5, and sub-paragraph (q) was inserted by S.R. 2010 No.286 regulation 4(2)
  - (d) Paragraph (2) was amended by S.R. 2009 No.188 regulation 6(2)
  - (e) Paragraph (8) was inserted by S.R. 2006 No.410 regulation 9(3)
  - (f) Paragraph (7) was inserted by S.R. 2009 No.65 regulation 8(3)

### **Amendment of regulation 89A**

**8.**—(1) Regulation 89A(a) (Deduction of tax: further provisions) is amended as provided by paragraphs (2) and (3).

(2) In paragraph (10), for “35 per cent” substitute “55 per cent”.

(3) After paragraph (10), insert—

“(10A) Where—

- (a) a lump sum on death is payable in accordance with regulation 19 (Member dies after pension becomes payable); and
- (b) that lump sum is payable in respect of a member who had reached the age of 75 at the date of the member’s death,

the Department shall deduct tax at the rate of 55 per cent (or such other amount as applies from time to time) from the lump sum payable in accordance with section 206 of the 2004 Act.

(10B) Where—

- (a) the Department’s liability to pay a pension under regulation 12 (Normal retirement pension) is discharged by the payment of a lump sum in accordance with paragraph (4) of that regulation; and
- (b) that lump sum payment is made to a member who has reached the age of 75,

the Department shall deduct tax at the rate of 55 per cent (or such other amount as applies from time to time) from the lump sum payable in accordance with section 205A of the 2004 Act.”.

### **Amendment of regulation 94**

**9.** For paragraph (3)(b) of regulation 94 (Commutation of trivial pensions)(b), substitute—

“(b) either—

- (i) the lump sum rule and lump sum death benefit rule, or
- (ii) the requirements of regulation 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 (payments by larger pension schemes)(c).”.

### **Amendment of Schedule 2**

**10.**—(1) Schedule 2 (Medical and dental practitioners) is amended as provided by paragraphs (2) to (4).

(2) In paragraph 10 (Contributions to this Section of the scheme)—

(a) in sub-paragraph (2I)(d)—

- (i) for “, which” substitute “on the basis of whichever of the following the host Health and Social Services Board considers the most appropriate in the circumstances”;
- (ii) in heads (a) and (b), at the beginning, insert “the amount of the practitioner’s (other than a dentist performer) or non-GP provider’s earnings that”; and
- (iii) in head (c)—
  - (aa) at the beginning, insert “the amount of such earnings that”; and
  - (bb) after “practitioner’s” insert “(not being a dentist performer)”.

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(a) Regulation 89A was inserted by S.R. 2006 No.410 regulation 16  
(b) Paragraph (3) was substituted by S.R. 2006 No.410 regulation 17(2)  
(c) S.I. 2009/1171  
(d) Sub-paragraph (2I) was amended by S.R. 2010 No.420 regulation 8(4)

- (b) in sub-paragraph (2L)(a)—
  - (i) for “, which” substitute “on the basis of whichever of the following the host Health and Social Services Board considers the most appropriate in the circumstances”; and
  - (ii) in heads (a), (b) and (c), at the beginning, insert “the amount of the performers earnings that”.

(3) Paragraph 13 is omitted.

(4) Paragraph 23 (Accounts and actuarial reports)(b), is amended as follows—

- (a) in sub-paragraph (2) for “principal medical practitioner” substitute “principal practitioner falling within paragraph (a) of the definition of principal practitioner”;
- (b) in sub-paragraph (3) for “assistant medical practitioner” substitute “assistant practitioner falling within paragraph (a) of the definition of assistant practitioner”;
- (c) in sub-paragraph (4)—
  - (i) for “principal dental practitioner” substitute “principal practitioner falling within paragraph (b) of the definition of principal practitioner”; and
  - (ii) for “Trust or Board” substitute “Health and Social Services Board”;
- (d) in sub-paragraph (5)—
  - (i) for “assistant dental practitioner” substitute “assistant practitioner falling within paragraph (b) of the definition of assistant practitioner”; and
  - (ii) for “Trust or Board” substitute “Health and Social Services Board”;
- (e) for sub-paragraphs (6) to (13), substitute—

“(6) In respect of each scheme year, an employing authority shall provide the Department with a statement of estimated superannuable earnings in respect of any—

- (a) non-GP provider that is a GMS practice or an APMS contractor who assists in the provision of HSC services provided by that GMS practice or APMS contractor;
- (b) principal practitioner, falling within paragraph (a) of the definition of principal practitioner, who performs medical services as, or on behalf of, the GMS practice or APMS contractor; or
- (c) assistant practitioner, falling within paragraph (a) of the definition of assistant practitioner, employed by the GMS practice or APMS contractor.

(7) In respect of each scheme year, a GMS practice or an APMS contractor shall provide the Department with an end-of-year statement of—

- (a) superannuable earnings,
- (b) contributions to this Section of the Scheme made under regulation 10 (Contributions by members) and the modifications to that regulation referred to in paragraph 10,
- (c) contributions to this Section of the Scheme made under regulation 11 (Contributions by employing authorities) and the modifications to that regulation referred to in paragraph 10, and
- (d) any superannuable earnings deemed in accordance with regulation 65 (Absence because of illness or injury or certain types of leave) and the modifications to that regulation referred to in paragraph 19,

in respect of assistant practitioners, falling within paragraph (a) of the definition of assistant practitioner, employed by the GMS practice or APMS contractor.

(8) The Department shall be provided with—

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(a) Sub-paragraph (2L) was amended by S.R. 2010 No.420 regulation 8(4)  
(b) Paragraph 23 was inserted by S.R. 2005 No.565 regulation 12(9), substituted by S.R. 2009 No.188 regulation 11(4) and amended by S.R. 2010 No.22 regulation 12, Schedule 1, Part 1, paragraph 1(b)

- (a) the statement referred to in sub-paragraph (6) at least 1 month before the beginning of that scheme year;
- (b) the statement referred to in sub-paragraph (7) no later than 3 months after the end of that scheme year.

(9) A host Health and Social Services Board shall, for each scheme year and no later than 13 months after the end of each scheme year, forward to the Department a copy of the records the host Health and Social Services Board maintains in respect of—

- (a) all contributions to this Section of the Scheme made under paragraph 10 in respect of principal practitioners falling within paragraph (a) of the definition of principal practitioner, and non-GP providers, and
- (b) their superannuable earnings.

(10) Subject to sub-paragraphs (11) and (12), if, in respect of a scheme year, a practitioner or non-GP provider has failed to comply with the requirements of whichever of sub-paragraphs (2) to (5) applies to that member, the member's superannuable earnings for that scheme year shall be zero.

(11) If, in respect of a scheme year, the employing authority of a practitioner or non-GP provider member is in possession of a figure representing all or part of that member's superannuable earnings for that year, the Department may treat that figure as the amount of that member's superannuable earnings for that year where—

- (a) the member has failed to comply with the requirements of whichever of sub-paragraphs (2) to (5) applies to them; and
- (b) a benefit in respect of that member's service as a practitioner or non-GP provider is payable to, or in respect of them, under these Regulations.

(12) If, in respect of a scheme year, a practitioner or non-GP provider—

- (a) dies without complying with the requirements of whichever of sub-paragraphs (2) to (5) applies to them; or
- (b) is, in the opinion of the Department, unable to look after their own affairs by reason of illness or lack of capacity,

the Department may require that practitioner or non-GP provider's personal representatives or person (or persons) duly authorised to act on the member's behalf to provide the relevant certificate or statement within the period specified in sub-paragraph (13).

(13) The period is—

- (a) that referred to in whichever of sub-paragraphs (2) to (5) was or is applicable to them, or
- (b) such other period as the Department permits.

(14) The certificates and statements referred to in this paragraph—

- (a) shall be in such form as the Department shall from time to time require;
- (b) may be provided to the Department in such manner as the Department may from time to time permit.

(15) 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 disturbance in the functioning of his mind or brain.”.

#### **Amendment of Schedule 2A**

**11.** In paragraph 7 of Schedule 2A (Pension sharing on divorce or nullity of marriage)(a), in sub-paragraph (5), after “sub-paragraph (1)”, insert “dies on or before 5th April 2011 and”, and for “has” substitute “had”.

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(a) Schedule 2A was inserted by S.R. 2004 No.104 Schedule 1 regulation 3 and amended by S.R. 2009 No.65 regulation 21

## PART 3

### Amendment of the Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008

12. The Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008(a) are amended as provided by regulations 13 to 30.

#### Amendment of regulation 10

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

(2) At the end of sub-paragraph (f)(b) omit “and”.

(3) After sub-paragraph (g) insert—

“(h) in the case of a Waiting Period Joiner referred to in regulation 136Y(c), a period equal in length to the period of qualifying service which the member is entitled to count under the 1995 Section; and

(i) in the case of a person who is eligible to join this Section of the scheme by virtue of regulation 21(5)(e), (g) or (h) (Eligibility: general), a period equal in length to the period of qualifying service which the member is entitled to count under the 1995 Section.”.

#### Amendment of regulation 27

14. In paragraph (8) of regulation 27(d) (Contributions by members), for “(3)” substitute “(3A)”.

#### Amendment of regulation 59

15. In paragraphs (4)(e) and (5)(f) of regulation 59 (Option for members in serious ill-health to exchange whole pension for lump sum), the words “and before reaching the age of 75” are omitted.

#### Amendment of regulation 75

16. In paragraph (1)(c)(i) of regulation 75 (Meaning of “dependent child”) for “whilst the deceased was an active member” substitute “before the deceased ceased to be an active member”.

#### Amendment of regulation 86A

17. In paragraph (1) of regulation 86A(g) (Pension payable when member dies on or after reaching age 75), after “If” insert “, on or before 5th April 2011,”.

#### Amendment of regulation 120

18. In paragraph (2) of regulation 120 (Meaning of “previous pay”: members with concurrent employments), for “118” substitute “119(4)”.

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(a) S.R. 2008 No.256 as amended by S.R. 2009 Nos. 65 and 188; S.R. 2010 Nos. 22, 286 and 420  
(b) Sub-paragraph (f) was inserted by S.R. 2009 No.65 regulation 27(3)  
(c) Chapter 11 was inserted by S.R. 2010 No.286 regulation 34  
(d) Regulation 27 was substituted by S.R. 2010 No.420 regulation 11  
(e) Paragraph (4) was amended by S.R. 2009 No.188 regulation 31(3)  
(f) Paragraph (5) was substituted by S.R. 2009 No.188 regulation 31(4)  
(g) Regulation 86A was inserted by S.R. 2009 No.65 regulation 36

### **Amendment of regulation 128**

**19.**—(1) Paragraph (2)(a) of regulation 128 (Commutation of small pensions) is amended as provided by paragraphs (2) and (3).

(2) The “and” at the end of sub-paragraph (e) is omitted.

(3) After sub-paragraph (f) add—

“; and

(g) Regulation 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 (payment by larger pension schemes).”.

### **Amendment of regulation 131**

**20.** At the end of regulation 131 (Deduction of tax)(b), add—

“(5) Paragraph (6) applies if—

(a) a lump sum death benefit is payable on the death of a pensioner member in accordance with paragraph (2) of regulation 83 (Amount of lump sum: single capacity members and recent leavers (disregarding regulation 49 employments)); and

(b) that lump sum is payable in respect of a member who had reached the age of 75 at the date of the member’s death.

(6) Without prejudice to the generality of paragraph (1), when the lump sum is paid, the Department may deduct the tax payable under section 206 of the Finance Act 2004 (special lump sum benefits charge).

(7) Paragraph (8) applies if—

(a) an active, non-contributing or pension credit member opts to exchange a relevant pension for a lump sum in accordance with paragraph (3)(a) of regulation 59 (Option for members in serious ill-health to exchange whole pension for lump sum); and

(b) that lump sum payment is made to a member who has reached the age of 75.

(8) Without prejudice to the generality of paragraph (1), when the lump sum is paid, the Department may deduct the tax payable under section 205A of the Finance Act 2004 (serious ill-health lump sum charge).”.

### **Amendment of regulation 141**

**21.**—(1) Paragraph (1) of regulation 141 (Meaning of “qualifying service”), is amended as provided by paragraphs (2) and (3).

(2) At the end of sub-paragraph (e), omit “and”.

(3) After sub-paragraph (f)(c) add—

“(g) in the case of a Waiting Period Joiner referred to in regulation 260X(d), a period equal in length to the period of qualifying service which the member is entitled to count under the 1995 Section; and

(h) in the case of a person who is eligible to join this section of the Scheme by virtue of regulation 153(5)(e), (g) or (h) (Eligibility: general), a period equal in length to the period of qualifying service which the member is entitled to count under the 1995 Section.”.

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(a) In paragraph (2), sub-paragraph (d) was revoked by S.R. 2009 No.188 regulation 47

(b) Regulation 131 was amended by S.R. 2010 No.22 by Schedule 2, Part 1, paragraph 1

(c) Sub-paragraph (f) was inserted by S.R. 2010 No.22 regulation 58

(d) Chapter 11 was inserted by S.R. 2010 No.286 regulation 51

### **Omission of regulation 148**

22. Regulation 148 (Distribution of pensionable earnings between principal dental practitioners employed or engaged by the same GDS provider)(a) is omitted.

### **Amendment of regulation 160**

23. In paragraph (3) of regulation 160 (Contributions by members)(b), for “(3)” substitute “(3A)”.

### **Amendment of regulation 161**

24.—(1) Regulation 161 (Members’ contribution rate)(c) is amended as provided by paragraphs (2) and (3).

(2) In paragraph (6)—

- (a) for “, which” substitute “on the basis of whichever of the following the host Board considers the most appropriate in the circumstances”; and
- (b) in sub-paragraphs (a), (b) and (c), at the beginning, insert “the amount of the practitioner’s (other than a dentist performer) earnings that”.

(3) In paragraph (9)—

- (a) for “, which” substitute “on the basis of whichever of the following the host Board considers the most appropriate in the circumstances”; and
- (b) in sub-paragraphs (a), (b) and (c), at the beginning, insert “the amount of the dentist performer’s earnings that”.

### **Amendment of regulation 186**

25. In regulation 186 (Option for members in serious ill-health to exchange whole pension for lump sum), in paragraphs (4)(d) and (5)(e), the words “and before reaching the age of 75” are omitted.

### **Amendment of regulation 202**

26. In paragraph (1)(c)(i) of regulation 202 (Meaning of “dependent child”) for “whilst the deceased was an active member” substitute “before the deceased ceased to be an active member”.

### **Amendment of regulation 213A**

27. In paragraph (1) of regulation 213A (Pension payable when member dies on or after reaching age 75)(f), after “If” insert “, on or before 5th April 2011,”.

### **Amendment of regulation 252**

28.—(1) Paragraph (2)(g) of regulation 252 (Commutation of small pensions) is amended as provided by paragraphs (2) and (3).

(2) The “and” at the end of sub-paragraph (e) is omitted.

(3) After sub-paragraph (f) add—

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- (a) Regulation 148 was amended by S.R. 2010 No.286 regulation 36
  - (b) Regulation 160 was amended by S.R. 2010 No.420 regulation 16
  - (c) Paragraphs (6) and (9) were amended by S.R. 2010 No.420 regulation 17(3)
  - (d) Paragraph (4) was amended by S.R. 2009 No.188 regulation 60(3)
  - (e) Paragraph (5) was substituted by S.R. 2009 No.188 regulation 60(4)
  - (f) Regulation 213A was inserted by S.R. 2009 No.65 regulation 67
  - (g) In paragraph (2), sub-paragraph (d) was revoked by S.R. 2009 No.188 regulation 76



“; and

- (g) Regulation 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 (payment by larger pension schemes).”.

### **Amendment of regulation 255**

**29.** At the end of regulation 255 (Deduction of tax)(a), add—

“(5) Paragraph (6) applies if—

- (a) a lump sum death benefit is payable on the death of a pensioner member in accordance with paragraph (2) of regulation 210 (Amount of lump sum: single capacity members and recent leavers (disregarding regulation 180 employments)); and
- (b) that lump sum is payable in respect of a member who had reached the age of 75 at the date of the member’s death.

(6) Without prejudice to the generality of paragraph (1), when the lump sum is paid, the Department may deduct the tax payable under section 206 of the Finance Act 2004 (special lump sum death benefits charge).

(7) Paragraph (8) applies if—

- (a) an active, non-contributing or pension credit member opts to exchange a relevant pension for a lump sum in accordance with paragraph (3)(a) of regulation 186 (Option for member in serious ill-health to exchange whole pension for lump sum); and
- (b) that lump sum payment is made to a member who has reached the age of 75.

(8) Without prejudice to the generality of paragraph (1), when the lump sum is paid, the Department may deduct the tax payable under section 205A of the Finance Act 2004 (serious ill-health lump sum charge).”.

### **Amendment of regulation 260**

**30.—**(1) Regulation 260 (Employing authority and certain member record keeping and contribution estimates)(b) is amended as provided by paragraphs (2) and (3).

(2) In paragraphs (3) and (4) in each place for “superannuable” substitute “pensionable”.

(3) For paragraphs (5) to (15) substitute—

“(5) In respect of each scheme year, a GMS practice or an APMS contractor shall provide the Department with a statement of estimated pensionable earnings in respect of any—

- (a) non-GP provider that is a GMS practice or an APMS contractor who assists in the provision of HSC services provided by that GMS practice or APMS contractor;
- (b) principal medical practitioner who performs medical services as, or on behalf of, the practice or contractor;
- (c) assistant medical practitioner employed by the practice or contractor.

(6) In respect of each scheme year, each employing authority shall, in respect of any of the person’s referred to in paragraph (5)(a) to (c), provide the Department with an end-of-year statement of—

- (a) pensionable earnings;
- (b) contributions to this Section of the Scheme made under regulation 161 (Members’ contribution rate);

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(a) Regulation 255 was amended by S.R. 2010 No.22 Schedule 2, Part 1, paragraph 1

(b) Regulation 260 was substituted by S.R. 2009 No.188 regulation 78 and amended by S.R. 2010 No.22 regulations 13, 105, Schedule 2, Part 1, paragraph 1

- (c) contributions to this Section of the Scheme made under regulation 162 (Contributions by employing authorities: general); and
- (d) any pensionable earnings deemed in accordance with regulation 144 (Pensionable earnings-breaks in service),

in respect of any of the persons referred to in paragraph (5)(a) to (c).

(7) The Department shall be provided with—

- (a) the statement referred to in paragraph (5) at least 1 month before the beginning of that scheme year;
- (b) the statement referred to in paragraph (6) no later than 3 months after the end of that scheme year.

(8) All employing authorities must, for each scheme year—

- (a) provide the Department with a statement of estimated total contributions due to this Section of the Scheme under regulation 160 (Contributions by members) and 162 (Contributions by employing authorities: general); and
- (b) maintain, in a manner approved by Department from time to time, the records of contributions to this Section of the Scheme made under regulations 160 and 161.

(9) The statement referred to in paragraph (8)(a) must be provided to the Department no later than 2 months after the end of each scheme year and, except where the Department waives such requirement, an employing authority must provide the Department with a statement of contributions to this Section of the Scheme recorded in accordance with paragraph (8)(b) no later than 2 months after the end of each scheme year.

(10) Subject to paragraphs (11) and (12), if, in respect of a scheme year, a member has failed to comply with the requirements of whichever of paragraphs (1) to (4) applies to that member, the member's pensionable earnings for that scheme year shall be zero.

(11) If, in respect of a scheme year, the employing authority of a practitioner or non-GP provider member is in possession of a figure representing all or part of that member's pensionable earnings for that year, the Department may treat that figure as the amount of that member's pensionable earnings for that year where—

- (a) that member has failed to comply with the requirements of whichever of paragraphs (1) to (4), applies to them; and
- (b) a benefit in respect of such services is payable to, or in respect of that member, under these Regulations.

(12) If, in respect of a scheme year, a practitioner or non-GP provider—

- (a) dies without complying with the requirements of whichever of paragraphs (1) to (4) applies to them; or
- (b) is, in the opinion of the Department, unable to look after their own affairs by reason of illness or lack of capacity,

the Department may require that practitioner or non-GP provider's personal representatives or person (or person's) duly authorised to act on the member's behalf to provide the relevant certificate or statement within the period specified in paragraph (13).

(13) The period is—

- (a) that referred to in whichever of paragraphs (1) to (4) was or is applicable to them
- (b) such other period as the Department permits.

(14) A host Board shall, for each scheme year and no later than 13 months after the end of each scheme year, forward to the Department a copy of the records that the host Board maintains in respect of practitioners under regulation 164(17)(b) (Payment of contributions).

(15) The certificates and statements referred to in this regulation—

- (a) shall be in such form as the Department shall from time to time require;

(b) may be provided to the Department in such manner as the Department may from time to time permit.

(16) 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 disturbance in the functioning of his mind or brain”.

## PART 4

### Amendment of the Health and Personal Social Services (Injury Benefits) Regulations (Northern Ireland) 2001

#### Amendment of regulation 2

**31.** In regulation 2 (Interpretation) of the Health and Personal Social Services (Injury Benefits) Regulations (Northern Ireland) 2001(a), omit the following definitions—

- (a) “APMS contract” has the same meaning as in the Superannuation Scheme Regulations;
- (b) “APMS contractor” has the same meaning as in the Superannuation Scheme Regulations.

## PART 5

### Amendment of the Health and Personal Social Services (Superannuation) (Additional Voluntary Contributions) Regulations (Northern Ireland) 1999

#### Amendment of regulation 10

**32.**—(1) Regulation 10 (Outward transfers) of the Health and Personal Social Services (Superannuation) (Additional Voluntary Contributions) Regulations (Northern Ireland) 1999(b), is amended as provided by paragraphs (2) to (4).

(2) For paragraph (1) substitute—

“(1) Subject to—

- (a) paragraphs (4) to (7); and
- (b) the cancellation, pursuant to regulation 5(1) or (2), of any election made under regulation 3(1),

the Department shall, as soon as reasonably practicable after having received a notice in writing from an eligible person requesting a transfer of the value of that persons investments made in relation to that person under regulation 7(1), 8(2) or, as the case may be 9(4), pay a transfer value representing the value of all such investments at that person’s option to any other registered pension scheme in which the person may be participating.”.

(3) Paragraph (3) is omitted.

(4) In paragraph 8(b)(i), for “60 years” substitute “75 years”.

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(a) S.R. 2001 No.367 as amended by S.R. Nos.155, 533, 534 and 565; S.R. 2006 Nos.159 and 410; S.R. 2008 No.130 and 350; S.R. 2009 Nos.65 and 188; S.R. 2010 No.286 Part 4

(b) S.R. 1999 No.294, regulation 10 was substituted by S.R. 2005 No.154 regulation 6. In paragraph (10, sub-paragraph (a) was substituted by S.R. 2006 No.410 regulation 25(2) and paragraph (3) was substituted by S.R. 2006 No.410 regulation 25(4)

## PART 6

### Miscellaneous

#### **Option to persons detrimentally affected by these Regulations**

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

(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  
10th February 2012

(L.S.)

*Diane Taylor*

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 10th February 2012

(L.S.)

*John McKibbin*

A senior officer of the Department of Finance and Personnel

## EXPLANATORY NOTE

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

These Regulations further amend the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995 (S.R. 1995 No.95) (“the 1995 Regulations”), the Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008 (S.R. 2008 No.256) (“the 2008 Regulations”), the Health and Personal Social Services (Injury Benefits) Regulations (Northern Ireland) 2001 (S.R. 2001 No.367), The and Personal Social Services (Superannuation) (Additional Voluntary Contributions) Regulations (Northern Ireland) 1999 (S.R. 1999 No.294) .

Regulation 1 provides for citation, commencement and effect, including that certain provisions of this rule are to take effect before the date of commencement. Article 14(1) of the Superannuation Order 1972 provides authority for the regulations specified in regulation 1(3) to (5) to take effect from a date earlier than the making of these regulations.

### **Amendments particular to the 1995 Regulations**

Regulations 3 (amendment of regulation 2) and 4 (amendment of regulation 7), make minor and technical amendments only.

Regulation 5(2) amends regulation 17 (Lump sum on retirement) in order to clarify that where an additional pension is purchased by members it does not attract the fixed lump sum on retirement provided for by this regulation.

Regulation 7 amends regulation 85 (Reduction of pension on return to HSC employment) in order to insert a missing cross reference to regulation 76(9) which deals with the payment of a deferred pension to a mental health officer. As a result of this amendment, such a pension will be subject to the abatement provisions of regulation 85.

Regulation 9 amends regulation 94 (Commutation of trivial pensions) as a result of the provisions of the Registered Pension Schemes (Authorised Payments) Regulations 2009 in relation to the circumstances in which a small HSC pension can be regarded as a trivial amount for permissive commutation to a one-off lump sum payment.

### **Amendments particular to the 2008 Regulations:**

Regulations 13 and 21 amend regulations 10 and 141 (Meaning of “qualifying service”), in order to enable members of the 1995 Section who are eligible to join the 2008 Section to count their 1995 Section qualifying service as qualifying service in the 2008 Section. They will qualify for a pension no matter how short their service is in the 2008 Section. Prior to this amendment such members were required to accrue a further 2 years of qualifying service in order to qualify for a pension under the 2008 Section.

Regulations 14 and 23 amend regulations 27 and 160 (Contributions by members), in order to correct a cross reference.

Regulations 16 and 26 amend regulations 75 and 202 (Meaning of “dependent child”), in order to ensure that children born before the member became an active member of the 2008 Section should also be included in the definition.

Regulation 18 amends 120 (Meaning of “previous pay”: members with concurrent employments), in order to correct an incomplete cross reference.

Regulations 19 and 28 make amendments to regulations 128 and 252 relating to the commutation of small pensions which are similar to those in regulation 10 for the purposes of the 1995 Regulations.

### **Amendments common to both the 1995 and 2008 Regulations in relation to dentists:**

Regulations 10, 22 and 30 introduce changes to the administrative and governance arrangements for recording the pensionable earnings of principal dental practitioners.

## **Changes to the 1995 and 2008 Regulations consequent on the Finance Act 2011**

Regulations 5(3), 6, 11, 15, 17, 25 and 27 amend various provisions of the 1995 and 2008 Regulations as a result of changes made by the Finance Act 2011 in relation to the lifting of the age limit on the payment of a lump sum in circumstances where the member retires, is terminally ill or dies after the age of 75.

Regulations 8, 20 and 29 amend the 1995 and 2008 Regulations in order to permit the scheme administrator to deduct the extended special lump sum death benefits charge and serious ill health lump sum charge from the payment due to the member or beneficiary.

Regulations 10(2) and 24 make technical changes in order to bring the wording of paragraph 10(2I) and (2L) of Schedule 2 to the 1995 Regulations and regulation 161(6) and (9) of the 2008 Regulations into line with the wording of regulation 30(6) of the 2008 Regulations.

### **Amendment to the Injury Benefits Regulations**

Regulation 31 makes a minor amendment to regulation 2 (Interpretation) of the Injury Benefits Regulations.

### **Amendment to the Additional Voluntary Contributions Regulations**

Regulation 32 amends regulation 10 (Outward transfers) of the Additional Voluntary Contributions Regulations in order to allow all members to transfer the value of their Additional Voluntary Contributions (“AVCs”) to any registered pension scheme and to increase the upper age limit (from 60 to 75) at which members can transfer the value of their AVCs to another provider.

### **Miscellaneous**

Part 6 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 33).

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