

## EXPLANATORY MEMORANDUM TO

### **The Health and Personal Social Services (Superannuation Scheme, Additional Voluntary Contributions and Injury Benefits), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2015**

**S.R. 2015 No.121**

#### **1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the Department of Health, Social Services and Public Safety (DHSSPS) 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 and 14 of and Schedule 3 to the Superannuation (Northern Ireland) Order 1972 and is subject to the negative resolution procedure.

#### **2. Purpose**

This rule implements reforms to the 1995 and 2008 Sections of the HSC Pension Scheme (“the old scheme”) including new contribution rates for the years 2015-16 to 2018-19. It also accommodates the new scheme within the Injury Benefits scheme and Additional Voluntary Contribution (AVC) facility, enables greater flexibility for members in relation to their money purchase AVC benefits and makes a series of technical clarifications.

#### **3. Legislative Context**

- 3.1. This rule forms part of a group of three linked rules that together implement reforms to pension scheme arrangements for health and social care workers in Northern Ireland. The other two linked rules are:
  - (a) The Health and Social Care Pension Scheme Regulations (Northern Ireland) 2015 (**S.R. 2015 No.120**) which establishes a new, reformed pension scheme (“the new scheme”), and
  - (b) The Health and Social Care Pension Scheme (Transitional and Consequential Provisions) Regulations (Northern Ireland) 2015 (**S.R. 2015 No.122**) which implement a series of transitional arrangements for the treatment of pension benefits built up under the old scheme where a person joins the new scheme on or after 1 April 2015. Such arrangements also include protections permitting members close to normal pension age to remain in the old scheme.
- 3.2. The current HSC Pension Scheme (“the old scheme”) is divided into two Sections, each providing entitlement to pension and other benefits calculated in accordance with the provisions of that particular Section. The 1995 Section is established by the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995 (S.R. 1995 No.95); the 2008 Section by the Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008 (S.R. 2008 No.256).

- 3.3. The Health and Personal Social Services (Superannuation) (Additional Voluntary Contributions) Regulations (Northern Ireland) 1999 (S.R. 1999 No.294) provides a facility through which HSC Pension Scheme members can supplement the value of their pension by making additional contributions.
- 3.4. Certain payments are made to HSC staff following a work-related illness or injury. The Health and Personal Social Services (Injury Benefits) Regulations (Northern Ireland) 2001 (S.R. 2001 No.367) provide for such payments to be made.

#### **4. Policy Background – What is being done and why**

- 4.1. This rule amends regulations that establish the old scheme, the AVC facility and the Injury Benefit scheme. The amendments cover a number of areas relating to (i) implementation of member contribution rates fixed for four years, (ii) accommodation of the new scheme within the AVC facility and Injury Benefit scheme, (iii) making technical clarifications or provision to accommodate new tax protection facilities, and (iv) accommodation of new flexibilities on how members may access money purchase AVC benefits.

##### *Scheme Contributions*

- 4.2. Members pay a proportion of their pensionable pay or earnings towards meeting the cost of the pension benefits that they build up. The contribution rate that a member must pay are set out in scheme regulations, tiered according to earnings with higher earners paying proportionately more to account for the beneficial effect of tax relief on contributions and the extra value gained per pound contributed. High earners do better under a final salary scheme due to greater career progression (i.e. promotions etc) compared to lower earners.
- 4.3. The Department published a document, *HSC Pension Scheme 2015: update on scheme reforms and contribution rates* in October 2014 presenting the draft contribution rates that would apply to member from 1 April 2015. This followed discussions between Department of Health England, NHS trade unions and employer representatives which centred on the shared priorities for how future member contribution rates should be structured, these being to include protections for the lower paid, minimise the risk of opt-outs and ensuring that the scheme remains sustainable and a valuable part of an individual's reward package.
- 4.4. Following these discussions the Department finalised a set of proposed contribution rates in line with those set out for the NHS Scheme in England & Wales. The contribution rate tables are fixed for the duration of the next valuation period – i.e. for four years ending 31 March 2019.
- 4.5. Amending regulations 5, 15, 22, 24 & 35 insert the new contribution rate tables. The results of the 2012 scheme valuation which assesses the cost of the pension rights being built up concluded that the contribution rate that an employer is required to pay in relation to a member should increase by 3% to 16.3%. This is implemented by amending regulations 6, 25 & 36.

### *Injury Benefits Scheme*

- 4.6. Until 31 March 2013, the HPSS Injury Benefits scheme and regulations (S.R. 2001 No.367) applied to certain HSC employees and general practitioners who sustained an injury, disease or other health condition attributable to their employment. From that date, the Injury Benefits scheme arrangements were replaced by contractual payments from HSC employers. However the Injury Benefits scheme regulations can still apply where qualifying HSC injuries occurred before 31 March 2013.
- 4.7. Certain pay definitions in the old scheme were relevant for the calculation of some Injury Benefit awards, whether or not the claimant was also a member of that pension scheme. Amending regulations 42 to 47 amend the Injury Benefits scheme regulations so that where a qualifying injury is identified after an individual joined the new pension scheme, certain provisions from that scheme are used in the calculation of lost earnings and any benefit payable under the Injury Benefit scheme.

### *Additional Voluntary Contributions*

- 4.8. The Health and Personal Social Services (Superannuation) (Additional Voluntary Contributions) Regulations (Northern Ireland) 1999 (S.R. 1999 No.294) provide facilities for HSC Pension Scheme members in pensionable employment to supplement the value of their pension by making money purchase additional voluntary contributions (AVCs) to authorised external pension providers.
- 4.9. Amending regulations 48 to 59 amend the AVC regulations to ensure that these accommodate the introduction of the new pension scheme. This will make it possible for new members (and employers) of the new pension scheme to make AVCs to an authorised HSC AVC provider. Individuals who have taken out AVC contracts under the old scheme will be able to continue with that contract (or begin making further AVCs) upon moving to the new pension scheme.
- 4.10. Provision is also made in Part 5 to accommodate the flexibilities announced by the Treasury in July 2014 and set out in the document *Freedom and choice in pensions: government response to the consultation*. From 6 April 2015, the changes will enable authorised HSC AVC providers to give members a wider range of pension options when taking their AVC benefits upon retirement. Where a particular option is not offered by a provider, then the member may withdraw their AVC investment and take it to a different authorised provider. The freedoms do not extend to benefits payable from either the old or new pension scheme.

### *Other Amendments*

- 4.11. Amending regulations 13 and 17 insert provisions to assist the operation of the Individual Protection 2014 tax facility. This is a transitional measure provided for by the Finance Act 2014 and effective from 6 April 2014 that provides protection to individuals against changes in the lifetime allowance limit.

- 4.12. Amending regulations 4 and 19 retrospectively insert a further category of payment that is to be excluded from the definition of pensionable pay. The 2014-15 Agenda for Change pay circular implemented a payment for HSC staff at the top of their pay band that was both non-consolidated and non-pensionable. The amendments provide that payments announced as non-consolidated by the Department are not pensionable.
- 4.13. Amending regulation 9 retrospectively clarifies the operation of the 1995 Section regulation 23 relating to payment of survivor pensions on re-marriage or civil partnership for same sex couples. This ensures that the Department can continue payment of an adult survivor pension in circumstances where the new relationship is or was a civil partnership or akin to a civil partnership.
- 4.14. Amending regulation 27 retrospectively removes an unintentional restriction that required a spouse or partner at the time of the member's death to have been the spouse or partner of the member on their last day of service in order to qualify for a survivor pension.
- 4.15. Amending regulations 21 and 34 amend 2008 Section provisions relating to eligibility to join that section of the scheme. Those provisions include a restriction that prevents most 1995 Section pensioners from being eligible to join. However, former members of the 1995 Section who have had a break in service of over five years become eligible to join the 2008 Scheme on return to pensionable service and can claim their 1995 Section pension benefits at normal pension age of 60 even if continuing in employment that qualifies for membership of the 2008 Section. These amendments retrospectively clarify that such pensioner members continue to be eligible for 2008 Section membership after their 1995 Section pension is put into payment.
- 4.16. Amending regulations 4(3) and (20) enable the Department to determine a member's final year's pay for pension calculation purposes where the Department considers the member's actual pay or earnings to be inordinate.
- 4.17. Amending regulations 7, 14 32 and 41 provide for the charging of interest and administration charges on late payment of contributions.

### **Consolidation**

- 4.18. The rule amends both the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995 and the Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008. The Department has previously advised that work to consolidate those regulations will be undertaken upon completion of the programme to implement long term reforms to HSC pension scheme arrangements, of which this rule forms part.

## **5. Consultation**

- 5.1. The Department consulted on the rule from 23 December 2014 to 6 February 2015. The Department held extensive discussions with trades unions through which the detailed elements of the new scheme and transitional arrangements were discussed.

5.2. A collective response was received from HSC Staff Side Representatives. The few comments received in relation to this particular rule raised technical points and sought clarification of the transitional arrangements. The Department has published a document summarising and replying to the responses received in relation to this and the other two rules referred to in paragraph 3.1

## **6. Equality Impact**

6.1. 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.

## **7. Regulatory Impact**

7.1. 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.

## **8. Financial Implications**

8.1. None.

## **9. Section 24 of the Northern Ireland Act 1998**

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

## **10. EU Implications**

10.1. Not appropriate

## **11. Parity or Replicatory Measure**

11.1. The amendments proposed mirror provisions introduced in England, Wales and Scotland.

## **12. Additional Information**

12.1. Not applicable.