EXPLANATORY MEMORANDUM TO

The Health Service Workers (Consequential Provisions) Regulations (Northern Ireland) 2015

S.R. 2015 No. 167

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 sections 1 and 3 of the Public Service Pensions Act (Northern Ireland) 2014 and is subject to the draft affirmative resolution procedure.

2. **Purpose**

The key purpose of this rule is to introduce consequential modifications in relation to the new HSC Pension Scheme under the Public Service Pensions Act (Northern Ireland) 2014 (c.2). The Regulations modify the effect of other statutory provisions in their application to the HSC Pension Schemes.

3. **Legislative Context**

3.1. The regulations implement reforms to public service pension schemes under the Public Service Pensions Act 2014 ('the 2014 Act') in respect of pensions for health service workers in Northern Ireland.

3.2. The 2014 Act was enacted in response to the recommendations of the Independent Public Service Pensions Commission led by Lord Hutton of Furness. The Commission reported on 10 March 2011. Under the 2014 Act, new pension schemes ('new schemes') are being established for persons in public service by regulations ('scheme regulations') made under section 1.

3.3. Regulations to establish the new HSC Pension Scheme from 1 April 2015 via three separate Statutory Rules, were laid on the 9th March 2015.

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

4.1. Some employers choose to set up company pension schemes to provide a pension which replaces all, or part, of the additional State Pension provided the scheme meets minimum standards known as the Reference Scheme Test. This is known as "contracting-out" of the additional State Pension. Individuals who are members of a contracted-out scheme and their employers pay lower National Insurance contributions. This arrangement is known as the National Insurance rebate. The Government intends that the new schemes, like the existing schemes, should be contracted-out of the additional State Pension, until contracting-out ends in April 2016. Part 2 of the Regulations deals with contracting-out under the Pension Schemes (Northern Ireland) Act 1993 (c.49) ("the 1993 Act") for the period from 1 April 2015 to 5 April 2016, inclusive. Certain procedural requirements are disapplied that would otherwise apply by virtue of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996 (S.R. 1996 No.493): for example, formal notices to earners. New schemes must still meet the requirements in section 5 of the 1993 Act: in particular, they must satisfy the Reference Scheme Test.

Provisions about pensionable service and early leavers

4.2. The effect of the 2014 Act, and scheme regulations once made, is that the existing scheme must close, and current members (except for specific protected groups) transfer into the new scheme. However, these transferring members will retain certain benefits in the existing scheme (described in the Regulations as their "old scheme"). Although they will accrue new benefits in the new scheme only, the member will, strictly speaking, belong to both schemes at once. In certain cases such a member will have a "final salary link" (see Schedule 7 to the 2014 Act) which means that their final salary in the new scheme will be used to determine their final salary for the purposes of the old scheme.

4.3. Part 3 of the Regulations reflects the policy intention that those with ongoing service in the old scheme and the new scheme should generally (subject to certain conditions) be treated as if they remained active members for particular purposes or in "pensionable service" for the old scheme until their pensionable service in the new scheme is terminated. The objective is to prevent them from becoming deferred members, thereby triggering rights that are inconsistent with them remaining in service with the same employer in a successor pension scheme.

4.4. The 1993 Act contains provisions about occupational pension schemes – not only public service schemes – including as to their contracting-out of the additional State Pension and as to members who leave their scheme before retirement age ("early leavers").

4.5. For the purposes of the 2014 Act and scheme regulations, a number of those provisions need to be modified in relation to members of an old scheme who transfer to a new scheme. The modifications described below affect only this category of members, and not those who remain fully active members of the old scheme (primarily, those near to normal pension age at the time of the reforms). It does not affect those who have become fully deferred members of the old scheme, nor brand new members who join the new scheme on or after 1 April 2015.

4.6. One reference to "pensionable service" in Part 3 of the 1993 Act, which concerns certification requirements for contracted-out pension schemes, is modified so that the person is treated as having a single period of pensionable service in one scheme.

4.7. There are further provisions in Part 4 which concern the rights of early leavers. Chapter 1 provides for preservation of benefits and sets out the principle of short service benefit for those persons. The Regulations provide that a person will not have access to short service benefit until pensionable service terminates in the new scheme, rather than when the person transfers into the new scheme. Certain provisions will apply as though the old scheme and the new scheme were a single scheme.

4.8. Chapter 2 of Part 4 concerns the revaluation of a person's benefits during the period between the person leaving their occupational scheme and reaching normal pension age. The requirements of that Chapter should not apply to someone's old scheme benefits when the person transfers into the new scheme but remains in service. Instead, the amount of their old scheme benefits will be determined in accordance with the scheme rules and the member's final salary (if applicable) in the new scheme. The Regulations provide that old scheme benefits are not to be revalued under Chapter 2 while the person remains in pensionable service in the new scheme. This is to ensure that their old scheme benefits are not effectively revalued twice.

4.9. Chapter 3 of Part 4 concerns "anti-franking", or the protection of increases in guaranteed minimum pensions which contracted-out schemes had to provide until 1997. For this purpose, the Regulations provide that the "cessation date" when a person ceases to be in contracted-out employment under the old scheme (and from which point guaranteed minimum pensions may need to be increased) is treated as the date when the person leaves their new scheme, and not the date when they transfer from the old scheme to the new scheme.

4.10. Chapter 4 of Part 4 concerns cash equivalent transfers for early leavers. The Regulations provide that a person will not acquire the statutory right to a cash equivalent under the old scheme until pensionable service terminates in the new scheme, rather than when the person transfers into the new scheme.

4.11. There are also modifications to the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996 (S.R. 1996 No.619) which were made to enable scheme managers in certain circumstances to delay transfers of preserved benefits until the transition member has left new scheme employment. This is designed to restrict transfers out (from either scheme) by a person who has voluntarily opted out of membership of the new scheme, but remains in employment.

4.12. Chapter 5 of Part 4 concerns cash transfer sums or contribution refunds for those who leave a scheme after 3 months but within 2 years or before their rights have vested. The Regulations provide that a person will not acquire rights under Chapter 5 until pensionable service terminates in the new scheme, rather than when the person transfers into the new scheme. The statutory time periods are also measured as though the person had one continuous period of service.

Ill-health benefits

4.13. The Government has chosen to adopt a 'single source model' for the payment of ill-health pensions in the new public service pension schemes, including the HSC Pension Scheme. Under the single source model, all payments of ill-health pension will be made from the new pension scheme during the period between retirement and the scheme member reaching normal pension age in the old scheme. This model delivers certainty over the ill-health pensions that are payable to members with service in both schemes, and prevents the administrative difficulty of performing two parallel ill-health calculations.

4.14. Accordingly, the pension payable to the scheme member from the new scheme will contain 3 elements:

(1) An element in respect of any Tier 1 ill-health pension entitlement in respect of service in the old scheme;
(2) A pension in respect of service in the new scheme; and
(3) In the case of Tier 2 ill-health pensions, an uplift.

4.15. When the person receiving an ill-health pension from the new scheme reaches their normal pension age in the old scheme, then the first element will cease to be paid out of the new scheme. At this point, the element in respect of the Tier 1 ill-health pension entitlement related to their old scheme pension will come into payment from the old scheme. The member will see no difference in the amount that they receive.

4.16. Part 4 of the Regulations modifies the tax regime in order to correct some unintended consequences.

4.17. Under the current legislation, element (1) above would count as an increase in the value of the pension over the pension input period. If that increase meant that the amount of the annual allowance for the pension input period was exceeded, then a tax charge would arise. Regulation 14 modifies the application of the current legislation to remove element (1) from the calculation of the pension input period during the pension input period in which the member takes ill-health retirement.

4.18. Under the current legislation, the initial value of the ill-health pension – elements (1), (2), and in cases of serious ill-health, (3) – would be measured against the lifetime allowance. However, when the member taking ill-health retirement reaches their normal pension age under the new scheme, the current legislation would measure the element in respect of the Tier 1 ill-health pension entitlement from the old scheme coming into payment against the member's remaining lifetime allowance, notwithstanding that element (1) will cease to be paid from the new scheme. If that second measurement results in the total amount of pension exceeding the lifetime allowance, then a tax charge will arise. Regulation 13 modifies the application of the current legislation to ensure that the payment of the element in respect of the Tier 1 ill-health pension entitlement paid from the old scheme will not count against the lifetime allowance.

4.19. Accordingly, both regulations operate so that a member will not suffer any unexpected tax consequences as a result of the way the Government has chosen to structure the ill-health provisions of the new scheme.

5. Consultation

5.1. The changes introduced by this statutory rule have been subject to statutory consultation which commenced on the 11 November 2014 and ended on the 9 December 2014. Among those consulted were HSC Trade Unions representatives; HSC Employers; HSC Pension Service (Scheme Administrators); DFP; the Government Actuary Department and HM Treasury.

5.2. 1 response was received.

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.