Draft regulations laid before the Assembly under section 24 of the Public Service Pensions Act (Northern Ireland) 2014, for approval by resolution of the Assembly

DRAFT STATUTORY RULES OF NORTHERN IRELAND

2015 No. 0000

HEALTH AND PERSONAL SOCIAL SERVICES

PUBLIC SERVICE PENSIONS

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

Made - - - -	***
Coming into operation -	*1st April 2015*

The Department of Health Social Services and Public Safety makes the following Regulations in exercise of the powers conferred by sections 1(1) and (2)(e), 2(1) and 3(1), (2), (3)(a) and (4) of the Public Service Pensions Act (Northern Ireland) 2014(**a**).

In accordance with section 21 of that Act, the Department has consulted the representatives of such persons as appear to it likely to be affected by these Regulations.

In accordance with section 3(5) of that Act, the Department of Finance and Personnel has consented to the making of these Regulations.

PART 1

Introductory

Citation and commencement

1. These Regulations may be cited as the Health Service Workers (Consequential Provisions) Regulations (Northern Ireland) 2015 and come into operation on 1st April 2015.

Interpretation

2. In these Regulations—

"the 1993 Act" means the Pension Schemes (Northern Ireland) Act 1993(**b**);

"the 2014 Act" means the Public Service Pensions Act (Northern Ireland) 2014;

"the new scheme" means the pension scheme established by regulations made under section 1(1) and (2)(e) of the 2014 Act for the payment of pensions and other benefits to or in respect of health service workers;

(**a**) 2014 c.2 (N.I.).
(**b**) 1993 c.49

"the old scheme" means the Health and Social Care Pension Scheme, as constituted by the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995(**a**) and the Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008(**b**).

PART 2

Modification of contracting-out provisions

Application of this Part

3. This Part applies—

(a) an election is made under section 7 (elections as to employments covered by contracting-out certificates) of the 1993 Act(**c**) in relation to persons who become members of the new scheme on or after 1st April 2015 and before 6th April 2016 (whether or not P is also a member of the old scheme); and

(b) the new scheme satisfies the requirements of section 5 (requirements for certification of schemes) of the 1993 Act(**d**).

Contracting-out

4.—(1) Part 2 of the Occupational Pension Schemes (Contracting Out) Regulations (Northern Ireland) 1996(**e**) (certification of employments) is modified as follows in its application to the new scheme.

(2) The requirements in regulation 2(1)(a) (making of elections for the issue of contracting-out certificates) and regulations 3 (notices by employers of intended election) to 5 (time for making an election) do not apply.

(3) In regulation 6 (information to be included in an election)—

(a) paragraph (1) is to be read as though, for sub-paragraphs (a) to (f), there were substituted—

"(a) the name by which the new scheme is to be known;

(b) the name by which the old scheme is known; and

(c) any other information necessary to enable the Commissioners for Her Majesty's Revenue and Customs to identify the old scheme."; and

(b) paragraphs (2) and (3) do not apply.

(**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; S.R. 2011 No.256; S.R. 2012 Nos. 42 and 78; S.R. 2013 Nos.40, 73, 247 and 259; S.R. 2014 Nos.59 and 225

(**b**) S.R. 2008 No.256 as amended by S.R. 2009 Nos.65 and 188; S.R. 2010 Nos.22, 286 and 420; S.R. 2011 No.256; S.R. 2012 Nos.42 and 78; S.R. 2013 Nos.40, 73, 247 and 259; S.R. 2014 Nos.59 and 225

(**c**) Section 7 was amended by Articles 1 and 3 of, and Schedule 1 to, the Social Security Contributions (Transfer of Functions etc.) (Northern Ireland) Order 1999 (S.I. 1999/671)

(**d**) Section 5 was amended by Articles 133 and 147 of, and Schedule 3 to, the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I.22); Articles 1 and 3 of, and Schedule 1 to, the Social Security Contributions (Transfer of Functions etc.) (Northern Ireland) Order 1999 (S.I. 1999/671); Article 260 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255) (N.I.1); Article 8(2) of S.I. 2006/745, sections 12, 13 and 19 of, and Schedules 4 and 6 to, the Pensions Act (Northern Ireland) 2008 (c.1 N.I.))

(**e**) S.R. 1996 No.493. Amendments were made by the Social Security Contributions (Transfer of Functions etc.) (Northern Ireland) Order 1999 (S.I. 1999/671), and by S.R. 1997 No.160; S.R. 2002 No.109; S.R. 2005 No.568; S.R. 2012 Nos.120 and 124, and S.R. 2014 No.79. By virtue of section 50(1) of the Commissioners for Revenue and Customs Act 2005 (c.11), references to the Commissioners of Inland Revenue are to be taken as references to the Commissioners for Her Majesty's Revenuer and Customs

PART 3

Modification of early leaver and other provisions

Application of this Part

5.—(1) This Part applies where a person (P)—

(a) is a member of the old scheme by virtue of pensionable service for that scheme or deemed transfer scheme service under paragraph 2 of Schedule 7 to the 2014 Act (final salary link);

(b) is a member of the new scheme by virtue of pensionable service for the new scheme; and

(c) is—

(i) a person to whom paragraph 1 or 2 of Schedule 7 to the 2014 Act applies by virtue of that person's pensionable service for the new scheme, and whose final salary falls to be determined by reference to either of those paragraphs; or

(ii) a person to whom—

(aa) Schedule 2 to the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995; or

(bb) Part 3 of the Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008,

applies and who has pensionable service for the old scheme and pensionable service for the new scheme which are continuous.

(2) For the purpose of paragraph (1)(c)(ii)—

(a) paragraph 3 of Schedule 7 to the 2014 Act (continuity of employment) applies as it applies for the purposes of paragraphs 1(2)(a) and 2(2)(a) of that Schedule; and

(b) P's pensionable service for the old scheme and pensionable service for the new scheme are not continuous if scheme regulations made pursuant to section 8A(4)(b) of the Pensions (Increase) Act (Northern Ireland) 1971(**a**) (references to "service": relevant old scheme pension in payment) apply to P.

Certification

6.—(1) Section 11A of the 1993 Act(**b**) (reduction of guaranteed minimum in consequence of pension debit) is modified as follows in relation to P.

(2) In the application of that section to the old scheme, the reference in subsection (2) of that section to pensionable "under the scheme" is to be taken as a reference to pensionable service either for the old scheme or for the new scheme.

Preservation of benefit

7.—(1) Chapter 1 of Part 4 of the 1993 Act (protection for early leavers: preservation of benefit) is modified as follows in relation to P.

(2) In the application of that Chapter to the old scheme—

(a) in section 66(**c**) (interpretation), in the definitions of "relevant employment" and "long service benefit" a reference to the scheme is to be taken as including a reference to either the old scheme or the new scheme;

(**a**) 1971 c.35 (N.I.). Section 8A was inserted by paragraph 2 of Schedule 8 to the Public Service Pensions Act 2014 (c.2 (N.I.)

(**b**) Section 11A was inserted by Article 29 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I.1999/3147 (N.I. 11)).

(**c**) Section 66 was amended by Article 2 of, and paragraph 12 of the Schedule to, the Civil Partnership (Pensions and Benefit Payments) (Consequential, etc. Provisions) Order (Northern Ireland) (S.R. 2005 No.434)

(b) in section 67(1)(**a**) (basic principle as to short service benefit)—

(i) the requirement for a scheme to make provision is to be taken as a requirement that either the old scheme or the new scheme must make that provision;

(ii) a reference to a transfer payment to the scheme is to be taken as a reference to a transfer payment either to the old scheme or to the new scheme;

(iii) a reference to termination of P's pensionable service is to be taken as a reference to termination of P's pensionable service in relation to the new scheme;

(iv) a reference to benefit which would have been payable to P under the scheme is to be taken as a reference to benefit which would have been payable to P either under the old scheme or under the new scheme,

and subsequent references in the Chapter to "short service benefit" are to be construed accordingly;

(c) in section 67(5), a reference to termination of P's pensionable service is to be taken as a reference to termination of P's pensionable service in relation to the new scheme;

(d) in section 67(7)(a), the reference to P's pensionable service under the scheme is to be taken as a reference to P's pensionable service either for the old scheme or for the old and new schemes taken together; and

(e) in sections 68(2) (no discrimination between short service and long service beneficiaries), 70(6) and (7) (computation of short service benefit), 71(3) and (4) (credits) and 72(1) and (3) (pension increases), a reference to termination of P's pensionable service is to be taken as a reference to termination of P's pensionable service in relation to the new scheme.

(3) In the application of that Chapter to the new scheme—

(a) in section 66, in the definitions of "relevant employment" and "long service benefit" a reference to the scheme is to be taken as a reference to either the old scheme or the new scheme;

(b) in section 67(1)—

(i) the requirement for a scheme to make provision is to be taken as a requirement that either the old scheme or the new scheme must make that provision;

(ii) a reference to a transfer payment to the scheme is to be taken as a reference to a transfer payment either to the old scheme or to the new scheme;

(iii) a reference to benefit which would have been payable to P under the scheme is to be taken as a reference to benefit which would have been payable to P either under the old scheme or under the new scheme,

and subsequent references to in the Chapter to "short service benefit" are to be construed accordingly;

(c) in section 67(7)(a), the reference to P's pensionable service under the scheme is to be taken as a reference to P's pensionable service either for the new scheme or for the old and new schemes taken together; and

(d) in section 70(6), in relation to pensionable service which is terminated, the reference to the beginning of that service is to be taken as a reference to the beginning of pensionable service under the old scheme.

Revaluation of preserved benefit

8.—(1) Chapter 2 of Part 4 of the 1993 Act (protection for early leavers: revaluation of accrued benefits) are modified as follows in relation to P.

(**a**) Section 67 was amended by Article 240 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1) and section 27 of, and paragraph 20 of Schedule 8 to, the Public service Pensions Act (Northern Ireland) 2014 (c.2) (N.I.)

(2) In the application of Chapter 2 for the purpose of revaluing the benefit payable to or in respect of P under the old scheme—

(a) in section 79(1)(a)(ii)(**a**) (scope of chapter 2), the reference to the date on which P's pensionable service ends is to be taken as a reference to the date on which P's pensionable service ends in relation to the new scheme; and

(b) subsequent references in that Chapter to "the termination date" and the "pre-pension period" are to be construed accordingly.

Protection of increases in guaranteed minimum pensions

9.—(1) Chapter 3 of Part 4 of the 1993 Act (protection for early leavers: protection of increases in guaranteed minimum pensions ("anti-franking")) is modified as follows.

(2) In the application of that Chapter to P as a member of the old scheme—

(a) in section 83(1)(a)(i)(**b**) (general protection principle), the reference to the time when P ceases to be in contracted-out employment by reference to a scheme is to be taken as a reference to the time when P ceases to be in employment which is contracted-out by reference to the new scheme; and

(b) subsequent references to "the cessation date" are to be construed accordingly.

Transfer Values

10.—(1) Chapter 4 of Part 4 of the 1993 Act 1993 (protection for early leavers: transfer values) is modified as follows.

(2) In the application of that Chapter to P as a member of the old scheme, in—

(a) section 89(1)(a)(**c**) (scope of chapter 4),

(b) section 93(3)(a) (calculation of cash equivalents), and

(c) section 94(1A) and (3)(**d**) (variation and loss of rights under section 90),

a reference to termination of P's pensionable service is to be taken as a reference to termination of P's pensionable service in relation to the new scheme.

Transfer values regulations

11.—(1) The Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996(**e**) are modified as follows.

(2) In the application of regulation 3 of those Regulations (rules on continuation in employment after termination of pensionable service) to P as a member of the old scheme—

(a) in paragraph (1), a reference to employment to which a scheme applies is to be taken as a reference to employment to which the new scheme applies;

(b) in paragraph (1)(a), a reference to P's pensionable service terminating at P's request is to be taken as a reference to P's pensionable service in relation to the new scheme so terminating; and

---

(**a**) Section 79 was amended by Article 74(1) of, and paragraph 20 of Schedule 9 to, the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)). It was amended further in relation to the definition of "normal pension age" by section 27 of, and paragraph 21 of Schedule 8 to, the Public Service Pensions Act (Northern Ireland) 2014 (c.2) (N.I.)

(**b**) Section 83 was amended by section 13(3) (a) of, and paragraph 28 of Schedule 4 to, the Pensions Act (Northern Ireland) 2008 (c.1 (N.I.)).

(**c**) Section 89(1)(a) was substituted by Article 148 of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)).

(**d**) Section 94(1A) was inserted by, and section 94(3) amended by, Article 165 of, and paragraph 7 of Schedule 4 to, the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))

(**e**) S.R. 1996 No. 619.

(c) in paragraph (1)(b)(i), a reference to P's pensionable service continuing until the guarantee date is to be taken as a reference to P's pensionable service in relation to the new scheme so continuing.

(3) In the application of regulation 4 of those Regulations (right to further cash equivalent on termination of employment to which the scheme applies) to P as a member of the old scheme, in paragraphs (1), (2), (3)(a) and (4), a reference to termination of P's employment is to be taken as a reference to termination of P's employment to which the new scheme applies.

Cash transfers and contribution refunds

12.—(1) Chapter 5 of Part 4 of the 1993 Act(**a**) (protection for early leavers: cash transfers and contribution refunds) is modified as follows.

(2) In the application of that Chapter to P as a member of the old scheme—

(a) in section 97AA(1)(a) and (b) (scope of Chapter 5), a reference to termination of P's pensionable service is to be taken as a reference to termination of P's pensionable service in relation to the new scheme;

(b) in section 97AA(2), the reference in the opening words in paragraph (a) to P's pensionable service under the scheme is to be taken as a reference to P's pensionable service either for the old scheme or for the old and new schemes taken together; and

(c) in section 97AB(1) and (3) (right to cash transfer sum and contribution refund), 97AC(1) and (2)(a) (notification of right to cash transfer sum or contribution refund) and 97AI(6) (rights under section 97AB: definition of "reply date"), a reference to termination of P's pensionable service is to be taken as a reference to termination of P's pensionable service in relation to the new scheme.

(3) In the application of that Chapter to P as a member of the new scheme, in section 97AA(2) a reference in the opening words and in paragraph (a) to P's pensionable service under the scheme is to be taken as a reference to P's pensionable service either for the new scheme or for the old and new schemes taken together.

PART 4

Modification of tax regime

Lifetime allowance charge

13.—(1) This regulation applies to a person (P), who—

(a) is a member of the old scheme whether by virtue of pensionable service for that scheme or deemed transfer scheme service under paragraph 2 of Schedule 7 to the 2014 Act (final salary link);

(b) is a member of the new scheme by virtue of pensionable service for the new scheme;

(c) is being paid an ill health at Tier 1 or Tier 2 under the new scheme; and

(d) has an ill health pension paid from the new scheme reduced, as a consequence of P becoming entitled to payment of a scheme pension (within the meaning of paragraph 2 of Schedule 28 to the Finance Act 2004)(**b**) under the old scheme.

(**a**) Chapter 5 was inserted by Article 241 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)).

(**b**) 2004 c.12. Paragraph 2 was amended by sections 101 and 104 of, and Schedules 10 and 11 to, the Finance Act 2005 (c.7); by section 161 of, and Schedule 23 to, the Finance Act 2006 (c.25); by section 70 of, and Schedule 20 to, the Finance Act 2007 (c.11); by section 51 of the Finance Act 2013 (c.29); and by S.I. 2007/493

(2) Section 216 of the Finance Act 2004(**a**) (benefit crystallisation events and amounts crystallised) is modified in its application to P as specified in paragraph (3).

(3) The payment of any scheme pension from the old scheme to P is treated as if it was not a benefit crystallisation event within the meaning of section 216 of the Finance Act 2004.

Annual allowance charge:

14.—(1) This regulation applies to a person (P), who—

(a) is a member of the old scheme whether by virtue of pensionable service for that scheme or deemed transfer scheme service under paragraph 2 of Schedule 7 to the 2014 Act (final salary link);

(b) is a member of the new scheme by virtue of pensionable service for the new scheme; and

(c) becomes entitled to immediate payment of an ill health pension at Tier 1 or Tier 2 under the new scheme.

(2) Section 234 of the Finance Act 2004(**b**) (defined benefit arrangements) is modified in its application to P as specified in paragraph (3).

(3) When calculating the closing value of P's rights under the new scheme for the pension input period during which P becomes entitled to payment of the ill health pension, the element of the ill health pension at Tier 1 that represents pensionable service for the old scheme is not to be counted as being part of the closing value.

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 2015

(L.S.)

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 2015

(L.S.)

A senior officer of the Department of Finance and Personnel

(**a**) Section 216 was amended by section 101 of, and paragraphs 1 and 31 of Schedule 10 to, the Finance Act 2005 (c.7); section 161 of, and paragraphs 1 and 30 of Schedule 23 to, the Finance Act 2006 (c.25); by section 92 of, and paragraphs 4 and 5 of Schedule 29 to, the Finance Act 2008 (c.9); and by section 65 of, and paragraphs 62 and 73 of Schedule 16 to, the Finance Act 2011 (c.11).

(**b**) Section 234 was amended by section 66 of, and paragraphs 1, 10 and 27 of Schedule 17 to, the Finance Act 2011 (c.11).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make consequential provision in relation to public service pensions for health service workers.

Under the Public Service Pensions Act (Northern Ireland) 2014 (c.2 (N.I)) ("the 2014 Act"), certain current members of public service pension schemes are to join new pension schemes ("new schemes") as active members, whilst retaining certain benefits in their existing pension schemes ("old schemes").

Part 1 of these Regulations provides for their citation, commencement and interpretation.

Part 2 of these Regulations modifies the effect of provisions relating to contracting-out of the additional state pension under the Pension Schemes (Northern Ireland) Act 1993 (c.49) ("the 1993 Act") for members joining or transferring to a new scheme during the period from 1st April 2015 to 5th April 2016 inclusive. Certain procedural requirements in the Occupational Pension Schemes (Contracting Out) Regulations (Northern Ireland) 1996 (S.R. 1996 No.493) are disapplied to an election to contract-out the new scheme.

Part 3 modifies the effect of other provisions of the 1993 Act, in their application to certain persons who join the new scheme while remaining non-accruing members of the old scheme. Those members are to be treated as if they are in ongoing pensionable service for one scheme, not two. Section 11A of the 1993 Act is modified in relation to pension debits. Part IV of the 1993 Act concerns members of occupational pension schemes who leave before retirement age. The non-accruing members of the old scheme are to be treated as if their old scheme service does not terminate, nor their contracted-out employment cease, when they join the new scheme; only when they leave the new scheme. The modifications apply for the purposes of preserved benefit (Chapter 1 of Part IV); revaluing benefits (Chapter 2); protecting increases in guaranteed minimum pensions (Chapter 3); and cash equivalent values and contribution refunds (Chapters 4 and 5). Specified provisions in the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996 (S.R. 1996 No.619), which were made under Chapter 4 of Part IV of the 1993 Act, are also modified.

Part 4 modifies the effect of the pensions tax regime contained in the Finance Act 2004 (c.12) upon the ill health pension provision in the new scheme. It provides that any element of an ill health pension relating to pensionable service for the old scheme will not fall to be calculated against the member's annual tax allowance, and that any pension in the old scheme that subsequently falls to be paid to a member who has taken ill health retirement will not fall to be calculated against the member's lifetime tax allowance.

These Regulations will have no effect on the costs of business or the voluntary sector. For that reason no impact assessment has been produced for them.

© Crown copyright 2015

Printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office being the Government Printer for Northern Ireland and the Officer appointed to print Acts of the Northern Ireland Assembly.

ISBN 978-0-337-99596-5

£6.00

N6425 02/2015 456425T 19585

9 780337 995965