STATUTORY RULES OF NORTHERN IRELAND

2014 No. 225

HEALTH AND PERSONAL SOCIAL SERVICES

The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) (Amendment No.2) Regulations (Northern Ireland) 2014

Made - - - -	*12th September 2014*
Coming into operation -	*15th October 2014*

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), Health and Social Care (Pension Scheme) (Amendment No.2) Regulations (Northern Ireland) 2014.

(2) These Regulations come into operation on the 15th October 2014 and, save as provided in paragraphs (3) and (4) shall have effect from 1st April 2014.

(3) Regulations 11 and 16 shall have effect from 1st April 2008.

(4) Regulation 8 shall have effect from 20th February 2014.

(**a**) 1972/1073 (N.I. 10) as amended by S.I. 1990/1509 (N.I. 13); 1993 c.49 (N.I.) and S.I. 2002/1555

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 6.

Amendment of regulation 11

3. Paragraph (8) of Regulation 11 (Contributions by employing authorities)(**b**) is amended as follows—

(a) after "fails to pay or remit", insert "or has previously failed to pay or remit";

(b) after "these Regulations or", insert "such liabilities as are specified by the Department under these Regulations or".

Amendment of regulation 89A

4.—(1) Regulation 89A (Deduction of tax: further provisions)(**c**) is amended as provided by paragraphs (2) to (4).

(2) In paragraph (7A)—

(a) after "to the 2011 Act" insert "or paragraph 1 of Schedule 22 to the Finance Act 2013(**d**)";

(b) in sub-paragraph (a), after "Regulations 2011" insert "or the Registered Pension Schemes and Relieved Non-UK Pension Schemes (Lifetime Allowance Transitional Protection) (Notification) Regulations 2013(**e**)".

(3) In paragraph (8), after "paragraph (7)" insert "or (7A)".

(4) In paragraph (9), after "paragraph (7)" insert "or (7A)".

Amendment of regulation 97

5. For regulation 97 (Accounts and actuarial reports), substitute—

"**Accounts and actuarial reports**

97.—(1) The Department must keep accounts for the scheme in a form approved by the Department of Finance and Personnel.

(2) The accounts are to be open to examination by the Comptroller and Auditor General.

(3) In respect of a member, an employing authority must keep a record of all—

(a) contributions paid under regulations 10, 72 and 73A;

(b) contributions due under regulations 10, 72 and 73A but unpaid;

(c) contributions paid under regulation 11(1);

(d) contributions due under regulation 11(1) but unpaid;

(**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 and S.R. 2014 No.59

(**b**) Regulation 11 as amended by S.R. 2005 No.533, regulation 3(2); S.R. 2005 No.565, regulation 8; S.R. 2008 No.96, regulation 3(2); S.R. 2008 No.130, regulation 3(3); S.R. 2008 No.163, regulation 8 and S.R. 2010 No.420, regulation 4

(**c**) Regulation 89A was inserted by S.R. 2006 No.410, regulation 16 and amended by S.R. 2008 No.130, regulation 3(18); S.R. 2008 No.163, regulation 62 and S.R. 2011 No.256, regulation 4

(**d**) 2013 c.29

(**e**) S.I. 2013/740

(e) hours, half-days or sessions constituting part-time superannuable employment for the purposes of regulation 78;

(f) superannuable pay;

(g) absences from work referred to in regulations 65 and 66;

(h) commencements and terminations of superannuable employment;

(i) reasons for terminations of superannuable employment.

(4) That record is to be in a manner approved by the Department.

(5) Except where the Department waives such requirement, an employing authority must provide the Department with a composite statement in respect of all scheme members covering all the matters referred to in paragraph (3) within 2 months of the end of a scheme year; this is subject to Schedule 2.

(6) Where an employing authority has provided the information in accordance with paragraph (5) and subsequently there is then a change to any of that information, that employing authority must, within 1 month of the change, provide the Department with the revised information.

(7) In respect of each scheme year an employing authority must, within 2 months of a request and in a manner prescribed by the Department, provide the Department with details of the total contributions paid for all scheme members under regulations 10, 11, 72 and 73A.

(8) Where an employing authority has provided the information requested at paragraph (7) and subsequently there is a change in those details, that employing authority must, within 1 month of the change, provide the Department with the revised details.

(9) An employing authority must, no later than 1 month before the beginning of each scheme year, and in a manner prescribed by the Department, provide the Department with a statement of estimated total contributions due under regulations 10, 11, 72 and 73A for that scheme year.".

Amendment of Schedule 2

6.—(1) Schedule 2 (Medical and dental practitioners) is amended as provided by paragraphs (2) to (5).

(2) In sub-paragraph (2) of paragraph 2 (Application of Regulations with modifications)(**a**), after "locum practitioner", insert "; this is subject to sub-paragraph (10) of paragraph 23".

(3) In paragraphs (1)(a) and (2)(a) and (b) of paragraph 6 (Meaning of "superannuable earnings" in relation to other practitioners)(**b**), omit "or for overtime".

(4) In paragraph 10 (Contributions to this Section of the scheme)(**c**) for sub-paragraph (7), substitute—

"(7) Where—

(a) the principal medical practitioner is a shareholder or partner in more than one employing authority referred to in sub-paragraph (6), each such employing authority shall pay regulation 11(1) contributions on any superannuable earnings it pays to that practitioner or, as the case may be, on the practitioner's share of the partnership profits, to the host Health and Social Services Board;

(b) the non-GP provider is a shareholder or partner in more than one employing authority referred to in sub-paragraph (6), that non-GP provider must nominate one

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(**a**) Paragraph 2 as amended by S.R. 2005 No.534, regulation 4(2) and S.R. 2005 No.565, regulation 12(2)

(**b**) Paragraph 6 as amended by S.R. 1999 No.293, regulation 11(1); S.R. 2005 No.534, regulation 4(5) and S.R. 2005 No.565, regulation 12(6)

(**c**) Paragraph 10 was substituted by S.R. 2005 No.565, regulation 12(7) and amended by S.R. 2009 No.65, regulation 20(4); S.R. 2009 No.188, regulation 11(2); S.R. 2010 No.22 Schedule 1, paragraph 1(b); S.R. 2010 No.420, regulation 8; S.R. 2012 No.42, regulation 10(2); S.R. 2012 No.73, regulation 7; S.R. 2012 No.78, regulation 8; S.R. 2013 No.73, regulation 7; S.R. 2013 No.247, regulation 4; S.R. 2013 No.259, regulation 16(3) and S.R. 2014 No.59, regulation 4

of those employing authorities and that nominated authority must pay regulation 11(1) contributions on any superannuable earnings it pays to that non-GP provider or, as the case may be, on the non-GP provider's share of the partnership profits, to the host Health and Social Services Board.".

(5) In paragraph 23 (Accounts and actuarial reports)(**a**)—

(a) in sub-paragraphs (2) and (3), after "certificate" insert "that correctly records the totality";

(b) for sub-paragraph (9), substitute,—

"(9) No later than 13 months after the end of each scheme year, each employing authority must forward to the Department a copy of the records referred to in regulation 97(3) and (4).".

(c) for sub-paragraph (10), substitute—

"(10) A member's superannuable earnings for a scheme year shall be zero and no contributions paid in respect of that scheme year are to be refunded where, in respect of that scheme year, a practitioner or non-GP provider has failed to comply with the requirements of—

(a) whichever of sub-paragraphs (2) to (5) applies to that member, or

(b) sub-paragraph (2) of paragraph 2.

This is subject to sub-paragraphs (11) and (12).".

PART 3

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

7. The Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008(**b**) are amended as provided by regulations 8 to 20.

Amendment of regulation 3

8. In regulation 3 (Actuarial reports and accounts)(**c**), after paragraph (3) add—

"(3A) The Scheme actuary must prepare an actuarial report of the scheme as at the 31st March 2012.

(3B) The Scheme actuary must send a copy of the actuarial report of the scheme to the Department and the Department of Finance and Personnel.

(3C) Where the Department indicates to the Scheme actuary that the actuarial report referred to in paragraph (3A) is also used for the purposes of establishing a scheme under section 1 of the Public Service Pensions Act (Northern Ireland) 2014(**d**) ("the proposed new scheme"), the Scheme actuary must prepare the report taking account of any Department of Finance and Personnel directions given from time to time pursuant to sections 11(2) and 12(3) of that Act (including any specific requirements in those directions relating to a preliminary valuation undertaken for the purposes of setting the employer cost cap for the proposed new scheme).".

(**a**) 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) and S.R.2012 No.42, regulation 10(4)

(**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 and S.R. 2014 No.59

(**c**) Regulation 3 as amended by S.R. 2010 No.420, regulation 10 and S.R. 2013 No.259, regulation 18

(**d**) 2013 c.2

Amendment of regulation 5

9. Paragraph (3A) of regulation 5 (Provision of information relevant for tax purposes)(**a**), is amended as follows—

(a) after "to the 2011 Act" insert "or paragraph 1 of Schedule 22 to the Finance Act 2013";

(b) after "Regulations 2011" insert "or the Registered Pension Schemes and Relieved Non-UK Pension Schemes (Lifetime Allowance Transitional Protection) (Notification) Regulations 2013".

Amendment of regulation 6

10. In paragraph (1) of regulation 6 (Interpretation: general)(**b**), in the definition of "Host Board", for the full out words at the end of sub-paragraph (c) substitute—

"means the Regional Health and Social Care Board (RHSCB) and such a person shall be deemed to be employed by the RHSCB for the purposes of this Part, except where—

(i) regulation 31(7) or (8) applies; or

(ii) contributions payable pursuant to regulation 31 by an employing authority in respect of a non-GP provider: in such a case those contributions are not payable by the RHSCB but are payable by that non-GP provider or by the practice in which they are a non-GP provider;".

Amendment of regulation 21

11. In paragraph (3) of regulation 21 (Eligibility: general)(**c**), for sub-paragraph (b), substitute—

"(b) entered HSC employment before that date and whether or not that person was, on that date, an active member of the 1995 Section in that employment or any other HSC employment,".

Amendment of regulation 33

12.—(1) Regulation 33 (Guarantees, indemnities and bonds), is amended as provided by paragraphs (2) and (3).

(2) In paragraph (1)(a), after "fails to pay contributions" insert "or has previously failed to do so".

(3) In paragraph (2), after "liabilities of the authority", insert "(or such liabilities as are specified by the Department)".

Amendment of regulation 50

13. In paragraph (1)(c) of regulation 50 (Increase in pensionable pay following exercise of option under regulation 49)(**d**), for "less than 90 per cent" substitute "90 per cent or less".

Amendment of regulation 136

14.—(1) Regulation 136 (Employing authority and certain member record keeping and contribution estimates)(**e**), is amended as provided by paragraphs (2) and (3).

(**a**) Regulation 5 as amended by S.R. 2010 No.22, regulation 15 and S.R. 2012 No.78, regulation 10

(**b**) Definition of Host Board was substituted by S.R. 2009 No.65, regulation 24(c); amended by S.R. 2010 No.22, regulation 16(d) and S.R. 2010 No.286, regulation 17(b)

(**c**) Regulation 21 as amended by S.R. 2009 No.65, regulation 29; S.R. 2010 No.22, regulation 20 and S.R. 2010 No.286, regulation 19

(**d**) Regulation 50 as amended by S.R. 2009 No.188, regulation 24

(**e**) Regulation 136 was substituted by S.R. 2009 No.188, regulation 49

(2) In paragraph (3), after "zero" insert "and no contributions paid in respect of that scheme year are to be refunded".

(3) For paragraphs (6) to (10), substitute—

"(6) An employing authority must, in respect of a person, keep a record of all—

(a) contributions paid under regulations 27, 34 or 36;

(b) contributions due under regulations 27, 34 or 36, but unpaid;

(c) contributions paid under regulation 31;

(d) contributions due under regulation 31, but unpaid;

(e) hours or sessions referred to in regulation 8;

(f) pensionable pay, or in the case of a non-GP provider, pensionable earnings;

(g) absences from work referred to in regulation 9;

(h) commencements and terminations of pensionable employment;

(i) reasons for terminations of pensionable employment.

(7) That record is to be in a manner approved by the Department.

(8) Except where the Department waives such requirement, an employing authority must provide a composite statement in respect of the matters referred to in paragraph (6) in respect of all scheme members to the Department within 2 months of the end of each scheme year.

(9) Where an employing authority has provided the information in accordance with paragraph (8) and there is then a change to any of the information provided, that employing authority must, within 1 month of the change, provide the Department with the revised information.

(10) In respect of each scheme year an employing authority shall, within 2 months of a request and in a manner prescribed by the Department, provide the Department with details of the total contributions paid for all scheme members under regulations 27, 31 and 34.

(11) Where an employing authority has provided the information requested pursuant to paragraph (10) and there is a revision to the total contributions paid, that employing authority must, within 1 month of the change, provide the Department with the revised total.

(12) In respect of each scheme year an employing authority shall, no later than 1 month before the beginning of that scheme year, and in a manner prescribed by the Department, provide the Department with a statement of estimated total contributions due under regulations 27, 31 and 34.

(13) 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 of a disturbance in the functioning of his mind or brain."

Amendment of regulation 137

15. In paragraph (1) of regulation 137 (Interpretation of Part 3: general)(**a**), in the definition of "Host Board", for the full out words at the end of sub-paragraph (iv) substitute—

"means the Regional Health and Social Care Board (RHSCB) and such a person shall be deemed to be employed by the RHSCB for the purposes of this Part, except where—

(i) regulation 164(5) or (6) applies; or

(ii) contributions payable pursuant to regulation 162 by an employing authority in respect of a GP provider: in such a case those contributions are not payable by

(**a**) The definition of Host Board was substituted by S.R. 2010 No.22, regulation 56(5)(b) and amended by S.R. 2010 No.286, regulation 35(b)

the RHSCB but are payable by that GP Provider or the practice where they are a GP provider.".

Amendment of regulation 153

16. In paragraph (3) of regulation 153 (Eligibility: general)(**a**), for sub-paragraph (b) substitute—

"(b) entered HSC employment before that date and whether or not that person was, on that date, an active member of the 1995 Section in that employment or any other HSC employment,".

Amendment of regulation 157

17. In paragraph (7) of regulation 157 (Opting out of this section of the scheme)(**b**), after "locum practitioner", insert ": this is subject to paragraph (10) of regulation 260".

Amendment of regulation 163

18.—(1) Regulation 163 (Guarantees, indemnities and bonds), is amended as provided by paragraphs (2) and (3)

(2) In paragraph (1)(a), after "fails to pay contributions" insert "or who has previously failed to pay contributions".

(3) In paragraph (2), after "liabilities of the authority" insert "(or such liabilities as are specified by the Department)".

Amendment of regulation 181

19. In paragraph (1)(c) of regulation 181 (Increase in level of engagement following exercise of option under regulation 180)(**c**), for "less than 90 per cent" substitute "90 per cent or less".

Amendment of regulation 260

20.—(1) Regulation 260 (Employing authority and certain member record keeping and contribution estimates)(**d**), is amended as provided by paragraphs (2) to (4).

(2) In paragraph (5), after "earnings" insert "and contributions due under regulation 160, 162 and 165".

(3) For paragraph (10), substitute—

"(10) A member's pensionable earnings for a scheme year shall be zero and no contributions paid in respect of that scheme year are to be refunded where, in respect of that scheme year, a member has failed to comply with the requirements of—

(a) whichever of sub-paragraphs (1) to (4) applies to that member, or

(b) paragraph (7) of regulation 157.

This is subject to sub-paragraphs (11) and (12).".

(4) For paragraph (14), substitute—

"(14) An employing authority must, in respect of a person, keep a record of all—

(a) contributions paid under regulations 160, 165 or 167;

(b) contributions due under regulations 160, 165 or 167, but unpaid;

(**a**) Regulation 153 as amended by S.R. 2009 No.65, regulation 58; S.R. 2010 No.22, regulation 62 and S.R. 2010 No.286, regulation 37

(**b**) Regulation 157 as amended by S.R. 2009 No.65, regulation 60 and S.R. 2013 No.73, regulation 16

(**c**) Regulation 181 as amended by S.R. 2009 No.65, regulation 63 and S.R. 2008 No.188, regulation 56

(**d**) Regulation 260 was substituted by S.R. 2009 No.188, regulation 78 and amended by S.R. 2012 No.42, regulation 30

(c) contributions paid under regulation 162 or 168;

(d) contributions due under regulation 162 or 168, but unpaid;

(e) pensionable earnings;

(f) absences from work referred to in regulation 140;

(g) commencements and terminations of pensionable employment;

(h) reasons for terminations of pensionable employment.

(14A) That record is to be in a manner approved by the Department.

(14B) Except where the Department waives such requirement, an employing authority must provide a statement in respect of the matters referred to in paragraph (14) in respect of all scheme members to the Department within 13 months of the end of each scheme year.

(14C) Where an employing authority has provided the information in accordance with paragraph (14B) and there is then a change to any of the information provided, that employing authority must, within 1 month of the change, provide the Department with the revised information.".

Part 4

Miscellaneous

Option to persons detrimentally affected by these Regulations

21.—(1) This regulation applies in relation to any benefit which is being paid or may become payable under the regulations amended by these Regulations to or in respect of a person who, having served in an employment or office, service in which qualified the person to participate in the benefits provided under the regulations amended by these Regulations, ceased to serve therein 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 six months of the coming into operation of these Regulations or such longer period as the Department may allow.

(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 12th September 2014

(L.S.)

Peter Toogood
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 12th September 2014

(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") and the Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008 (S.R. 2008 No.256) ("the 2008 Regulations").

Regulation 1 provides for citation, commencement and effect, including that certain provisions of this rule are to take effect from a date before the date of commencement. Article 14(1) of the Superannuation (Northern Ireland) Order 1972 provides the authority for the regulations specified in regulation 1(3) and (4) to take effect as from a date earlier than the making of these Regulations.

The remainder of the Regulations are divided into three Parts, with Parts 2 and 3 amending the 1995 Regulations and the 2008 regulations respectively, and Part 4 providing that certain persons detrimentally affected by these Regulations may elect for the provisions not to apply to them.

Regulations 5, 14 and 20 require the Department and employing authorities to keep accounts and records and make them available for inspection and clarify their obligations in relation to pension record keeping.

Regulations 4 and 9 amend the provisions governing the deduction of tax.

Regulation 8 provides for the Scheme actuary to undertake a valuation of the Scheme as at 31 March 2012, and to take account of any Department of Finance and Personnel directions given pursuant to sections 11(2) and 12(3) of the Public Service Pensions (Northern Ireland) Act 2014 where the valuation is to be used for the purposes of setting the employer cost cap for a proposed new scheme made under section 1 of that Act. This valuation applies in respect of both the Section of the scheme governed by the 1995 Regulations and the 2008 Regulations.

Regulation 6 clarifies responsibility for payment of employer contributions in circumstances where a principal medical practitioner or non-GP provider is a shareholder or partner in more than one employing authority.

Regulation 21 provides for deferred members, or members in receipt of a relevant benefit, who are detrimentally affected by these Regulations to elect for the provisions not to apply to them by giving notice within six months of the coming into operation of these Regulations.

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