EXPLANATORY MEMORANDUM TO

The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009

2009 No.188

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department of Health, Social Services and Public Safety to accompany SR 2009 No.188 which is laid before the Northern Ireland Assembly.

1.2 The statutory rule is made under Articles 12 and 14 and 19 (1), (3) and (4) of, and Schedule 3 to, the Superannuation (Northern Ireland) Order 1972 and is subject to the negative resolution procedure.

1.3 The rule is due to come into operation on 31 May 2009 with retrospective effect from 1 April 2009.

2. Purpose

2.1 This rule amends three statutory rules relating to pension and benefits provided to Health and Social Care staff.

2.2 The key changes made by the rule are:

- revised assessment of contributions to the scheme by members from 1 April 2009
- revised certificates of earnings and contributions for practitioner (GP) and non-GP scheme members
- access to early retirement and pension commutation facilities for pension credit members from 6 April 2009, and
- clarifying the benefits payable following the re-employment of ill-health retirement pensioners.

2.3 This rule also makes various miscellaneous amendments to clarify the working of certain regulations.

3. Background

3.1 These changes follows on from the reforms already introduced as a result of the review of the NHS Pension Scheme in England & Wales, which aims to ensure long-term affordability of pension provision

4. Matters of special interest to the Statutory Health Committee

5. Consultation

5.1 The Department consulted, as required under Article 12 (4) of the Superannuation (Northern Ireland) Order 1972, with representatives of persons likely to be affected by the provisions of this rule. Consultees included employers and Staff Side representatives. Consultation began on the 3 February 2009 and ended on 2 March 2009. Amongst those consulted were HSC Staff Side representatives, HSC Employers and the HSC Pension Service.

5.2 No responses were received.

6. Position in Great Britain

It is general policy to mirror arrangements in GB in relation to pensions legislation. This rule mirrors The National Health Service Pension Scheme and Injury Benefits (Amendment) Regulations 2009 (No. 381) for NHS employees in England and Wales. Similar provisions will also be provided for NHS employees in Scotland.

7. Equality Impact

A preliminary equality impact assessment was carried out. 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.

8. Regulatory Impact

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.

9. Financial Implications

None

10. EU Implications (where appropriate)

Not appropriate.

11. Section 24 of the Northern Ireland Act 1998

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

12. Additional Information

Moira McCarthy at the Department of Health, Social Services and Public Safety; Tel 028 71 321204 or email Moira.McCarthy@dhsspsni.gov.uk can answer any queries regarding this rule.

ANNEX

13.0 **Part 2** of the S.R. amends the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995 *('the 1995 regulations')*

Part 3 of the S.R. amends the Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008 *('the 2008 regulations')*

Part 4 of the S.R. amends the Health and Personal Social Services (Injury Benefits) Regulations (Northern Ireland) 2001 *('the Injury benefit regulations')*

Part 5 of the S.R. provides an option to persons detrimentally affected by these regulations to elect for those provisions not to apply in certain circumstances.

14.0 Amendments to the 1995 Regulations and Part 2 (officer members) of the 2008 regulations – Tiered Member contribution rates

Changes to the way tiered contribution rates for 'officer' members (other than non-GP providers) will be assessed from the Scheme year 2009/10 and beyond

Amending Regulations	1995 regulation amended	**Amending Regulations**	2008 regulations amended
4	10 (Contributions by members)	**18, 19**	28 and 29 (Employees)

General approach

(1) Members are assessed for an appropriate contributions rate at the beginning of each scheme year (1 April). For members who are in pensionable employment on 31 March and 1 April of each year, the contribution rate is generally set for the forthcoming scheme year based on pensionable pay received in the previous year (scaled up to a full year for members who started part-way through the previous year).

1995 Regulation 10 - new paragraphs (2C), (2D), (2E), (2F), (2G) and paragraphs (2K), (2L) and (2M)

2008 Regulation 29 - new paragraphs (2), (3), (4), (5) and (10), (11) and (12)

(2) For members who start a pensionable employment during the current scheme year, the contribution rate is set according to estimated pensionable pay for that employment to the end of the current scheme year (scaled up to a full year). In all cases pay is scaled up to the equivalent full time rate if the member is part-time.

1995 Regulation 10 - paragraph (2Q)

2008 Regulation 29 - paragraph (16)

General changes made are:

(3) The regulations now apply to all scheme years from the Scheme year commencing on 1 April 2009, **see:**

1995 Regulation 10 - paragraph (1A)

2008 Regulation 28 - paragraph (2)

(4) The table has been updated with the current bandings, **see:**

1995 Regulation 10 - paragraph (1A)

2008 Regulation 28 - paragraph (2)

(5) During the 'transitional' 2008/09 year a member's contribution rate would not normally change once it had been assessed but from 1 April 2009, a member's contribution tier may be re-assessed 'in year' if:

- the member starts a new employment in year with the same or a new employer, **see:**
  1995 Regulation 10 - paragraph (2Q)
  2008 Regulation 29 - paragraph (16)
- the member's pensionable pay changes in year for an existing employment, **see:**
  1995 Regulation 10 - paragraph (2R)
  2008 Regulation 29 - paragraph (17)
  This excludes changes to pensionable allowances which are due to changes in duties which are not planned or are unlikely to persist for at least 12 months, **see:**
  1995 Regulation 10 - paragraph (2S)
  2008 Regulation 29 - paragraph (18)

- In the case of a part-time member, the change to pay or allowances will be ignored if the member's whole time equivalent pay does not change, **see:**
  1995 Regulation 10 - paragraph (2T)
  2008 Regulation 29 - paragraph (19)

- If a member's contribution rate changed in the previous scheme year (because of the circumstances explained at the above bullet point), when the contribution rate is set for the next year, this will be based on the pensionable pay received in the previous year from the date of the contribution change to the end of the year (uprated to 365 days), **see:**
  1995 Regulation 10 - paragraph (2H), (2I), (2J), (2N), (2O) and (2P)
  2008 Regulation 29 - paragraph (7), (8), (9), (13), (14) and (15)

Provisions that have been removed

(6) The previous provision that allowed some manual workers **(1995 Regulations only)** to pay contributions at a rate of 5%, regardless of earnings, have been removed. This means that from 1 April 2009, all members will pay the tiered contribution rate appropriate to their pensionable pay.

(7) The provisions that allowed a rate applicable to one employment to be carried forward into another have been removed. From 1 April 2009 the appropriate tiered rate will now apply to each employment separately according to the member's pensionable pay for that employment, **see:**
1995 Regulation 10 - paragraph (2B) (b)
2008 Regulation 29 - paragraph 1 (b)

New Provisions about the contribution rate to be deducted from payments made to members in arrears

Small Payments

(8) The amendments provide for a current contribution rate to be deducted from 'payments in certain circumstances' where these are made in arrears (rather than the rate that would have applied when the member did the work that earned the payment), **see:**

1995 Regulation 10 - new paragraphs (2W) and (2X)
2008 Regulation 29 - new paragraphs (22) and (23)

(9) 'Payments in certain circumstances' are payments of £150 or less that relate to a previous scheme year or a period in the current scheme year before the members contribution rate changed (or a combination of both those circumstances).

(10) Where the member is employed by the employer making the payment, the contribution rate that applies to the member on the day the payment is made will be applied, **see:**
1995 Regulation 10 - new paragraph (2W)
2008 Regulation 29 - new paragraph (22)

(11) Where the member is not currently employed by the employer making the payment, the contribution rate that last applied to the member when they left that employer will be applied, **see:**
1995 Regulation 10 - new paragraph (2X)
2008 Regulation 29 - new paragraph (23)

Unsocial Hours payments
(12) Where a payment is made for work done during unsocial hours where the work was undertaken by the member within the two calendar months preceding the month in which the payment is made, the contribution rate that applies to the member on the day the payment is made will be applied if they are employed by the employer making the payment, **see:**
1995 Regulation 10 - new paragraph (2Y)
2008 Regulation 29 - new paragraph (24)

(13) If the member is not employed by the employer making the payment in the circumstances described above, the contribution rate that will apply is the rate that applied on the last day of employment, **see:**
1995 Regulation 10 - new paragraph (2Z)
2008 Regulation 29 - new paragraph (25)

14.1 Amendments relating to the 1995 Regulations and to Part 3 ('practitioner' and 'non-GP provider' members') of the 2008 Regulations – Tiered member contribution rates

Amending Regulations	1995 regulation amended	**Amending Regulations**	2008 "Officer" regulations amended	**Amending Regulations**	2008 "Practitioner" regulation amended
11	Schedule 2, paragraph (10) (Contributions to the Scheme)	**18, 20**	30 (non-GP Providers)	**52**	161 (Member's contribution rate)

(1) These amendments provide for changes to the way in which tiered contribution rates for 'practitioner' and 'non-GP provider' (NGPP) members will operate for the Scheme Years 2009/10 onwards. It should be noted that the amending regulations remove the NGPP provisions formerly in regulation 29 of the 2008 Regulations, and rely on provisions elsewhere in the 2008 regulations for the part-time member differences previously repeated in regulation 30 Regulation 30 now specifies only how the changes to tiered contributions under this Part will operate differently for NGPPs.

General approach

Principles which are unchanged:

(2) Medical practitioner and non-GP provider (NGPP) service is considered separately from dental practitioner service, for tiering purposes. In all cases any service as an Officer is considered separately for a contribution rate.

1995 Schedule 2 paragraph 10 - subparagraphs (2D) and (2E)
2008 Regulation 30 (Non-GP Providers) - paragraph (5)
2008 Regulation 161 (Member's contribution rate) - paragraphs (12) and (13)

(3) All a member's HSC medical practitioner service, NGPP service or dental practitioner service will be taken into account when the tiered rate for the relevant service is set, **see:**

1995 Schedule 2 paragraph 10 – subparagraph (2F)
2008 Regulation 30 (Non-GP Providers) - paragraph (1)
2008 Regulation 161 (Member's contribution rate) - paragraph (14)

(4) Part-time practitioner and NGPP service under the career average system will not be scaled to a full-year equivalent for tiering purposes.
(5) Dental practitioner, but not medical practitioner or NGPP, service for a part year will be scaled to a full-year equivalent for tiering purposes, **see;**
1995 Schedule 2 paragraph 10 - subparagraph (2K)
2008 Regulation 161 (Member's contribution rate) - paragraph (8)

Provisions that have been removed:
(6) The arrangement that based the tiered rate for 2008/09 on an earlier year's certified earnings, and retained that tier regardless of actual 2008/09 earnings, are removed.

(7) The provisions that allowed a rate applicable to one period of practitioner or NGPP period of service or an officer employment to be carried forward into another have also been removed.

General changes made are:
(8) The regulations now apply to all scheme years from the scheme year commencing on 1 April 2009 and the pensionable earnings bandings have been updated, **see:**
1995 Regulations, Schedule 2 paragraph (10) - subparagraphs (2) (2A) to (2N)
2008 Regulation 28 (Member's contribution rate) - paragraph (2)
2008 Regulation 161 (Member's contribution rate) - paragraph (2)

(9) With the objective of minimizing year-end adjustments, from 1 April 2009 a provisional in-year tiered rate and monthly contributions deduction will be based on:

- a rate agreed between the Health and Social Care Board/ Trust and the Practitioner or Non GP Provider; or
- the last available set of finalised earnings; or
- the estimated level of earnings for the current year, **see:**

1995 Regulations Schedule 2 paragraph (10) - subparagraphs (2I) and (2L)
2008 Regulations 30 (Non-GP Providers) - paragraph (2)
2008 Regulation 161 (Member's contribution rate) - paragraphs (6) and (9)

(10) The host HSC Board/Trust may adjust the tiering and deduction rate, during the year, either:

- in agreement with the GP or NGPP; or
- if it becomes apparent that income will exceed that used to base the deduction tier on
- any adjustments will be backdated to the start of the Scheme year, **see:**

1995 Regulations Schedule 2 paragraph (10) – subparagraph (2N)
2008 Regulation 30 (non-GP Providers) - paragraph (4)
2008 Regulation 161 (Member's contribution rate) - paragraph (11)

(11) Employers of practitioners and Non-GP Providers, who are not the host HSC Board/Trust for the correct tiered rate to use for deductions, **see:**
1995 Regulations Schedule 2 paragraph (10) – subparagraph (2G)
2008 Regulation 30 (Non-GP Providers) - paragraph (7)
2008 Regulation 161 (Member's contribution rate) - paragraph (15)

(12) Following the close of each scheme year (around 6 months afterwards for dental practitioners, and after completion of their tax returns, for medical practitioners and NGPPs) the host Board/Trust will compare the member's actual earnings for the year with the provisional in-year deductions, and make final adjustments to contributions, and if necessary the tiered rate, **see:**
1995 Regulations Schedule 2 paragraph (10) – subparagraphs (2H) and (2K)
2008 Regulation 30 (Non-GP Providers) - paragraph (1)
2008 Regulation 161 (Member's contribution rate) - paragraphs (5) and (8)

14.2 Amendments relating to the 1995 Regulations and to Part 2 'non-GP provider members' and to Part 3 'practitioner' members', of the 2008 Regulations – New assistant GP end of year certificates of pensionable earnings and GP Practice start and end of year statements of earnings and contributions

Amending Regulations	1995 regulation amended	**Amending Regulations**	2008 "Officer" regulations amended	**Amending Regulations**	2008 "Practitioner" regulations amended
11(4)	Schedule 2, paragraph (23) (Accounts and actuarial reports)	**49**	136 (Employing authority and certain member record keeping contribution estimates)	**78**	260 (Employing authority and certain member record keeping contribution estimates)

(1) The above amendments introduce a new end-of-year certificate of HSC Scheme pensionable earnings and contributions, for assistant medical practitioner completion, and bring existing principal medical practitioner certificates and other returns of pensionable earnings and contributions under a single provision. The amendments also introduce GP Practice start-of-year statements of estimated practitioner and NGPP earnings and contributions, and end-of-year statements for assistant medical practitioners. The latter changes will regularise existing informal employer arrangements, to improve the accuracy of in-year and end-of-year tiered contribution rate setting and collection, **see:**
1995 Regulations Schedule 2, paragraph 23 - sub-paragraphs (3), (4), (5), (6) and (7)
2008 Regulation 136 (Employing authority and certain member record keeping and contribution estimates) and Regulation 260 (Employing authority and certain member record keeping and contribution estimates)

14.3 Amendments relating to the 1995 Regulations and to Part 2 'officer' and 'non-GP provider' members' and to Part 3 'practitioner' members', of the 2008 Regulations – (Pension sharing on divorce or nullity of marriage)

Amending Regulations	1995 regulation amended	**Amending Regulations**	2008 "Officer" regulations amended	**Amending Regulations**	2008 "Practitioner" regulations amended
12	Schedule 2A (Pension sharing on divorce or nullity of marriage)	**21, 30, 31, 32, 47**	46 new paragraph (5), 58, 59,128	**53, 59, 60, 61, 76**	177, 185, 186, 188 and 252

Key changes

(1) These amendments will be made from 6 April 2009, when the Pension Sharing (Pension Credit Benefit) (Amendment) Regulations 2009 come into effect and will:

- Allow early payment of a pension credit with an actuarial reduction from normal minimum pension age, **see:**
  1995 Regulations Schedule 2A - new paragraph 3A –
  2008 Regulations 46 and 177 - new paragraph (5)

- Allow the pension credit to be paid early on health grounds as long as the pension credit member meets the ill-health condition in the Finance Act 2004 and is permanently incapable of regular employment because of ill-health, **see:**
  1995 Regulations Schedule 2A - new paragraph 3B
  2008 Regulations 46 and 177 - new paragraph (8)

- Allow pension credit members the same access to pension commencement lump sums as those enjoyed by other deferred scheme members (as long as the sharing order is pre-retirement). This means that pension credit members will have the same rights as other scheme members to exchange some of their pension credit for lump sum, up to the limits provided for in the Finance Act 2004 and subject to the minimum fixed lump sum payable in the 1995 regulations **see:**
  1995 Regulations Schedule 2A - new sub paragraphs (7) to (12) of paragraph 3
  2008 Regulation 58 - replacement paragraph (1)
  2008 Regulation 185 - revisions to paragraph (1)

Further and consequential changes

(2) As a consequence of the above key changes the regulations make some further changes:

- Firstly, (in line with other members) a pension credit member who is terminally ill may commute the maximum amount of pension credit into lump sum before the pension is commuted, **see:**
  1995 Regulations Schedule 2A - new sub paragraph (2) of 4 and new sub-paragraph (2) of 5
  2008 Regulation 59 - replacement paragraph (5)
  2008 Regulation 186 - replacement paragraph (5)

- Secondly, in the 1995 regulations only, the paragraphs dealing with the death benefit lump sum payable when a pension credit member who is receiving their benefit dies are revised, so that the maximum amount of any lump sum that may be paid will take account of the amount of pension that was commuted to lump sum, **see:**
  1995 Regulations Schedule 2A - new sub-paragraph (3) of paragraph 7

(3) **Technical Changes made are**

- References to 'safeguarded rights' are removed, **see:**
  1995 Regulations Schedule 2A - revised paragraphs (12) and (13)
  2008 Regulations - deleted regulations 61 and 188

- References to the Pension Sharing (Pension Credit Benefit) Regulations 2000 are replaced with appropriate references to the Finance Act 2004, **see:**
  1995 Regulations Schedule 2A - amendment to Paragraph 4
  2008 Regulations 128 and 252 (Commutation of small pensions)

14.4 Regulations that amend the 1995 Regulations and Parts 2 and 3 of the 2008 Regulations – benefits payable following the re-employment of ill-health retirement pensioners

(1) **Restricting accrual of further service in re-employment where a tier 1 ill health pension for earlier service is converted to tier 2**

Amending Regulations	1995 regulation amended	**Amending Regulations**	2008 "Officer" regulations amended	**Amending Regulations**	2008 "Practitioner" regulations amended
3	8 (Restriction on further participation in the scheme)	**17**	22 (Restrictions on eligibility: general)	**51**	154 (restrictions on eligibility: general

The above amendments are made so that a re-employed pensioner must stop accruing any further service in their re-employment if the tier 1 ill health pension in payment for their earlier service is converted to a tier 2 ill health pension. Provision is also made so that members my restart contributions again if they are in NHS/HSC employment (and under age 50 if subject to the 1995 regulations) one year after their 1 pension is replaced by a tier

2 pension. At this point their replacement tier 2 pension will have reverted to a tier 1 pension. The amendments ensure that a tier 2 pensioner may not accrue further service that runs concurrently with the enhancement of 2/3rds prospective service to the relevant scheme's normal pension age included in a tier 2 pension.

(2) **Preventing the award of 2 separate tier 2 ill health pensions**

Amending Regulations	1995 regulation amended	**Amending Regulations**	2008 "Officer" regulations amended	**Amending Regulations**	2008 "Practitioner" regulations amended
5	13B (Re-assessment of ill heath condition determined under regulation 13A)	**27**	53 (Reassessment of entitlement to an ill health pension determined under regulation 52)	**58**	183 (Reassessment of entitlement to an ill health pension determined under regulation 182)

The above amendments ensure that if a re-employed ill health pensioner becomes entitled to a tier 2 pension in respect of their new service, they will not be able to apply for any tier 1 pension in payment for their earlier service to also be converted to a tier 2 pension under Department review. This prevents a member from becoming entitled to two separate tier 2 pensions both of which would attract enhancements of 2/3rds prospective service to the relevant scheme's normal retirement age.

(3) **Limit on additional lump sum where a tier 1 ill health pension is converted to tier 2**

Amending Regulations	1995 regulation amended	**Amending Regulations**	2008 "Officer" regulations amended	**Amending Regulations**	2008 "Practitioner" regulations amended
6 and 7	17 (lump sum on retirement) 17A (general option to exchange part of pension for lump sum)	**30**	58 (General option to exchange part of pension for lump sum) new paragraph (9)	**59**	185 (General option to exchange part of pension for lump sum) new paragraph (9)

The above amendments clarify that where a tier 1 ill health pension is converted to a tier 2 pension following a review by the Department, the member may exchange part of the additional pension (difference between the tier 1 and the tier 2 ill-health pension) for lump sum. In addition, amending regulation 6 clarifies that for members subject to the 1995 regulations the fixed lump sum (equal to three times the pension) is only due for the difference between the tier 1 and the tier 2 ill health pension.

(4) **Restriction to tier 1 ill health pensions for later (re employment) service where a tier 1 pension for earlier service is converted to tier 2**

Amending Regulations	1995 regulation amended	**Amending Regulations**	2008 "Officer" regulations amended	**Amending Regulations**	2008 "Practitioner" regulations amended
10	86A (Benefits in respect of pensionable employment after pension becomes payable under regulation 13A	**46**	113 (Re-employed tier 1 ill health pensioners)	**75**	240 (Re-employed tier 1 ill health pensioners)

The above amendments ensure that where a member whose tier 1 ill-health pension (in payment) is converted to a tier 2 pension, they may only become entitled to a tier 1 pension for their re-employed service (regardless of whether they meet the tier 1 or the tier 2 condition in respect of that service).

(5) **Provision to pay interest if the difference in payments between a tier 1 and a tier 2 ill health pension is delayed**

Amending Regulations	1995 regulation amended	**Amending Regulations**	2008 "Officer" regulations amended	**Amending Regulations**	2008 "Practitioner" regulations amended
N/A	**N/A**	**48**	132 (Interest on late payment of benefits and refunds of contributions) paragraph 7 (c)	**77**	256 (Interest on late payment of benefits and refunds of contributions) paragraph 7 (c)

The above amendments provide for interest to be due from the scheme if the difference between a tier 1 ill health pension and a tier 2 ill health pension is not paid within one month of the date the Department is in possession of all the information needed to calculate the additional amounts due.

14.5 Regulations that amend the 1995 Regulations and Part 3, 'practitioner members only' of the 2008 Regulations

(1) **Lump sum on member's death after pension becomes payable**

Amending Regulations	1995 regulation amended	**Amending Regulations**	2008 "Practitioner" regulation amended
11(3)	Schedule 2, paragraph (14) (Lump sum on member's death in pensionable employment or after pension becomes payable	**74(3)**	240 (Amount of lump sum: dual capacity members: members with pensions under regulation 180

The above amendments clarify the uprating period for the pensionable earnings of practitioner members who have ceased to accrue pensionable service during continuing membership or whose dependants qualify for benefit following their death on pension. These amendments are made retrospectively from 1 April 1995, in the case of the 1995 Regulations and from 1 April 2008, in the case of the 2008 Regulations.

14.6 Regulations that amend the 1995 Regulations only

(1) **Regulation 8 amends regulation 35 (Member dies after pension becomes payable)** to include references to 'nominated partners' and 'surviving nominated partners'.

(2) **Regulation 9 makes a technical change to regulation 49 (Preserved pension)** to ensure that 49 is consistent with other regulations providing for commutation of benefits on terminal illness by including a reference to the requirements of the 'lump sum rule' in the Finance Act 2004.

14.7 Regulations that amend the 2008 Regulations only

(1) **Regulations 14 and 50(a) and (b) respectively, amend regulations 6 and 137 (Interpretation: general)** by inserting a new definition of "non-contributing member" and revising the existing definition of "member" to include "non-contributing members". The changes ensure that the correct 'pay' (in the case of a member, other than a 'non-GP provider', under Part 2 of the 2008 regulations) or 'earnings' (in the case of a 'non-GP provider' or any member under Part 3 of the 2008 regulations) will be used when calculating benefits for non-contributing members where they:

- Have reached the 45 years pensionable service limit
- Remain in HSC employment
- Have ceased payment of contributions (and have not applied to continue payment)
- Remain entitled to pension benefits but are currently under age 75

(2) **Regulation 15 amends regulation 14 (Pensionable pay: breaks in service)** to correct the reference to 'pensionable pay' to 'pensionable earnings'..

(3) **Regulation 16 amends regulation 15 (Meaning of reckonable pay: General)** to cater for the introduction of 'non-contributing members' as described in the explanation of amending regulation 14, at paragraph (1) above.

Members, who reach the scheme's 45-year service limit, cease to pay contributions and accrue pensionable service, making the 'relevant day' at 15(5) the member's last day of pensionable service.

(4) **Regulations 22 to 26, and 28, 29, 33, 34, 39 and 40 respectively, amend regulations:**

- **48 (Early payment of pensions with actuarial reduction)**
- **49 (Partial retirement (members aged at last 55)**
- **50 (Increase in pensionable pay following exercise of option under regulation 49)**
- **51 (Application of regulation 49 and 50 where concurrent part-time employments held)**
- **52 (Early retirement on ill health (active members))**
- **55 (Early retirement on termination of employment by employing authority)**
- **57 (Exceptions to requirement that NHS employment must have ceased)**
- **65 (dual capacity membership)**
- **67 (Surviving adult dependants' pensions)**
- **77 (Amount of children's pensions under regulation 74: deceased pensioner members), and**
- **78 (Amount of children's pensions under regulation 74: deceased deferred members)**

to cater for the introduction of 'non-contributing members' as described in the explanation of amending regulation 14, at paragraph (1) above. The changes ensure that the correct pensionable pay will be used to calculate personal or dependants benefits when members have ceased to pay contributions and accrue pensionable service but continue to HSC employment.

(5) **Regulation 35 amends regulation 69 (Amount of pensions under regulation 67: active members)** to cater for the introduction of 'non-contributing members' as described in the explanation of amending regulation 14, at paragraph (1) above. The amendment also corrects paragraph (1) of regulation 69 so that the initial pension for a deceased non-contributing member will be based on the member's reckonable pay on their last day of pensionable service.

(6) **Regulation 36 amends regulation 70 (Amount of pension under regulation 67: pensioner members)** so that abatement under Part 2 of the 2008 regulations is 'ignored' for both the initial and continuing pensions. This amendment is made retrospectively from 1 April 2008.

(7) **Regulation 37 amends regulation 73 (Re-employed pensioners: adult survivor pensions in initial period**) to ensure that the initial pension for a re-employed member's later service will be based on their reckonable pay at their last day of pensionable service.

(8) **Regulation 38(2), (3) and (6) amend regulation 76 (Amount of children's pensions under regulation 74: deceased active members)** to cater for the introduction of 'non-contributing members' as described in the explanation of amending regulation 14, at paragraph (1) above and revises paragraphs (6) and (7), so that the initial pension for a 'non-contributing member' will be based on the member's reckonable pay on their last day of pensionable service. Regulation 38(4) corrects the regulation at paragraph (4) to ensure that a minimum of 10 years pensionable service will be taken into account when calculating a child pension for deceased active members. This amendment is made retrospectively from 1 April 2008.

(9) **Regulation 41 amends regulation 79 (Amount of children's pensions under regulation 74: recent leavers)** to correct the 'basic death pension' on which a child pension is based (in the case of a 'recent leaver') to a tier 2 ill heath pension under regulation 52(5) (Early retirement on ill-health: active members). This amendment is made retrospectively from 1 April 2008.

(10) **Regulation 42 amends regulation 81 (Amount of children's pensions under regulation 74: re-employed pensioners)** to cater for the introduction of 'non-contributing members' as described in the explanation of amending regulation 14, at paragraph (1) above, and revises paragraph (2)(a) of regulation 81 so that the initial pension for a deceased non-contributing member will be based on the members reckonable pay on their last day of pensionable service.

(11) **Regulation 43 amends regulation 83 (Amount of lump sum: single capacity members and recent leavers (disregarding regulation 49 employments)** to cater for the introduction of 'non-contributing members' as described in the explanation of amending regulation 14, at paragraph (1) above, and adds cross-reference to regulations 86A and 87.

(12) **Regulation 44 amends regulation 84 (Amount of lump sum: dual capacity members (disregarding regulation 49 employments)** to cater for the introduction of 'non-contributing members' as described in the explanation of amending regulation 14, at paragraph (1) above and, in the case of a deceased non-contributing member, the amendment also ensures that the service taken into account is adjusted to the date of the member's last day of pensionable service. Regulation 44(3) corrects paragraph (2)(a), so that the lump sum for the deceased member's later service will be based on a tier 2 ill health pension under regulation 52(5) (Early retirement on ill-health: active members). This amendment is made retrospectively from 1 April 2008.

(13) **Regulation 45 amends regulation 85 (Amount of lump sum: dual capacity members: members with pensions under regulation 49)** to cater for the introduction of 'non-contributing members' as described in the explanation of amending regulation 14, at paragraph (1) above, and corrects the reference in paragraph (2)(a) of regulation 85 from 'final pensionable pay' to 'reckonable pay'

(14) **Regulations 54 to 57 and 62, 63, 68 and 69 respectively, amend regulations:**

- **48 (Early payment of pensions with actuarial reduction)**
- **49 (Partial retirement (members aged at least 55)**
- **181 (Increase in level of engagement following exercise of option under regulation 180)**
- **182 (Early retirement on ill-health (active members)**
- **192 (Dual capacity membership)**
- **194 (Surviving adult dependants' pensions)**
- **204 (Amount of children's pension under regulation 201: deceased pensioner members)**
- **205 (Amount of children's pension under regulation 201: deceased deferred members)**

to cater for the introduction of 'non-contributing members' as described in the explanation of amending regulation 50, at paragraph (1) above. The changes ensure that, for a member under Part 3 of the 2008 regulations the correct pensionable earnings will be used to calculate personal or dependant's benefits when members have ceased to pay contributions and accrue pensionable service but continue in HSC employment.

(15) **Regulation 64 amends regulation 196 (Amount of pensions under regulation 194: active members)** to cater for the introduction of 'non-contributing members' as described in the explanation of amending regulation 50, at paragraph (1) above, and replaces paragraph (1) of regulation 196 so that the initial pension for a deceased non-contributing member will be based on the monthly average of their uprated earnings on their last day of pensionable service.

(16) **Regulation 65 amends regulation 197 (Amount of pensions under regulation 194: pensioner members)** so that abatement under Part 2 of the 2008 regulations is 'ignored' for both the initial and continuing pensions. This amendment is made retrospectively from 1 April 2008.

(17) **Regulation 66 amends regulation 200 (Re-employed pensioners: adult survivor pensions in initial period)** so that for re-employed non-contributing members, the initial pension for the member's later period of service will be based on the monthly average of the deceased's uprated earnings on their last day of pensionable service.

(18) **Regulation 67(2), (3), (5) and (6) amends regulation 203 (Amount of children's pension under regulation 201: deceased active members)** to cater for the introduction of 'non-contributing members' as described in the explanation of amending regulation 50, at paragraph (1) above and ensures that the initial pensions for a non-contributing members will be based on the rate of the monthly average of the deceased's uprated earnings on the member's last day of pensionable service. Regulation 67(4) revises paragraph (3) of regulation 203 so that a minimum of 10 years pensionable service is taken into account when calculating a child pension for deceased 'active' members. Regulation67 (4) is made retrospectively from 1 April 2008.

(19) **Regulation 70 amends regulation 206 (Amount of children's pension under regulation 201: recent leavers)** to correct the 'basic death pension' at paragraph (3) on which the child pension is based (in the case of a 'recent leaver') to a tier 2 ill-health pension under regulation 182(5) (Early retirement on ill-health (active members). This amendment is made retrospectively from 1 April 2008.

(20) **Regulation 71 amends regulation 208 (Amount of children's pension under regulation 201: re-employed pensioners)** to cater for the introduction of 'non-contributing members' as described in the explanation of amending regulation 50, at paragraph (1) above. The amendment also replaces sub-paragraphs (a) and (b) of paragraph (2) of regulation 208, so that the initial pension for a deceased non-contributing member will be based on the rate of the monthly average of the deceased's uprated earnings on their last day of pensionable service.

(21) **Regulation 72 amends regulation 210 (Amount of lump sum: single capacity members and recent leavers (disregarding regulation 180 employments)** to cater for the introduction of 'non-contributing members' as described in the explanation of amending regulation 50, at paragraph (1) above. The amendment also replaces paragraph (1) of

regulation 210 to ensure that the lump sum for a deceased non-contributing member is based on the twice the annual average of the members' uprated earnings on their last day of pensionable service, and clarifies, in paragraph (2), that the regulation is subject to regulations 213A and 214.

(22) **Regulation 73(2) amends regulation 211 (Amount of lump sum: dual capacity members (disregarding regulation 180 employments)** to cater for the introduction of 'non-contributing members' as described in the explanation of amending regulation 50, at paragraph (1) above. Regulation 73(3) corrects paragraph (2)(a) of regulation 211, so that the lump sum for a deceased non-contributing member's later service will be based on a tier 2 ill-health pension under regulation 182(5) (Early retirement on ill-health (active members), adjusted to the date of the member's last day of pensionable service. Regulation 73(3) is made retrospectively from 1 April 2008.

(23) **Regulation 74(2) and (4) amend regulation 212 (Amount of lump sum: dual capacity members (members with pension under regulation 180)** to cater for the introduction of 'non-contributing members' as described in the explanation of amending regulation 50, at paragraph (1) above.
See also regulation 74(3) at paragraph 14.5 above.

14.8 Amendments to the Injury Benefit Regulations

(1) **Regulation 80 amends regulation 2(1) (Interpretation)** by inserting a new definition of "ophthalmic provider" which will operate in conjunction with the revised definition of "practitioner" (made by amending regulation 81 below), to clarify that the Injury Benefit regulations continue to apply to ophthalmic providers. This amendment is made retrospectively from 1 April 2004.

(2) **Regulation 81 amends regulation 2A (Meaning of practitioner)** by adding "ophthalmic provider" to the definition of 'practitioners' to whom the Injury benefit Regulations apply. This amendment is made retrospectively from 1 April 2004.

(3) **Regulation 82 amends regulation 4 (Scale of benefits)** by adding Employment and Support Allowance (ESA) (payable under section 1(2)(a) of the Welfare and Reform Act (Northern Ireland) 2007) to the benefits listed at regulation 4(6)(b) of the Injury Benefit Regulations, and taken into account when calculating the amount of an Injury Benefit. ESA replaces Incapacity Benefit and Income Support for new claimants with effect from 27 October 2008, and will be taken into account for Injury Benefit purposes at the rate payable during the 'assessment phase' and at any rate payable after that phase has ended.

(4) **Regulation 83 amends regulation 14 (Review and adjustment of allowance)** to ensure that Injury Benefit awards in payment at 1 April 2009 (the effective date for the amendment) can be reviewed to take account of ESA (at either rate) awarded between 27 October 2008 (when ESA was introduced) and 1 April 2009. However any adjustment in the rate of Injury Benefit payable will be made only with effect from 1 April 2009.

14.9 Option to persons detrimentally affected by these amending regulations

Regulation 84 (Option to persons detrimentally affected by these regulations) provides for a deferred member, or a member in receipt of a relevant benefit, whose position under these regulations would be worsened by any retrospective provision, to elect that that provision will not apply to them.

Consultation on the draft regulations

15.0 A formal consultation exercise on the amending regulations began on the 3 February 2009 and ended on 2 March 2009. Amongst those consulted were: HSC Staff Side representatives, HSC Employers and HSC Pension Service

15.1 Consultation outcome

No responses to the consultation were received.

16.0 Guidance for HSC Staff and HSC employers

HSC Pension Service wrote to all employers in April 2009 to notify them of the changes to the tiered contribution arrangements. The link to the specific document is as follows:

17.0 Monitoring and review

HSC Pension Scheme changes are developed, monitored and reviewed in line with the NHS Pension Schemes in England and Wales.