EXPLANATORY MEMORANDUM TO

The Health and Social Care Pension Schemes (Amendment No.2) Regulations (Northern Ireland) 2025

S.R. 2025 No. 100

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Health (DoH) to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under Articles 12(1), (2) and (3), and 14(1) and (2) of, and Schedule 3 to, the Superannuation (Northern Ireland) Order 1972 and sections 1(1) and (2)(e), 2(1) and 3(1) to (3) of, and paragraph 5 of Schedule 2 and Schedule 3 to, to (4) of, and paragraph 5 of Schedule 2 and Schedule 3 to, the Public Service Pensions Act (Northern Ireland) 2014(**1**) and is subject to the negative resolution procedures.

1.3. In accordance with section 22(2)(b) of the 2014 Act, the Department has laid a report before the Assembly.

2. Purpose

2.1. The Statutory Rule will introduce the following changes to the HSCPensions Schemes Rules: -

- Retrospectively amend the definition of overtime in the 2015 Scheme so it aligns with the long-standing policy and practice for additional hours worked by part-time staff to be pensionable up to whole-time equivalent (WTE) hours.

- Clarify the method for calculating member contributions where pay reduces during a period of absence.

- Provide for general practitioner (GP) partners and non-GP providers to update their annual certificate of pensionable profits for 2024 to 2025 to the amount declared to HM Revenue and Customs (HMRC) on their revised tax return. This is required as a result of HMRC's reforms to standardise the accounting period for businesses.

- Allow members who are affected by the McCloud remedy to revoke a deferred choice election or for a deferred choice election to lapse in certain circumstances.

- Make other technical and miscellaneous amendments.

([1]) 2014 c.2 (N.I.) section 3 was amended by section 94(11) to (14) of the Public Service Pensions and Judicial Offices Act 2022 (c. 7)

3. Policy Background – What is being done and why

3.1. There are two HSC Pension Schemes: the reformed 2015 Scheme and the older, closed scheme which is divided into the 1995 and 2008 Sections. The scheme is contributory. Members and their employers are required to pay towards the cost of benefits they build up in the scheme. An actuarial valuation is conducted every 4 years to ensure the level of contributions made by members and employers meet the full cost of their pension rights as they accrue them.

Background to the pensionability of additional hours for members who work part time

3.2. Scheme regulations provide that overtime payments are not pensionable in the HSC Pension Scheme.

3.3. For part time staff it has been long-standing practice that additional hours worked up to whole time are not considered overtime and are therefore pensionable, which his supported by the 1995 and 2008 Regulations.

3.4. When the 2015 Regulations were being drafted the consultation materials supported that this would continue, however the regulations were drafted in a way that the 2015 Scheme inadvertently did not allow for this. This was amended prospectively from 1 April 2024 meaning that staff who work part time have any additional hours worked up to whole time automatically pensionable.

3.5. Whilst it is reasonable to assume that employers will have followed scheme literature and guidance issued by the administrator: collecting and making pension contributions based on any additional hours up to the whole-time ceiling, the regulations will also provide for a correction of the position where this was not done.

3.6. The consultation proposed to amend the 2015 Regulations so that the definition of overtime reflects the intended policy retrospectively and underwrites how the scheme has operated in the period from 1 April 2015 to 31 March 2024.

Background to the method for calculating member contributions if they are on reduced pay

3.7. As part of previous reform, member contribution rates have been calculated on actual pay since 1 November 2022, rather than the notional whole-time equivalent pay. Given that the method for calculating member contribution rates has changed, it was appropriate to consider how member contributions are calculated where members receive less than full pay, for example due to maternity leave or sickness absence.

3.8. It is the Department's intention that members who are in receipt of reduced pay will now have their member contribution rate calculated on their actual annual pay, rather than what they would have been earning had they continued to receive full pay and will also provide for members to still have the option to build up pension benefits (in allowed circumstances) where those members go from full pay to zero pay.

3.9. The changes to the regulations will not affect benefit accrual and members will continue to accrue pension benefits as if they are in receipt of their full pay. Certain types of

leave are unpaid and therefore do not naturally attract pension contributions and subsequently no pension benefits.

Background to GP and non-GP provider annual certificates of pensionable profit

3.10. HMRC introduced changes that mean the profits of unincorporated businesses must be taxed on a 'tax year' basis. Previously they could be taxed based on their annual accounting period if this did not align with the tax year. This change impacts approx. 24% of GP practices in N. Ireland, who do not align their annual accounting period with the tax year.

3.11. As part of the consultation, the Department proposed to make a minor amendment to the 2015 HSC Pension Scheme regulations to provide clear direction on the process for reporting future tax years from 2024 to 2025 onwards.

3.12. This means that GP partners must provide a revised annual certificate of pensionable earnings to HSC Pension Service where their GP practice accounting year is not aligned with the tax year, and where their certificate was based on a provisional figure submitted to HMRC in their self-assessment tax return.

Background to revocation or lapsing of deferred 'McCloud remedy' choices

3.13. In 2018 the Court of Appeal found regulations put in place in 2015 to protect older public service workers by allowing them to remain in their original pension scheme were discriminatory on the basis of age. The McCloud remedy enables members to be given a choice at retirement of keeping original legacy scheme benefits or electing to have 2015 equivalent scheme benefits for their service during 2015 to 2022.

3.14. The first proposed change will allow members to revoke a deferred choice election within a reasonable period of time, 2 weeks, before benefits are put into payment and the second change will cause a deferred choice election made by a member to lapse in circumstances where the member dies more than 2 weeks before the day on which the first benefit payment is due enabling the designated person to make the choice in relation to the death benefits paid in respect of the late member.

Background to technical and miscellaneous amendments

3.15. As part of the consultation the Department proposed a series of technical and miscellaneous amendments, as set out below: -

- Correct an error retrospectively from 1 April 2015 to ensure qualifying service in the 1995 Section continues to count as qualifying service in the 2008 Section for relevant 1995 Section deferred members who joined the 2008 Section between 1 October 2008 and 31 March 2015.

- Previous amendments were made to ensure members on parental bereavement leave were treated in the same way as members on maternity leave, adoption leave, paternity leave and parental and shared parental leave. While this has happened in practice there are a number of places within the 2008 Section regulations where the reference to parental bereavement leave was omitted and the Department proposed to correct these omissions retrospectively.

- Align all 3 sets of the HSC Pension Scheme regulations so that factors used to establish the cost of purchasing additional pension are applied in the same way.

- Corrections were proposed to correct relevant cross references in relation to forfeiture for both the 2008 and 2015 Schemes.

4. Consultation

4.1. A consultation was issued on 13 February 2025 and closed on 10 April 2025. In total 3 responses were received, as follows: -

- British Medical Association (BMA) Northern Ireland
- British Dental Association (BDA) Northern Ireland
- Royal College of Nursing (RCN) Northern Ireland

4.2 Overall, respondents supported the proposals.

5. Equality Impact

5.1. An Equality Screening and Rural Needs Impact Assessment were carried out by the Department and have been published on the Departments website.

6. Regulatory Impact

6.1. It is not anticipated that there will be any adverse impact on business, charities social economy or voluntary bodies.

7. Financial Implications

7.1. There are no financial implications for the Department.

8. Section 24 of the Northern Ireland Act 1998

8.1. Consideration has been given to the human rights implications of these regulations. They are considered compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. None

10. Parity or Replicatory Measure

10.1 Similar regulations have been brought into force with the equivalent NHS Pension Schemes.

11. Additional Information

11.1. Not applicable.