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STATUTORY RULES OF NORTHERN IRELAND

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**2015 No. 120**

**The Health and Social Care Pension Scheme  
Regulations (Northern Ireland) 2015**

**PART 5**

Member's benefits

CHAPTER 5

Ill-Health pension

**Entitlement to ill-health pension**

- 89.**—(1) An active member (M) is entitled to immediate payment of—
- (a) an ill-health pension at Tier 1 (a Tier 1 IHP) if the Tier 1 conditions are satisfied in relation to M;
  - (b) an ill-health pension at Tier 2 (a Tier 2 IHP) if the Tier 2 conditions are satisfied in relation to M.
- (2) The Tier 1 conditions are that—
- (a) M has not attained normal pension age;
  - (b) M has ceased to be employed in HSC employment;
  - (c) the scheme manager is satisfied that M suffers from physical or mental infirmity as a result of which M is permanently incapable of efficiently discharging the duties of M's employment;
  - (d) M's employment is terminated because of the physical or mental infirmity; and
  - (e) M claims payment of the pension.
- (3) The Tier 2 conditions are that—
- (a) the Tier 1 conditions are satisfied in relation to M; and
  - (b) the scheme manager is also satisfied that M suffers from physical or mental infirmity as a result of which M is permanently incapable of engaging in regular employment of like duration.
- (4) M is not entitled to payment of a pension under this regulation if M's HSC employment is terminated because—
- (a) M is dismissed (unless the scheme manager is satisfied that the dismissal was because of M's infirmity);
  - (b) M retires or resigns at a time when—
    - (i) M is subject to disciplinary proceedings; or
    - (ii) had been notified that such proceedings were being contemplated; or

- (c) M otherwise retires or resigns, unless—
  - (i) at the time of doing so M’s employing authority has notified the scheme manager in writing that M’s physical or mental infirmity is the reason for the termination; and
  - (ii) the scheme manager is satisfied that is the case.
- (5) In paragraph (3)(b), “regular employment of like duration” means—
  - (a) in the case of a practitioner or a non-GP provider, such employment as the scheme manager thinks would involve a similar level of engagement to M’s current pensionable service as a practitioner or non-GP provider;
  - (b) in any other case, where prior to ceasing HSC employment, M was employed—
    - (i) on a whole-time basis, regular employment on a whole time basis;
    - (ii) on a part-time basis, regular employment on a part-time basis, regard being had to the number of hours, half days and sessions M worked in the employment.
- (6) A pension under this regulation is payable for life: but see regulations 94 and 95.

**Member’s incapacity**

**90.**—(1) For the purpose of determining whether a member (M) is permanently incapable of discharging the duties of M’s employment efficiently the scheme manager must—

- (a) have regard to the factors in paragraph (2), no one of which is to be decisive; and
  - (b) disregard M’s personal preference for or against engaging in the employment.
- (2) The factors mentioned in paragraph (1)(a) are—
- (a) whether M has received appropriate medical treatment in respect of the infirmity;
  - (b) M’s mental capacity;
  - (c) M’s physical capacity;
  - (d) the type and period of rehabilitation it would be reasonable for M to undergo in respect of the infirmity, regardless of whether M has undergone the rehabilitation; and
  - (e) any other matter the scheme manager thinks appropriate.

(3) For the purpose of determining whether M is permanently incapable of engaging in regular employment of like duration as mentioned in paragraph (3)(b) of regulation 89, the scheme manager must—

- (a) have regard to the factors in paragraph (4), no one of which is to be decisive; and
  - (b) disregard the factors in paragraph (5).
- (4) The factors mentioned in paragraph (3)(a) are—
- (a) whether M has received appropriate medical treatment in respect of the infirmity;
  - (b) such reasonable employment as M would be capable of engaging in if due regard is given to—
    - (i) M’s mental capacity;
    - (ii) M’s physical capacity;
    - (iii) M’s previous training; and
    - (iv) M’s previous practical, professional and vocational experience,irrespective of whether or not such employment is available to M;
  - (c) the type and period of rehabilitation it would be reasonable for M to undergo in respect of the infirmity, regardless of whether M has undergone the rehabilitation, having regard to—

- (i) M's mental capacity; and
- (ii) M's physical capacity;
- (d) the type and period of training it would be reasonable for M to undergo in respect of the infirmity, regardless of whether M has undergone the training, having regard to—
  - (i) M's mental capacity;
  - (ii) M's physical capacity;
  - (iii) M's previous training; and
  - (iv) M's previous practical, professional and vocational experience; and
- (e) any other matter the scheme manager thinks appropriate.
- (5) The factors mentioned in paragraph (3)(b) are—
  - (a) M's personal preference for or against engaging in any particular employment; and
  - (b) the geographical location of M.
- (6) In this regulation—

“appropriate medical treatment” means such medical treatment as it would be normal to receive in respect of the infirmity, but does not include any treatment that the scheme manager considers—

  - (a) that it would be reasonable for M to refuse;
  - (b) would provide no benefit to restoring M's capacity for—
    - (i) discharging the duties of M's employment efficiently for the purposes of paragraph (2)(c) of regulation 89; or
    - (ii) engaging in regular employment of like duration for the purposes of paragraph (3)(b) of that regulation;
  - (c) that through no fault on the part of M, it is not possible for M to receive before M reaches normal pension age.

“permanently” means until M attains M's prospective normal pension age; and

“regular employment of like duration” has the same meaning as in regulation 89.

### **Annual rate of ill-health pension**

- 91.**—(1) The annual rate of Tier 1 IHP payable to a member (M) is found by—
- (a) taking the amount of full retirement earned pension specified in M's pensioner member's account;
  - (b) subtracting the conversion amount (if any) specified in that account in relation to that amount; and
  - (c) adding the amount of accrued additional pension (if any) calculated in accordance with regulation 69(3)(b) less the conversion amount (if any) specified in the account in relation to the additional pension.
- (2) The annual rate of Tier 2 IHP payable to M is the sum of—
- (a) the annual rate of Tier 1 IHP; and
  - (b) the Tier 2 addition.
- (3) The Tier 2 addition is found by applying the following formula—

$$\frac{A \times (C + E)}{C} - A$$

where—

A is the aggregate of the amounts of all of M's pensions from pensionable service on the day after M's last day of pensionable service (L+1)—

- (i) disregarding any additional pension; and
- (ii) including any increases applied by virtue of the Pensions (Increase) Act (Northern Ireland) 1971(1);

C is the total period of pensionable service counted in days over which the pensions aggregated to find A were accrued; and

E is the period equal to 50% of the length of the period starting on L+1 and ending on M's prospective normal pension age, and any part of a day must be taken to be a whole day.

### Re-assessment of entitlement

92.—(1) This regulation applies if—

- (a) in respect of a member (M) the scheme manager is satisfied as mentioned in regulation 89(2)(c); and
- (b) at the time M is awarded a pension the scheme manager gives M notice in writing as mentioned in paragraph (2).

(2) The notice is that M's case may be considered once within a period of three years beginning with the date of the award to determine whether, at the date of the consideration, M meets the condition in regulation 89(3)(b).

(3) M may apply to the scheme manager for a review of whether M subsequently meets the condition in regulation 89(3)(b) if—

- (a) M makes the application in writing not later than the relevant date;
- (b) the application is accompanied by further written medical evidence—
  - (i) relating to whether, at the date of the scheme manager's review, M has the physical or mental infirmity mentioned in regulation 89(3)(b); and
  - (ii) that relates to the same physical or mental infirmity as a result of which M met the condition in regulation 89(2)(c);
- (c) no previous application for a review has been made under this paragraph; and
- (d) M has not become entitled to a Tier 2 IHP in respect of any later service under regulation 96.

(4) The relevant date in paragraph (3)(a) is—

- (a) the last day of the period of three years after the giving of notice under paragraph (1)(b); or
- (b) if M engages in further HSC employment during that period, the first anniversary of the day on which the employment commences or, if sooner, the last day of that period.

(5) If, after considering the further medical evidence the scheme manager determines that M has the physical or mental infirmity for the purposes of regulation 89(3)(b), with effect from the date the determination is made, M—

- (a) ceases to be entitled to a Tier 1 IHP; and

(b) becomes entitled to a Tier 2 IHP.

(6) If a determination is made under paragraph (5), in calculating the Tier 2 addition pursuant to regulation 91(3), in the explanation of factor E for “period starting on L+1” substitute “period starting on day of the determination under regulation 92(5)”.

#### **Early retirement on ill-health (deferred members)**

**93.**—(1) A deferred member (DM) is entitled to immediate payment of a pension if—

- (a) DM is not in HSC employment;
- (b) DM has not attained normal pension age;
- (c) the scheme manager is satisfied that DM suffers from physical or mental infirmity as a result of which DM is permanently incapable of engaging in regular employment of like duration; and
- (d) DM claims payment of the pension.

(2) DM is entitled to immediate payment of a pension if—

- (a) DM is in HSC employment;
- (b) DM has not attained normal pension age;
- (c) the scheme manager is satisfied that DM—
  - (i) is not within paragraph (1)(b); but
  - (ii) suffers from physical or mental infirmity as a result of which DM is permanently incapable of discharging the duties of DM’s employment efficiently; and
- (d) DM has left the employment and claims payment of the pension.

(3) The amount of a pension payable under this regulation is found by applying regulation 91(1) as if—

- (a) a reference to M is a reference to DM; and
- (b) the pension under this regulation is a Tier 1 IHP.

(4) Regulation 90 applies for the purposes of this regulation as if—

- (a) a reference to M is a reference to DM; and
- (b) a reference to regular employment of like duration is a reference to such employment for the purposes of paragraph (1)(c).

#### **Effect of re-employment on Tier 2 IHP**

**94.**—(1) This regulation applies if a member (M)—

- (a) is entitled to a Tier 2 IHP under regulation 89 in respect of earlier service;
- (b) did not opt to exchange the pension for a lump sum in accordance with regulation 108; and
- (c) has re-entered employment (M’s further employment).

(2) M continues to be entitled to a Tier 2 IHP if M’s further employment—

- (a) is not HSC employment, and
- (b) is an excluded employment.

(3) M continues to be entitled to a Tier 2 IHP during the initial period if M’s further employment—

- (a) is HSC employment, and
- (b) is an excluded employment.

(4) M ceases to be entitled to a Tier 2 IHP and is treated as being entitled to a Tier 1 IHP if—

- (a) M's employment—
    - (i) is not HSC employment; and
    - (ii) is not an excluded employment, or
  - (b) during the initial period, M's employment—
    - (i) is HSC employment; and
    - (ii) is not an excluded employment; or
  - (c) after the initial period, M's employment is HSC employment.
- (5) As regards further employment in HSC employment—
- (a) paragraph (4)(c) applies from the first day on which payment of a Tier 1 IHP falls after the first anniversary of M's re-entry into HSC employment, whether or not that day is part of a continuous period of further HSC employment beginning with entry into that employment;
  - (b) M may not rejoin the scheme in respect of that employment or any other HSC employment until after the first anniversary of M's re-entry into HSC employment, whether or not that or any other HSC employment is an excluded employment.
- (6) For the purposes of this regulation—
- (a) an employment is an excluded employment at any time in a tax year, in relation to M, if M's earnings from the employment and any other employments are such that the lower earnings limit for the purposes of national insurance for that year is not exceeded;
  - (b) for the purposes of paragraph (4) an employment that has been an excluded employment in a tax year is not treated as ceasing to be such an employment until the first day following the end of the pension pay period for the Tier 2 IHP in which the limit described in subparagraph (a) is first exceeded, and
  - (c) "the initial period" means the period of 12 months beginning with the day on which M first enters an employment which results in this regulation applying.
- (7) M must—
- (a) notify the scheme manager if M is in HSC employment at the end of the initial period;
  - (b) notify the scheme manager if M's aggregate earnings for the purposes of national insurance from employments held in a tax year are such that the lower earnings limit for that year is exceeded; and
  - (c) provide the scheme manager or any other person specified by the scheme manager with such further information as the scheme manager specifies concerning any further employment.
- (8) In this regulation—
- (a) the lower earnings limit must be read in accordance with section 5 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(2);
  - (b) "tax year" means a year of assessment for income tax purposes.

### **Renewed entitlement to Tier 2 IHP**

- 95.**—(1) This regulation applies to a member (M) who—
- (a) has not attained normal pension age; and
  - (b) has ceased to be entitled to a Tier 2 IHP by virtue of regulation 94(4).

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(2) [1992 c.7 \(N.I.\)](#) Section 5 was substituted by section 73 of, and paragraph 1 of Schedule 9 to, the Welfare Reform and Pensions Act [1999 \(c.30\)](#) and amended by sections 7(1) and (3) and 27(2) of, and Part 4 of Schedule 7 to, the Pensions Act [2007 \(c.22\)](#) and sections 1(1) and 4(2) of, and Schedule 2 to, the National Insurance Contributions Act [2008 \(c.16\)](#)

- (2) M may apply to the scheme manager under this regulation to become entitled to a Tier 2 IHP if—
- (a) M is in further HSC employment and ceases to be employed at all during the initial period; or
  - (b) M is in further employment that is not HSC employment and ceases to be employed in that further employment within a period of one year beginning with the day on which the further employment ceased to be an excluded employment.
- (3) An application to which paragraph (2)(a) applies must—
- (a) state that M has ceased to be employed at all;
  - (b) be made within the initial period;
  - (c) be in writing and be accompanied by evidence from a registered medical practitioner that M has the physical or mental infirmity mentioned in regulation 89(3)(b).
- (4) An application to which paragraph (2)(b) applies must—
- (a) state that M has ceased to be employed at all;
  - (b) be made within the period of one year beginning with the day on which the employment ceased to be an excluded employment;
  - (c) be in writing and be accompanied by evidence from a registered medical practitioner that M has the physical or mental infirmity mentioned in regulation 89(3)(b).
- (5) If the scheme manager is satisfied that M has the physical or mental infirmity mentioned in regulation 89(3)(b), from the day following that on which M's last employment ceased—
- (a) M ceases to be treated as entitled to the Tier 1 IHP; and
  - (b) M becomes entitled to a Tier 2 IHP in respect of the earlier service.
- (6) Expressions used in this regulation and in regulation 94 have the same meaning as in that regulation.

### **Re-employed Tier 1 IHP members**

**96.**—(1) This regulation applies to a member (M) if M is entitled to a Tier 1 IHP in respect of M's earlier service.

- (2) M is entitled to the benefits in paragraph (3) if—
- (a) M became entitled to a Tier 1 IHP for the earlier service, and,
  - (b) on the termination of the later service, M becomes entitled to a Tier 1 IHP or a Tier 2 IHP.
- (3) The benefits are—
- (a) M's original Tier 1 IHP in respect of M's earlier service, and
  - (b) a Tier 1 IHP or a Tier 2 IHP (as the case may be) in respect of M's later service.
- (4) M is entitled to the benefits in paragraph (5) if—
- (a) M ceases to be entitled to a Tier 1 IHP in respect of the earlier service;
  - (b) M becomes entitled to a Tier 2 IHP in respect of the earlier service in accordance with regulation 92(5); and
  - (c) on the termination of the later service, M becomes entitled to a Tier 1 IHP or a Tier 2 IHP (as the case may be) in respect of the later service.
- (5) The benefits are—
- (a) a Tier 2 IHP paid in accordance with regulation 92 in respect of M's earlier service; and
  - (b) a Tier 1 IHP in respect of M's later service.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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