
STATUTORY RULES OF NORTHERN IRELAND

2015 No. 121

The Health and Personal Social Services (Superannuation Scheme, Additional Voluntary Contributions and Injury Benefits), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2015

PART 2

Amendment of the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995

New regulation 11A

7. After regulation 11 (Contributions by employing authorities) insert—

“Further contributions by employing authorities in respect of excessive pay increases

11A.—(1) This regulation applies where a member becomes entitled to a benefit in accordance with regulation 12, 13A, 14A, 14C, 16 or 49 and the Department determines that the member’s final year’s superannuable pay determined under regulation 3(6) exceeds the allowable amount.

(2) For the purposes of this regulation—

- (a) Year 1 is the year in which the member ceases to be in superannuable employment or dies, whichever occurs first;
- (b) Year 2 is the year immediately preceding Year 1;
- (c) Year 3 is the year immediately preceding Year 2.

(3) The allowable amount in respect of Year 1 is the lower of—

- (a) the member’s superannuable pay for Year 1, and
- (b) the allowable amount for Year 2 increased by the lower of—
 - (i) the aggregate of 4.5% and the percentage (if any) by which the consumer prices index for the February before the start of Year 1 is higher than it was for the previous February, and
 - (ii) the percentage increase in the member’s superannuable pay for Year 1 compared with Year 2.

(4) The allowable amount in respect of Year 2 is the lower of—

- (a) the member’s superannuable pay for Year 2, and
- (b) the allowable amount for Year 3 increased by the lower of—

- (i) the aggregate of 4.5% and the percentage (if any) by which the consumer prices index for the February before the start of Year 2 is higher than it was for the previous February, and
 - (ii) the percentage increase in the member's superannuable pay for Year 2 compared with Year 3.
- (5) The allowable amount in respect of Year 3 is the lower of—
 - (a) the member's superannuable pay for Year 3, and
 - (b) the member's superannuable pay for the year immediately preceding Year 3 increased by the aggregate of 4.5% and the percentage (if any) by which the consumer prices index for the February before the start of Year 3 is higher than it was for the previous February.
- (6) An excess employer contribution is determined as follows—
 - Step 1: find Amount A, which is the difference between the member's final year's superannuable pay and the allowable amount for that year
 - Step 2: calculate amount B, which is the amount of the pension payable to the member as if the member's final year's superannuable pay consisted only of Amount A increased by an amount equal to any increases that would be due under the Pensions (Increase) Act (Northern Ireland) 1971 on a pension of that amount
 - Step 3: calculate amount C, which is the amount of the lump sum payable to the member as if the member's final year's superannuable pay consisted only of amount A increased by an amount equal to any increases that would be due under the Pensions (Increase) Act (Northern Ireland) 1971 on a lump sum of that amount
 - Step 4: multiply Amount B by the applicable factor to find Amount D
 - Step 5: in the case of a member who is entitled to a benefit under regulation 49, multiply Amount C by the applicable factor to find Amount E
 - Step 6: add together—
 - (a) Amount D and Amount E, in the case of a member entitled to a benefit under regulation 49;
 - (b) Amount C and amount D, in all other cases,
to find the amount of the excess employer contribution.
- (7) Where the member's final year's superannuable pay exceeds the allowable amount by reason only of it including an amount in respect of a national award recommended by the Advisory Committee on Clinical Excellence Awards, the body responsible for the funding of that award must pay the excess employer contribution.
- (8) Paragraphs (9) and (10) apply where Amount A found under Step 1 of paragraph (6) includes both—
 - (a) an increased pay award from the member's employing authority, and
 - (b) a national award recommended by the Advisory Committee on Clinical Excellence Awards.
- (9) Where—
 - (a) the inclusion of both of the awards referred to in paragraph (8) in the member's superannuable pay in Year 3, Year 2 or, as the case may be, Year 1 means that pay is the member's final year's superannuable pay in accordance with regulation 3(6), but

- (b) the exclusion of the award referred to in paragraph (8)(b) from the member's superannuable pay in the year identified in sub-paragraph (a) would result in a different one of those years being so identified,

the Department, after consulting the Scheme Actuary, is to determine the proportion of the excess employer contribution determined in accordance with paragraph (6) to be paid by the member's employing authority and the body responsible for the funding of awards recommended by the Advisory Committee on Clinical Excellence Awards: the determination of the excess employer contribution is to take account of the award referred to in paragraph (8)(b).

(10) Where the inclusion of both of the awards referred to in paragraph (8) in the member's superannuable pay in Year 3, Year 2 or, as the case may be, Year 1 means that pay is the member's final year's superannuable pay in accordance with regulation 3(6), and the exclusion of the award referred to in paragraph (8)(b) would not result in a different one of those years being so identified, the amount of the excess employer contribution determined in accordance with paragraph (6) (and taking account of the amount referred to in paragraph (8)(b)) payable by the member's employing authority and the body responsible for the funding of awards recommended by the Advisory Committee on Clinical Excellence Awards is to be determined in accordance with paragraph (11).

(11) The amount of the excess employer contribution payable by the member's employing authority and the body responsible for the funding of awards recommended by the Advisory Committee on Clinical Excellence Awards is to be determined as follows—

Step 1: find Amount A in accordance with Step 1 of paragraph (6)

Step 2: find Amount F, which is the difference between—

- (a) the member's superannuable pay for the member's last year of superannuable employment as if that, and the member's superannuable pay in previous years, did not include the award referred to in paragraph (8)(b), and
- (b) the allowable amount for that year as if the member's superannuable pay for previous years had not included the award referred to in paragraph (8)(b)

Step 3: divide Amount F by Amount A and express the result as a percentage: that is the percentage of the excess employer contribution payable by the member's employing authority

Step 4: subtract the percentage found under Step 3 from 100% to find the percentage of the excess employer contribution payable by the body responsible for the funding of awards recommended by the Advisory Committee on Clinical Excellence Awards.

(12) The amount of an excess employer contribution must be paid to the Department within 1 month of the Department notifying the payer of its liability for that amount: but the Department may exceptionally specify that it is to be paid within some other period.

(13) Where a payer fails to pay all, or any part, of the excess employer contribution it is liable to pay, the Department is to give that payer a written notice ("a late payment notice") specifying all of the following—

- (a) the amount of the excess employer contribution that is unpaid;
- (b) the amount of any interest due on the amount referred to in paragraph (a);
- (c) the amount of the administration charge arising from the late payment of the excess employer contribution;
- (d) that the amounts in (a) to (c) are to be received by the Department within 1 month of the date of the notice.

(14) Where a payer fails to comply with a late payment notice, the Department may issue a further late payment notice amended to take account of that failure.

(15) Where a member has superannuable employment with more than one employing authority during the years referred to in paragraph (2), this regulation applies to each such employment separately.

(16) In the case of a member in part-time employment, this regulation is subject to regulation 78.

(17) For the purpose of this regulation an increase in superannuable pay during Year 3, Year 2 or, as the case may be, Year 1 is to be ignored where the Department is satisfied it arises as a result of—

- (a) the member taking up new employment with a new employer: provided the Department is satisfied that the employer in question is a new employer;
- (b) the ending of a salary sacrifice arrangement made before the 1 April 2015: for these purposes a salary sacrifice arrangement is one under which the member gives up the right to receive an amount of superannuable pay in return for the provision of a benefit in kind including, but not limited to, a benefit consisting of a motor car or other vehicle, meals care or vouchers.

(18) If the Department is not satisfied that the employer in question is a new employer, that employer is to be treated as an employing authority liable for an excess employer contribution in accordance with this regulation.

(19) An increase in a member's superannuable pay due to the acceptance of a transfer payment in the circumstances described in regulation 3(5) shall be ignored for the purposes of this regulation.

(20) In any particular case the Department may direct that, for the purposes of this regulation, "employing authority" includes one or more of a successor, transmittee or assignee of an employing authority's business or functions.

(21) For the purposes of this regulation—

- (a) a "payer" is the person who is liable to pay all or part of an excess employer contribution to the Department in accordance with this regulation;
- (b) the superannuable pay to be taken into account by the Department for a year or part of a year referred to in paragraph (2) will be derived from the superannuable pay for that period recorded in scheme year pension records provided to the Department in accordance with paragraph (5) of regulation 97;
- (c) where the member is in superannuable employment for less than 12 months superannuable pay for that year means—

(superannuable pay/number of days superannuable employment) × 365

- (d) no account is to be taken of increases in superannuable pay prior to 1st April 2015 or more than 1095 days prior to the member's last day of superannuable employment;
- (e) the applicable factor is to be determined from time to time by the Department having considered the advice of the Scheme Actuary and having obtained the consent of the Department of Finance and Personnel;
- (f) if the percentage increase in the consumer prices index referred to in paragraphs (3), (4) and (5) is less than zero, it will be regarded as a percentage increase of 0% for the purposes of this regulation;
- (g) a benefit referred to in paragraph (1) means—

- (i) in the case of regulation 13A, a benefit including the effects of any increase in superannuable service referred to in paragraph (4) of that regulation;
- (ii) in the case of regulation 16, a benefit including the effects of any reduction referred to in paragraph (2) of that regulation;
- (h) for the purposes of making any payment it is liable to pay under this regulation, the body responsible for the funding of awards recommended by the Advisory Committee on Clinical Excellence Awards shall have the same liabilities and duties as an employing authority under these Regulations in respect of that payment.”.