

## EXPLANATORY MEMORANDUM TO

### The Health and Social Care Pension Scheme (Transitional and Consequential Provisions) Regulations (Northern Ireland) 2015

S.R. 2015 No.122

#### 1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Health, Social Services and Public Safety (DHSSPS) to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Article 12 of and Schedule 3 to, the Superannuation (Northern Ireland) Order 1972 and sections 1, 3 and 18(5) of the Public Service Pensions Act (Northern Ireland) 2014 and is subject to the negative resolution procedure.

#### 2. Purpose

This rule implements transitional and consequential arrangements for members of the new 2015 HSC Pension Scheme for Northern Ireland (“the new scheme”) who have pension rights accrued in either the 1995 or 2008 Section of the HSC pension scheme (“the old scheme”). These arrangements make provision for the treatment and payment of old scheme benefits during or following a period of membership of the new scheme. They also include protections permitting members close to normal pension age to remain in the old scheme.

#### 3. Legislative Context

- 3.1. This rule forms part of a group of three linked rules that together implement reforms to pension scheme arrangements for health service workers. The other two linked rules are:
  - (a) The Health and Social Care Pension Scheme Regulations (Northern Ireland) 2015 (**S.R. 2015 No.120**) which establishes a new, reformed pension scheme, and
  - (b) 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 (**S.R. 2015 No.121**) implements reforms and makes technical clarifications to the old scheme including new contribution rates.
- 3.2. This rule implements transitional and consequential measures relating to the introduction of a reformed pension scheme for health service workers in Northern Ireland under the powers provided in the Public Service Pensions Act (Northern Ireland) 2014 (“the Act”) and the Superannuation(Northern Ireland) Order 1972
- 3.3. The Act was enacted in response to the recommendations of the Independent Public Service Pensions Commission (the Commission) chaired by Lord Hutton of Furness. The Commission published its final

report on 10 March 2011. This recommended a series of changes to public service pension arrangements in order to secure long term sustainability of the pension schemes together with a more balanced distribution of costs between scheme members and, via the employer, the taxpayer.

- 3.4. The old scheme is divided into two Sections, each providing entitlement to pension and other benefits calculated in accordance with the provisions of that particular Section. The 1995 Section is established by the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995 (S.R. 1995 No.95); the 2008 Section by the Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008 (S.R. 2008 No.256).

#### **4. Policy Background – What is being done and why**

- 4.1. The transitional and consequential arrangements take the form of four broad areas. First, to implement protections permitting members close to normal pension age to remain in the old scheme. Second, for members without such protection, to provide a smooth transfer between old and new schemes such that the qualifying service, notices and earnings under the old scheme have effect for the corresponding purposes of the new scheme. Third, to implement measures that protect the value and functionality of pension benefits a member has built up in the old scheme before moving to the new scheme. Fourth, to ensure that where appropriate the rules and entitlements of the new scheme apply in relation to old scheme benefits when certain events occur – for instance when a member dies in service or claims ill-health retirement benefits.
- 4.2. Specifically, Chapter 1 of Part 2 and Schedule 1 provide for the circumstances in which individuals who are in receipt of a pension from the old scheme may join the new scheme. Chapter 2 allows relevant options, nominations, notices & declarations made in respect of old scheme benefits to have equal application regarding new scheme benefits and membership.
- 4.3. Chapter 3 is concerned with transitional arrangements regarding the treatment of service and various breaks in service and absences during which a member may be moved across to the new scheme. Provision is made here to allow a member to be treated as though active in the old scheme whilst simultaneously remaining active in the new scheme and for qualifying service in the old scheme to count as such in the new scheme (and vice versa).
- 4.4. Where a member is moved to the new scheme during a period of authorised absence from employment of up to 24 months, Chapter 3 also provides for the period of absence under the old scheme to be taken into account when determining how long the absence period may be under the new scheme. In addition, provision is also made so that in certain circumstances members may repay refunded contributions in the old scheme following a break in service after which they return to the new scheme.
- 4.5. Chapter 4 establishes the method for determining the rate of member contributions payable under the new scheme for active members who are moved across to the new scheme. Pensionable pay or earnings for purposes

relating to the old scheme, such as calculation of benefits, would be determined in accordance with the provisions of that scheme.

- 4.6. Schedule 7 of the Act provides a facility for the old scheme retirement pension to be calculated using earnings at retirement or upon leaving the new scheme, thereby enabling those pension rights to be honoured in full (“the final salary link”). Chapter 4 provides that this facility may only be exercised once and that any subsequent period of scheme membership will not lead to a recalculation of the old scheme pension that is in payment. Provision is also made to apply an equivalent of the final salary link to scheme members who are practitioners with old scheme benefits built up partially on a career average basis.
- 4.7. Chapter 5 provides for the continuation of additional voluntary contribution contracts to purchase supplementary old scheme benefits during active membership of the new scheme. Where the benefits purchased relate to the 1995 section of the old scheme, the member can choose to claim these upon reaching normal pension age without leaving pensionable service in the new scheme. Chapter 6 allows the portion of a bulk transfer payment that relates to a member’s rights in a final salary pension scheme to be received into the old scheme.
- 4.8. Chapter 7 makes arrangements relating to the payment of old scheme retirement benefits. Provision is made to extend eligibility to participate in the old scheme whilst an application for ill-health retirement and any appeal process are in train. Where a member of the new scheme claims ill-health retirement, any pension resulting from service under the old scheme becomes payable through and in accordance with the terms of the new scheme. Where a member retires from the new scheme on a partial or premature basis, provision is made for the retirement event to also have effect in relation to the member’s old scheme benefits. Equally, any old scheme pension in payment will be taken into account alongside a new scheme pension for the purposes of determining whether those pensions are abated upon re-employment.
- 4.9. Chapter 8 establishes that where a new scheme member dies, the benefit entitlement derived from any old scheme service is calculated in accordance with the rules of the new scheme rather than the old scheme
- 4.10. Chapter 9 provides a further option for members of the 1995 Section of the HSC Pension Scheme to convert that period of membership to membership of the 2008 Section. Benefits are built up more quickly under the 2008 Section but with a later retirement age of 65. Members of the old scheme were first given this option before development of the reformed pension scheme. Those members who chose not to convert membership and are eligible to join the new scheme will therefore have a second opportunity to do so.
- 4.11. Part 3 and Schedule 2 amend the old scheme to implement a number of transitional protections.
- 4.12. Section 18(1) of the Act prevents an individual building up benefits in the old scheme beyond 31 March 2015. However scheme regulations are permitted by section 18(5) to make limited exceptions. The Proposed Final

Agreement (PFA) provided that members of the old scheme who on 1 April 2012 were less than 10 years from their normal pension age could exceptionally continue that membership (“full protection”).

- 4.13. A further tapering protection is provided to mitigate the ‘cliff edge’ effect for members who as at 1 April 2012 are more than 10 but less than 13 years and 5 months away from normal pension age. Tapered protection delays the point at which a member moves from the old to the new scheme. Members who do not qualify for protection are moved to the new scheme on 1 April 2015. The same protection principles apply to special class members of the 1995 section where the potential to qualify for a lower normal pension age is taken into account. Arrangements are made for members who return from a break in service of less than five years to retain protection and resume membership of the old scheme.
- 4.14. Provision is made so that members of the new scheme who have lost entitlement to a final salary link in respect of old scheme benefits or the equivalent for practitioners with old scheme benefits built up partially on a career average basis, are able to claim those old service benefits without needing to leave the employment that entitles membership of the new scheme.
- 4.15. The protection principles are also applied to transfers received from other public service pension schemes including corresponding HSC pension schemes in England & Wales and Scotland. In addition, former members of the scheme to whom the Treasury’s ‘Fair Deal’ policy applies may be admitted to the old scheme if that person would have been eligible for protection after 1 April 2015 had their employment not been transferred out of the public sector. New provisions are inserted that give a member of the new scheme the option to transfer the cash equivalent value of their deferred old scheme benefits into the new scheme following a break in service of five years or more. The option is only exercisable at the first opportunity that it arises.
- 4.16. Schedule 2 also makes arrangements dealing with the transfer of final salary benefits in the old scheme from the corresponding final salary HSC pension schemes in England & Wales and Scotland, and from other final salary public service schemes via the Public Sector Transfer Arrangements.
- 4.17. Finally, new provisions are inserted that require each member to be sent a ‘benefit information statement’ annually, in accordance with The Public Service Pensions Act (Northern Ireland) 2014.
- 4.18. The statement will describe the level of pension scheme benefits that the member has so far built up.

### **Consolidation**

- 4.19. The rule makes freestanding provision save for Part 3 which amends both the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995 and the Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008. The Department has previously advised that work to consolidate those regulations would be undertaken after implementation of these long term reforms to HSC Pension Scheme arrangements, of which this rule forms part.

## **5. Consultation**

5.1. The Department consulted on the rule from 23 December 2014 to 6 February 2015. The Department held extensive discussions with trades unions through which the detailed elements of the new scheme and transitional arrangements were discussed in detail.

A collective response was received from HSC Staff Side Representatives.. The few comments received in relation to this rule raised technical points and sought clarification of the transitional arrangements. The Department has published a document summarising and replying to the responses received in relation to this and the other two rules referred to in paragraph 3.1.

## **6. Guidance**

6.1. Details of the new pension scheme, transitional arrangements and contribution rates are available on the HSC Pension Service's (the scheme administrator) website. This will continue to be updated with new material and resources as they are developed. A staff leaflet will also be issued to all members of the current scheme during February and March 2015. This will provide an overview of the new arrangements.

6.2. An extensive communication campaign targeting employers is underway, providing supportive resources in the form of Frequently Asked Questions, employer presentations and an e-learning package. Employer material is promoted via regular electronic Technical Newsletters.

## **7. Equality Impact**

7.1. 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**

8.1. 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**

9.1. None.

## **10. Section 24 of the Northern Ireland Act 1998**

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

## **11. EU Implications**

11.1. Not appropriate

## **12. Parity or Replicatory Measure**

12.1. The amendments proposed mirror provisions introduced in England, Wales and Scotland.

## **13. Additional Information**

13.1. Not applicable.