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STATUTORY RULES OF NORTHERN IRELAND

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**2015 No. 122**

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

PART 2

Transitional provisions

CHAPTER 7

Retirement benefits

**Ill health benefits: continuity of existing applications**

27.—(1) This regulation [<sup>F1</sup>, except paragraph (1A) and paragraph (2) to the extent that it relates to paragraph (1A),] applies [<sup>F2</sup>during the application period] to a member—

- (a) who, on [<sup>F3</sup>the transition date—]
  - (i) is prevented from contributing to or accruing further [<sup>F4</sup>pensionable] service in the 1995 Section or being an active member of the 2008 [<sup>F5</sup>Section; and]
    - <sup>F6</sup>(aa) .....
    - <sup>F7</sup>(bb) .....
  - (ii) becomes eligible to join the new scheme <sup>F8</sup> ...;
- (b) who submitted Form AW33 (or such other form as the Department accepted) together with supporting medical evidence [<sup>F9</sup>(if) not included in the form) for the purposes of [<sup>F10</sup>1995 regulation 13A (Ill health pension on early retirement), 2008 regulation 52 or 2008 regulation 182 (Early retirement on ill-health: active members and non-contributing members)] before the transition date;
- (c) whose Form AW33 [<sup>F11</sup>(or such other form as the Department accepted)] and supporting medical evidence [<sup>F12</sup>(“the member’s application for ill-health pension”)] was received by the Department before the transition date; and
- (d) whose ill-health pension has not become payable under the 1995 Section or the 2008 Section before the transition date.

[<sup>F13</sup>(1A) This regulation, except paragraph (1) and paragraph (2) to the extent that it relates to paragraph (1), applies during the application period to a member—

- (a) who has remediable service in the legacy scheme up to and including 31st March 2022—
  - (i) that is pensionable service under that scheme by virtue of section 2(1) of PSPJOA 2022;
  - (ii) in respect of which an immediate choice election by virtue of regulation 9 of the Health and Social Care Pension Schemes (Remediable Service) Regulations

**Changes to legislation:** There are currently no known outstanding effects for the The Health and Social Care Pension Scheme (Transitional and Consequential Provisions) Regulations (Northern Ireland) 2015, Section 27. (See end of Document for details)

(Northern Ireland) 2023 (election for 2015 scheme benefits: immediate choice members and deceased members) has not been made;

- (b) who on the transition date—
  - (i) was prevented from contributing to or accruing further pensionable service in the 1995 Section or being an active member of the 2008 Section; and
  - (ii) was eligible to be an active member of the new scheme;
- (c) who submitted Form AW33E (or such other form as the Department accepted) together with supporting medical evidence (if not included in the form) for the purposes of 2015 regulation 89 before the transition date;
- (d) whose Form AW33E (or such other form as the Department accepted) and supporting medical evidence (“the member’s application for ill-health pension”) was received by the Department before the transition date; and
- (e) whose ill-health pension had not become payable under the new scheme before the transition date.]

(2) <sup>F14</sup>For the purposes of <sup>F15</sup>paragraphs (1) and (1A)] , “the application period” in relation to a member is the period which ends with the day on which—]

- (a) the member withdraws the application for ill-health pension; or
- (b) the Department determines that there is no entitlement to <sup>F16</sup>an] ill-health pension <sup>F17</sup>in respect of that application] and that determination has become final and binding.

(3) <sup>F18</sup>For the purposes of paragraph (2)(b), a determination becomes final and binding when—]

- (a) the determination may not be the subject of further challenge by the member—
  - (i) pursuant to dispute resolution arrangements made and implemented under Article 50 of the Pensions (Northern Ireland) Order 1995<sup>(1)</sup>;
  - (ii) by way of a complaint to the Pensions Ombudsman pursuant to Part X of the Pension Schemes (Northern Ireland) Act 1993<sup>(2)</sup>; or
  - <sup>F19</sup>(iii) by proceedings before a court or tribunal;] or
- (b) <sup>F20</sup>... the member has indicated in writing that—
  - (i) the application for ill-health pension is withdrawn; or
  - (ii) the determination is accepted by the member as being final and binding and any right to further challenge is waived.

<sup>F21</sup>(4) .....

<sup>F21</sup>(5) .....

<sup>F21</sup>(6) .....

<sup>F22</sup>(7) Where this regulation applies—

- (a) the member’s application for ill-health pension is considered in accordance with paragraph (8) or (9) (whichever is relevant); and
- (b) the member’s benefits, if any, are paid in accordance with paragraph (10) and the further provisions referred to in that paragraph (whichever are relevant).

(8) If the member was in pensionable employment in the 1995 Section on 31st March 2022, the member’s application for ill-health pension is considered—

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(1) [S.I. 1995/3213 \(N.I. 22\)](#); Article 50 was substituted by Article 250(1) of the Pensions (Northern Ireland) Order 2005 ([S.I. 2005/255 \(N.I. 1\)](#))

(2) [1993 c.49](#)

- (a) as an application for ill-health pension for the purposes of 2015 regulation 89 (Entitlement to ill-health pension); and
  - (b) as if it were also an application for ill-health pension for the purposes of 1995 regulation 13A.
- (9) If the member was an active member of the 2008 Section on 31st March 2022, the member's application for ill-health pension is considered—
- (a) as an application for ill-health pension for the purposes of 2015 regulation 89; and
  - (b) as if it were also an application for ill-health pension for the purposes of 2008 regulation 52 or 2008 regulation 182.
- (10) The member's benefits will be paid in accordance with—
- (a) paragraph (13) if, as a result of consideration under paragraph (8), the member satisfies the tier 1 condition or the tier 2 condition for the purposes of paragraph (2)(b)(i) or (ii) of 1995 regulation 13A (together “the 1995 regulation 13A ill-health conditions”) but does not satisfy the Tier 1 condition or the Tier 2 condition for the purposes of paragraph (2)(c) or (3)(b) of 2015 regulation 89 (together “the 2015 regulation 89 ill-health conditions”);
  - (b) paragraph (14) if, as a result of consideration under paragraph (9), the member satisfies the condition at paragraph (2)(a) or (3)(a) of 2008 regulation 52 or 2008 regulation 182 (together “the 2008 ill-health conditions”) but does not satisfy either of the 2015 regulation 89 ill-health conditions;
  - (c) paragraph (16) if—
    - (i) as a result of—
      - (aa) consideration under paragraph (8), the member satisfies one or both of the 1995 regulation 13A ill-health conditions and one or both of the 2015 regulation 89 ill-health conditions; or
      - (bb) consideration under paragraph (9), the member satisfies one or both of the 2008 ill-health conditions and one or both of the 2015 regulation 89 ill-health conditions; and
    - (ii) the annual rate of ill-health pension to which the member would have been entitled under 1995 regulation 13A, 2008 regulation 52 or 2008 regulation 182 if the member had retired from pensionable employment or ceased HSC employment on 31st March 2022 is, subject to paragraphs (11) and (12), greater than the annual rate of ill-health pension to which the member is entitled under paragraph (3)(a) or (4) of regulation 28 (Ill health benefits: members below old scheme normal pension age) as at the date the member ceased HSC employment for the purposes of the 2015 Regulations (“the pension comparison calculation”);
  - (d) regulation 28(3) or (4) if—
    - (i) sub-paragraph (c)(i)(aa) or (bb) applies to the member; and
    - (ii) the annual rate of ill-health pension payable to the member under regulation 28(3) (a) or (4) is greater than the annual rate of ill-health pension to which the member would have been entitled under 1995 regulation 13A, 2008 regulation 52 or 2008 regulation 182, as determined in accordance with the pension comparison calculation, if the member had retired from pensionable employment or ceased HSC employment on 31st March 2022.
- (11) If the member was in pensionable employment in the 1995 Section on 31st March 2022, for the purposes of the pension comparison calculation, the pensions (“P”) under—
- (a) 1995 regulation 13A; and
  - (b) regulation 28(3)(a)(ii),

are each increased by the amount found by applying the formula—

$3 \times P/12$

(12) If the member was an active member of the 2008 Section on 31st March 2022 who is entitled to a lump sum (“LS”) under regulation 28(3)(b)(ii) or (iii), for the purposes of the pension comparison calculation, the pensions under—

- (a) 2008 regulation 52 or 2008 regulation 182; and
- (b) regulation 28(3)(a)(ii),

are each increased by the amount found by applying the formula—

$LS/12$

(13) Where this paragraph applies to the member (see paragraph (10)(a)), the annual rate of ill-health pension and the lump sum payable from the new scheme is equal to—

- (a) either—
  - (i) if the member satisfies the tier 1 condition in paragraph (2)(b)(i) of 1995 regulation 13A, the tier 1 ill-health pension the member would have been entitled to under that regulation if the member had retired from pensionable employment on 31st March 2022; or
  - (ii) if the member satisfies the tier 2 condition in paragraph (2)(b)(ii) of 1995 regulation 13A, the tier 2 ill-health pension the member would have been entitled to under that regulation if the member had retired from pensionable employment on 31st March 2022; and
- (b) the lump sum to which the member would have been entitled under regulation 17 (Lump sum on retirement) of the 1995 Regulations as a consequence of becoming entitled to the payment of one of those pensions.

(14) Where this paragraph applies to the member (see paragraph (10)(b)), the annual rate of ill-health pension and the lump sum payable from the new scheme is equal to—

- (a) if the member satisfies the tier 1 condition in paragraph (2)(a) of 2008 regulation 52 or 2008 regulation 182, the tier 1 ill-health pension the member would have been entitled to under whichever of those regulations applies to the member if the member had ceased to be employed in HSC employment on 31st March 2022; or
- (b) if the member satisfies the tier 2 condition in paragraph (3)(a) of 2008 regulation 52 or 2008 regulation 182, the tier 2 ill-health pension the member would have been entitled to under whichever of those regulations applies to the member if the member had ceased to be employed in HSC employment on 31st March 2022.

(15) On the payment of a pension to a member in accordance with paragraph (13) or (14), all rights in respect of that member under the old scheme are extinguished.

(16) Where this paragraph applies to the member (see paragraph (10)(c))—

- (a) the annual rate of ill-health pension payable from the new scheme under regulation 28 is increased by an amount equal to the difference between the annual rate of the member’s ill-health pension under 1995 regulation 13A, 2008 regulation 52 or 2008 regulation 182 and the annual rate of the member’s ill-health pension under regulation 28(3)(a) or (4), determined in accordance with the pension comparison calculation; and
- (b) that increase is applied to the member’s ill-health pension under regulation 28 after the calculation of the Tier 2 addition (if any) in accordance with paragraph (4)(b) of that regulation.

(17) Paragraphs (18) and (19) apply if a member receiving an ill-health pension under paragraph (10)(a) or (b) dies (“the deceased member”).

(18) If a surviving adult dependant of the deceased member is entitled to a pension in accordance with regulation 115 (Amount of pension: survivor of pensioner member) of the 2015 Regulations, the annual rate of the adult survivor pension payable under paragraph (4)(a) of that regulation is—

- (a) 50% of the pension to which the member was entitled at the date of death (disregarding any additional pension) if the member was receiving a pension under paragraph (13) of this regulation on that date; and
- (b) 37.5% of the pension to which the member was entitled at the date of death (disregarding any additional pension) if the member was receiving a pension under paragraph (14) of this regulation on that date.

(19) If a child's pension becomes payable in respect of an eligible child of the deceased member in accordance with regulation 123 (Amount of child pension: deceased pensioner member) of the 2015 Regulations, the basic death pension for the purposes of paragraph (3)(a) of that regulation is—

- (a) 100% of the pension to which the member was entitled at the date of death (disregarding any additional pension) if the member was receiving a pension under paragraph (13) of this regulation on that date; and
- (b) 75% of the pension to which the member was entitled at the date of death (disregarding any additional pension) if the member was receiving a pension under paragraph (14) of this regulation on that date.

(20) For the purposes of the 2015 Regulations—

- (a) a member's pension entitlement under the new scheme that is equivalent to entitlement to one of the following pensions is treated as if it were entitlement to an ill-health pension at Tier 1 under 2015 regulation 89—
  - (i) a tier 1 pension under 1995 regulation 13A referred to in paragraph (13)(a)(i);
  - (ii) a tier 1 pension under 2008 regulation 52 or 2008 regulation 182 referred to in paragraph (14)(a);
- (b) a member's pension entitlement under the new scheme that is equivalent to entitlement to one of the following pensions is treated as if it were entitlement to an ill-health pension at Tier 2 under 2015 regulation 89—
  - (i) a tier 2 pension under 1995 regulation 13A referred to in paragraph (13)(a)(ii);
  - (ii) a tier 2 pension under 2008 regulation 52 or 2008 regulation 182 referred to in paragraph (14)(b);
  - (iii) a pension under regulation 28 that is increased in accordance with paragraph (16) by an amount equal to the difference between the annual rate of the ill-health pension payable under regulation 28(3)(a) and the annual rate of the member's tier 2 ill-health pension under 1995 regulation 13A, 2008 regulation 52 or 2008 regulation 182 as determined in accordance with the pension comparison calculation.

(21) In this regulation—

- “1995 regulation 13A” means regulation 13A of the 1995 Regulations;
- “1995 regulation 13A ill-health conditions” has the meaning given in paragraph (10)(a);
- “2008 regulation 52” means regulation 52 of the 2008 Regulations;
- “2008 regulation 182” means regulation 182 of the 2008 Regulations;
- “2015 regulation 89” means regulation 89 of the 2015 Regulations;
- “the 2008 ill-health conditions” has the meaning given in paragraph (10)(b);
- “the 2015 regulation 89 ill-health conditions” has the meaning given in paragraph (10)(a);
- “the deceased member” has the meaning given in paragraph (17);

“the member’s application for ill-health pension” has the meaning given in paragraph (1)(c) [<sup>F23</sup>or (1A)(d) (whichever is relevant)] ;

“the pension comparison calculation” has the meaning given in paragraph (10)(c)(ii) [<sup>F24</sup>];]  
 [<sup>F25</sup>“ the transition date ” means 1st April 2022.]

- F1** Words in reg. 27(1) inserted (1.10.2023) by The Health and Social Care Pension Schemes (Remediable Service) Regulations (Northern Ireland) 2023 (S.R. 2023/132), reg. 1, **Sch. para. 3(2)(a)**
- F2** Words in reg. 27(1) inserted (1.4.2022) by The Health and Social Care Pension Schemes (Amendment) Regulations (Northern Ireland) 2022 (S.R. 2022/156), regs. 1(2), **5(6)(a)(i)**
- F3** Words in reg. 27(1)(a) substituted (1.10.2023) by The Health and Social Care Pension Schemes (Remediable Service) Regulations (Northern Ireland) 2023 (S.R. 2023/132), reg. 1, **Sch. para. 3(2)(b)**
- F4** Word in reg. 27(1)(a)(i) inserted (1.4.2022) by The Health and Social Care Pension Schemes (Amendment) Regulations (Northern Ireland) 2022 (S.R. 2022/156), regs. 1(2), **5(6)(a)(ii)(bb)**
- F5** Words in reg. 27(1)(a)(i) substituted (1.4.2022) by The Health and Social Care Pension Schemes (Amendment) Regulations (Northern Ireland) 2022 (S.R. 2022/156), regs. 1(2), **5(6)(a)(ii)(bb)**
- F6** Reg. 27(1)(a)(i)(aa) omitted (1.4.2022) by virtue of The Health and Social Care Pension Schemes (Amendment) Regulations (Northern Ireland) 2022 (S.R. 2022/156), regs. 1(2), **5(6)(a)(ii)(bb)**
- F7** Reg. 27(1)(a)(i)(bb) omitted (1.4.2022) by virtue of The Health and Social Care Pension Schemes (Amendment) Regulations (Northern Ireland) 2022 (S.R. 2022/156), regs. 1(2), **5(6)(a)(ii)(bb)**
- F8** Words in reg. 27(1)(a)(ii) omitted (1.4.2022) by virtue of The Health and Social Care Pension Schemes (Amendment) Regulations (Northern Ireland) 2022 (S.R. 2022/156), regs. 1(2), **5(6)(a)(ii)(cc)**
- F9** Word in reg. 27(1)(b) substituted (1.4.2022) by The Health and Social Care Pension Schemes (Amendment) Regulations (Northern Ireland) 2022 (S.R. 2022/156), regs. 1(2), **5(6)(a)(iii)(aa)**
- F10** Words in reg. 27(1)(b) substituted (1.4.2022) by The Health and Social Care Pension Schemes (Amendment) Regulations (Northern Ireland) 2022 (S.R. 2022/156), regs. 1(2), **5(6)(a)(iii)(bb)**
- F11** Words in reg. 27(1)(c) inserted (1.4.2022) by The Health and Social Care Pension Schemes (Amendment) Regulations (Northern Ireland) 2022 (S.R. 2022/156), regs. 1(2), **5(6)(a)(iv)(aa)**
- F12** Words in reg. 27(1)(c) inserted (1.4.2022) by The Health and Social Care Pension Schemes (Amendment) Regulations (Northern Ireland) 2022 (S.R. 2022/156), regs. 1(2), **5(6)(a)(iv)(bb)**
- F13** Reg. 27(1A) inserted (1.10.2023) by The Health and Social Care Pension Schemes (Remediable Service) Regulations (Northern Ireland) 2023 (S.R. 2023/132), reg. 1, **Sch. para. 3(3)**
- F14** Words in reg. 27(2) substituted (1.4.2022) by The Health and Social Care Pension Schemes (Amendment) Regulations (Northern Ireland) 2022 (S.R. 2022/156), regs. 1(2), **5(6)(b)(i)**
- F15** Words in reg. 27(2) substituted (1.10.2023) by The Health and Social Care Pension Schemes (Remediable Service) Regulations (Northern Ireland) 2023 (S.R. 2023/132), reg. 1, **Sch. para. 3(4)**
- F16** Word in reg. 27(2)(b) inserted (1.4.2022) by The Health and Social Care Pension Schemes (Amendment) Regulations (Northern Ireland) 2022 (S.R. 2022/156), regs. 1(2), **5(6)(b)(ii)(aa)**
- F17** Words in reg. 27(2)(b) substituted (1.4.2022) by The Health and Social Care Pension Schemes (Amendment) Regulations (Northern Ireland) 2022 (S.R. 2022/156), regs. 1(2), **5(6)(b)(ii)(bb)**
- F18** Words in reg. 27(3) substituted (1.4.2022) by The Health and Social Care Pension Schemes (Amendment) Regulations (Northern Ireland) 2022 (S.R. 2022/156), regs. 1(2), **5(6)(c)(i)**
- F19** Reg. 27(3)(a)(iii) substituted (1.4.2022) by The Health and Social Care Pension Schemes (Amendment) Regulations (Northern Ireland) 2022 (S.R. 2022/156), regs. 1(2), **5(6)(c)(ii)**
- F20** Word in reg. 27(3)(b) omitted (1.4.2022) by virtue of The Health and Social Care Pension Schemes (Amendment) Regulations (Northern Ireland) 2022 (S.R. 2022/156), regs. 1(2), **5(6)(c)(iii)**
- F21** Reg. 27(4)-(6) omitted (1.4.2022) by virtue of The Health and Social Care Pension Schemes (Amendment) Regulations (Northern Ireland) 2022 (S.R. 2022/156), regs. 1(2), **5(6)(d)**
- F22** Reg. 27(7)-(21) inserted (1.4.2022) by The Health and Social Care Pension Schemes (Amendment) Regulations (Northern Ireland) 2022 (S.R. 2022/156), regs. 1(2), **5(6)(e)**
- F23** Words in reg. 27(21) inserted (1.10.2023) by The Health and Social Care Pension Schemes (Remediable Service) Regulations (Northern Ireland) 2023 (S.R. 2023/132), reg. 1, **Sch. para. 3(5)(a)**

- F24** Word in reg. 27(21) substituted (1.10.2023) by The Health and Social Care Pension Schemes (Remediable Service) Regulations (Northern Ireland) 2023 (S.R. 2023/132), reg. 1, **Sch. para. 3(5)(b)**
- F25** Words in reg. 27(21) inserted (1.10.2023) by The Health and Social Care Pension Schemes (Remediable Service) Regulations (Northern Ireland) 2023 (S.R. 2023/132), reg. 1, **Sch. para. 3(5)(c)**

**Commencement Information**

- I1** Reg. 27 in operation at 1.4.2015, see **reg. 1(1)**

**Changes to legislation:**

There are currently no known outstanding effects for the The Health and Social Care Pension Scheme (Transitional and Consequential Provisions) Regulations (Northern Ireland) 2015, Section 27.