

2005 No. 155

HEALTH AND PERSONAL SOCIAL SERVICES

**The Health and Personal Social Services (Superannuation)
(Amendment) Regulations (Northern Ireland) 2005**

Made - - - - - *23rd March 2005*

Coming into operation *9th May 2005*

The Department of Health, Social Services and Public Safety^(a), in exercise of the powers conferred upon it by Articles 12 and 14 of, and Schedule 3 to, the Superannuation (Northern Ireland) Order 1972^(b) and of all other powers enabling it in that behalf, after consulting with such representatives of persons likely to be affected by these Regulations as appear to it to be appropriate as required by Article 12(4) of that Order, and with the consent of the Department of Finance and Personnel, hereby makes the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Health and Personal Social Services (Superannuation) (Amendment) Regulations (Northern Ireland) 2005 and shall come into operation on 9th May 2005.

(2) These Regulations shall have effect as from 1st April 2003 except in the case of regulation 7 which shall have effect as from 6th April 2003.

Interpretation

2. In these Regulations “the principal Regulations” means the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995^(c).

Amendment of regulation 3(3) of the principal Regulations (Meaning of “superannuable pay”)

3. For regulation 3(3) of the principal Regulations (meaning of “superannuable pay”), there shall be substituted the following paragraph –

“(3) In the case of a member who –

(a) joined the scheme before 1st June 1989 and has a break in superannuable employment on or after that date –

(i) any superannuable pay earned preceding the break in that employment in excess of the permitted maximum will not be ignored;

(ii) any superannuable pay earned after the break in that employment in excess of the permitted maximum will be ignored;

(a) See S.I. 1999/283 (N.I.): Article 3(6)

(b) S.I. 1972/1073 (N.I. 10) as amended by S.I. 1990/1509 (N.I. 13)

(c) S.R. 1995 No. 95 as amended by S.R. 1997 Nos. 217 and 390; S.R. 1998 No. 299; S.R. 1999 No. 293, S.R. 2002 No. 69 and S.R. 2004 Nos. 103 and 104

- (b) joined the scheme before 1st June 1989 and to whom sub-paragraph (a) does not apply, superannuable pay in excess of the permitted maximum will not be ignored.”.

Amendment of regulation 22 of the principal Regulations (Payment of lump sum)

4. In regulation 22 of the principal Regulations (Payment of lump sum)(a) –
- (1) In sub-paragraph (3)(a) –
 - (a) after the word “notice” in the first place where it occurs, there shall be inserted the words “in writing”;
 - (b) the words “in accordance with paragraph (3B)” shall be omitted.
 - (2) After sub-paragraph (3)(a) there shall be inserted the following sub-paragraph –

“(aa) the widow or widower has been convicted of an offence specified in regulation 93 (Loss of rights to benefits) and the Department has directed as a consequence of that conviction, the widow’s or widower’s right to a payment in respect of the member’s death shall be forfeited; or,.
 - (3) In paragraph (3A), the words “and (3C)” shall be omitted.
 - (4) After sub-paragraph (3A)(a) there shall be inserted the following sub-paragraph –

“(aa) that person has been convicted of an offence specified in regulation 93 (Loss of rights to benefits) and the Department has directed as a consequence of that conviction, that that person’s right to a payment in respect of the member’s death shall be forfeited; or”.

Amendment of regulation 49 of the principal Regulations (Preserved pension)

5. In regulation 49 of the principal Regulations (Preserved pension) –
- (1) At the beginning of paragraph (4), there shall be inserted the words “Except in a case to which paragraph (4A) applies,”;
 - (2) After paragraph (4) there shall be inserted the following paragraphs –

“(4A) Paragraph (4) may not apply where the HPSS employment which the member is in when he reaches age 60 is employment into which he has been transferred as a result of an undertaking to the employer.

(4B) Where the member receives a pension under paragraph (1) while being in the new employment to which paragraph (4A) applies –

 - (a) his benefits in respect of any superannuable service in that new employment shall be calculated without any regard to any superannuable service in any earlier employment;
 - (b) for the purposes of regulation 4 (Meaning of “superannuable service”) and regulation 10(3) and (4) (Contributions by members), his service in the earlier employment and in the new employment shall be aggregated.”.

Amendment of regulation 52 of the principal Regulations (Early leavers returning to superannuable employment)

6. For regulation 52(8) of the principal Regulations (Early leavers returning to superannuable employment) there shall be substituted the following paragraph –
- “(8) If a member’s superannuable employment before and after a break in superannuable employment (the “pre-break period” and the “post-break period”) is treated separately, the member’s benefits in respect of such employment in the pre-break period and the post-break period shall be calculated –
- (a) separately; and
 - (b) by reference to –

(a) Regulation 22 was amended by S.R. 2002 No. 69

- (i) the member's superannuable service comprising that pre-break period or post-break period as the case may be; and
 - (ii) his final year's superannuable pay in respect of that particular period,
- as if that period had been his only period of superannuable employment.”.

Amendment of regulation 65 of the principal Regulations (Absence because of illness or injury or maternity leave)

7.—(1) In the title to regulation 65 of the principal Regulations (Absence because of illness or injury or maternity leave), for the words “maternity leave”, there shall be substituted the words “certain types of leave”.

(2) In regulation 65(1), after the words “maternity leave”, there shall be inserted the words “adoption leave or paternity leave”.

(3) In regulation 65(4)(b), for the words “woman on maternity leave”, there shall be substituted the words “member on maternity leave, adoption leave or paternity leave”.

Amendment of regulation 85 of the principal Regulations (Reduction of pension on return to HPSS employment)

8. In regulation 85 of the principal Regulations (Reduction of pension on return to HPSS employment) –

(1) At the beginning of paragraph (1), there shall be inserted the words “Except in a case to which paragraph (1A) applies,”.

(2) After paragraph (1) there shall be inserted the following paragraph –

“(1A) This paragraph applies where a member has been transferred into HPSS employment as a result of a transfer of an undertaking to the employer .”.

Amendment of regulation 93 of the principal Regulations (Loss of rights to benefits)

9. In regulation 93 of the principal Regulations (Loss of rights to benefits) –

(1) After paragraph (1) there shall be inserted the following paragraph –

“(1A) Subject to paragraph (2), the Department may also direct that all or part of any rights to benefits or other amounts payable in respect of a member be forfeited where such benefits or amounts are payable to a person who is –

- (a) the member's widow or widower;
- (b) a dependant of the member;
- (c) a person not coming within sub-paragraph (a) or (b) who is specified in a notice given under regulation 22(3A) (Payment of lumps sum); or
- (d) a person to whom such benefits or amounts are payable under the member's will or on his intestacy,

and that person is convicted of the offence of murder or manslaughter of that member or of any other offence of which the unlawful killing of that member is an element.”;

(2) In paragraph (2), for “(b) or (c)”, there shall be substituted “paragraph (1)(b) or (c)”.

Amendment to Schedule 2 of the principal Regulations (Medical and dental practitioners)

10.—(1) In paragraph 9 of Schedule 2 to the principal Regulations (Officer service treated as practitioner service) –

(a) in sub-paragraphs (1) and (8) after the words “principal practitioner” there shall be inserted the words “or a practitioner providing piloted services.”;

(b) for sub-paragraph (2) there shall be substituted –

“(2) For the purpose of calculating any benefit in respect of officer service that is treated as practitioner service under sub-paragraph (1), the member's superannuable pay in respect of that officer service –

- (a) may be disregarded and his uprated earnings increased by the same proportion as his practitioner's service is increased by virtue of the officer service being treated as practitioner service under sub-paragraph (1); or
- (b) may be treated as superannuable earnings,

whichever is the more favourable to him.”.

- (c) after sub-paragraph (5), there shall be inserted the following sub-paragraphs –

“(5A) Where a member has more than 10 years officer service before first becoming –

- (a) a principal practitioner; or
- (b) a practitioner providing piloted services,

the member's officer service before first becoming such a practitioner may be treated as practitioner service if it would be more favourable to him.

(5B) For the purpose of calculating any benefits in respect of officer service that is treated as practitioner service under sub-paragraph (5A), the member's superannuable pay in respect of that officer service shall be treated as superannuable earnings.”.

- (d) after sub-paragraph (6) there shall be inserted the following sub-paragraphs –

“(6A) Subject to sub-paragraph (8), if a member has in total 1 year's officer service or more on the last occasion on which he ceases to be a practitioner before his pension under the scheme becomes payable, that officer service may be treated as practitioner service if it would be more favourable to him.

(6B) Any officer service which is treated as practitioner service by virtue of sub-paragraph (6) or (6A) shall include any periods of officer service which are concurrent with periods of practitioner service.”;

- (e) in sub-paragraph (7) “after sub-paragraph (6) there shall be inserted “or (6A).”;

- (f) in sub-paragraph (8) –

(aa) after “sub-paragraph (6)” in the first and third places where it occurs, there shall be inserted “or (6A)”;

(bb) for the words “sub-paragraph (6) will not” there shall be substituted the words “neither sub-paragraph (6) or (6A) will”;

(cc) in sub-paragraph (a) after “sub-paragraph (1)” there shall be inserted “or (5A)”;

- (g) in sub-paragraph (11), after “sub-paragraph (6)”, there shall be inserted “, sub-paragraph (6A)”.

- (2) After paragraph 11 (Normal retirement pension) there shall be inserted the following paragraph –

“Practitioners with benefits from both practitioner and officer service

11A.—(1) A member –

- (a) who has at least 2 years' qualifying service or in respect of whom a transfer payment has been made to the scheme in respect of his rights under a personal pension scheme;
- (b) who ceases to be in officer service while continuing in practitioner service; and
- (c) whose officer service is not treated as practitioner service under paragraphs 9(5A) or (6A),

shall be entitled to receive a separate pension and retirement lump sum in respect of his officer service.

(2) A member –

- (a) who has at least two years' qualifying service or in respect of whom a transfer payment has been made to the scheme in respect of his rights under a personal pension scheme; and
- (b) who ceases, or who ceased before 1st April 2003, to be in practitioner service while continuing in officer service on or after that date,

shall be entitled to receive a separate pension and retirement lump sum in respect of such of his superannuable service as specified in sub-paragraph (3).

(3) The superannuable service specified for the purposes of sub-paragraph (2) is –

(a) any practitioner service; and

(b) any officer service which falls to be treated as practitioner service under paragraph 9.

(4) Subject to sub-paragraph (5), the amount of any pension or retirement lump sum which a member is entitled to receive under sub-paragraph (1) or (2) shall be the same as the amount of the pension or retirement lump sum which the member would have been entitled to receive under these Regulations if he had left superannuable employment on the day on which he ceased to be in officer service or, as the case may be, ceased to be in practitioner service.

(5) A member who is entitled to a pension and retirement lump sum under sub-paragraph (2) shall, if it would be more favourable to him, be treated as having continued in practitioner service until the last day of his superannuable employment.”.

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 23rd March 2005.

(L.S.)

D. C. Bingham

A senior officer of the Department of Health, Social Services and Public Safety

Sealed with the Official Seal of the Department of Finance and Personnel on 23rd March 2005.

(L.S.)

M. G. Brennan

A senior officer of the Department of Finance and Personnel

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations further amend the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995 (S.R. 1995 No. 95), “the principal Regulations”, which provide for the superannuation of persons engaged in Health and Personal Social Services.

The Regulations shall have retrospective effect as authorised by Article 14(1) of the Superannuation (Northern Ireland) Order 1972.

Regulations 1 and 2 provide for the citation, commencement, retrospective effect and interpretation of the Regulations.

Regulation 3 amends regulation 3 (Meaning of superannuable pay), and regulation 6 amends regulation 52 (Early leavers returning to superannuable employment), of the principal Regulations ensuring that a member’s contributions and benefits reflect the situation where that member is subject to an earnings cap following a break in superannuable employment.

Regulation 4 amends regulation 22 of the principal Regulations (Payment of lump sum) ensuring that lump sums, which would otherwise be payable to persons whose right to the lump sum has been forfeited because they have been convicted of the unlawful killing of the member, shall be payable to the personal representatives of the member.

Regulation 5 amends regulation 49 (Preserved pension), and regulation 8 amends regulation 85 (Reduction of pension on return to HPSS employment), of the principal Regulations to provide that both preserved benefits are paid and that a pension is not abated where a member returns to employment with an employing authority by virtue of a transfer of an undertaking to that authority.

Regulation 7 amends regulation 65 of the principal Regulations (Members absent from work) to provide that periods of adoption and paternity leave count as superannuable service under the scheme.

Regulation 9 amends regulation 93 of the principal Regulations (Loss of rights to benefits) to provide forfeiture of scheme benefits to persons other than a member where the beneficiary has been convicted of the unlawful killing of the member.

Regulation 10 amends Schedule 2 of the principal Regulations (Medical and dental practitioners) to provide more choice for practitioners with mixed patterns of officer and practitioner service to have their benefits under the scheme calculated in the way most beneficial to them and in particular to enable them to have separate pensions in respect of periods of officer and practitioner service.

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