The draft Health and Social Care Pension Scheme, Injury Benefits

and Additional Voluntary

Contributions (Amendment)

Regulations (Northern Ireland) 2016

Consultation Document & Explanatory Notes

March 2016

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| **Title:**The draft Health and Social Care Pension Scheme, Injury Benefits and Additional Voluntary Contributions (Amendment) Regulations (Northern Ireland) 2016 |
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Introduction

1. The Department of Health, Social Services and Public Safety has published for consultation a draft Statutory Rule titled: The Health and Social Care Pension Scheme, Injury Benefits and Additional Voluntary Contributions (Amendment) Regulations (Northern Ireland) 2016. This rule proposes amendments to the regulations that provide the rules for the HSC Pension Scheme, the supplementary Additional Voluntary Contribution arrangements and the Injury Benefits scheme.
2. There are two HSC Pension Schemes: the new reformed 2015 scheme and the older, closed scheme which is divided into the1995 and 2008 sections. Accordingly there are three sets of regulations under which entitlement to pension and other benefits are calculated:
* The Health and Personal social Services (Superannuation) Regulations (Northern Ireland) 1995 (S.R. 1995 No.95)
* The Health and social Care Pension Scheme Regulations (Northern Ireland) 2008 (S.R. 2008 No.256)
* The Health and Social Care Pension Scheme Regulations (Northern Ireland) 2015 (S.R. 2015 No.120)
1. The Health and Personal Social Services (Superannuation) (Additional Voluntary Contributions) Regulations (Northern Ireland) 1999 (S.R. 1999 No.294) provides a facility through which members of the HSC Pension Schemes can supplement the value of their pension by making additional contributions to a third party provider. The Health and Personal Social Services (Injury Benefits) Regulations (Northern Ireland) 2001 (S.R. 2001 No.367) provides for certain payments to be made to HSC staff following a work-related illness or injury (“The Injury Benefits Scheme”).
2. The Health and Social Care Service Pension Scheme (Transitional and Consequential Provisions) Regulations (Northern Ireland) 2015 (S.R. 2015 No.122) put in place transitional arrangements for members of the new 2015 scheme who have pension rights accrued in either the 1995 or 2008 section of the old HSC pension scheme. The transitional regulations 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. In summary, the draft rule proposes to amend the scheme regulations for the following main purposes:
* To clarify how claimants moving on to Employment & Support Allowance should be assessed;
* To permit the money purchase AVC arrangements to pay lifetime allowance excess lump sums;

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* To make consequential changes to scheme rules to accommodate the introduction of shared parental leave, the abolition of contracting-out and the Pension Schemes Act 2015;
* make technical corrections and refinements to improve the operation of scheme regulations.

6. This document explains the purpose and effect of the provisions set out in the draft

rule. It should be read in conjunction with the draft Statutory Rule.

How to respond

1. Comments on the proposed changes and the draft Statutory Rule can be submitted via email to:

hscpensioncontribs@dhsspsni.gov.uk

or by post to:

DHSSPS Pensions Policy Team
Waterside House

Room G33

75 Duke Street
Londonderry

BT47 6FP

1. The consultation will close on 17 May 2016.
Confidentiality of information
2. Information the Department receives, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).
3. If you want the information that you provide to be treated as confidential, please be aware
that, under the Freedom of Information Act 2000, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If the Department receives a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
4. The Department will process your personal data in accordance with the Data Protection Act 1998 and in most circumstances this will mean that your personal data will not be disclosed to third parties.

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1. Injury Benefits Scheme

1.1 The Injury Benefits Scheme provides an annual allowance for HSC staff who have suffered a permanent loss of earning ability as the result of an illness or injury that is wholly or mainly attributable to their HSC employment.

1.2 The Injury Benefits Scheme closed on 31 May 2013, with a “sunset clause” allowing certain claims to be made until 31 May 2038.

1.3 Injury Benefits Scheme claimants often also qualify for state benefits related to their inability to work, and any income received from state benefits (that relates to the qualifying injury or disease) is offset against the Injury Benefits Scheme award. The claimant’s income is made up to the required level, prescribed in regulations, through a combination of state benefits and the Injury Benefits Scheme award.

*Employment and Support Allowance*

1.4 An issue which has arisen recently relates to the introduction of the employment and support allowance (ESA) to replace various state benefits, including

incapacity benefit. The Injury Benefits Scheme regulations were amended from 1 April 2009 to include ESA so it became a relevant benefit from that date. This means that any Injury Benefit Scheme claimant moved on to ESA from that date would have their award re-assessed from the start date of ESA. The Injury Benefit Scheme regulations are made under powers contained in the Superannuation (Northern Ireland) Order 1972. This means that any amending statutory rule, such as the one that introduced ESA to the regulations, must include a “no detriment” provision. This provision allows affected Injury Benefit Scheme claimants to opt that a potentially detrimental change to regulations should not apply to them.

1.5 The “no detriment” provision should be invoked by scheme members within 6 months of the relevant amendment being made. In the case of ESA, it was more than 12 months after 1 April 2009 that claimants began to be moved on to that new benefit. It was therefore impossible for Injury Benefit Scheme claimants to know or anticipate whether they would be affected detrimentally by the

introduction of ESA within 6 months of the regulations being amended.

1.6 Reviews of Injury Benefit Scheme awards can only occur at the commencement or cessation of a relevant benefit. Moving onto ESA qualifies as a “commencement” and therefore the scheme administrator must undertake a review of the claimant’s income and adjust the Injury Benefit Scheme award if necessary. Due to the way it is calculated and paid, the ESA award is usually higher than the amount taken into account when the original pre-ESA benefit was commenced. There may be cases where Injury Benefit Scheme claimants moving onto ESA have had their Injury Benefit Scheme award reduced, affecting their overall income and meaning that the regulatory amendment made in April 2009 was arguably detrimental. However, many claimants are unaware of the “no detriment” provision or due to the passage

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of time, significantly beyond the 6 month period during which objections should be raised.

1.7 The Department has decided to implement a retrospective change to the Injury Benefit Scheme regulations which should remove any detriment to claimants moving on to ESA. Draft **amending regulation 86** implements this amendment.

1.8 Making this change to the way Injury Benefit Scheme awards are calculated when ESA “commences” will be retrospective to 1 April 2009 – the date when ESA was inserted into the Injury Benefit Scheme regulations.

1.9 This means that any case that has already been considered, and where there has proven to be a detriment, will be reconsidered in line with the amended regulations. Affected claimants will be contacted in due course by the scheme administrator, the HSC Pension Service.

*Universal Credit*

1.10 The introduction of universal credit, which will eventually replace a number of existing benefits, via the Welfare Reform (Northern Ireland) Order 2015 needs to be reflected in the list of relevant benefits under the Injury Benefits Scheme. Draft **amending regulation 86(2)(b)** therefore inserts universal credit into regulation 4(6)(b) of the Injury Benefit Scheme regulations.

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2. Additional Voluntary Contributions

2.1 Since the decision by the last UK Government to introduce pensions freedoms and flexibilities (known as “freedom and choice”), largely implemented by the Taxation of Pensions Act 2014, the Department has been considering how the resulting changes introduced to the Health and Personal Social Services (Superannuation) (Additional Voluntary Contributions) Regulations (Northern Ireland) 1999 have been working in practice.

2.2 The amendments, made from April 2015, allowed members of the HSC money purchase additional voluntary contributions (MPAVC) scheme:

* to claim their MPAVC pension pot separately from their main HSC Pension Scheme benefits
* to claim their MPAVC pension pot from their minimum pension age
* removed the requirement to purchase an annuity with MPAVC pension pot

2.3 These amendments have been broadly welcomed and a number of MPAVC scheme members have taken advantage of them via the MPAVC scheme providers (Equitable Life and Standard Life). It has become apparent though that the reforms to the HSC MPAVC scheme regulations could have gone further; and this draft statutory rule proposes two further changes to the scheme rules.

2.4 Firstly, it is proposed that a change should be made to regulation 11, by draft **amending regulation 88,** to allow MPAVC pension pots to be taken as a lifetime allowance excess lump sum. Such a lump sum has been a legally permissible payment since 2006, and there is no policy reason for it not to now be allowed under the HSC MPAVC scheme rules. Members will incur a taxation charge if taking such a payment, however, MPAVC providers have informed the Department that there is a demand for such payments to be permissible under the MPAVC scheme.

2.5 Secondly, a consequential amendment needed as a result of allowing lifetime allowance excess lump sum payments is to delete regulation 13 (benefit limits). This is achieved by draft **amending regulation 89.** Regulation 13 limits benefits paid from the MPAVC scheme to the member’s lifetime allowance limit. Analogous provisions were deleted from other comparable public service MPAVC scheme rules in 2006 when the lifetime allowance was introduced. There is no good policy reason for the provision to remain in the HSC MPAVC scheme regulations.

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3. Technical & consequential amendments

3.1 A number of miscellaneous amendments are proposed. These make consequential adjustments to accommodate changes in primary legislation, or other technical corrections and refinements.

Abolition of contracting-out

3.2 A key element of the single-tier state pension reforms is the abolition of the State Second Pension (S2P) with effect from 6 April 2016. This means that salary related pension schemes like the HSC scheme will no longer be able to contract members out of the S2P with effect from that date.

*Key primary and secondary legislation concerned with the end of contracting-out*

3.3 The Pensions Act (Northern Ireland) 2015 makes various amendments to the Pension Schemes (Northern Ireland) Act 1993 and provides for the end of contracting-out with effect from 6 April 2016 and the preservation of contracting-out rights earned by members up to that date.

3.4 However, to support the transition and many of the associated administrative processes during the three year period up to 6 April 2019, some of the existing contracting-out provisions will remain in place. This has meant that only a small number of immediate technical changes and only one consequential change to HSC scheme regulations are necessary to ensure that scheme regulations work correctly in tandem with the new and revised legislation between 6 April 2016 and 6 April 2019.

*Consequential change*

3.5 A new provision in the Occupational Pension Schemes (Schemes that were Contracted-out) Regulations (Northern Ireland) 2016 enables the forfeiture of a spouse’s or surviving civil partner’s guaranteed minimum pension (GMP) where the beneficiary is convicted of the murder or manslaughter of the member by reference to whose contracted-out membership the GMP has accrued**. Amending regulations 5, 13, 26, 33, 44, 51, 63, 64(3) and 72(3)** amend 1995 regulations 42 and 93, 2008 regulations 92, 130, 219, and 254 and 2015 regulations 114, 117, and paragraph 12 of Schedule 3 to implement this change.

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*Technical changes - 1995 Regulations*

3.6 A definition of “contracted out-employment” is inserted into regulation 3 by **amending regulation 3(c).**

3.7 Regulations 45 and 46 deal with increases to GMP (earned in the HSC scheme or transferred in) in circumstances where members leave contracted-out employment before their GMP is due for payment. **Amendment regulations 6 and 7** ensure that such increases also apply where members with a GMP leave pensionable employment after 6 April 2016.

3.8 Regulation 67 allows members to buy added years equivalent to any years for which a refund was paid at half cost where the service in question was not contracted out service. **Amending regulation 10** ensures that this facility does not apply to service on or after 6 April 2016 when contracting out is abolished.

*1995, 2008 and 2015 Regulations*

3.9 Regulation 94 of the 1995 Regulations, Regulations 128 and 252 of the 2008 Regulations and paragraph 6 of Schedule 3 to the 2015 regulations deal with the conversion of pension into lump sum on the grounds of triviality. **Amending regulations 14, 31, 49 and 72(2)** adjust those regulations so that they work in conjunction with regulation 18 of the Occupational Pension Schemes (Schemes that were Contracted-out) Regulations (Northern Ireland) 2016 and Section 5(2) of the Pension Schemes (Northern Ireland) Act 1993.

*2008 and 2015 Regulations only*

3.10 Regulations 66, 193 and regulation 109 of the 2015 Regulations deal with guaranteed minimum pensions. **Amending regulations 24, 42 and 62** replace references in those regulations to regulation 60 of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996 with a reference to its replacement found at regulation 25 of the Occupational Pension Schemes (Schemes that were Contracted-Out) Regulations (Northern Ireland) 2016.

*2008 Regulations only*

3.11 **Amending regulations 30, 34, 48 and 52** correct regulation and paragraph numbering errors.

Shared parental leave

3.12 The Work and Families Act (Northern Ireland) 2015 establishes new entitlements to shared parental leave and statutory shared parental pay. It abolishes additional paternity leave and additional statutory parental pay.

3.13 Accordingly, **amending regulations 3(c), 9, 17(d), 18, 19, 22, 25, 35(d), 36 to 38, 40, 43, 54, 55, 60, 75 and 76** insert new references to shared parental leave alongside existing references to parental leave. Such references are found in scheme provisions dealing with absences from work, and the pay or earnings taken into account during such periods. These new provisions are backdated to 5 April 2015.

Pension Schemes Act 2015

3.14 The Pension Schemes Act 2015 amended the Pension Schemes (Northern Ireland) Act 1993 to prevent the transfer of deferred benefits from unfunded public service pension schemes to other schemes offering ‘flexible benefits’. The ban applies to all deferred members who are covered by the Pension Schemes (Northern Ireland) Act 1993 provisions. (Chapter 1 of Part 4ZA).

3.15 The two Pension Schemes Acts combine to apply the ban to deferred members who leave at least one year before normal pension age and also make an application for payment.

3.16 However the 2008 and 2015 scheme regulations contain provisions that supplement the operation of the Pension Schemes Act (Northern Ireland) 1993. The effect is to permit transfers where a member leaves, makes a transfer application and applies for payment in the year before normal pension age. We expect there to be very few if any members that fit these circumstances. However to ensure the ban is fully implemented, **amending regulations 28, 46 and 70** close this small lacuna.

3.17 In a similar vein, **amending regulation 8(3)** clarifies in 1995 regulation 53 that deferred members cannot transfer to Qualifying Recognised Overseas Schemes offering flexible benefits where the member leaves, makes an application and applies for payment between ages 59 and 60.

3.18 Finally, a number of consequential amendments are also made that:

* Update cross-references to the Pension Schemes Act (Northern Ireland) 1993 provisions that have been re-located or re-numbered by the Pension Schemes Act (Schedule 4**). See amending regulations 3(b), 8(3), 17(b), 23, 27, 35(b), 41, 45, 57, 58, 67, 68 and 69.**
* Remove obsolete references to ‘safeguarded rights’ and ‘safeguarded percentage’. See **amending regulations 3(d), 17(c), 35(c) and 50.** Safeguarded rights formed part of a pension from contracted out service that was shared under a Pension Sharing Order on divorce or cessation of a Civil Partnership. Certain restrictions applied as to what could and could not be done with safeguarded rights. Safeguarded rights were provided for in primary legislation by section 64A of the Pension Schemes Act (Northern Ireland) 1993. That section was repealed in 2009.
* Update the definition of “buy out policy” to better reflect the wording of Section 15 of the Pensions Schemes Act (Northern Ireland) 1993 which contains requirements as to how liability for a guaranteed minimum pension may be discharged via a transfer to such a policy. See **amending regulations** **3(a), 17(a), 35(a) and 71** which amend regulation 2 (1995 regulations), regulations 6 and 137 (2008 Regulations) and regulation 140 (2015 Regulations) respectively. **Amending regulation 8(2)** makes clear that any buy-out policy purchased must satisfy the requirements of regulation 12(2) of the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996.

3.19 These provisions have effect from 1 April 2016.

Bulk transfers

3.20 An amendment is proposed to 1995 regulation 8 to ensure that certain members who are compulsorily transferred into the HSC after 1 April 2015 because of a machinery of government transfer (or subsequent transfer where the person was originally in a public sector scheme) are able to join the 1995 Section if they meet HSC scheme criteria for protection.

3.21 1995 Regulation 7(3) permits individuals to join the 1995 section where a compulsory transfer has taken place. **Amending regulation 4** ensures that the provisions at 1995 regulation 8 restricting eligibility to individuals holding protection also cater for scenarios where an individual is permitted to join under 7(3). Otherwise such individuals would be ineligible to join the scheme even if the criteria for protection is otherwise met.

General refinements and corrections

3.22 The following amendment regulations are retrospective to 1 April 2015 unless otherwise stated - 11, 12, 15, 29, 47, 56, 61, and 74 correct cross-references

3.23 **Amending regulation 11** corrects a cross-reference in regulation 73B(1)(a) (Effect of member being absent or leaving and re-joining this section of the scheme during the contribution option period). This amendment is retrospective to 1 April 2008.

3.24 **Amending regulations 12, 29 and 47** correct an omission by inserting cross-references to the Public Service Pensions Act 2013. 1995 regulation 81 and 2008 regulations 101 and 228 allow persons joining the 2015 scheme from other health service schemes to transfer in final salary benefits only into the 1995 or 2008 sections where that service has a final salary link under paragraph 2 of Schedule 7 to the Public Service Pensions Act (Northern Ireland) 2014 Act. This is extended to include service with a final salary link under the equivalent GB provisions.

3.25 **Amending regulation 56** inserts a missing cross-reference to regulations 33 and 34 in 2015 regulation 36(1) (Member’s contributions: records and estimates). The intention is for employing authorities to keep a record of all employer contributions made, including those payable in the event that a premature retirement pension is paid on grounds of redundancy or in the interests of the efficiency of the service. In a similar way, **amending regulation 15** corrects a cross-reference that narrowed the Employing Authority obligation in 1995 regulation 97 to keep records of employer contributions paid or unpaid. The amendment extends this obligation to any employer contribution payable, including those connected with early retirement pensions.

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3.26 **Amending regulation 61** replaces the cross-reference to paragraph (1)(b) in 2015 regulation 93 (Early retirement on ill-health (deferred members) with paragraph (1). **Amending regulation 74** amends cross-references to regulation 44 (Accepting a buy-out election) in paragraph 15 of Schedule 7 (Pension accounts).

*Amending regulations 20 and 39 omit obsolete paragraphs*

3.27 **Amending regulation 20** omits obsolete paragraph (2)(c) from 2008 regulation 22 (Restrictions on eligibility: general). **Amending regulation 39** makes the equivalent amendment to 2008 regulation 154 (Restrictions on eligibility: general) and omits obsolete paragraph (1)(c).

*Amending regulations 59, 64(2), 65, 66, 73 and 80 make a number of operational or technical corrections*

3.28. **Amending regulation 59** replaces paragraph (2) of 2015 regulation 62 (Repayment of lump sum contribution) to clarify the provision for repayment of a lump sum contribution paid by a scheme member for Additional Pension in certain circumstances.

3.29 **Amending regulation 64(2)** amends 2015 regulation 117 (Recent leavers) to clarify the pension for a surviving spouse or surviving civil partner following the death of a recent leaver, as defined in paragraph (4) of that regulation.

3.30 **Amending regulation 65** amends the formula in paragraph (3) of regulation 123 (Amount of child pension: deceased pensioner member) relating to the basic death pension calculation of the child pension to clarify that ‘A’ in the formula does not include any tier 2 addition to an ill-health pension.

3.31 **Amending regulation 66** removes the reference to “an active member” from paragraph (1)(b) of regulation 124 (Amount of child pension: deceased deferred member) to allow for the payment of a child pension following the death of a member who is both active and deferred. **Amending regulation 73** amends paragraph 1 of schedule 4 (Opting out and re-joining) to clarify the intention of the opting-out provisions where a member has more than one employment. The amendment adds two new sub-paragraphs to paragraph (1) to clarify that an officer member who works in more than one part-time post may opt out of one employment whilst continuing as an active member in a concurrent post. 4.31

3.32 **Amending regulation 80** inserts a new regulation 10A to resolve an anomaly in the transitional provisions. The new regulation allows for the 2015 scheme tier 2 addition to be properly calculated in circumstances where a member becomes eligible to join the 2015 scheme but has zero pensionable earnings due to exhaustion of paid sick leave.

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*Amending regulations 79 and 81 to 83 amend the Health and Social Care Pension Scheme (Transitional and Consequential Provisions) Regulations (Northern Ireland) 2015*

3.33 **Amending regulation 79, 81 and 83(2)** correct instances where the ‘new scheme’ was incorrectly referred to as the ‘2015 scheme’.

3.34 **Amending regulation 82** amends regulation 31 (Partial retirement) to bring it into line with the equivalent 2008 and 2015 regulations in terms of the life-time allowance condition.

3.35 **Amending regulation 83(3)** makes an amendment in column 2 of regulation 38 (Death in service) to ensure the correct proportion of children’s pension is payable in the event of the death of a transitional member within 12 months of deferment.

*Amending regulation 85 amends the Injury Benefits Scheme Regulations*

3.36 **Amending regulation 85** amends regulation 2B (Meaning of “average remuneration”) of the Health and Personal Social Services (Injury Benefits) Regulations (Northern Ireland) 2001 to clarify that paragraph (5) provides for a person who is not a practitioner.

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