HSC Pension Scheme – proposed amendments to scheme regulations regarding flexibilities

Consultation Document & Explanatory Notes

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| **Title:** HSC Pension Scheme – proposed amendments to scheme regulations regarding flexibilities |
| **Author:**  DoH – Pension Policy Unit |
| **Document Purpose:** Consultation |
| **Publication date:** 7 August 2023 |
| **Target audience:**  HSC Staff and employers and providers of HSC clinical services |
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Introduction

The Department of Health is consulting on amendments to the Regulations that provide the rules for the HSC Pension Schemes.

There are two HSC Pension Schemes: the reformed 2015 scheme and the older, closed scheme which is divided into the 1995 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).

These are referred to collectively in this document as the 'Pension Scheme Regulations'.

In summary, the proposals amend the above mentioned Regulations to:

* Introduce new retirement flexibilities including:
  + Pensionable re-employment
  + Partial retirement
  + Removing the 16-hour rule
* Propose other changes in relation to partial retirement.

The Department welcomes views on the proposals set out in this document.

The draft Regulations attached cover all measures other than partial retirement. Regulations relating to partial retirement may be included before introduction or at a slightly later date.

Consultation questions

The Department welcomes any comments or views on the proposals set out in this document. Respondents are invited to consider the following questions:

1. Do you agree or disagree that the new retirement flexibilities should be introduced as proposed in this consultation document? If you disagree, please explain why?
2. Are there any additional comments you wish to provide with regard to the proposed amendments?
3. Are there any considerations and evidence that you think the Department should take into account when assessing any equality issues arising as a result of the proposed changes?
4. Do you feel the draft regulations accurately reflect the proposals (other than partial retirement).

How to respond

Comments on the proposals and draft legislation can be submitted using the consultation response document (see Annex A) to:

[modernisation@health-ni.gov.uk](mailto:modernisation@health-ni.gov.uk)

or by post:

DoH Pensions Policy Team   
Waterside House

Room G33   
75 Duke Street

Londonderry

BT47 6FP

Please use email if possible as mail will only be monitored periodically.

**The consultation will close at 5pm on 16 October 2023**

Confidentiality of information

For this consultation, we may publish all responses except for those where the respondent indicates that they are an individual acting in a private capacity (e.g. a member of the public). All responses from organisations and individuals responding in a professional capacity will be published. We will remove email addresses and telephone numbers from these responses; but apart from this, we will publish them in full. For more information about what we do with personal data please see our consultation privacy notice.

Your response, and all other responses to this consultation, may also be disclosed on request in accordance with the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR); however all disclosures will be in line with the requirements of the Data Protection Act 2018 (DPA) and the UK General Data Protection Regulation (UK GDPR) (EU) 2016/679.

If you want the information that you provide to be treated as confidential it would be helpful if you could explain to us why you regard the information you have provided as confidential, so that this may be considered if the Department should receive a request for the information under the FOIA or EIR

New retirement flexibilities

**Background**

Eligible members of the HSC workforce all now belong the 2015 Scheme, a career average revalued earnings (CARE) scheme that provides benefits based on average earnings over a member’s career. Many members however also hold benefits in the final salary defined scheme, or legacy scheme, which is made up of the 1995 and 2008 Sections and is now closed to future accrual. The key differences between the schemes, other than the way benefits are calculated, are different normal pension ages (NPAs) and accrual rates, as shown in the table below.

Table 1: comparison of scheme, retirement age and accrual rate

|  |  |  |
| --- | --- | --- |
| **Scheme or section** | **NPA** | **Accrual rate** |
| 1995 Section | 60 | 1/80th |
| 2008 Section | 65 | 1/60th |
| 2015 Scheme | State Pension Age | 1/54th |

The 2015 Scheme was introduced as part of wider reforms implemented by regulations made under the Public Service Pensions Act (Northern Ireland) 2014. As part of these reforms, public service pension scheme members within 10 years of retirement were originally given transitional protection, and so remained in their legacy pension schemes.

In December 2018, the Court of Appeal found this protection to be discriminatory against younger members. This has become known as the ‘McCloud judgment’. The government accepted the judgment applies to other public service schemes, including the HSC, and has set out how the discrimination will be remedied. This is known as the ‘McCloud remedy’.

**Options for retirement**

At the time the 1995 Section was designed, retirement patterns were understood to be relatively binary; staff would typically work full-time until claiming their benefits and retiring. After this point, members were unlikely to return to HSC service, and the rules of the HSC Pension Scheme restricted the incentives to do so by preventing any further pension accrual.

However, we understand that retirement today is often a gradual process over many years, rather than a hard cliff edge. We are aware that staff value the ability to retire flexibly, in a way that suits their work/life balance. The new retirement flexibilities outlined in this section of this consultation document have therefore been designed to offer staff increased options at the end of their careers, so that they can partially retire or return to work seamlessly and continue building pension after retirement if they wish to do so.

Also, as a result of the McCloud remedy, all eligible staff were moved to the 2015 Scheme for future accrual from 1 April 2022. This means that some members will now have service in both the 1995 Section and 2015 Scheme, which have different rules on how members can claim their benefits. We have therefore designed the proposed retirement flexibilities to address this issue and ensure that the rules are aligned for all members of the HSC Pension Scheme.

**Proposed changes**

Within the package of new retirement flexibilities the Department is proposing that the 1995 Section includes:

* pensionable re-employment
* partial retirement
* removing the 16-hour rule

As well as supporting members’ work/life balance and giving them a greater degree of flexibility around how they take their pension benefits, we have also designed these measures to support patient care. If members of the HSC Pension Scheme are able to continue working longer but more flexibly in ways that suit both individuals and employers the HSC system will also continue to benefit from their skills and experience. This could provide an important boost to HSC capacity at a crucial time and help tackle care backlogs.

We are also proposing to make a number of small changes to the 2008 Section and 2015 Scheme. More information about the proposed changes is provided in the relevant sections of this consultation document.

**Pensionable re-employment**

Under the existing regulations of the HSC Pension Scheme, members who take their 1995 Section benefits are not permitted to build up any further pension in the 2015 Scheme. If they do return to work, this is on a non-pensionable basis. Because the 1995 Section does not have any late retirement factors (LRFs), if members choose to leave these benefits unclaimed after the normal pension age (NPA), they do not increase in value.

Now all members have been moved to the 2015 Scheme for future accrual, these rules could cause problems for those who need to carry on working but wish to claim their 1995 Section benefits when they are most valuable.

We therefore propose an amendment to allow members who take their benefits in the 1995 Section to return to work and build further pension in the 2015 Scheme, if they wish. We think that this may help some retired staff to bridge the gap between claiming their HSC pension benefits and receiving their State Pension. This could in turn support HSC capacity, as allowing staff to build up further benefits in the 2015 Scheme may make returning to service more attractive.

The Department is also intending to allow members who are currently non-pensionable in the 1995 and 2008 Sections, because they have breached the maximum service limits, to join the 2015 Scheme. The age limit for 2015 Scheme membership (75) will apply as normal.

Under the proposal, members with special class status (SCS) would still be subject to abatement until age 60 under normal circumstances. This would mean that their pension is reduced if their pension plus salary after returning to work exceeds their pre-retirement income. However, abatement for SCS members is currently suspended until 31 March 2025. More information on the suspension of abatement is provided in the next section of this consultation document.

**Partial retirement**

Under the current 1995 Regulations, members are currently unable to partially retire, or to take some of their pension benefits whilst continuing to work and build further pension. Taking part of your pension benefits is also sometimes known as ‘draw down’.

This is different to the rules for 2008 Section and 2015 Scheme members in the HSC Pension Scheme, and for members of other comparable public service pension schemes. We think that increasing the level of flexibility may have a positive impact on some members’ work/life balance later in their careers, when they may prefer to retire more gradually, reducing their work commitment for a period of time before retiring completely.

Furthermore, the McCloud remedy may mean that some staff aged 55+ are able to retire earlier than they previously planned, which when combined with other factors, could have an impact on HSC capacity. A lack of partial retirement in the 1995 Section may discourage staff from remaining in the workforce for longer than they might if more flexible options were available.

We are therefore proposing an amendment to the 1995 Section regulations to allow members to partially retire and claim up to 100% of their 1995 Section benefits whilst continuing to work and accrue further pension in the 2015 Scheme. Under this proposal, on reaching minimum pension age (currently 55), members will become eligible to partially retire if they reduce their pensionable pay by at least 10%. For GPs, a 10% reduction in commitment would be required. Members with a protected minimum pension age of 50 will be able to partially retire from age 50.

We believe the proposal for partial retirement will better support members’ work/life balance and may also help the HSC to retain valued experienced staff in the workforce, as members may wish to partially retire and work for longer than they had previously planned. For those impacted by pension tax, this proposal would also allow them to manage their tax position by partially retiring and remaining in work, rather than opting out of the HSC Pension Scheme or leaving the HSC service completely. We think that this is especially important in the current context, as maximising workforce capacity by retaining experienced staff will be crucial to reducing elective care backlogs.

The following example sets out how an example member could make use of the proposal for partial retirement:

**Example**

Nurse currently aged 61 at the top of Agenda for Change band 7, who has service in the 1995 Section and is now accruing benefits in the 2015 Scheme.

Under the proposed plans, the member can take 100% of their 1995 Section pension under partial retirement at age 61, and then work for 2 further years at 0.75 FTE (building further pension in the 2015 Scheme), before retiring completely at age 63.

At age 61: 1995 Section pension = 100% of £16,515 annual pension, plus 1995 Section 3 x lump sum = £49,546.

At age 63: 2015 Scheme pension = £2,610 accrued pension including revaluations x 0.808 early retirement adjustment for taking benefits 4 years early = £2,109 annual pension.

This example is for illustration only.

SCS members who take up this option would be subject to abatement under normal circumstances until age 60.

However, as set out in the previous section of this document, abatement for SCS members has been suspended since 25 March 2020 as part of a series of ‘retire and return’ easements designed to support capacity during the pandemic and subsequent pandemic recovery period. These easements have allowed retired and partially retired staff to return to work in the HSC or increase their working commitments without impacting their pension.

From 25 March 2020 to 25 March 2022, the retire and return easements were provided by section 47 of the Coronavirus Act 2020, one of the pieces of emergency legislation introduced to provide the government and the HSC with the tools required to deal with the COVID-19 pandemic. These easements were continued through temporary modifications to HSC Pension Scheme regulations made by The Health and Social Care Pensions (Abatement) Regulations (Northern Ireland) 2022.

These temporary modifications were originally due to expire on 31 October 2022 but the expiry date has been extended through The Health and Social Care Pensions (Abatement) (No2) Regulations (Northern Ireland) 2022. As a result, the suspension of drawdown abatement ended on 31 March 2023, the suspension of the 16 hour rule will now expire on 31 March 2024, and the suspension of SCS members abatement, will expire on 31 March 2025.

To ensure consistency with the 2008 Section and the 2015 Scheme, under the proposal for partial retirement, abatement will apply to 1995 Section members who choose to partially retire (reducing their pensionable pay by at least the required 10%) but whose terms of employment later change again so that their pensionable pay increases to more than 90% of what it was before the original reduction.

We propose that new regulations will be added to Part III of the 1995 Section, setting out the rules governing partial retirement. These rules will follow the approach to partial retirement taken in the 2008 Section and 2015 Scheme.

Timings for the availability of partial retirement will be confirmed following the consultation findings and subsequent decisions on final policy design, but it is expected to be implemented in 2024.

**Removing the 16-hour rule**

Under the current 1995 Regulations, members who choose to take their pension benefits and then return to work can only work a maximum of 16 hours per week in their first month back without impacting their pension. The Department is anecdotally aware that this rule can be administratively difficult for employers to manage, and it may also discourage staff from returning to work, or increasing their commitment to more than 16 hours per week after their first month back. The 16-hour rule is also not a feature of the 2008 Section or 2015 Scheme regulations for HSC staff, or of other comparable public service pension schemes.

The Department is now proposing an amendment to the 1995 Section regulations to permanently remove this rule. This would apply to all members, including SCS members. This amendment has been designed to complement the proposal for pensionable re-employment in the package of retirement flexibilities, by allowing staff to have a smooth transition back into work after claiming their 1995 Section benefits and allowing them to maximise the hours they contribute, if they wish, without impacting their pension.

The Department is therefore proposing that regulation 84 of the 1995 Section regulations, which contains the 16-hour rule, will be permanently removed from 1 April 2024.

The 16-hour rule has been suspended since 25 March 2020 as part of the retire and return easements explained in the previous section of this document. The suspension of the 16-hour rule is due to continue until 31 March 2024.

Other proposed changes in relation to partial retirement

**Allowing 100% drawdown in the 2008 Section and 2015 Scheme**

Under the current 2008 Section regulations and 2015 Scheme regulations, members can only claim a maximum of 80% of their benefits. However, under the Department’s plans, members who partially retire would be able to claim, or ‘draw down’, up to 100% of their 1995 Section benefits under partial retirement.

To ensure that partial retirement provisions are aligned across the 1995 Section, 2008 Section and 2015 Scheme, the Department is proposing to amend the relevant provisions governing partial retirement in the 2008 Section (regulation 49) and 2015 Scheme (regulation 83) to permit the maximum drawdown of 100% instead of the existing 80%.

The 2008 Section and the 2015 Scheme already have late retirement factors, which is a benefit for members who want to retire after their normal pension age and have their pension benefits remain in the scheme, where they are subject to revaluation. The change being proposed is to allow up to 100% drawdown will not remove this benefit for members, but it will offer them more flexibility if they do want to partially retire and take 100% of their pension benefits.

**Correcting regulation 85(3) in the 2015 Scheme**

Furthermore, when designing the provision for partial retirement, an error was noticed in regulation 85(3) of the 2015 Regulations surrounding abatement, following retirement from the scheme where members hold additional pension (AP).

Under the 2008 Section regulations, if members who partially retire are subject to abatement, then their AP continues in payment, whereas under the 2015 Scheme regulations the AP is also subject to abatement. The Department’s view is that AP should not be subject to abatement, and so the drafting of the 2015 Scheme regulations contains an error which the Department intends to correct. Regulation 85(3) states that the member’s pension mentioned in 84(2) will be abated to zero. However, the Department’s view is that regulation 85(3) should only refer to the member’s pension in regulation 84(2)(a) and (b) being abated to zero, because regulation 84(2)(c) refers to the member’s AP.

The HSC Pension Scheme (HSCPS), who administer the HSC Pension Scheme, have confirmed that no members who have partially retired from the 2015 Scheme have been subject to abatement in respect of their AP.

**Removing regulation 77(8) from the 1995 Section**

Regulation 77(8) applies to members with more than one employment and means that if they retire from at least one HSC employment, they can remain working in the HSC and still be entitled to claim their pension, provided they do not work for more than 16 hours per week. This is the same number of hours members can currently work on their first month back after retirement without impacting their pension. Given that the Department plans to permanently remove the 16-hour rule, it has considered that it is also appropriate to remove regulation 77(8).

As the Department is intending to introduce pensionable re-employment, if this regulation remained in place, impacted members would be able to claim their 1995 Section benefits and continue working and building further pension in the 2015 Scheme, without a break. The Department believes that this may be unfair on members who work more than 16 hours per week and wish to continue without a break, as they would be required to take partial retirement and reduce their pensionable pay by at least 10%, whereas members impacted by regulation 77(8) may not need to.

There is also not a similar rule in the 2008 Section or 2015 Scheme, which means that members with more than one employment must cease them all to be able to claim their pension. Therefore, to align the rules of the 1995 Section, 2008 Section and 2015 Scheme, the Department is proposing to permanently remove this regulation.

Equality Impact Assessment

Section 75 of the Northern Ireland Act 1998 requires all public authorities in carrying out their functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity:-

* between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
* between men and women generally;
* between persons with a disability and persons without; and
* between persons with dependents and persons without.

The Department’s Equality Screening Exercise initial conclusion has determined that the proposed changes do not differentially impact on any of the Section 75 groups.

However, the Department would like to take this opportunity to ask stakeholders the following question in relation to equality:-

Are there any considerations and evidence that you think the Department should take into account when assessing any equality issues arising as a result of the proposed changes?

The equality screening analysis will be reviewed based on responses received during the consultation.

**ANNEX A**

**CONSULTATION RESPONSE FORM**

**CONSULTATION**

**HSC Pension Scheme – proposed amendments to scheme regulations**

(Please complete and return to the address at the end of the form to ensure that we handle your response appropriately).

***1. Name/Organisation***

**Organisation Name**

|  |
| --- |
|  |

**Title**

|  |
| --- |
|  |

**Surname**

|  |
| --- |
|  |

**Forename**

|  |
| --- |
|  |

***2. Postal Address***

|  |  |  |
| --- | --- | --- |
|  | | |
|  | | |
|  | | |
| **Postcode** | **Phone** |  |
| **Email** | | |

***3. Permissions* - I am responding as…** (Please complete either sections (a), (b) and (d) or sections (c) and (d):

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  |  | **Individual** | | | | **or** | **Group/Organisation** | | | |  |  |  |
|  |  |  |  |  |  | | | | |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **(a)** | Do you agree to your response being made available to the public (in the Assembly library and/or on the Assembly web site)?  ***Please state yes or no:*** | | | | | |  | **(c)** | The name and address of your organisation ***will be*** made available to the public (in the Assembly library and/or on the Assembly web site). | | | | | |
| **(b)** | Where confidentiality is not requested, we will make your responses available to the public on the following basis | | | | | |  |  | Are you content for your ***response*** to be made available? | | | | | |
|  | ***Please state yes to one of the following:*** | | | | | |  |  | ***Please state yes or no: ……………*** | | | | | |
|  | Yes, make my response, name and address all available | | | | | **..........** |  |  |  | | | | |  |
|  |  | | | | | ***or*** |  |  |  | | | | |  |
|  | Yes, make my response available, but not my name and address | | | | | **……...** |  |  |  | | | | |  |
|  |  | | | | | ***or*** |  |  |  | | | | |  |
|  | Yes, make my response and name available, but not my address | | | | | **………** |  |  |  | | | | |  |
|  |  | | | | |  |  |  |  | | | | |  |
| **(d)** | We may share your response internally with other Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Department of Health to contact you again in relation to this consultation exercise?  ***Please state yes or no: ……………………………………….*** | | | | | | | | | | | | | |

ABOUT YOU

|  |
| --- |
| I am responding …  as a scheme member  on behalf of an Employer Organisation  on behalf of a Trade Union/Staff Association  other (please specify) |

|  |
| --- |
| What is your gender?    Female  Male  Other  Do not wish to say |

|  |
| --- |
| I am employed as…  an administrator  a dentist  a doctor  a general practitioner  a junior doctor  a manager  a nurse  I’m retired  other (please specify) |

|  |
| --- |
| What is your working pattern?  I work part-time  I work full- time  Not applicable |

**CONSULTATION COMMENTS**

Please use this space to provide any comments on the amendments.

|  |
| --- |
| Comments: |

Please e-mail your response to [modernisation@health-ni.gov.uk](mailto:modernisation@health-ni.gov.uk) or post to:

DoH – Pension Policy Team

Room G33

Waterside House

75 Duke Street

Londonderry BT47 6FP

The closing date for receipt of comments is 5pm on 16 October 2023.