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STATUTORY RULES OF NORTHERN IRELAND

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**1999 No. 294**

**HEALTH AND PERSONAL SOCIAL SERVICES**

The Health and Personal Social Services  
(Superannuation) (Additional Voluntary  
Contributions) Regulations (Northern Ireland) 1999

*Made* - - - - *28th June 1999*  
*Coming into operation* *9th August 1999*

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 12(1), (2), (2A)(1) and (3) and 14(2) (1), (2), (3) and (3A)(3) of, and Schedule 3 to, the Superannuation (Northern Ireland) Order 1972(4) 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:

**PART I**

**Preliminary**

**Citation, commencement and retrospective effect**

1.—(1) These Regulations may be cited as the Health and Personal Social Services (Superannuation) (Additional Voluntary Contributions) Regulations (Northern Ireland) 1999.

(2) These Regulations shall come into operation on 9th August 1999 and shall have effect from 1st February 1991(5).

**Interpretation**

2.—(1) In these Regulations—

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- (1) Paragraph (2A) was inserted by Article 10(5) of S.I.1990/1509 (N.I. 13) and paragraph (11) was inserted by Article 10(6) of S.I. 1990/1509 (N.I. 13)
- (2) Article 14 of the Superannuation (Northern Ireland) Order was amended by Article 12 of S.I. 1990/1509 (N.I. 13)
- (3) As inserted by Article 12(3) of S.I. 1990/1509 (N.I. 13)
- (4) S.I. 1972/1073 (N.I. 10) as amended by S.I. 1990/1509 (N.I. 13)
- (5) See Article 14(1) of the Superannuation (Northern Ireland) Order 1972, which provides that certain regulations may be framed so as to have effect from a date earlier than that of their making

“the 1995 Regulations” means the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995<sup>(6)</sup>;

“approved scheme” means a retirement benefits scheme approved under Chapter 1 of Part XIV of the Taxes Act;

“authorised fund” means a fund managed by an authorised provider selected by the Department for the purposes of these Regulations;

“child” means a child who is entitled to a child’s allowance under regulation 33 of the 1995 Regulations (Payment of allowance);

“contributor” means a person in respect of whom an election under regulation 3(1) has effect;

“date of retirement” means the date on which benefits become payable to the participator under any of regulations 12 to 17 of the 1995 Regulations;

“the Department” means the Department of Health and Social Services;

“dependant” means either a surviving spouse (providing the marriage was not, prior to 1st April 1995, subject to an order of judicial separation) or any surviving child of that contributor or participator;

“dependant’s pension” means a pension which becomes payable to a dependant on the death of a participator;

“free-standing additional voluntary contributions scheme” means an approved scheme which falls within section 591(2)(h) of the Taxes Act (discretionary approval);

“the Index” at any time means the Retail Price Index or any successor agreed as appropriate by the Board of Inland Revenue, for the calendar month three months prior to that time;

“insurance company” means a body authorised under section 3 or 4 of the Insurance Companies Act 1982<sup>(7)</sup> to carry on long term insurance business or an EC company as defined by section 2(6) of that Act<sup>(8)</sup> which carries on long term insurance business through a branch in the United Kingdom and in respect of which such of the requirements of Part I of Schedule 2F to that Act<sup>(9)</sup> as are applicable have been complied with;

“lump sum death benefit” means a lump sum which will become payable in the event of a person’s death while paying contributions to provide for it;

“participator” means—

- (a) a person in respect of whom investments have been made under regulation 7, 8(2) or 9(4) and who has not exercised any right to take a cash equivalent within the meaning of section 90 of the Pension Schemes (Northern Ireland) Act 1993<sup>(10)</sup> or to be paid a lump sum under regulation 14; or
- (b) a person who, while he was a participator in terms of paragraph (a), has made a benefits election under regulation 11(3) or has died;

“personal pension scheme” means a scheme approved under Chapter IV of Part XIV of the Taxes Act;

“retirement” is to be construed in accordance with the 1995 Regulations;

“retirement benefits scheme” has the meaning given to it in section 611 of the Taxes Act;

“salary” means all salary, wages, fees and other payments paid or made to a person as such for his own use in respect of his employment;

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<sup>(6)</sup> S.R. 1995 No. 95 as amended by S.R. 1997 No. 217; S.R. 1997 No. 390 and S.R. 1998 No. 299

<sup>(7)</sup> 1982 c. 50

<sup>(8)</sup> As inserted by S.I. 1994/1696, regulation 4(2)

<sup>(9)</sup> Schedule 2F was inserted by S.I. 1994/1696 Schedule 6

<sup>(10)</sup> 1993 c. 49; section 90 was amended by the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)) Article 150

“the Taxes Act” means the Income and Corporation Taxes Act 1988(11).

(2) Subject as aforesaid and except where the context otherwise requires, other expressions in these Regulations have the same meaning as in the 1995 Regulations.

## PART II

### Additional Voluntary Contributions

#### **Making and acceptance of elections**

3.—(1) Subject to paragraph (3), a person in superannuable employment may elect to pay contributions under these Regulations—

- (a) for investment under regulation 7(1) to provide for an annuity payable on retirement;
- (b) for investment under regulation 7(2) to provide for a lump sum death benefit.

(2) An election under paragraph (1) may relate to contributions to be paid by, or on behalf of, the contributor or contributions to be paid by the contributors employer or both.

(3) An election under paragraph (1) shall not have effect if the person making it—

- (a) is on leave of absence from work or while his earnings are reduced or have ceased; or
- (b) is not receiving tax relief under section 594(1) of the Taxes Act (exempt statutory schemes) or otherwise in respect of contributions paid under regulation 10 of the 1995 Regulations.

(4) An election under paragraph (1) shall be made by giving written notice to the Department specifying—

- (a) whether the election relates to paragraph (1)(a) or (b), or both;
- (b) the amount of the contributions; and
- (c) in relation to the contributions for the purpose of investment under regulation 7(1), the authorised fund or funds in which the contributions are to be invested,

and, subject to paragraph (5), shall be accepted by the Department.

(5) The Department shall not accept an election under paragraph (1)—

- (a) where any limit imposed by regulation 4(3), 4(4) or 13 (limits on contributions and benefits) would be exceeded; or
- (b) in the case of an election under paragraph (1)(b) to provide for a lump sum on death, unless it is satisfied that the election is made in accordance with the requirements of regulation 16(2) and at the time of making an election the person is in good health and there is no reason why his health should prevent him from making contributions.

(6) Subject to paragraph (5)(b) and regulation 4(4), where contributions are paid until the contributors 60th birthday and the contributor does not then cease to be in superannuable employment, an election may be made to pay further contributions up to the contributors 61st birthday to provide for a lump sum death benefit; and so long as the contributor has not ceased to be in superannuable employment, further elections may be made annually in respect of subsequent years.

(7) For the purposes of paragraphs (1) and (6), an election shall have effect from the date when the Department accepts the election.

### **Payment and amount of additional voluntary contributions**

4.—(1) Contributions under these Regulations may be made by way of weekly, monthly or quarterly payments or by way of a single payment.

(2) The contributor's employer may deduct any amount payable by the contributor from the contributor's salary, and such deductions shall commence to be made from the salary in respect of the first whole pay period falling after the date the employer receives authorisation to make those deductions and shall be remitted to the Department as soon as reasonably practicable but not later than 10 days following the pay period in which the contributions are deducted.

(3) Subject to paragraph (4), in any period of 12 months beginning on 6th April in any year the total contributions payable by the contributor must not exceed the lesser of A and B where—

A is 15 percent of the contributor's salary less the total of any contributions in respect of that year paid by the contributor—

- (i) to another approved scheme;
- (ii) to a free-standing additional voluntary contributions scheme;
- (iii) under the 1995 Regulations;

B is the amount which would be likely to provide benefits of the largest amounts allowed by regulation 13.

(4) In the case of an election under regulation 3(1)(b) to provide for a lump sum death benefit, contributions payable by virtue of that election, or any election under regulation 3(6) or 5(2)(a), may not, at the date on which the Department accepts the election, be of such amount as to provide for a lump sum death benefit in excess of the permitted amount under paragraph 15(4) of the Schedule.

### **Variation and cancellation of elections**

5.—(1) A contributor who has elected under regulation 3(1)(a) to pay contributions for the purpose of investment under regulation 7(1) may at any time by giving written notice to the Department—

- (a) subject to regulation 4(3), alter the amount of the contributions;
- (b) require the whole or part of them to be invested in future in some authorised fund; or
- (c) require the Department to realise the whole or part of any investments made and to reinvest the proceeds in some other authorised fund; or
- (d) cancel the election.

(2) A contributor who has elected under regulation 3(1)(b) to pay contributions to provide a lump sum death benefit under regulation 7(2) may at any time by giving written notice to the Department—

- (a) subject to regulation 4(3) and (4) and provided he is not absent from work or his health is such that the Department would not accept an election under regulation 3(1)(b), elect that a specified larger sum is to be secured and the contributions increased accordingly; or
- (b) cancel the election.

(3) The Department shall give effect as soon as is reasonably practicable to the terms of any notice given under this regulation.

### **Circumstances in which elections cease to have effect**

6. An election shall cease to have effect where a contributor—

- (a) receives payment of benefits under any of regulations 12 to 17 of the 1995 Regulations except where the contributor is entitled to accrue further benefits in the circumstances described in regulation 8(2) of those Regulations;

- (b) leaves superannuable employment;
- (c) ceases to be in superannuable employment by virtue of an election under regulation 9 of the 1995 Regulations (Opting out of the scheme); or
- (d) ceases to receive tax relief under section 594(1) of the Taxes Act (exempt statutory schemes) or otherwise in respect of contributions paid under regulation 10 of the 1995 Regulations (Contributions by members).

### **Investment of additional voluntary contributions**

7.—(1) Any contributions paid in respect of a contributor for investment under this paragraph shall be invested by the Department in accordance with any notice under regulation 3(4) or 5(1).

(2) Any contributions paid in respect of a contributor to provide for a lump sum death benefit under this paragraph shall be paid by the Department to an insurance company selected by it so as to secure the payment of a lump sum death benefit of the amount required by any notice under regulation 3(4) or 5(2).

### **Inward transfers**

8.—(1) Where a person who enters superannuable employment has during any previous employment paid contributions to—

- (a) a free-standing additional voluntary contributions scheme; or
- (b) an approved scheme which provides additional benefits through additional voluntary contributions but does not fall within section 591(2)(h) of the Taxes Act (discretionary approval),

that person, whether or not he becomes a contributor within the meaning of these Regulations, may, within 12 months of entering superannuable employment, or such longer period as the Department may in any particular case allow, give written notice to the Department that he wishes it to accept from the trustees or managers of such a scheme a transfer value representing the value of the investments derived from his contributions.

(2) Where the Department accepts a transfer value it shall be invested by the Department, in accordance with the wishes of the person entering superannuable employment, in one or more of the authorised funds.

(3) Where a transfer value is invested under paragraph (2) the person may at any time, by giving written notice to the Department, require the Department to realise the whole or part of the sums so invested and to reinvest the proceeds in a different way.

### **Inward transfers: mis-sold pensions**

9.—(1) This Regulation shall apply to a person to whom regulation 9A(12) (Opting into the Scheme: Mis-sold Pensions) of the 1995 Regulations applies in respect of whom a transfer payment within the meaning of regulation 62A(13) (Transfers in respect of members to whom regulation 9A applies who elect to join or rejoin the scheme) of those Regulations has been paid by a personal pension scheme to the Department.

(2) Subject to paragraph (3), where, at any time, a person to whom this regulation applies elects to rejoin the scheme under regulation 9(5) (Opting out of the scheme) of the 1995 Regulations, that person, whether or not he becomes a contributor within the meaning of these Regulations may, within 12 months of rejoining the scheme, or such longer period as the Department may in any particular

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(12) Regulation 9A was inserted by S.I. 1997 No. 217, regulation 4

(13) Regulation 62A was inserted by S.I. 1997 No. 217, regulation 6(3)

case allow, give written notice to the Department that he wishes it to accept, for the purposes of these Regulations, a transfer value.

(3) For the purposes of paragraph (2), the transfer value shall be of an amount representing the difference between—

- (a) the capitalised value of the accrued rights to benefit in the personal pension scheme from which the transfer value is paid which is attributable to contributions made to that scheme by the person referred to in paragraph (1) during his opted-out service; and
- (b) the total of the amounts referred to in regulation 62A(2)(i) and (ii) of the 1995 Regulations.

(4) Where a transfer value is accepted by the Department it shall be invested by the Department, in accordance with the wishes of the person referred to in paragraph (1), in one or more of the authorised funds.

(5) Where a transfer value is invested under paragraph (4) the person referred to in paragraph (1) may at any time, by giving written notice to the Department, require the Department to realise the whole or part of the sums so invested and to reinvest the proceeds in a different way.

(6) In this regulation—

“opted-out service” means the period of HPSS employment in respect of which the Department has approved an additional period of superannuable service for the purposes of regulation 62A(2)(i) of the 1995 Regulations; and

“personal pension scheme” has the meaning given by section 1 of the Pensions Schemes (Northern Ireland) Act 1993.

### **Outward transfers**

**10.**—(1) Subject to paragraph (2), the Department shall, in circumstances where a transfer payment in respect of a person is provided and used in accordance with regulation 53 of the 1995 Regulations (Member’s right to transfer or buy-out), pay a transfer value representing the value of investments made under regulation 7(1), 8(2) or 9(4) at that person’s option to one of the following schemes in which the person may be participating—

- (a) an approved scheme which provides additional benefits through additional voluntary contributions but does not fall within section 591(2)(h) of the Taxes Act (discretionary approval);
- (b) a personal pension scheme; or
- (c) any other arrangement which has been approved by the Board of Inland Revenue to accept transfer payments, provided that the transfer value shall not be used to purchase benefits in the form of a tax free lump sum.

(2) Where the Department is required to make a transfer payment it shall do so by whichever is the earlier of—

- (a) the date being a date within six months of the guarantee date; or
- (b) if the person in respect of whom the transfer payment is to be made—
  - (i) ceased to be subject to the 1995 Regulations on a date prior to his attaining the age of 59 years; and
  - (ii) made his application for a transfer payment within 6 months of that date, the date on which he attains the age of 60 years.

(3) In this regulation “the guarantee date” has the meaning given to it in section 89A of the Pensions Schemes (Northern Ireland) Act 1993(14).

## PART III

### Provision of Benefits

#### Retirement and dependant's pensions

11.—(1) Subject to paragraph (7) and regulation 15(9) and (10), the proceeds of any investment made under regulation 7(1), 8(2) or 9(4) may be used only for the purchase from an insurance company of an annuity which complies with the requirements of paragraph (2).

(2) An annuity complies with the requirements of this paragraph if—

- (a) it provides a retirement pension which commences not earlier than the date of retirement and is payable to the participator for life;
- (b) and dependant's pension which is payable under it is payable only on the death of the participator after his retirement and is payable for life, except that in the case of a dependant who is a child to whom regulations 32 to 38 of the 1995 Regulations apply it shall cease to be payable when that person ceases to be a dependent child within the meaning of those Regulations;
- (c) it is not capable in whole or in part of surrender, assignment or of commutation.

(3) Not earlier than three months before retirement, a participator, by giving written notice to the Department, shall make a benefits election which shall specify—

- (a) whether only a retirement pension is to be provided;
- (b) for whom, if anyone, a dependants pension is to be provided;
- (c) if more than one pension is to be provided, either—
  - (i) the proportion of the amount secured by the investments under regulation 7(1), 8(2) or 9(4) that is to be applied to the purchase of each of them; or
  - (ii) the dependant's pensions to be provided expressed as a percentage of the retirement pension;
- (d) in respect of every pension to be provided, whether the annual rate of pension—
  - (i) is to be fixed; or
  - (ii) is to vary in accordance with the Index; or
  - (iii) is to increase yearly by a specified percentage or, if lower than that percentage, by the increase in the Index in the year in question; and
- (e) the authorised provider who is to provide each pension.

(4) In the case of a retirement pension, the benefits election under paragraph (3) may also specify that if the participator dies within the period of 5 years beginning on the date the retirement pension commences, the balance that would have been payable during the remainder of that period, if the pension had continued at the rate in force at the time of the participator's death, is to be paid as a lump sum.

(5) Upon receipt of a notice of election under paragraph (3) the Department shall, as soon as reasonably practicable, realise the investments made under regulation 7(1), 8(2) or 9(4) and apply the proceeds to the purchase of an annuity from the authorised provider chosen by the participator to provide the benefits specified in the notice of election.

(6) Subject to paragraph (7) and regulation 15(9) and (10) where, on or after the date on which these Regulations come into operation, no benefits election under paragraph (3) has been made six months after the date of retirement, the Department may realise the investments made under regulation 7(1), 8(2) or 9(4) and apply the proceeds to the purchase of a pension from the insurance company referred to in regulation 7 to provide such benefits as appear to it to be suitable.

(7) If the participator dies before retirement, or after retirement but before an annuity such as is mentioned in paragraph (5) is acquired, the investments made under regulation 7(1), 8(2) or 9(4) shall be realised and be payable as a lump sum, subject to any limit imposed by regulation 13 and paragraph 15 of the Schedule.

(8) If the benefits provided by the annuity, purchased in accordance with paragraph (5), when aggregated with the benefits payable under the 1995 Regulations arising from the participator's superannuable service, do not exceed any amount prescribed by regulations for the time being in force under section 17(1) of the Pension Schemes (Northern Ireland) Act 1993<sup>(15)</sup>, the authorised provider may discharge the liability for payment of the benefits under the annuity by payment of a lump sum representing their capital value.

### **Lump sums on death**

**12.**—(1) Subject to paragraph (2), if a contributor who has elected under regulation 3(1)(b) to pay contributions to provide for a lump sum death benefit dies, the lump sum shall be payable.

(2) Any lump sum payable under paragraph (1) shall not exceed the permitted amount specified in paragraph 15(4) of the Schedule.

### **Benefit limits**

**13.**—(1) The Schedule shall have effect for limiting the benefits that may be paid under these Regulations.

(2) The maximum annual rate of a retirement pension or dependant's pension ascertained from the Schedule may be increased—

(a) by 3 percent for each completed year that has elapsed; or

(b) if a greater increase results, in proportion to the increase in the Index that has occurred, since the date on which the pension became payable,

(3) The Department shall comply with the requirements of regulation 5 of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) Regulations 1993<sup>(16)</sup>, and where, within the meaning of those Regulations, the scheme is the "leading scheme" in relation to a member, with the requirements of regulation 6 of those Regulations so far as they concern "main schemes" for the purposes of those Regulations.

## **PART IV**

### **Miscellaneous Provisions**

#### **Repayment of investments in certain cases**

**14.**—(1) In the case of a person who—

(a) ceases to be employed in superannuable employment;

(b) is entitled to receive a refund of contributions under regulation 50 of the 1995 Regulations; and

(c) has applied for and received such a refund of contributions,

the Department shall make arrangements for that person, subject to paragraph (2), to receive a lump sum representing the total realisable value of the investments made by the Department in respect of

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<sup>(15)</sup> 1993 c. 49

<sup>(16)</sup> S.I. 1993/3016.



that person under regulation 7(1), 8(2) or 9(4) less the amount of tax chargeable under section 598 of the Taxes Act (charge to tax: repayment of employee's contributions).

(2) Where, in the circumstances mentioned in paragraph (1), contributions have been made by an employer, the Department shall make arrangements for that employer to receive a lump sum representing the total realisable value of the investments made by the Department in respect of contributions made by that employer under regulation 7(1) less the amount of tax chargeable under section 601 of the Taxes Act (charge to tax: payment to employers).

### **Payments by the Department**

**15.**—(1) Subject to paragraph (2), where an authorised provider fails to pay any amount due under an annuity or lump sum death benefit provided in accordance with these Regulations, the Department shall be liable to pay that amount.

(2) Where, on or after the date on which these Regulations come into operation, a participator elects for benefits to be provided by an authorised provider other than the one selected by the Department, the Department shall not be liable under paragraph (1).

(3) Lump sums payable—

- (a) as mentioned in regulation 11(4); or
- (b) under regulation 11(7) or 12,

shall be paid to the deceased's spouse (provided no notice has been given under regulation 22(1) of the 1995 Regulations that the spouse is not to receive payment) or, if there is no spouse or such notice has been given, to the deceased's personal representatives.

(4) Lump sums payable under regulation 11(8) or 14(1) shall be paid to the participator.

(5) If when a participator dies a lump sum would have been payable under regulation 11(7) or 12, but the whole or part of that sum cannot be paid by reason of regulation 13 and paragraph 15 of the Schedule, any amount which cannot be paid under those provisions shall be used for the purchase of an annuity which complies with the provisions of regulation 11(2)(b) and (c) to provide a pension for—

- (a) the deceased's spouse, but if none is living;
- (b) any dependant child of the deceased,

provided that—

- (i) any such person shall be subject to any limit imposed by regulation 13 and paragraph 14 of the Schedule; and
- (ii) any amount remaining after the purchase of such a pension, or the whole amount if no such person as is mentioned in sub-paragraph (a) or (b) is living, less any amount of tax chargeable under section 599A of the Taxes Act(17) (charge to tax; payments out of surplus funds), shall be paid to the deceased's personal representatives.

(6) If, by reason of regulation 13 and paragraphs 7 to 14 of the Schedule, an annuity falling to be provided under regulation 11 is not payable in full, there shall, subject to paragraph (7), be paid to the participator the balance of the amount, or aggregate of amounts, not exceeding the prescribed amount as defined in paragraph (8), out of the investments by virtue of regulation 11(5) which would otherwise have been applicable to the purchase of the annuity less the amount of any tax chargeable under section 599A of the Taxes Act.

(7) Where, in the circumstances mentioned in paragraph (6), contributions have been made by the employer, the balance (to the extent that it is attributable to contributions made by the employer) less the amount of any tax chargeable under section 601 of the Taxes Act, shall be paid to the employer.

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(17) Section 599A was inserted by section 75 of, and paragraph 12 of Schedule 6 to, the Finance Act 1989 (c. 26)

(8) In paragraph (6) the reference to a prescribed amount is to an amount calculated in accordance with the method for the time being specified in regulations made for the purposes of section 591 of the Taxes Act (discretionary approval) as the method to be used for calculating the amount of any surplus funds.

(9) In the case of a participator to whom benefits become payable under any of regulations 12 to 17 of the 1995 Regulations, the Department may realise such part of the investments made under these Regulations as is derived from any contributions made by the participator's employer without purchasing an annuity and, in that event, the amount shall be payable to the participator as a lump sum.

(10) In the case of a participator to whom regulation 13(7) or 17(5) of the 1995 Regulations applies (early retirement on grounds of ill-health), the Department may realise the investments made under these Regulations without purchasing an annuity and, in that event, the proceeds shall be payable as a lump sum less any charge to tax under section 599 of the Taxes Act.

### **Information**

**16.—**(1) A person making an election under these Regulations, and his employers, shall give the Department such information it may reasonably require for the purposes of its functions under these Regulations.

(2) A person making—

- (a) an election under regulation 3(1)(b) or (6) to provide a lump sum death benefit; or
- (b) an election under regulation 5(2)(a),

shall, in particular, give the Department such information about his health as it may reasonably require.

### **Payments in respect of deceased persons**

**17.—**(1) This regulation applies where a person dies and the total of—

- (a) any sums that were due to him under these Regulations; and
- (b) any sums payable under these Regulations to his personal representatives,

does not exceed the amount specified in any order for the time being in force for the purposes of section 1 of the Administration of Estates (Small Payments) Act (Northern Ireland) 1967(18) and applying in relation to the death.

(2) Where this regulation applies the Department may, without requiring the production of proof of title, pay any amount due under paragraph (1)(a) or (b)—

- (a) to the deceased's personal representatives; or
- (b) to the person, or to among any one or more of any persons, appearing to it to be beneficially entitled to the estate,

any any person to whom such a payment is made, and not the Department, shall thereafter be liable to account for any amount paid.

### **Benefits not assignable on bankruptcy**

**18.—**(1) On the bankruptcy of any person entitled to benefit under these Regulations, no part of the benefit shall be paid to any trustee or any other person acting on behalf of creditors, except as provided for in paragraph (2).

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(18) 1967 c. 5 (N.I.). The amount specified in S.R. 1984 No. 336 as amended by S.R. 1988 No. 271 is £5,000

(2) Where, following the bankruptcy of any person entitled to benefits under these Regulations, the court makes an income payments order under Article 283 of the Insolvency (Northern Ireland) Order 1989(19) that requires the Department to pay all or part of the benefit to the person's trustee in bankruptcy, the Department shall comply with that order.

#### **Offset for crime, negligence or fraud**

19. Where, in the circumstances set out in regulation 92 of the 1995 Regulations, there has been a loss to public funds, the Department may, in relation to benefits which arise by virtue of the employer's contributions, reduce the amount of any benefit payable to or in respect of a person under these Regulations, to the extent set out, and subject to the conditions specified in that regulation.

#### **Loss of rights to benefit**

20. Where the circumstances are such that a direction may be made by the Department under regulation 93 of the 1995 Regulations, the Department may direct that all or part of any rights to benefit under these Regulations which arise by virtue of the employer's contributions be forfeited.

#### **Determination of questions**

21. Any question arising under these Regulations as to the rights or liabilities of any person shall be determined by the Department.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on

L.S.

28th June 1999.

*J. McGrath*  
Assistant Secretary

The Department of Finance and Personnel hereby consents to the foregoing Regulations.  
Sealed with the Official Seal of the Department of Finance and Personnel on

L.S.

28th June 1999.

*D. Angus*  
Assistant Secretary

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

## SCHEDULE

Regulations 4(4), 11(7), 12(2), 13(1) and  
(2) and 15(5) and (6)

### Benefit limits

## PART I

### Interpretation

1. Paragraphs 2 to 6 have effect for defining expressions used in this Schedule.

2. “Adjusted salary” means A + B, where—

A is the participator’s total taxable salary for the year in question less any fluctuating emoluments such as bonus payments and payments for overtime, and

B is the annual average of such fluctuating emoluments. For these purposes such emoluments shall be averaged—

- (i) over a period of whole years, not being less than 3 consecutive years, ending on the last day of the year in question, or
- (ii) in a case where such emoluments have been paid for a period of less than 3 years, over the period during which they have been paid.

3.—(1) “Final remuneration” means, subject to sub-paragraphs (2) and (3), the greater of C and D, where—

C is the participator’s highest year’s adjusted salary in respect of superannuable service during the period of 5 years ending on the material date; and

D is the average of the participator’s salary in respect of any period of 3 or more consecutive years ending no earlier than 10 years before the material date.

but, in respect of any year other than the one ending on the material date, the salary shall be taken to have increased in proportion to any increase in the Index from the end of the year up to the material date.

(2) In respect of the tax year’s 1987/88 and following tax years, “final remuneration” shall not include any sums chargeable to tax under section 148 of the Taxes Act (payments on retirement or removal from office or employment) or chargeable under Schedule E to Part I of the Taxes Act and arising from the acquisition or disposal of shares, or an interest in shares, or from a right to acquire shares except where the shares or rights which give rise on or after 17th March 1987 to a Schedule E tax liability had been acquired before that date.

(3) Where the participator entered superannuable employment on or after 1st June 1989 and final remuneration, calculated under sub-paragraph (1), exceeds the permitted maximum under section 590C of the Taxes Act<sup>(20)</sup> (conditions of approval of retirement benefit schemes; earning cap), then, for the purposes of calculating the participator’s final remuneration, no account shall be taken of the excess over that amount unless the participator is a person mentioned in regulation 3(3) of the 1995 Regulations.

(4) For the purposes of this paragraph, the Department shall select the years by reference to which the participators final remuneration shall be calculated and the years selected shall be those which produce the most favourable result to the participator.

4. “Material date” means the earlier of—

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(20) Section 590C was inserted by the Finance Act 1989 (c. 26), Schedule 6, paragraph 4

- (a) the participator's retirement date;
- (b) the date on which the participator ceased to be in superannuable employment.

5.—(1) "Retained benefits" means the total of any pensions payable to the participator, in respect of employment before the participator entered superannuable employment, under—

- (a) a retirement benefits scheme or under an annuity contract falling within section 431(4)(d) of the Taxes Act (interpretative provisions relating to insurance companies);
- (b) a retirement annuity contract or trust scheme under Chapter III of Part XIV of the Taxes Act;
- (c) a personal pension scheme approved under Chapter IV of Part XIV of the Taxes Act;
- (d) a statutory scheme (as defined in section 612 of the Taxes Act); or
- (e) an approved scheme.

(2) In this paragraph "pension" includes the actuarial equivalent as an annual pension, as determined by the Inland Revenue Pensions Schemes Office, of any lump sum.

6. "Total retirement benefits" means the total of so much of—

- (a) the annual rate of the participator's retirement pension under these Regulations;
- (b) the annual rate of any pension payable under 12 to 17 of the 1995 Regulations;
- (c) the actuarial equivalent as an annual pension, as determined by the Inland Revenue Pension Schemes Office, of any retirement lump sum under the 1995 Regulations;
- (d) the annual rate of any pensions payable to the participator under any approved scheme;
- (e) the actuarial equivalent as an annual pension, as determined by the Inland Revenue Pension Schemes Office of any retirement lump sum under an approved scheme,

as is attributable to contributions, including any contributions made by the employer, paid while in superannuable employment.

## PART II

### Retirement pensions

7. The annual rate of a participator's retirement pension under these Regulations must not be such as to cause the participator's total retirement benefits to exceed the permitted amount.

8.—(1) If the participator becomes entitled to a pension under regulation 12 of the 1995 Regulations on his 60th birthday, the permitted amount is the greater of E and F, where—

E is  $\frac{1}{60}$ th of the participator's final remuneration for each of up to 40 years of superannuable service; and

F is the lesser of G and H.

(2) In sub-paragraph (1)—

(a) G is—

- (i) in relation to a participator who entered superannuable employment before 17th March 1987, the fraction of final remuneration ascertained by reference to the number of years of superannuable service at age 60, from the following Table—

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Table

<i>Years of superannuable service at age 60</i>	<i>Fraction</i>
Not more than 5	1/60th for each year
6	8/60ths
7	16/60ths
8	24/60ths
9	32/60ths
10 or more	40/60ths

and

(ii) in any other case, is 1/30th of the participator’s final remuneration for each of up to 20 years of superannuable service; and

(b) H is 2/3rds of the participator’s final remuneration less any retained benefits.

9. If the participator becomes entitled to a pension under regulation 12 of the 1995 Regulations on a date later than his 60th Birthday, the permitted amount is the greater of J, K and, where applicable L. where—

J is an amount calculated in accordance with paragraph 8 at the material date;

K is an amount calculated in accordance with paragraph 8 as at the participator’s 60th birthday increased, up to the date of his retirement, either in proportion to any increase in the Index during that period or actuarially in respect of that period; and

L is, in the case of a participator with more than 40 years superannuable service, 1/60th of his final remuneration for each of up to a maximum of 45 years of superannuable service, excluding any years before the participator’s 60th birthday in excess of 40.

10.—(1) If the participator becomes entitled to a pension under regulation 49 of the 1995 Regulations on or after his 60th birthday, the permitted amount is—

(a) where the participator first entered superannuable employment before 1st June 1989, the greater of—

$$\frac{(M + R) \text{ and } (N \times Q) + R}{P}$$

where—

M is 1/60th of the participator’s final remuneration for each of up to 40 years of superannuable service;

N is the number of years on which M is calculated;

P is the number of years on which M would have been calculated if the participator had continued in superannuable employment up to his 60th birthday;

Q is the maximum amount calculated in accordance with paragraph 8 if the participator had continued in superannuable employment up to his 60th birthday;

R is the appropriate increase; and

(b) is in any other case, is the amount calculated in accordance with paragraph 8 but disregarding sub-paragraph (2)(a)(i) of that paragraph and uprated by the appropriate increase.

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(2) For the purposes of sub-paragraph (1) the appropriate increase is an increase in the amount in question in proportion to any increase in the Index, from the cessation of superannuable employment to the date of payment of retiring allowances.

11. Paragraphs 8 to 10 in their application to persons who are special class officers or mental health officers for the purposes of regulations 75 and 76 of the 1995 Regulations shall have effect subject to the modification that 55th birthday shall be substituted for 60th birthday and age 55 shall be substituted for age 60.

12. If the participator becomes entitled to a pension under regulation 13 of the 1995 Regulations (Early retirement pension on the grounds of ill health), the permitted amount is that fraction of the participator's final remuneration which, in accordance with paragraph 8, he could have received had he remained in superannuable employment until his 60th birthday.

13. If the participator becomes entitled to a pension under regulation 14 (Early retirement pension in respect of redundancy), 15 (Early retirement pension with employer's consent) or 16 (Early retirement pension with actuarial reduction) of the 1995 Regulations, the permitted amount is—

(a) where the participator first entered superannuable employment before 1st June 1989, the greater of—

$$M \text{ and } \frac{N \times Q}{P} \text{ and}$$

(b) in any other case, S, where—

M, N, P and Q have the same meaning as in paragraph 10; and

S is the lesser of the amounts calculated in accordance with paragraph 8 but disregarding sub-paragraph (2)(a)(i) of that paragraph and uprated by the appropriate increase.

### PART III

#### Dependants' Pensions

14.—(1) The annual rate of a dependants' pension under these Regulations, or where more than one such pension is payable the total of their annual rates, must not be such as to cause the total of the annual rates of the relevant benefits to exceed the permitted amount.

(2) Where only one dependant's pension is payable, the relevant benefits are—

(a) that pension;

(b) any similar pension payable to the dependant under the 1995 Regulations or under a free-standing additional voluntary contributions scheme to which contributions were paid while the participator was in superannuable employment;

and the permitted amount is 2/3rds of the maximum retirement pension.

(3) Where two or more dependants' pensions are payable, the relevant benefits are—

(a) those pensions;

(b) any similar pensions payable as mentioned in sub-paragraph (2)(b),

and the permitted amount is the annual rate of the maximum retirement pension.

Provided that for each dependants' pension the relevant benefits shall not exceed the permitted amount specified in sub-paragraph (2).

(4) Subject to sub-paragraph (5), the maximum retirement pension is the participator's permitted amount calculated in accordance with paragraphs 8 to 13 but disregarding any retained benefits.

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- (5) In calculating the maximum retirement pension—
- (a) if the participator died in superannuable employment and had not attained the age of 60, it is to be assumed that he continued in superannuable employment at the same salary up to, and retired on, his 60th birthday; and
  - (b) if the participator died in superannuable employment and had attained the age of 60, it is to be assumed that he retired on the day before death.

## PART IV

### Lump Sums on Death

15.—(1) The lump sum payable under regulation 11(7) must not be such as to cause the total lump sums payable on death to exceed the total realisable value of the investments made by the Department under regulations 7(1), 8(2) or 9(4) in respect of contributions made by the participator.

- (2) The total lump sums payable on death are the total of—
- (a) any lump sum death benefit arising pursuant to an election under regulations 3(1)(b), 3(6) or 5(2)(a);
  - (b) any lump sum payable under regulation 11(7); and
  - (c) any lump sum benefits totalling £2,500 or more that are payable under the relevant schemes mentioned in sub-paragraph (2).
- (3) The relevant schemes are—
- (a) approved schemes;
  - (b) schemes approved under Chapter XIV of the Taxes Act;
  - (c) free standing additional voluntary contributions schemes;
  - (d) retirement annuity contracts approved under Chapter III of Part XIV of the Taxes Act;
  - (e) the scheme constituted by the 1995 Regulations;
  - (f) “relevant statutory schemes” as defined by section 611A of the Taxes Act.
- (4) The permitted amount for the purpose of regulation 4(4) and 12(2) is £5,000 or, if greater, 4 times the participators' remuneration.
- (5) The participators' remuneration is the greater of T, U and V, where—
- T is what the participators' final remuneration would have been if the date of death had been the material date;
  - U is the participators' highest year's adjusted salary for the purpose of calculating T; and
  - V is the participators' total taxable earnings during any period of 12 months ending not more than 3 years immediately before the date of death, increased in proportion to any increase in the Index from the end of the year up to the material date as mentioned in paragraph 3(1).



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## EXPLANATORY NOTE

*(This note is not part of the Regulations.)*

These Regulations make provisions for the payment of additional voluntary contributions by persons who are members of the Health and Personal Social Services Superannuation Scheme as constituted by the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995 (“the HPSS Superannuation Scheme” and “the 1995 Regulations”), or by their employers, in order to secure additional benefits financed by the investment of those contributions.

The Regulations have retrospective effect from 1st February 1991, as authorised by Article 14(1) of the Superannuation (Northern Ireland) Order 1972.

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

Regulation 3 provides for elections to pay periodical contributions so as to secure additional retirement and dependants' pensions and a lump sum death benefit in the event of death while paying such contributions and contains general provisions as to the making and acceptance of elections.

Regulation 4 deals with the payment of contributions and imposes limits on their total amount.

Regulation 5 provides for the variation or cancellation of elections made under regulation 3.

Regulation 6 prescribes the circumstances under which an election ceases to have effect.

Regulation 7 makes provision in relation to the investment of contributions by the Department.

Regulation 8 makes provision relating to the acceptance of a transfer value from another scheme.

Regulation 9 makes special provision regarding the acceptance of a transfer value from a personal pension scheme in the case of persons who have opted out of the HPSS Superannuation Scheme and suffered a loss as the result of a contravention which is actionable under section 62 of the Financial Services Act 1986 (mis-sold pensions). The transfer value will be the amount by which the accrued rights to benefit in the personal pension scheme exceeds the amount required under regulation 62A(2) of the 1995 Regulations to restore the person's service in the HPSS Superannuation Scheme.

Regulation 10 makes provision regarding payment of a transfer value (representing the value of the investments) to another scheme.

Regulation 11 provides for the payment of retirement and dependants' pensions and for the making of elections relating thereto.

Regulation 12 provides for the payment of lump sum death benefits.

Regulation 13 and the Schedule impose limits on benefits payable under the Regulations.

Regulation 14 provides for the realisable value of investments to be repaid where contributions under the 1995 Regulations are repaid.

Regulation 15 makes provision in relation to the circumstances in which the Department will make any payment of benefits that an authorised provider fails to make. It also makes provision as to the persons to whom certain payments are to be made and as to the deduction of income tax.

Regulation 16 provides for the Department to be given information needed for the purposes of its functions under the Regulations.

Regulation 17 provides for payments, up to the prescribed maximum (currently £5,000), payable to the personal representatives of deceased persons, to be made without proof of title.

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Regulation 18 provides that on bankruptcy or sequestration benefits under the Regulations may be assigned to a person's trustee in bankruptcy, but only if the court makes an order to that effect. Benefits are otherwise not assignable by virtue of regulation 11(2)(c).

Regulation 19 provides for the offsetting of any benefits arising from the employer's contributions in circumstances of crime, negligence or fraud.

Regulation 20 provides for the forfeiture of rights to any benefits arising from the employer's contributions in certain circumstances.

Regulation 21 provides for the determination of questions by the Department.