

2006 No. 410

HEALTH AND PERSONAL SOCIAL SERVICES

The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions) (Amendment) Regulations (Northern Ireland) 2006

Made - - - - 12th October 2006

Coming into operation - 31st October 2006

The Department of Health, Social Services and Public Safety(a), makes the following Regulations in exercise of the powers conferred by Articles 12 and 14 of, and Schedule 3 to the Superannuation (Northern Ireland) Order 1972(b), with the consent of the Department of Finance and Personnel.

In accordance with Article 12(4) of that Order the Department has consulted with such representatives of persons likely to be affected by these Regulations as appear to it to be appropriate.

Citation, commencement and retrospective effect

1.—(1) These Regulations may be cited as the Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions) (Amendment) Regulations (Northern Ireland) 2006

(2) These Regulations shall come into operation on 31st October 2006 and shall have effect from 6th April 2006 except that regulation 19 shall have effect from 1st April 2006.

Interpretation

2. In these Regulations—

“the 1993 Act” means the Pension Schemes (Northern Ireland) Act 1993(c)

“the AVC Regulations” means the Health and Personal Social Services (Superannuation) (Additional Voluntary Contributions) Regulations (Northern Ireland) 1999(d);

“the Injury Benefits Regulations” means the Health and Personal Social Services (Injury Benefits) Regulations (Northern Ireland) 2001(e);

(a) See S.I. 1999/283 (N.I. 1): Article 3(6)

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

(c) 1993 c. 49

(d) S.R. 1999 No. 294 as amended by S.R. 2002 No. 129; S.R. 2004 No. 104; S.Rs. 2005 Nos. 154 and 533

(e) S.R. 2001 No. 367 as amended by S. R. 2004 No. 156; S.Rs 2005 Nos.533and 565 and S.R. 2006 No.159

“the Superannuation Scheme Regulations” means the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995(a).

Amendment of regulation 2 of the Superannuation Scheme Regulations

3.—(1) Regulation 2(b) of the Superannuation Scheme Regulations (Interpretation) is amended in accordance with this regulation.

(2) Insert each of the following definitions at the appropriate place in the alphabetical order—

“the 2004 Act” means the Finance Act 2004(c);

“lump sum rule” has the meaning given in section 166 of the 2004 Act;

“lump sum death benefit rule” has the meaning given in section 168 of the 2004 Act;

“normal minimum pension age” has the meaning given in section 279 of the 2004 Act;

“protected pension age” means the pension age provided for in Part 3 of Schedule 36 to the 2004 Act for the purposes of that Part (which deals with pre-commencement benefit rights and the right to take benefit before normal minimum pension age) where conditions specified in that Part are satisfied;”

(3) For the definition of “occupational pension scheme” and “personal pension scheme” respectively, substitute—

“occupational pension scheme” means an occupational pension scheme within the meaning of section 1 of the Pension Schemes (Northern Ireland) Act 1993(d) which—

(a) in the case of such a scheme established on, or after, the 6th April 2006 is a registered pension scheme for the purposes of the 2004 Act and which the Department agrees to recognise as a transferring scheme for the purposes of regulations 53 to 64 (Transfers);

(b) in the case of such a scheme established before that date, was—

(i) approved by the Commissioners for Her Majesty’s Revenue and Customs(e) for the purposes of Chapter I of Part XIV of the Income and Corporation Taxes Act 1988(f) (Retirement Benefits Schemes) or whose application for approval under that Chapter was under consideration,

(ii) a statutory scheme as defined in section 612(1) of the Income and Corporation Taxes Act 1988 (Interpretation), or

(iii) a scheme to which section 608 of the Income and Corporation Taxes Act 1988 applied (Superannuation funds approved before 6th April 1980),

and on 6th April 2006 became a registered pension scheme for the purposes of the 2004 Act.

“personal pension scheme” means a personal pension scheme which—

(a) in the case of such a scheme established on, or after, 6th April 2006 is a registered pension scheme for the purposes of the 2004 Act and which the Department agrees to recognise as a transferring scheme for the purposes of regulations 53 to 64 (Transfers);

(b) in the case of a scheme established before that date, was—

(a) S.R. 1995 No. 95 as amended by S.Rs. 1997 Nos. 217 and 390; S.R. 1998 No. 299; S.R. 1999 No. 293; S.R. 2002 No. 69; S.Rs. 2004 Nos. 103 and 104; S.Rs. 2005 Nos. 155, 533, 534 and 565 and S.R. 2006 No. 159

(b) Regulation 2 was amended by S.R. 1997 No.390, S.R. 1998 No. 299, S.R. 1999 No. 293, S.R. 2002 Nos. 69 , S.R.2004 No.104, S.Rs. 2005 Nos. 534 and 565

(c) 2004 c.12

(d) 1993 c.49

(e) The functions of the Commissioners for Inland Revenue were transferred to the Commissioners for Her Majesty’s Revenue and Customs by section 5 of the Commissioners for Revenue and Customs Act 2005 (c. 11)

(f) 1988 c. 1

- (i) approved by the Commissioners for Her Majesty's Revenue and Customs for the purposes of Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988 (Personal Pension Schemes), and
- (ii) on the 6th April 2006 became a registered pension scheme for the purposes of the 2004 Act;”.

Amendment of regulation 9A of the Superannuation Scheme Regulations

4.—(1) Regulation 9A(a) of the Superannuation Scheme Regulations (Opting into the Scheme: Mis-sold Pensions) is amended in accordance with this regulation.

(2) For paragraph (4) substitute—

“(4) In this regulation—

“active member” means a person who is in superannuable employment under the scheme; and

“personal pension scheme” has the meaning given by section 1 of the 1993 Act and includes—

- (i) a retirement annuity contract approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988(b);
- (ii) a personal pension scheme approved under Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988;
- (iii) a retirement benefits scheme approved under section 591(2)(g) of the Income and Corporation Taxes Act 1988;
- (iv) a scheme referred to in (i), (ii) or (iii) that obtained relevant approval under the Income and Corporation Taxes Act 1988 before 6th April 2006 and on that date became a registered scheme for the purpose of the 2004 Act;
- (v) a scheme established on, or after, 6th April 2006 as a registered scheme for the purpose of the 2004 Act and which the Department agrees to recognise as a transferring scheme for the purposes of regulations 53 to 64”.

Amendment of Regulation 13 of the Superannuation Scheme Regulations

5.—(1) Regulation 13 of the Superannuation Scheme Regulations (Early retirement pension (ill health)) is amended in accordance with this regulation.

(2) For paragraph (7) substitute—

“(7) Subject to paragraph (8), where a member becomes entitled to a pension under paragraph (1), the Department may discharge its liability for that pension by the payment of a lump sum of an amount consistent—

- (a) with the contracting-out and preservation requirements of the 1993 Act; and
- (b) the lump sum rule.”.

(3) For paragraph (10), substitute—

“(10) The amount of the lump sum payable under paragraph (7)—

- (a) will be equal to 5 times the yearly rate of the member's incapacity pension (calculated in accordance with this regulation); and
- (b) shall be payable in addition to the lump sum on retirement payable under regulation 17 (Lump sum on retirement) (which shall not be subject to any reduction under regulation 17(3)).”.

(a) Regulation 9A was inserted by S.R. 1997 No. 217
 (b) 1988 c. 1

Amendment of regulation 14 of the Superannuation Scheme Regulations

6. In paragraph (1)(a) of regulation 14(a) of the Superannuation Scheme Regulations (Early retirement pension (redundancy etc)), for “age 50” substitute “normal minimum pension age, or where relevant, protected pension age”.

Amendment of regulation 15 of the Superannuation Scheme Regulations

7. In paragraph (1) of regulation 15 of the Superannuation Scheme Regulations (Early retirement pension (employer’s consent)), for “age 50” substitute “normal minimum pension age, or where relevant, protected pension age”.

Amendment of regulation 16 of the Superannuation Scheme Regulations

8. In paragraph (1) of regulation 16 of the Superannuation Scheme Regulations (Early retirement pension (with actuarial reduction)), for “age 50” substitute “normal minimum pension age, or where relevant, protected pension age”.

Amendment of regulation 17 of Superannuation Scheme Regulations

9.—(1) Regulation 17 of the Superannuation Scheme Regulations (Lump sum on retirement) is amended in accordance with this regulation.

(2) In paragraph (1) for “Each member” substitute “Subject to paragraph (8), each member”.

(3) After paragraph (7), add—

“(8) Where a member entitled to a lump sum under this regulation has attained the age of 75—

- (a) he shall cease to be entitled to a lump sum; and
- (b) shall instead be entitled to have his pension increased by such amount as the Department may, after taking advice from the Government Actuary, determine.”.

Amendment of regulation 19 of the Superannuation Scheme Regulations

10.—(1) Regulation 19 of the Superannuation Scheme Regulations (Member dies after pension becomes payable) is amended in accordance with this regulation.

(2) After paragraph (2), insert—

“(3) A person who retires from superannuable employment on, or after, 6th April 2006 may give notice to the Department in accordance with paragraph (4)(a) that any lump sum payable under this regulation is to be treated as a pension protection lump sum death benefit in accordance with paragraph 14 of Part 2 of Schedule 29 to the 2004 Act.

(4) Such a notice—

- (a) shall be given in writing; and
- (b) may be revoked in writing at any time.

(5) A lump sum paid under this regulation in respect of a member who became entitled to a pension under regulations 12 to 16 (Benefits) or 49 (Preserved pension) before 6th April 2006, shall be treated as a pension protection lump sum death benefit but regulation 89A (10)(b) shall not apply.”.

Amendment of regulation 32 of the Superannuation Scheme Regulations

11.—(1) Regulation 32 of the Superannuation Scheme Regulations (Dependent child) is amended in accordance with this regulation.

(a) Regulation 14(1) was amended by S.R 2002 No. 69

(b) Regulation 89A(10) is inserted pursuant to regulation 16 of these Regulations

(2) In paragraphs 3(b), (c) and (d) and paragraph (4), after “aged 17 or over” insert “but has not reached the age of 23”.

(3) After paragraph (3)(d), insert—

“or

- (e) or aged 17 or over but has not reached the age of 23 and is incapable of earning a living because of permanent physical or mental infirmity from which he started to suffer whilst qualifying as a dependent child; but such a person will only be treated as a dependent child for so much of the period commencing with the day on which he attains the age of 17 and ending immediately before the day on which he attains the age of 23, during which he remains incapable of earning a living.”.

(4) In paragraph (6), omit “or from which he started to suffer whilst qualifying as a dependent child”.

(5) After paragraph (6), insert—

“(7) Where—

- (a) a dependent child became entitled to a child allowance under regulation 33 (Payment of allowance) before 6th April 2006; or
- (b) the dependency of a child born on, or before, 5th April 2007 is to be assessed in respect of a person who became entitled to a pension under regulations 12 to 16 (Benefits) or 49 (Preserved pension) before 6th April 2006,

paragraphs (3)(b), (c) and (d) and paragraph (4) shall be read as if they did not include the words “but has not reached the age of 23”, paragraph (3)(e) shall not apply and paragraph (6) shall be read as if it included the words “or from which he started to suffer whilst qualifying as a dependent child” after the words “the member died”.”.

Amendment of regulation 39 of the Superannuation Scheme Regulations

12. In paragraph (4)(a) of regulation 39 of the Superannuation Scheme Regulations (Allocation of pension) for “on, or within one month after,” substitute “before”.

Amendment of regulation 49 of the Superannuation Scheme Regulations

13. In paragraph (3)(d)(ii)(a) of regulation 49 of the Superannuation Scheme Regulations (Preserved pension) for “age 50”, substitute “normal minimum pension age or, where relevant protected pension age”.

Amendment of regulation 50 of the Superannuation Scheme Regulations

14. For paragraph (1) of regulation 50 of the Superannuation Scheme Regulations (Refund of contributions), substitute—

“(1) A member who leaves superannuable employment without becoming entitled to a pension under regulations 12 to 16 (Benefits) or a preserved pension under regulation 49 (Preserved pension) shall be entitled to receive a lump sum refund of his contributions, less tax at—

- (a) 20 per cent (or at such other rate as applies from time to time) in respect of so much of the lump sum as does not exceed £10,800 (or such other amount as applies from time to time); and
- (b) 40 per cent (or at such other rate as applies from time to time) in respect of so much (if any) of it as exceeds that limit.”.

(a) Inserted by S.R. 2002 No.69

Amendment of regulation 60 of the Superannuation Scheme Regulations

15. For paragraph (1) of regulation 60 of the Superannuation Scheme Regulations (Member's right to transfer accrued rights to benefits to the scheme), substitute—

“(1) Within 12 months after joining the scheme, a member in superannuable employment may, in writing, request the Department to accept a transfer payment in respect of the member's rights under another occupational pension scheme, a personal pension scheme, or a buy-out policy but not in respect of rights under a free-standing AVC scheme—

- (a) established on, or after, the 6th April 2006 as a registered free-standing AVC scheme for the purposes of the 2004 Act; or
- (b) which on 6th April 2006 became a registered free-standing AVC scheme for the purposes of that Act and which immediately before that date was approved by the Commissioners for Her Majesty's Revenue and Customs by virtue of section 591(2)(h) of the Income and Corporation Taxes Act 1988 (free-standing AVC schemes).”.

Insertion of new regulation 89A in the Superannuation Scheme Regulations

16. After regulation 89 of the Superannuation Scheme Regulations (Deduction of tax) insert—

“Deduction of tax: further provisions

89A.—(1) Where a person's entitlement to a benefit under these Regulations—

- (a) constitutes a benefit crystallisation event in accordance with section 216 of the 2004 Act; and
- (b) a lifetime allowance charge under that Act is payable in respect of that event,

that charge shall be paid by the Department.

(2) Where a person's entitlement to a benefit under these Regulations constitutes a relevant benefit accrual he may, at the time he applies for the benefit, notify the Department in writing that he wishes to waive his right to that part of it that exceeds the appropriate limit.

(3) Where the Department receives a notification referred to in paragraph (2), it shall issue the person with a “waiver form” to be completed by him and returned to the Department and which shall, upon receipt by the Department, be irrevocable.

(4) A valid waiver shall have the effect of reducing the value of benefits payable to, or in respect of, the person below his relevant benefit accrual level as determined in accordance with Schedule 36 of the 2004 Act whether or not the benefit crystallisation event in respect of those benefits occurs before, or after, the receipt of the waiver.

(5) A waiver shall not affect—

- (a) a person's or an employing authority's liability to pay contributions whether in respect of any period before, or after, the date a person's waiver is received by the Department;
- (b) the operation of regulations 18 (Member dies in superannuable employment), 19 (Member dies after pension becomes payable), 23 to 31C(a) (Widows and Widowers), 32 to 38 (Child Allowance) and the benefits mentioned in those Regulations.]

(6) Where a person is entitled to a benefit under these Regulations he shall (whether or not he intends to rely on entitlement to an enhanced lifetime allowance, or to enhanced protection) give to the Department such information as will enable the Department to determine—

(a) Regulations 31(A), (B) and (C) were inserted by S.R. 2005 No. 533

- (a) whether any lifetime allowance is payable in respect of the benefit and, if so,
- (b) the amount of that charge.

(7) If a person applying for a benefit under these Regulations intends to rely on entitlement to an enhanced lifetime allowance by virtue of any of the provisions listed in section 256(1) of the 2004 Act (Enhanced lifetime allowance regulations), he shall give to the Department—

- (a) the reference number issued by the Commissioners under the Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006(a) in respect of that entitlement;
- (b) the information referred to in paragraph (6).

(8) The information referred to in paragraph (6) or, as the case may be, paragraph (7) shall be given to the Department

- (a) at the time the person makes a claim for a benefit; or
- (b) where that information has not been provided at the time of making the claim, within such time as the Department specifies in writing.

(9) Where the person fails to provide all, or part of, the information referred to in paragraph (6) or, as the case may be, paragraph (7) within the time limits specified by the Department where relevant, the Department may treat the whole of the benefit as a chargeable benefit and pay the charge on that basis.

(10) Subject to regulation 19(4)(b)(b), where—

- (a) a member has given notice to the Department in accordance with regulation 19(3) that a lump sum payable under that regulation is to be treated as a pension protection lump sum death benefit in accordance with paragraph 14 of Schedule 29 to the 2004 Act, and
- (b) has not revoked that notice,
the Department shall deduct tax at 35 per cent (or such other amount as applies from time to time) from the lump sum payable in accordance with section 206 of that Act.

(11) For the purposes of this regulation “appropriate limit” and “relevant benefit accrual” are to be construed in accordance with Schedule 36 to the 2004 Act.”.

Amendment of regulation 94 of the Superannuation Scheme Regulations

17.—(1) Regulation 94 of the Superannuation Scheme Regulations (Commutation of trivial pensions) is amended in accordance with this regulation.

(2) For paragraph (3) substitute—

“(3) A pension may be treated as trivial only if all benefits payable under the scheme to the person concerned are of an amount consistent with—

- (a) the contracting-out and preservation requirements of the 1993 Act(c); and
- (b) the lump sum rule and the lump sum death benefit rule.”.

(3) Omit paragraph (4).

Amendment of Schedule 2A of Superannuation Scheme Regulations

18.—(1) Schedule 2A(d) to the Superannuation Scheme Regulations (Pension Sharing on Divorce or Nullity of Marriage) is amended in accordance with this regulation.

(a) S.I. 2006/131
(b) Regulation 19(4) is inserted pursuant to regulation 10 of these Regulations
(c) 1993 c. 49
(d) Schedule 2A was inserted by S.R. 2004 No. 104

(2) In paragraph 4(1) (Commutation of the whole of pension credit benefit before normal benefit age), for “(3)(2)” substitute “(3)(2)(a)”

(3) For paragraph 5(1)(b), substitute—

“(b) the total benefits payable to the pension credit member, including any pension credit benefit, is of an amount that complies with the provisions of paragraphs 7 to 9 of Part 1 of Schedule 29 to the 2004 Act(a) (Lump sum rule: Trivial commutation lump sum) at normal benefit age;”.

Amendment of regulation 2 of the Injury Benefits Regulations

19. In paragraph (1) of regulation 2 of the Injury Benefits Regulations (Interpretation), in the definition of “employing authority” after sub-paragraph (f), insert

“(g) any body that was listed as an employing authority under these Regulations or the previous Regulations at the date of cessation of employment or reduction in emoluments of a person seeking to apply under these Regulations;”.

Amendment of regulation 2 of the AVC Regulations

20.—(1) Regulation 2(b) of the AVC Regulations (Interpretation) is amended in accordance with this regulation.

(2) In regulation 2(1)—

(a) omit the definitions of “the Taxes Act”, “free-standing additional voluntary contributions scheme”, “personal pension scheme” and “retirement benefits scheme”.

(b) Insert each of the following definitions at the appropriate place in the alphabetical order—

““the 2004 Act” means the Finance Act 2004(c);

“HPSS employment” has the meaning given in regulation 2 (Interpretation) of the 1995 Regulations(d);

“lifetime allowance” shall be construed in accordance with Part 4 of the 2004 Act (Pension Schemes etc.);

“pension commencement lump sum” means a lump sum for the purposes of Part I of Schedule 29 to the 2004 Act not exceeding 25 per cent of the proceeds of any investment made under regulations 7(1), 8(2) or 9(4) ;

“registered pension scheme” has the meaning given by section 150(2) of the 2004 Act;

“superannuable employment” has the meaning given in regulation 2 (Interpretation) of the 1995 Regulations;”.

Amendment of regulation 3 of the AVC Regulations

21.—(1) Regulation 3(e) of the AVC Regulations (Making and acceptance of elections) is amended in accordance with this regulation.

(2) In paragraph (1)(a), for “an annuity payable on retirement;” substitute “an annuity or a pension commencement lump sum and an annuity payable on retirement;”.

(3) In paragraph (3)(b), for “section 594(1) of the Taxes Act (exempt statutory schemes)” substitute “section 190 of the 2004 Act (Annual limit of relief)”.

(a) 2004 c. 12

(b) Regulation 2 was amended by S.Rs 2002 No. 129; 2004 No. 104; 2005 Nos. 154 and 533

(c) 2004 c. 12

(d) S. R. 1995 No. 95

(e) Regulation 3 was amended by S. R. 2002 No. 129 and S. R. 2005 No. 154

Amendment of regulation 4 of the AVC Regulations

22.—(1) Regulation 4(a) of the AVC Regulations (Payment and amount of additional voluntary contributions) is amended in accordance with this regulation.

(2) For paragraph (3), substitute—

“(3) In any period of 12 months beginning on 6th April in any year the total contributions payable by the contributor shall not exceed 100 per cent of the amount which represents the contributor’s salary from superannuable employment less the total of any contributions paid by the contributor in respect of that year—

- (a) to another registered pension scheme, and
- (b) under the 1995 Regulations.”.

(3) Omit paragraph (4).

Amendment of regulation 6 of the AVC Regulations

23. In paragraph (1)(d) of regulation 6(b) of the AVC Regulations (Circumstances in which elections cease to have effect) for “section 594(1) of the Taxes Act (exempt statutory schemes)”, substitute “section 190 of the 2004 Act (Annual limit of relief)”.

Amendment of regulation 8 of the AVC Regulations

24. For paragraph(1) of regulation 8 of the AVC Regulations (Inward transfers), substitute—

“(1) Where a person who enters superannuable employment has paid contributions to a registered additional voluntary contribution scheme for the purposes of the 2004 Act, that person, whether or not he becomes a contributor within the meaning of these Regulations, may—

- (a) within 12 months of entering superannuable employment; or
- (b) such longer period as the Department may in any particular case allow,

give written notice to the Department that he wishes the Department to accept from the trustees or managers of that scheme a transfer value representing at least the value of the investments derived from his contributions.”.

Amendment of regulation 10 of the AVC Regulations

25.—(1) Regulation 10 of the AVC Regulations (Outward transfers) is amended in accordance with this regulation.

(2) For paragraph (1)(a) substitute—

“(a) where that person has left superannuable employment, to any other registered pension scheme in which the person may be participating; or”.

(3) Omit paragraph (2).

(4) For paragraph (3), substitute—

“(3) The scheme specified in this paragraph is a registered additional voluntary contribution scheme for the purpose of the 2004 Act.”.

Amendment of regulation 11 of the AVC Regulations

26.—(1) Regulation 11 of the AVC Regulations (Retirement and dependent’s pensions) is amended in accordance with this Regulation.

(2) For paragraph (1) substitute—

(a) Regulation 4 was amended by S.R.2002 No. 129
(b) Regulation 6 was amended by S.R. 2002 No. 129 and S.R. 2005 No. 154

“(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 —

- (a) taken partially as a pension commencement lump sum with the remainder being used to purchase from an insurer an annuity which complies with the requirements of paragraph (2); or
- (b) used solely for the purchase from an insurer of an annuity which complies with the requirements of that paragraph, and not otherwise.”.

(3) After paragraph (3)(a), insert—

“(aa) whether a pension commencement lump sum and retirement pension is to be provided;”.

(4) For paragraph (5), substitute—

“(5) Upon receipt of a notice of election under paragraph (3), the Department shall, as soon as reasonably practicable, realise the investments made under regulations 7(1), 8(2) or 9(4) and —

- (a) where sub-paragraph (aa) of that paragraph does not apply, apply the proceeds to the purchase of an annuity from the authorised provider specified in the notice of an election;
- (b) where that sub-paragraph does apply—
 - (i) pay the percentage of the proceeds specified in the notice of election as a pension commencement lump sum, and
 - (ii) apply the balance of those proceeds to the purchase of an annuity from the authorised provider specified in that notice.”.

Amendment of regulation 12 of the AVC Regulations

27. For paragraph (2) of regulation 12 of the AVC Regulations (Lump sums on death), substitute—

“(2) Any lump sum payable under paragraph (1) shall not exceed the amount permitted in accordance with Part 2 of Schedule 29 to the 2004 Act.”.

Amendment of regulation 13 of the AVC Regulations

28. For regulation 13 of the AVC Regulations (Benefit limits), substitute—

“Benefit limits

13. Benefits that may be paid under these Regulations shall be limited by reference to a person’s lifetime allowance.”.

Amendment of regulation 14 of the AVC Regulations

29.—(1) Regulation 14 of the AVC Regulations (Repayment of investments in certain cases) is amended in accordance with this regulation.

(2) In paragraph (1) for “section 598 of the Taxes Act (charge to tax: repayment of employee’s contributions)” substitute “the 2004 Act”.

(3) In paragraph (2), for “section 601 of the Taxes Act (charge to tax: payment to employers)” substitute “the 2004 Act”.

Amendment of regulation 15 of the AVC Regulations

30.—(1) Regulation 15 of the AVC Regulations (Payments by the Department) is amended in accordance with this regulation.

(2) In paragraph (1) for “annuity or lump sum death benefit” substitute “annuity, pension commencement lump sum or lump sum death benefit”.

(3) Omit paragraphs (5) to (8).

(4) In paragraph (10) omit “less any charge to tax under section 599 of the Taxes Act”.

Amendment of regulation 16 of the AVC Regulations

31.—(1) Regulation 16 of the AVC Regulations (Information) is amended in accordance with this regulation.

(2) After paragraph (2), insert—

“(3) Where a person is entitled to a benefit under these Regulations he shall (whether or not he intends to rely on entitlement to an enhanced lifetime allowance or to enhanced protection) give to the provider such information as will enable the provider to determine—

(a) whether any lifetime allowance is payable in respect of the benefit and, if so,

(b) the amount of that charge.

(4) If a person applying for a benefit under these Regulations intends to rely on entitlement to an enhanced lifetime allowance by virtue of any of the provisions listed in section 256(1) of the 2004 Act (Enhanced lifetime allowance regulations), he shall give to the provider—

(a) the reference number issued by the Commissioners under the Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006(a) in respect of that entitlement;

(b) the information referred to in paragraph (3).

(5) The information referred to in paragraph (3) or, as the case may be, paragraph (4) shall be given to the provider—

(a) at the time the person makes a claim for a benefit; or

(b) where that information has not been provided at the time of making the claim, within such time as the provider specifies in writing, or

(c) where the person fails to provide all, or part of, the information referred to in paragraph (3) or, as the case may be, paragraph (4) within the time limits specified by the provider (where relevant), the provider may treat the whole of the benefit as a chargeable benefit and the charge may be paid on that basis.”.

New regulation 22 of the AVC Regulations

32. After regulation 21 of the AVC Regulations (Determination of questions), there shall be inserted—

“Tax

33. Benefits payable under these Regulations shall be paid net of any tax due under the 2004 Act.”.

Revocation of Schedule 1 to the AVC Regulations

33. Omit Schedule 1 to the AVC Regulations (Benefit limits).

(a) S.I. 2006/131

Amendment of Schedule 2 to the AVC Regulations

34.—(1) Schedule 2(a) to the AVC Regulations (Pension Sharing on Divorce or Nullity of Marriage) is amended in accordance with this regulation.

(2) In paragraph 4 (Pension credit benefit)—

(a) at the end of sub-paragraph (1), insert “(including, where appropriate, a pension commencement lump sum)”.

(b) after sub-paragraph (5)(a), insert—

“(aa) whether a pension commencement lump sum and a pension payable for life is to be provided.”.

(c) for sub-paragraph (7), substitute—

“(7) Upon receipt of a notice of election under sub-paragraph (5) the Department shall, as soon as reasonably practicable, realise the investments made under paragraph 2 and—

(a) where sub-paragraph (5)(aa) does not apply, apply the proceeds to the purchase of an annuity from the authorised provider specified in the notice of election;

(b) where that sub-paragraph does apply—

(i) pay the percentage of the proceeds specified in the notice of election as a pension commencement lump sum, and

(ii) apply the balance of those proceeds to the purchase of an annuity from the authorised provider specified in that notice,

and not otherwise.”.

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on
12th October 2006



Castle Buildings
12th October 2006

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

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 12th October 2006



Rathgael
12th October 2006

M Mc Ivor
A senior officer of the
Department of Finance and Personnel

(a) Schedule 2 was inserted by S.R. 2004 No. 104

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995 (“the Superannuation Scheme Regulations”), which make provision for the superannuation of HPSS employees and the Health and Personal Social Services (Superannuation) (Additional Voluntary Contributions) Regulations (Northern Ireland) 1999, (“the AVC Regulations”) which make provision to enable members of the Superannuation Scheme, or their employers to pay additional voluntary contributions to secure additional pension benefits by the investment of those contributions. An amendment is also made to the Health and Personal (Injury Benefits) Regulations (Northern Ireland) 2001, (“the Injury Benefits Regulations”) which provide for the payment of injury benefits to employees of the Health and Personal Services who are injured, or contract a disease in the course of their employment.

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

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

Amendment of the Superannuation Scheme Regulations 1995

Regulation 3 amends regulation 2 (interpretation) by inserting various definitions which are needed to give effect to the provisions of the Finance Act 2004 (c.12).

Regulation 4 amends regulation 9A (Opting into the Scheme: Mis-sold pensions) by amending the definition of “personal pension scheme” to take account of the change in status of such schemes to “registered schemes” for the purposes of the Finance Act 2004.

Regulation 5 amends regulation 13 (Early retirement pension (ill health)) so that any lump sum payment is consistent with the provisions of the Pension Schemes (Northern Ireland) Act 1993 (c.49) relating to contracting-out and preservation of benefits and the new lump sum rule from the Finance Act 2004. It also amends that regulation so as to provide for the calculation of such a lump sum.

Regulation 6 amends regulation 14 (Early retirement pension (redundancy etc.)) so as to refer to those who have the normal minimum retirement age of 55 or, where provided for under the Finance Act 2004, a lower protected pension age.

Regulations 7 and 8 amend regulations 15 (Early retirement pension (employer’s consent)) and 16 (Early retirement pension (with actuarial reduction)) in the same way as regulation 6 amends regulation 14.

Regulation 9 amends regulation 17 (Lump sum on retirement) so as to provide that where a member of the scheme has attained the age of 75, he shall no longer be entitled to a lump sum but shall instead have his pension increased in lieu of that lump sum.

Regulation 10 amends regulation 19 (Member dies after pension becomes payable) to provide that a member of the scheme may notify the Department that he wants a lump sum payable under the regulation to be treated as a pension protection lump sum death benefit in accordance with the provisions of the Finance Act 2004.

Regulation 11 amends regulation 32 (Dependent child) so that it refers to a child aged 17 or over but who has not reached the age of 23. It also makes transitional provision for children who may become entitled to a child allowance before 6th April 2006 or whose dependency is to be assessed in relation to a person who became entitled to a pension on or before that date.

Regulation 12 amends regulation 39 (Allocation of pension) so as to provide that a member who wishes to allocate part of his pension to another person must do so before the date on which that pension becomes payable to him.

Regulation 13 amends regulation 49 (Preserved pension) so as to refer to a normal minimum pension age or, where the Finance Act 2004 provides, a protected pension age.

Regulation 14 amends regulation 50 (Refund of contributions) so as to provide that a member who becomes entitled to a refund of his contributions shall receive a lump sum less tax at 20 per cent on such part of the sum which does not exceed £10,800 and at 40 per cent on such part of that sum which exceeds that limit.

Regulation 15 amends regulation 60 (Member's right to transfer accrued rights to benefits to the scheme) so as to provide that a member may, within 12 months of joining the scheme, request the Department to accept a transfer payment in respect of his rights under certain other schemes except rights under a free-standing AVC scheme which was established on, or after 6th April 2006 or which existed prior to that date and became a free-standing AVC scheme for the purpose of the Finance Act 2004 on that date.

Regulation 16 inserts a new regulation 89A (Deduction of tax: further provisions) after regulation 89. Regulation 89A provides, amongst other things, for any lifetime charge under the Finance Act 2004 to be paid by the Department, for a person entitled to a benefit under the Regulations to be able to waive part of it and for such a person to notify the Department of certain matters if he wishes to rely on protections provided by the Finance Act 2004 (i.e. enhanced lifetime allowance protection).

Regulation 17 amends regulation 94 (Commutation of trivial pension) so as to provide that any commutation must be consistent not only with the contracting-out and preservation requirements of the Pension Schemes (Northern Ireland) Act 1993 but also the lump sum and lump sum death benefits rules provided for in the Finance Act 2004.

Regulation 18 amends Schedule 2A (Pension Sharing on Divorce or Nullity of Marriage) so as to provide that any pension credit benefit which is to be commuted has to satisfy the requirements of the Finance Act 2004 in respect of trivial commutation of lump sums.

Amendment of the Injury Benefits Regulations 2001

Regulation 19 amends regulation 2 (Interpretation) and inserts a new sub-paragraph (g) in the definition of "employing authority" to preserve the right of a person to claim injury benefits in respect of an injury or disease he has already suffered notwithstanding the subsequent omission of his employer from the definition in the Regulations.

Amendment of the Additional Voluntary Contributions Regulations 1999

Regulation 20 amends regulation 2 (Interpretation) of the AVC Regulations by inserting certain definitions to give effect to the provisions of the Finance Act 2004 (e.g. "lifetime allowance").

Regulation 21 amends regulation 3 (Making and acceptance of elections) so as to provide that an AVC scheme may provide either for an annuity or for both a pension commencement lump sum and an annuity on retirement.

Regulation 22 amends regulation 4 (Payment and amount of additional voluntary contributions) so as to enable a person to make contributions to an AVC scheme which do not exceed 100 per cent of his salary (subject to certain exceptions).

Regulation 23 amends regulation 6 (Circumstances in which elections cease to have effect) so as to refer to the correct sections of the Finance Act 2004.

Regulation 24 amends regulation 8 (Inward transfers) to provide that a person who has paid contributions to a registered AVC scheme for the purposes of the Finance Act 2004 can give notice to the Department saying that he wishes the Department to accept a transfer from that scheme.

Regulation 25 amends regulation 10 (Outward transfers) so that it correctly refers to the Finance Act 2004.

Regulation 26 amends regulation 11 (Retirement and dependent's pensions) so as to reflect the fact that investments made under a scheme may be realised so as to provide not just an annuity but also a pension commencement lump sum and an annuity on retirement.

Regulation 27 amends regulation 12 (Lump sums on death) to provide that a lump sum payable on death cannot exceed the limits set down in the Finance Act 2004.

Regulation 28 amends regulation 13 (Benefit limits) to make it clear that any benefits paid under the Regulations are limited by reference to the person's lifetime allowance under the Finance Act 2004.

Regulation 29 amends regulation 14 (Repayment of investments in certain cases) to correctly refer to the provisions of the Finance Act 2004.

Regulation 30 amends regulation 15 (Payments by the Department) to reflect the fact that AVC investments may be realised and used to purchase either an annuity or a pension commencement lump sum or lump sum death benefit.

Regulation 31 amends regulation 16 (Information) to impose an obligation on a person who wishes to take advantage of an entitlement to an enhanced lifetime allowance in accordance with the Finance Act 2004 to provide the AVC provider with certain information.

Regulation 32 inserts a new regulation 22 (Tax) making it clear that benefits payable under the Regulations are paid net of tax due under the Finance Act 2004.

Regulation 33 revokes Schedule 1 to reflect the fact that the benefits limits are now subject to the Finance Act 2004 (see new regulation 13 (Benefit limits) inserted in the Additional Voluntary Contributions Regulations).

Regulation 34 amends Schedule 2 (Pension Sharing on Divorce or Nullity of Marriage) to reflect the fact that an AVC investment may be realised so as to provide a pension commencement lump sum, and to allow for a percentage of the proceeds of any investment specified in a notice of election to be used in that manner.