



STATUTORY INSTRUMENTS.

S.I. No. 181 of 2014



HUMAN RIGHTS COMMISSION SPOUSES', CIVIL PARTNERS' AND
CHILDREN'S CONTRIBUTORY PENSION SCHEME 2014

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By virtue of section 20 of the Human Rights Commission Act 2000 (No. 9 of 2000), I, Alan Shatter T.D., Minister for Justice and Equality, with the consent of the Minister for Public Expenditure and Reform, hereby approve the following Scheme.

1. SHORT TITLE

This Scheme may be cited as the Human Rights Commission Spouses', Civil Partners' and Children's Contributory Pension Scheme 2014.

2. COMMENCEMENT

The scheme shall be deemed to have commenced with effect from 25 July 2001 which shall be known as the date of commencement.

3. INTERPRETATION:

In this Scheme—

“Human Rights Commission” means the Human Rights Commission established under section 4 of the Human Rights Commission Act 2000 (No.9 of 2000);

3.1 “Act” means the Public Service Superannuation (Miscellaneous Provisions) Act of 2004 (No. 7 of 2004);

3.2 “adoption order” means an order for the adoption of a child made—

(a) before the establishment day for the Adoption Authority of Ireland, by An Bord Uchtála under the Adoption Acts 1952 to 1998, or

(b) on or after the establishment day for the Adoption Authority of Ireland, by that Authority under the Adoption Act 2010;

3.3 “Allowances” means such allowances in the nature of pay lawfully determined or lawfully approved by the Human Rights Commission, which are designated as pensionable by the Human Rights Commission with the approval of the Minister and the consent of the Minister for Public Expenditure and Reform, but excluding any sums paid in respect of overtime, commission, gratuity, special fees, travelling allowance, subsistence allowance and the like, the money equivalent of any emolument or benefit in kind (including motor car or other vehicle) or any payment toward or in respect of such emoluments;

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 18th April, 2014.*

- 3.4 “Child”, subject to paragraph 7.1, means a child or step-child or lawfully adopted child of the deceased, who is—
- (a) a person under sixteen years of age, or
 - (b) a person under twenty-two years of age and is receiving full-time instruction at any university, college, school or other educational establishment,
 - (c) a person under twenty-two years of age and is undergoing full-time instruction or training by any person (in this Scheme referred to as "the employer") for any vocation, profession or trade, being instruction or training approved of by the Human Rights Commission for the purposes of this paragraph, or
 - (d) a person who is permanently incapacitated by reason of mental or physical infirmity from maintaining himself or herself and who, when his or her permanent incapacity first occurred, was a person described in any of the foregoing clauses of this paragraph;
- 3.5 “civil partner” means a person who is either of two persons of the same sex who are—
- (a) parties to a civil partnership registration (within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010) that has not been dissolved or the subject of a decree of nullity, or
 - (b) parties to a legal relationship of a class that is the subject of an order made under section 5 of that Act that has not been dissolved or the subject of a decree of nullity;
- 3.6 “Contributing Member” means a serving member of the Main Scheme;
- 3.7 “death gratuity” except in the expression “preserved death gratuity” means a gratuity payable in accordance with sub-paragraph 8.2(f)(i) of the Main Scheme;
- 3.8 “deceased's pension” means:-
- (a) in case, otherwise than on retirement on medical grounds, he or she is awarded a pension,
 - (i) in relation to a member who is not fully insured, the amount of such pension,
 - (ii) in relation to a Pre-1995 fully insured member, the amount of such pension, and
 - (iii) in relation to a Post-1995 fully insured member, the greater of the amount of such pension or the pension which would have been

granted to him or her if it had been calculated by reference to net pensionable remuneration (Spouses', Civil Partners' and Children's Scheme) instead of net pensionable remuneration (Main Scheme) at the date of his or her retirement as increased by reference to pension increases granted under Article 11 of the Main Scheme during the period between retirement and death;

(b) in case, on retirement on medical grounds, he or she is awarded a pension, the pension which would have been granted to him or her if it fell to be calculated by reference to—

(i) in relation to a member who is not fully insured,

(I) his or her pensionable remuneration at the date of retirement as increased by reference to pension increases granted under Article 11 of the Main Scheme during the period between retirement and death, and

(II) the pensionable service which he or she would have had if he or she had served to the age of sixty-five years or, if earlier, to the date on which his or her contract of employment would expire,

(ii) in relation to a Pre-1995 fully insured member,

(I) his or her net pensionable remuneration (Main Scheme) at the date of retirement as increased by reference to pension increases granted under Article 11 of the Main Scheme during the period between retirement and death, and

(II) the pensionable service which he or she would have had if he or she had served to the age of sixty-five years or, if earlier, to the date on which his or her contract of employment would expire,

(iii) in relation to a Post-1995 fully insured member,

(I) his or her net pensionable remuneration (Spouses', Civil Partners' and Children's Scheme) at the date of retirement as increased by reference to pension increases granted under Article 11 of the Main Scheme during the period between retirement and death, and

(II) the pensionable service which he or she would have had if he or she had served to the age of sixty-five years or, if earlier, to the date on which his or her contract of employment would expire;

(c) in case a preserved pension was in payment to the deceased,

- (i) in relation to a member who is not fully insured, the amount of such pension,
 - (ii) in relation to a Pre-1995 fully insured member, the amount of such pension, and
 - (iii) in relation to a Post-1995 fully insured member, the preserved pension which would have been granted to him or her if it had been calculated by reference to net pensionable remuneration (Spouses', Civil Partners' and Children's Scheme) instead of net pensionable remuneration (Main Scheme) at the date of resignation as increased by reference to pension increases granted under Article 11 of the Main Scheme during the period between resignation and death;
- (d) in case, having resigned with entitlement to a preserved pension, the deceased dies before the age at which the preserved pension became payable or before making application for the preserved pension, an amount equal to—

D x E

80

where D is the number of years of pensionable service at the date of resignation, subject to a maximum of 40 years, and E is

- (i) in relation to a member who is not fully insured, his or her pensionable remuneration at the date of resignation as increased by reference to pension increases granted under Article 11 of the Main Scheme during the period between resignation and death,
 - (ii) in relation to a Pre-1995 fully insured member, his or her net pensionable remuneration (Main Scheme) at the date of resignation as increased by reference to pension increases granted under Article 11 of the Main Scheme during the period between resignation and death, and
 - (iii) in relation to a Post-1995 fully insured member, his or her net pensionable remuneration (Spouses', Civil Partners' and Children's Scheme) at the date of resignation as increased by reference to pension increases granted under Article 11 of the Main Scheme during the period between resignation and death;
- (e) in case he or she dies while serving as a member of the Main Scheme, the pension for which he or she would be eligible if clause (b) of this subparagraph applied to him or her;
- (f) in case the deceased elected to be paid benefits under subparagraphs 8.3 (g) or 8.4 (g), as appropriate of the Main Scheme, the amount of the preserved pension which would have been awarded to him or her

on attaining 60 years of age, or 65 years of age in the case of a new entrant, if he or she had not so elected;

- 3.9 “Family Law Acts” means the Family Law Acts 1995 to 1997 including any enactment which amends or extends any or all of those Acts and any regulation, warrant or order made thereunder.
- 3.10 “Former member” means a person who was awarded a pension and retirement lump sum or preserved pension and lump sum;
- 3.11 “fully insured” means a member of this scheme who is, or was immediately before attaining the age of 66, insured for State Pension (Contributory) under the Social Welfare Acts;
- 3.12 “lawfully adopted child” means a child adopted by a member (whether alone or jointly with any other person) either in pursuance of an adoption order or in accordance with the law of a country or territory other than the State and recognised by the law of the State as valid; where a married member applies for an adoption order in respect of a child and dies before the adoption procedure is completed and the child is subsequently adopted by the member's spouse, the child shall, from the date on which the member has custody of him or her, be deemed, for the purposes of this Scheme, to be the member's lawfully adopted child;
- 3.13 “Main Scheme” means the Human Rights Commission Superannuation Scheme 2013.
- 3.14 “Member” means a person who, pursuant to article 4, is a member of this Scheme;
- 3.15 “minimum pension age” means
- (i) in the case of a member who is not a new entrant, age 65
 - (ii) in the case of a member who is a new entrant, age 60;
- 3.16 “Minister” means the Minister for Justice and Equality
- 3.17 “new entrant” shall be construed in accordance with section 2 of the Act;
- 3.18 “net pensionable remuneration (Main Scheme)” means the amount by which pensionable remuneration exceeds twice the annual maximum personal rate of State Pension (Contributory) payable on the last day of pensionable service to a person who has no adult dependant or qualified children.
- 3.19 “net pensionable remuneration (Spouses’, Civil Partners’ and Children's Scheme)” means the amount by which pensionable remuneration exceeds once the rate of State Pension (Contributory) payable on the last day of pensionable service to a person who has no adult dependant or qualified children;

- 3.20 “net remuneration” means the amount by pensionable remuneration exceeds twice the rate of State Pension (Contributory) payable from time to time to a person who has no adult dependant or qualified children;
- 3.21 “part-time employee” means an employee who works less than the standard hours of a comparable employee in a whole-time post;
- 3.22 “Pensionable allowances” means the average of any allowances paid to the member calculated in accordance with the provisions of paragraph 5.6 of the main scheme;
- 3.23 “Pensionable remuneration” means the aggregate of retiring salary and pensionable allowances provided that, in the case of a member who is a part-time employee or a work-sharer at retirement or death, pensionable remuneration shall be deemed to be the pensionable remuneration applicable in his or her case if he or she were not work-sharing or employed in a part-time capacity;
- 3.24 “Pensionable service” means service reckonable under paragraph 6.1 of the Main Scheme;
- 3.25 “Post-1995 fully insured member” means a member who is fully insured and whose liability for full insurance derives from the introduction of full PRSI for all public servants appointed on or after 6 April 1995;
- 3.26 “Pre-1995 fully insured member” means a member who is fully insured and whose liability for full insurance existed prior to the introduction of full PRSI for all public servants appointed on or after 6 April 1995;
- 3.27 “Remuneration” means the aggregate of salary and allowances (multiplied by 52.18 in the case of weekly allowances).
- 3.28 “retirement lump sum”, means a lump sum awarded under the provisions of subparagraph 8.2 (c), 8.2 (d) or 8.2(e) of the Main Scheme;
- 3.29 “Retirement on medical grounds” means retirement in accordance with the provisions of Article 9 of the Main Scheme on completion of 5 or more year’s actual pensionable service;
- 3.30 “Retiring salary” means
- (a) in the case of a member whose actual service and potential service to the end of his or her contract of employment is less than 1 year, the rate of salary multiplied by the number of days in the contract divided by 365;
 - (b) where a member has had the same scale of salary and has been in the same grade for the last three years of his or her pensionable service, the salary of the member at the date of retirement or death;

- (c) where a member under 62 years of age dies in service, the salary of the member at the date of death;
- (d) where a member retires or is retired on medical grounds before minimum pension age with sufficient potential service to minimum pension age to avoid averaging, the salary of the member at the date of retirement.

In any other case retiring salary shall be averaged by taking the total calculated by multiplying by 1/1095 the annual rate of salary appropriate on the last day of pensionable service for each grade in which the member served during the last three years of pensionable service, and multiplying the result by the number of days of his or her employment in each grade during those years, subject to the retiring salary so taken not exceeding the annual basic rate of salary payable at the time of retirement or death. Where the pensionable service of the member is less than three years, the number of days of pensionable service shall be substituted for 1095.

- 3.31 “Salary” means the annual basic rate (or the weekly basic rate multiplied by 52.18) of remuneration payable from time to time as lawfully determined or lawfully approved by the Human Rights Commission, excluding any sums paid in respect of overtime, commission, gratuity, special fees, travelling allowance, subsistence allowance and the like, the money equivalent of any emolument or benefit in kind (including motor car or other vehicle) or any payment toward or in respect of such emoluments.
- 3.32 “Spouse” means a partner to a marriage recognised by the law of the State as valid which was not terminated by divorce;
- 3.33 “State Pension (Contributory)” means the State Pension (Contributory) payable under the Social Welfare Acts;
- 3.34 “Widow's, Widower's or Surviving Civil Partner's (Contributory) Pension” means the Widow's, Widower's or Surviving Civil Partner's (Contributory) Pension payable under the Social Welfare Acts;
- 3.35 “work-sharer” means a whole-time employee who, under an arrangement which has been approved by the Minister, works less than the standard hours of the whole-time post;
- 3.36 “years” means a figure determined by the formula $A + B/365$ where A is the number of completed years in the period in question and B is any number of days additional to a completed year or a number of completed years in that period, and “year” shall be construed accordingly;

4. MEMBERSHIP AND APPLICATION OF SCHEME

All members of the Main Scheme shall be members of this Scheme (unless otherwise approved by the Minister).

5. POWER TO GRANT PENSIONS

Subject to the provisions of this Scheme, the Human Rights Commission may, on the death of a contributing or former member (in this Scheme referred to as "the deceased") to whom or in respect of whom a pension or death gratuity, or preserved pension or preserved death gratuity has been, or is awarded, grant in respect of his or her service—

- (a) where he or she leaves a spouse or civil partner, a pension to that spouse or civil partner (hereafter in this Scheme referred to as a "partner's pension"), and
- (b) where he or she leaves a child or children (whether or not a partner's pension is, or may be, granted) a pension for such child or children (in this Scheme referred to as a "children's pension").

6. PARTNER'S PENSION

6.1 A partner's pension shall not be granted or paid under this Scheme—

- (a) if the spouse or civil partner was at the time of the death of the member cohabiting with a person other than the deceased, or
- (b) in respect of any time after the said death when the spouse or civil partner is remarried or in a civil partnership or is so cohabiting with any person or
- (c) where, by virtue of an earlier marriage or civil partnership the spouse or civil partner is entitled to a partner's pension under this or any other scheme for the provision of pensions for the spouses, civil partners and children of public sector employees, a partner's pension shall not be payable unless the partner's pension payable by virtue of the earlier marriage or civil partnership is less than the partner's pension payable in respect of the latest marriage or civil partnership.

6.2 Notwithstanding paragraph 6.1, where,

- (a) a pension under this Scheme is not granted or ceases under the said paragraph 6.1, and
- (b) at a date subsequent to the date of the marriage, civil partnership or cohabitation by reason of which the pension was withheld or ceased the Human Rights Commission is satisfied that the marriage, civil partnership or cohabitation has come to an end, or that there are compassionate grounds for the payment of pension, the Human Rights Commission may, if it thinks fit, grant or regrant, as may be appropriate, the pension as from,
 - (i) in case the marriage, civil partnership or cohabitation has come to an end, the date on which the marriage, civil partnership or cohabitation ended,

(ii) in any other case, a date not earlier than the date on which the relevant application is received by the Human Rights Commission,

provided that, if, by virtue of a later marriage or civil partnership, the spouse or civil partner becomes entitled to a partner's pension under this or any other scheme for the provision of pensions for the spouses, civil partners and children of public sector employees the pension shall not be payable unless the partner's pension payable by virtue of the later marriage or civil partnership is less than the pension.

6.3 Subject to paragraphs 6.1 and 21.2, a partner's pension may be paid for the whole of the period beginning on the death of the deceased and ending with the death of the spouse or civil partner.

6.4 (a) The rate of a partner's pension shall be one-half of the rate of the deceased's pension.

(b) (i) In the case of the death of a contributing or former member who was fully insured, the Human Rights Commission may, at its discretion, pay to his or her spouse or civil partner a supplementary pension, the amount of which shall not exceed the difference between—

(I) the rate of partner's pension resulting from the calculation at subparagraph (4) (a), together with the personal rate of Widow's, Widower's or Surviving Civil Partner's (Contributory) Pension, if any, payable to the spouse or civil partner, and

(II) the rate of partner's pension which would have resulted from the calculation at subparagraph (4) (a) if the member had not been fully insured.

(ii) The supplementary pension shall be payable in respect of any period or periods during which the spouse or civil partner—

(I) fails to qualify for Widow's, Widower's or Surviving Civil Partner's (Contributory) Pension where such failure is not due to causes within his or her own control, or

(II) qualifies for Widow's, Widower's or Surviving Civil Partner's (Contributory) Pension at less than the maximum personal rate due to causes outside his or her own control.

6.5 Notwithstanding paragraph 6.4, where on the death of a contributing or former member, other than a former member who qualifies for a preserved pension, a partner's pension becomes payable to his or her spouse or civil partner, the rate of that pension may, in respect of the first month after his or her death, be increased to—

(a) in case he or she dies while a contributing member, one twelfth of his or her pensionable remuneration,

- (b) in case he or she dies after being granted a pension,
- (i) in relation to a member who is not fully insured, where the rate of pension payable to him or her on the date of his or her death is greater than the rate of partner's pension otherwise payable under the Scheme, one twelfth of the said rate of pension,
 - (ii) in relation to a Pre-1995 fully insured member, where the rate of pension payable to him or her on the date of his or her death is greater than the rate of partner's pension otherwise payable under the Scheme, one twelfth of the said rate of pension,
 - (iii) in relation to a Post-1995 fully insured member who is fully insured, where the rate of pension payable to him or her on the date of his or her death, if it had been calculated on the basis of net pensionable remuneration (Spouses', Civil Partners' and Children's Scheme) instead of net pensionable remuneration (Main Scheme), is greater than the rate of partner's pension otherwise payable under this Scheme, one twelfth of the said rate of pension.

provided that the rate as so increased shall be reduced by the rate of any children's pensions payable under this Scheme, and provided also that the amount payable to the spouse or civil partner under this Scheme in respect of the period of one month commencing on the day immediately following that of the deceased's death may be paid at any time on or after the first day of the said period.

7. CHILDREN'S PENSIONS; BENEFICIARIES

7.1 The following shall not be regarded as a child within the meaning of this Scheme namely:

- (a) a person who was not wholly or mainly dependent on a member immediately prior to the member's death,
- (b) a person who is married or in a civil partnership or cohabiting with another person, or
- (c) a person referred to in subparagraph 3.4(c) to, or in respect of, whom emoluments in respect of such instruction or training are payable by, or on behalf of, the employer and which are of such an amount as makes the person self-supporting,

provided that if there are compassionate grounds for so doing, the Human Rights Commission may, as regards a person who apart from this subparagraph would be such a child, direct that notwithstanding this subparagraph the person shall, with effect from such date as is specified in the direction, be regarded as being such a child and in case the Human Rights Commission makes a direction under this subparagraph, then for so long as the direction is in force this Scheme shall, as regards the person to whom

the direction relates, be construed and have effect in accordance with the direction.

- 7.2 Where, in relation to a person referred to in subparagraph 3.4(b) or (c), a break occurs in his or her full-time instruction or training, then unless the Human Rights Commission otherwise directs, he or she shall, for the duration of such break, be regarded as having ceased to be a child for the purposes of this Scheme.
- 7.3 A child shall not be eligible for a children's pension in respect of more than one member.
- 7.4 Where there would, apart from paragraph 7.3, be eligibility for children's pension in respect of two or more members, the child will count as eligible in respect of one of them in the way which in the opinion of the Human Rights Commission, gives the most favourable overall result for the child in question.

8. CHILDREN'S PENSIONS; RATE AND MODE OF PAYMENT

- 8.1 A children's pension under this Scheme will be paid to the parent or step-parent of the children if the eligible children are in his or her care, and in case any child in respect of whom a pension is payable is not in such care, the pension will be paid either to the child or to such other person as the Human Rights Commission may determine. If the children are in the care of more than one person, different parts of the children's pension will be paid to those persons in such proportions as the Human Rights Commission may determine.
- 8.2 In all cases, the pension is to be applied for the benefit of the children for whom it is granted.
- 8.3 A children's pension may be paid only in relation to the period or periods subsequent to the date of death of the deceased.
- 8.4 The rate of children's pension under this Scheme shall be—
- (a) where the deceased leaves no spouse or civil partner or, if he or she leaves a spouse or civil partner and the spouse or civil partner dies after his or her death, then, provided no payment is due to a former spouse or civil partner under the terms of a Pensions Adjustment Order made under the provisions of the Family Law Acts
 - (i) where there is only one child, one-third of the deceased's pension,
 - (ii) where there are two or more children, a rate in respect of each child equivalent to one-half of the deceased's pension divided by the number of children.
 - (b) subject to paragraph 8.5, where the deceased leaves a spouse or civil partner,

- (i) where there are not more than three children, one-sixth of the deceased's pension for each child,
- (ii) where there are more than three children, a rate in respect of each child equivalent to one-half of the deceased's pension divided by the number of children.

8.5

- (a) Where the children of the deceased are at the time of, or at any time after, his or her death in the care of some person other than the spouse or civil partner and no partner's pension is payable then, provided no payment is due to a former spouse or civil partner under the terms of a Pensions Adjustment Order made under the provisions of the Family Law Acts, the Human Rights Commission may, if it thinks fit, direct that for so long as they are in such care, subparagraph 8.4(a) shall apply notwithstanding that the spouse or civil partner is still alive, and in case the Human Rights Commission so directs this subparagraph shall be construed and shall have effect in accordance with the direction.
- (b) Where some but not all of the children of the deceased are at the time of, or at any time after, his or her death in the care of a person other than the spouse or civil partner and no partner's pension is payable, the rate of that portion of the children's pension which is payable in respect of the children who are in the care of that person may be calculated by reference to the rates specified in paragraph 8.4(a); provided that the amount of children's pension payable in respect of the deceased person shall not exceed one-half of the rate of the deceased's pension.

8.6 Notwithstanding the foregoing provisions of this paragraph, where the deceased leaves a spouse or civil partner and no partner's pension is granted to him or her under this Scheme, or, if one is so granted to him or her and it ceases to be paid before his or her death, no children's pension shall be payable under this Scheme as respects any period comprised within the lifetime of the spouse or civil partner or within the time in respect of which no partner's pension is payable, as may be appropriate, unless the Human Rights Commission in its absolute discretion directs that such a pension shall be so payable, and in case the Human Rights Commission gives a direction under this paragraph it may, if it thinks fit, further direct that paragraph 8.5 shall apply as respects any such period.

9. PAYMENT OF PENSION

Pensions payable under this Scheme shall be paid fortnightly in arrears except that where paragraph 6.5 applies in respect of a deceased member, the Human Rights Commission may decide that the amount of pension in respect of the month in question may be paid before the expiry of that month.

10. PERIODIC CONTRIBUTIONS

10.1 Contributions shall be payable at the rate of—

- (a) in the case of a Pre-1995 fully insured member, one and one-half per cent of the amount of the net remuneration from time to time payable to him or her (or where he or she is in receipt of reduced remuneration because of absence from employment, of the amount of the remuneration that would be payable to him or her if he or she were not so absent);
- (b) in the case of a Post-1995 fully insured member and all other members, one and one-half per cent of the amount of the remuneration from time to time payable to him or her (or where he or she is in receipt of reduced remuneration because of absence from employment, of the amount of the remuneration that would be payable to him or her if he or she were not so absent).

provided that in the case of a member who is a part-time employee or a work-sharer, the contributions under sub-clause (a) above shall be calculated in accordance with the formula $A \times B \div C$, where

A is the amount of the contribution which would be payable by an equivalent whole-time employee,

B is the number of hours (excluding overtime) worked by the member concerned, and

C is the standard number of hours applicable to an equivalent whole-time post.

10.2 The contribution shall be paid in respect of the period commencing on the date of commencement of this Scheme or the date on which he or she becomes a member, whichever is the later, and ending when he or she ceases to be a contributing member and at such times and in such manner as the Human Rights Commission may determine.

10.3 No contributions shall be payable under this Scheme by a member for any period which does not constitute pensionable service.

10.4 Contributions payable under this paragraph are in this Scheme referred to as "periodic contributions".

11. REFUND OF CONTRIBUTIONS

11.1 If a member ceases to be a contributing member other than on death and on so ceasing is not eligible for the grant of a pension and retirement lump sum, or preserved pension and preserved lump sum, then if his or her pensionable service is not transferred to another organisation or service, the whole of his or her periodic contributions shall be returned to him or her.

- 11.2 If a member retires on medical grounds with less than 5 years pensionable service and opts in accordance with the provisions of paragraph 8.2(b) of the Main Scheme to accept a gratuity or gratuities in lieu of any other benefits payable under the Main Scheme, the whole of his or her periodic contributions shall be returned to him or her.
- 11.3 A member who, on ceasing to be a contributing member, has paid periodic contributions for a period in excess of 40 years may have returned to him or her, or if his or her membership ceases due to death, to his or her legal personal representative, such of those contributions beginning with his or her initial contribution and working forward, as is necessary to secure that the period in respect of which such contributions are paid by him or her without being returned does not exceed 40 years. Where a member has, in accordance with the provisions of Article 7 of the Main Scheme, opted to retain preserved benefits in respect of an earlier period of service, then the contributions refunded shall be the initial contributions made in the current period of pensionable service.
- 11.4 Where a member who was awarded a pension in accordance with the provisions of Article 9 of the Main Scheme is re-employed by the Human Rights Commission in a pensionable capacity, then any non-periodic contributions in respect of potential service to age 65 deducted from the lump sum payable on the initial retirement shall be refunded to him or her.
- 11.5 Where any contributions are returned under this article they shall be returned without interest and less an amount equal to any income tax liability of the member in respect of such contributions.
- 11.6 Where periodic contributions are returned in accordance with this article to a person who subsequently becomes a member of this Scheme, he or she shall refund to the Human Rights Commission the amount of the periodic contributions so returned to him or her, together with compound interest on that amount at such rate per annum as may be specified by the Human Rights Commission with the approval of the Minister and the consent of the Minister for Public Expenditure and Reform with half-yearly rests from the date of payment to him or her.

12. FORMER MEMBERS BECOMING CONTRIBUTING MEMBERS

- 12.1 Subject to paragraph 12.2, where a former member becomes a contributing member of this Scheme and does not opt under the provisions of Article 7 of the Main Scheme to retain entitlement to preserved benefits in respect of the earlier period of membership, any entitlement to partner's pension or children's pension under this Scheme in respect of his or her previous membership shall cease.
- 12.2 Where a person, on becoming a contributing member of this Scheme, had at any time previously been a member of this Scheme, had paid periodic contributions during such period of membership and does not opt, under the provisions of Article 7 of the Main Scheme to retain entitlement to

preserved benefits in respect of the earlier period of membership, the period in respect of which he or she paid such periodic contributions shall be excluded in determining the number of relevant years under paragraph 13(7) provided—

- (a) no refund of those contributions is, or was, paid, or
- (b) paragraph 11.6 applies.

13 NON-PERIODIC CONTRIBUTIONS

13.1 Where a member was married or in a civil partnership throughout the period, or for a portion of the period, during which the Scheme applied to him or her and he or she ceases to be a contributing member and such cessation is due to—

- (a) death, or
- (b) retirement on pension or resignation with entitlement to a preserved pension,

then, unless the number of relevant years is nil, a contribution under this paragraph shall be payable by way of reduction in the amount of his or her retirement lump sum or death gratuity or preserved lump sum or preserved death gratuity, or in such manner as the Human Rights Commission may require.

13.2 A contribution under this paragraph shall be—

- (a) in the case of a Pre-1995 fully insured member, one per cent of the member's net pensionable remuneration multiplied by the number of relevant years;
- (b) in the case of a Post-1995 fully insured member and all other members, one per cent of the member's pensionable remuneration multiplied by the number of relevant years.

13.3 Where a contribution under this paragraph is being deducted from a preserved lump sum or preserved death gratuity, the contribution shall be calculated by reference to an amount equal to the member's pensionable remuneration at date of resignation, as increased by reference to pension increases granted under Article 11 of the Main Scheme in the interval between the date of resignation and the date—

- (a) on which he or she attains the age at which the pension would become payable, in the case of a preserved lump sum, or
- (b) of his or her death, in the case of a preserved death gratuity.

13.4 Where, subsequent to the date on which a member ceases to be a contributing member, the pension payable to him or her or to his or her

spouse or civil partner (but not the retirement lump sum, death gratuity, preserved lump sum or preserved death gratuity) falls to be increased because of an increase in the pensionable service of the member, the Human Rights Commission may adjust the amount of the contribution under this paragraph to take account of the increase.

- 13.5 At the discretion of the Human Rights Commission and subject to conditions specified by the Human Rights Commission, a member may elect to pay, over a period of twelve months beginning on a date specified by the Human Rights Commission, being a date not earlier than the date of the election, additional contributions equal in each case to the amount of the periodic contributions payable in respect of that period and in case one or more such additional contributions are made, this paragraph shall apply to the person by whom the contribution or contributions is or are made subject to the modification that, in calculating what is the number of relevant years, that number shall be reduced by one for every contribution made by the person under this paragraph.
- 13.6 Where a member, to whom this paragraph applies, gave service otherwise than as an employee of the Human Rights Commission, but which is pensionable service under Article 6 of the Main Scheme, any portion of that service during which he or she paid periodic contributions under a scheme similar to this Scheme may, provided those contributions were not refunded to him or her, or having been so refunded have been repaid by him or her with appropriate compound interest applied, be excluded in determining the number of relevant years under this Article.
- 13.7 In this Article, “the number of relevant years” means—
- (a) in the case of a member who, being then married or a civil partner, ceases to be a contributing member,
- (i) if such cesser is caused otherwise than by death or retirement on medical grounds, the number of years of pensionable service which he or she then had,
- (ii) if such cesser is due to death or retirement on medical grounds, the number of years of pensionable service which he or she would have if he or she had served to age 65 or, if earlier, to the date on which his or her contract of employment would expire,
- reduced in each case by the number of years if any, for which periodic contributions have been paid by him or her and are not returnable;
- (b) In the case of a member who, being then unmarried and not a civil partner, ceases to be a contributing member,
- (i) if such cesser is caused otherwise than by death, the number of years of pensionable service which he or she had on the date of termination of his or her last marriage or civil partnership before such cesser,

(ii) if such cesser is caused by death and there is no Pensions Adjustment Order in place, the number of years of pensionable service which he or she had on the termination of his or her last marriage or civil partnership,

(iii) if such cesser is caused by death and there is a Pensions Adjustment Order relating to partner's pension in place, the number of years of pensionable service which he or she would have if he or she had served to age 65 or, if earlier, to the date on which his or her contract of employment would expire,

reduced by the number of years, if any, for which periodic contributions have been paid by him or her and are not returnable.

13.8 Where a person to whom paragraph 12.1 applies became a former member by retiring on pension, whether on a medical certificate or otherwise, then the contribution payable under paragraph 13.2 at the termination of his or her final period of contributing membership shall be reduced by the amount of the contributions paid under paragraph 13.2 when he or she became a former member, provided there was no refund of that contribution.

13.9 Where the pensionable remuneration of a member who is not fully insured includes pensionable allowances he or she will be liable for a deduction of one per cent of the pensionable allowances in respect of each year during which he or she paid periodic contributions up to the date of termination of his or her last marriage or civil partnership before he or she ceased to be a contributing member and, where he or she is married or in a civil partnership at the time of retirement, for each year during which periodic contributions were paid by the member.

13.10 Pensionable service in excess of 40 years shall be left out of account for the purposes of this Article.

14. MARRIAGE OR CIVIL PARTNERSHIP OF MEMBERS WHOSE EARLY DEATH IS TO BE FORESEEN

Where a member or a former member marries or enters into a civil partnership and—

(a) he or she dies within the year beginning on the date of the marriage or civil partnership and

(b) in the case of a marriage, there are no children born of the marriage, and

(c) the Human Rights Commission is of the opinion that his or her death within the year beginning with the date of the marriage or civil partnership was, at that date, to be foreseen by him or her or his or her spouse or civil partner,

for the purposes of this Scheme the marriage or civil partnership may be regarded by the Human Rights Commission as not having taken place, and in case the marriage or civil partnership is so regarded all necessary adjustments (including, if need be, repayment to the Human Rights Commission of the sums paid in respect of pensions already granted under this Scheme) shall be made accordingly.

15. DUTY TO GIVE INFORMATION

- 15.1 A member of this Scheme shall give to the Human Rights Commission such information as is necessary for the proper operation of this Scheme in relation to the member.
- 15.2 The spouse or civil partner of a deceased member shall give to the Human Rights Commission such information as is necessary for the proper operation of this Scheme in relation to any application by him or her for a partner's pension or a pension for the children of that member.
- 15.3 A person having the care of a child of a deceased member who applies for a children's pension in respect of that child shall give to the Human Rights Commission such information as is necessary for the proper operation of this Scheme in relation to that child.

16. DECLARATIONS

Payment of pension under this Scheme shall be subject to the making by the spouse or civil partner and where children's pension is not payable to the spouse or civil partner, the person having the care of the children in question, of a declaration in such form and at such times as the Human Rights Commission may determine.

17. REPAYMENTS OF PENSIONS OVERPAID

If at any time a person receives payments on foot of a pension and such person is not entitled under this Scheme to such payments, or if a person receives payments on foot of a pension which exceed those which are appropriate under this Scheme, such person or, in case such a person is dead, the legal personal representative of such person, shall pay to the Human Rights Commission on demand such payments or excess payments, as may be appropriate, and such payments or excess payments may, in default of payment, be recoverable by the Human Rights Commission as a simple contract debt in any court of competent jurisdiction.

18. ASSIGNMENTS

Every assignment of, or charge on, and every agreement to assign or charge, a pension under this Scheme shall be void and, on the bankruptcy of any person entitled to a pension under this Scheme, that pension shall not pass to any trustee or other person acting on behalf of the creditors. If the pensioner becomes incapable of giving a receipt for payments due, the Human Rights Commission shall have discretion to make such payments in whole or in part to such persons, including the authorities of any institution having care of the pensioner, as the Human Rights Commission

thinks fit, and the Human Rights Commission shall be discharged from all liability in respect of any sum so paid.

19. ABATEMENT BY REFERENCE TO OTHER BENEFITS

19.1 Where, either directly or indirectly, the Human Rights Commission provides, or helps to provide, or contributes towards a financial benefit for the spouse or civil partner and/or children of a member, other than under

(a) this Scheme, or

(b) the provisions of the Main Scheme, or

(c) the Social Welfare Acts, or

(d) the Social Welfare (Occupational Injuries) Act 1966,

the Human Rights Commission shall not make an award under this Scheme unless it is authorised to do so by the Minister with the consent of the Minister for Public Expenditure and Reform. In authorising an award in such a case, the Minister, with the consent of the Minister for Public Expenditure and Reform, may direct the Human Rights Commission to adjust the amount of an award to take such account as he or she considers appropriate of the financial benefit in question.

19.2 Where, arising from the application of paragraph 19.1, an award is not made under this Scheme, the whole of the periodic contributions paid by the member shall be returned to his or her legal personal representative and Article 13 of this Scheme will not apply in his or her case.

19.3 Where, arising from the application of paragraph 19.1, the amount of an award is adjusted, the Human Rights Commission may return to the member's legal personal representative such proportion of the periodic contributions paid by the member as is authorised by the Minister with the consent of the Minister for Public Expenditure and Reform and may make such adjustment in any contribution which would otherwise be due under Article 13 of this Scheme as is authorised by the Minister with the consent of the Minister for Public Expenditure and Reform.

20. INCREASE IN PENSIONS

The Human Rights Commission may grant such increase in such pensions under this Scheme as may be authorised from time to time by the Minister with the consent of the Minister for Public Expenditure and Reform.

21. CESSER OR REDUCTION OF BENEFIT

21.1 Where a member is dismissed or resigns or otherwise ceases to hold employment and has been guilty of misconduct involving a financial loss to the Human Rights Commission or the State, the Human Rights Commission may, at its discretion, refuse or reduce any award which might

otherwise be payable under this Scheme (including a refund of contributions) in order to make good such a loss.

- 21.2 The Human Rights Commission may, at its discretion, reduce or cease paying a pension awarded under this Scheme if the pensioner has been guilty of misconduct involving a financial loss to the Human Rights Commission or the State, in order to make good such a loss.

22. APPEALS

If a person is aggrieved by the failure or refusal of the Human Rights Commission to make an award under this Scheme or by the amount of any award (including the award of pension increases) made, he or she may appeal to the Minister who shall refer the dispute to the Minister for Public Expenditure and Reform who shall, within 3 months of the dispute being referred to him or her, issue a determination in accordance with Article 5.1 of the Pensions Ombudsman Regulations 2003 (S.I. No. 397 of 2003).

23. TERMINATION OR AMENDMENT OF SCHEME

The Human Rights Commission reserves the right to amend or terminate the Scheme at any time, subject to the approval of the Minister and the consent of the Minister for Public Expenditure and Reform and subject to giving 3 months notice of impending changes to members of the Scheme. Benefits secured for a member or former member prior to the date of amendment or termination will not be affected.

L.S.

The Minister for Justice and Equality hereby approves of the above Scheme,
15 April 2014.

ALAN SHATTER,
Minister for Justice and Equality.

L.S.

The Minister for Public Expenditure and Reform hereby consents to approval of the above Scheme,
15 April 2014.

BRENDAN HOWLIN,
Minister for Public Expenditure and Reform.

EXPLANATORY NOTE.

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

This Scheme provides for superannuation benefits for the Spouses, Civil Partners and Children of the members of the Human Rights Commission Superannuation Scheme 2013.

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