

EXECUTIVE NOTE

THE NATIONAL HEALTH SERVICE SUPERANNUATION SCHEME (SCOTLAND) AMENDMENT REGULATIONS 2008 SSI/2008/226

1. The above instrument is made in exercise of the powers conferred by sections 10 and 12 of, and Schedule 3 to, the Superannuation Act 1972. These powers have been transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750). This instrument is subject to the negative resolution procedure.
2. This instrument amends the National Health Service Superannuation Scheme (Scotland) Regulations 1995 (“the 1995 Regulations”) and introduces changes as a part of the overall pension reforms to the NHS pension scheme for Scotland.

Background

3. In December 2002, the U.K. Government published a Green Paper entitled “Simplicity, security and choice: Working and saving for retirement” (Cm 5677). Following on from this, in June 2003, “Working and saving for retirement – action on occupational pensions” (Cm 6111) made recommendations that all public service pension schemes should be reviewed to reflect improved longevity and to ensure future arrangements were affordable and sustainable. In common with other public service schemes; the NHS Pension Scheme for Scotland has been under review since 2003. The terms of the review and the resulting recommendations agreed by the Scottish Ministers was undertaken by the Scottish Pensions Review Group (SPensiR)¹.

Policy Objectives

4. The overall policy aim was to achieve agreement through discussion with key stakeholders to changes to the NHS pension scheme for Scotland that provided flexibility for a more diverse and modern workforce whilst at the same time maintaining affordability to both members and the tax payer. This has been achieved both through the amendments made by these regulations to the 1995 Regulations together with further regulations introduced for members joining the scheme from 1 April 2008 (the National Health Service Pension Scheme (Scotland) Regulations 2008)(“the 2008 Regulations”).
5. Key aspects of the current benefit structure **that are unchanged** for existing staff are:
 - a pension based on $1/80^{\text{th}}$ of final pay for each year of service and a fixed lump sum (normally three times the pension) for members employed by the NHS;

¹ A partnership between employers, trade unions/professional organisations for the NHS in Scotland and the Scottish Government

- a pension based on 1.4% of uprated career average earnings for self-employed general medical and dental practitioners; and
- a normal retirement age of 60 for all members.

Amendments to the 1995 Regulations

6. Key changes to benefits and terms introduced for members to whom the 1995 Regulations apply and are in pensionable employment on or after 1 April 2008 are:

- Regulation 6 amends regulation C1 of the 1995 Regulations to introduce the removal of the cap on pensionable earnings for service after 1 April 2008. Members whose earnings have exceeded the cap will receive two separate pensions at retirement, one for any uncapped service based on their final year's pensionable pay and one for any capped service based on the earnings cap in operation at retirement.
- Regulation 7 amends regulation C2 to introduce a change so that members with a normal retirement age of 60 will be able to make contributions until they achieve a maximum of 45 years service or reach age 75. Service before 1 April 2008 is still subject to the current limit of 40 years at age 60 but this restriction is removed for service after 1 April 2008. After that date the limit will be 45 years membership. The current limits² for special class³ members are retained.
- Regulation 9 amends regulation D1 to provide for a contribution tariff set according to the level of a member's pensionable earnings. From 1 April 2008 member contributions (for all members other than those who are employed in manual posts⁴) will be based on a tiered rate depending on the level of a member's annual pensionable pay. The rates range from 5% to 8.5%.

The amendments made by regulation 9 outline how contribution tiers will be set for the 2008/09. The process of calculating contribution tiers for 2009/10 and beyond is due to be agreed and finalised later this year. Similar changes are introduced for practitioners by regulation 63 paragraph 5.

- Regulation 13 inserts new regulations E2A, E2B and E2C to introduce a new two tier ill health retirement provision. Members retiring on ill health grounds on or after 1 April 2008 will be subject to the new 'two tier' ill health provisions contained in regulation E2A of the 1995 regulations.

Lower Tier condition and benefits – Members with at least 2 years service who are permanently unable to continue in their current job because of ill health will receive the early payment of the pension they have earned up to the date of retirement.

² 40 years at age 55 and 45 years overall

³ Qualifying nurses, physiotherapists, health visitors, and midwives and mental health officers

⁴ Manual workers will pay 5% until 1 April 2009

Upper Tier condition and benefits - Members with at least 2 years service who are permanently unable to undertake regular employment will receive benefits based on membership increased by 2/3rds of the membership they would have completed if they had worked until age 60.

- Regulation 18 inserts anew regulation E11 to provide a new facility to exchange pension for additional tax free lump sum. Members who leave the scheme on or after 1 April 2008 will be allowed to take an additional tax free lump sum in place of part of their pension within the limits set by the Finance Act 2004. Members will receive £12 of lump sum for every £1 of pension they give up.
- Regulation 32 inserts new regulations G14 to G17 to introduce nominated partner pensions. A member who is in pensionable employment on or after 1 April 2008 may nominate a partner to receive a pension after their death. The member and their nominated partner must jointly sign a declaration at the time the nomination is made.

If the member dies, the nominated partner must satisfy the scheme that for a period of at least two years the member and the nominated partner were:

- living together as if husband and wife or as if civil partners;
- not prevented from marrying or entering into a civil partnership;
- financially interdependent or the partner was financially dependent on the member; and
- not living with another person as if they were husband and wife or civil partners.

The nominated partner's pension is based on the member's pension for service after 5 April 1988 and is equal to half that amount⁵.

- Regulation 33 amends regulation H1 to extend all child allowances to be paid to age 23 with cover extended to include children of nominated partners. For members who die in pensionable employment on or after 1st April 2008 the allowance will be paid until the child reaches age 23 in all cases and may continue after that age if a child is incapable of earning a living because of permanent physical or mental infirmity;
- Regulation 52 provides for a new facility for members who are in pensionable employment or an employer on their behalf to take out an option to purchase additional pension (AP). The option may cover:
 - an increase to the member's pension; or
 - an increase to the member's pension and any pension that may become payable to a surviving partner and dependent child also.

The minimum amount of AP that may be bought is £250. A member may opt to buy more in further blocks of £250 up to a maximum 13£5000⁶. This replaces the option to buy added years which ceased on 31 March 2008.

⁵ Calculated in the same way as a widower's pension is calculated.

- Regulation 57 amends regulation S2 of the 1995 Regulations to take account of new abatement rules that apply to various pensions coming into payment on or after 1 April 2008. The member's pre retirement earnings are compared to new earnings (including pension) but only part of the pension will be taken into account. This is the part that is over and above the amount the pensioner would have got had the pension been actuarially reduced for retirement before normal benefit age. The pension is reduced if new earnings plus the actuarially reduced pension is more than pre-retirement earnings.
- Regulation 62 makes amendments to regulation U4 that allows for future increases in the costs of benefits to be shared by NHS employers and members via adjustments to respective contributions rates. This regulation implements the SPensiR agreement on how scheme costs are to be shared between members and employers.

In the first instance the relevant actuarial valuation report provided for England and Wales will be applied unless the initial employers contribution rate as calculated for Scotland is 1% greater than or less than the rate payable by employing authorities in England and Wales. The appropriate contribution rate for member and employers following each scheme valuation will be decided after taking into account advice from the Scheme Actuary, Her Majesty's Treasury and advice provided separately by employer and member representatives. Where an increase or decrease in costs is determined to be shareable this would fall to members in the form of contribution or benefit changes or a mixture of the two.

Sensitivity

7. The Regulations are not contentious. Agreement to the change has been reached through the SPensiR who are a partnership group consisting of representatives of employers, trade unions and professional organisations for the NHS in Scotland and the Scottish Government

Consultation

8. The changes which these Regulations introduce have been the subject of extensive consultation. In Scotland SPensiR first produced a consultation document in January 2005 containing proposals based on new entrants moving to a normal pension age of 65 by 2006 and current staff moving to a normal pension age of 65 by 2013. Consultation on these proposals and similar proposals for other public pension schemes however highlighted considerable opposition from members and their representatives. In light of this general strength of feeling over the proposals the UK Government undertook further discussions with unions and employers resulting in the Public Service Forum (PSF) reaching an agreement on pension age. Following this agreement a revised set of proposals were developed which enabled current members to retain a normal benefit age of 60. These proposals were contained in the publication "Moving to the future" and were consulted on from 2nd October 2006 to

⁶ This maximum includes any amount bought by the member and paid for by lump sum payment and any amount bought by an employer on the member's behalf.

5th January 2007 and at the same time a number of information seminars were run to which NHS employers and staff representatives were invited. Information was also published on the Scottish Public Pensions Agency website (www.sppa.gov.uk) Official responses received from this consultation was a lot lower (29) than the initial consultation (1298) but this was interpreted as being positive noting that the main concerns over the proposals contained in the earlier document about the introduction of a normal pension age of 65 for all staff and moving to a career average scheme had been addressed through the public services forum.

9. In addition to the above consultations a separate review of the ill health provisions within the scheme took place and consultation on proposals to change the ill health arrangements was carried out over the period from October 2006 to January 2007. There were 14 generally positive responses received from this. The main change to come out of the consultation was that SPensiR recognised that the criteria for an upper tier ill health pension should be reflected fully in the regulations and they also agreed for guidance to be produced for the scheme medical advisors to ensure that they were consistent in their assessments across the UK schemes.
10. SPensiR reached final agreement on the changes to the NHS pension scheme for Scotland at their meeting on 12 September 2007 and to the ill health elements on 18th February 2008.
11. These Regulations formalise the proposals previously consulted on and the Regulations themselves have been the subject of consultation with representatives of NHS employers and employees, other Scottish Government interests and UK Government departments.

Financial implications

13. The reform of the NHS pension scheme for Scotland has been carried out under the principles agreed at the PSF in October 2005. These required that providing existing members with full protection from normal pension age (NPA) of 65 should not reduce the overall level of saving that is delivered through the reform of the unfunded public service pension schemes.
14. Based on Government Actuary's Department (GAD) assumptions that the Scottish scheme will deliver a proportion of the savings estimated in England and Wales, the Scottish scheme is expected to generate savings of around £0.5 billion over a 50 year period (an estimated £50 million from existing members and the balance from new entrants). Although data from the 2004 valuation of the Scottish scheme was not available at the time the assumptions were made GAD has indicated that the proposed package of reformed benefits and similar increases in contribution rates in Scotland to those proposed for England and Wales, should deliver the necessary savings to satisfy the PSF cost envelope.
15. Cost sharing arrangements have been introduced, which will govern how member and employer contribution rates should be set in future and it has been agreed with Her Majesty's Treasury that the rate setting mechanism is kept under review in Scotland as future valuations become available. Currently, member contribution rates have been set at the same level as England and Wales and are:

- 5% for whole time equivalent pensionable pay up to £19,682;
- 6.5% for pensionable pay from £19,683 to £65,002;
- 7.5% from £65,003 to £102,499; and
- 8.5% for staff earning £102,500 and more

16. A Regulatory Impact Assessment has not been prepared for this instrument as it has no adverse impact on business, charities or voluntary bodies.

Scottish Public Pensions Agency
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