

EXECUTIVE NOTE

THE NATIONAL HEALTH SERVICE PENSION SCHEME (SCOTLAND) REGULATIONS 2008 S.S.I. 2008/224

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). The instrument is subject to the negative resolution procedure.

2. These regulations supplement the National Health Service Superannuation Scheme (Scotland) Regulations 1995 (“the 1995 Regulations”) and introduce major changes to the NHS Pension Scheme for Scotland for those who join the scheme for the first time from 1 April 2008. The main changes being a move from normal benefit age of 60 to 65 and the accrual rate moving from 1/80th to 1/60th.

Background

3. In December 2002, the UK 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. This instrument brings about necessary changes to the NHS pension scheme for Scotland which are required to ensure that the scheme remains affordable and sustainable in the long term. It reflects changes for future members which were agreed in partnership. There is an increase in normal benefit age for new members to reflect that people are living and working for longer however members are compensated by the introduction of improved benefits and more flexibility around retirement such as part draw down of pension whilst still working and enhanced pension if they choose to work even longer. These flexibilities are not open to members whose pension provision is covered by the 1995 regulations whose normal pension benefit age remains at age 60.

Changes for new NHS Pension scheme members from 1 April 2008

5. These Regulations are divided into four parts, each with chapters dealing with different aspects of the pension scheme arrangements. Part 1 contains introductory material

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

and sets out the circumstances in which Parts 2 to 4 apply. It also sets out the provisions relating to scheme reports, accounts and cost sharing. Part 2 sets out the provisions applying to people working in the National Health Service in Scotland as officers, (members of the scheme other than GP providers) and non GP providers (i.e. officer members who are partners in a GP practice). Part 3 sets out the provisions applying to people working in the National Health Service in Scotland as practitioners or who work for out-of-hours providers (who are not NHS employers but who have been contracted by a health board to provide out of hours primary medical services). Part 4 sets out the provisions applying to people who have worked in the National Health Service in Scotland as both officers and practitioners.

6. The main changes set out in these Regulations which affect new joiners from 1 April 2008 are:

- **A normal pension benefit age of 65** (regulations 2.D.1 and 3.D.1)
- **A higher accrual rate** (the rate at which pension is built up i.e. 1/60th of reckonable pay per year of service for officer members and 1.87% of uprated earnings for practitioner members (a qualifying registered medical practitioner or registered dentist) (Regulations 2.D.1 and 3.D.1).
- **Ability to take all retirement benefits as a pension or to ‘give up’ part of the pension for a retirement lump sum within the tax limitations.** A member is able to take up to 25% of his or her pension pot as a lump sum at a rate of £12 of lump sum per £1 of annual pension given up (regulations 2.D.14 and 3.D.10).
- **Reckonable pay.** For officer members the calculation of pension is based on the annual average of the best three consecutive years pay in the 10 years before retirement revalued by reference to the retail prices index (regulation 2.A.10).
- **Tiered employee contributions.** These range from 5% for the lowest paid to 8.5% for the highest paid to improve the internal equity of the final salary scheme. These rates will also apply to those currently in the scheme and to whom the 1995 Regulations apply) (regulations 2.C.2 and 3.C.2).
- **Removal of the cap on pensionable earnings** (except where it applies to transferred in service (regulations 2.A.12, 2.F.12, 3.A.11 and 3.F12).
- **Partner Pensions** available for staff who are not married or who have not entered into a civil partnership which will be payable for life (regulations 2.E.1 and 3.E.1). This puts unmarried couples on the same footing as married couples and registered civil partners. In order that a pension can be paid to such a surviving partner it is however dependent on the surviving partner having been nominated by the member and proof that the partner had been financially dependent or independent on the member for two years prior to the member’s death will also need to be provided to the Scottish Ministers.
- **Two tier ill health arrangements** where extra service is only applied to the pensions of staff unable to engage in any “regular employment of like duration” (regulations 2.D.7 to 2.D13. 3. D.7 and 3.D.8). The two tiers are:

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.

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 65.

At the time a lower tier ill health pension is awarded, the regulations also allow for the medical assessor to recommend that in certain circumstances a member's entitlement may be re-assessed against the upper tier condition within a 3 year period. If, based on further medical evidence, it is decided that the member meets the condition for an upper tier pension at the date of the review, an upper tier pension including any additional service will be calculated and paid from the date of this decision. The Regulations also cover the circumstances in which an upper tier pension will be replaced by a lower tier pension. Those circumstances are that: the member's earnings from any further employment in any tax year exceed the lower earnings limit (LEL) for national insurance purposes for that tax year; and where a member is re-employed in the NHS, one year after they become re-employed, if sooner.

Members whose upper tier pension is replaced by a lower tier pension will be automatically protected from the permanent loss of their upper tier pension for a period of one year that will run from the date earnings exceed the LEL (for those not employed in the NHS), and from the first day of re-employment (for those employed in the NHS). If the further employment ends during this "one year protection period" and a member is under normal benefit age he may apply for his/her upper tier pension to be reinstated.

- **Additional Pension Purchase facility** whereby members or employers on their behalf are able to buy additional amounts of pension in blocks of £250 up to a maximum of £5,000 additional annual pension. Members can choose to buy additional pension for themselves only or to include dependents allowances (regulations 2.C.8, 2.C.9, 3.C.8 and 3.C.9).
- **Late Retirement Factors** rewarding those who work beyond their normal pension age of 65 and which will help to retain skills within the NHS (regulations 2.D.3 and 3.D.3).
- **Facility to be able to take part of the pension and to carry on working.** A member who reaches minimum pension age (55) may opt to take part of his or her pension and carry on working as long as the member's revised pensionable pay is reduced to at least 90% of what the member was earning in the 12 months prior to making this election (regulations 2.D.5 and 3.D.5).
- **New cost sharing arrangements** whereby risks associated with final salary are transferred to all staff by capping employer contributions at 14.2% up to 2016 and at 14% thereafter (regulation 1.B.2).

Sensitivity

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

Consultation

8. The changes which these Regulations introduce have been the subject of extensive consultation. In Scotland the review of the pension arrangements for NHS staff has been taken forward by SPensiR. 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 of 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 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 much 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 agreed by SPensiR. The Regulations themselves have been the subject of consultation with representatives of NHS employers and employees, other Scottish Government interests and UK Government departments, to which only 3 responses were received. None of these have any consequential effect.

Financial Implications

12. The reform of the NHS pension scheme for Scotland 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.

13. 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.

14. 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 will be:

- 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.

Regulatory Impact

15. 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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