

EXECUTIVE NOTE

THE NATIONAL HEALTH SERVICE (SUPERANNUATION SCHEME, INJURY BENEFITS, ADDITIONAL VOLUNTARY CONTRIBUTIONS AND COMPENSATION FOR PREMATURE RETIREMENT) (SCOTLAND) AMENDMENT REGULATIONS 2008 SSI/2008/92

1. The above instrument is made in exercise of the powers conferred by sections 10, 12 and 24 of, and Schedule 3 to, the Superannuation Act 1972. These powers have been devolved 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 amend the National Health Service Superannuation Scheme (Scotland) Regulations 1995 (“the Principal Regulations”), the National Health Service (Scotland) (Injury Benefits) Regulations 1998 (“the Injury Benefits Regulations”), the National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998 (“the AVC Regulations”), and the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003 (“the Compensation Regulations”) to clarify the working of certain regulations.
3. Certain of the amendments introduced by this instrument are expressed to take effect from a date earlier than the commencement of the instrument (pursuant to powers in section 12(1) of the Superannuation Act 1972) so as to provide benefits from that earlier date to categories of Scheme members who would otherwise have been excluded from, or received reduced, benefits.

Policy Objectives

4. The first main area of change is that amendments are needed to remove all references to the Government Actuary in the Principal Regulations. Following the report of the Morris Review of the actuarial profession in March 2005, Scottish Ministers in line with HM Treasury Ministers accepted the recommendation that Government should remove the legislative requirements that the Government Actuary provide actuarial advice to public service pension schemes as government departments should be allowed a choice of actuarial advisors. These Regulations therefore allow Scottish Ministers to appoint an actuary rather than use the Government Actuary.
5. Another main area of change concerns the payment of interest. Regulation T9 of the Principal Regulations for the NHS Pension Scheme for Scotland, which came into force on 18 December 2001, introduced a general provision for the NHS Pension Scheme for Scotland to pay interest automatically, where the whole or any part of a qualifying payment under the Principal Regulations was not paid by the end of a period of one month beginning with the due date. A qualifying payment is any payment of benefit paid under the NHS Pension Scheme for Scotland which can be paid either to the member, a surviving dependent (widow, widower, surviving civil partner, dependent child) or to the deceased member’s estate. The policy intention behind regulation T9 was to pay interest where decisions on claims for retirement on ill health grounds were unavoidably delayed, usually in areas where developments in medical knowledge were still taking place, (e.g. Chronic Fatigue Syndrome). Although the intention was not to pay interest on the balance between a final agreed award and any lower “safe” interim award, the original policy instructions did not clarify this, therefore, interest was expressed to apply generally to all delayed pension

benefits. The proposed change to regulation T9 clarifies the position by excluding from payment of interest those cases where a “safe” rate of benefit has been paid and this rate is subsequently revised. Regulation T9 is also amended to change the definition of the base rate to make use of the Bank of England Official Bank Rate in order to simplify any calculation of interest for late payments. This amendment should result in savings to the NHS Pension Scheme for Scotland.

6. The third main area of change concerns the collection of practitioners’ contributions. From 1 April 2004 a new contract for the provision of General Medical Services (New GMS contract) was introduced which included a wider range of services that GPs and GP Practices could undertake and thus they could have earnings from different sources. At this time administrative procedures were set in place for the collection of contributions from the different sources. Practitioner Services Division of the Central Services Authority (now known as the NHS National Services) carries out this function on behalf of the Health Boards. The Principal Regulations are amended by these Regulations in order to formalise the procedures which have been applied in practice administratively following the introduction of the New GMS contract in April 2004.

7. The fourth main area of change is to clarify that death benefits are payable in the circumstance where because a member has maximum service, that member has ceased contributing to the Scheme. Authority to pay death benefits when members of both the ‘Special and non Special Classes’ (Special Classes being certain members who were in the scheme before 1 April 1995 and retain a right to retire at the age of 55 on unreduced pension and in the case of mental health officers accrue double service after 20 years) have stopped contributing to the Scheme but die before retirement is not currently included in the Principal Regulations. This appears to have been a drafting oversight when the Principal Regulations were consolidated in 1995 and as the policy intention is that benefits are payable, in this circumstance, as if the member died whilst still in NHS pensionable employment, a retrospective amendment effective from 1 April 1995 has therefore been included.

8. There are also minor changes being made as described below.

Background

9. This instrument tidies up the regulations described in paragraph 2 and updates them in relation to current procedural practices. There will be a number of changes to the NHS Pension Scheme for Scotland which will shortly be required as a result of the public pension reforms process which will be coming into effect from 1 April 2008. Some of the amendments in these Regulations have retrospective effect to pick up changes overlooked at the time and by bringing them in earlier than 1 April it will distinguish these changes from the fundamental changes brought about by the public pension reforms and therefore provide clarity.

Amendments

The changes are:

- To include in the definition of “employing authority” in the Principal Regulations and Injury Benefits Regulations those employers who are subject to a Direction under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967;
- To insert a definition of “scheme actuary ” and substitute “scheme actuary” for “Government Actuary “ where this appears in the Principal Regulations;

- To amend regulation C(4)4 of the Principal Regulations to restrict the whole time pensionable pay equivalent for a part time member to that which would have been paid in a single comparable employment; in other words in the case of a member working part time his income is uprated to a full time equivalent for the purpose of working out earnings for pension purposes. If there is more than one part time employment, total uprated earnings may amount to more than what would be a full time equivalent amount for only one full time employment. The amendment clarifies that only a single comparable employment can be used as an equivalent;
- To amend regulations F(1), G2(5) and H3(8) of the Principal Regulations by extending death in service cover to those members whose NHS employment had ceased to be pensionable solely by virtue of having the maximum amount of reckonable service under the scheme. This amendment has retrospective effect to 1 April 1995;
- To amend regulation N1 of the Principal Regulations by inserting a new paragraph N1A to allow for the relaxation of the 12 month time limit on members transferring membership in to the NHS Pension Scheme for Scotland from other UK NHS pension schemes;
- To amend regulation P1 of the Principal Regulations to ensure that parental leave is treated in the same way as maternity, paternity and adoption leave; and by inserting a new paragraph P1 (5), to include “keep in touch” days as part of maternity leave. These allow a member up to 10 paid days to be taken to keep in touch with the employer without breaking maternity leave. This amendment is as a result of the Work and Families Act 2006, the relevant provisions of which came into force on 1 April 2007. This amendment has retrospective effect to that date;
- To amend regulation Q1 of the Principal Regulations to insert a new paragraph (10) providing that members who are moderate earners and who have reduced service as a result of dissolution or annulment of marriage (or, after 5th December 2005, civil partnership) may re-build their service under regulation Q1 (right to buy additional service), following an Inland Revenue easement that allows moderate earners to rebuild their service following the grant of a Pension Sharing Order as a result of a divorce or nullity of marriage. This amendment has retrospective effect to 10 May 2000 (and 5th December 2005 in relation to a civil partnership);
- To amend regulation S4 of the Principal Regulations to provide for a lump sum to be payable on death in pensionable re-employment under this regulation; and
- To amend the Principal Regulations and Injury Benefits Regulations so that an applicant is required to provide the Scottish Ministers with permission to see information relating to that person or that person’s entitlement where such information is held by a third party;
- To amend regulation T9(4) of the Principal Regulations to change the definitions of “due date”, “base rate” and expand the definition of “qualifying payment”. This is in order to clarify when interest should be paid to members and what the rate should be;
- To amend Schedule 1 of the Principal Regulations substituting a new paragraph 10 in order to clarify the procedures with regard to payment of pension contributions in respect of practitioners;

- To amend regulation 4(4)(b) of the Injury Benefits Regulations to remove the requirement for the reduction in emoluments of an employment to be permanent for the purposes of regulation 4(4) (allowance on reduction in emoluments); and to clarify that the dispute procedure in those Regulations complies with the Pensions Act 1995; and amend regulation 4A to allow the recovery of costs by Scottish Ministers, in relation to the provision of injury benefits, from successors, transmitters, and assignees of an employing authority's business or functions; and
- To amend the Injury Benefits Regulations, the AVC Regulations and the Compensation Regulations to clarify that the dispute procedures in those Regulations comply with the dispute resolution procedure set out in the Pensions Act 1995.

Sensitivity

10. The Regulations are not contentious.

Consultation

11. These Regulations have been the subject of consultation with representatives of NHS employers and employees, other Scottish Government interests and UK Government departments. No comments of any consequence have been received.

Consolidation

12. It is our intention to consolidate the National Health Service Superannuation Scheme (Scotland) Regulations 1995 once all the pension reform changes are introduced.

Financial implications

13. By clarifying the rules on payment of interest the Scottish Public Pensions Agency (SPPA) will no longer be obliged to pay interest on payments which are late due to circumstances outwith the SPPA's control and there will be a saving to the NHS Pension Scheme for Scotland. Example cases include GPs' pensions which cannot be finalised for a couple of years because of the length of the dynamisation process (GPs earn NHS pension benefits on a career average earnings basis and their earnings are revalued (dynamised) at retirement to maintain their value). This cannot be done until (a) final accounts have been received and (b) agreement reached on a UK basis for that years dynamisation factor. This means that when a GP retires a provisional pension is paid based on information held which is therefore subject to change when final accounts are received and final dynamisation applied. Another example is where SPPA is not in receipt of all the necessary pay details of a person or there has been a late implementation of a backdated pay award which would affect the final year's pensionable pay calculations on which the pension of that person is based.

Regulatory Impact

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