

POLICY NOTE

THE NATIONAL HEALTH SERVICE (SCOTLAND) (INJURY BENEFITS) AMENDMENT REGULATIONS 2013

S.S.I. 2013/52

These Regulations are made in exercise of the powers conferred by sections 10 and 12 of, and Schedule 3 to, the Superannuation Act 1972. They are subject to the negative procedure.

Policy Objectives

The Regulations make changes to the NHS Injury Benefit provisions set out in the National Health Service (Scotland) (Injury Benefits) Regulations 1998 (“the 1998 Regulations”).

Background

NHS Employers and Trades Unions have completed a UK partnership review of NHS Injury Benefit (IB) provisions under delegation from the Department of Health and the Scottish Government. The review addressed concerns that the current arrangements (as set out in the 1998 Regulations) were no longer fit for purpose, and were difficult to replicate outside the traditional NHS organisations. The review partners submitted recommendations for changes to the NHS Staff Council, and these changes have been accepted for implementation from 31 March 2013 by the Secretary of State / Cabinet Secretary for Health in each country.

Summary of the changes

Injury/disease arising before 31 March 2013

The NHS Injury Benefit provisions covering NHS staff in Scotland (and NHS staff in England and Wales under the separate legislation) will continue to protect all eligible persons who suffer a relevant injury or disease on or before 30 March 2013 as follows:

- *Sunset clause for a period of 5 years (31 March 2013 – 30 March 2018).* This is designed to provide a mechanism for the transition away from current provisions. Eligible staff will continue to be able to claim benefits as currently provided for where an injury is sustained or a disease is contracted before 31 March 2013.
- *Exception clause for an additional period of 20 years (31 March 2018 – 30 March 2038).* This is designed to deal with claims associated with delayed onset of symptoms resulting from injuries sustained and diseases contracted before 31 March 2013.

Together these measures provide a period of 25 years transitional protection for those who sustain a work-related injury or contract a work-related disease before 31 March 2013.

Injury/disease arising on or after 31 March 2013

For injuries or diseases arising on or after 31 March 2013, employers will be able to pay eligible employees a new “Injury Allowance” (IA) under their contractual terms and

conditions. The criteria for awarding the new IA, and the level of that allowance, will be similar to the temporary injury allowance currently payable under the existing NHS Injury Benefit provisions. However, the new IA will be limited to the period of the employment contract and a maximum payment period of 12 months for each relevant injury or disease.

A new section of the NHS Terms and Conditions of Service Handbook (agreed by the NHS Staff Council and endorsed by Health Ministers in the English, Welsh and Scottish Governments) will contain the replacement IA provisions. Similar amendments will appear in the contracts of staff covered by the new IA but subject to different contract arrangements.

To reflect the above changes, these Regulations amend the 1998 Regulations so that:

- the provisions apply only to NHS work-related injuries sustained and NHS work-related diseases contracted before 31 March 2013,
- for the full range of benefits to continue (within the periods described below) to apply to persons whose NHS work-related injuries were sustained and NHS work-related diseases were contracted before 31 March 2013, for those still in employment but the injury/disease only later causes the person to have a reduction in income,
- for a 5-year period from 31 March 2013 to 30 March 2018, provision for allowances benefits remains unchanged if the injury was sustained or the disease was contracted before 31 March 2013 but was only discovered after the NHS employment ended,
- for a further 20-year period from 31 March 2018 to 30 March 2038 provision for allowances and benefits remains unchanged if the injury was sustained or the disease was contracted before 31 March 2013 but was only discovered after the NHS employment ended, and compelling evidence is provided to support the claim,
- the claims procedure and evidential and notification requirements are clear.

Consultation

A public consultation on a draft of these Regulations took place from 14 December 2012 to 25 January 2013. In particular, representatives of NHS employers and employees, other Scottish Government interests and UK Government departments were consulted. A report on the consultation will be published on the SPPA website in due course.

Impact Assessments

An Equality Impact Assessment has been carried out and will be published when finalised.

Financial Effects

The current arrangements for injury benefits allowing payments for life are paid for by the employers and can be very costly. Because of the nature of injury benefits, it is difficult to predict what the financial effects of the new arrangements would be. However, we estimate that, based on recent trends, the NHS in Scotland could expect a possible saving of around £0.5m per year in permanent injury benefit claims. Going forward, payment of temporary injury allowances would also be limited to 12 months per episode instead of being open ended, and this should also result in cost savings.

SPPA
Scottish Government

7 February 2013