

EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE PENSION SCHEME, ADDITIONAL VOLUNTARY CONTRIBUTIONS AND INJURY BENEFITS (AMENDMENT) REGULATIONS 2013

2013 No 413

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument amends four statutory instruments relating to pensions and benefits provided for National Health Service staff.

2.2 Key changes implemented by this instrument include increases to member contribution rates; requirements for the automatic enrolment of members; the new structure and function of NHS administration introduced by the Health and Social Care Act 2012 and closure of the NHS Injury Benefit Scheme.

2.3 The instrument also makes a number of other miscellaneous and technical amendments.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Section 12(1) of the Superannuation Act 1972 confers a power to make regulations having effect from a date earlier than the date of their making. Regulations 78 and 80 have retrospective effect from 12 February 2007. Regulations 10, 11, 12, 26, 39, 41, 52, 67 and 68 have retrospective effect from 1 April 2008. Regulations 3(2)(with exceptions) and (5)(b), 5(3), 6, 25(2)(with exception) and (4)(b), 29, 30, 51(2)(with exceptions) and (5)(b), 60 and 61 have retrospective effect from 1st March 2013. Regulations 82(c), 83, 84, 85(2) and (4), and 86 to 89 have retrospective effect from 31st March 2013.

4. Legislative Context

4.1 In 2008 the NHS Pension Scheme divided into two 'sections' when a new benefit structure was introduced for new entrants. Membership and administration of the '1995 Section' is governed by the National Health Service Pension Scheme Regulations 1995 (Statutory Instrument (S.I) 1995/300). Part 2 of this SI amends those regulations. Similarly, the '2008 Section' was created by the National Health Service Pension Scheme Regulations 2008 (S.I. 2008/653). Part 3 of this SI amends those regulations.

4.2 The National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000 provides a facility through which NHS Pension Scheme members can supplement the value of their pension by making additional contributions. Part 4 of this SI amends those regulations.

4.3 Certain payments are made to NHS staff following a work-related illness or injury. The National Health Service (Injury Benefits) Regulations 1995 (S.I. 1995/866) provide for such payments to be made. Part 5 of this SI amends those regulations.

5. Territorial Extent and Application

The instrument applies to England and Wales.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background - What is being done and why

Increase to member contributions (amendments made by regulations 7, 21(9), 32(2), 33(4) and 62(5))

7.1 The Independent Public Service Pensions Commission, chaired by Lord Hutton, concluded that there is a rationale for increasing member contributions to ensure a fairer distribution of costs between taxpayers and members.

7.2 The Government announced plans in the 2010 Spending Review to produce £2.8bn savings per year by 2014-15 through increasing public service employee pension contributions by an average of 3.2 percentage points by March 2015. Contribution increases are to be phased over three years from 2012-13 to 2014-15. In determining the distribution of increases, the Department's stated principles is to protect the low paid, apply increases progressively and limit the level of opt out that higher contribution rates may generate.

7.3 The first year of increases were applied from 1 April 2012 and opt-out data monitored to check the impact of the increases. Trade Unions and NHS employer representatives have also reviewed this data. There has only been a small increase in opt-outs, which are in-line with assumptions. The data does not indicate that a change is required in the approach to determining the distribution of contribution increases for 2013-14.

7.4 The new contributions rates from 1 April 2013 are implemented in tiers according to earnings in seven bandings. For 2013-14, staff earning up to £15,278 will have no increase, whilst those earning between £15,279 and £26,557 will see a minimal 0.3% increase. Members earning between £26,558 and £48,982 would have a 1% increase, whilst members earning £48,983 and above will see an increase of 2.4%.

Automatic enrolment (amending regulations 3(2)(except the definitions of "foundation trainee" and "specialist trainee in general practice") and 3(5)(b), 5(3), (6), 25(2)(except the definition of "NHS 111 services") and 25(4)(b), 29, 30, 51(2)(except the definitions of "foundation trainee" and "NHS 111 services") and 51(5)(b), 60 and 61(2),(3) and (4), with retrospective effect from 1st March 2013)

7.5 From 1 October 2012, the Pension Act 2008 and the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 require the automatic enrolment of workers into an occupational pension scheme, to encourage and enable low to moderate earners to save more for their retirement. NHS Pension Scheme already require auto-enrolment of all eligible staff on employment with a scheme employing authority.

7.6 However to become fully compliant, amending regulations introduce a requirement from 1 March 2013 (when the first NHS employers are affected by automatic enrolment) to automatically enroll or re-enroll staff who opt out of the NHS scheme. Where such staff are

Reform of NHS administration and related changes (amending regulations 3, 4, 16, 21, 25, 27, 28, 31, 33, 34, 50, 51, 53, 55, 56, 58, 59, 62, 63, 66, 75, 76, 79, 82 and 85)

- 7.7 The Health & Social Care Act 2012 introduced significant changes to the structure and function of NHS administration. Primary Care Trusts (PCTs) and Strategic Health Authorities (SHAs) are abolished from 31 March 2013 with their functions transferring to the newly created NHS Commissioning Board (NHSCB) and Clinical Commissioning Groups (CCGs).
- 7.8 References to PCTs and SHAs throughout the NHS Pension Scheme regulations are removed or replaced by NHSCB and CCGs. Scheme administrative functions are assigned to these new bodies that are also added to the list of statutory NHS Scheme Employing Authorities. This is dealt with via amending regulations
- 7.9 In the case of locum practitioners, an anomaly is corrected which saw employer contributions paid by a PCT rather than the practice where the locum is employed.
- 7.10 The instrument also clarifies the pension administration for Specialist Trainees in General Practice as well as updating the definition of such trainees. Terminology used for dental trainees is also updated as are a number of definitions and requirements relating to pensionable pay for practitioners.

Injury Benefit Scheme (amending regulations 82(c), 83, 84, 85(2), 85(4) and 86 to 89 with retrospective effect from 31 March 2013)

- 7.11 NHS Employers and Trade Unions have reviewed the NHS Injury Benefit provisions in response to concerns that the current arrangements are no longer fit for purpose. The instrument implements the review recommendations from 31 March 2013. All eligible persons who suffer a relevant injury or disease on or before 30 March 2013 can submit a claim under existing provisions at any time until 30 March 2038.
- 7.12 For injuries or diseases arising on or after 31 March 2013, employers will be able to pay eligible employees a new injury allowance under their contractual terms and conditions. The criteria for awarding the new allowance, and the level payable, will be similar to the temporary injury allowance currently payable by employers under NHS Injury Benefits regulations but limited to a maximum payment period of 12 months for each relevant injury or disease.

Miscellaneous amendments

Valuations and cost sharing (amending regulations 19, 20, 21(9), 23, 24, 32(3), 33(2) and 62(3))

- 7.13 Previous reforms to the NHS Pension Scheme in 2008 established a mechanism for apportioning any increases to the cost of pensions. This arrangement provided that additional cost pressures would be shared between employees and employers up to a capped limit. It is supported by regular actuarial valuations of the scheme to analyse cost pressures.
- 7.14 The Public Service Pensions Bill 2012 proposes a new mechanism to address variations in scheme costs and will require scheme regulations to conduct actuarial valuations in

Benefits on redundancy_(amending regulations 8, 9, 35, and 38)

- 7.15 Employers are responsible for meeting the costs of paying benefits early on the grounds of redundancy. The current option for employers to pay the costs by five equal annual installments is rarely selected and is being withdrawn from 1 April 2013.
- 7.16 Under certain terms and conditions of employment, members are entitled to claim unreduced pension benefits as an alternative to receiving a lump sum redundancy payment from their employer. The amendments are made to better reflect this link to terms and conditions in Scheme Regulations.

Other changes

- 7.17 Amending regulations 10 and 11 (with retrospective effect from 1 April 2008) permit married or civil partners to receive an appropriate survivor pension in circumstances where nomination occurred in service but marriage or partnership took place after retirement.
- 7.18 Amending regulations 12, 39 and 67 ensure (with retrospective effect from 1 April 2008) that a children's pension may be paid at the ongoing rate immediately following the pensioners death rather than six months later, if that rate is higher than the rate of the late member's pension.
- 7.19 Amending regulation 13 implements the Pension Act 2008 intention to abolish from 6 April 2012 protected rights relating to contracting-out of State second pension for service transferred into the 1995 section of the NHS scheme from that date.
- 7.20 Amending regulations 14, 15, 36, 37, 64 and 65 allow the retrospective cancellation of an additional pension purchase in circumstances where the Secretary of State has reasonable grounds to believe that a member's health will prevent them from completing the contract.
- 7.21 Amending regulations 21(9)(h), 31 & 63 permit arrears of employer contributions to be deducted from benefits where this is in the interest of the member and done with their agreement.
- 7.22 Amending regulations 18, 48 & 74 enable benefits to be withheld if a beneficiary fails to respond by a specified date to correspondence requesting information to establish entitlement.
- 7.23 Amending regulations 26 & 52 (with retrospective effect from 1 April 2008) correct a cross reference and provide that breaks in service of less than one month are disregarded for the purpose of determining qualifying service even where contributions had been refunded.
- 7.24 Amending regulations 41 & 68 (with retrospective effect from 1 April 2008) ensure that additional pension purchased by the member is correctly treated in abatement calculations. Amending regulations 17 and 42 to 47 and 69 to 73 clarify the application of abatement provisions especially where a pension is paid for only part of a financial year.

7.25 Amending regulations 78 & 80 (with retrospective effect from 12th February 2007) ensure continuity of scheme liability to pay benefits even where there is a change of additional voluntary contribution underwriter.

7.26 Finally, amending regulations 3, 4, 5, 21, 25, 27, 40, 41, 49, 51, 52, 53, 54, 57, 61 and 62, also make minor updates to definitions, terminology and correct a cross reference.

Consolidation

7.27 An informal consolidated text of the Regulations amended by this instrument was made available to NHS Trade Unions and other stakeholders during consultation.

7.28 Informally consolidated texts of both full sets of NHS Pension Scheme regulations incorporating all changes implemented up to and including those which came into effect on 1 April 2012 are available on the NHS Pensions website and may be viewed here <http://www.nhsbsa.nhs.uk/Pensions/2963.aspx>

7.29 Work to formally consolidate both the 1995 and 2008 Regulations has been deferred in light of the Public Service Pensions Bill which will require further significant amendments to these instruments.

8. Consultation outcome

8.1 The draft regulations were subject to a three month public consultation ending 12 February. Nearly 3,200 responses were received – the vast majority (3,155) were from general practitioners, hospital doctors or consultants who replied using a template from the British Medical Association (BMA). Representations were also received from the BMA, the British Dental Association, Cambridgeshire LMC, Derbyshire LMC, NHS Employers, the Royal College of Midwives, the Royal College of Nursing and UNISON.

8.2 The points raised focused mainly on the proposed employee contribution increases. Concerns were raised about the need for increases, affordability for staff and steepness of rises for higher earners. Respondents also commented on how new arrangements for both the Injury Benefit Scheme and locum practitioner superannuation administration might work in practice and raised practical issues for consideration.

9. Guidance

9.1 Guidance for members and employers on contribution changes is available on NHS Pensions' (the scheme administrator) website and can be viewed at www.nhsbsa.nhs.uk/Pensions/2520.aspx, along with the leaflet that will be issued to all members with their pay slips before 1 April 2013.

9.2 Guidance for employers and members on auto-enrolment can be found on both NHS Employers and NHS Pensions website and can be viewed here; <http://www.nhsemployers.org/PayAndContracts/NHSPensionSchemeReview/Automatic%20enrolment%20in%20the%20NHS/Pages/AutomaticEnrolment.aspx>. http://www.nhsbsa.nhs.uk/Documents/Pensions/TN1_-_2013_-_Employer_Newsletter.pdf

9.3 Guidance for employers and staff on new Injury Benefit arrangements can also be found on NHS Employers website at <http://www.nhsemployers.org/PayAndContracts/NHSInjuryBenefitSchemereview/Pages/NHInjuryBenefitReview.aspx>

10. Impact

10.1 This instrument will not impose or reduce costs on business or the third sector nor will it result in costs to the public sector of over £5 million. However, an impact assessment is provided for the provisions concerning increased contribution rates in view of the potential public interest. This can be found on the Department of Health website at

<https://www.wp.dh.gov.uk/publications/files/2012/11/Impact-Assessment-Increase-in-2013-14-NHSPS-employee-contributions-v7.pdf>

10.2 In summary, the impact assessment concludes that the approach adopted for increased employee pension contributions remains fair and progressive, with the increases distributed in a way that takes account of the beneficial effect of tax relief for members who pay a higher rate of income tax. The increases therefore better correlate to the actual burden that falls on members. An equality analysis available on the Department of Health website concludes that the approach does not give rise to equality issues.

<https://www.wp.dh.gov.uk/publications/files/2012/11/Equality-Analysis-2013-14-employee-contribution-increases-v4.pdf>

11. Regulating small business

The changes do not affect small business.

12. Monitoring & review

NHS Pension Scheme changes are discussed, monitored and reviewed in partnership with the NHS Employers organisation and NHS trade unions, in the light of formal and informal consultation procedures. The partners report to a ‘Governance Group’ representing employers, NHS Trades Unions and the Department of Health, which in turn makes recommendations to the Secretary of State for Health and HM Treasury.

13. Contact

Mr. Gareth Probert (Gareth.Probert@dh.gsi.gov.uk) at the Department of Health NHS Pensions Policy Team, Tel: 0113 2545491 can answer any queries regarding the instrument.