

EXECUTIVE NOTE

THE NATIONAL HEALTH SERVICE (SUPERANNUATION SCHEME, INJURY BENEFITS, ADDITIONAL VOLUNTARY CONTRIBUTIONS AND COMPENSATION FOR PREMATURE RETIREMENT) (CIVIL PARTNERSHIP) (SCOTLAND) AMENDMENT REGULATIONS 2005 SSI/2005/544

The above instrument is made in exercise of the powers conferred by section 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.

Policy Objectives

This instrument makes amendments to the National Health Service Superannuation Scheme (Scotland) Regulations 1995 (“the Superannuation Scheme 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 Premature Retirement Compensation Regulations”) (together “the principal regulations”).

The Civil Partnership Act 2004 (c.33), which comes into force on 5th December 2005, introduces the new status of “civil partner” where same sex couples form a legal civil partnership and this instrument makes provision for civil partners to receive, under the principal regulations, similar pension rights as are provided to married couples.

The main changes to the Superannuation Scheme Regulations are outlined at 1-9 below and the main changes to the other principal regulations are outlined at 10-12:

1. Surviving civil partners will be eligible to receive a compensation payment from an employer on the death of their civil partner. Surviving civil partners will also be able to receive payment of a lump sum on the death of their civil partner.
2. Pensions for surviving civil partners will be backdated at no cost to the member to 6th April 1988 or to the start of the member’s pensionable service if this commences after this date. Provision is made for any scheme member to purchase, prior to 28 February 2007, service prior to 6th April 1988, on similar terms as were available to female members in respect of widowers in 1988.
3. A member who has formed a civil partnership may, prior to leaving pensionable employment, nominate the other party to the civil partnership to receive a dependant surviving civil partner’s pension on the member’s death.
4. Provision is made to include the payment of an allowance in respect of the children of a civil partnership when the member dies.
5. Provision is made to permit a member to allocate part of his pension to a civil partner.

6. Civil partner's pensions are included in the provisions for guaranteed minimum pensions, so that civil partners are included within the protected rights that are transferred to the scheme and that surviving civil partners are included within the state scheme premiums.
7. Civil partners are included in the provisions for the right to buy an unreduced retirement lump sum.
8. Provision is made for the sharing of pension credit rights and pension credit benefit payable on the dissolution or nullity of a civil partnership.
9. Provision is made so that a surviving civil partners' benefits on a member's death may be forfeited in whole or in part on a direction by the Scottish Ministers following the civil partner's conviction of murder, culpable homicide or another offence including the unlawful killing of the member. This mirrors the current position for widows and widowers.
10. The Injury Benefits Regulations are amended to include the circumstances when payment of an annual allowance will or will not be paid to a surviving civil partner. The definition of "dependent child" is amended to include the dependent children of a civil partnership and the definition of "dependent relative" is amended to include the dependent parent of a civil partnership. The amendments also provide for the circumstances when an allowance will or will not be paid to a dependent relative of a civil partner. Provision is also made for a surviving civil partner to receive a lump sum payment on the death of their civil partner when the civil partner qualifies under the Injury Benefits Regulations.
11. The AVC Regulations are amended to include a civil partner in the definition of a dependant, to provide that certain lump sum payments can be paid to a surviving civil partner and for pension sharing to apply on dissolution or nullity of a civil partnership.
12. The Premature Retirement Compensation Regulations are amended to include provisions for civil partners in pension allocation arrangements, so that the officer may surrender part of his or her annual compensation allowance to provide a pension for a surviving civil partner; for surviving civil partners to be paid compensation payments when the officer dies; and for surviving civil partners to be paid compensation payments where a lump sum on death becomes payable when an officer dies.

Consultation

The instrument has been the subject of consultation with representatives of NHS employers and employees and with other government departments. The changes introduced are as a result of the Civil Partnership Act 2004. Responses were supportive of civil partner inclusion in the NHS pension scheme.

Consolidation

As noted in the Executive Note to SSI2005/512, we are in the process of preparing a consolidation of the Superannuation Scheme Regulations. A draft of the consolidation is expected to be issued for consultation during November 2005. It is considered that the changes in this instrument are of sufficient urgency and importance (the Civil Partnership Act 2004 comes into force on 5th December 2005) that they should be introduced before the consolidation. The intention is to include the changes in this instrument in the consolidation of the Superannuation Scheme Regulations when these Regulations are made in 2006.

Financial effects

An assessment of the financial impact to public sector pension schemes was included in the regulatory impact assessment published with the Civil Partnership Act 2004. The impact from the cost of extending survivor benefits to include civil partners and from provide providing survivor benefits on the basis of service from 1988 depends on the take-up rate of civil partnerships. The final Regulatory Impact Assessment for the Civil Partnership Act 2004 can be viewed at <http://www.dti.gov.uk/access/ria/index.htm#equality>.

Scottish Public Pensions Agency
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