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Your ref:

Our ref: NHS/01/27

7 July 2010

Dear Colleague

The National Health Service (superannuation and Pension Scheme) (Scotland) Amendment Regulations 2010

I enclose, for your consideration and comments, a copy of the draft regulations which will further amend the NHS Superannuation Scheme (Scotland) Regulations 1995 and the NHS Pension Scheme (Scotland) 2008 Regulations. These changes are in addition to those consulted on in February and once finalised will be amalgamated with the changes already consulted on into one Scottish Statutory Instrument to be laid in the Scottish Parliament. These draft Regulations introduce the following changes to the pension scheme:

- Update the employee contributions tables within the regulations to reflect the current position and includes the contribution rate for employers.
- amend the regulations that cover scheme valuations and actuarial reports to better reflect the roles of the Scottish Ministers, HMT, the Scheme Actuary, and representatives of employees and employing authorities in the setting of actuarial assumptions on which that report is to be based.
- make a minor technical change to the 1995 Regulations only in respect of guaranteed minimum pensions as a consequence of the phased changes to state retirement ages for women from 6 April this year.

More detailed information on all the changes can be found in the annex to this letter.

Any comments should be sent to me at the above address or by e-mail to Sharon.Liptrott@Scotland.gsi.gov.uk by Friday 20 August 2010

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If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly. All respondents should however be aware that the SPPA is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to the Agency under the Act for information relating to responses made to this consultation exercise.

Yours faithfully



Sharon Liptrott (Mrs)
Policy Manager, NHSSS

Addressees

Chief Executives NHS Boards
HR Directors NHS Boards
Scottish NHS Pensions Group (SPG)
SPPA Technical Working Group
NHS Trade Unions and Professional Organisations
Scottish General Practitioners Committee
Institute of Health Service Management
Scottish Practice Nurse Association
Women's National Committee
SGHD Directorate of Primary Care
SGHD Health Workforce Directorate
SGLD Finance
NHS Retirement Fellowship
Home Office, Police and Firemen's Pension Schemes
Department of Health and Social Services, Northern Ireland
NHS BSA Pensions Division
Department for Children, Schools and Family
Cabinet Office
Department for Communities and Local Government
DWP
GAD (for information only)
HM Treasury
Savings, Pensions, Share Schemes HMRC
SGLD
SPPA Senior and Regional Managers

The National Health Service (Scotland) Superannuation and Pension Scheme (Amendment) Regulations 2010

Part 1 of the draft Scottish Statutory Instrument (SSI)

Regulation 1 sets the context for the amending regulations

It names the regulations as the “National Health Service (Scotland) Superannuation and Pension Scheme (Amendment) Regulations 2010”.
The regulations come into force from 21 days after laying in Parliament and will have retrospective effect from 1 April 2010 except for regulation 5 having retrospective effect from 6 April 2010.

Part 2 of the draft SSI

Regulations **2 to 8** in Part 2 of the SSI amend the provisions of the NHS Superannuation Scheme (Scotland) Regulations 1995.

Part 3 of the draft SSI

Regulations **9 to 18** in Part 3 of the SSI amend the NHS Pension Scheme (Scotland) Regulations 2008.

Part 4 of the draft SSI Regulation **19** allows deferred members, or members in receipt of a relevant benefit, who are detrimentally affected by the amendments to elect for the provisions not to apply to them by giving notice within six months of the coming into force of the amending Statutory Instrument.

1. Member and employer contributions

Overview

The pay/earnings bands used to set member contributions rates for each scheme year are uprated annually. Currently, the regulations permit the Scottish Ministers to implement those uprated bands¹ and alter member contribution rates without making further amendments to regulations. The uprated pay/earnings bands effective from 1 April each year are issued to the Service via guidance provided by SPPA

The Joint Committee on Statutory Instruments (JCSI)² of the UK Parliament drew the special attention of both Houses of Parliament to the England and Wales NHS pension scheme SI 2009/381 because there was doubt that the current regulations described

¹ with the consent of HMT and after taking advice from the Scheme Actuary and employee and employer representatives

² The Parliamentary Select Committee comprises members from both Houses - its remit is to consider the technical aspects of Statutory Instruments including unexpected or doubtful use of the enabling powers.

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above were permitted by the Superannuation Act 1972. In order to rectify this, the new bandings to be implemented will be updated annually via further amending regulations. The updated pay/earnings bands for the scheme year 1 April 2010 to 31 March 2011 are being implemented via this amending SSI. The current employer contribution rate of 13.5% is also to be specified in regulations. (The current 1995 Section provisions provide for the employer contribution rate to be “at such rate as the Scottish Ministers specify from time to time”)

We have also taken the opportunity to better marshal 2008 Section Regulations which cover the member and employer contributions due in respect of members who are non-GP providers.

Detail

1.1 Pay Bands – tiered contribution rates for members who are officers (other than Non-GP Providers)

Amending regulation 4 amends 1995 Regulation D1 (contributions by members), and

Amending regulations 12 and 13 amend 2008 Regulations 2.C.2 (members’ contribution rate), 2.C.3 (employees) respectively

Changing the pay bands

Provisions that provided for the Scottish Ministers to amend the pay bands and contribution rates by making a determination have been amended so that the bands and rates applicable to each scheme year may only be amended via regulations.

Tables containing pay bands and contribution rates

Group 1 – officers who are employed by the same employer at the end of the last scheme year and the beginning of the current scheme year

Each scheme year the tiered rate set for officers will depend on whether the officer was employed with the same employer at the end of the last scheme year and the beginning of the current scheme year. If so, the contribution rates are set by comparing the officer’s pensionable pay during the last scheme year with the pay bands for that year. For example, in these circumstances pay and pay bands for 2009/10 are used to set the rate for the scheme year 2010/11.

Group 2 – officers who start a new job in the current scheme year or whose rate of pay for an existing job changes (except if unplanned or unlikely to last for 12 months or more)

Alternatively, if an officer starts a new employment or has a change to their rate of pay after 1 April in the current scheme year, the contribution rate is set by calculating an annual pay figure for the current scheme year and comparing that amount to the updated pay bands that apply from 1 April in that current scheme year. For example, in these circumstances pay and pay bands for 2010/11 are used to set the rate for the scheme year 2010/11.

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This means that two tables containing pay bands and rates are required for each scheme year. The two tables that apply to the current 2010/11 scheme year have been inserted at 1995 regulation D1 (2B) (c) and 2008 regulation 2.C.2 (5).

(Table 2 will apply at the start of the 2011/12³ scheme year for members in Group 1)

Calculating pensionable pay for the purpose of setting a tiered contribution rate

Various paragraphs in 1995 Regulation D1 ((2E) to (2Q), (2R) and (2V)) and 2008 Regulation 2.C.3 ((4) to (17) and (21)) deal with the calculation of the pensionable pay which is to be compared to the pay bands in order to set a tiered rate. These paragraphs are amended so that they now refer to the pay bands in the “relevant table”.

1.2 Marshaling of non-GP Provider regulations – 2008 Regulations

Amending regulations 11, 14 and 15 amend, respectively, 2008 Regulations 2.C.1 (contributions by members), 2.C.4 (Non-GP Providers), 2.C.5 (contributions by employing authorities: general).

Provisions formerly contained in regulation 2.C.1 which related specifically to member contributions in respect of Non-GP Providers have been moved to renamed regulation 2.C.4 (contribution rate and determination of pensionable earnings for Non-GP providers).

Provisions formerly contained that regulation which related specifically to employer contributions in respect of Non-GP Providers have been moved to regulation 2.C.5 (contributions by employing authorities general).

The result is a streamlined regulation 2.C.1 which is now focused on generic provisions relating to member contributions for all officer members.

1.3 Earnings Bands – tiered contribution rates for members who are practitioner or non-GP Provider members

**Amending regulation 8 amends paragraph 10 of Schedule 1 to the 1995 Regulations
Amending regulations 14 amends 2008 Regulations 2.C.4 (Non-GP Providers)
Amending regulation 17 amends regulation 3.C.2 (members’ contribution rate)**

Changing the earnings bands

Provisions that provided for the Scottish Ministers to amend the earnings bands and contribution rates for practitioners and non-GP provider members by making a determination have been amended so that the bands and rates applicable to each scheme year may only be amended via regulations.

Tables containing earnings bands and contribution rates

Practitioner and non-GP provider earnings can vary significantly from year to year and are only finalised following completion of their tax return, sometime after the end of the scheme year.

³this table will also be used for Group 2 members until the 2011/12 table becomes available

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This means that from the 2009/10 scheme year onwards, the tiered rates for practitioner and non-GP provider members for any year have been set on a provisional basis using a 'best estimate' of likely earnings. The estimate can be based on finalised earnings and the relevant earnings bands for an earlier year, or an estimate of future earnings and the earnings bands for the current year. Once the actual earnings for the scheme year are known, the final tier is set and, if necessary, the contributions made on a provisional basis are adjusted retrospectively.

This means that the earnings bands for any scheme year are only required to set the final tiered rate. However, to cater for this two-stage process for practitioners and non-GP providers, the earnings bands and rates that apply to both the 2009/10 and 2010/11 scheme years have been included in regulations. The 2010/11 earnings bands may of course be used to set a provisional contribution rate for the 2011/12 scheme year, until the earnings bands and amending regulations for that year become available. (See 1995 Sched. 2 Paragraph 10(1A) and 2008 2.C.4 (15) and 3.C.2 (17)).

Pensionable earnings to be used for the purpose of setting a tiered contribution rate

Various paragraphs:

- in 1995 regulations Schedule 1 (paragraph 10 (2F) and (2G)), and
- 2008 regulations 2.C.4 ((6) and (7)) and 3.C.2 ((5) and (6))

deal with the two stage process for setting a contribution rate for practitioners or non-GP providers. These paragraphs have been amended so that they refer to pensionable earnings and contribution rates in the "relevant table".

1.4 Employer contribution rates

Amending regulation 4 amends 1995 Regulation D2 (contributions by employing authorities), and

Amending regulations 14, 15 and 17 amend 2008 Regulations 2.C.5 (Contributions by employing authorities: general), 3.C.1 (contributions by members) and 3.C.3 (Contributions by employing authorities: general)

Regulations across both Sections of the Scheme providing for contributions to be paid by employers have been amended so that they now uniformly refer to the "employer's standard rate" of 14 per cent.

In addition 2008 regulation 2.C.5 has been amended so that it includes provisions relating to employer contributions for Non-GP Providers which have been moved from regulation 2.C.1.

Regulation 3.C.1 has been amended so as to clarify that it provides for member contributions.

2. Valuation regulations

Overview

The Scheme Actuary is required to prepare an actuarial report of the scheme liabilities and benefits every four years. Regulations have been amended to better reflect the role of the Scottish Ministers, HMT, the Scheme Actuary, and representatives of employees and employing authorities in the setting of actuarial assumptions on which that report is to be based.

Detail

**Amending regulation 7 amends 1995 Regulation U3 (accounts and actuarial reports), and
Amending regulation 10 amends 2008 Regulations 1.B.1 (actuarial reports and accounts)**

Two new paragraphs are inserted into each of the above regulations. The first paragraph ((3A) of U3 and (5) of 1.B.1) provides for the assumptions on which the Scheme Actuary's report is based to be determined by the Scottish Ministers following the consent of HMT. The second paragraph ((3B) of U3 and (6) of 1.B.1) permits the Scottish Ministers to consult representatives of employers and members and the Scheme Actuary before determining those assumptions.

3. Changes to state pension ages and guaranteed minimum pensions – the 1995 Section

Overview

The NHS Pension Scheme contracts its members out of the second state pension and, as a result, the Scheme must reach specific standards in respect of the benefits it will pay. In respect of service up to 5th April 1997, the Scheme must pay benefits at State Pension Age (SPA) that are at least equal in value to the benefits the member would have earned from the State Earnings Related Pension Scheme (SERPS). This is known as a guaranteed minimum pension (GMP).

However, whilst changes to SPA are being phased in from 6 April 2010, the obligations of occupational pension schemes in respect of GMPs will remain linked to age 60 for women and age 65 for men. Relevant amendments in this SSI adjust the terminology used in the 1995 Regulations accordingly from 6 April 2010.

Detail – changes to 1995 Regulations Part K (Contracting Out)

Amending regulation 6:

- introduces the term “guaranteed minimum pension age” into **regulation K1 (contracting-out conditions to be overriding)** and defines it as meaning the age of 65 for men and the age of 60 for women, and
- replaces various references to “state pension age” with references to “guaranteed minimum pension age” in regulations **K2 (guaranteed minimum pensions), K3 (late retirement), K4 (early leavers) and K5 (guaranteed minimum pensions transferred to this section of the scheme).**