

National Health Service Superannuation Scheme (Scotland)

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Our ref: NHS/01/34

28 January 2013

The National Health Service Superannuation Scheme etc (Miscellaneous Amendments) (Scotland) Regulations 2013

I attach for your consideration and comment, a copy of the draft regulations which will amend the National Health Service (Scotland) Superannuation Regulations 2011 (the 1995 section) and the National Health Service (Scotland) Pension regulations 2008 (the 2008 section).

Summary of the Changes

These miscellaneous amendments include provisions for automatic enrolment, which the Scottish Government is obliged to put in place in order to comply with UK legislation; changes to administration arrangements for redundancy payments and instances where a pensioner or beneficiary fails to provide requested information; amendments to reflect the removal of cost sharing and associated valuation requirements from the scheme (given the linkage between these provisions and those in the counterpart England and Wales scheme, which are being removed; and a number of other minor amendments to clarify or improve the quality of scheme regulations). A detailed explanation of these changes is contained in **Appendix A** of this letter.

Consultation

To simplify the process you can respond to this consultation online via the following link:
http://www.sppa.gov.uk/index.php?option=com_wrapper&view=wrapper&Itemid=1500

Alternatively you may complete the Consultation Response Form provided at **Appendix B** which can be submitted electronically to nhspensionsreform@scotland.gsi.gov.uk or via mail to the following address:

NHS Pension Scheme (Scotland) Miscellaneous Regulations Consultation
SPPA Policy
7 Tweedside Park
Tweedbank
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TD1 3TE

A copy of the consultation documentation and online response form is also available on the Agency's website at:

http://www.sppa.gov.uk/index.php?option=com_content&view=article&id=713&Itemid=484.

Responses are requested no later than the closing date of Monday 25 February 2013.

The consultation will close on Monday 25 February at 6 pm and we ask that anyone wishing to respond does so by then.

We intend to publish a summary of consultation responses in due course and would like to be able to include any response you make in that summary. However, if you ask us not to publish your response to this consultation we will regard it as confidential, and we will treat it accordingly.

Respondents should also be aware that the SPPA is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and will have to respond appropriately to any relevant request made to the Agency under that Act for information concerning this consultation exercise.

Yours faithfully

Sharon Liptrott (Mrs)
NHS Policy Manager

Addressees

HR Directors NHS Boards
Finance Directors and Payroll managers
Scottish NHS Pensions Group (SPG)
UK Injury Benefit Review partners
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
HM Treasury
SGLD
SPPA (Senior Managers, Policy and Technical Team)



Explanation of Amending Regulations

Auto enrolment

Background

From 1 October 2012, Department of Work and Pensions (DWP) legislation requires the automatic enrolment of workers into an occupational pension scheme, to encourage and enable low to moderate earners to save more for their retirement. The automatic enrolment 'take-on' affects all employers and all pension arrangements, over a 'staging period', beginning with the largest employers in October 2012 and ending with employers of fewer than 50 persons (and new employers) on 1 February 2018. The first Scottish NHS employers affected have a 'staging date' of 1 January 2013.

The DWP legislation is contained in:

- The Pensions Act 2008, Part 1 Chapter 1 Sections 3-8, and
- The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 Part 2 and Part 3

Briefly, this requires automatic-enrolment of all employees over relevant age and earnings criteria in a pension scheme which is compliant with the above legislation from the employers 'staging date'. Affected employees may opt out of the automatic enrolment scheme under DWP rules, and if they do so within the first month will be treated as if they had never joined. However, employers must automatically re-enrol eligible employees who opt out, at three-yearly intervals. Subject to DWP criteria, employees who do not qualify for meeting automatic enrolment may still be able to apply themselves to join their employer's pension arrangement.

The NHS Superannuation Scheme in Scotland is such a compliant pension scheme, and regulations already require auto-enrolment of all eligible employees on commencement with an NHS employing authority. Employee's eligible for the scheme include almost all employed staff working up to whole-time (irrespective of their hours worked or rate of pay) and medical and dental practitioners. Employees and practitioners automatically enrolled in the scheme may also opt out of the arrangement and if this is within their first pay period, they will be treated as if they had never joined the scheme. A few staff, mainly re-employed pensioners, cannot join the scheme and employers must then (for those staff still eligible under the DWP rules) automatically enrol them into an alternative qualifying pension arrangement.

The NHS Superannuation Scheme (Scotland) will continue to be the default choice for NHS employed staff and medical or dental practitioners. However, changes will be made to Scheme regulations, retrospectively effective from 1 January 2013, requiring automatic enrolment or re-enrolment of NHS staff that opt out of the scheme; back into the scheme for employees who are eligible, or into an alternative NHS employer pension arrangement where staff are ineligible for the NHS Superannuation Scheme (Scotland). Changes in connection with auto enrolment are to be found in regulations 3, 4, 5 24, 27, 44 and 47.

Amendments remove from the Scheme's 1995 section regulation B4, and 2008 section regulations 2.B.5 and 3.B.5 the facility for an opt-out notice made in one employment to apply for



subsequent employments with the same employer. In future, NHS employers will be required to automatically enrol eligible employees and medical and dental practitioners in the NHS Superannuation Scheme (Scotland) each time that they take up NHS employment, whether or not this is with the same employer.

Employees and practitioners will still be able to apply to opt out of the scheme within their first pay period and, if they do so will be treated as if they had never joined. A person who opts out of the scheme will remain opted out unless they apply to opt back into the scheme. However, any opt-out notice given by an employee or practitioner will cease to apply on:

- **their 'automatic enrolment date'** as defined in the DWP legislation (i.e. the NHS employer's initial 'staging date' or the employees date of commencement with that employer, provided that at that date, the employee meets the DWP age and qualifying earnings criteria), or
- **their 'automatic re-enrolment date'** as defined in the DWP legislation (i.e. the third anniversary of the employer's 'staging date', provided that at that date, the employee meets the DWP age and qualifying earnings criteria)

NHS employers with staff who are due for automatic enrolment as described above must join them in the NHS Superannuation Scheme (Scotland) if they are eligible or, if they are ineligible for the scheme, make arrangements to enrol them in an alternative qualifying pension arrangement, in accordance with the DWP legislation.

Cost Sharing and associated valuation requirements

Background

Existing cost sharing provisions

Previous reforms to the NHS Pension Scheme in 2008 established a mechanism for apportioning any increases to the cost of pensions. This arrangement, known as 'cap and share', provided that additional cost pressures would be shared between employees and employers up to a capped limit. Beyond this cap, the cost would be borne by employees by increasing their contributions and/or reducing the value of pensions received in the future.

To support the identification and quantification of cost pressures, the SPPA is required to conduct regular actuarial valuations of the scheme.

Rationale for change

The UK Government has stated its intention to bring in new public service pension schemes from 2015. For existing schemes, it has increased member contribution rates for 2012-13 and announced plans for further increases to these rates for 2013-14 and 2014-15.

Other major changes have resulted in pensions being updated by the Consumer Price Index (CPI) rather than the Retail Prices Index (RPI) from April 2011 and a revision to the discount rate for valuing schemes for future budgeting purposes.

In the light of these reforms, little practical purpose is served by carrying out the previous actuarial valuation or cost sharing processes. It is considered that the money and resource which would be used in conducting such processes is better served focusing on the actuarial valuations

which will be needed in order to set up the new schemes. Accordingly, it is proposed that the cost sharing mechanisms and associated valuation requirements within public service pension schemes are removed pending implementation of new arrangements.

The Public Service Pensions Bill proposes a new mechanism to address variations in scheme costs (an employer cost cap). To support this, a requirement would be placed on schemes to conduct actuarial valuations in accordance with HM Treasury directions.

Changes to Regulations

(a) Cost sharing mechanism

Regulations U4 in the 1995 section and 1.B.2 in the 2008 section contain the cost sharing provisions. Amending regulations 19 and 23 revoke U4 and 1.B.2 respectively.

Regulations D1(4), 2.C.2(4) and 3.C.2(4) provide that, where the cost sharing mechanism is in play, the Scottish Ministers must consider the advice of employer and employee representatives before determining new banding and contributions rates. Amending regulations 6, 28 and 48 remove this requirement.

(b) Actuarial reports

Regulations U3 and 1.B.1 require production of actuarial reports (i.e. valuations) with such reports being required to be prepared every four years. Amending regulations 18 and 22 remove relevant portions of U3 & 1.B.1 to revoke these requirements.

Redundancy

Recharging of Scheme costs to employers

Currently there are two methods available by which employers may meet the scheme costs of paying benefits early on the grounds of redundancy. The capitalised costs can be met by making five equal annual instalments or by making a single payment within one month of the benefits becoming payable.

Employers rarely select the option to pay capitalised costs by five annual instalments and, as such, this option is being withdrawn in respect of retirements on the grounds of redundancy on or after 1 April 2013.

Changes to Regulations

Amending Regulations 7 and 30 therefore amend regulation D2 of the 2011 regulations and paragraph (4) of regulation 2.C.6 (contributions by employing authorities: members becoming entitled to pensions under regulation 2.D.11) of the 2008 Section to remove the option for employers to pay capitalised redundancy costs by 5 equal instalments from 1 April 2013.

[Link to terms and conditions](#)

Under various terms and conditions applying to NHS staff, qualifying members of the NHS Superannuation Scheme (Scotland) are entitled to claim unreduced pension benefits as an alternative to receiving a lump sum redundancy payment (in part or in full) from their employer.

To better reflect this entitlement in scheme regulations, amending regulations 8 and 38 insert a requirement that on application for redundancy benefits, the employer certifies that entitlement to an NHS redundancy pension is provided for in that member's terms and conditions of employment.

Amending Regulations 8 and 33 amend regulation E7 of the 2011 regulations and regulation 2.D.11 of the 2008 Regulations insert a requirement that the option for a NHS redundancy pension is provided for in the member's terms and conditions of employment.

Other miscellaneous and technical amendments

Amending regulations 9 and 10 - Widows/ Widowers and Surviving Partner pensions

2011 Regulations G6 (Member marries after leaving pensionable employment) and G14 (Surviving nominated partner's pension) do not currently cater for circumstances in which a member:

- nominates a partner to receive a survivor pension whilst in pensionable employment, and
- subsequently marries or forms a civil partnership with that partner post retirement.

These amendments ensure that any widow's, widowers or civil partner pension paid in these circumstances will, if of a higher value, be equal to the surviving nominated partner pension that would have been paid had the marriage/civil partnership not taken place.

Further technical amendments are made to G14 (2) (b) to ensure that the qualifying criteria listed there are cumulative.

These amendments have retrospective effect from 1 April 2008.

Amending regulation 12 - Protected rights transferred into the 1995 Section

Protected rights accrue in money purchase pension schemes as a consequence of the member contracting out of State provision. On transfer, schemes like the NHS Superannuation Scheme (Scotland) are required to provide the equivalent defined benefit contracted out rights in respect of any incoming protected rights. Section 106 of the Pensions Act 2008 abolished "protected rights" with effect from 6 April 2012 and this change has been reflected by the amendment made to regulation K6 (Protected rights transferred to this Section of the scheme) so that K6 only applies to protected rights transferred in before that date.

Amending regulation 17 - Unauthorised payments in the 1995 Section

New regulation T3A (General prohibition on unauthorised payments) is inserted into 1995 Section regulations. This provision replicates the provisions already included at 2008 Regulations 2.J.12

and 3.J.12. Those provisions prevent the making of any payment which would constitute an unauthorised payment for the purposes of HMRC's Finance Act 2004.

Amending regulations 11, 34 and 51 - Children's Pensions

For an initial period of six months following the death of a pensioner, any children's pension due is paid at the same rate as the late member's pension. The ongoing rate of children's pension is then put into payment.

Amendments to:

Regulations 11, 34 and 51 amend regulations H4 of the 2011 regulations and 2.E11 and 3.E.11 of the 2008 regulations to ensure that the children's pension may be paid at the ongoing rate immediately after the pensioner's death if that rate is higher than would be paid for the 6 month initial rate (i.e. at the rate of the deceased member's pension).

These amendments have retrospective effect from 1 April 2008.

Amending regulations 13, 14, 31, 32, 49 and 50 - Voiding of Additional Pension Purchases

Amendments made to 2011 regulation Q13 (cancellation and cessation of options under regulation Q8) and 2008 regulations 2.C.13 and 3.C.11 (cancellation of options under regulation 2.C.8/3.C.8) allow the retrospective cancellation of an additional pension purchase. The contract may be cancelled in circumstances where the Scottish Ministers have reasonable grounds to believe that a member's health will prevent them from completing the contract.

The facility that allows the Scottish Ministers to give credit for an additional pension purchase continues to apply. This applies in circumstances where a contract has been in place for 12 months or more and the member is retiring on health grounds. This provision is made subject to the new provision above by amendments made to Q15 (2), Q15 (4), 2.C.15 (2), 2.C.15 (4), 3.C.13 (2) and 3.C.13 (4).

Regulations 13 and 14 amend regulations Q13 and Q15 of the 2011 regulations and regulations 31, 32, 49 and 50 amend regulations 2.C.13, 2.C.15, 3.C.11 and 3.C.13 of the 2008 regulations to allow retrospective cancellation of an additional pension purchase.

Amending regulations 16, 42 and 58 – Benefit recipients who do not respond to correspondence

New 2011 regulation T1A and 2008 regulations 2.J.2A and 3.J.2A are inserted to provide a procedure to cover circumstances where a beneficiary or pensioner fails to respond to correspondence. In these circumstances, the Scottish Ministers may specify a date in correspondence by which the beneficiary or pensioner is required to provide information such as evidence of identity, contact details and/or proof of entitlement. Where the beneficiary fails to provide that information by the date specified the Scottish Ministers may withhold all or any part of the benefits payable.

Amending regulations 25 and 45 - Qualifying Service in the 2008 Section

Amendments made to 2008 Regulations 2.A.6 and 3.A.6 (Qualifying service: disregard of breaks in service) ensure that where the member has a break of less than one month, service before

and after the break will be treated as continuous for the purpose of establishing qualifying service even if contributions in respect of the earlier service are refunded.

A cross reference in paragraph (7) of regulation 3.A.6 is also corrected. These amendments have retrospective effect from 1 April 2008.

Amending regulations 35 and 52 – Abatement and Additional Pension in the 2008 Section

Paragraph (5) of regulation 2.H.1 (application of Chapter 2.H) and paragraph (6) of regulation 3.H.1 (application of Chapter 3.H) are removed to ensure that Additional Pension purchased is correctly apportioned between the “earned” and the “unearned” elements of a member’s pension if that member is being assessed for abatement.

Amending regulations 36 to 41 and 53 to 57 – Abatement in the 2008 Section

References to “scheme year” are replaced by references to “financial year” in regulations 2.H.3 to 2.H.6, 2.H.8 to 2.H.9 and 3.H.3 to 3.H.7 to ensure that abatement is assessed consistently across the 1995 and 2008 Sections.

In addition, a further amendment is made to regulations 2.H.3 and 3.H.3 (reduction of pension) to clarify how abatement works if the member’s pension is in payment for only part of a financial year. The amendment ensures that new income for that part year is compared to the equivalent proportion of the member’s pre-retirement earnings.

Amending regulation 43 – technical correction

A reference to “rules” is replaced with a reference to “Regulations” in regulation 2.J.11 (general prohibition on unauthorised payments).

CONSULTATION RESPONSE FORM: Consultation on NHS pension scheme (Scotland) miscellaneous regulations

1. Name/Organisation

Organisation Name

Title

Surname

Forename

2. Postal Address

Postcode

Phone

Email

3. Permissions - I am responding as... (please complete either sections (a), (b) and (d) or sections (c) and (d):

Individual or **Group/Organisation**

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please state yes or no: _____

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please state yes to one of the following:

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please state yes or no:

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please state yes or no:



ABOUT YOU

I am responding ...

- as a scheme member
- on behalf of an Employer Organisation
- on behalf of a Trade Union/Staff Association
- other (please specify)

What is your gender?

- I am female
- I am male

I am employed as...

- an administrator
- a dentist
- a doctor
- a general Practitioner
- a junior doctor
- a manager
- a nurse
- I'm retired
- other (please specify)

What is your working pattern?

- I work part-time
- I work full- time
- Not applicable

Please provide your comments in the space below:

Please post your response to:

NHS Pension Scheme (Scotland) Miscellaneous Regulations Consultation
SPPA Policy
7 Tweedside Park
Tweedbank
Galashiels
TD1 3TE

The closing date for this consultation is Monday 25 February 2013.