

**NATIONAL HEALTH SERVICE SUPERANNUATION SCHEME (Scotland)
2013/02**

WHO SHOULD READ: HR and Payroll Managers
ACTION: To read and circulate to all interested parties
SUBJECT: Changes to NHS Injury Benefit arrangements

The purpose of this circular is to advise employers of changes to the NHS Injury Benefit arrangements from 31 March 2013

Key Message

NHS staff who suffer an injury or illness on or after 31 March 2013, which is wholly or mainly attributable to the duties of their NHS employment, will no longer be eligible to claim benefits under the 'The NHS (Scotland)(Injury Benefits) Regulations 1998' (The 1998 Regulations).

From 31 March 2013, new arrangements will be set out in section 22 of the NHS staff handbook and in respect of employee's terms and conditions. The new arrangements will be in the form of an injury allowance. This will be administered by the employer which will top up the employees income to 85% of their previous pay for a maximum of 12 months. The new section 22 of the NHS handbook and also supporting guidance for employers on the new Injury Allowance (IA) will be published on [the Management Steering Group Website](#). Managers will also receive more detailed information on the new allowance direct from the Scottish Government Health Department in due course.

Under transitional arrangements injuries or illness which were wholly or mainly attributable to the duties of NHS employment, which occurred on or before 30 March 2013, can still be claimed under the 1998 Regulations. The timescales and procedures for these claims are set out below under 'Continuing Access to the NHS Injury Benefit Scheme Scotland'.

Background

NHS Employers and Trades Unions 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 were 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 set out in the 1998 regulations covering NHS staff in Scotland will continue to protect all eligible persons who suffer a relevant injury or disease on or before 30 March 2013 as follows:

- The “Sunset” clause provides for 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.
- The “Exception” clause applies 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.

Regulations

The 1998 Regulations have recently been updated to reflect the transitional arrangements and can be viewed on the [legislation.uk.gov website](http://legislation.uk.gov.uk) . A summary of the comments on the consultation on the regulations is available on the SPPA website.

Continuing access to NHS Injury Benefit scheme (Scotland)

Access to the NHS Injury Benefit Scheme as set out in the 1998 Regulations will continue to be available under transitional arrangements until 30 March 2038 for employees who suffer a relevant work related injury or disease on or before 30 March 2013. NHS Injury Benefits can provide three forms of financial support for NHS employees affected by injury or disease that is wholly or mainly attributable to their NHS employment.

- Temporary injury benefit

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- Permanent injury benefit
 - Death benefits

Making a claim from 31 March 2013 to 30 March 2018

During this period eligible employees or ex employees will be able to apply for Temporary Injury and, if eligible, Permanent Injury benefit for injury or disease occurring on or before 30 March 2013. The application and decision making processes for Temporary and Permanent Injury benefit remain unchanged.

SPPA will continue to administer applications on behalf of NHS employers for Temporary and Permanent Injury benefit. Applications should continue to be made on form [INJ1](#) and on completion, sent with all relevant documents to SPPA for processing. Approved Temporary applications are calculated and, if payment is to be made, these are forwarded to NHS payroll departments for processing. All Permanent applications are sent to SPPA's independent medical adviser for advice on acceptance. If approved, our medical adviser assesses the applicant's permanent reduction of earning ability in employment and payment may be made if the applicant is awarded a banding of more than 10%. Approved Permanent applications are calculated and, if any payment is to be made, this is processed by SPPA in house payroll. SPPA will continue to consider disputes about entitlement to Temporary and Permanent Injury benefit under their Internal Dispute Resolution Procedures (IDRP).

Making a claim from 31 March 2018 to 30 March 2038

During this period access to scheme benefits will only be available to those who can prove that there has been a delayed onset of their symptoms such that an injury benefit application was not previously necessary. In the main, the application and decision making processes for such claims will remain as described above. However, applicants must be able to provide robust evidence to confirm that their injury or disease was caused by an event or incident that occurred on or before 30 March 2013 and that their symptoms had not developed to a degree that they considered it necessary to make an application before 30 March 2018.

Applicants in receipt of NHS Injury benefits on or before 30 March 2013

Approved applicants already in receipt of Temporary or Permanent Injury benefit on or before 30 March 2013 will not be affected by the changes from 31 March 2013.

Approved Permanent Injury benefit applicants will still be able to ask for a review of their benefit if their income changes or their condition deteriorates (and that deterioration is wholly or mainly attributable to the qualifying injury due to their NHS employment).

Applicants will continue to be required to provide information to SPPA about any compensation damages payments received as a result of the injury and their Injury Benefit award may be recalculated as a consequence.



NHS Injury Benefits applications processed on or before 30 March 2013

Applications for Temporary and/or Permanent Injury benefit in respect of an injury sustained or a disease contracted on or before 30 March 2013 but where the outcome has not been determined at that date, will not be affected by the changes from 31 March 2013. Applicants will receive a decision on their application in due course.

NHS Injury benefits applications rejected on or before 30 March 2013

Applications for Temporary or Permanent Injury benefit rejected on or before 30 March 2013, in respect of an injury sustained or disease contracted on or before that date, will not be affected by the changes from 31 March 2013. The two stage IDRP operated by SPPA remains available to applicants who wish to challenge (appeal) the outcome of their claim for Temporary and/or Permanent Injury benefit.

NHS Injury benefits death/dependant benefits

Death benefits remain available for employees (leaving a spouse and/or dependants) who die as a result of a work related injury that occurred on or before 30 March 2013 which is wholly or mainly attributable to their NHS duties, or if later in life, their death is hastened by a disease which is wholly or mainly attributable to their NHS duties. Applications must be supported with robust evidence to confirm that the injury or disease was caused by an event or incident that occurred on or before 30 March 2013 and that their symptoms had not developed such that they needed to make an application before 30 March 2018. Applications in respect of an onset of disease will be processed by SPPA until 30 March 2038. To be eligible to apply for widow/widower benefits, the spouse must have been married to the deceased both at the time NHS employment ended and at the time of death.

Access to the NHS Injury Benefit Scheme will close on 31 March 2038; no claims will be accepted by SPPA on or after this date.

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4 March 2013

Contact information:

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