

# **The draft National Health Service Pension Scheme (Consequential Provisions) (Scotland) Regulations 2015**

## **Explanatory Notes**

### **1. Modification of Contracting-Out Provisions**

#### *Purpose of the Amendments*

1.1 The UK Government intends that the new 2015 scheme is, like the existing NHS Pension Scheme, contracted-out of the additional state pensions until contracting-out ends in April 2016. The new 2015 scheme will, for contracting out purposes, effectively be treated as a continuation of the contracted-out status of the existing NHS Pension Scheme.

1.2 Part 2 of the draft SSI dis-applies certain procedural requirements that would otherwise apply by virtue of the Occupational Pension Schemes (Contracting Out) Regulations 1996 (S.I. 1996/1172) in order to achieve contracted-out status; for example, formal notices to earners. New schemes must still meet the requirements in section 9 of the Pension Schemes Act 1993 (the 1993 Act); in particular, satisfy the “reference scheme test”, the minimum standard of benefits a contracted-out pension scheme has to provide.

### **2. Modification of early leaver and other provisions**

2.1 The effect of the 2013 Act and scheme regulations is that the existing NHS Pension Scheme must close, and current members (except for specific protected groups) transfer into the new 2015 scheme. However, these transferring members will retain certain benefits in their existing section of the NHS Pension Scheme (described in the Regulations as their “old scheme”). Although transferring members will accrue benefits in the new 2015 scheme only, they will, strictly speaking, belong to both schemes at once.

2.2 Part 3 of the Regulations reflects HM Treasury’s policy intention that those with continuous service in the existing NHS Pension Scheme and in the new 2015 scheme should generally be treated as if they remained active members or in “pensionable service” for the old scheme (after 1 April 2015) until their pensionable service in the new 2015 scheme is terminated. The objective is to prevent the member triggering rights as a deferred member that is inconsistent with the member remaining in pensionable service with the same employer in a successor pension scheme.

2.3 The 1993 Act contains provisions about occupational pension schemes – only public service schemes – including as to their contracting-out of the additional state pension (see Part 3 of the 1993 Act); and as to members who leave their scheme before retirement age (“early leavers”) (see Part 4 of that Act).

2.4 For the purposes of the 2013 Act and scheme regulations, a number of those

provisions need to be modified in relation to a member of the old scheme who transfers to the new scheme. The modifications described below affect only this category of members, and not those who remain fully active members of the existing NHS Pension Scheme (primarily those with “full protection” status – those within 10 years of their normal pension age on 1 April 2012), nor brand new members who join the NHS for the first time after 1 April 2015.

2.5 One reference to “pensionable service” in Part 3 of the 1993 Act, which concerns certification requirements for contracted-out pension schemes, is modified so that the person is treated as having a single period of pensionable service in one scheme.

2.6 There are further provisions in Part 4 of the 1993 Act, which concern the rights of early leavers. Chapter 1 provides for preservation of benefits and sets out the principle of short service benefit for those persons. The Regulations provide that a member will not acquire the right to short service benefit until pensionable service terminates in the new scheme. Certain provisions will apply as though the old scheme and the new scheme were a single scheme.

2.7 Chapter 2 of Part 4 concerns revaluation of benefits. Regulation 8 provides that old scheme benefits are not to be revalued while the member remains in pensionable service in the new scheme: in other words, they are not to be treated as a deferred member of the old scheme during this period. Amendments made by the 2013 Act to the Pensions (Increase) Act 1971 (c.56) mean that a person continues in “service” when they transfer to the new scheme and their benefits are treated as if they are an active member.

2.8 Chapter 3 of Part 4 concerns “anti-franking”, or the protection of increases in guaranteed minimum pensions (“GMPs”) which contracted-out schemes had to provide until 1997. For this purpose, Regulations 9 and 10 provide that the “cessation date” when a person ceases to be in contracted-out employment under the old scheme (and from which point GMPs may need to be increased) is treated as the date when the person leaves the new 2015 scheme, and not the date when they transfer from the old scheme to the new 2015 scheme.

2.9 Chapter 4 of Part 4 concerns cash equivalent transfers for early leavers. Regulation 11 provides that a member will not acquire the right to a cash equivalent under the old scheme until pensionable service terminates in the new scheme, rather than when the member transfers into the new 2015 scheme. However, where calculations of benefit are made based on length of service in the old or the new scheme, the two schemes are then treated separately.

2.10 Regulation 12 modifies the Occupational (Transfer Values) Regulations 1996 (S.I. 1996/1847), which were made under Chapter 4 of Part 4, to enable scheme managers to delay transfers of preserved benefits until after the transition member has left new scheme employment. This is designed to restrict transfers out (from either scheme) by a person who has voluntarily opted out of membership of the new scheme, but remains in employment.

2.11 Chapter 5 of Part 4 concerns cash transfer sums or contribution refunds for those who leave a scheme after 3 months but within 2 years. Regulation 13 provides

that a person will not acquire rights under Chapter 5 until pensionable service terminates in the new scheme, rather than when the person transfers into the new scheme. The statutory time periods are also measured as though the person had one continuous period of service. However, where calculations of benefit are made based on length of service in the old or the new scheme, the two schemes are then treated separately.

### *Ill-health Benefits*

2.12 The UK Government has chosen to adopt a 'single source' model for the payment of ill-health pensions in the new schemes. Under the single source model, all payments of ill-health pension will be made from the new 2015 NHS Pension Scheme during the period between retirement and the scheme member reaching normal pension age in the old scheme. This model delivers certainty over the ill-health pensions that are payable to members with service in both schemes, and prevents the administrative difficulty of performing two parallel ill-health calculations.

2.13 Accordingly, the pension payable to the scheme member from the new scheme will contain 3 elements:

- (1) A pension in respect of service in the old scheme;
- (2) A pension in respect of service in the new scheme; and
- (3) In the case of an upper tier ill-health pension, an uplift.

2.14 When the member receiving an ill-health pension from the new scheme reaches their normal pension age in the old scheme, then the first element will cease to be paid out of the new scheme and their old scheme pension will come into payment. The member will see no difference in the amount that they receive.

## **3. Modification of tax regime**

3.1 Part 4 of the Regulations modifies the tax regime in order to correct some unexpected consequences.

3.2 Under the current legislation, the initial value of the ill-health pension – elements (1),(2), and in cases of serious ill-health, (3) in paragraph 2.13 above – would be measured against the lifetime allowance. However, when the member taking early retirement reaches the normal pension age under the new scheme, the current legislation would measure the old scheme pension coming into payment against the member's remaining lifetime allowance, notwithstanding that element (1) will cease to be paid from the new scheme. If that second measurement results in the total amount of pension exceeding the lifetime allowance, then a tax charge will arise. Regulation 14 modifies the application of the current legislation to ensure that the payment of the old scheme pension will not count against the lifetime allowance.

3.3 Under the current legislation element (1) in paragraph 2.13 above would count as an increase in the value of the pension over the pension input period. If that increase meant that the amount of the annual allowance for the pension input period was exceeded, then a tax charge would arise. Regulation 15 modifies the application of the current legislation to remove element (1) from the calculation of the pension input

period during the pension input period in which the member takes ill-health retirement.

3.4 Accordingly, both regulations operate so that a member will not suffer any unexpected tax consequences as a result of the way the Government has chosen to structure the ill-health provisions of the new scheme.

*Interaction with scheme regulations*

3.5 The amendments made by the statutory instrument will come into force on 1 April 2015, at the same time as the new 2015 scheme regulations.