

## **EXECUTIVE NOTE**

### **THE NATIONAL HEALTH SERVICE (SUPERANNUATION SCHEME, PENSION SCHEME AND INJURY BENEFITS) (SCOTLAND) AMENDMENT REGULATIONS 2009 SSI/2009/19**

1. The above instrument is made in exercise of the powers conferred by sections 10, 12 and 24 of, and Schedule 3 to, the Superannuation Act 1972. These powers have been transferred 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.
2. These Regulations amend the National Health Service Superannuation Scheme (Scotland) Regulations 1995 (“the 1995 scheme”), the National Health Service Pension Scheme (Scotland) Regulations 2008 (“the 2008 scheme”) and the National Health Service (Injury Benefits) (Scotland) Regulations 1998 (“the Injury Benefits Regulations”)

#### **Background**

3. Scottish Statutory Instruments 2008/224, 2008/225 and 2008/226 laid in June this year introduced major changes to the NHS pension scheme following the reform of all public pension schemes. These further regulations amend some technical errors which occurred and introduce further changes which were not able to be included in earlier instruments due to time constraints. These regulations also introduce one major change to the Injury Benefits regulations required as a consequence of the member being able to commute pension to a larger lump sum in the main scheme. The majority of these changes will be retrospective to 1 October 2008 so that the Scottish NHS pension scheme mirrors provisions in the England and Wales scheme. Other regulations as listed are effective from 1 April 2008 to amend minor technical errors and omissions which should have been included in the earlier instruments.

#### **Policy Objectives**

4. The Main changes to the scheme introduced by these Regulations are:
  - (a) To include in the 1995 scheme restrictions on joining the scheme for those members who return to NHS from 1 October 2008 and who have been out of the scheme for 5 years or more. The intention is that new members and those who have been out of the 1995 scheme for more than 5 years should join the new 2008 scheme based on a normal pension age 65.
  - (b) To insert in both the 1995 scheme and 2008 scheme regulations a clause whereby the Treasury must approve any changes in member tier contribution tables and employer contribution rates.
  - (c) To insert in both the 1995 scheme and 2008 scheme regulations, amendments where applicable, in order to reflect tax changes which apply when a member or pensioner who has left within 5 years and who is over 75 dies. In such cases the lump sum death benefit ceases to be payable and has instead to be paid in the form of pension to those the member had nominated to receive the member’s lump sum.

(d) To insert in both the 1995 scheme and 2008 scheme regulations a new definition of “electronic communication” and to amend the regulations to so that when members are required to notify their intentions to Scottish Ministers “in writing” this phrase includes notification by “electronic communication”.

(e) To include new regulations in both the 1995 scheme and 2008 scheme regulations which distinguish between transfers in to the scheme on cash equivalent terms, public transfer terms and on choice terms.

(f) To amend both the 1995 scheme and 2008 scheme regulations to increase the amount of authorised leave which can be pensionable from 6 months to a total of 2 years. The extra 18 months is only pensionable however if the member agrees to pay both the employer and employee contributions.

(g) To amend both the 1995 scheme and 2008 scheme regulations so that in the case of those who return to NHS employment with a lower tier ill health pension but with a review pending, that review time will be shortened from 3 years to 12 months from the start of their employment in the NHS or the remainder of the 3 year period if this is shorter. This is to bring these members in line with those who have an upper tier ill health pension and who would lose it permanently if they returned to NHS employment for 12 months or more.

(h) A change is made to the Injury Benefit Regulations to extend the disregard of certain reductions of pension under a relevant pension scheme, to any reduction in the amount of specified NHS Scheme pensions under the 1995 or 2008 schemes, where members opt for a reduced pension in favour of an increased lump sum retiring allowance. The purpose of this change is to ensure that members cannot increase their tax-free injury benefit (and consequent cost to the chargeable employer) by choosing to take more of their pension scheme benefits in lump sum form. This change will be effective from 1 October 2008 and therefore a regulation is included in this instrument which allows those members who leave between this date and the regulations coming into force detrimentally affected by the change to opt that this change is not applicable to them.

### **Sensitivity**

5. The Regulations are not contentious.

### **Consultation**

6. These Regulations have been the subject of consultation with representatives of NHS employers and employees, other Scottish Government interests and UK Government departments. No comments have been received.

### **Financial Implications**

7. Most changes have no financial implications however if the change to the Injury Benefits Regulations is not introduced (see sub paragraph (h)) this may result in NHS employers having to pay more in injury benefit than they otherwise would.

Scottish Public Pensions Agency  
19 December 2008