

## **POLICY NOTE**

### **THE NATIONAL HEALTH SERVICE SUPERANNUATION SCHEME (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2015**

#### **S.S.I. 2015/96**

The above instrument was made in exercise of the powers conferred by sections 10, 12 and 24 of, and Schedule 3 to, the Superannuation Act 1972. The instrument is subject to negative procedure

These Regulations amend the National Health Service Superannuation Scheme (Scotland) Regulations 2011 (S.S.I. 2011/117) (“the 2011 Regulations”), the National Health Service Superannuation Scheme (Scotland) (2008 Section) Regulations 2013 (S.S.I. 2013/174) (“the 2013 Regulations”), the National Health Service (Scotland) (Injury Benefits) Regulations 1998 (S.I. 1998/1594) (“the Injury Benefits Regulations”), the National Health Service Superannuation Scheme (Additional Voluntary Contributions) Regulations 1998 (S.I. 1998/1451) (“the AVC Regulations”) and the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003 (S.S.I. 2003/344) (“the Compensation Regulations”).

The 2011 and 2013 regulations set out the rules of the two sections of the existing scheme. The AVC Regulations provide a facility through which NHS Pension Scheme members can supplement the value of their pension by making additional contributions. The Injury Benefit Regulations provide for payments to be made to certain NHS staff following a work-related illness or injury.

This instrument forms part of a group of three instruments that together implement reforms to pension scheme arrangement for health service workers. The other two linked instruments are: the National Health Service Pension Scheme (Transitional and Consequential Provisions) (Scotland) Regulations 2015 and the National Health Service Pension Scheme (Scotland) Regulations 2015.

#### **Background**

The Public Service Pensions Act 2013 (“the 2013 Act”) provided that final salary schemes in the public sector should close and that new Career Average Revalued Earnings (CARE) Schemes should be introduced from 1 April 2015. The new schemes link normal pension age to state pension age

The Regulations in the main make changes as a consequence of the 2013 Act and the Marriage and Civil Partnership (Scotland) Act 2014. The Regulations also make a number of other miscellaneous changes including revised employer and employee contribution rates from 1 April 2015 and changes in the AVC Regulations that reflect the UK Government’s pension flexibilities being introduced from 6 April 2015.

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#### **Policy Objectives**

The main provisions in these Regulations therefore are:

- (a) The Marriage and Civil Partnership (Scotland) Act 2014 (“the 2014 Act”) provides for same sex marriages in Scotland from December 2014. These Regulations set out amendments to reflect the introduction of same sex marriage in Scotland and that for the

purposes of the scheme same sex couples are treated the same as civil partners. Provision is also made to maintain widow benefit entitlements for a male scheme member who acquires a new gender under the Gender Recognition Act 2004 and at the time of that member's death that member was married to a woman in a marriage that existed before the scheme member changed their gender (regulations 4, 22, 37, 48, 53 and 66).

(b) A provision is also included to allow a limited period in which to buy pre 1988 service for the purpose of male survivor benefits in the 1995 Section as had been allowed previously following the introduction of widower's benefits in 1988 and civil partners in 2005 (regulation 12).

(c) New definitions inserted in the main scheme, Injury Benefit Regulations, AVC and Compensation Regulations which are required as a result of the 2013 Act and the 2014 Act (regulations 3, 4, 21, 22, 36, 37, 47, 48, 52, 53, 63 and 65).

(d) Until 31 March 2013, the NHS Injury Benefits scheme and Regulations applied to certain NHS employees and general practitioners who sustained an injury, disease or other health condition attributable to their employment. From that date, the Injury Benefits scheme arrangements were replaced by contractual payments from NHS employers. However the Injury Benefit Regulations can still apply where qualifying NHS injuries occurred before 31 March 2013. Certain pay definitions in the old scheme (that is the 1995 and 2008 sections set out in the 2011 and 2013 regulations as detailed above) were relevant for the calculation of some Injury Benefit awards, whether or not the claimant was also a member of that pension scheme. Regulations 48 to 50 amend the Injury Benefit Regulations so that where a qualifying injury is identified after an individual joined the new pension scheme, certain provisions from that scheme are used in the calculation of lost earnings and any benefit payable under the Injury Benefit scheme.

(e) Regulations 6, 17, 25, 27 and 39 insert new contribution tables into the 1995 Section and 2008 Section of the old scheme. The updated employee contribution rates are applicable from 1 April 2015. The employee contribution rates were agreed in partnership and must provide an average yield of 9.8% of pensionable pay. They will be set for four years however the banding rate against which a contribution rate is set may change following a national pay uplift. These rates apply across both the old and the new 2015 schemes.

(f) The scheme valuation as at 31 March 2012 sets the employer contribution rate for four years commencing 1 April 2015. This is 14.9% and regulations 7, 28 and 40 refer.

(g) The AVC scheme provides facilities for NHS Pension Scheme members in pensionable employment to supplement the value of their pension by making money purchase additional voluntary contributions (AVCs) to authorised external pension providers. Regulations 51 to 62 amend the AVC Regulations to ensure that these accommodate the introduction of the new 2015 pension scheme. This will make it possible for new members (and employers) of the new pension scheme to make AVCs to an authorised NHS AVC provider. Individuals who have taken out AVC contracts under the existing scheme will be able to continue with that contract (or begin making further AVCs) upon moving to the new 2015 pension scheme.

(h) Provision is also made in Part 5 to accommodate the flexibilities announced by the Treasury in July 2014 and set out in the document *Freedom and choice in pensions: government response to the consultation*. From 6 April 2015, the changes will enable authorised NHS AVC providers to give members a wider range of pension options when taking their AVC benefits upon retirement. Where a particular option is not offered by a provider, then the member may withdraw their AVC investment and take it

to a different authorised provider. The new flexibilities do not extend to benefits payable from public service pension schemes which include both the existing and new 2015 pension scheme.

(i) Regulations 16, 35 and 45 amend provisions for transfers as a consequence of the introduction of the new NHS pension scheme from 1 April 2015 allowing those members who have had more than a five year break to be able to transfer a deferred pension from the old scheme into the 2015 scheme on a cash equivalent basis.

(j) The 2013 Regulations are updated to include the process for scheme valuations (regulation 19).

(h) A number of other minor amendments are made to clarify original intention and amend errors.

### **Consultation**

The Scottish Public Pensions Agency consulted on these Regulations from 27 November 2014 to 4 January 2015 (contribution rates from 16 December 2014 to 11 January 2015). The consultation was circulated to interested parties via email as well as being hosted on the SPPA website.

### **Impact Assessments**

No equality impact statement has been done for this individual instrument as one will be prepared for the wider pension reforms being introduced to the NHS scheme.

### **Financial Effects**

No Business and Regulatory Impact Assessment has been prepared because no impact on the private or voluntary sector is foreseen.

Scottish Public Pensions Agency  
An Agency of the Scottish Government  
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