

## **POLICY NOTE**

### **THE NATIONAL HEALTH SERVICE SUPERANNUATION AND PENSION SCHEMES (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2021**

#### **SSI 2021/102**

The above instrument was made in exercise of the powers conferred by section 10 and 12, and Schedule 3 to the Superannuation Act 1972, and by section 1(1) and (2) (e) and paragraph 5(b) of schedule 2 of the Public Service Pensions Act 2013 (“the Act”). The instrument is subject to negative procedure.

This instrument makes changes to the employee contribution table for 2021-22 which updates the salary/earnings bands on which the employee contribution percentages are set. The instrument also makes retrospective amendments to the NHS Pension Schemes (Scotland) to remove the scheme rules requiring an unmarried co-habiting partner to have been nominated to receive survivor pension benefits upon death of the member. The third main purpose of this instrument is to provide the survivors of civil partners and same sex spouses with the same pension as widows in the 1995 section of the Scheme.

#### **Policy Objectives**

The purpose of this instrument is to update and amend The National Health Service Superannuation Scheme (Scotland) Regulations 2011, The National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013, The National Health Service Pension Scheme (Scotland) Regulations 2015 The National Health Service Pension Scheme (Scotland) (Additional Voluntary Contributions) Regulations 2018, The National Health Service (Scotland) (Injury Benefits) Regulations 1998 and The National Health Service Pension Scheme (Transitional and Consequential Provisions) (Scotland) Regulations 2015.

One of the aims of this instrument is to to make changes to the salary/earnings bands of the employee contribution tables in respect of the scheme year 2021/22. This will ensure that the tiering of pay bands remains in line with annual increases in members’ pay. It was agreed during scheme reform discussions with both scheme employer and scheme member representatives that, although member contribution rates would not change, the pay/earnings bands in each tier would increase each year in line with national NHS pay awards in Scotland.

The second aim of the instrument is to amend the provisions relating to survivor benefits. In particular the requirement that a cohabiting surviving partner must have been nominated by the member in order to qualify for a surviving nominated partner’s pension (i.e. they must have been a “nominated partner”) is removed.

This follows a legal judgment in *Denise Brewster, Re Application for Judicial Review (Northern Ireland)* [2017] UKSC 8 (the “Brewster case”), this instrument removes the requirement to nominate co-habiting partners for survivor benefits. These amendments will have retrospective effect for members who have pensionable service on or after 1 April 2008

so that surviving partner pensions are paid to survivors without the need for a nomination to be made, provided that qualifying criteria are met.

There remain (unchanged) a number of conditions that a cohabiting surviving partner must satisfy in order to qualify for a “survivor pension”. The removal of the nomination requirement has retrospective effect and starts on 1 April 2011 in respect of the 2011 Regulations and on 1 July 2013 in respect of the 2013 Regulations

The third main purpose of the instrument is to provide the survivors of civil partners and same-sex spouses with the same pension as widows in the 1995 section of the Scheme. As a result of a legal judgment in *Walker v. Innospec Ltd* [2017] UKSC 47, public sector schemes, including the NHS Pension Scheme, are amending their rules to provide the same survivors’ benefits for same-sex couples (whether married or in civil partnerships) as those for widows.

The NHS Pension Scheme has already equalised benefits between male and female same-sex couples in the 2008 Section and the 2015 Scheme, and in respect of service from 6 April 1988 in the 1995 Section. Therefore, the amending regulations only amend the 1995 Section. The amendments apply with retrospective effect to civil partners from 5 December 2005 (the date civil partnerships were introduced) and 13 March 2014 (the date marriage for same-sex couples was introduced).

## **Consultation**

To comply with the requirements of section 10(4) of the Superannuation Act 1972 a formal policy consultation took place from 14 January 2021 to 28 January 2021. In particular, representatives of NHS employers and employees, other Scottish Government interests and UK Government departments were consulted. Two responses to the consultation were received.

## **Impact Assessments**

An equality impact statement in respect of the NHS Pension Scheme (Scotland) reforms (including contribution rates) was prepared and is available at <http://www.gov.scot/Publications/2015/03/2855>

## **Financial Effects**

The increase in pay bands on which contributions for members are based is beneficial to members. There is an agreed policy that members should not be moved into a higher contribution tier as a result of the national NHS pay awards. As a result of the re-structuring and separation of the AfC pay bands in 2021/22 some of the salary points used to base the contribution tiers have been merged and therefore a higher salary point has been used. The Government Actuaries Department have assessed the impact on scheme yield of using higher salary points and have concluded that this will not have a material effect.

## **Business and Regulatory Impact Assessment**

No Business and Regulatory Impact Assessment is necessary as the instrument has no financial effects on local government or business.

Scottish Public Pensions Agency

An Agency of the Scottish Government

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