POLICY NOTE

THE NATIONAL HEALTH SERVICE PENSION SCHEMES (SCOTLAND) AMENDMENT REGULATIONS 2022

SSI 2022/100

The above instrument was made in exercise of the powers conferred by section 1(1), (2)(e) 2 and 3 of, and Schedule 3 to, the Public Service Pensions Act 2013 ("the 2013 Act"). It is subject to negative procedure.

The Regulations implement reforms to the National Health Service Pension Schemes under the Public Service Pensions and Judicial Offices Act ("the 2022 Act") in respect of pensions for NHS workers in Scotland.

Policy Objectives

Occupational pensions policy is reserved to the UK Government. The 2013 Act introduced reforms to public service pension schemes including those in devolved nations. The aim of the reforms was to implement the recommendations of the Independent Public Service Pensions Commission: Final Report, to make public service pensions, which due to increased workforce longevity had increasingly been paid for by taxpayers, more affordable and sustainable. New pension schemes were introduced from 1 April 2015, characterised through a higher normal pension age (NPA) for all scheme members, calculating benefits on a career average revalued earnings (CARE) basis rather than through final salary, and the introduction of a cost control mechanism.

Transitional protection provided for some scheme members, dependent on proximity to their NPA on 31 March 2012, to be either "fully protected" or "taper protected". Members in these categories were allowed to remain in their legacy scheme permanently, or for a set period before transitioning to the reformed CARE scheme before 31 March 2022.

In 2018, following a successful challenge by members of the judicial and firefighters' pension schemes, the transitional protections were found to be discriminatory against younger members by the Court of Appeal, as protection was only offered to older scheme members. The UK government accepted this ruling had implications for all public service schemes that contained similar transitional protection arrangements and introduced legislation through the 2022 Act to remedy the discrimination caused by these transitional protections.

The purpose of the amendments in this instrument, in implementation of the 2022 Act, is to ensure that the pension schemes governed by the 2011 Regulations ("the 1995 Section") and the 2013 Regulations ("the 2008 Section") will, except for limited purposes, be closed to the accrual of pension benefits with effect from 1st April 2022. Any members currently in pensionable service under those pension schemes will, on that date, begin to accrue benefits in the scheme established by the 2015 Regulations.

A further instrument is being prepared that will complete the statutory arrangements as set out in the 2022 Act.

The Amendments

This instrument achieves the purposes of closing the legacy scheme at 31 March 2022, moving all active members to the 2015 Scheme on 1 April 2022 and ensuring that rules around additional pension elections and transfers in to the existing scheme for transitional members are applied consistently to those previously classed as full protection members.

Regulation 1 establishes the title of the Regulations and the commencement date is set at 1 April 2022.

Regulation 2 amends the 2011 Regulations to prevent any further contributions to, or accruals of service within, the 1995 Section. The transitional protections introduced for affected members on 1st April 2015 will only apply in respect of service before 1st April 2022.

Regulation 3 amends the 2013 Regulations for the same purpose and in an equivalent way in relation to members who had been allowed to remain in the 2008 Section after 31st March 2015. In this note, reference to the "legacy scheme" includes the 1995 Section and the 2008 Section. Reference to "the new scheme" is a reference to the pension scheme established by the 2015 Regulations.

Regulation 4 amends the 2015 Regulations so that members of the legacy scheme (other than pensioners) whose accrual of pensionable service ceased in that scheme on 31st March 2022 are eligible to join the new scheme from 1st April 2022.

Regulation 5 amends the Transitional Regulations, which apply to persons who are members of the legacy scheme and the new scheme, as follows:

a) Paragraphs (2) and (3) amend regulations relating to the setting of contribution rates for the scheme year commencing 1st April 2022.

b) Paragraph (2) amends the regulation applicable to employed members of the new scheme to provide that where the member's contribution rate is to be set by reference to that member's pensionable earnings during a previous scheme year, those earnings can be derived from the member's service in the legacy scheme.

c) Paragraph (3) amends the regulation applicable to self-employed practitioners and non-GP providers to provide that where the member's contribution rate is to be set by reference to that member's most recently certified or final pensionable earnings, those earnings can be also derived from the member's service in the legacy scheme.

d) Paragraph (4) amends the regulation relating to the uprating of the earnings of practitioners who are members of the legacy scheme and the new scheme so that it applies after such a member joins the new scheme on or after 1st April 2022.

e) Paragraph (5) amends the regulation which provides for members of the 1995 Section to elect to take benefits derived from additional voluntary contributions at their chosen birthday without having to retire so that it also allows for elections by reference to the date on which the member joins the new scheme in circumstances where members have passed or are near to their chosen birthday on that date.

f) Paragraphs (6) and (7) amend the regulations which set out transitional arrangements relating to ill-health benefits to ensure that, in cases where members have submitted an application for ill-health retirement before 1 April 2022, and the application is still in train on that date, legacy members and their dependants are not placed in a less beneficial position than they would have been in had the outcome of their application been determined under legacy scheme criteria and their retirement on ill-health grounds had taken place before the closure of the legacy scheme on 31st March 2022.

g) Paragraph (9)(a) and (b)(ii) adds to the groups of legacy scheme pensioners set out in Schedule 1 so that re-employed pensioners no longer able to accrue benefits in that scheme from 1st April 2022 are eligible to join the new scheme from that date.

h) Paragraph (8) amends the regulation which provides for which of the pensioner groups set out in Schedule 1 are entitled to a lump sum death benefit different from the one otherwise provided to active members of the new scheme by adding the new groups inserted by paragraph (9)(a) and (b)(ii).

Consultation

To comply with the requirements of section 21 of the 2013 Act, a public consultation was undertaken from 22 November 2021 and closed on 16 January 2022. Those consulted were NHS pension scheme members, employers, related trade unions and relevant Scottish and UK Government Departments. Consultation responses showed a general agreement with the purpose and nature of the amendments. Some respondents did not agree with the overall nature of the 2015 Remedy as set out in the primary legislation. Five responses were received to the consultation and a summary of the consultation responses will be made available on the Scottish Public Pensions Agency's website www.sppa.gov.uk.

Impact Assessments

An initial Equality Impact Assessment has been completed and was included with the public consultation. This assessment will continue to be reviewed and updated and a full assessment will be published with the second and final instrument.

A fairer Scotland duty assessment was not carried out. The policy set out in this SSI is technical in nature and implements reserved UK legal changes. Accordingly, the Fairer Scotland Duty Assessment is not considered to be applicable here.

Financial Effects

This policy introduces further reform to the pension scheme for the NHS in Scotland, following court judgment and public consultation. This policy does not impose any additional costs or reduce existing costs for business, third or public sector organisations and on that basis no Business and Regulatory Impact Assessment is required for these Regulations.

Scottish Public Pensions Agency
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