POLICY NOTE

THE NATIONAL HEALTH SERVICE SUPERANNUATION AND PENSION SCHEMES (MISCELLANEOUS AMENDMENT) (SCOTLAND) REGULATIONS 2024

SSI 2024/272

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.

Summary Box

1. **The purpose of this instrument is to make amendments to the NHS Superannuation Scheme (Scotland) (NHSSS[S]) and the NHS Pension Scheme (Scotland) (NHSPS[S]). The instrument introduces legislative changes to the scheme, including; retirement flexibilities, amendments to abatement rules and final pay controls, changes to the 2015 Regulations regarding inflation and other miscellaneous amendments.**

2. **The instrument also introduces a new employer contribution rate from 1 April 2024 and reforms the employee contribution rates in the NHSPS(S) in two phases from 1 October 2023 and 1 October 2024.**

Policy Objectives

There are two NHS Pension Schemes. The legacy pension scheme, which is made up of two sections, is legislated for by the National Health Service Superannuation Scheme (Scotland) Regulations 2011 (S.S.I. 2011/117) (the "1995 Section") and the National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013 (S.S.I. 2013/174) (the "2008 Section"). The reformed pension scheme is legislated for by the National Health Service Pension Scheme (Scotland) Regulations 2015 (S.S.I. 2015/94) (the "2015 Scheme").

This instrument amends the 1995 Section, the 2008 Section, the 2015 Scheme and the National Health Service Pension Scheme (Transitional and Consequential Provisions) (Scotland) Regulations 2015 (S.S.I. 2015/95) ("the 2015 Transitional Regulations").

New retirement flexibilities

The amendments in this instrument implement, in two phases, changes to introduce new retirement flexibilities to the 1995 Section. The first phase of changes, creates provision for pensionable re-employment for members of the 1995 Section. This means that staff who retire and claim benefits from that scheme can, from 1 April 2023, re-join the 2015 Scheme should they return to work. The instrument also permanently removes the 16-hour rule from 1 April 2023, meaning that the number of hours re-employed staff can work after claiming their 1995 benefits is no longer restricted.

The second phase creates provision for partial retirement for members of the 1995 section from 1 October 2022, and makes other changes related to the over-arching retirement flexibility policy, which are a) allowing members of the 1995 and 2008 Sections who had previously breached the maximum service limits to join the 2015 Scheme if they wish and b) allowing 2008 Section and 2015 Scheme members to draw down 100% of their benefits if partially retiring.

Changes to the employee contribution structure

This instrument also implements phased changes to employee contribution structure. The first phase of contribution rate changes was implemented administratively from 1 October 2023, with the second phase of changes to contributions rates effective from 1 October 2024. Employee contributions, tiered by pay levels, must yield 9.8% of total pensionable pay as required by HM Treasury. The current structure was underperforming, necessitating increases to contribution rates to meet the target yield and also changes to make the contribution structure more appropriate for the 2015 Scheme which is a career average revalued earnings (CARE) scheme. All members have been part of the 2015 Scheme since April 2022. The new structure therefore narrows the range of tiers and reduces the highest rates from 14.7% to 12.7%. Some employees will pay increased contributions to cover the shortfall against the yield, however, increases are capped at 0.9% for those earning up to £37,831 in the first year. By 1 October 2024, the range of contribution rates will narrow to 5.7% to 12.7%, from 5.2% to 14.7% previously.

Amendment to the employer contribution rate

The other key aim of this instrument is to implement a revised employer contribution rate which will increase from 20.9% to 22.5% from 1 April 2024. Reserved primary legislation and HM Treasury (HMT) Directions set out the process for assessing the employer contribution rate for the NHSPS(S), as part of the quadrennial scheme valuation, and the date it should be applied from. The main reason for the employer contribution rate increase is the reduction the discount rate set out in HMT Directions and used in the most recent valuation of the NHSPS(S) (the 2020 valuation), which was concluded earlier this year.

Reform of the Final Pay Control charges

Final pay controls protect the NHS pension scheme from the increased cost of paying retirement pensions which have been inflated by excessive late career pay rises and are relevant to the final salary pension benefits of members of the 1995 Section of the NHS pension scheme. Employers, in certain circumstances, are charged an 'excess employer contribution' for the cost of pension benefits calculated on pensionable pay increased beyond the allowable amount. The benefits payable to scheme members are unaffected. A pay increase is considered excessive if the annual percentage increase exceeds the rate of the Consumer Price Index (CPI) plus 4.5%.

Following consultation with the NHS Pension Scheme (Scotland) Advisory Board (SAB), who are a statutory board comprising member and employer representatives, it was agreed that final pay controls served an important purpose and should be retained. However, it was considered that there should be some reform, the 'allowable amount should be increased from 4.5% to 7% and a number of pensionable pay increases should be exempt from final pay control charges. The amendments reduce the number of retirement awards falling to be

considered for a charge, whilst maintaining the original policy intention of charging employers where final salary pay rises are excessive. This instrument gives effect to those changes.

Changes to the 2015 Regulations regarding inflation

This instrument makes technical amendments to ensure that the date on which CARE pensions accruing in the 2015 Scheme are revalued each year is aligned with the date on which the annual Public Service Pensions Revaluation Order 2023 and subsequent orders will come into effect. In respect of the 2015 Scheme, this date changed from 1 April each year to the 6 April each year with effect from the financial year commencing 6 April 2023. This change aligns the rate of CPI used in the in-service revaluation of CARE pensions and the pension benefit growth calculation for annual allowance purposes.

Miscellaneous amendments

The instrument also implements various smaller technical amendments to the NHSPS(S) that consolidate various changes made to the scheme. These technical amendments were introduced following significant stakeholder engagement exercises with trade union and employer representatives which sought to rectify previous administrative and technical issues with the application of the regulations.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the NHS Superannuation and Pensions Scheme (Miscellaneous Amendment) (Scotland) Regulations 2024 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

To comply with the requirements of section 21(1) of the Public Service Pensions Act 2013 a formal policy consultation took place on retirement flexibility (December 2022 - February 2023), employee contributions (May - August 2023), and employer contribution rates and other amendments (December 2023 - February 2024).

In particular, representatives of NHS employers and employees in Scotland, other Scottish Government interests and UK Government departments were consulted. Consultation responses were submitted to SPPA from scheme members, trade unions and an employer associations.

Introduction of new retirement flexibilities

The introduction of retirement flexibilities recevied subsantial support from consultation respondents with many outlining the positive impact these flexibilities would have on retaining experienced staff. It was also particularly welcome because respondents felt it

provides flexibility for NHSPS(S) members to manage their retirement and return to work in the future if they wish to do so. In particular the proposal to allow members to access 100% of their 1995 Section benefits was widely welcomed.

While 'partial retirement' was roundly welcomed, respondents were negative about some aspects of that proposal. In particular the requirement for members to reduce their earnings by 10% in order to access partial retirement. Many respondents felt this requirement was unnecessary and would lead to members reducing their commitments at a time where NHS Scotland needs to maximise existing capacity. However, in order for staff to partially retire, SPPA considered that some reduction in working commitment is required, and as the NHSPS(S) records members' pensionable pay, this is a reasonable way of assessing if members are taking steps towards retirement. This is also how partial retirement operates for members of the 2008 Section and 2015 Scheme in the NHS, and similarly for members of other public sector pension schemes. This requirement will remain in place for the 12 months after members take partial retirement.

Based on the overwhelmingly positive feedback received for these proposals, SPPA proceeded with the introduction of pensionable re-employment administratively from 1 April 2023. SPPA also proceeded with the implementation of Partial Retirement adminstratively from 1 October 2023.

Increase to the employer contribution rate from 1 April 2024

The principal reason for employer contributions increasing is the UK Government's decision to reduce the SCAPE discount rate used in the valuation process. The Chief Secretary to the Treasury's statement announcing the change in the discount rate, confirmed that the UK Government will provide funding for increases in employer contribution rates resulting from the 2020 valuations because of changes to the SCAPE discount rate. For the NHS valuation the full 1.6% increase is a consequence of these SCAPE discount rate changes.

The UK government's funding commitment is for employers whose employment costs are centrally funded through departmental expenditure. The UK Government has provided funding for devolved administrations via the Barnett formula.

In line with the outcome of the 2020 scheme valuation process, the Scottish Government are required to increase the employer contribution rate from its current rate of 20.9% to 22.5% effective from 1 April 2024.

Changes to the member contribution structure

A number of respondents raised concerns about the proposals to change the member contribution structure. However, the reasons for objecting to these proposals were split into responses from those representing lower earners of the membership and those representing higher earners of the membership. There were also several other respondents who raised concerns around those middle earners who will see the sharpest increase in member contribution because of the proposed reforms.

Those using the UNISON Scotland template (approximately 82% of responses) objected to the increases in contribution structure while the cost of living remains high and believe this may have an impact on the affordability of the scheme. These respondents also voiced

concerns that lower and middle earners of the scheme will be expected to pay more while higher earning members will pay less.

On the other hand, those using the British Medical Association (BMA) response template (approximately 14% of respondents) stated that the proposals to flatten the structure did not go far enough and emphasised that it is inappropriate to have a system of tiered member contribution structure within a CARE scheme. They therefore believe that the members contribution structure should be based on a single contribution rate.

Overall, these two groups of respondents, those representing the lower paid and those representing the higher paid, within the NHS workforce are diametrically opposed in their view of the proposed contribution structure. Therefore, due to the diverse nature of the NHS Workforce, any revision or changes to the member contribution structure must strike the appropriate balance between maintaining the affordability of the scheme for lower earners, meeting the contribution yield required by HM Treasury and ensuring any revised structure better reflects the nature of accrual in a CARE scheme.

Following discussions with stakeholders and much analysis, the revised proposals which went forward for consultation presented a compromise position as there was no alternative structure which was agreeable to both staff groups.

Reform of the Final Pay Control charges

Most respondents to the consultation agreed with the proposed changes to final pay controls. In particular, stakeholders agreed that aligning the final pay control provisions with those in place for the comparable NHS pension scheme in England and Wales was preferable.

Changes to the 2015 Regulations regarding inflation

While 97% of respondents were supportive of the proposal to align the CPI values used for the in-service revaluation of the 2015 Scheme pension with that used as part of the annual allowance calculation, they did not agree that it should be done in this way. Many respondents highlighted their preference for the UK government to amend the Finance Act 2004 as means to addressing this issue.

Impact Assessments

Equality impact assessments in respect of the provisions contained within The NHS Superannuation and Pension Schemes (Miscellaneous Amendments) (Scotland) Regulations 2024 were prepared and presented as part of the consultation documents on the [1]SPPA website.

Financial Effects

The Minister for Public Finance confirms that no Business and Regulatory Impact Assessment (BRIA) is necessary as most of the changes will have no significant financial effects on the Scottish Government, local government or on business. The instrument does implement an increase in scheme employer contributions from the current rate of 20.9% to

[1] NHS Scotland pension schemes' consultations | SPPA https://pensions.gov.scot/nhs/scheme-governance-and-legislation/consultations

22.5% from 1 April 2024. However, funding provided from HM Treasury, via Barnett consequentials, is being provided to employers in the NHSPS(S) who are being fully funded for the increase. The increase in the employer contribution rate is because of HM Treasury Directions used in the scheme valuation which are mandated in UK Government legislation.

Scottish Public Pensions Agency
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1 October 2024