EXECUTIVE NOTE

THE NATIONAL HEALTH SERVICE (SUPERANNUATION SCHEME, PENSION SCHEME, INJURY BENEFITS AND ADDITIONAL VOLUNTARY CONTRIBUTIONS) (SCOTLAND) AMENDMENT (No. 2) REGULATIONS 2010 SSI 2010/369

The above instrument is made in exercise of the powers conferred by sections 10 and 12 of, and Schedule 3 to, the Superannuation Act 1972. These powers, so far as within devolved competence 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. The instrument amends the National Health Service Superannuation Scheme (Scotland) Regulations 1995 (S.I. 1995/365 "the 1995 Section of the scheme"), the National Health Service Pension Scheme (Scotland) Regulations 2008 (S.S.I. 2008/224 "the 2008 Section of the scheme"), the National Health Service (Scotland) (Injury Benefits) Regulations 1998 (S.I. 1998/1594 "the Injury Benefits Regulations") and the National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998 (S.I. 1998/1451 "the AVC Regulations") .

Background

3. The main aims of the instrument are:

- To allow those who have retired between 1 April 2008 (the date of introduction of the 2008 section of the scheme) and 1 October 2009 (effective date for 1995 section members having the choice to move to the 2008 Section of the Scheme) to be able to join the 2008 section of the scheme on return to NHS employment;
- To provide for Pension Credit members (i.e. those who have rights in the scheme as the result of a pension sharing order on divorce) to be able to take their benefits before normal retirement age on an actuarially reduced basis;
- To provide a calculation for the revaluation of Additional pension which also covers a situation where there has been negative inflation;
- To allow those who have AVC proceeds totalling less than £2000 who are unable to or unwilling to secure an annuity because of the small amount, to take payment in the form of a lump sum; and
- Technical changes in relation to employee contribution tables, scheme valuation and GMP

Policy Objectives

4.1 Following a review of the Scheme by SPensiR[1] a new Section of the Scheme was introduced for new entrant NHS staff with effect from 1 April 2008. Key features of that section are a normal pension age of 65, a pension equal to 1/60th of final pay for each year of membership or a pension based on 1.87% of career average earnings for self-employed general medical and dental practitioners, more flexible retirement i.e. ability to take part pension and continue working and no automatic lump sum but option to exchange up to 25%

[1] SPensiR (now the Scottish NHS Pensions Group) is a partnership between employers, trade unions/ professional organisations for the NHS in Scotland and the Scottish Government

of the member's pension pot for a lump sum. The National Health Service (Superannuation Scheme, Pension Scheme, Injury Benefits and Additional Voluntary Contributions) (Scotland) Amendment Regulations (S.S.I. 2010/22) provide for eligible members of the 1995 Section of the Scheme to be offered a choice to transfer past and future service to the 2008 Section of the Scheme. Those eligible to participate were those members who active in the 1995 Section of the Scheme on or after 1 October 2009. Those members who retired between 1 April 2008 (when the 2008 Section of the Scheme came into force) and 30 September 2009 therefore missed out on this opportunity and it was agreed by the reform partners that they should have the opportunity to join the 2008 scheme if they returned to NHS employment after a waiting period which would in most cases be 2 years after retirement depending on the type of retirement pension. These members will be known in the scheme as "waiting period joiners".

4.2 The Occupational Personal and Stakeholder Pension (Miscellaneous Amendment) Regulations 2009 (SI 2009/615) made provisions which broadly align the general rules for the payment of pension credit benefit with other deferred pension rights held in occupational pension schemes. As a consequence amendments have been made to the scheme regulations to allow early payment of a pension credit with an actuarial reduction from normal minimum pension age and to allow pension credit members the same access to pension commencement lump sums as those enjoyed by other deferred scheme members (as long as the sharing order is pre-retirement). This will mean that in addition to the fixed lump sum in the 1995 Section of the Scheme pension credit members will be able to exchange part of their pension credit for lump sum up to the limits provided for in the Finance Act 2004. These changes take effect from 1 April 2010 and bring the Scottish Scheme in line with the English and Welsh NHS pension Scheme. It is not intended however introduce the right to take benefits early on ill health grounds as in the England and Wales NHS Scheme as we wish to retain consistency in Scotland with the Scottish Teachers Superannuation Scheme also administered by SPPA who have also chosen not to introduce this facility. The number of Pension Credit members in the scheme is currently 160.

4.3 These amendments also clarify the means by which Additional Pension (AP) is revalued to take account of inflation, and the instrument makes technical adjustments in both Sections of the Scheme. The amendments will ensure that members always get at least the amount of AP they contracted to buy following a period(s) of 'negative inflation', and experience neither a "windfall gain", nor an "unexpected loss", if AP is purchased by lump sum payment close to retirement.

4.4 Technical changes are made to include up to date employee contributions in the SSI.

4.5 The NHS Pension Scheme (made up of the 1995 Section of the Scheme and the 2008 Section of the Scheme together) contracts its members out of the second state pension and, as a result, the Scheme must reach specific standards in respect of the benefits it will pay. In respect of service up to 5th April 1997, the Scheme must pay benefits at State Pension Age (SPA) that are at least equal in value to the benefits the member would have earned from the State Earnings Related Pension Scheme (SERPS). This is known as a guaranteed minimum pension (GMP). However, whilst changes to SPA are being phased in from 6 April 2010, the obligations of occupational pension schemes in respect of GMPs will remain linked to age 60 for women and age 65 for men. Relevant amendments in the instrument adjust the terminology used in the 1995 Section of the Scheme accordingly from 6 April 2010.

4.6 The main change to the AVC Regulations is required in order that members can take advantage of new HMRC easements made under the Registered Pension Schemes (Authorised Payments) Regulations 2009 (S.I. 2009/1171). This Instrument "authorises" a variety of payments that currently would not be permitted under Finance Act 2004 rules, including the release of "small" or "stranded" investments in the AVC schemes of public service and other occupational pension schemes. The changes to the regulations allow that a member with AVC proceeds totalling less than £2,000 (disregarding main scheme and other pension holdings) who is unable to secure an annuity, will be able to take the AVC payment as a stand-alone lump sum. The arrangement will have few restrictions, but HMRC rules will require members to be aged between 60 and 75 and will exclude AVC funds that have received transfers in within the previous 5 years or transfers out within the past 3 years.

4.7 A number of other technical adjustments are included in the instrument including some additional definitions in the Injury Benefits Regulations.

Sensitivity

5. The instrument is not contentious.

Consultation

6. The instrument has been the subject of consultation with representatives of NHS employers and employees, other Scottish Government interests and UK Government departments and has incorporated any suggested changes which were appropriate.

Financial Implications

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

Consolidation

8. The Subordinate Legislation Committee have, in relation to previous amending instruments, asked whether consolidation was being contemplated. We are currently working on a consolidation of the 1995 Section of the Scheme. This is a major task because of the sheer number of changes to the scheme as a result of pension reforms however we are aiming to lay a consolidating instrument in the Scottish Parliament by February 2011.

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