



Department
of Health

The draft National Health Service Pension Scheme, Additional Voluntary Contributions, Compensation for Premature Retirement and Injury Benefits (Amendment) Regulations 2014

Consultation document and explanatory notes

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Introduction

The Department of Health has published for consultation a draft Statutory Instrument titled The National Health Service Pension Scheme, Additional Voluntary Contributions, Compensation for Premature Retirement and Injury Benefits (Amendment) Regulations 2014.

This document explains the purpose and effect of the provisions set out in the draft Statutory Instrument (SI). It should be read in conjunction with the draft Statutory Instrument which is attached separately at Annex A. It is also available via the NHS Business Service Authority's website: www.nhsbsa.nhs.uk/Pensions

The draft Statutory Instrument proposes changes to NHS Pension Scheme regulations to:

- Re-introduce provisions requiring the Scheme actuary to undertake an actuarial valuation of the NHS Pension Scheme as at 31st March 2012
- Implement the first phase of changes arising from and related to the Marriage (Same Sex Couples) Act 2013, including related changes to survivor benefits for persons who are not a same sex spouse.

The consultation will run from 11 November 2013 and close on 9 December 2013.

Comments on the amendments in draft Statutory Instrument can be submitted via email to: nhspsregsfeb14@dh.gsi.gov.uk or by post to:

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1. Valuation requirements

Background

Existing valuation provisions

Provisions requiring the Scheme actuary to prepare actuarial reports of the scheme liabilities and benefits (valuations) were removed from NHS Pension Scheme Regulations with effect from 1 April 2013¹. The requirements to undertake valuations were removed pending the introduction of new arrangements under the Public Service Pensions Act 2013, especially in regards to the actuarial reports which would be needed in order to inform the setting up of new public service schemes under that Act from 1 April 2015.

Overview of changes

The requirement for the Scheme actuary to prepare an actuarial report of the Scheme as at 31st March 2012 in preparation for the making of a new pension scheme under powers in section 1 of the Public Service Pensions Act 2013 is re-introduced with effect from 10th February 2014.

Changes in detail

Regulation 1.B.1 (actuarial reports and accounts) of the 2008 Regulations applies to both sections of the National Health Service Pension Scheme as set out in:

- The National Health Service Pension Scheme Regulations 1995, and
- The National Health Service Pension Scheme Regulations 2008.

Amending regulation 10 inserts new paragraphs (3A), (3B) and (3C) into regulation 1.B.1.

New paragraph (3A) requires the Scheme actuary to prepare an actuarial report of the Scheme as at 31st March 2012.

New paragraph (3B) requires the Scheme actuary to send a copy of that report to the Secretary of State for Health and the Treasury.

¹ The National Health Service Pension Scheme, Additional Voluntary Contributions and Injury Benefits (Amendment) Regulations 2013 No 413, amendments to regulations 1.B.1 (Actuarial reports and accounts) and U3 (accounts and actuarial reports).

Finally, where that report is to be used for the purposes of establishing a scheme under section 1 of the Public Service Pensions Act 2013, new paragraph (3C) requires the Scheme actuary to take account of any Directions issued by the Treasury from time to time under sections 11(2) and 12(3) of that Act including any specific requirements in those Directions relating to a preliminary valuation undertaken for the purposes of setting the employer cost cap for new public service schemes from 1 April 2015.

An extract of sections 1, 11, and 12 of the Public Service Pensions Act 2013 follows:

The full text of that Act may be viewed here:

<http://www.legislation.gov.uk/ukpga/2013/25/contents>

1 Schemes for persons in public service

(1) Regulations may establish schemes for the payment of pensions and other benefits to or in respect of persons specified in subsection (2).

(2) Those persons are—

- (a) civil servants;
- (b) the judiciary;
- (c) local government workers for England, Wales and Scotland;
- (d) teachers for England, Wales and Scotland;
- (e) health service workers for England, Wales and Scotland;
- (f) fire and rescue workers for England, Wales and Scotland;
- (g) members of police forces for England, Wales and Scotland;
- (h) the armed forces.

(3) These terms are defined in Schedule 1.

(4) In this Act, regulations under this section are called “scheme regulations”.

11 Valuations

(1) Scheme regulations for a scheme under section 1 which is a defined benefits scheme must provide for actuarial valuations to be made of—

- (a) the scheme, and
- (b) any statutory pension scheme that is connected with it.

(2) Such a valuation is to be carried out in accordance with Treasury directions.

(3) Treasury directions under subsection (2) may in particular specify—

- (a) how and when a valuation is to be carried out;
- (b) the time in relation to which a valuation is to be carried out;
- (c) the data, methodology and assumptions to be used in a valuation;
- (d) the matters to be covered by a valuation;

(e) where a scheme under section 1 and another statutory pension scheme are connected, whether the schemes are to be valued separately or together (and if together, how);

(f) the period within which any changes to the employer contribution rate under a scheme under section 1 must take effect following a valuation.

(4) Treasury directions under subsection (2), and variations and revocations of such directions, may only be made after the Treasury has consulted the Government Actuary.

(5) Scheme regulations for a scheme under section 1 which is not a defined benefits scheme may provide for actuarial valuations to be made of the scheme and any statutory pension scheme that is connected with it; and if they do, subsections (2) to (4) apply.

12 Employer cost cap

(1) Scheme regulations for a scheme under section 1 which is a defined benefits scheme must set a rate, expressed as a percentage of pensionable earnings of members of the scheme, to be used for the purpose of measuring changes in the cost of the scheme.

(2) In this section, the rate set under subsection (1) is called the “employer cost cap”.

(3) The employer cost cap is to be set in accordance with Treasury directions.

(4) Treasury directions may in particular specify—

(a) how the first valuation under section 11 of a scheme under section 1 is to be taken into account in setting the cap;

(b) the costs, or changes in costs, that are to be taken into account on subsequent valuations of a scheme under section 1 for the purposes of measuring changes in the cost of the scheme against the cap;

(c) the extent to which costs or changes in the costs of any statutory pension scheme which is connected with a scheme under section 1 are to be taken into account for the purposes of this section.

(5) Treasury regulations must make—

(a) provision requiring the cost of a scheme (and any connected scheme) to remain within specified margins either side of the employer cost cap, and

(b) for cases where the cost of a scheme would otherwise go beyond either of those margins, provision specifying a target cost within the margins.

(6) For cases where the cost of the scheme would otherwise go beyond the margins, scheme regulations may provide for—

(a) a procedure for the responsible authority, the scheme manager (if different), employers and members (or representatives of employers and members) to reach agreement on the steps required to achieve the target cost for the scheme, and

(b) the steps to be taken for that purpose if agreement is not reached under that procedure.

(7) The steps referred to in subsection (6) may include the increase or decrease of members' benefits or contributions.

(8) Treasury regulations under this section may—

(a) include consequential or supplementary provision;

(b) make different provision for different schemes.

(9) Treasury regulations under this section are subject to the negative Commons procedure.

2. Changes in response to the Marriage (Same Sex Couples) Act 2013

Background

The Marriage (Same Sex Couples) Act 2013

The Marriage (Same Sex Couples) Act (M(SSC)Act) received Royal Assent on 17 July 2013 and work to implement the Act is already under way across government.

The government has announced that it anticipates that the first same sex weddings will take place by summer 2014 but is exploring whether implementation could be brought forward, so that the unfairness preventing same sex couples being able to marry is removed as soon as possible². The government is therefore keen to ensure that the framework of rights and responsibilities for same sex married couples, including relevant provision within public service pension schemes, is in place in good time. Hence, we are consulting now on proposed changes to the NHS Pension Scheme but have not included an effective date in the SI pending a decision on whether implementation can be brought forward.

The M(SSC) Act 2013 can be viewed here:

<http://www.legislation.gov.uk/ukpga/2013/30/contents/enacted>

M(SSC) Act and occupational pension schemes that contract members out of the State Earnings Related Pension Scheme (SERPS) and the State Second Pension (contracted out schemes)

The effects of the M(SSC) Act and the amendments made by Schedule 4 of that Act to the Pensions Scheme Act 1993 are that contracted out pension schemes like the NHS Pension Scheme-

² The arrangements for allowing the conversion of civil partnerships to marriages, and allowing people who change their legal gender to remain in their marriages, will follow later, as these will take longer to implement. The government will announce further details on these changes in due course.

- must provide a survivor benefit for a widow or widower of a same sex spouse based on the deceased spouse's guaranteed minimum pension³ earned from 6th April 1988 to 5th April 1997, and
- must meet the statutory standard⁴ set for contracted out schemes in respect of the minimum amount of any such a survivor pension to be paid for a deceased member's service from 6th April 1997 onwards.

The Equality Act 2010

The Equality Act 2010⁵ provides for an occupational pension scheme to be taken to include a non-discrimination rule. However, this is qualified⁶. Currently, it is not a breach of that rule, so far as relating to sexual orientation, to prevent or restrict a person who is not married from having access to a benefit that would be available to a person who was married where that benefit is payable in respect of service before 5 December 2005⁷.

Paragraph 17 of Schedule 4 to the M (SSC) Act 2013 will, once in force, extend this exception to the non-discrimination rule so that it also applies to same sex married couples. The extension of the exception means that it is not a breach of the non-discrimination rule, so far as relating to sexual orientation, to prevent or restrict a person who is not married to a member of the opposite sex⁸ from having access to a survivor benefit where that benefit is payable in respect of service before 5th December 2005.

Minimum amount payable taking into account the amended Pension Schemes Act 1993 and the amended Equality Act 2010

In summary, the minimum amount payable to a widower or widow of a same sex spouse who is a member of a contracted out occupational scheme is as follows:

- Half the deceased member's guaranteed minimum pension for earnings from 6th April 1988 to 5th April 1997,
- A survivor pension that meets the statutory standard in respect of the member's service from 6th April 1997 onwards, and
- A pension equal to that payable to a widow or widower of an opposite sex spouse in respect of a member's pension for service from 5th December 2005.

³ The amount the member would have received had they participating in SERPS instead of a contracted out occupational scheme. See section 17(4) of the Pension Schemes Act 1993, as amended by the M (SSC) Act 2013.

⁴ See S12A and 12B of the Pension Schemes Act 1993

⁵ S61 of the Equality Act 2010

⁶ paragraph 18 of Schedule 9 to the Equality Act 2010

⁷ 5 December 2005 is the date the Civil Partnership Act came into force.

⁸ Note the treatment for persons in a relevant gender change case.

Public service pension schemes and survivor benefits for same sex couples

Notwithstanding the review of survivor benefits in occupational pension schemes required by the Marriage (Same Sex Couples) Act 2013⁹ the policy which is the subject of this consultation is that in the majority of cases¹⁰ the survivor benefits of same sex married couples in the public service pension schemes should be aligned with those of civil partners. This policy provides survivor pensions that are generally greater than the minimum amount described above and means that survivor pensions for widows or widowers of same sex spouses will be based on half of the member's pension earned for service from 6th April 1988 onwards.

Changes to the National Health Service Pension Scheme

Key changes

The proposed amendments introduce survivor pensions for same sex married couples that are aligned with those of civil partners.

This means that:

For members of the NHS Pension Scheme:

- Survivor benefits for a same sex spouse of a member of the 1995 section will be equal to half of the member's pension for service from 6th April 1988 onwards
- Survivor benefits for a same sex spouse of a member of the 2008 section will be equal to 37.5% of the member's pension.
- A lump sum death benefit may also be payable to a surviving same sex spouse.
- If a member dies whilst in service, the survivor pension paid to their same sex spouse may be increased to take account of any additional pension that would have been paid to the member had they retired on health grounds
- A member may elect to allocate part of their pension to their same sex spouse so as to provide that person with a greater pension after their death.

⁹ Section 16 of the Marriage (Same Sex Couples) Act 2013 requires the Secretary of State to arrange for a review to be carried out on relevant differences in survivor benefits in occupational pension schemes. The review must consider what the costs and other effects would be if the relevant differences in survivor benefits were eliminated.

¹⁰ An exception will be made in the case of a "relevant gender change case". In such cases the survivor of a marriage between a same sex couple, where the deceased spouse had changed legal gender, will retain their expectation of survivor benefits as if their spouse had not changed legal gender.

- Scheme provisions relating to pension sharing on divorce will apply to same sex married couples

For members of the 1995 section of the NHS Pension Scheme only:

- An active member with service before 6 April 1988 may nominate their same sex spouse to receive a pension for that service if their spouse is permanently incapable of earning a living through physical or mental infirmity and is wholly or mainly dependent on the member
- An active member with service before 6 April 1988 may be able to increase any survivor pension which may be payable to a widower of the opposite sex, civil partner, nominated partner or same sex spouse through a time-limited opportunity to purchase additional spouse or partner cover for that service.
- Some restrictions on the transfer of previously purchased additional spouse or partner cover have been removed, so that this cover can apply to a widower of the opposite sex, civil partner, nominated partner or same sex spouse (as applicable at the time of the member's death), irrespective of the date at which this was purchased.

Members who take out an NHS Additional Voluntary Contribution (AVC) with an authorised provider:

- will, at retirement, be able to opt to provide for a pension to be paid to their same sex spouse on their death.

The same sex spouse of a member who is in receipt of compensation for premature retirement under the NHS (Compensation for Premature Retirement) Regulations 2002

- may qualify for a survivor pension equal to half of the increase to the member's pension that is in payment under those Regulations.

The same sex spouse of a person in receipt of an Injury Benefit or of a person covered under transitional arrangements put in place from 31 March 2013 following the closure of the Injury Benefit Scheme

- may qualify for a survivor benefit if their spouse's death was substantially hastened by their illness or injury.

Changes in detail

Parts 2 to 6 of the draft statutory instrument amend, respectively:

- the National Health Service Pension Scheme Regulations 1995,
- the National Health Service Pension Scheme Regulations 2008,
- the NHS Pension Scheme (Additional Voluntary Contributions) Regulations 2000,
- the NHS (Compensation for Premature Retirement) Regulations 2002, and
- the NHS (Injury Benefits) Regulations 1995.

New Provisions

Amending regulation 3 amends 1995 Regulations regulation A2 (Interpretation) by inserting new definitions to clarify that “civil partner” and “civil partnership” are to be read in accordance with new regulation A4, references to “marriage” and “married” do not include a reference to a marriage of a same sex couple unless otherwise provided and “widow” and “widower” do not include a reference to a marriage of a same sex couple.

Amending regulation 4 inserts new regulation A4 (civil partnerships and marriage of same sex couples), which provides for any reference to civil partner, civil partnership or related term across the regulations to be read so as to include a reference to marriage of a same sex couple.

Equivalent amendments to those described above can be found in:

- amending regulations 11, 12, 14 and 15 which amend regulations 2.A.1 and 3.A.1 of the 2008 Regulations and insert new regulations 2.A.1A and 3.A.1A into those regulations.
- amending regulation 18, which amends regulation 2 of the NHS Pension Scheme (Additional Voluntary Contributions) Regulations 2000 and regulation 19 which inserts new regulation 2A into those regulations,
- amending regulation 22 which amends regulation 2 of the NHS (Compensation for Premature Retirement) Regulations 2002 and regulation 23 which inserts new regulation 2A into those regulations
- amending regulation 25 which amends regulation 2 of the NHS (Injury Benefits) Regulations 1995 and regulation 26 which inserts new regulation 2A into those regulations.

Purchase of additional survivor pension cover

Amending regulation 5 removes the requirement in regulation G9 (increased widower's pension) for a member to be in pensionable employment on or after a specified date in order for the increase the member elected to purchase in respect of a widower to apply to any surviving partner pension that may be payable on death.

Amending regulation 6 removes the requirement in regulation G13 (increased surviving civil partner's pension) for a member to be in pensionable employment on or after a specified date in order for the increase the member elected to purchase in respect of a civil partner to apply to any surviving partner pension that may be payable on death.

Amending regulations 7 and 8 amend regulations G16 (purchase of a surviving partner's pension in respect of service before 6 April 1988) and G17 (increased surviving partner's pension) to provide a further time-limited option to purchase additional surviving partner cover.

A member of the 1995 section who is in ¹¹pensionable employment may elect to buy additional surviving partner cover for all or part of their service in the scheme before 6 April 1988. This option will be available from the implementation date until 31 March 2015.

Cover can be purchased for –

- a surviving same sex spouse
- a surviving widower of the opposite sex
- a surviving civil partner
- a surviving nominated partner

and will apply to any such surviving partner pension payable on the member's death. There is no requirement for a member to be in pensionable employment on or after a specified date in order for the increase the member elected to purchase to apply to any surviving partner pension that may be payable on death.

A member can purchase cover for all of their service before 6 April 1988 or any number of complete years of service before that date. An election must be made in writing and may only be made by a member who is in sound health for their age. Once an election is made it cannot be cancelled.

There are three methods of payment available and the cost will depend on which method is chosen.

¹¹ Apart from re-employed pensioners (members who have retired on ill health grounds and re-joined the scheme)

The methods are –

- By taking a reduced lump sum retiring allowance¹²
- By making a single lump sum payment to buy an unreduced lump sum
- By paying AVCs in regular payments until retirement to purchase an unreduced lump sum

The surviving partner's pension will be based on half the member pension for the service purchased and half the pension for the member's service after 5 April 1988.

Consequential amendments

Amending regulations 13 and 16 relate to the acceptance of transfer value payments and specifically the circumstances when the Secretary of State may not accept a payment. The amendments remove the requirement to test against a spouse's entitlement to a guaranteed minimum pension from regulations 2.F.10 and 3.F.10. This is consistent with the equivalent provision in the 1995 section (regulation N1(2)).

Amending regulation 20 relates to payments by the Secretary of State under an NHS AVC. The amendment to regulation 15 clarifies the circumstances in which lump sums may be payable to the member's personal representatives.

¹² If a member opts to take a reduced lump sum retiring allowance, but at retirement benefits are commuted because of terminal ill health, no reduction is made to the lump sum paid