

National Health Service Superannuation Scheme (Scotland)

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Our ref: NHS/01/33

14 December 2012

Dear Colleague

The National Health Service (Scotland) (Injury Benefits) Amendment Regulations 2013

I enclose, for your consideration and comment, a copy of the draft regulations which will amend the National Health Service (Scotland) (Injury Benefit) Regulations 1998.

Relationship to the broader reforms of the NHS Pension scheme in Scotland

The regulations in this consultation are intended to bring in changes in NHS Injury Benefit provisions that are to apply in Scotland from 31 March 2013. They are the outcome of Scotland's participation in a UK-wide partnership review of Injury Benefits which has been underway since 2009. A separate process is already underway to consider a programme of broader scheme reform in Scotland, in partnership between NHS employers, trade unions / staff associations and Scottish Government representatives.

Background

NHS Employers and Trades Unions have completed a UK partnership review of NHS Injury Benefit (IB) provisions under delegation from the Department of Health and the Scottish Government. The review addressed concerns that the current arrangements in regulations were no longer fit for purpose, and difficult to replicate outside the traditional NHS organisations. The review partners submitted recommendations for changes to the NHS Staff Council, and respective Secretary of State / Cabinet Secretary for Health have since accepted these changes for implementation from 31 March 2013.

Summary of the Changes

Injury/disease arising on or before 30 March 2013

NHS Injury Benefit regulations covering NHS staff in Scotland and NHS staff in England and Wales under the separate legislation will continue to protect all eligible persons who suffer a relevant injury or disease on or before 30 March 2013. Protection will continue until 30 March 2038, subject to the production of compelling evidence of a pre 31 March 2013 injury or disease for claims arising on or after 30 March 2018, following a 5-year transitional period.



Injury/disease arising on or after 31 March 2013

For injuries or diseases arising on or after 31 March 2013, employers will be able to pay eligible employees a new "Injury Allowance" (IA) under their contractual terms and conditions. The criteria for awarding the new IA, and the level of that allowance, will be similar to the temporary injury allowance currently payable under the current NHS Injury Benefit Regulations. However, the new IA will be limited to the period of the employment contract and a maximum payment period of 12 months for each relevant injury or disease.

A new section of the NHS Terms and Conditions of Service Handbook; agreed by the NHS Staff Council and endorsed by Health Ministers in the English, Welsh and Scottish Governments, will house the replacement IA provisions. Similar amendments will appear in the contracts of staff covered by the new IA but subject to different contract arrangements.

Changes to the Regulations

The main changes to the regulations brought about by these amendments are:

- To end claims for new injuries/diseases under these regulations which occur on or after 31 March 2013.
- To allow access to the full range of IB benefits to those whose injury or disease occurred on or before 30 March 2013. Protection will continue until 30 March 2038, subject to the production of compelling evidence of a pre 31 March 2013 injury or disease for claims arising on or after 30 March 2018, following the 5-year transitional period.
- To ensure that the provisions for temporary injury allowance, partial and full permanent injury benefits and permanent injury benefits where a NHS injury or disease is discovered *after* cessation of NHS employment (but which can be related back to a period before 31 March 2013), remain completely unchanged during a 5-year transitional period 31 March 2013 to 30 March 2018.
- To ensure there is no duplication of benefits paid under the regulations and under the new arrangements.
- To clarify administrative arrangements and supporting information/evidence required.

A detailed explanation of these changes is contained in **Appendix A** of this letter.

Consultation

To simplify the process you can respond to this consultation online via the following link: - [NHS Injury Benefit online response form](#). Alternatively your response may be made by completing the attached Consultation Response Form at **Appendix B** which can be submitted in hard copy to the following address.

NHS Injury Benefits Consultation
SPPA Policy
7 Tweedside Park
Tweedbank
Galashiels
TD1 3TE

A copy of the consultation document and online response form is also available on the [Agency's website](#).

Responses are requested no later than the closing date for this consultation, which is Friday 25 January 2013.

If you ask for your response to this consultation not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the SPPA is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to the Agency under the Act for information relating to responses made to this consultation exercise.

Yours faithfully

Sharon Liptrott (Mrs)
NHS Policy Manager

Addressees

HR Directors NHS Boards
Finance Directors and Payroll managers
Scottish NHS Pensions Group (SPG)
UK Injury Benefit Review partners
SPPA Technical Working Group
NHS Trade Unions and Professional Organisations
Scottish General Practitioners Committee
Institute of Health Service Management
Scottish Practice Nurse Association
Women's National Committee
SGHD Directorate of Primary Care
SGHD Health Workforce Directorate
SGLD Finance
NHS Retirement Fellowship
Home Office, Police and Firemen's Pension Schemes
Department of Health and Social Services, Northern Ireland
NHS BSA Pensions Division
Department for Children, Schools and Family
Cabinet Office
Department for Communities and Local Government
DWP
GAD
HM Treasury
SGLD
SPPA (Senior Managers, Technical Team and Injury Benefit Team)

Explanation of Amending Regulations

Amending regulation 1 – Citation and effect

States that the regulations will come into effect from 31 March 2013.

Amending regulation 3 – Persons to whom the regulations apply

Amending regulation 3 date-tags, regulation 3(1) 'persons to whom the regulations apply' to make clear that, from 31 March 2013, the NHS IB regulations will apply only to the persons listed who sustain an injury or contract a disease referred to in paragraph (2) before that date. Such claimants will be able to access the full range of NHS IB up to 30 March 2038, subject to compelling evidence of the relevant injury or disease for claims relating to the period 31 March 2018 to 30 March 2038.

Amending regulation 4 - Scale of benefits

Amending regulation 4(2) clarifies that all injury benefit claims must be made in accordance with regulation 18A.

Amending regulations 4(3), (5), (6) and (8) date-tag, regulations 4(2), 4(3), 4(4) and 4(5). This will ensure that the provisions for temporary injury allowance, partial and full permanent injury benefits and permanent injury benefits where a NHS injury or disease (which occurred prior to 31 March) is discovered *after* cessation of NHS employment, remain completely unchanged during a 5-year transitional period 31 March 2013 to 30 March 2018.

Amending regulations 4(4), (5), (7) and (9) insert a further date-tagged version of each of the above provisions. The additions will ensure that the above provisions remain available during a further 20-year 'exception period', 31 March 2018 to 30 March 2038. However, for claims made during the exception period, the claimant will be required to provide compelling evidence of a pre 31 March 2013 injury or disease to have their claim considered. Compelling evidence (of a relevant pre 31 March 2013 injury or disease) is a defined term in the amending regulations and must be reliable, substantial and highly supportive of the claim, having regard to the severity, available treatments and prognosis for the injury or disease in question.

Amending regulation 4(10) inserts, at regulation 4(6) (b) (vii), a new reference to any benefit payable under the new IA referred to above. Regulation 4(6)(b) lists certain mainly DWP related benefits payable in respect of an injury or disease, the amounts of which are taken into account when calculating the amount of the NHS IB required to produce an income of the percentage determined in accordance with the table in paragraph 4(2). A new IA benefit should not be payable at the same time as a benefit under the NHS IB regulations for the same condition, because each benefit is limited to IB conditions arising after or before 31 March 2013, respectively. However, the listing of new IA as a benefit to be taken account of in regulation 4(6) (b) (vii) will prohibit dual payment.

Amending regulation 4(11) inserts, a new paragraph (6A) in regulation 4, to clarify existing policy that, a benefit to which a claimant is entitled and would normally be taken into account

when calculating the amount of NHS IB payable, will not be ignored for that purpose, solely because the claimant decides not to claim it.

Amending regulation 5 – Recovery of Costs

Amending regulation 5 amends paragraph (2) of regulation 4A (recovery of costs). This amendment extends the cross-references in this paragraph to include the new date tagged versions of the provisions described under amending regulation 4.

Amending regulation 6 – Review and adjustment of allowance

Amending regulation 6 inserts the words “or reduction in the amount” to paragraph 13(1) (a), so that the amount of a NHS IB can be reviewed if the amount of a benefit listed in regulation 4(6) (b) reduces. Under the current wording, a NHS IB can only be reviewed if the amount of a regulation 4(6) (b) benefit commences or ceases. The change will allow the making of a corresponding increase in the amount of NHS IB payable, where a regulation 4(6) (b) benefit reduces but does not cease.

Amending regulations 7 and 8 – Claims for benefits and Claims: Additional matters

Amending regulations 7 and 8 revise the existing ‘Claims for benefit’ regulation 18A and insert a new ‘Claims: Additional matters’ regulation 18B. This expansion clarifies the existing general administrative rules for NHS IB claims, e.g. submission of medical evidence, and confirms the end-date for coverage under NHS IB regulations in respect of injuries or diseases arising on or before 30 March 2013.

Amending regulation 9 – notification requirements

Amending regulation 9(1) inserts a new regulation to prescribe timescales for information required by the Scottish Ministers in relation to a claim. Amending regulation 9(2) allows that where the timescales are not the Scottish Ministers have the right to withhold benefits until payments due to the ministers in respect of compensation are repaid.

Amending regulation 10- Option to persons detrimentally affected by these regulations.

Amending regulation 10 allows for a person who is in receipt of benefits under these regulations or who has a prospective right under these regulations, and who has been detrimentally affected to write to the Scottish Ministers within 6 months of the regulations coming into effect to elect that they do not apply to him.

Amending regulation 11 – Consequential Revocation

Amending regulation 11 makes a consequential revocation to SSI 2008/92 by omitting regulation 3(5).

CONSULTATION RESPONSE FORM: The National Health Service (Scotland) (Injury Benefits) Amendment Regulations 2013

1. Name/Organisation

Organisation Name

Title

Surname

Forename

2. Postal Address

Postcode

Phone

Email

3. Permissions - I am responding as... (please complete either sections (a), (b) and (d) or sections (c) and (d):

Individual or **Group/Organisation**

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please state yes or no: _____

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please state yes to one of the following:

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please state yes or no:

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please state yes or no:



ABOUT YOU

I am responding ...

- as a scheme member
- on behalf of an Employer Organisation
- on behalf of a Trade Union/Staff Association
- other (please specify)

What is your gender?

- I am female
- I am male

I am employed as...

- an administrator
- a dentist
- a doctor
- a general Practitioner
- a junior doctor
- a manager
- a nurse
- I'm retired
- other (please specify)

What is your working pattern?

- I work part-time
- I work full- time
- Not applicable

Please provide your comments in the space below:

Please post your response to:

NHS Injury Benefit Consultation
SPPA Policy
7 Tweedside Park
Tweedbank
Galashiels
TD1 3TE

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