

**REPORT TO THE SCOTTISH PARLIAMENT IN RESPECT OF CHANGES TO  
THE NATIONAL HEALTH SERVICE PENSION SCHEME (SCOTLAND)**

**Laid before The Scottish Parliament**

**by The Scottish Ministers**

**under section 22 of The Public Service Pensions Act 2013**

**2022**

**SG/2022/70**

# REPORT TO THE SCOTTISH PARLIAMENT IN RESPECT OF CHANGES TO THE NATIONAL HEALTH SERVICE PENSION SCHEME (SCOTLAND)

## Introduction

1. The Scottish Ministers propose to make regulations under section 1 of the Public Service Pensions Act 2013 (“the Act”) so as to amend the National Health Service Pension Scheme (Scotland) Regulations 2015 (S.S.I. 2015/94) (“the 2015 Regulations”). As discussed below, the proposed regulations will include provisions which change members’ contribution rates under the scheme set out in the 2015 Regulations. In terms of section 22 of the Act, the Scottish Ministers are required to provide a report to the Parliament where they propose to make regulations changing (prior to 31<sup>st</sup> March 2040) a protected element of the scheme. Section 22(5) of the Act lists members’ contribution rates as one of the “protected elements”.

## Policy intent

2. The 2015 Regulations require that members of the NHS Pension Scheme (Scotland) pay contributions to the Scheme as a condition of membership. There is provision to the following effect within both regulations 30 (members’ contributions: employees) and 31 (members’ contributions: practitioners and non-GP providers)—

“The Scottish Ministers must—

- (a) with the consent of the Treasury; and
- (b) having considered the advice of the scheme actuary,

determine the pensionable earnings bands and contribution percentage rates in respect of each subsequent scheme year.”

3. The proposed amending instrument (“The National Health Service Superannuation and Pension Schemes (Miscellaneous Amendments) (Scotland) Regulations 2022”) will make changes to the salary/earnings bands of the employee contribution tables in regulations 30 and 31 from 1 April 2022. It was agreed during scheme reform discussions with both scheme employer and scheme member representatives that, although member contribution rates would not change, the pay/earnings bands in each tier would increase each year in line with national NHS pay awards in Scotland. The aim is to ensure that the tiering of pay bands remains in line with annual increases in members’ pay and, thereby, to avoid individual scheme members being moved into a higher contribution rate banding as a result of the national NHS pay awards in Scotland. There would otherwise be some circumstances where some scheme members’ pay had increased as a result of the nationally agreed pay award, but where their take home pay (income from pay after all appropriate deductions) had decreased.

4. The proposed regulations will therefore insert into the 2015 Regulations revised employee contribution tables to reflect the NHS pay uplift from 1 April 2021. The revised tables will be applicable from 1 April 2022.

## **Consultation**

5. As noted in paragraph 3 above, the proposals were agreed in partnership with all relevant parties having been consulted. However, it is noted that the structure to apply for member contributions has been subject to discussion amongst Scottish Ministers, the Scheme Advisory Board and HM Treasury. The SPPA published a consultation on 24 January 2022 which sought views on the reform of the member contribution structure from 1 April 2022 and proposed the following changes to the structure:

- Change members' contribution rates so that they would be based on actual pensionable pay instead of members' notional whole-time equivalent pay
- Rebalance contribution rates by reducing the highest contribution tiers and narrowing the range of contribution rates.
- Change to the approach of increasing tier boundaries in line with annual AfC pay awards
- Phase in the member contribution structure over 2 years

6. The consultation closed on 27 February 2022 and SPPA published an interim consultation response on 3 March 2022. The interim response confirmed that the introduction of the reforms would be postponed from 1 April 2022 until 1 October 2022. This delay reflects the immediate pressures on the take-home pay of NHS staff from 1 April 2022 and the impact of increases in National Insurance Contributions from the same date.

7. Notwithstanding the uncertainty from ongoing discussions, the proposal to increase pay bands each year in line with pay uplifts was endorsed by HM Treasury during their initial consideration of the 2015 Regulations. Those Regulations required the consent of HM Treasury under section 3(5) of the Act, as do the proposed amending regulations.

8. A full consultation on the proposed Regulations has been carried out. Scheme Regulations generally require consultation in terms of section 21 of the Act. Since, however, the requirement under section 21 is superseded by the requirements of section 22 in a case falling within that latter section, the consultation requirements under section 22 have now been drawn specifically to the attention of statutory consultees. Whilst section 22(2)(a) refers to consultation "with a view to reaching agreement with" such consultees, the proposed regulations are already the subject of appropriate agreement.

## **Related matters**

9. Currently the NHS Pension arrangement in Scotland comprises of three strands. The 1995 Section (set out in the NHS Superannuation Scheme (Scotland) Regulations 2011), the 2008 Section (set out in the NHS Superannuation Scheme (2008 Section) (Scotland) Regulations 2013) which comprise the legacy scheme and the reformed 2015 Scheme (set out in the 2015 Regulations). The 2015 Regulations were made under the Act, whilst the 1995 section and 2008 section scheme regulations were made under the Superannuation Act 1972.

10. Since 1 April 2015, all new members have joined the 2015 Scheme, however there were some transitional protections allowed for those who were in the scheme and within 10 years of their scheme retirement age as at 1 April 2012. These members did not have to move to the 2015 scheme terms and others who were between 10 and 13 years of their Normal Pension Age in the scheme as at 1 April 2012 received limited protection whereby they could move to the 2015 scheme terms at a later date.

11. The transitional protections were based on a member’s age and were subject to challenge in the Judiciary (“McCloud”) and Firefighters’ (“Sargeant”) schemes on the grounds of age discrimination. In 2018, the Court of Appeal found that these protections discriminated against younger scheme members. The government is therefore removing this discrimination for the period between 1 April 2015 and 31 March 2022. This is known as the ‘McCloud remedy’.

12. The McCloud remedy is made up of two parts. The first part will ensure equal treatment going forward by closing the 1995 and 2008 Sections of the Scheme to all members on 31 March 2022. All active members of the NHS Pension Scheme will be in the 2015 Scheme from 1 April 2022

13. To address the inequality that has already occurred, the second part of the remedy involves providing affected staff with a choice between their legacy pension scheme or their reformed pension scheme for the period between 2015 and 2022.

### **Impact**

14. As noted in paragraph 3 (above), the Scottish Ministers consider that the effect of not implementing these changes would mean that some active scheme members (members’ currently making contributions to the scheme) would pay higher employee contributions on getting an annual pay rise. The active membership of the NHS pension arrangements in Scotland is currently around 175,000 (currently approximately 80% of the membership falls under the 2015 scheme regulations).

15. The table below provides an estimate of the number of active members in the NHS pension arrangements who would be negatively affected if this change is not introduced as intended, together with the estimated average loss to those members. That information is based on the membership data produced for the 2016 actuarial valuation of the NHS scheme, from which it is not possible to identify only those whose members contributions are made under the Act. Consequently, the estimates are for both sets of members.

**Table: Estimated impact on scheme members if regulations are not amended**

<b>Financial Year</b>	<b>Number of Members Worse off</b>	<b>Average Annual Loss</b>
2022/23	20,400	£330

### **Conclusion**

16. The Parliament is invited to note the reasons for amending the pay bands in respect of member contributions to the NHS pension arrangements and that a related Scottish Statutory Instrument under the negative procedure will be laid in Parliament shortly.

**Scottish Public Pensions Agency**

25 March 2022

**REPORT TO THE SCOTTISH PARLIAMENT ON  
ORDERS REGULATING THE MANAGEMENT OF  
SHELLFISHERIES UNDER THE SEA FISHERIES  
(SHELLFISH) ACT 1967**

**SEA FISHERIES (SHELLFISH) ACT 1967  
REPORT TO THE SCOTTISH PARLIAMENT  
YEAR ENDING: 31 DECEMBER 2020**

Laid before the Scottish Parliament by the Scottish Ministers under Section 6 of the Sea Fisheries (Shellfish) Act 1967

28 February

2022

SG/2022/17

## **Sea Fisheries (Shellfish) Act 1967**

### **Report to the Scottish Parliament**

In pursuance of Section 6 of the Sea Fisheries (Shellfish) Act 1967, the Minister for Rural Economy and Tourism makes the following report in respect of the applications to and proceedings of, the Cabinet Secretary under the provisions of the Act during the year ended 31 December 2020.

#### **Applications Received in 2020**

<u>Application</u>	<u>Applicant</u>	<u>Location</u>
None		

#### **Applications Carried Over from 2019, and under Consideration in 2020**

<u>Application</u>	<u>Applicant</u>	<u>Location</u>
None		

#### **Applications Refused in 2020**

<u>Application</u>	<u>Applicant</u>	<u>Location</u>
None		

#### **Applications Withdrawn in 2020**

<u>Application</u>	<u>Applicant</u>	<u>Location</u>
None		

#### **Public Inquiries Held in 2020**

<u>Application</u>	<u>Applicant</u>	<u>Location</u>
None		

**Shellfish Orders Made in 2020**

<u>Order</u>	<u>Grantee</u>	<u>Location</u>
None		

**Shellfish Orders Revoked in 2020**

<u>Order</u>	<u>Grantee</u>	<u>Location</u>
None		

**Shellfish Orders Expired in 2020**

<u>Order</u>	<u>Grantee</u>	<u>Location</u>
None		

**Marine Scotland  
February  
2022**

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REPORT TO THE SCOTTISH PARLIAMENT  
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<u>Application</u>	<u>Applicant</u>	<u>Location</u>
None		

#### **Applications Carried Over from 2022, and under Consideration in 2023**

<u>Application</u>	<u>Applicant</u>	<u>Location</u>
None		

#### **Applications Refused in 2023**

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**Marine Scotland  
NOVEMBER  
2023**