

Transitional protection arrangements – guidance on the application of the sunset and exception clauses

NHS Injury Benefits Scheme
– changes from 31 March 2013

Background

- 1** NHS Employers and Trade Unions have completed a partnership review of NHS Injury Benefit provisions under delegation from the Department of Health and the Scottish Government. The review partners have agreed recommendations for change through the NHS Staff Council, and Ministers have accepted these recommendations for implementation from 31 March 2013. These changes bring about the closure of the NHS Injury Benefit Scheme in respect of injuries or diseases occurring on or after 31 March 2013, introduce transitional arrangements in respect of injuries or diseases occurring before that date and launch of a new Injury Allowance as part of NHS Staff Terms and Conditions of Service.
- 2** Eligible staff will have a contractual right to the new Injury Allowance where they are covered by the NHS Terms and Conditions of Service handbook. For staff that have a contractual right to Injury Allowance but are not covered by the NHS Terms and Conditions of Service Handbook or are no longer working for an NHS employer, the provisions will apply as specified in individuals' contracts of employment and should be read alongside the relevant contractual documents. The responsibility for ensuring eligible staff, not covered by the NHS Terms and Conditions of Service Handbook, have access to the Injury Allowance provisions lies with the employer and or the recognised national collective bargaining forums.

Summary of changes from 31 March 2013

3 Temporary Injury Allowance

Temporary Injury Allowance payable under the NHS Injury Benefit Scheme will no longer be available to people who sustain an injury or contract a disease due to NHS employment on or after 31 March 2013.

From 31 March 2013, Temporary Injury Allowance will be replaced by a new allowance known as Injury Allowance and will form part of NHS Staff Terms and Conditions of Service - Section 22 of the NHS Terms and Conditions of Service handbook and supporting guidance refers.

4 Injury Allowance

The Injury Allowance covers employees who sustain an injury or contract a disease or other health condition due to NHS employment on or after 31 March 2013.

Employers are responsible for the administration of the Injury Allowance.

Any dispute about entitlement to the Injury Allowance falls to be considered under employer's local grievance procedures.

5 Permanent Injury Benefits

Permanent Injury Benefit under the NHS Injury Benefit Scheme will no longer be available to people who sustain an injury or contract a disease due to NHS employment on or after 31 March 2013.

Injuries or diseases arising on or before 30 March 2013

- 6** Access to the NHS Injury Benefit Scheme will continue to be available under amended National Health Service (Injury Benefit) Regulations sunset (the 'sunset clause') and exception (the 'exception clause') arrangements until 30 March 2038 for people who suffer a relevant injury or disease on or before 30 March 2013.

The Sunset Clause

- 7** The sunset clause covers the period from 31 March 2013 to 30 March 2018.
- 8** During this period eligible employees will be able to apply for Temporary Injury Allowance and/or Permanent Injury Benefit for injuries or diseases occurring on or before 30 March 2013.
- 9** The application and decision making processes for Temporary Injury Allowance and Permanent Injury Benefit remain unchanged. NHS employing organisations are responsible for considering claims for Temporary Injury Allowance and for the calculation and payment of the allowance where appropriate.
- 10** NHSBSA Pensions will continue to consider disputes about entitlement to TIA under its Internal Dispute Resolution procedures.
- 11** Applications for Permanent Injury Benefit will still be dealt with by NHSBSA Pensions. Applications should continue to be made on Form AW13 and sent to NHSBSA Pensions for action. Form AW13 is available for download from the NHSBSA Pensions website at www.nhsbsa.nhs.uk/Injury.
- 12** NHSBSA Pensions will continue to consider disputes about entitlement to Permanent Injury Benefits under its Internal Dispute Resolution procedures.

The Exception Clause

- 13** The exception clause has been introduced to cover the period from 31 March 2018 until 30 March 2038. During this period access to scheme benefits will only be available to those who can prove that there has been a delayed onset of their symptoms such that a benefit claim was not previously necessary.

- 14 During this period the application and decision making processes for Temporary Injury Allowance and Permanent Injury Benefit remain broadly the same, subject to the additional requirement that the burden of proof will rest with the individual to prove causation and that the injury occurred on or before 30 March 2013.
- 15 NHS employing organisations will continue to be responsible for considering claims for Temporary Injury Allowance and applications for Permanent Injury Benefit will continue to fall to NHSBSA Pensions for determination.
- 16 Additionally, there is a full disclosure requirement for all available evidence in support of any applications or appeals made by individuals under the protection arrangements. This means that all parties can have full access to all the relevant information as part of any appeal process.

Death/dependants benefits

- 17 Death benefits remain available for people who die as a result of sustaining an injury or contracting a disease before 31 March 2013.

People in receipt of NHS Injury Benefits on or before 30 March 2013.

- 18 People who are in receipt of Temporary Injury Allowance or Permanent Injury Benefits on or before 30 March 2013 will not be affected by the changes from 31 March 2013.
- 19 The existing provisions for benefit and deterioration reviews under regulation 13 and damages recovery under regulation 17 of the NHS Injury Benefit Regulations 1995 remain in force. Full details are available from www.nhsbsa.nhs.uk/Injury

People who have applied for NHS Injury Benefits on or before 30 March 2013

- 20 People who have applied for Temporary Injury Allowance or Permanent Injury Benefits in respect of an injury sustained or a disease contracted on or before 30 March 2013 but where the outcome has not been determined at that date will not be affected by the changes from 31 March 2013.

People who have had an application for NHS Injury Benefits rejected on or before 30 March 2013

- 21 People whose application for Temporary Injury Allowance or Permanent Injury Benefits has been rejected on or before 30 March 2013 in respect of an injury sustained or disease contracted on or before that date will not be affected by the changes from 2013. The two stage Internal Dispute Resolution procedures operated by NHSBSA Pensions remain available to applicants who wish to challenge (appeal) the outcome of their claim for Temporary Injury Allowance or Permanent Injury Benefit.

Who decides if an employee is entitled to TIA?

- 22** Employers have delegated authority to make decisions on entitlement to TIA. If an employee disagrees with the decision or believes that a decision may be flawed because it has not been considered in accordance with the NHS Injury Benefit Regulations, they can ask NHSBSA Pensions to consider their dispute (appeal) under the provisions of the Internal Dispute Resolution (IDR) procedures. The employer's decision letter will include more information for the employee on how to go about appealing if they wish.
- 23** Entitlement to TIA is decided by the claimant's NHS employer. However, where employers require assistance or advice in order to reach a decision, they can approach the NHSBSA Pensions for help.

NHS Injury Benefit Forms and Guidance are available from www.nhsbsa.nhs.uk/Injury