

2006 No. 600

**NATIONAL HEALTH SERVICE, ENGLAND AND
WALES**

**The National Health Service (Pension Scheme, Injury Benefits
and Additional Voluntary Contributions) Amendment
Regulations 2006**

Made - - - - - *7th March 2006*

Laid before Parliament *10th March 2006*

Coming into force in accordance with regulation 1(2)

The Secretary of State for Health, with the consent of the Treasury(a), makes the following Regulations in exercise of the powers conferred by sections 10(1) and (2) and 12(1), (2) and (3) of, and Schedule 3 to, the Superannuation Act 1972(b).

In accordance with section 10(4) of that Act, she has consulted with representatives of persons likely to be affected by these Regulations, as appeared to her to be appropriate(c).

Citation, commencement, effect and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Pension Scheme, Injury Benefits and Additional Voluntary Contributions) Amendment Regulations 2006.

(2) These Regulations shall come into force—

- (a) for the purposes of regulations 1, 2 (except the definitions of “lump sum rule”, “lump sum death benefit rule”, “normal minimum pension age”, “occupational pension scheme”, “personal pension scheme” and “protected pension age”), 3, 6 (except paragraph (2)), 7 (except paragraph (2)), 16, 17, 20, 21, 23, 24 and 25 on 1st April 2006;
- (b) for all other purposes, on 6th April 2006, but
- (c) regulation 21(4) shall have effect as from 1st April 2004 in so far as it relates to a type 1 medical practitioner or a non-GP provider.

(3) In these Regulations—

“the Additional Voluntary Contributions Regulations” means the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000(d);

(a) See section 10(1) of the Superannuation Act 1972 (c.11) and article 2 of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I.1981/1670).

(b) Section 10(1) was amended by sections 57 and 58 of, and Schedule 5 to, the National Health Service Reorganisation Act 1973 (c.32) and section 4(2) of the Pensions (Miscellaneous Provisions) Act 1990 (c.7); section 12(2) was amended by section 10(1) of the Pensions (Miscellaneous Provisions) Act 1990.

(c) See section 10(4) of the Superannuation Act 1972.

(d) S.I.2000/619.

“the Injury Benefits Regulations” means the National Health Service (Injury Benefits) Regulations 1995(a); and

“the Pension Scheme Regulations” means the National Health Service Pension Scheme Regulations 1995(b).

Amendment of regulation A2 of the Pension Scheme Regulations

2.—(1) Regulation A2 of the Pension Scheme Regulations (interpretation) is amended in accordance with this regulation.

(2) Omit the definitions of “assistant practitioner”, “dental hygienist”, “dental list”, “dental pilot scheme employee”, “dental therapist”, “personal dental services”, “pilot scheme”, “piloted services”, “principal practitioner” and “registered dentist”.

(3) Insert each of the following definitions at the appropriate place in the alphabetical order—

“the 2004 Act” means the Finance Act 2004(c);

“dental performers list” means a list of dental practitioners prepared in accordance with regulations made under section 28X of the 1977 Act(d) (persons performing primary medical and dental services);

“dentist performer” means a dental practitioner whose name is included in a dental performers list and who performs primary dental services under—

(a) a GDS contract;

(b) a PDS agreement to which a PDS contractor is a party; or

(c) a contract for services with a Primary Care Trust or a Local Health Board which relates to arrangements under which it provides primary dental services under—

(i) section 16CA(2) of the 1977 Act (primary dental services), or

(ii) a PDS agreement to which a PDS contractor is not a party,

except that a vocational trainee who is undertaking vocational training and is in the first two months of that training need not have his name included in a dental performers list in order to be a dentist performer;

“GDS contract” means a general dental services contract under section 28K of the 1977 Act(e) (general dental services contracts: introductory);

“GDS contractor” means a person who is a party to a GDS contract, other than a Primary Care Trust or a Local Health Board;

“lump sum rule” has the meaning given in section 166 of the 2004 Act;

“lump sum death benefit rule” has the meaning given in section 168 of the 2004 Act;

“normal minimum pension age” has the meaning given in section 279 of the 2004 Act;

“PDS agreement” means section 28C arrangements under which primary dental services are provided;

“PDS contractor” means a person who is a party to a PDS agreement who is neither a Primary Care Trust, nor a Strategic Health Authority, nor a Local Health Board;

“protected pension age” means the pension age provided for in Part 3 of Schedule 36 to the 2004 Act for the purposes of that Part (which deals with pre-commencement benefit rights and the right to take benefit before normal minimum pension age) where the conditions specified in that Part are satisfied;

(a) S.I.1995/866.

(b) S.I.1995/300.

(c) 2004 c.12.

(d) Section 28X was inserted by section 179(1) of the Health and Social Care (Community Health and Standards) Act 2003 (c.43).

(e) Section 28K was inserted by section 172(1) of the Health and Social Care (Community Health and Standards) Act 2003.

“type 1 dental practitioner” means a dentist performer who is not a type 2 dental practitioner;

“type 1 medical practitioner” means a GP provider who is not a type 2 medical practitioner;

“type 1 practitioner” means a type 1 dental practitioner or a type 1 medical practitioner;

“type 2 dental practitioner” means—

- (a) a vocational trainee who is employed by a GDS or PDS contractor; or
- (b) a dentist performer with a contract for services with a Primary Care Trust or Local Health Board which relates to arrangements under which the Trust or Board provides primary dental services under—

- (i) section 16CA(2) of the 1977 Act (primary dental services), or

- (ii) a PDS agreement to which a PDS contractor is not a party;

“type 2 medical practitioner” means a GP performer who—

- (a) is not a GP provider, and—

- (i) is employed (whether under a contract of service or for services) by a GMS practice, a PMS practice, an APMS contractor, an OOH provider, a Primary Care Trust or a Local Health Board, and

- (ii) in that employment is engaged wholly or mainly in assisting his employer in the discharge of the employer’s duties as a GMS practice, a PMS practice, an APMS contractor, an OOH provider, a Primary Care Trust or a Local Health Board; or

- (b) is participating in a Doctors’ Retainer Scheme;

“type 2 practitioner” means a type 2 dental practitioner or a type 2 medical practitioner; and

“vocational trainee” means a dentist performer who is employed as a vocational trainee as a consequence of a placement arrangement made by a local postgraduate dental dean or a director of postgraduate dental education;”.

(4) In—

- (a) paragraph (c) of the definition of “GP performer”, for “by it to provide” substitute “under which it provides primary medical”;
- (b) paragraph (b) of the definition of “host Trust or Board”, before “practitioner” insert “registered medical”;
- (c) the definition of “PMS agreement”, for “the 1977 Act” substitute “which primary medical services are provided”;
- (d) the definition of “practice staff”, for “an assistant practitioner, a principal practitioner, a trainee practitioners,” substitute “a registered medical practitioner, a trainee practitioner”;
- (e) the definition of “practitioner”, for sub-paragraph (b) substitute the following—
 - “(b) a dentist performer;”.

(5) For the definition of “NHS dental employee”, “occupational pension scheme” and “personal pension scheme” respectively, substitute—

““NHS dental employee” means an individual who is not a practitioner and who, in connection with the provision of dental health services in the health service, is employed under a contract of service by—

- (a) a Strategic Health Authority;
- (b) a National Health Service trust;
- (c) a NHS foundation trust;
- (d) a Primary Care Trust; or
- (e) a Local Health Board;

“occupational pension scheme” means an occupational pension scheme within the meaning of section 1 of the Pension Schemes Act 1993 which—

- (a) in the case of such a scheme established on, or after, the 6th April 2006 is a registered pension scheme for the purposes of the 2004 Act and which the Secretary of State agrees to recognise as a transferring scheme for the purposes of regulations M and N;
- (b) in the case of such a scheme established before that date, was—
 - (i) approved by the Commissioners for Her Majesty’s Revenue and Customs^(a) for the purposes of Chapter I of Part XIV of the Income and Corporation Taxes Act 1988 (retirement benefits schemes) or whose application for approval under that Chapter was under consideration,
 - (ii) a statutory scheme as defined in section 612(1) of the Income and Corporation Taxes Act 1988 (interpretation), or
 - (iii) a scheme to which section 608 of the Income and Corporation Taxes Act 1988 applied (superannuation funds approved before 6th April 1980),and on 6th April 2006 became a registered pension scheme for the purposes of the 2004 Act.

“personal pension scheme” means a personal pension scheme which—

- (a) in the case of such a scheme established on, or after, 6th April 2006 is a registered pension scheme for the purposes of the 2004 Act and which the Secretary of State agrees to recognise as a transferring scheme for the purposes of regulations M and N;
- (b) in the case of a scheme established before that date, was—
 - (i) approved by the Commissioners for Her Majesty’s Revenue and Customs for the purposes of Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988 (personal pension schemes), and
 - (ii) on the 6th April 2006 became a registered pension scheme for the purpose of the 2004 Act;”.

Amendment of regulation B2 of the Pension Scheme Regulations

3. In regulation B2 of the Pension Scheme Regulations^(b) (restrictions on membership), for paragraphs (e) and (f) substitute—

“(e) a person, other than a practitioner, who is employed by a GDS or PDS contractor.”

Amendment of regulation B5 of the Pension Scheme Regulations

4. In paragraph (4) of regulation B5 of the Pension Scheme Regulations (opting into the scheme: mis-sold pensions) at the end of the definition of “personal pension scheme”, add—

- “(iv) a scheme referred to in (i), (ii) or (iii) that obtained relevant approval under the Income and Corporation Taxes Act 1988 before 6th April 2006 and on that date became a registered scheme for the purpose of the 2004 Act;
- (v) a scheme established on, or after, 6th April 2006 as a registered scheme for the purpose of the 2004 Act and which the Secretary of State agrees to recognise as a transferring scheme for the purposes of regulations M and N.”.

(a) The functions of the Commissioners for Inland Revenue were transferred to the Commissioners for Her Majesty’s Revenue and Customs by section 5 of the Commissioners for Revenue and Customs Act 2005 (c.11).
(b) Paragraphs (e) and (f) were amended by S.I.1998/2216 and 2004/696.

Amendment of regulation E2 of the Pension Scheme Regulations

5.—(1) Regulation E2 of the Pension Scheme Regulations (early retirement pension (ill-health)) is amended in accordance with this regulation.

(2) For paragraph (7), substitute—

“(7) Subject to paragraph (8), where a member becomes entitled to a pension under paragraph (1), the Secretary of State may discharge her liability for that pension by the payment of a lump sum of an amount consistent—

- (a) with the contracting-out and preservation requirements of the 1993 Act; and
- (b) the lump sum rule.”.

(3) For paragraph (10), substitute—

“(10) The amount of the lump sum payable under paragraph (7)—

- (a) will be equal to 5 times the yearly rate of the member’s incapacity pension (calculated in accordance with this regulation); and
- (b) shall be payable in addition to the lump sum on retirement payable under regulation E6 (which shall not be subject to any reduction under regulation E6(3)).”.

Amendment of regulation E3 of the Pension Scheme Regulations

6.—(1) Regulation E3 of the Pension Scheme Regulations (early retirement pension (redundancy etc.)) is amended in accordance with this regulation.

(2) In paragraph (1)(a), for “age 50” substitute “normal minimum pension age or, where relevant, protected pension age”.

(3) Omit paragraph (4).

Amendment of regulation E4 of the Pension Scheme Regulations

7.—(1) Regulation E4 of the Pension Scheme Regulations (early retirement pension (employers consent)) is amended in accordance with this regulation.

(2) In paragraph (1), for “age 50” substitute “normal minimum pension age or, where relevant, protected pension age”.

(3) Omit paragraph (4).

Amendment of regulation E5 of the Pension Scheme Regulations

8. In paragraph (1) of regulation E5 of the Pension Scheme Regulations (early retirement pension (with actuarial reduction)), for “age 50” substitute “normal minimum pension age or, where relevant, protected pension age”.

Amendment of regulation E6 of the Pension Scheme Regulations

9.—(1) Regulation E6 of the Pension Scheme Regulations (lump sum on retirement) is amended in accordance with this regulation.

(2) In paragraph (1), before “Each member”, insert “Subject to paragraph (8),”.

(3) After paragraph (7), add—

“(8) Where a member entitled to a lump sum under this regulation has attained the age of 75—

- (a) he shall cease to be entitled to a lump sum; and
- (b) shall instead be entitled to have his pension increased by such amount as the Secretary of State may, after taking advice from the scheme actuary, determine.”.

Amendment of regulation F2 of the Pension Scheme Regulations

10. After paragraph (2) of regulation F2 of the Pension Scheme Regulations (member dies after pension becomes payable), add—

“(3) A person who retires from pensionable employment on, or after, 6th April 2006 may give notice to the scheme administrator in accordance with paragraph (3A) below that any lump sum payable under this regulation is to be treated as a pension protection lump sum death benefit in accordance with paragraph 14 of Part 2 of Schedule 29 to the 2004 Act.

(4) Such a notice—

- (a) shall be given in writing; and
- (b) may be revoked in writing at any time.

(5) A lump sum paid under this regulation in respect of a member who became entitled to a pension under regulations E1 to E5 or L1 before 6th April 2006, shall be treated as a pension protection lump sum death benefit but regulation T2A (11) shall not apply.”

Amendment of regulation H1 of the Pension Scheme Regulations

11.—(1) Regulation H1 of the Pension Scheme Regulations (dependent child) is amended in accordance with this regulation.

(2) In paragraphs (3)(b), (c) and (d) and (4), after “aged 17 or over” insert “but has not reached the age of 23”.

(3) After paragraph (3)(d), add—

“(e) aged 17 or over but has not reached the age of 23 and is incapable of earning a living because of permanent physical or mental infirmity from which he started to suffer whilst qualifying as a dependent child; but such a person will only be treated as a dependent child for so much of the period commencing with the day on which he attains the age of 17 and ending immediately before the day on which he attains the age of 23, during which he remains incapable of earning a living.”

(4) In paragraph (6), omit “or from which he started to suffer whilst qualifying as a dependent child”.

(5) After paragraph (6), add—

“(7) Where—

- (a) a dependent child became entitled to a child allowance under regulation H2 before 6th April 2006; or
- (b) the dependency of a child born on, or before, 5th April 2007 is to be assessed in respect of a person who became entitled to a pension under regulations E1 to E5 or L1 before 6th April 2006,

paragraphs (3)(b),(c) and (d) and (4) shall be read as if they did not include the words “but has not reached the age of 23”, paragraph (3)(e) shall not apply and paragraph (6) shall be read as if it included the words “or from which he started to suffer whilst qualifying as a dependent child” after the words “member died.”

Amendment of regulation J1 of the Pension Scheme Regulations

12. In paragraph (4) of regulation J1 of the Pension Scheme Regulations (allocation of pension), for “on, or within one month after,” substitute “before”.

Amendment of regulation L1 of the Pension Scheme Regulations

13. In paragraph (3)(d)(ii) of regulation L1 of the Pension Scheme Regulations(a) (preserved pension) for “age 50”, substitute “normal minimum pension age or, where relevant, protected pension age”.

Amendment of regulation L2 of the Pension Scheme Regulations

14. For paragraph (1) of regulation L2 of the Pension Scheme Regulations (refund of contributions), substitute—

“(1) A member who leaves pensionable employment without becoming entitled to a pension under regulations E1 to E5 or a preserved pension under regulation L1 shall be entitled to receive a lump sum refund of his contributions, less tax at—

- (a) 20 per cent (or at such other rate as applies from time to time) in respect of so much of the lump sum as does not exceed £10,800 (or such other amount as applies from time to time); and
- (b) 40 per cent (or at such other rate as applies from time to time) in respect of so much (if any) of it as exceeds that limit.”.

Amendment of regulation N1 of the Pension Scheme Regulations

15. For paragraph (1) of regulation N1 of the Pension Scheme Regulations (member’s right to transfer accrued rights to benefits to the scheme), substitute—

“(1) Within 12 months after joining the scheme, a member in pensionable employment may, in writing, request the Secretary of State to accept a transfer payment in respect of the member’s rights under another occupational pension scheme, a personal pension scheme, or a buy-out policy but not in respect of rights under a free-standing AVC scheme—

- (a) established on, or after, the 6th April 2006 as a registered free-standing AVC scheme for the purposes of the 2004 Act; or
- (b) which on 6th April 2006 became a registered free-standing AVC scheme for the purposes of that Act and which immediately before that date was approved by the Commissioners for Her Majesty’s Revenue and Customs by virtue of section 591(2)(h) of the Income and Corporation Taxes Act 1988 (free-standing AVC schemes).”.

Amendment of regulation R1 of the Pension Scheme Regulations

16. In regulation R1 of the Pension Scheme Regulations(b) (practitioners and trainee practitioners), for “Health Authority”, at both places where it occurs, substitute “Local Health Board”.

Revocation of regulation R11 of the Pension Scheme Regulations

17. Omit regulation R11 of the Pension Scheme Regulations (participators in pilot schemes).

New regulation T2A of the Pension Scheme Regulations

18. After regulation T2 of the Pension Scheme Regulations (deduction of tax), insert—

(a) Sub-paragraph (d) was inserted by S.I.2000/605.
(b) The relevant amending instruments are S.I.2000/605 and 2002/2469.

“Deduction of tax: further provisions

T2A—(1) For the purposes of these Regulations and the 2004 Act, the scheme administrator shall be the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG)(a).

(2) Where a person’s entitlement to a benefit under these Regulations—

(a) constitutes a benefit crystallisation event in accordance with section 216 of the 2004 Act; and

(b) a lifetime allowance charge under that Act is payable in respect of that event, that charge shall be paid by the scheme administrator.

(3) Where a person’s entitlement to a benefit under these Regulations constitutes a relevant benefit accrual he may, at the time he applies for the benefit, notify the scheme administrator in writing that he wishes to waive his right to that part of it that exceeds the appropriate limit.

(4) Where the scheme administrator receives a notification referred to in paragraph (3), he shall issue the person with a “waiver form” to be completed by him and returned to the scheme administrator and which shall, upon receipt by the scheme administrator, be irrevocable.

(5) A valid waiver shall have the effect of reducing the value of benefits payable to, or in respect of, the person below his relevant benefit accrual level as determined in accordance with Schedule 36 of the 2004 Act whether or not the benefit crystallisation event in respect of those benefits occurs before, or after, the receipt of the waiver.

(6) A waiver shall not affect—

(a) a person’s or an employing authority’s liability to pay contributions whether in respect of any period before, or after, the date a person’s waiver is received by the scheme administrator;

(b) the operation of regulations F1, F2, G1 to G12, H1 to H7 and the benefits mentioned in those regulations.

(7) Where a person is entitled to a benefit under these Regulations he shall (whether or not he intends to rely on entitlement to an enhanced lifetime allowance, or to enhanced protection) give to the scheme administrator such information as will enable the scheme administrator to determine—

(a) whether any lifetime allowance is payable in respect of the benefit and, if so,

(b) the amount of that charge.

(8) If a person applying for a benefit under these Regulations intends to rely on entitlement to an enhanced lifetime allowance by virtue of any of the provisions listed in section 256(1) of the 2004 Act (enhanced lifetime allowance regulations), he shall give to the scheme administrator—

(a) the reference number issued by the Commissioners under the Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006(b) in respect of that entitlement;

(b) the information referred to in paragraph (7).

(9) The information referred to in paragraph (7) or, as the case may be, paragraph (8) shall be given to the scheme administrator—

(a) at the time the person makes a claim for a benefit; or

(b) where that information has not been provided at the time of making the claim, within such time as the scheme administrator specifies in writing.

(a) The Authority was established by S.I.2005/2414.

(b) S.I.2006/131.

(10) Where the person fails to provide all, or part of, the information referred to in paragraph (7) or, as the case may be, paragraph (8) within the time limits specified by the scheme administrator where relevant, the scheme administrator may treat the whole of the benefit as a chargeable benefit and pay the charge on that basis.

(11) Subject to regulation F2(4), where—

(a) a member has given notice to the scheme administrator in accordance with regulation F2(1) that a lump sum payable under that regulation is to be treated as a pension protection lump sum death benefit in accordance with paragraph 14 of Schedule 29 to the 2004 Act; and

(b) has not revoked that notice,
the scheme administrator shall deduct tax at 35 per cent (or such other amount as applies from time to time) from the lump sum payable in accordance with section 206 of that Act.

(12) For the purposes of this regulation, “appropriate limit” and “relevant benefit accrual” are to be construed in accordance with Schedule 36 to the 2004 Act.”.

Amendment of regulation T7 of the Pension Scheme Regulations

19.—(1) Regulation T7 of the Pension Scheme Regulations (commutation of trivial pensions) is amended in accordance with this regulation.

(2) For paragraph (3), substitute—

“(3) A pension may be treated as trivial only if all benefits payable under the scheme to the person concerned are of an amount consistent with—

(a) the contracting-out and preservation requirements of the 1993 Act; and

(b) the lump sum rule and lump sum death benefit rule.”.

(3) Omit paragraph (4).

Amendment of regulation U3 of the Pension Scheme Regulations

20. In paragraph (5) of regulation U3 of the Pension Scheme Regulations^(a) (accounts and actuarial reports), for “principal practitioners” substitute “type 1 medical practitioners”.

Amendment of Schedule 2 to the Pension Scheme Regulations

21.—(1) Schedule 2 to the Pension Scheme Regulations^(b) (medical and dental practitioners) is amended in accordance with this regulation.

(2) In paragraph 1 (additional definitions)—

(a) omit the definitions of “assistant practitioner”, “Dental Practice Board” and “principal practitioner”; and

(b) insert the following definition after the definition of “pensionable earnings”—

““pensionable earnings ceiling”, in relation to a GDS contract or a PDS agreement, is to be construed in accordance with paragraph 3(2B);”.

(3) In paragraph 2 (application of the Regulations with modifications), for sub-paragraph (1A) substitute—

“(1A) In sub-paragraph (1), “listing authority”, in relation to a locum practitioner, means the Primary Care Trust or Local Health Board who prepare and publish the medical performers list on which he is included.”.

(a) Paragraph 5 was amended by S.I.2005/661 with retrospective effect from 1st April 2004.

(b) The relevant amending instruments are S.I.1998/666 and 2216, 2000/605, 2002/561 and 2469, 2003/631 and 2322, 2004/665 and 2005/661 and 3074.

(4) In paragraph 3 (meaning of “pensionable earnings”)—

(a) for sub-paragraph (1) substitute—

“(1) In the case of a either a type 1 practitioner or a non-GP provider who is not in receipt of any salary, wages, fees or any other regular payment in respect of his employment by virtue of the application of these Regulations to him as if he were such an officer under regulation R1, “pensionable earnings” means—

- (a) in the case of a type 1 medical practitioner or a non-GP provider, practitioner income less any sum on account of practice expenses (for these purposes, D2(1) contributions payable under paragraph 10(6) or (7) are neither practitioner income nor practice expenses); and
- (b) in the case of a type 1 dental practitioner, practitioner income (taking into account any relevant pensionable earnings ceiling).”;

(b) in sub-paragraph (2)—

- (i) after ““practitioner income” means” insert “as regards type 1 medical practitioners”,
- (ii) in paragraph (a), after “which accrues to the” insert “type 1 medical”,
- (iii) in paragraph (a)(vi), after “in the case of a” insert “type 1 medical”,
- (iv) in paragraph (a)(vii), for “principal practitioner” substitute “type 1 medical practitioner”,
- (v) in paragraph (a)(viii), for “principal practitioner” substitute “type 1 medical practitioner” and for “general dental services,” substitute “primary dental services,”
- (vi) in paragraph (b), before “practitioner is” insert “type 1 medical”, and
- (vii) in paragraph (c), after “in the case of a” insert “type 1 medical”; and

(c) after sub-paragraph (2) insert—

“(2A) Subject to sub-paragraphs (2B), (2D) and (3), for the purposes of this paragraph, “practitioner income” means, as regards a type 1 dental practitioner, income which accrues to the practitioner which is derived from a GDS contract or a PDS agreement, and—

- (a) includes charges collected from patients which are required, by virtue of directions given under sections 28E or 28N of the 1977 Act^(a) (which relate to PDS agreements and payments under GDS contracts), to be set off against payments under the contract or agreement; but
- (b) does not include charges collected from patients which are not required, by virtue of such directions, to be so set off.

(2B) As regards each GDS contract or PDS agreement from which practitioner income is derived, the maximum amount of practitioner income which may be derived from that contract in any financial year is, subject to sub-paragraph (2C), the value of that contract in that financial year—

- (a) less the value of following payments (where payable in that financial year by the Primary Care Trust or Local Health Board that is a party to the contract or agreement)—
 - (i) monthly seniority payments,
 - (ii) maternity leave, paternity leave or adoption leave payments,
 - (iii) sickness leave payments,
 - (iv) reimbursement of the salary of a vocational trainee,

(a) Section 28E was inserted by section 22(1) of the National Health Service (Primary Care) Act 1997 (c.46) as amended by section 4(3) of, and paragraphs 1 and 8(a)-(d) of Schedule 3 to, the National Health Service Reform and Health Care Professions Act 2002 (c.17), section 27(5)(a) of the Health and Social Care Act 2001 (c.15) and S.I.2003/1250, and further amended by sections 177(1), (7)-(11) and 196 of, and Part 4 of Schedule 14 to, the Health and Social Care (Community Health and Standards) Act 2003 and section 65(2) of, and Schedule 5 to, the Health Act 1999 (c.8).

(v) reimbursement of the national insurance contributions of a vocational trainee, and

(vi) reimbursement of non-domestic rates; then

(b) multiplied by a percentage to be determined by the Secretary of State,

which produces the amount referred to in this Schedule as the “pensionable earnings ceiling”.

(2C) Income which accrues to a type 1 dental practitioner which is derived from the following payments under a GDS contract or PDS agreement—

(a) monthly seniority payments;

(b) maternity leave, paternity leave or adoption leave payments; and

(c) sickness leave payments,

are all practitioner income for the purposes of this paragraph (that is, they are pensionable earnings, notwithstanding that they are not included in the calculation of the pensionable earnings ceiling for a particular GDS contract or PDS agreement).

(2D) The following payments under a GDS contract or PDS agreement are not to be considered practitioner income for the purposes of this paragraph—

(a) reimbursement of the salary of a vocational trainee;

(b) reimbursement of the national insurance contributions of a vocational trainee; and

(c) reimbursement of non-domestic rates.

(2E) For the avoidance of doubt, income which accrues to a type 1 dental practitioner while he is engaged as a type 2 practitioner is practitioner income of that type 1 dental practitioner, but unaffected by any pensionable earnings ceiling (although the combined earnings of that practitioner will be subject to the upper limit specified in paragraph 8).”.

(5) In paragraph 4 (calculating pensionable earnings of practitioners in partnership)—

(a) in sub-paragraph (1), after “in the case of” insert “type 1 medical” and for “principal practitioner” substitute “type 1 medical practitioner”; and

(b) in sub-paragraph (2), for “principal practitioners” substitute “type 1 medical practitioners”,

and in the heading of that paragraph before “practitioners” insert “medical”.

(6) In paragraph 5 (elections relating to calculation of “pensionable earnings” in partnerships)—

(a) in sub-paragraph (1), before “practitioners” insert “type 1 medical”;

(b) omit sub-paragraph (2); and

(c) in sub-paragraph (4), for “principal practitioners” substitute “type 1 medical practitioners”,

and in the heading of that paragraph before “partnerships” insert “medical”.

(7) After paragraph 5 insert—

“Distribution of pensionable earnings between type 1 dental practitioners employed or engaged by the same GDS or PDS contractor

5A.—(1) After the end of each financial year, each GDS or PDS contractor must, by a date to be decided by the Secretary of State, send to the employing authority with which he is party to a GDS contract or PDS agreement a notice, in a format approved by the Secretary of State, specifying, in respect of that financial year—

(a) the pensionable earnings ceiling for that contract or agreement; and

(b) the amount of any monthly seniority payments, maternity leave payments, paternity leave payments, adoption leave payments or sickness leave payments paid under that contract or agreement,

and how much of the practitioner income that relates to the contract or agreement each type 1 dental practitioner that performed services under that contract or agreement is to be treated as having earned during that financial year (and those who are partners in, or directors of, the contractor must be identified as such).

(2) An employing authority may, in exceptional circumstances, and with the agreement of the Secretary of State, extend the date decided by the Secretary of State in accordance with paragraph (1) by which notices are to be submitted.

(3) The notice from the GDS or PDS contractor is invalid if—

- (a) it contains information that is inaccurate or misleading in a material particular;
- (b) it is not received by the due date (although the employing authority may accept replacement notices in appropriate circumstances); or
- (c) the total of the amounts specified in the notice in respect of each type 1 dental practitioner that performed services under that contract or agreement is greater than the total of the amounts referred to in sub-paragraph (1)(a) and (b).

(4) Where an employing authority has received a valid notice under this paragraph, the amounts notified to it in respect of each type 1 dental practitioner mentioned in the notice are, for the financial year to which the notice relates, the pensionable earnings for that practitioner under the contract or agreement to which the notice relates.

(5) But the employing authority may revise the amounts notified to it in appropriate circumstances (such as where it receives a valid replacement notice signed by all the type 1 dental practitioners who performed services under the contract or agreement).

(6) If an employing authority does not receive a valid notice under this paragraph from a GDS or PDS contractor with which it is party to a GDS contract or PDS agreement, the pensionable earnings of each type 1 dental practitioner under that contract or agreement for the financial year in respect of which the valid notice was required but not received are to be an equal share of the maximum amount of practitioner income that could be derived from that contract or agreement in that financial year (that is, the total of the amounts referred to in sub-paragraph (1)(a) and (b)), less the difference between—

- (a) that maximum amount; and
- (b) the total of monthly amounts in respect of which estimated D1 contributions were paid on account during the financial year to which the earnings relate,

but if the total mentioned in paragraph (b) is greater than the maximum amount referred to in paragraph (a), then no amount is to be deducted pursuant to this paragraph.”.

(8) In paragraph 6—

(a) in sub-paragraph (1), for “assistant practitioner” substitute “type 2 medical practitioner”; and

(b) for sub-paragraph (2), substitute—

“(2) In the case of a type 2 dental practitioner, “pensionable earnings” means all salary, wages, fees and other regular payments paid to the practitioner—

- (a) in the case of a vocational trainee, under his contract of employment with a GDS or PDS contractor; or
- (b) in all other cases, by an employing authority in respect of the performance of primary dental services,

but does not include bonuses or payments made to cover expenses or for overtime.”.

(9) In paragraph 9 (officer service treated as practitioner service)—

(a) in sub-paragraph (1), before “principal practitioner” at both places where it occurs, insert “type 1 practitioner,”;

(b) in sub-paragraph (3)—

- (i) after paragraph (a) insert—

- “(aa) the member is a type 1 dental practitioner who is employed by a GDS or PDS contractor but who is neither a partner in, nor a director of, the contractor; or”, and
 - (ii) in paragraph (b), after “principal practitioner” insert “or type 1 practitioner”;
 - (c) in sub-paragraph (5A)(a), before “principal practitioner” insert “type 1 practitioner or a”;
 - (d) after sub-paragraph (5A), insert—
 - “(5AA) But sub-paragraph (5A) does not apply to a member who is type 1 dental practitioner who is employed by a GDS or PDS contractor but who is neither a partner in, nor a director of, the contractor.”;
 - (e) in sub-paragraph (8), before “principal practitioner” insert “type 1 practitioner (other than a type 1 dental practitioner who is employed or engaged by a GDS or PDS contractor but who is neither a partner in, nor director of, the contractor),”; and
 - (f) after sub-paragraph (11), add—
 - “(12) For the purposes of this paragraph “principal practitioner” and “practitioner providing piloted services” have, in respect of a person’s service prior to 1st April 2006, the meaning that they had under these Regulations as at the date that service was provided.”.
- (10) In paragraph 10 (contributions to the scheme)—
- (a) for sub-paragraph (4), substitute—
 - “(4) Save where sub-paragraph (5) applies, type 1 medical practitioners and non-GP providers shall pay D1 contributions to the host Trust or Board.
 - (4A) Type 1 dental practitioners shall pay D1 contributions in respect of pensionable earnings that relate to a particular GDS contract or PDS agreement to the employing authority that is a party to that GDS contract or PDS agreement, and that employing authority is liable to pay the D2(1) contributions that are payable in respect of those pensionable earnings.”.
 - (b) in sub-paragraphs (5), (6) and (7), for “principal practitioner” substitute “type 1 medical practitioner”;
 - (c) in sub-paragraph (9), for “assistant practitioner” substitute “type 2 practitioner” and before “where it is not” insert “in the case of a type 2 medical practitioner,”;
 - (d) in sub-paragraph (10), before “where paragraph (9)” insert “in the case of a type 2 medical practitioner,”;
 - (e) after sub-paragraph (10), insert—
 - “(10A) As regards a type 2 dental practitioner who—
 - (a) is a vocational trainee—
 - (i) the GDS or PDS contractor who employs him shall deduct D1 contributions from any pensionable earnings the contractor pays to him and shall pay those contributions to the employing authority that is a party to the contractor’s GDS contract or PDS agreement, and
 - (ii) that employing authority is liable to pay the D2(1) contributions that are payable in respect of those pensionable earnings; or
 - (b) is not a vocational trainee, the employing authority with which he has a contract for services from which his pensionable earnings are derived is liable to pay the D2(1) contributions that are payable in respect of those pensionable earnings.”;
 - (f) after sub-paragraph (13), insert—
 - “(13A) D1 contributions that are required to be paid to an employing authority by or in respect of a type 1 or type 2 dental practitioner in accordance with this paragraph shall be paid to that employing authority not later than—
 - (a) the 7th day of the month following the month to which the earnings relate; or
 - (b) if the contributions are in respect of earnings derived from a PDS agreement and the monthly payment date in respect of that agreement is not the first working day

of the month following the month to which the earnings relate, the 7th day after the date on which the earnings to which those contributions relate were paid.

(13B) It shall be a function of an employing authority—

- (a) to which D1 contributions are paid in respect of a type 1 or type 2 dental practitioner in accordance with this paragraph;
- (b) which is liable to pay D2(1) contributions in respect of any type 1 or type 2 dental practitioner,

to forward or pay those contributions to the Secretary of State not later than the 12th day after the date on which, by virtue of sub-paragraph (13A), it is due to receive the D1 contributions or, in the case of D2(1) contributions, the related D1 contributions.”;

(g) in sub-paragraph (15)—

- (i) before “an employing authority” insert “, as regards a type 1 or type 2 medical practitioner,” and
- (ii) in paragraph (b)(ii), for “principal practitioner” substitute “type 1 medical practitioner”;

(h) in sub-paragraph (16), for “principal practitioner” substitute “type 1 medical practitioner”; and

(i) in sub-paragraph (17), for “a principal practitioner, assistant practitioner,” substitute “a type 1 practitioner, type 2 practitioner.”

(11) In paragraph 23(a) (accounts and actuarial reports)—

- (a) in sub-paragraph (2), for “principal practitioner” substitute “a type 1 medical practitioner”; and
- (b) in sub-paragraph (3)(a), for “principal practitioners” substitute “type 1 medical practitioners”.

Amendment of Schedule 2A to the Pension Scheme Regulations

22.—(1) Schedule 2A to the Pension Scheme Regulations (pension sharing on divorce or nullity of marriage or, on the dissolution or nullity of a civil partnership) is amended in accordance with this regulation.

(2) In paragraph 4(1) (commutation of the whole of pension credit benefit before normal benefit age), for “3(2)” substitute “3(2)(a)”.

(3) For paragraph 5(1)(b), substitute—

“(b) the total benefits payable to the pension credit member, including any pension credit benefit, is of an amount that complies with the provisions of paragraphs 7 to 9 of Part I of Schedule 29 to the 2004 Act (lump sum rule: trivial commutation lump sum) at normal benefit age.”.

Amendment of regulation 2 of the Injury Benefits Regulations

23. In paragraph (1) of regulation 2 of the Injury Benefits Regulations (interpretation)—

(a) omit the definitions of “assistant practitioner”, “default contract”, “dental hygienist”, “dental list”, “dental pilot scheme employee”, “Dental Practice Board”, “dental therapist”, “enhanced services”, “essential services”, “GP performer”, “GP provider”, “NHS dental employee”, “personal dental services”, “pilot scheme” and “piloted services”;

(b) insert each of the following definitions at the appropriate place in the alphabetical order—

““the 1977 Act” means the National Health Service Act 1977;

(a) Paragraph 23 was inserted by S.I.2005/661 with retrospective effect from 1st April 2004.

“GDS contract” means a general dental services contract under section 28K of the 1977 Act^(a) (general dental services contracts: introductory);

“PDS agreement” means arrangements under section 28C of the 1977 Act under which primary dental services are provided;”;

(c) in the definition of “employing authority”, omit the definition of “Dental Practice Board”;

(d) in the definition of “employing authority”, after sub-paragraph (e) insert—

“(f) any body which was listed as an employing authority under these Regulations or the previous regulations at the date of cessation of employment or reduction in emoluments of a person seeking to apply under these Regulations;”;

(e) in the definition of “PMS agreement”, omit from “and includes” to the end of the definition;

(f) for the definition of “practitioner”, substitute—

““practitioner” means a person, other than a locum practitioner—

(a) to whom regulation R1(1) or (2) of the pension scheme regulations^(b) (practitioners and trainee practitioners) applies (or would apply if he had been a member of the Scheme at the date he sustains an injury, or contracts a disease, to which these Regulations apply); and

(b) who is performing services—

(i) in the case of a registered medical practitioner, under a GMS contract, a PMS agreement, an APMS contract or arrangements to provide services under section 16CC(2)(a) of the 1977 Act^(c) (primary medical services), or

(ii) in the case of a registered dentist, under a GDS contract, a PDS agreement or arrangements to provide services under section 16CA(2) of the 1977 Act^(d) (primary dental services);”.

Amendment of regulation 3 of the Injury Benefits Regulations

24. In regulation 3 of the Injury Benefits Regulations (persons to whom the regulations apply)—

(a) in paragraph (1) omit sub-paragraphs (e), (g), (h), (i) and (j); and

(b) omit paragraph (1A).

Amendment of regulation 4A of the Injury Benefits Regulations

25. For paragraph (6) of regulation 4A of the Injury Benefits Regulations^(e) (recovery of costs) substitute—

“(6) This regulation and regulation 4(5) shall apply to a practitioner or non-GP provider who is not an officer of a Local Health Board or Primary Care Trust as if he were an officer of the Local Health Board or Primary Care Trust in whose area he is providing services.”.

Amendment of regulation 2 of the Additional Voluntary Contributions Regulations

26.—(1) Regulation 2 of the Additional Voluntary Contributions Regulations (interpretation) is amended in accordance with this regulation.

(2) Omit the definitions of “the Taxes Act”, “free-standing additional voluntary contributions scheme”, “personal pension scheme” and “retirement benefits scheme”.

(3) Insert each of the following definitions at the appropriate place in the alphabetical order—

(a) Section 28K was inserted by section 172(1) of the Health and Social Care (Community Health and Standards) Act 2003.

(b) Regulation R1 has been amended by S.I.2000/605, 2002/2469 and 2005/661.

(c) Section 16CC was inserted by section 174 of the Health and Social Care (Community Health and Standards) Act 2003.

(d) Section 16CA was inserted by section 170 of the Health and Social Care (Community Health and Standards) Act 2003.

(e) Paragraph (6) was amended by S.I.1998/667, 2000/606, 2002/2469, 2004/865 and 1016, and 2005/661.

“the 2004 Act” means the Finance Act 2004;

“lifetime allowance” shall be construed in accordance with Part 4 of the 2004 Act (pension schemes etc.);

“pension commencement lump sum” means a lump sum for the purposes of Part I of Schedule 29 to the 2004 Act not exceeding 25 per cent of the proceeds of any investment made under regulation 7(1), 8(2) or 9(4);

“registered pension scheme” has the meaning given by section 150(2) of the 2004 Act;”

Amendment of regulation 3 of the Additional Voluntary Contributions Regulations

27.—(1) Regulation 3 of the Additional Voluntary Contributions Regulations (making and acceptance of elections) is amended in accordance with this regulation.

(2) In paragraph (1)(a), for “an annuity payable on retirement” substitute “an annuity or a pension commencement lump sum and an annuity payable on retirement”.

(3) In paragraph (3)(b), for “section 594(1) of the Taxes Act (exempt statutory schemes)” substitute “section 190 of the 2004 Act (annual limit of relief)”.

Amendment of regulation 4 of the Additional Voluntary Contributions Regulations

28.—(1) Regulation 4 of the Additional Voluntary Contributions Regulations (payment and amount of additional voluntary contributions) is amended in accordance with this regulation.

(2) For paragraph (4), substitute—

“(4) In any period of 12 months beginning on 6th April in any year the total contributions payable by the contributor shall not exceed 100 per cent of the amount which represents the contributor’s salary from NHS employment less the total of any contributions paid by the contributor in respect of that year—

- (a) to another registered pension scheme; and
- (b) under the Pension Scheme Regulations.”.

(3) Omit paragraph (5).

Amendment of regulation 6 of the Additional Voluntary Contributions Regulations

29. In paragraph (1)(d) of regulation 6 of the Additional Voluntary Contributions Regulations (circumstances in which elections cease to have effect) for “section 594(1) of the Taxes Act (exempt statutory schemes)”, substitute “section 190 of the 2004 Act (annual limit of relief)”.

Amendment of regulation 8 of the Additional Voluntary Contributions Regulations

30. For paragraph (1) of regulation 8 of the Additional Voluntary Contributions Regulations (inward transfers), substitute—

“(1) Where a person who enters pensionable employment has paid contributions to a registered additional voluntary contribution scheme for the purposes of the 2004 Act, that person, whether or not he becomes a contributor within the meaning of these Regulations, may—

- (a) within 12 months of entering pensionable employment; or
- (b) such longer period as the Secretary of State may in any particular case allow,

give written notice to the Secretary of State that he wishes the Secretary of State to accept from the trustees or managers of that scheme a transfer value representing at least the value of the investments derived from his contributions.”.

Amendment of regulation 10 of the Additional Voluntary Contributions Regulations

31.—(1) Regulation 10 of the Additional Voluntary Contributions Regulations (outward transfers) is amended in accordance with this regulation.

(2) For paragraph (1)(a), substitute—

“(a) where that person has left pensionable employment, to any other registered pension scheme in which the person may be participating; or”.

(3) Omit paragraph (2).

(4) For paragraph (3), substitute—

“(3) The scheme specified in this paragraph is a registered additional voluntary contribution scheme for the purposes of the 2004 Act.”.

Amendment of regulation 11 of the Additional Voluntary Contributions Regulations

32.—(1) Regulation 11 of the Additional Voluntary Contributions Regulations (retirement and dependants’ pensions) is amended in accordance with this regulation.

(2) For paragraph (1), substitute—

“(1) Subject to paragraph (7) and regulation 15(10) and (11) the proceeds of any investment made under regulation 7(1), 8(2) or 9(4) may be—

(a) taken partially as a pension commencement lump sum with the remainder being used to purchase from an insurer an annuity which complies with the requirements of paragraph (2); or

(b) used solely for the purchase from an insurer of an annuity which complies with the requirements of that paragraph,

and not otherwise.”.

(3) After paragraph (3)(a), insert—

“(aa) whether a pension commencement lump sum and retirement pension is to be provided;”.

(4) For paragraph (5), substitute—

“(5) Upon receipt of a notice of election under paragraph (3), the Secretary of State shall, as soon as reasonably practicable, realise the investments made under regulations 7(1), 8(2) or 9(4) and—

(a) where sub-paragraph (aa) of that paragraph does not apply, apply the proceeds to the purchase of an annuity from the authorised provider specified in the notice of election;

(b) where that sub-paragraph does apply—

(i) pay the percentage of the proceeds specified in the notice of election as a pension commencement lump sum, and

(ii) apply the balance of those proceeds to the purchase of an annuity from the authorised provider specified in that notice.”.

Amendment of regulation 12 of the Additional Voluntary Contributions Regulations

33. For paragraph (2) of regulation 12 of the Additional Voluntary Contributions Regulations (lump sums on death), substitute—

“(2) Any lump sum payable under paragraph (1) shall not exceed the amount permitted in accordance with Part 2 of Schedule 29 to the 2004 Act.”.

Amendment of regulation 13 of the Additional Voluntary Contributions Regulations

34. For regulation 13 of the Additional Voluntary Contributions Regulations (benefit limits), substitute—

“Benefit limits

13. Benefits that may be paid under these Regulations shall limited by reference to a person’s lifetime allowance.”.

Amendment of regulation 14 of the Additional Voluntary Contributions Regulations

35.—(1) Regulation 14 of the Additional Voluntary Contributions Regulations (repayment of investments in certain cases) is amended in accordance with this regulation.

(2) In paragraph (1), for “section 598 of the Taxes Act (charge to tax: repayment of employee’s contributions)” substitute “the 2004 Act”.

(3) In paragraph (2), for “section 601 of the Taxes Act (charge to tax: payment to employers)” substitute “the 2004 Act”.

Amendment of regulation 15 of the Additional Voluntary Contributions Regulations

36.—(1) Regulation 15 of the Additional Voluntary Contributions Regulations (payments by the Secretary of State) is amended in accordance with this regulation.

(2) In paragraph (1), for “annuity or lump sum death benefit” substitute “annuity, pension commencement lump sum or lump sum death benefit”.

(3) Omit paragraphs (5) to (9).

(4) In paragraph (11) omit “less any charge to tax under section 599 of the Taxes Act”.

Amendment of regulation 16 of the Additional Voluntary Contributions Regulations

37. In regulation 16 of the Additional Voluntary Contributions Regulations (information) after paragraph (2), add—

“(3) Where a person is entitled to a benefit under these Regulations he shall (whether or not he intends to rely on entitlement to an enhanced lifetime allowance or to enhanced protection) give to the provider such information as will enable the provider to determine—

- (a) whether any lifetime allowance is payable in respect of the benefit and, if so,
- (b) the amount of that charge.

(4) If a person applying for a benefit under these Regulations intends to rely on entitlement to an enhanced lifetime allowance by virtue of any of the provisions listed in section 256(1) of the 2004 Act (enhanced lifetime allowance regulations), he shall give to the provider—

- (a) the reference number issued by the Commissioners under the Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006(a) in respect of that entitlement;
- (b) the information referred to in paragraph (3).

(5) The information referred to in paragraph (3) or, as the case may be, paragraph (4) shall be given to the provider—

- (a) at the time the person makes a claim for a benefit, or
- (b) where that information has not been provided at the time of making the claim, within such time as the provider specifies in writing, or

(a) S.I.2006/131.

- (c) where the person fails to provide all, or part of, the information referred to in paragraph (3) or, as the case may be, paragraph (4) within the time limits specified by the provider (where relevant), the provider may treat the whole of the benefit as a chargeable benefit and the charge may be paid on that basis.”.

New regulation 22 of the Additional Voluntary Contributions Regulations

38. After regulation 21 of the Additional Voluntary Contributions Regulations (determination of questions), add—

“Tax

22. Benefits payable under these Regulations shall be paid net of any tax due under the 2004 Act.”.

Revocation of Schedule 1 to the Additional Voluntary Contributions Regulations

39. Omit Schedule 1 to the Additional Voluntary Contributions Regulations (benefit limits).

Amendment of Schedule 2 to the Additional Voluntary Contributions Regulations

40.—(1) Schedule 2 to the Additional Voluntary Contributions Regulations (pension sharing on divorce or nullity of marriage or, dissolution or nullity of a civil partnership) is amended in accordance with this regulation.

(2) In paragraph 4 (pension credit benefit)—

- (a) at the end of sub-paragraph (1), add “(including, where appropriate, a pension commencement lump sum)”;
- (b) after sub-paragraph (5)(a), insert—
 - “(aa) whether a pension commencement lump sum and a pension payable for life is to be provided;”;

(c) for sub-paragraph (7), substitute—

“(7) Upon receipt of a notice of election under sub-paragraph (5) the Secretary of State shall, as soon as reasonably practicable, realise the investments made under paragraph 2 and—

- (a) where sub-paragraph (5)(aa) does not apply, apply the proceeds to the purchase of an annuity from the authorised provider specified in the notice of election;
- (b) where that sub-paragraph does apply—
 - (i) pay the percentage of the proceeds specified in the notice of election as a pension commencement lump sum, and
 - (ii) apply the balance of those proceeds to the purchase of an annuity from the authorised provider specified in that notice, and not otherwise.”.

Signed by authority of the Secretary of State for Health.

7th March 2006

Warner
Minister of State,
Department of Health

We consent

7th March 2006

Tom Watson and Dave Watts
Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the National Health Service Pension Scheme Regulations 1995 (S.I.1995/300) (“the Pension Scheme Regulations”), the National Health Service (Injury Benefits) Regulations 1995 (S.I.1995/866) (“the Injury Benefits Regulations”) and the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000 (S.I.2000/619) (“the AVC Regulations”).

Regulation 1(2)(c) provides that regulation 21(4) (which deals with “pensionable earnings” for medical practitioners and non-GP providers) shall have effect as from 1st April 2004.

Regulations 2 to 22 amend the Pension Scheme Regulations.

Regulation 2 amends regulation A2 (definitions) by inserting various definitions relating to the types of dental services provided, and the persons or bodies who provide them. It also inserts definitions which are needed to give effect to the provisions of the Finance Act 2004 (c.12).

Regulation 3 amends regulation B2 (restrictions on membership) by substituting existing references to dental pilot scheme employees with a reference to employees of new contractors.

Regulation 4 amends regulation B5 (opting into the scheme: mis-sold pensions) by amending the definition of “personal pension scheme” to take account of the change in status of such schemes to “registered schemes” for the purposes of the Finance Act 2004.

Regulation 5 amends regulation E2 (early retirement pension (ill-health)) so that any lump sum payment is consistent with the Pension Schemes Act 1993 (c.48) provisions relating to contracting-out and preservation of benefits and the new lump sum rule from the Finance Act 2004. It also amends that regulation so as to provide for the calculation of such a lump sum.

Regulation 6 amends regulation E3 (early retirement pension (redundancy etc.)) so as to refer to those who are to have the normal minimum pension age of 55 or, where provided for under the Finance Act 2004, a lower protected pension age. It also amends that regulation to remove references to dental pilot schemes and services.

Regulation 7 amends regulation E4 (early retirement pension (employers consent)) in the same way as regulation 6 amends regulation E3. Regulation 8 makes the same amendment (as regards minimum pension age) in respect of regulation E5 (early retirement pension (with actuarial reduction)).

Regulation 9 amends regulation E6 (lump sum on retirement) so as to provide that where a member of the scheme has attained the age of 75, he shall no longer be entitled to a lump sum but shall instead have his pension increased in lieu of that lump sum.

Regulation 10 amends regulation F2 (member dies after pension becomes payable) so as to provide that a member may notify the scheme administrator that he wants a lump sum payable under the regulation to be treated as a pension protection lump sum death benefit in accordance with the provisions of the Finance Act 2004.

Regulation 11 amends regulation H1 (dependent child) so that it refers to a child aged 17 or over but who has not reached the age of 23. It also makes transitional provision for children who may become entitled to a child allowance before 6th April 2006 or whose dependency is to be assessed in relation to a person who became entitled to a pension on or before that date.

Regulation 12 amends regulation J1 (allocation of pension) so as to provide that a member who wishes to allocate part of his pension to another person must do so before the date on which that pension becomes payable to him.

Regulation 13 amends regulation L1 (preserved pension) so as to refer to a normal minimum pension age or, where the Finance Act 2004 provides, a protected pension age.

Regulation 14 amends regulation L2 (refund of contributions) so as to provide that a member who becomes entitled to a refund of his contributions shall receive a lump sum less tax at 20 per cent on such part of that sum which does not exceed £10,800 and at 40 per cent on such part of that sum which exceeds that limit.

Regulation 15 amends regulation N1 (member's right to transfer accrued rights to benefits to the scheme) so as to provide that a member may, within 12 months of joining the scheme, request the Secretary of State to accept a transfer payment in respect of his rights under certain other schemes except rights under a free-standing AVC scheme which was established on, or after, 6th April 2006 or which existed prior to that date and became a free-standing AVC scheme for the purposes of the Finance Act 2004 on that date.

Regulation 16 amends regulation R1 (practitioners and trainee practitioners) so as to replace references to a Health Authority with references to a Local Health Board.

Regulation 17 omits regulation R11 (participants in pilot schemes) following the abolition of dental pilot schemes.

Regulation 18 inserts a new regulation (regulation T2A (deduction of tax: further provisions)) after regulation T2. New regulation T2A provides, amongst other things, for any lifetime charge under the Finance Act 2004 to be paid by the scheme administrator (who is to be the NHS Business Services Authority), for a person entitled to a benefit under the Regulations to be able to waive part of it and for such a person to notify the scheme administrator of certain matters if he wishes to rely on protections provided for under the Finance Act 2004 (i.e. enhanced lifetime allowance protection).

Regulation 19 amends regulation T7 (commutation of trivial pensions) so as to provide that any commutation must be consistent not only with the contracting-out and preservation requirements of the Pension Schemes Act 1993 but also the lump sum and lump sum death benefit rules provided for in the Finance Act 2004.

Regulation 20 amends regulation U3 (accounts and actuarial reports) to provide for the change in terminology from "principal practitioners" to "type 1 medical practitioners".

Regulation 21 amends Schedule 2 (medical and dental practitioners) to give effect to changes required by the introduction of the General Dental Contract, omitting or amending existing definitions, or introducing new definitions, as required. It also makes changes to the manner in which practitioner income and pensionable income are calculated for dentists, and applies a pensionable earnings ceiling. Paragraph (7) introduces a new paragraph 5A to the Schedule under which dental practitioners are required to notify their employing authority by a specified date each year of the proportion of total pensionable earnings under the dental contract that is to be allocated to each practitioner. In default of such a notice, each practitioner is taken to have an equal proportion of the total pensionable earnings for the year. Paragraph (9) preserves the existing treatment of assistant practitioners for type 1 practitioners who are employed by a contractor but who are neither directors nor partners of the contractor.

Regulation 22 amends Schedule 2A (pension sharing on divorce or nullity of marriage or, on the dissolution or nullity of a civil partnership) so as to provide that any pension credit benefit which is to be commuted has to satisfy the requirements of the Finance Act 2004 in respect of trivial commutation of lump sums.

Regulations 23 to 25 amend the Injury Benefits Regulations.

Regulation 23 amends regulation 2 (interpretation) to give effect to changes required by the introduction of the General Dental Contract, omitting or amending existing definitions, or introducing new definitions, as required. Sub-paragraph (d) preserves the right of a person to claim an injury benefit in respect of an injury or disease he has already suffered notwithstanding

the subsequent omission of his employer from the definition of “employing authority” in the regulations.

Regulation 24 amends regulation 3 (persons to whom the regulations apply) to omit references to dental pilot schemes.

Regulation 25 amends regulation 4A (recovery of costs) to omit references to dental pilot schemes and to provide that the Local Health Board or Primary Care Trust is responsible for the costs of providing injury benefits to practitioners.

Regulations 26 to 40 amend the AVC Regulations.

Regulation 26 amends regulation 2 (interpretation) by inserting certain definitions to give effect to the provisions of the Finance Act 2004 (e.g. “lifetime allowance”).

Regulation 27 amends regulation 3 (making and acceptance of elections) so as to provide that an AVC scheme may provide either for an annuity or for both a pension commencement lump sum and an annuity on retirement.

Regulation 28 amends regulation 4 (payment and amount of additional voluntary contributions) so as to enable a person to make contributions to an AVC scheme which do not exceed 100 per cent of his salary (subject to certain exceptions).

Regulation 29 amends regulation 6 (circumstances when elections cease to have effect) so as to refer to the correct sections of the Finance Act 2004.

Regulation 30 amends regulation 8 (inward transfers) so as to provide that a person who has paid contributions to a registered AVC scheme for the purposes of the Finance Act 2004 can give notice to the Secretary of State saying that he wishes the Secretary of State to accept a transfer from that scheme.

Regulation 31 amends regulation 10 (outward transfers) so that it correctly refers to the Finance Act 2004.

Regulation 32 amends regulation 11 (retirement and dependants pensions) so as to reflect the fact that investments made under a scheme may be realised so as to provide not just an annuity but also a pension commencement lump sum and an annuity on retirement.

Regulation 33 amends regulation 12 (lump sums on death) so as to provide that a lump sum payable on death cannot exceed the limits set down in the Finance Act 2004.

Regulation 34 amends regulation 13 (benefit limits) to make it clear that any benefits paid under the Regulations are limited by reference to the person’s lifetime allowance under the Finance Act 2004.

Regulation 35 amends regulation 14 (repayment of investments in certain cases) to correctly refer to the provisions of the Finance Act 2004.

Regulation 36 amends regulation 15 (payments by the Secretary of State) to reflect the fact that AVC investments may be realised and used to purchase either an annuity or a pension commencement lump sum or lump sum death benefit.

Regulation 37 amends regulation 16 (information) to impose an obligation on a person who wishes to take advantage of an entitlement to an enhanced lifetime allowance in accordance with the Finance Act 2004 to provide the AVC provider with certain information.

Regulation 38 inserts a new regulation (regulation 22: tax) making it clear that benefits payable under the Regulations are paid net of tax due under the Finance Act 2004.

Regulation 39 amends Schedule 1 (benefit limits) to reflect the fact that the benefit limits are now subject to the Finance Act 2004 (see new regulation 22).

Regulation 40 amends Schedule 2 (pension sharing on divorce or nullity of marriage or, on dissolution or nullity of civil partnership) to reflect the fact that an AVC investment may be realised so as to provide a pension commencement lump sum, and to allow for a percentage of the proceeds of any investment specified in a notice of election to be used in that manner.

A regulatory impact assessment has not been produced for this Instrument as it has no additional impact on business, charities, voluntary bodies or any public bodies distinct from that of the Finance Act 2004 itself. A regulatory impact assessment in respect of the provisions of Part 4 of the Finance Act 2004 and subordinate legislation under it was published by the Board of Inland Revenue on 8 April 2004, and is available on the website of Her Majesty's Revenue and Customs at <http://www.hmrc.gov.uk/ria/simplifying-pensions.pdf> or (for hard copies) by writing to the Ministerial Correspondence Unit, Capital and Savings 1st Floor Ferrers House, PO Box 38, Castle Meadow Road, Nottingham, NG2 1BB.

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**NATIONAL HEALTH SERVICE, ENGLAND AND
WALES**

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