

---

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

This Instrument further amends the National Health Service Pension Scheme Regulations 1995 (S.I.1995/300) (“the 1995 Regulations”).

Regulation 2 amends Part A of the 1995 Regulations by inserting new definitions including a definition of “scheme year”.

Regulations 3 and 4 amend Part B of the 1995 Regulations. Regulation 3 provides for new restrictions on membership of the 1995 NHS Pension Scheme and, in particular, provides that a person over the age of 75 or a person over the age of 70 on or before 31 March 2008 cannot be a member of the Scheme. Regulation 4 makes consequential amendments.

Regulations 5 and 6 amend Part C of the 1995 Regulations. Regulation 5 provides for the calculation of pensionable pay and makes provision for the calculation of pay of a member credited with pensionable service under another public sector pension scheme. Regulation 6 provides that benefits are to be calculated by a maximum period of pensionable service (45 years in most cases) and provides that pensionable service in excess of the maxima will be ignored.

Regulations 7 and 8 amend Part D of the 1995 Regulations. Regulation 7 introduces new contribution rates linked to bands of pensionable pay. Those rates run from 5 per cent to 8.5 per cent (depending on the pay band). Regulation 8 makes consequential amendments to regulation D2 in respect of contributions payable by employing authorities.

Regulations 9 to 14 amend Part E of the 1995 Regulations. Regulation 9 amends regulation E1 so as to provide that the Secretary of State can discharge her liability for a pension by the payment of a lump sum and in doing so has to have regard to the life expectancy of a member. Regulation 10 amends regulation E2 so as to limit its application to a member who retires from pensionable employment on or after 1 April 2008 but submitted an application for the benefit prior to that date.

Regulation 11 inserts new regulations E2A to E2C which introduce a new two tier ill health pensions on early retirement, reassessment of an ill health pension awarded on early retirement and the effect of further employment on such a benefit. Regulation 12 makes a consequential amendment to regulation E3, regulation 13 omits regulation E4 and regulation 14 inserts a new regulation (E7) which enables a member to opt to exchange part of a pension for a lump sum payment.

Regulations 15 to 17 amend Part F of the 1995 Regulations. Regulation 15 amends regulation F1 so as to provide when a lump sum on death is payable, regulation 16 amends regulation F2 to take account of the new two tier ill health pension and regulation 17 substitutes regulation F5 to provide for an order of priority in respect of the payment of a lump sum death benefit.

Regulations 18 to 29 amend Part G of the 1995 Regulations. In particular, they make provision for the period over which a widow’s pension is paid and the rate at which is payable.

Regulation 21 amends regulation G3 to take account of the new two tier ill health pension. Regulation 22 amends regulation G4 to provide that where a member dies with a preserved pension, the rate of the dependant’s will be determined by reference to an ill health pension he would have received had he retired through ill health on the day he left pensionable employment. Regulation 23 amends regulation G7 to provide that the whole of the member’s pensionable service will be taken into account when calculating a widower’s pension. Regulation 24 amends regulation G8 to take account of the new two tier ill health pension. Regulation 25 amends regulation G9 to provide for the payment of a pension to a surviving partner of a female member. Regulation 26 amends regulation G10 to take account of the two tier ill health pension. Regulation 27 amends regulation G11 to take account

*Status: This is the original version (as it was originally made).*

of the two tier ill health pension. Regulation 28 amends regulation G13 to provide for the devolution of a surviving civil partner's pension in cases where the member dies without leaving a civil partner but leaving a surviving widower or nominated partner.

Regulation 29 inserts new regulations G14 to G17 to make provision for a surviving nominated partner's pension on the same basis as a surviving civil partner's or surviving spouse's pension.

Regulation 30 to 34 amends Part H of the 1995 Regulations. Regulation 30 amends regulation H1 so as to take account of nominated partner's pensions and to define a dependant child. Regulation 31 amends regulation H3 to provide for the destination of a pension payable in respect of dependents where the member dies in pensionable employment. Regulation 32 amends regulation H4 to provide for the calculation of a pension in circumstances where a member dies after the pension becomes payable. Regulation 33 amends regulation H5 to make similar provision where a member dies with a preserved pension and regulation 34 amends regulation H7 to take account of nominated partner pensions.

Regulation 35 amends regulation J1 of the 1995 Regulations to take account of the 45 year pensionable service limit in the scheme.

Regulations 36 and 37 amend Part K of the 1995 Regulations. Regulation 36 substitutes regulation K1 so as to provide that the scheme will be administered in conformity with the contracting-out conditions applicable to occupational pension schemes and regulation 37 amends regulation K2 so as to carry that principle forward in relation to both guaranteed minimum pensions and rights under section 9(2B) of the Pensions Act 1995.

Regulations 38 to 40 amend Part L of the 1995 Regulations. Regulation 38 amends regulation L1 to provide when a pension and lump sum will be payable in respect of those who have a preserved pension and to determine when a member with a preserved pension shall be treated as being incapable of any regular employment. Regulation 39 amends regulation L2 in consequence of the amendments made to Part K (contracting-out) of the 1995 Regulations. Regulation 40 amends regulation L4 to take account of the two tier ill health pension.

Regulation 41 substitutes the whole of Part M of the 1995 Regulations. Substituted regulation M1 deals with the member's right to a transfer or buy-out, M2 with exercising the right to transfer or buy-out, M3 with the amount of the member's cash equivalent on such a transfer or buy-out, M4 on the mechanism for applying for a transfer value payment, M5 with the time limits involved in making such an application and M6 with bulk transfers.

Regulations 42 and 43 amend Part N of the 1995 Regulations. The amendments are consequential and in the case of regulation 43 omit regulation N5 (waiver of transfer payments).

Regulation 44 amends regulation P2 of the 1995 Regulations to provide that a period of absence continues to count as pensionable service but it does not exceed 6 months and the member continues to contribute to the scheme.

Regulations 45 to 51 amend Part Q of the 1995 Regulations. Regulation 45 amends regulation Q1 to provide when a member can increase his rights to benefit by purchasing additional service. Regulation 47 amends regulation Q4 to provide new time limits for the purchasing of additional service and the cost of doing so. Regulation 48 amends regulation Q5 to impose time limits for the making of an election to pay for an unreduced lump sum by a single payment and regulation 49 amends regulation Q6 to provide for the limits on the amount of pensionable pay which may be used to purchase additional service or unreduced retirement lump sum by regular contribution payments. Regulation 51 inserts new regulations Q8 to Q17 which provide for the facility to purchase additional pension. New regulation Q8 deals with an option to purchase additional pension, Q9 with the effect of being absent or leaving and rejoining the scheme during the option period referred to in Q8, Q10 deals with the facility to purchase additional pension by the payment of a lump sum (as does Q11 in respect of employing authorities), Q12 with the procedure for and effect of making an option under regulations Q8, Q10 and Q11, Q13 with the cancellation and cessation of an option, Q14 with the effect of the payment of additional contributions, Q15 with the effect of death or early payment

of a pension after an option has been exercised, Q16 with the effect of part payment of periodical contributions and Q17 with the revaluation of increases bought under options.

Regulations 52 to 55 amend Part S of the 1995 Regulations. Regulation 52 amends regulation R3 to take account of the new tier 2 ill health pension. Regulation 53 amends regulation R4 to allow for a pension to come into payment at age 75. Regulation 54 amends regulation R5 to also take account of the new tier 2 ill health pension. Regulation 55 amends regulation R9 to provide for the protection of pension rights if a member approaching retirement takes up less demanding duties.

Regulations 56 to 61 amend Part S of the 1995 Regulations. Regulation 56 amends regulation S1 to provide that a pension which has been suspended on return to NHS employment may again become payable in certain specified circumstances. Regulation 57 amends regulation S2 to set out the circumstances when certain pensions payable under other parts of the 1995 Regulations will be reduced upon return to NHS employment and the amount by which they will be so reduced. Regulation 58 inserts a new regulation S3A to deal with the effect of a return to service on a tier 1 or tier 2 ill health pension. Regulation 59 makes consequential amendments to S4. Regulation 60 amends regulation S4 detailing the amount of and length of a payment made to a surviving spouse or civil partner or nominated partner. Regulation 61 inserts a new regulation S4A to deal with benefits on death in pensionable employment after a pension under regulation E2A becomes payable.

Regulation 62 amends regulation T2A of the 1995 Regulations to provide that present or future benefits of a member are to be reduced by an amount which fully reflects the amount of tax paid by the scheme administrator.

Regulations 63 and 64 amend Part U of the 1995 Regulations. Regulation 63 amends regulation U1A so as to provide that medical practitioners can determine if a member is permanently incapable of regular employment in connection with an ill health pension. Regulation 64 inserts a new regulation U4 to provide for cost sharing of scheme expenses between members of the scheme and employing authorities.

Regulation 65 amends Schedule 2 to the 1995 Act which modifies the application of the 1995 Regulations in respect of practitioners. In particular, the amendments to Schedule 2 introduce a new contribution rate for practitioners based on pensionable earnings. Those rates run from 5 per cent to 8.5 per cent. The amendments also give effect to nominated partner's pensions, increase in surviving partner pensions and increases in the amounts of child allowance payable where a practitioner dies whilst in pensionable employment.

Regulation 66 amends Schedule 2A to the 1995 Regulations which deals with pension sharing on divorce. The amendments are consequential on changes made elsewhere in the scheme.

A full impact assessment has not been produced for this instrument as it has no impact on the costs of business, charities or the voluntary sector.