

## **EXPLANATORY MEMORANDUM TO**

### **THE NATIONAL HEALTH SERVICE PENSION SCHEME (AMENDMENT) REGULATIONS 2008**

**2008 No. 654**

### **THE NATIONAL HEALTH SERVICE PENSION SCHEME REGULATIONS 2008**

**2008 No. 653**

**AND THE**

### **THE NATIONAL HEALTH SERVICE PENSION SCHEME (ADDITIONAL VOLUNTARY CONTRIBUTION) and NATIONAL HEALTH SERVICE (INJURY BENEFITS and COMPENSATION FOR PREMATURE RETIREMENT) AMENDMENT REGULATIONS 2008**

**2008 No. 655**

- 1.** This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

The memorandum contains information for the Joint Committee on Statutory Instruments and for publication on the Office of Public Sector Information website.

- 2. Description**

- 2.1** SI 2008 No. 654 introduces changes to the benefits currently provided for existing members of the NHS occupational pension scheme (the 1995 Scheme)
- 2.2** SI 2008 No. 653 establishes the principal regulations governing a new occupational pension scheme for new entrant NHS Staff and General Medical and Dental Practitioners who first join the scheme on or after 1 April 2008. (The 2008 Scheme)
- 2.3** SI 2008 No. 655 makes technical changes to associated Injury Benefit, Additional Voluntary Contribution and Compensation regulations to include new and updated cross references to the new and amended pension scheme regulations.

- 3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 Paragraphs (2) and (3) of Regulation 66 make retrospective amendments from 1 April 2003 to Schedule 2A (Pension Sharing on Divorce) of the National Health Service Pension Scheme Regulations. The amendments reflect changes made to regulation F5 (Payment of lump sum (on death)) at that time in respect of circumstances in which a death benefit lump sum may be forfeited.

#### **4. Legislative Background**

4.1 SI 2008/654 amends the National Health Service Pension Scheme Regulations 1995 (S.I.1995/300) which were made under sections 10, 12 (and schedule 3 to) the Superannuation Act 1972.

4.2 SI 2008/653 sets out the rules of the 2008 NHS pension scheme and is made under sections 10, 12 (and schedule 3 to) the Superannuation Act 1972.

4.3 SI 2008/655 amends the National Health Service (Injury Benefits) Regulations 1995 (S.I. 1995/866) and the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000 (S.I. 2000/619) and The National Health Service (Compensation for Premature Retirement) Regulations 2002 (S.I. 2002/1311) which were also made under sections 10, 12, 24 (and schedule 3 to) the Superannuation Act 1972.

#### **5. Territorial Extent and Application**

5.1 All three instruments apply to England and Wales.

#### **6. European Convention on Human Rights**

6.1 As all three instruments are subject to the negative resolution procedure and do not amend primary legislation, no statement is required

#### **7. Policy Background**

7.1 In December 2002, the Government published a Green Paper entitled “Simplicity, security and choice: Working and saving for retirement”. Following on from this, in June 2003, “Working and saving for retirement – action on occupational pensions” made recommendations that all public service pension schemes should be reviewed to reflect improved longevity and to ensure future arrangements were affordable and sustainable. In common with other public service Schemes; the NHS Pension Scheme has been under review since 2003. The review has been led by the NHS Employers organisation<sup>1</sup> in partnership with NHS trade unions (the NHS Review Partners).

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<sup>1</sup> Initially led by the NHS Confederation which transferred responsibility for the Review to NHS Employers a part of the Confederation which represents NHS Trusts in England and Wales

- 7.2 In line with Government recommendations, the first consultation document published on 10th January 2005 included a key proposal to:
- increase the age at which retirement benefits are paid to existing staff from age 60 to age 65 by 2013
  - introduce a normal retirement age of 65 for new entrants as part of any Scheme reforms
- 7.3 However, initial negotiations stalled due to the adverse reaction from members and threats of industrial action by NHS trade unions. Following the General Election in May 2005, the TUC and Government agreed to begin national negotiations on the introduction of the higher pension age within the Public Services Forum (PSF)<sup>2</sup>.
- 7.4 On 18 October 2005, agreement was reached within the PSF in relation to the NHS, Teachers and Civil Service pension schemes to:
- retain the existing pension age of 60 (55 for members of the NHS special classes<sup>3</sup>) and final salary arrangements for existing staff
  - introduce new pension arrangements for new entrants including a higher normal pension age of 65.
- 7.5 Negotiations on the detail of the new pension arrangements resumed and a second consultation document was published by the NHS Review Partners on 1st September 2006.
- 7.6 Negotiations on ill health retirement benefits were part of a separate and more wide-ranging exercise led also by the Review Partners. This review ran parallel to, but slightly behind, the main scheme review and covered:
- (i) Provision of ill health retirement benefits under the NHS Pension Scheme
  - (ii) Alternative funding arrangements for ill health retirement
  - (iii) Arrangements for the prevention and management of sickness absence, and
  - (iv) Provision of Injury Benefits

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<sup>2</sup> The PSF was formed in 2003 to improve dialogue between Government, public service trade unions, employers and enable joint work on workforce reform issues which impact on public services

<sup>3</sup> Under Regulation R2 of the 1995 NHS Pension Scheme Regulations as amended, nurses, midwives, health visitors and physiotherapists have the right to retire with an unreduced pension from age 55 and Regulation R3 Mental Health Officers with the right to double accrual and retirement with an unreduced pension after reaching 20 years in this type of employment. These special retirement rights were withdrawn for new entrants from 6 March 2005.

A second consultation on the outcome of this review began on 22 October 2007<sup>4</sup>. DH Ministers have subsequently accepted all recommendations across the two reviews and asked that these be taken forward. (Further detailed information on consultation can be found at paragraphs 7.18 to 7.26)

7.7 The instruments covered in this Explanatory Memorandum implement those recommendations.

### **NHS Pension Scheme benefits and terms for existing members of the 1995 Scheme (SI 2008/654)**

7.8 Key aspects of the current benefit structure **that are unchanged** for existing staff are:

- a pension based on 1/80<sup>th</sup> of final pay for each year of service and a fixed lump sum (normally three times the pension) for members employed by the NHS
- a pension based on 1.4% of uprated career average earnings for self-employed general medical and dental practitioners
- All members - a normal retirement age of 60

### **Key changes for existing members of the 1995 Scheme**

7.9 Key changes to benefits and terms introduced for members of the existing 1995 Scheme who are in pensionable employment on or after 1 April 2008 are:

- Members with a normal retirement age of 60 will be able to make contributions until they achieve a maximum of 45 years or reach age 75
- Removal of the cap on pensionable earnings for future service
- A member contribution tariff set according to the level of a members pensionable earnings
- Arrangements that will allow for future increases in the costs of benefits to be shared by NHS employers and members via adjustments to respective contributions rates
- Two tier ill health retirement provisions
- Facility to exchange pension for additional tax free lump sum
- Introduction of nominated partner pensions, improvements to the duration of pensions paid to a qualifying spouse or partner on the members death
- Child allowances to be paid to age 23 with cover extended to include children of nominated partners

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<sup>4</sup> Because the proposals on ill health retirement benefits form an integral part of the amended and new pension schemes effective from 1 April 2008, the Review Partners agreed to include those proposals as part of the consultation on the main pension scheme draft regulations; hence the consultation periods on the ill health proposals and the corresponding draft regulations overlapped

- Facility to pay additional voluntary contributions to buy further years of scheme membership is replaced by a facility for members and employers to buy additional amounts of pension
- New formula for reducing pensions in payment if a pensioner returns to NHS employment

### **Changes for existing members of the 1995 Scheme in detail**

7.10 There follows a detailed explanation of the amending regulations.

#### **(1) Regulation 2: Inserts into part A definitions of new terms used in the amending regulations-**

“Scheme Year” means any year beginning 1 April and ending on 31 March. This term is used in regulation D1.

“Section 9(2B) rights” relates to membership (after 1997) of a scheme that contracts its members out of the State Scheme. This term is used in part K.

“Tax year” means any year beginning 6 April and ending on 5 April. This term is used in regulation C1 and regulation E2C.

#### **(2) Regulation 3: Replaces regulation B2 (Restrictions on membership)**

The amendments to B2 change the upper age limit for scheme membership from 70 from 75 years in respect of members with a normal retirement age of 60

The existing scheme is closed to:

- brand new entrants and returners who did not have enough service to qualify for existing 1995 Scheme benefits when they last left
- members who leave the existing 1995 Scheme on or after 1 April 2008 and subsequently transfer their benefits to another scheme

However, the Secretary of State may continue to admit new entrants who would normally be required to join the new 2008 scheme (normal retirement age 65) if their employment is transferred into the NHS on a compulsory basis and their normal retirement age in their last occupational scheme is age 60.

#### **(3) Regulation 4: Changes to B3 (Restriction on further participation in the scheme)**

A technical change is made to this regulation and a reference to new ill health regulation E2A (11) is inserted. This reference provides that a pensioner may only rejoin the existing 1995 Scheme if in receipt of a tier 1 ill health pension and the member returns to NHS employment under the age of 50 years.

#### **(4) Regulation 5: Changes to regulation C1 (Meaning of pensionable pay and final year’s pensionable pay)**

The amendments to C1 remove the cap on pensionable earnings (currently £112,800) for service after 1 April 2008. Service transferred into the 1995

Scheme from another Public Service Scheme after 1 April 2008 that was subject to an earnings cap in the previous scheme will remain subject to the cap in the NHS Scheme.

Members whose earnings have exceeded the cap will receive two separate pensions at retirement, one for any uncapped service based on their final year's pensionable pay and one for any capped service based on the earnings cap in operation at retirement.

**(5) Regulation 6: Changes to regulation C2 (Meaning of “pensionable service”)**

Service before 1 April 2008 is still subject to the current limit of 40 years at age 60 but this restriction is removed for service after 1 April 2008. After that date the limit will be 45 years membership.

The current <sup>5</sup>limits for <sup>6</sup>Special Class members are retained.

**(6) Regulation 7: Changes to regulation D1 (Contributions by members)**

From 1 April 2008 member contributions (for all members other than those who are employed in <sup>7</sup>manual posts) will be based on a tiered rate depending on the level of a member's annual pensionable pay. The rates range from 5% to 8.5%.

For the purpose of allocating a contribution rate for the scheme year running from 1 April 2008 to 31 March 2009, new paragraphs (2E) to (2T) detail how pensionable pay is to be calculated.

For members who were employed throughout the year 1<sup>st</sup> April 2007 to 31 March 2008, the tier will be allocated according to the pensionable pay received during that year (the appropriate full time rate will be used for part-time staff). New paragraphs (2E) to (2G) cover this.

For those starting a new employment during that year, the contribution rate will be set according to the pensionable pay received in that employment increased to an annual amount. New paragraphs (2H) to (2J) cover this.

For those returning to the scheme on or after 1 April 2008, the contribution rate will be set according to the pensionable pay their employer estimates will be received during that year, increased to an annual amount. New paragraphs (2K) to (2L) cover this.

The vast majority of staff will retain the contribution rate that is first allocated to them on or after 1 April 2008 for the remainder of the year even if there is a change to their substantive post. However, employment patterns in the NHS can be complex; for example, members may have two or more part-time employments

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<sup>5</sup> 40 years at age 55 and 45 years overall

<sup>6</sup> Qualifying nurses, physiotherapists, health visitors, and midwives and mental health officers

<sup>7</sup> Manual workers will pay 5% until 1 April 2009

that run concurrently but have different rates of pay, members who have benefits based on the career average system (general practitioners) may also be employed as a hospital doctor (final salary arrangements). New paragraphs (2M) to (2T) deal with these more complicated circumstances and what happens where posts overlap, or start and stop.

**(7) Regulation 8: Changes to regulation D2 (Contributions by employers)**

This regulation covers employer contribution rates including the extra contributions that must be paid if an employer agrees to fund early retirement on redundancy or in the interest of the efficiency of the service. In these circumstances, the changes made require an employer to pay for the full cost of such a pension without taking into account any amount of pension that a member has exchanged for additional tax free lump sum. (see new regulation E7 inserted by regulation 14 ).

The facility for an employer to fund early retirement for any reason other than those mentioned above has been removed (see amendments to E4 at regulation 13). References to that facility have been removed from regulation D1.

**(8) Regulation 9: Changes to regulation E1 (Normal retirement pension)**

The age at which benefits become payable regardless of whether a member is continuing in NHS employment is changed to age 75. This regulation is also amended to allow members to commute pension into a lump sum on the grounds of serious ill health up to age 75.

**(9) Regulation 10: Amends regulation E2 (Early retirement pension ill-health)**

This amendment provides transitional arrangements for existing members who apply for ill health retirement before 1<sup>st</sup> April 2008 to be treated under the current terms even though they may retire after 1 April 2008.

**(10) Regulation 11: Insertion of new regulations E2A, E2B and E2C**

**E2A – Ill Health pension on early retirement**

Members retiring on ill health grounds on or after 1 April 2008 will be subject to the new ‘two tier’ ill health provisions contained in regulation E2A.

**Tier 1 condition and benefits** – Members with at least 2 years service who are permanently unable to continue in their current job because of ill health will receive the early payment of the pension they have earned up to the date of retirement.

**Tier 2 condition and benefits** - Members with at least 2 years service who are permanently unable to undertake regular employment will receive benefits based on membership increased by 2/3rds of the membership they would have completed if they had worked until age 60. There will also be a transitional underpin for members of the 1995 Scheme only of 4 years minimum increase subject to a maximum of the membership they would have had at age 60.

Members who commute benefits on the grounds of terminal ill health will not be able to re-join the scheme. Members who are awarded a tier 2 pension will not be able to re-join the scheme unless their tier 2 pension is replaced by a tier 1 pension. (see related amendments at E2C below)

### **E2B Re-assessment of ill health condition determined under regulation E2A**

Where, at the time a tier 1 pension is awarded, it is agreed that a member's entitlement may be re-assessed against the tier 2 condition; this regulation permits a member to request such a re-assessment within three years after retirement. If, based on further medical evidence, it is decided that the member meets the condition for a tier 2 pension at the date of the review, a tier 2 pension including any additional service will be calculated and paid from the date of this decision.

### **E2C Further employment after a benefit is paid under regulation E2A**

This regulation covers the circumstances in which a tier 2 pension will be replaced by a tier 1 pension. Those circumstances are:

- The member's earnings from any further employment in any tax year exceed the lower earnings limit (LEL) for national insurance purposes for that tax year.
- Where a member is re-employed in the NHS, one year after they become re-employed, if sooner.

Members whose tier 2 pension is replaced by a tier 1 pension will be automatically protected from the permanent loss of their tier 2 pension for a period of one year that will run –

- from the date earnings exceed the LEL (for those not employed in the NHS), and
- from the first day of re-employment (for those employed in the NHS)

If the further employment ends during this “one year protection period” and a member is under <sup>8</sup>normal benefit age he may apply for his tier 2 pension to be reinstated.

**(11) Regulation 12: Regulation E3** is amended to clarify that re-employed pensioners may still have access to a pension and lump sum under the transitional redundancy arrangements if the other qualifying criteria are met.

**(12) Regulation 13: omits regulation E4 (Early retirement pension (employer's consent)).**

The general facility that allowed an employer to fund the early payment of benefits is removed. An employer may only agree to fund early retirement if a member is made redundant or if the retirement is in the interest of the efficiency of the NHS.

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<sup>8</sup> Age 60



**(13) Regulation 14: Inserts new regulation E7 (General option to exchange part of pension for lump sum)**

This regulation allows members who leave the scheme on or after 1 April 2008 to take an additional tax free lump sum in place of part of their pension within the limits set by the Finance Act 04. Members will receive £12 of lump sum for every £1 of pension they give up.

**(14) Regulations 15, 16 and 17: Changes to Part F (Lump sum on death)**

**Regulation F1** (Member dies in pensionable employment) is amended so that a lump sum on death where a member dies whilst in service may be paid up to age 75.

**Regulation F2** (Member dies after pension becomes payable) is amended so that if a member's tier 2 ill health pension has been replaced by a tier 1 pension, any death benefit lump sum payable during the 'one year protection period' will be based on the original tier 2 pension. The amounts paid will be based on the amount of the member's original pension before any amount was exchanged for additional lump sum.

(Equivalent amendments have also been made in respect of benefits payable to a surviving partner - G3 (member dies after pension becomes payable and child allowance regulation H4 (member dies after pension becomes payable)).

**Regulation F5** (Payment of lump sum) is replaced so that members who are in pensionable employment on or after 1 April 2008 may nominate more than one person to receive the lump sum on death.

If a member has nominated a partner to receive a pension following their death, the nominated surviving partner will automatically receive the lump sum on death unless the member has provided alternative instructions.

**(15) Regulations 18 to regulation 29: Changes to Part G "Widows, widowers and surviving civil partners"**

**The title of Part G** is changed to "Surviving partner pensions"

**Regulation G1 (Widow's pension)** is amended so that regulations that cause a spouse or civil partner pension to stop if a member re-marries or forms a further civil partnership will not apply to members who have pensionable service in the scheme on or after 1 April 2008.

**Regulation G2 (member dies in pensionable employment)** is amended so that initial <sup>9</sup>surviving partner pensions in respect of members who die in pensionable employment on or after 1 April 2008 will be paid for six months at pensionable pay rate.

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<sup>9</sup> Widow's, widower's, surviving civil partner's and surviving nominated partner's pensions.

**Regulation G7 (Widower's pension)** is amended so that if a widower's pension is to be based on a proportion of the member's tier 2 ill health pension under new rules, this amendment allows the whole of the member service to be taken into account when determining how much additional service is to be added and for applying overall service limits to the calculation of the ill health pension. The widower's pension will be equal to half the member's pension for service after 5 April 1988 and half of the entire enhancement due.

**Regulation G8 (<sup>10</sup>Dependent widower's pension)** is amended so that if a female member has nominated her husband to receive a dependent widower's pension, any benefits that are commuted because of terminal ill health under the new ill health rules (E2A), will not be reduced to take account of any service that the member had before 25 March 1972. (An equivalent amendment has also been made to regulation G11 (Dependent Surviving Civil partner's pension) in respect of service before 6 April 1988)

**Regulation G9 (increased widower's pension)** so that if a female member has elected to purchase an increased widower's pension, any benefits that are commuted because of terminal ill health under the new ill health rules, will not be reduced to take account of the member's election. If a member who made such an election is in or returns to pensionable employment after 1<sup>st</sup> April 2008, the increase she has elected to purchase will apply to any surviving partner pension that may be payable on her death. (Equivalent amendments have also been made to regulation G13 (Increased surviving civil partner's pension))

#### **(16) Regulation 29: Inserts new regulations G14 to G17**

##### **G14 Surviving nominated partner's pension**

A member who is in pensionable employment on or after 1 April 2008 may nominate a partner to receive a pension after their death. The member and their nominated partner must jointly sign a declaration at the time the nomination is made.

If the member dies, the nominated partner must satisfy the scheme that for a period of at least two years the member and the nominated partner were:

- Living together as if husband and wife or as if civil partners
- Not prevented from marrying or entering into a civil partnership
- Financially interdependent or the partner was financially dependent on the member
- Not living with another person as if they were husband and wife or civil partners

The nominated partner's pension is based on the member's pension for service after 5 April 1988 and is equal to half that amount<sup>11</sup>.

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<sup>10</sup> The member's husband must be permanently incapable of earnings a living because of physical or mental infirmity and wholly or mainly dependent on the member

<sup>11</sup> Calculated in the same way as a widower's pension is calculated

### **G15 Dependent surviving nominated partner's pension**

Before leaving the scheme, a member may apply for their nominated partner to receive a pension for any service the member has in the scheme before 6 April 1988. For an application to be accepted the nominated partner must be permanently incapable of earning a living because of physical or mental infirmity, and wholly or mainly dependent on the member.

### **G16 Purchase of a surviving partner's pension in respect of service before 6 April 1988 and G17 Increased surviving partner's pension**

A member who is in pensionable employment may elect to buy additional surviving partner cover for all or part of their service in the scheme before 6 April 1988. This option is available for 15 months starting on 1<sup>st</sup> April 2008 and ending on 30 June 2009.

### **(17) Regulations 30 to 34: Changes to Part H Child Allowances**

Regulations H1 (dependent child), H3 (Member dies in pensionable employment), H4 (member dies after pension becomes payable), H5 (member dies with preserved pension) and H7 (Dependent child not being maintained by a surviving parent or spouse or civil partner of a parent) are amended to include cover for children of nominated partners.

Further amendments to H1 extend the payment of a child allowance in respect of members who die in pensionable employment on or after 1<sup>st</sup> April 2008 so that the allowance will be paid until the child reaches age 23 in all cases and may continue after that age if a child is incapable of earning a living because of permanent physical or mental infirmity.

Further amendments to H3 change the amount of the allowance to a proportion of the tier 2 ill health pension under new regulation E2A that the member would have been entitled to on the day he died. (The minimum amount of service used to calculate the member's pension is 10 years.)

If a <sup>12</sup>surviving partner pension is paid for an initial period of six months at salary rate, any child allowance in respect of a child who is dependent on the recipient, will be paid from the day after the date of the member's death (instead of after the salary payment ends.)

### **(18) Regulation 35: Changes to Regulation J1 (Allocation of pension)**

Regulation J1 is amended as a consequence of the new service limits for members who are not special class officers. Members who are still in pensionable employment may now allocate part of their pension at any time after completing 45 years service

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<sup>12</sup>Widow's, widower's, surviving civil partner's and surviving nominated partner's pensions

**(19) Regulation 36 and 37: Changes to Regulation K1 (Contracting-out conditions to be overriding) and Regulation K2 (Guaranteed minimum pensions)**

These are technical changes to reflect current legislation in respect of schemes that contract their membership out of the State Scheme

**(20) Regulation 38 to 40: Changes to Part L Early Leavers**

**Regulation L1 (Preserved pension)** is amended as a consequence of the change of the scheme's upper age limit to 75 years – members who have a deferred benefit but who are still in NHS employment on and after age 60, will be paid benefits at age 75 (rather than age 70) even if they continue to work in the NHS after that age. Further amendments are made to this regulation as a consequence of the introduction of new two tier ill health retirement provision (E2A) to cover the circumstances when a preserved pension may be paid early on health grounds.

**Regulation L2 (Refunds of contributions)** is amended to take account of the technical changes made to Part K – Contracting Out.

**Regulation L4 (Early leavers returning to pensionable employment)** is amended as a consequence of the implementation of new ill health retirement provisions (E2A). Members retiring on ill health grounds who have had a break of over one year during their scheme membership are paid the better of:

- two separate pensions; one based on pay before the break and one based on final pay (without additional service given for ill health retirement), or
- one pension for all service (with any additional service due under the ill health retirement regulations)

**(21) Regulation 41: Replacement of Part M (Transfers and Buy-Outs)**

Technical changes have been made to Part M to reflect the requirements of the Pension Schemes Act 1993 in respect of transfers of pension rights to another scheme. No other substantive changes have been made to Part M; however we have taken the opportunity to represent the regulations in a more logical order.

**(22) Regulations 42 and 43: Changes to Part N (Transfers from other pension arrangements)**

**Regulation N1 (Member's right to transfer accrued benefits to the scheme)** is amended to take account of the technical changes made to Part K – Contracting Out

**Regulation N5 (Waiver of transfer payment)** is amended so that a transfer payment from another scheme cannot be waived.

**(23) Regulation 44: Changes to Regulation P2 (Other leave of absence)**

**Regulation P2 (other leave of absence)** is amended to so that a member who takes an authorised unpaid leave of absence may continue to pay scheme contributions for a period of up to six months.

**(24) Regulation 45 to 51 Amendments to Part Q Right to buy additional service and unreduced retirement lump sum**

**Regulation Q1 (Right to buy additional service)** is amended to reflect transitional arrangements for the withdrawal of the facility to purchase full cost additional years of service. The facility will be closed to new purchases from 1 April 2009.

**Regulation Q2 (Right to buy an unreduced retirement lump sum)** is amended so that an inappropriate reference to members who are in a civil partnership is removed.

**Regulation Q4 (Paying for additional service by single payment)** is amended so that the facility to pay by this method for full cost added years is removed.

**Regulation Q5 (Paying for unreduced lump sum by single payment)** is amended as a consequence of the introduction of nominated partner pensions.

**Regulation Q6 (Paying for additional service or unreduced retirement lump sum by regular additional contributions)** is amended so that new additional contribution limits are set that take account of the introduction of new rates of member contributions covering normal benefits. Member's who are paying contributions at 5 per cent may make additional contributions to buy additional years of up to a maximum of 10 per cent of pensionable pay. Members who are paying any other rate (6.5 per cent – 8.5 percent) may pay up to a further 9 per cent to buy additional service.

**Regulation Q7 (Part payment for additional service or unreduced retirement sum)** is amended as a consequence of the introduction of new ill health retirement regulations.

**Regulation 51: Insertion of new regulations Q8 to Q17**

**Q8 Option to pay additional periodical contributions to purchase additional pension**

Members who are in pensionable employment or an employer on their behalf may take out an option to purchase additional pension (AP). The option may cover:

- An increase to the member's pension, or
- An increase to the member's pension and any pension that may become payable to a surviving partner and dependent child also.

The minimum amount of AP that may be bought is £250. A member may opt to buy more in further blocks of £250 up to a maximum <sup>13</sup>£5000.

### **Q9 Effect of member being absent or leaving and rejoining the Scheme during the contribution option period**

Members may continue to pay additional contributions to purchase AP whilst absent from work as long as they are paying main scheme contributions under regulation D1.

### **Q10 Members option to pay lump sum contributions to purchase additional pension**

A member who is in pensionable employment may also buy AP by paying a single lump sum additional contribution. The limit and related requirements on the amounts that may be purchased are the same as those where the purchase is made by periodical payments. (See Q8).

### **Q11 Payment of additional lump sum contributions by employing authority**

An employer may make a lump sum payment to buy an amount of additional pension for a member who is in pensionable employment. The limits and related requirements are the same as those that apply where the payment is made by the member (See Q10 and Q8 above).

### **Q12 Exercise of options under regulations Q8, Q10 and Q11**

An option must be exercised by a member who is in good health or an employer in writing and may not be made if the member is absent from work. An option will be cancelled if a lump sum payment is not received by the date on which it is due.

### **Q13 Cancellation and cessation of options under regulation Q8**

A member may cancel an option in writing. Payments will stop from the next payment period after the employer received the member's notification.

An option may be cancelled by the scheme in writing if it appears that the overall maximum (£5,000) will be exceeded or the amount of AP the member has opted to purchase would not result in any increase to that member's pension.

### **Q14 Effect of payment of additional contributions under this Part**

This regulation provides for the increases to be applied if all additional contributions have been made. The member will receive the full amount of AP if retiring after age 60 or age 65 (if the member elected to pay to that age).

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<sup>13</sup> This maximum includes any amount bought by the member and paid for by a lump sum payment and any amount bought on the member's behalf by an employer

If the member elected to include cover for dependents, 37.5 per cent of the full amount of AP will be added to any surviving partner pension paid after death and 75 percent of the full amount of AP is added to the member's pension before any child allowance is calculated.

**Q15 Effect of death or early payment of pension after option exercised under regulation Q8, Q10 or Q11**

If within 12 months after exercising an option to buy AP, the member dies or becomes entitled to an ill health pension, contributions will be refunded to the member's personal representatives or to the employer if the employer exercised the option. If the member dies or becomes entitled to an ill health pension more than 12 months after exercising the option (or the employer exercising the option), credit for the full amount of AP will be given. If the member becomes entitled to any other pension under the scheme before the age that was chosen for the full amount to be payable, the AP will be subject to an actuarial reduction.

**Q16 Effect of part payment of periodical contributions**

If the member does not pay the full amount of the contributions he elected to pay, he will receive an amount of AP that is proportionate to the full amount.

**Q17 Revaluation of increases bought under options: members' pensions**

This regulation provides for the amount of basic AP bought, to be uprated in line with the Retail Prices Index (RPI) between the date the AP option commenced and a point <sup>14</sup>2 months before payment with main scheme benefits.

Where main scheme benefits have an earlier date for pensions increase purposes than AP the regulation also provides for AP uprating to be adjusted, to prevent 'double indexation' when benefits are paid.

**(25) Regulation 52- 55: Changes to Part R 'Special Provisions for certain members'**

**(R3) (Mental health officers)** is amended as a consequence of the introduction of new ill health retirement rules. Mental health officers may count one year of service as two years after they have completed 20 years service in a qualifying post (doubled service). Doubled service does not count when calculating the service a member would have been entitled to if he had staying in employment until a certain age.

**R4 (Members doing more than one job)** is amended as a consequence of the upper pensionable age changing to 75. Benefits are not payable until a member leaves all employments or reaches age 75.

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<sup>14</sup> the latest RPI factors that can be used without delaying payment

**R5 (Part-time employment)** is amended as a consequence of the introduction of new ill health retirement rules. The value of any increase to service is adjusted according to the proportion of full time working throughout the member's service.

**R9 (Members whose earnings are reduced)** is replaced. A member who is over minimum pension age may make one election to preserve his benefits up to the date his pay (whole time comparable pay for part-time membership) reduces if an employer certifies that the member meets the prescribed conditions. A member who makes such an election may receive two separate pensions at retirement.

**(26) Regulations 56- 61 Changes to Part S Members who return to employment after pension becomes payable**

**S1 (Suspension of pension on return to NHS employment)** is amended as a consequence of the change of the scheme's upper pensionable age to 75. If a pension is suspended it again becomes payable at age 75 unless, before then, the member reduces hours worked to less than 16 a week for at least a month.

**S2 (Reduction of pension on return to NHS employment)** is amended to take account of new abatement rules that apply to various pensions coming into payment on or after 1 April 2008. The member's pre retirement earnings are compared to new earnings (including pension) but only part of the pension will be taken into account. This is the part that is over and above the amount the pensioner would have got had the pension been actuarially reduced for retirement before normal benefit age. The pension is reduced if new earnings plus the actuarially reduced pension is more than pre-retirement earnings.

**S3A (Benefits in respect of pensionable employment after pension becomes payable under regulation E2A)**

New regulation S3A provides for the benefits to be paid to re-employed pensioners who are in receipt of a new style ill health pension and who are re-employed in the NHS under age 50. Members will receive separate benefits for their service during their re-employment based on final pensionable pay when re-employment ends.

**S4 (Benefits on death in pensionable employment after pension becomes payable)** The heading of this regulation is changed to "Benefits on death in pensionable employment after pension becomes payable under Regulation E2"

**S4A Benefits on death in pensionable employment after pension under regulation E2A becomes payable),**

This regulation covers the benefits that are payable if a member who retired under new ill health rules (regulation E2A), re-joins the scheme and dies in pensionable employment. It covers the lump sum, surviving partner pension and child allowance that may be payable in respect of both the pension that is in payment and the member's further pensionable service.



**(27) Regulation 62: T2A (Deduction of tax: further provisions)** is amended as a consequence of the removal of the earnings cap from 1 April 2008. Whilst the cap continued to apply, authority to reduce benefits in respect of which the scheme administrator has paid a Lifetime Allowance Charge was provided by <sup>15</sup>HMRC regulations. This authority has now been incorporated into scheme regulations.

**(28) Regulation 63: U1A (Determinations by medical practitioners)** is amended as a consequence of the introduction of new ill health retirement regulations.

**(29) Regulation 64: U4 (Cost Sharing)** this regulation implements the Review Partners agreement on how scheme costs are to be shared between members and employers. The Secretary of State will decide on the appropriate contribution rate for member and employers following each scheme valuation after taking into account advice from the Scheme Actuary, HMT and advice provided separately by employer and member representatives. An overall cap on employer contributions of 14.2% will apply up to 2016 and a cap of 14.0% thereafter. This means employers would pick up the first part of any contribution rate increase up to a maximum employer contribution rate of 14.2% up to 2016. If costs had increased beyond 14.2% up to 2016 and beyond 14.0% after 2016, this would fall to employees in the form of contribution increases, benefit changes or a mixture of the two.

**(30) Regulation 65: Paragraph (1) provides for the amendment of Schedule 2. This schedule modifies regulations in respect of their application to Medical and Dental Practitioners and Non GP-Providers**

**Paragraph (2)** updates the definition of “commissioned services”

**Paragraph (3)** removes outdated references to ‘Health Authorities’ from paragraph 2(1)

**Paragraph (4) amends paragraph 2A** (Membership: Locum Practitioners) so that an outdated provision in respect of Locum practitioners is removed

**Paragraph (5) amends paragraph 3(2B)(a)(ii)**(Meaning of pensionable earnings) to take account of parental leave.

**Paragraph (6)** removes outdated references to ‘Health Authorities’ from paragraphs 5(4), (5) and (6)

**Paragraph (7) amends paragraph 8(2)** (Limit on pensionable earnings – dental practitioners) so that the limit on earnings ceases to apply after 1<sup>st</sup> April 2008

**Paragraph (8) amends paragraph 9(5)** (Officer service treated as practitioner service) so that the calculation of total officer and total practitioner service does not include any additional service due in respect of an ill health pension awarded under new regulation E2A

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<sup>15</sup> The Pension Schemes (Modification of Rules of Existing Schemes) Regulations 2005

**Paragraph (9) substitutes a new paragraph 10 (2)** (Contributions to the scheme) so that in common with non-practitioner members, a tariff will be set according to earnings, with rates varying between 5.0 and 8.5 per cent of pensionable pay. Finalised 2007-2008 earnings for scheme members on and before 1 April 2008 will be unavailable for many self-employed general practitioners and non-GP providers, and their contribution rate in the 2008-2009 scheme year will normally be based on their 2006-2007 or 2005-2006 earnings, using a suitably adjusted pay band table. The contribution rate for practitioners and non-GPs returning to the scheme on or after 1 April 2008 will normally be the amount estimated for the 2008-2009 year by the practitioner and their host primary care trust or local health board, as described in paragraph 2J or 2S.

The majority of practitioners and non-GPs will retain the contribution rate that is first allocated to them on or after 1 April 2008, for the remainder of that year, even if there is a change in the services they provide. Paragraphs 2K to 2R, and 2T to 2Y, allow many members who commence practitioner and non-GP work following earlier officer employment or who have earlier periods of practitioner service during the 2008-2009 year, to continue payment at the rate set for that earlier period. Practitioners and non-GPs who have concurrent non-practitioner employment, will be tiered separately for such earnings under regulation D1.

**Paragraph (10) amends paragraph 10(3)(a)** to reflect new service limits of 45 years overall for members who are not special class officers.

**Paragraph (11) amends paragraph 11(2)** (Normal retirement pensions) so that the member's uprated earnings are to be calculated by uprating the member's pensionable earnings by the amount of the annual increase due under the provisions of the Pensions (Increase) Act 1971 and Section 59 of the Social Security Pensions Act 1975, plus 1.5% annually.

**Paragraph (12) amends paragraph 12** (Early retirement pension (ill Health)) so that the calculation of an ill health pension for a member who is or has been a practitioner described in that paragraph also applies if the pension is awarded under new regulation E2A. The definition in that regulation of, "regular employment of like duration" is also modified so that in the case of a practitioner it means such employment as the Secretary of State considers would involve a similar level of engagement in the member's current pensionable service as a practitioner.

**Paragraph (13) inserts a new paragraph 16 B** (Increased dependent surviving nominated partner's pension) and 16C (Increased surviving partner pension)

These amendments modify regulations G15 and G17 so that if a member applies for a dependent surviving nominated partner's pension or elects to purchase an increase to that pension, the lump sum payable on the member's retirement will be reduced by 1.96 per cent of uprated earnings for each complete year of practitioner service before 6 April 1988 plus the relevant daily proportion for each additional day.

**Paragraph (14) replaces paragraph 17** (Child allowance—member dies in pensionable employment) This amendment modifies regulation H3(9) so that the reference there to the member’s final year’s pensionable pay is treated as a reference to the yearly average of the member’s uprated earnings at the date of death.

**Paragraph (15) inserts new paragraph 17A** to modify regulation L1 (Preserved Pension) so that where a practitioner applies for the early payment of preserved benefits on health grounds, “regular employment of like duration” means such employment as the Secretary of State considers would involve a similar level of engagement to the member’s pensionable service as a practitioner immediately before that service ceased.

**Paragraph (16) Omits paragraph 19(6)** – that contains obsolete provisions relating to dental pilot schemes.

**Paragraph (17) inserts new paragraph 22A** – to modify references to pensionable pay in regulation S4 and S4A (Benefits on death in pensionable employment after a pension has been paid under E2 or E2A respectively) References to ‘pensionable pay’ will be read as references to the average rate of the member’s pensionable earnings during the last complete quarter before the member died.

### **(31) Regulation 66 Amendment of Schedule 2A (Pension Sharing on Divorce)**

Amends the schedule retrospectively so that it reflects changes made to regulation F5 (Payment of lump sum (on death)) in 2003 (in respect of circumstances in which a death benefit lump sum may be forfeited)

Makes further amendments from 1 April 2008 to take account of new provision for nominated partner pensions and the extended death benefit lump sum nomination facility.

### **The structure, terms and benefits of the new NHS Pension Scheme 2008**

7.11 New entrant NHS staff will join the new NHS Pension Scheme from 1 April 2008. (Existing members of the 1995 Scheme will be given the opportunity to move to the new Scheme through an exercise planned to run from 2009)

#### **(1) Key features of the new scheme that distinguish it from the existing 1995 Scheme are:**

- Normal retirement age of 65
- Minimum Pension age of 55
- Member benefits based in  $1/60^{\text{th}}$  of reckonable pay for each year of service with an option to commute pension to lump sum

- Reckonable pay will be the average of the pay in the best 3 consecutive years of the last 10 years of membership.
- Facility to “draw down” a percentage of benefits from minimum pension age without retiring
- Maximum service of 45 years but members have an option to contribute beyond this to retain a link to up to date pay
- Late retirement factors that will increase benefits that are accrued before normal retirement age 65 but are taken later than this age
- Pensioners permitted to re-join the scheme and accrue further benefits
- Benefits for general medical and dental practitioners of 1.87% of uprated career average earnings
- Cap on pensionable pay will only apply to service transferred in from other Public Sector Schemes if the cap applied in the sending scheme

**(2) Key features that are the same for both the amended 1995 scheme and the new 2008 scheme are:**

- A member contribution tariff set according to the level of a members pensionable earnings and arrangements that will allow for future increases in the costs of benefits to be shared by NHS employers and members via adjustments to respective contributions rates
- Two tier ill health retirement provisions
- Facility to exchange pension for tax free lump sum
- Revised career average earnings uprating formula for general medical and dental practitioners of RPI +1.5%
- Provision of nominated partner pensions, standardised duration of pensions paid to a qualifying spouse or partner on the members death
- Child allowances to be paid to age 23 and cover is extended to include children of nominated partners
- Provision for a member or an employer to buy additional amounts of pension
- New formula for reducing pensions in payment if a pensioner returns to NHS employment

**The structure, terms and benefits of the new NHS Pension Scheme 2008**

- 7.12 The regulations are divided into four parts. There follows a summary of each part and chapter of the new scheme including a more detailed explanation about the benefits available, particularly where provisions differ significantly from those provided for members of the existing 1995 Scheme from 1 April 2008.
- 7.13 **Part 1** contains introductory material, and sets out the circumstances in which Parts 2 to 4 apply. It also sets out the provisions relating to Scheme reports and accounts and cost sharing. Cost sharing provisions are the same as for the existing scheme (see explanation at new Regulation U4)
- 7.14 **Part 2 sets out the provisions and benefit structure for NHS staff and for non GP Providers with modifications (officers).**

(1) **Chapter 2.A** contains definitional matters. Regulation 2.A.1 contains general definitions. The remainder of Chapter 2.A contains definitions that are relevant for entitlement to and calculation of benefits under the Scheme.

Regulations:

**2.A.2 to 2.A.7** deal with the meaning of “pensionable service” and “qualifying service” and how service is calculated.

**2.A.8 to 2.A.14** deal with “pensionable pay” and “reckonable pay”.

Reckonable pay is the pay that will be used to calculate scheme benefits. In the new scheme the best 3 consecutive years during the last 10 years of membership will be identified and the average, revalued, pay over those three years will be used as the member’s final pensionable pay figure.

(2) **Chapter 2.B** sets out the conditions that must be met for a person to be eligible to belong to the Scheme, and also deals with leaving and rejoining it. Joiners will include new NHS staff, and returners who left the existing scheme without qualifying for retirement benefits and most members who chose to transfer their benefits to another scheme. Existing scheme pensioners are also excluded.

(3) **Chapter 2.C** deals with contributions to the Scheme.

**Regulations 2.C.1 to 2.C.4** cover members’ compulsory contributions during the scheme year 1 April 2008 to 31 March 2009. In common with the existing scheme, a tariff will be set according to earnings with rates varying between 5.0 and 8.5 per cent of pensionable pay. Pensionable pay for this purpose will be estimated by the employer and increased to an annual figure as described in 2.C.3 (1). The vast majority of staff will retain the contribution rate that is first allocated to them on or after 1 April 2008 for the remainder of the year even if there is a change to their substantive post. However, employment patterns in the NHS can be complex; for example, members may have two or more part-time employments that run concurrently and have different rates of pay, and members employed as a hospital doctor under Part 2 of these regulations (final salary arrangements) may also have general practitioner benefits under Part 3 of the regulations (career average arrangements). Paragraphs 2.C.3 (2) to 2.C.3 (12) deal with these more complicated circumstances.

**Regulations 2.C.5 to 2.C.7** relate to employers’ contributions and the circumstances in which they can be required to give guarantees, indemnities etc. to cover their contributions. Employer contributions are 14 per cent of pensionable pay for the scheme year 1 April 2008 to 31 March 2009.

**Regulations 2.C.8 to 2.C.17** are about the members’ rights to purchase additional pension by paying extra contributions either by instalments over

a period of up to 20 years or by lump sum. Regulation 2.C.11 enables such pension to be bought for a member by the member's employer. These provisions operate in the same way as for existing scheme members. (See 1995 Scheme amendments at paragraph 24 amendments to Part Q) **Regulation C.18** deals with refunds of contributions.

**(4) Chapter 2.D** deals with the pensions to which active members become entitled on retirement or partial retirement and members with deferred benefits become entitled to before and at age 65.

**Retirement on reaching the schemes normal retirement age 65**

Annual pension equal to  $1/60^{\text{th}}$  of reckonable pay for each year of membership and pro rata for any part years

**Retirement after reaching the schemes normal retirement age of 65**

Pension calculated as above but with an actuarial increase applied to benefits accrued for service before normal retirement age because benefits are being paid 'late'.

**Voluntary retirement on or after minimum pension age (55 years)**

Calculated as above but reduced by actuarial factors because benefits are being paid early

**Partial retirement on or after minimum pension age (55 years)**

From minimum pension age, members whose pay reduces by at least 10% will be able to 'draw-down' part of their pension, whilst continuing to build up more pension. Pension that is drawn-down before normal retirement age will be subject to an actuarial reduction and, where paid after that age, will be subject to a late retirement increase. Members will be able to draw down part of their pension twice before final retirement.

Each part drawn-down must be not less than 20% of the available pension, with an overriding minimum pre-commutation pension, following any actuarial reduction of £750. The minimum pensionable service that can be left in the Scheme after any draw down is 20% of the total pensionable service available before draw down or one year, whichever is greater.

If during the 12 months after pension is drawn down the 10% reduction in pay is eroded (after taking account of normal salary increases) the member's pension will be stopped until pay once again drops below the required level.

**Retirement on health grounds before normal retirement age**

Members retiring from active membership on ill health grounds will be subject to the new 'two tier' ill health provisions. The provisions operate in the same way as for the 1995 Scheme except that normal retirement age is 65 in the 2008 scheme. (See explanation at 7.11 (10))

**Retirement on the termination of employment on the grounds of efficiency or redundancy**

Members with two year or more service who are made redundant after reaching the minimum pension age of 55 may receive a pension for

service in the scheme up to the date of their redundancy. This pension is funded by the employer until normal retirement age.

### **Option to exchange pension for lump sums**

Members do not have to take any tax free lump sum. However, they can if they wish exchange pension for a tax free lump sum up to the limits set by the Finance Act 2004. Members will receive £12 of lump sum for every £1 of pension exchanged.

### **Commutation of pension on serious ill health**

Members who are under normal retirement age may commute a tier 2 ill health pension into a lump sum if life expectancy is less than one year. The amount payable will be the maximum tax free retirement lump sum plus five times the remaining amount of tier 2 ill health pension.

Members who are over normal retirement age will also be able to commute benefits to a lump sum if they are terminally ill. The amount payable will be the maximum tax free retirement lump sum plus five times the remaining amount of their pension for service accrued up until retirement.

Members who commute benefits on the grounds of terminal ill health will not be able to re-join the scheme.

Provisions covering the payment of a pension credit following a Pension Sharing Order, provisions that allow a member to allocate part of their pension to a dependent and the Schemes obligations as a result of contracting members out of the State Scheme are also covered in this Chapter.

## **(5) Chapter 2.E sets out the benefits that are payable on the death of a member.**

### **Pensions for Surviving Adults**

If a member has two years or more service, a surviving adult pension may become payable to a surviving spouse, civil partner or nominated partner. The criteria for a nominated partner are the same as for the existing 1995 scheme.

A surviving adult pension is paid at two rates if an active or a pensioner member dies. Following the death of an active member the initial pension is paid at salary rate for six months and following the death of a pensioner at three or six months (if there are also dependent children) at the member's pension rate.

If an active member or a deferred member who has recently left dies before normal retirement age the ongoing pension is paid at a rate equal to 37.5 per cent of the pension the member would have received had they retired with a tier 2 ill health pension. The ongoing amount paid in respect of other members is equal to 37.5 per cent of the member's pension. All surviving adult pensions are paid for life.

On the death of a re-employed pensioner, benefits paid to a surviving adult are based on a combination of those paid following the death of a pensioner member and those paid following the death of an active member (in respect of the pensioner's later active service)

### **Pensions for Dependent Children**

A child who meets the relationship condition and is dependent on the member at the date of death may receive a pension until age 23. A pension may be paid after age 23 on health grounds. The amounts payable depend on the number of children who qualify for a pension and whether the member was active, deferred or a pensioner member at death and whether an adult pension is also payable in respect of the member.

### **Lump sum death benefits**

A lump sum on death may be paid to one or more nominees, adults to whom a pension is payable or personal representatives. The amounts payable will depend on whether the member is an active, deferred or pensioner member.

Following the death of an active member the amount payable is twice the member's deferred pension, and in the case of a pensioner member it is the lesser of five times the member's pension less the pension already paid and twice the member's reckonable pay less the amount of lump sum already paid.

In the case of a re-employed pensioner the lump sum comprises two parts, the first is calculated in the same way as for other pensioner members and the lump sum for the later active service is equal to five times the member's pension for that service.

In the case of an active member who has taken (drawn-down) part of their benefits the lump sum is calculated as combination of those paid following the death of a pensioner member and those paid following the death of an active member, subject to an overriding cap that reflects the benefits drawn-down.

**Chapter 2E** also deals with the benefits to be paid if a person who has a pension credit (following a Pension Sharing Order) dies, tax issues following the payment of a lump sum on death, how benefits are shared if the member has a polygamous marriage and guaranteed pensions for spouses and civil partners.

**(6) Chapter 2.F** deals with members' rights under the Scheme to have a transfer payment paid by the Scheme into another scheme, and the right of a member to have a transfer payment from another scheme accepted by the Scheme so that the member is entitled to count further pensionable service in the Scheme. (The rights to transfers out supplement the members' rights under the Pension Schemes Act 1993 (c. 48)) There are special



arrangements for those going to or from other public sector schemes, those who transfer in or out with a number of other similar employees, and transfers with EU and other overseas transfers.

A cap on pensionable earnings will apply to service transferred in from another Public Sector Scheme if that service was subject to the earnings cap in the previous scheme.

**(7) Chapter 2.G** deals with members who have more than one period of service that counts for the Scheme because they are re-employed. As a general rule the rights relating to such separate periods of service are dealt with separately, but this does not apply if aggregation of the periods would give rise to more favourable benefits. There are also special rules provide for ill-health pensioners and those transferred out of the Scheme on a transfer of an undertaking.

The special rules that apply to ill - health pensioners covers the circumstances in which a tier 2 pension will be replaced by a tier 1 pension and when a member may apply for re-instatement of a tier 2 pension. Those circumstances are the same as for member of the existing scheme. (See explanation for the 1995 Scheme at 7.11(10) new regulation E2C)

**(8) Chapter 2.H** deals with the abatement of pensions in certain circumstances where pensioners are re-employed in the National Health Service. Abatement will apply in the same way as for existing scheme pensions from 1 April 2008 – (see explanation for the 1995 Scheme at 7.11 (26) amendments to regulation S2).

**(9) Chapter 2.J** contains miscellaneous and supplementary provisions, for example, relating to claims for and payment of benefits, the commutation of small pensions, the forfeiture of benefits in certain circumstances, the deduction of tax and the provision of information relevant for tax purposes and the payment of interest where the payment of benefits or refunds of contributions are late.

7.15 **Part 3 sets out the provisions applying to people working in the National Health Service as General Medical and Dental Practitioners.**

**(1) Chapter 3.A** contains definitional matters. Regulation 3.A.1 contains general definitions. The remainder of Chapter 3.A contains definitions that are relevant for entitlement to and calculation of benefits under the practitioner regulations. Regulations 3.A.3 to 3.A.6 are similar to their equivalents in Part 2 of these regulations and deal with the meaning of “pensionable service” and “qualifying service” and how service is calculated. Regulations 3.A.7 to 3.A.15 deal with “pensionable earnings” and 3.A.16 provides certain specific rules for out-of-hours providers.

**(2) Chapter 3.B** sets out the conditions that must be met for a person to be eligible to belong to the Scheme, and also deals with leaving and rejoining it. Most people will become members of the Scheme automatically on entering their employment unless they wish not to belong to it. Joiners will include new NHS general medical and dental practitioners and returners who left the existing scheme without qualifying for retirement benefits and most members who chose to transfer their benefits to another scheme. Existing scheme pensioners are also excluded.

**(3) Chapter 3.C** Regulations 3.C.1 and 3.C.2 deal with members' compulsory contributions to the Scheme during the scheme year 1 April 2008 to 31 March 2009. In common with the existing scheme and part 2 of these regulations, a tariff will be set according to earnings, with rates varying between 6.5 and 8.5 per cent of general practitioner or non-GP provider pensionable earnings. Pensionable earnings for this purpose will be the amount estimated for the scheme year by the practitioner and their Host Primary Care Trust or Local Health Board as described in paragraphs 3.C.2 (6) and (12). The vast majority of GPs providers will retain the contribution rate first allocated to them on or after 1 April 2008 for the remainder of the year, even if there is a change in the services they provide. However, service patterns in the NHS can be complex; for example, practitioner members may undertake services both as a NHS doctor and dentist (career average arrangements) and also have part-time employments under Part 2 of these regulations as a hospital doctor (final salary arrangements). The remaining paragraphs in regulation 3.C.2 deal with these more complicated circumstances.

Regulations 3.C.3 to 3.C.5 relate to employers' contributions and the circumstances in which they can be required to give guarantees, indemnities etc. to cover their contributions. Regulations 3.C.6 to 3.C.15 are about the members' rights to purchase Additional Pension (AP) by paying extra contributions either by instalments over a period of up to 20 years or by lump sum. Regulation 3.C.9 enables such pension to be bought for a member by the member's employer. Where a member has service in this Part of the regulations as well as employment under Part 2, the limits on purchase of AP apply as if they were a member in only one Part. Regulation 3.C.16 deals with refunds of contributions.

**(4) Chapter 3.D** deals with the pensions to which members become entitled on retirement. Regulations 3.D.1 to 3.D.18 provide the same range of benefits, lump sum commutation and related provisions as those described under Part 2 of the memorandum at regulations 2.D.1 to 2.D.22, but they are based on a 'career average' calculation, in which the practitioner's career earnings are dynamised annually by the current level of the retail prices index, plus 1.5%. 1.87% of those uprated earnings

provide a pension broadly equating to the 1/60 final salary benefits under Part 2.

**(5) Chapter 3.E** provides the same range of benefits payable on the death of a member under Part 2 of these regulations. Calculation arrangements are very similar, with the exception of:

- ‘active member initial period benefits, which are based on the average rate of the practitioner’s earnings in the quarter prior to death,
- certain child pensions, which are based on the deceased member’s pension and utilise the practitioner career average calculation, and
- the use of an ‘appropriate proportion’ fraction of ‘70/187’, to provide an exact practitioner equivalent of the 37.5% figure used in death benefits in Part 2 of these regulations

**(6) Chapter 3.F** deals with members’ rights under the Scheme to have a transfer payment paid by the Scheme into another scheme, and the right of a member to have a transfer payment from another scheme accepted by the Scheme so that the member is entitled to count further pensionable service in the Scheme. For practitioner scheme members, the further pensionable service is converted into a remuneration credit for their career average benefits. (The rights to transfers out supplement the members’ rights under the Pension Schemes Act 1993 (c. 48)) There are special arrangements for those going to or from other public sector schemes, those who transfer in or out with a number of other similar employees, and transfers with EU and other overseas transfers.

**(7) Chapter 3.G** deals with members who have more than one period of service that counts for the Scheme because they are re-employed. As a general rule the rights relating to such separate periods of service are dealt with separately, but this does not apply if aggregation of the periods would give rise to more favourable benefits. There are also special rules provide for ill-health pensioners and those transferred out of the Scheme on a transfer of an undertaking.

**(8) Chapter 3.H** deals with the abatement of pensions in certain circumstances where pensioners are re-employed in the National Health Service and, with adjustments to suit practitioner benefits and pensionable earnings, follow the arrangements described for the existing scheme and Part 2 of these regulations.

**(9) Chapter 3.J** contains miscellaneous and supplementary provisions, for example, relating to claims for and payment of benefits, the commutation of small pensions, the forfeiture of benefits in certain circumstances, the

deduction of tax and the provision of information relevant for tax purposes and the payment of interest where the payment of benefits or refunds of contributions are late.

7.16 **Part 4 sets out the provisions applying to people who have worked in the National Health Service as both Officers and Practitioners.**

**Chapter 4.A** explains how the benefits of members with both employment under Part 2 and service under Part 3 of these regulations, may be payable with modifications.

**Chapter 4.B** describes a range of ways in which periods of employment under Part 2 can be treated as if they were periods of practitioner service under Part 3, and the result compared with original Part 2 benefits.

**Chapter 4.C** provides for the members benefits calculated under Part 2 and Part 3 to be modified (i.e. 'topped-up'), provided that the comparisons carried out under 4.B demonstrate that treatment of some or all of the members Part 2 employment as if it were Part 3 service, would increase total benefits. Chapter 4.C also provides for the appropriate proportion of any top-up payable, to be reflected in death benefits.

**Chapter 4.D** These provisions cover combined applications for benefits, limits on total pensionable service, and abatement of pensions on re-employment where a member has officer service under Part 2 and practitioner service under Part 3.

**SI covering consequential changes to include appropriate cross references to the New 2008 Scheme in associated Injury Benefits, AVC and Compensation Scheme regulations.**

7.17 The National Health Service Pension Scheme (Additional Voluntary Contribution) and the National Health Service (Injury Benefits) Regulations contain references to The National Health Service Pension Scheme Regulations 1995. Regulations (2) and (3) of the amending SI insert corresponding references to regulations in the new 2008 NHS Pension Scheme. These amendments do not effect any changes to entitlement. Regulation (4) of the SI amends regulation 4 of the National Health Service (Compensation for Premature Retirement) Regulations 2002 (S.I. 2002/1311). Transitional arrangements for the phased withdrawal of provisions that awarded additional service on redundancy to members of the 1995 Scheme were introduced from December 2006. This amendment provides for the earnings cap to continue to apply in respect of the amount of pension for the additional service if a member was subject to the cap before 1<sup>st</sup> April 2008.

**Consultation on the proposals**

7.18 Key stakeholders were directly involved in the policy development process and all proposals have been the subject of public consultation

exercises led by NHS Employers. This first exercise began on 1<sup>st</sup> September 2007 and ended on the 30<sup>th</sup> November 2007. A separate consultation on ill health proposals ran from 22 October 2007 until 21 January 2008.

- 7.19 Employers and scheme members were invited to register their responses via mail, email and an online response form. NHSE delegates also attended a series of HR network meetings across the country to discuss the review with representatives from over 200 different NHS employers. In addition NHS trade unions consulted with their respective members and have each provided a formal response to the exercise.

### **Consultation of the draft regulations**

- 7.20 Formal consultation exercises on regulations were conducted as follows:

1995 Scheme Amending SI: 28 November 2007 to 13 February 2008.

New 2008 Scheme SI: 19 December 2007 to 13 February 2008.

SI covering consequential changes only: 30 January 2008 to 13 February 2008.

- 7.21 Amongst those consulted were: NHS Staff Side representatives, NHS Employers; the NHS Business Services Authority Pensions Division; other public service pension schemes; Government Actuary's Department; the Pensions Regulator; the National Audit Office; the devolved administrations; and HM Treasury. Comments have been received from the NHS Staff Side representatives, Government Actuary's Department, Pensions Division, HM Treasury and the devolved administrations. In addition, workshops were provided to allow stakeholders the opportunity to ask any questions and to make comments on the Draft SIs. These were attended by NHS Staff Side representatives, representatives of the devolved administrations and NHS Business Services Authority Pensions Division (the scheme administrators).

### **Responses to consultation exercise on all proposals except ill health**

#### **Employers in the NHS**

- 7.22 Almost all (94%) of the 31 NHS employers who responded to the consultation supported the proposed changes to the NHS Pension Scheme for both existing members and new entrants. They viewed the increased flexibilities and as a positive step forward providing a valuable aid to recruitment and retention. Employers also supported the retention of normal pension age of 60 for the existing scheme and the increase in normal pension age to 65 in the new scheme. There were some concerns that the higher normal pension age would stop existing staff moving to the new, more flexible pension scheme.

## **NHS Trade Unions**

7.23 The NHS trade unions that responded to the consultation endorsed the overall agreement for existing and new scheme members; in particular, they welcomed:

- Retention of final salary scheme for both existing and new scheme members
- Retention of Normal Pension Age 60 (NPA60)
- Addition of nominated partner pensions
- Increased flexibility for members of the new 2008 1/60<sup>th</sup> scheme
- Employees contributions at tiered rates

The NHS trade unions did however signal up some areas of concern to their members:

- The employer contribution cap
- Increase in Normal Pension Age to 65 for the new scheme
- Value of pension purchase compared with current added years facility
- Communication of changes and effective administration/implementation of the proposals

## **Responses from NHS staff**

7.24 NHS Employers received 270 responses from both scheme and non-scheme members. In total 44% of the staff responses agreed and 47% disagreed with the changes to the existing scheme; a key factor seems to have been the introduction of higher contribution rates, a majority of high earners who responded disagreed with the proposals for existing staff. It was also apparent that a number of un-partnered members objected to paying for unmarried partner benefits. A majority of staff who responded agreed with the proposed changes to the scheme for new entrants; 54% agreed with the provisions for the new scheme 23% disagreed.

## **Responses to consultation exercise on ill health proposals**

7.25 192 responses were received, broken down as follows:

|   |    |
|---|----|
| Joint response (representing staff and employer views):   | 55 |
| Employers – as an employer on behalf of the organisation: | 45 |
| Trade union representative:                               | 33 |
| Staff:  | 56 |
| Not Specified:  | 3  |

## **Summary of responses**

- 7.26 77% of respondents supported the proposed ‘two tier’ approach to ill health retirement benefits.  
81% of respondents supported the proposal to review the medical condition within three years of the granting of a pension on tier 1 if the medical condition worsens, with a view to seeing if a member qualifies for tier 2 pension.  
66% of respondents supported the proposal that entitlement to a tier 2 pension would be reviewed if a recipient’s earnings after retirement exceeded the lower earnings limit for National Insurance purposes.

### **Guidance for NHS Staff**

- 7.27 A new set of dedicated communication products has been developed by the BSA Pensions Division to assist members to understand and prepare for the changes from 1<sup>st</sup> April 2008. These include a leaflet that was included in all November pay slips entitled “The NHS Pension Scheme is changing”, Fact sheets have been issued to deferred members and pensioners and all NHS staff have been directed to the BSA Pension Division’s website where more detailed information on the changes (including calculators that allow a member to model different scenarios) is available.

### **Guidance for NHS Employers**

- 7.28 A similar set of products has also been developed for NHS employers to assist them to communicate the changes to members and to administer them. These include employer guides “Getting ready for April 2008”, “Allocation to contributions tiers”, and publicity material such as posters and leaflets. In addition, seminars attended by 870 employer payroll and pensions staff have been held across the country to disseminate information about the changes and to assist with implementation.

### **Consolidation**

- 7.29 A consolidation exercise will begin in October 2008 and it is intended that a new consolidated set of 1995 Scheme regulations will be made in 2009. An informal consolidated text incorporating changes up to 1 April 2008 has been made available to NHS Trade Unions and other stakeholders during the review.

## **8. Impact**

A full regulatory impact assessment has not been produced on this instrument as it has no impact on the costs of business, charities or the voluntary sector. However, the implementation of scheme reforms from 1 April 2008 and importantly tiered contributions, which will increase the average employee contribution rate from 6% to 6.5%, will deliver an extra £170m annually to the Exchequer. The cost for the NHS lies in the

employer contribution rate with each 0.1% increase equivalent to about £30m per annum. Without the reforms, the recent Scheme valuation report published on 17 December 2007 confirmed that maintaining the status quo would have meant an employer contribution rate of 15.3% as against 14.0%.

## **9. Contact**

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