
STATUTORY INSTRUMENTS

2008 No. 655

**The National Health Service Pension Scheme
(Additional Voluntary Contributions) and National
Health Service (Injury Benefits and Compensation for
Premature Retirement) Amendment Regulations 2008**

Amendments to National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000

2.—(1) The National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000(1) are amended as follows.

(2) In regulation 2(1) (interpretation)—

omit the definitions of “the Pension Scheme Regulations”, “child”, “date of retirement”, “dependant”, “NHS Pension Scheme”, “normal benefit age”, “pensionable service” and “retirement”;

(a) insert the following definitions at the appropriate place in alphabetical order—

““the 1995 Regulations” means the National Health Service Pension Scheme Regulations 1995(2);”;

““the 2008 Regulations” means the National Health Service Pension Scheme Regulations 2008(3);”;

““child” means a person who qualifies for—

(a) a child’s allowance under regulation H2 of the 1995 Regulations; or

(b) a child’s pension under regulation 2.E.8 or 3.E.8 of the 2008 Regulations;”;

““date of retirement” means the date on which benefits become payable to the participator under—

(a) regulation E1 to E5 or L1 of the 1995 Regulations; or

(b) regulation 2.D.1, 2.D.4, 2.D.5, 2.D.8, 2.D.10, 2.D.11, 3.D.1, 3.D.4, 3.D.5, 3.D.7 or 3.D.9 of the 2008 Regulations;”;

““dependant” means—

(a) a surviving spouse of a participator (providing the marriage was not, prior to 6th March 1995, subject to an order of judicial separation);

(b) any surviving child of a participator; or

(c) any person in whose favour a participator has made an election under—

(i) regulation J1 of the 1995 Regulations; or

(1) S.I. 2000/619, amended by S.I. 2001/1428 and 3649, 2002/610, 2005/3074, 2006/600 and 2007/3280.

(2) S.I. 1995/300, amended by S.I. 1997/80 and 1888, 1998/666 and 2216, 2000/605, 2001/1428 and 3649, 2002/561 and 2469, 2003/631 and 2322, 2004/665 and 696, 2005/661 and 3074, 2006/600 and 2919, 2007/2054 and 3280 and modified by S.I. 1996/971.

(3) S.I. 2008/653.

- (ii) regulation 2.D.18 or 3.D.14 of the 2008 Regulations;
 - (d) a surviving civil partner or surviving nominated partner;”;
- ““NHS Pension Scheme” means the National Health Service Pension Scheme for England and Wales, the rules of which are set out in the 1995 Regulations and the 2008 Regulations, as the case may be;”;
- ““normal benefit age”, in relation to the AVC scheme, means—
- (a) in the case of a person whose pension arrangements are governed by the 1995 Regulations, the age of 60;
- (b) in any other case, the age of 65;”;
- ““pensionable service” is to be construed in accordance with whichever of the following is applicable—
- (a) regulation C2 of the 1995 Regulations;
- (b) regulation 2.A.2 or 3.A.3 of the 2008 Regulations;”;
- ““retirement” is to be construed in accordance with whichever of the following is applicable—
- (a) the 1995 Regulations;
- (b) the 2008 Regulations;”;
- (b) for the definition of “authorised fund” substitute—
- ““authorised fund” means a fund managed by—
- (a) an authorised provider selected by the Secretary of State for the purposes of these Regulations; or
- (b) any successor, transmittee or assignee of any person in paragraph (a) who is—
- (i) an authorised provider; and
- (ii) approved by the Secretary of State;”.
- (3) In regulation 2(2), for “the Pension Scheme Regulations” substitute “the 1995 Regulations or the 2008 Regulations, as the case may be”.
- (4) In regulation 3 (making and accepting of elections)—
- (a) in paragraph (3)(b), for “of the Pension Scheme Regulations (contributions by members)” substitute “of the 1995 Regulations (contributions by members) or regulation 2.C.1 or 3.C.1 of the 2008 Regulations (contributions by members) as the case may be”;
- (b) in paragraph (5)(a) omit “or (5),”;
- (c) in paragraph (6), for “Subject to” substitute “In the case of a person whose membership of the NHS Pension Scheme is governed by the 1995 Regulations, subject to”;
- (d) after paragraph (6) insert—
- “(6A) In the case of a person whose membership of the NHS Pension Scheme is governed by the 2008 Regulations, subject to paragraph (5)(b) and regulation 4(4)—
- (a) if contributions are paid for the purposes of paragraph (1)(b)—
- (i) until the contributor reaches their 65th birthday; and
- (ii) on reaching their 65th birthday they continue to be in pensionable employment,
- the contributor may elect for further contributions to be paid until they reach their 66th birthday; and

- (b) a person to whom paragraph (a) applies may continue to elect annually for further contributions to be paid provided they continue to be in pensionable employment.”
- (5) In regulation 4 (payment and amount of additional voluntary contributions)—
- (a) in paragraph (4)(b), for “Pension Scheme Regulations” substitute “1995 Regulations or the 2008 Regulations (as the case may be)”;
- (b) after paragraph (4) insert—
- “(4A) In this regulation—
- “employer” has the same meaning as “employing authority” in the 1995 Regulations or the 2008 Regulations (as the case may be) and, where the context requires, includes a host Trust or Board (as defined in the relevant Regulations); and
- “salary” includes pensionable pay and pensionable earnings (within the meaning of the 1995 Regulations or the 2008 Regulations (as the case may be)).”
- (6) In regulation 5(2)(a) (variation and cancellation of elections) omit “and (5)”.
- (7) In regulation 6 (circumstances in which elections cease to have effect)—
- (a) in paragraph (1)(a), for “Pension Scheme Regulations” substitute “1995 Regulations”;
- (b) after paragraph (1)(a) insert—
- “(aa) receives payment of benefits under regulations 2.D.1, 2.D.4, 2.D.5, 2.D.7, 2.D.9, 2.D.11, 3.D.1, 3.D.4, 3.D.5, 3.D.8 or 3.D.10 of the 2008 Regulations;”;
- (c) in paragraph (1)(c), for “of the Pension Scheme Regulations (opting-out of the scheme)” substitute “of the 1995 Regulations (opting-out of the scheme) or regulations 2.B.5 or 3.B.5 of the 2008 Regulations (opting-out of the scheme) as the case may be”;
- (d) in paragraph (1)(d), for “of the Pension Scheme Regulations (contributions by members)” substitute “of the 1995 Regulations (contributions by members) or regulation 2.C.1 or 3.C.1 of the 2008 Regulations (contributions by members) as the case may be”;
- (e) in paragraph (2), after “(1)(a)” insert “, (aa)”.
- (8) In regulation 9 (inward transfers: mis-sold pensions)—
- (a) in paragraphs (1), (2) and (3)(b), for “Pension Scheme Regulations” substitute “1995 Regulations”;
- (b) in paragraph (6), for “Pension Scheme Regulations” (where twice occurring) substitute “1995 Regulations”.
- (9) In regulation 10 (outward transfers)—
- (a) for paragraph (4) substitute—
- “(4) If the Secretary of State is required under paragraph (1) to make a transfer payment in circumstances where a transfer payment in respect of an eligible person is also provided and used in accordance with—
- (a) regulation M1 of the 1995 Regulations (member’s right to transfer or buy-out);
or
- (b) regulation 2.F.1 or 3.F.1 of the 2008 Regulations (rights to transfer value payment),
- the Secretary of State must do so in accordance with the time limits specified in whichever of the following is applicable—
- (i) regulation M5 of the 1995 Regulations;

- (ii) regulation 2.F.4 or 3.F.4 of the 2008 Regulations,
as if any reference in the regulations specified in (i) or (ii) to an application were a reference to the notice referred to in paragraph (1).”;
- (b) in paragraph (6), for “persons’s” substitute “person’s”;
- (c) for paragraph (8)(b)(ii) substitute—
“(ii) to whom regulation M6 of the 1995 Regulations or regulation 2.F.14 or 3.F.14 of the 2008 Regulations applies.”.
- (10) In regulation 11 (retirement and dependants’ pensions)—
- (a) for paragraph (2)(b) substitute—
“(b) any dependant’s pension which is payable under it is payable only on the death of the participator after his retirement and is payable to the dependant for life, except that—
- (i) in the case of a dependant who is a child to whom Part H of the 1995 Regulations (child allowance) applies, it shall cease to be payable when that person ceases to be a dependent child within the meaning of those Regulations; or
- (ii) in the case of a dependant who is a child to whom regulation 2.E.9 or 3.E.9 of the 2008 Regulations (meaning of dependent child) applies, it shall cease to be payable when that person ceases to be a dependent child within the meaning of those Regulations; and”;
- (b) in paragraph (6), for “of the Pension Scheme Regulations (benefits for members or a preserved pension)” substitute “of the 1995 Regulations (benefits for members or a preserved pension) or regulation 2.D.1, 2.D.4, 2.D.5, 2.D.8, 2.D.10, 2.D.11, 3.D.1, 3.D.4, 3.D.5, 3.D.7 or 3.D.9 of the 2008 Regulations (normal retirement pensions, actuarially reduced pensions, ill health and early retirement pensions)”;
- (c) in paragraph (8), for “Pension Scheme Regulations” substitute “1995 Regulations or the 2008 Regulations (as the case may be)”.
- (11) In regulation 14 (repayment of investments in certain cases), for paragraph (1)(b) substitute—
“(b) has applied for a refund of contributions under—
- (i) regulation L2 of the 1995 Regulations (refund of contributions); or
- (ii) regulation 2.C.18 or 3.C.16 of the 2008 Regulations (repayment of contributions).”.
- (12) In regulation 15 (payments by the Secretary of State)—
- (a) in paragraph (3)(a) and (b)(i), after “spouse” insert “, nominated partner”;
- (b) for paragraph (b)(ii) substitute—
“(ii) a notice has been given in accordance with—
- (aa) regulation F5 of the 1995 Regulations (payment of lump sum); or
- (bb) regulation 2.E.21 or 3.E.21 of the 2008 Regulations (payment of lump sum on death); or
- (cc) paragraph 11 of Schedule 2,
that the spouse is not to receive the payment.”;
- (c) in paragraph (10), for “of the Pension Scheme Regulations applies (benefits for members, or preserved pension)” substitute “of the 1995 Regulations (benefits for members, or preserved pension) or regulation 2.D.1, 2.D.4, 2.D.5, 2.D.8, 2.D.10, 2.D.11, 3.D.1, 3.D.4,

3.D.5, 3.D.7 or 3.D.9 of the 2008 Regulations (normal retirement pensions, actuarially reduced pensions, ill health and early retirement pensions) applies”;

(d) for paragraph (11) substitute—

“(11) In the case of a participator to whom any of the following provisions apply—

(a) regulation E2(7), E2A(7) or L1(5) of the 1995 Regulations (ill health pensions and preserved pension);

(b) regulation 2.D.15 or 3.D.11 of the 2008 Regulations (option for members in serious ill health to exchange whole pension for lump sum),

the Secretary of State may realise the investments made under these Regulations without purchasing an annuity and, in that event, the proceeds shall be payable to the participator as a lump sum.”.

(13) In paragraph (a) of regulation 19 (offset for crime, negligence or fraud), for “of the Pension Scheme Regulations (offset for crime, negligence or fraud)” substitute “of the 1995 Regulations (offset for crime, negligence or fraud) or regulation 2.J.6 or 3.J.6 of the 2008 Regulations (reduction in benefits in cases where loss caused by member’s crime, negligence or fraud)”.

(14) In paragraph (a) of regulation 20 (loss of rights to benefits), for “Pension Scheme Regulations (loss of rights to benefits)” substitute “of the 1995 Regulations (loss of rights to benefits) or regulation 2.J.7 or 3.J.7 of the 2008 Regulations (forfeiture of rights to benefits)”.

(15) In regulation 22 (tax)—

(a) before “Benefits” insert “(1)”;

(b) after paragraph (1) insert—

“(2) For the purposes of the 2004 Act, the administrator of the AVC scheme shall be the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG)”.

(16) In Schedule 2 (pension sharing on divorce or nullity of marriage or dissolution or nullity of civil partnership)—

(a) in paragraph 1(5)(b), for “of the Pension Scheme Regulations (child allowance)” substitute “of the 1995 Regulations (child allowance) or regulation 2.E.9 or 3.E.9 of the 2008 Regulations (meaning of dependent child)”;

(b) in paragraph 4(8), for “of the Pension Scheme Regulations (benefits for members or preserved pension)” substitute “of the 1995 Regulations (benefits for members or preserved pension) or regulation 2.D.1, 2.D.4, 2.D.5, 2.D.8, 2.D.10, 2.D.11, 3.D.1, 3.D.4, 3.D.5, 3.D.7 or 3.D.9 of the 2008 Regulations (normal retirement pensions, actuarially reduced pensions, ill health and early retirement pensions)”;

(c) for paragraph 7(2)(b) substitute—

“(b) the total benefits payable would be treated as a trivial amount under paragraph 5(1)(b) of Schedule 2A to the 1995 Regulations or regulation 2.J.5 or 3.J.5 of the 2008 Regulations.”;

(d) in paragraph 11(2), after “widower” (where three times occurring) insert “, nominated partner”;

(e) after paragraph 11(4)(c) insert—

“(d) shall nominate the whole of the lump sum to a nominee and, in the case of a notice that specifies more than one person, shall also specify the percentage of the lump sum to be paid to each such person.”;

(f) for paragraph 11(5) substitute—

“(5) A notice given under subparagraph (3) must specify one or more persons who may be—

- (a) an individual;
- (b) a body corporate;
- (c) an unincorporated body;
- (d) the member's personal representatives,

but must not specify one or more persons referred to in paragraph (a) together with a body referred to in either of paragraphs (b) or (c).”;

- (g) in paragraph 13(1)(a), for “of the Pension Scheme Regulations (offset for crime, negligence or fraud)” substitute “of the 1995 Regulations (offset for crime, negligence or fraud) or regulation 2.J.6 or 3.J.6 of the 2008 Regulations (reduction in benefits in cases where loss caused by member's crime, negligence or fraud and forfeiture of right to benefits)”;
- (h) in paragraph 14(1)(a), for “of the Pension Scheme Regulations (loss of rights to benefits)” substitute “of the 1995 Regulations (loss of rights to benefits) or regulation 2.J.7 or 3.J.7 of the 2008 Regulations (forfeiture of rights to benefits).”.