

2011 No. 2586

**NATIONAL HEALTH SERVICE, ENGLAND AND
WALES**

**The National Health Service Pension Scheme, Injury Benefits
and Additional Voluntary Contributions (Amendment)
Regulations 2011**

<i>Made</i> - - - -	<i>27th October 2011</i>
<i>Laid before Parliament</i>	<i>1st November 2011</i>
<i>Coming into force</i> - -	<i>28th November 2011</i>

The Secretary of State for Health, with the consent of the Treasury, makes the following Regulations in exercise of the powers conferred by sections 10(1) and (2), 12(1), (2) and (4) of, and Schedule 3 to, the Superannuation Act 1972(a).

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

PART 1

Introductory

Citation, commencement and effect

1.—(1) These Regulations may be cited as the National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions (Amendment) Regulations 2011.

(2) These Regulations come into force on 28th November 2011 and, save as provided in paragraphs (3) to (6), have effect from that date.

(3) Regulations 18 and 30 have effect from 1st April 2008.

(4) Regulations 15 and 24 have effect from 9th February 2011.

(5) Regulations 6(b), 7, 9, 13, 17, 19, 22, 29, 31 and 33 have effect from 6th April 2011.

(6) Regulations 11, 23 and 34 have effect from 19th July 2011.

(a) 1972 c.11. Section 10(1) was amended by sections 57 and 58 of, and Schedule 5 to, the National Health Service Reorganisation Act 1973 (c.32) and section 4(2) of the Pensions (Miscellaneous Provisions) Act 1990 (c.7). Section 12(2) was amended by section 10(1) of the Pensions (Miscellaneous Provisions) Act 1990. As to Treasury consent, see section 10(1) of the Superannuation Act 1972 and article 2 of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I.1981/1670).

PART 2

Amendment of the National Health Service Pension Scheme Regulations 1995

General

2. The National Health Service Pension Scheme Regulations 1995(a) are amended in accordance with this Part.

Amendment of regulation A2

3. In regulation A2 (interpretation)—

(a) after the definition of “GDS contract”, insert—

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

(b) in the definition of “host Trust or Board”(b), at the end, add—

“(c) in respect of a type 1 dental practitioner, means each Primary Care Trust or Local Health Board with whom that practitioner is contracted to provide services under a GDS contract or has entered into an agreement to provide services under a PDS agreement;”.

Amendment of regulation B2

4. In paragraph (1)(q) of regulation B2 (restrictions on membership)(c), for “(iii) has, in respect of that pensionable employment, either received a repayment of contributions or exercised the right to a transfer payment under Part M” substitute—

“(iv) has, in respect of that pensionable employment, either received a repayment of contributions under regulation L2 or exercised the right to a transfer payment under Part M”.

Amendment of regulation D2

5. In paragraph (1B)(d) of regulation D2 (contributions by employing authorities), for “take the advice of the Scheme Actuary” substitute “consider the advice of the Scheme Actuary”.

Amendment of regulation E6

6. Regulation E6 (lump sum on retirement) is amended as follows—

(a) in paragraph (2)(e), for “the yearly rate of the pension” substitute “that part of the yearly rate of the pension which is attributable to contributions paid under Part D”; and

(b) in paragraph (8)(f), for “has attained the age of 75” substitute “attained the age of 75 on or before 5th April 2011”.

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- (a) S.I.1995/300, as 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, 2008/654 and 2263, 2009/381, 1298 and 2466, 2010/492 and 1634 and 2011/591 and as modified by S.I.1996/971.
- (b) Definition of “host Trust or Board” inserted by S.I. 2005/661, regulation 2(b) and amended by S.I. 2008/2263, regulation 3(f).
- (c) Regulation B2 was substituted by S.I.2008/654, regulation 3, and sub-paragraph (q) was inserted by S.I.2010/492, regulations 2 and 4.
- (d) Paragraph (1B) was inserted by S.I.2010/1634, regulation 4.
- (e) Paragraph (2) was amended by S.I.2009/381, regulation 6(a).
- (f) Paragraph (8) was inserted by S.I.2006/600, regulation 9.

Amendment of regulation F2

7. In paragraph (7)(a) of regulation F2 (member dies after pension becomes payable), after “paragraph (1)”, insert “dies on or before 5th April 2011 and”, and for “has” substitute “had”.

Amendment of regulation S2

8. In paragraph (1A)(c)(ii)(b) of regulation S2 (reduction of pension on return to NHS employment), after “(nurses, physiotherapists, midwives and health visitors)” insert “or regulation R3(9) (mental health officers)”.

Amendment of regulation T2A

9. Regulation T2A (deduction of tax: further provisions)(c) is amended as follows—

- (a) in paragraph (11), for “35 per cent” substitute “55 per cent”; and
- (b) after paragraph (11), insert—

“(11A) Where—

- (a) a lump sum on death is payable in accordance with regulation F2 (member dies after pension becomes payable); and
- (b) that lump sum is payable in respect of a member who had reached the age of 75 at the date of the member’s death,

the scheme administrator shall deduct tax at the rate referred to in paragraph (11) from the lump sum payable in accordance with section 206 of the 2004 Act.

(11B) Where—

- (a) the Secretary of State’s liability to pay a pension under regulation E1 (normal retirement pension) is discharged by the payment of a lump sum in accordance with paragraph (4) of that regulation; and
- (b) that lump sum payment is made to a member who has reached the age of 75,

the scheme administrator shall deduct tax at the rate of 55 per cent (or such other amount as applies from time to time) from the lump sum payable in accordance with section 205A of the 2004 Act.”.

Amendment of regulation T7

10. For paragraph (3)(b)(d) of regulation T7 (commutation of trivial pensions), substitute—

“(b) either—

- (i) the lump sum rule and lump sum death benefit rule, or
- (ii) the requirements of regulation 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 (payments by larger pension schemes)(e).”.

Amendment of regulation U1A

11. After paragraph (1)(g) of regulation U1A (determinations by medical practitioners)(f), add—

“(h) able to satisfy the severe ill health condition for the purposes of subsection (3)(a) of section 229 of the 2004 Act (total pension input amount).”.

(a) Paragraph (7) was inserted by S.I.2008/2263, regulation 8.
(b) Paragraph (1A) was inserted by S.I.2003/631, regulation 2, and substituted by S.I.2008/654, regulation 57(1), (2).
(c) Regulation T2A was inserted by S.I.2006/600, regulation 18.
(d) Paragraph (3) was substituted by S.I.2006/600, regulation 19(1), (2).
(e) S.I. 2009/1171.
(f) Regulation U1A was inserted by S.I.2004/665, regulation 3(1), (5).

Amendment of Schedule 2

12.—(1) Schedule 2 (medical and dental practitioners) is amended as follows.

(2) In paragraph 1 (additional definitions used in this schedule), at the end of the definition of “practitioner income”, add “, or as the case may be, paragraph 3(2A)”.

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

(a) in sub-paragraph (2A)(a), for paragraph (b), substitute—

“(b) does not include—

- (i) charges collected from patients which are not required, by virtue of such directions, to be so set off,
- (ii) income received by a practitioner to whom regulation B2 (restrictions on membership), regulation B3 (restriction on further participation in this Section of the scheme) or regulation B4 (opting-out of this Section of the scheme) applies, or
- (iii) income received on or after 7th November 2011 by a practitioner in respect of the performance of services under a GDS contract or a PDS agreement to which the practitioner’s employer is not a party.”;

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

“(2C) Where the income of a type 1 dental practitioner includes payments made under a GDS contract or a PDS agreement consisting of all or any of—

- (a) monthly seniority payments;
- (b) maternity leave, paternity leave, parental leave or adoption leave payments; and
- (c) sickness leave payments,

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

(4) Paragraph 5A (distribution of pensionable earnings between type 1 dental practitioners employed or engaged by the same GDS or PDS contractor)(c) is omitted.

(5) Paragraph 10 (contributions to this section of the scheme)(d) is amended as follows—

(a) in sub-paragraph (2I)(e)—

- (i) for “, which” substitute “on the basis of whichever of the following the host Trust or Board considers the most appropriate in the circumstances”;
- (ii) in paragraphs (a) and (b), at the beginning, insert “the amount of the practitioner’s (other than a dentist performer) or non-GP provider’s earnings that”; and
- (iii) in paragraph (c)—
 - (aa) at the beginning, insert “the amount of such earnings that”; and
 - (bb) after “practitioner’s” insert “(not being a dentist performer)”;

(b) in sub-paragraph (2K)(f)—

- (i) in paragraph (a), at the beginning, insert “reconciled or”;
- (ii) in paragraph (b), after “required to”, insert “reconcile or”; and
- (iii) in sub-paragraph (i) of paragraph (b), insert “reconciled,” before the word “certified” in both places where it occurs;

(a) Sub-paragraph (2A) was inserted by S.I.2006/600, regulation 21 and amended by S.I.2007/3280, regulation 2.

(b) Sub-paragraph (2C) was inserted by S.I.2006/600, regulation 21 and amended by S.I.2007/3280, regulation 2.

(c) Paragraph 5A was inserted by S.I.2006/600, regulation 1(2)(a) and amended by S.I.2007/3280, regulation 2(1), (27)(c).

(d) Paragraph 10 was substituted by S.I.2005/661, regulation 11(1), (8). Relevant amendment is S.I.2009/381, regulation 13(1), (2).

(e) Sub-paragraph (2I) was amended by S.I.2010/1634, regulations 2, 7(1), (4).

(f) Sub-paragraph (2K) was amended by S.I.2010/1634, regulations 2, 7(1), (4).

(c) in sub-paragraph (2L)(a)—

- (i) for “, which” substitute “on the basis of whichever of the following the host Trust or Board considers the most appropriate in the circumstances”; and
- (ii) in paragraphs (a), (b) and (c), at the beginning, insert “the amount of the performer’s earnings that”.

(6) Paragraph 13 (early retirement pension (employer’s consent)) is omitted.

(7) In paragraph 23 (accounts and actuarial reports)(b), for sub-paragraphs (4) to (12), substitute—

“(4) Within 1 month of the end of each financial year, a host Trust or Board must give to each—

- (a) GDS or PDS contractor with which that host Trust or Board is a party to a GDS contract or a PDS agreement, a notice which sets out, in accordance with the host Trust or Board’s records, the amount of the pensionable earnings ceiling and the amount of the pensionable earnings the contractor has paid to every type 1 dental practitioner who has performed services under that contract or agreement during that financial year (“an annual reconciliation notice”); and
- (b) type 1 dental practitioner referred to in (a), a notice which sets out the amount of pensionable earnings each practitioner has been paid for that financial year as indicated in the host Trust or Board’s records (“a performer’s notice”).

(5) Within 3 months of the end of each financial year the GDS or PDS contractor must return the annual reconciliation notice to the host Trust or Board stating—

- (a) that the amounts referred to in sub-paragraph (4)(a) are correct or, where either or both of those amounts are incorrectly shown in the notice, the correct figure or figures;
- (b) in the case of a type 1 dental practitioner whose earnings, during the period covered by the annual reconciliation notice, are not pensionable because they fall within paragraph 3(2A)(b) of this Schedule, the earnings that would otherwise have been pensionable if that paragraph did not apply;
- (c) the amount of any monthly seniority payments, maternity leave payments, paternity leave payments, adoption leave payments, parental leave payments or sickness leave payments paid under the contract or agreement during the financial year;
- (d) the amount of pensionable earnings the contractor has paid to each type 1 dental practitioner under the contract or agreement during the financial year;
- (e) whether each type 1 dental practitioner who performed services under the contract or agreement referred to in sub-paragraph (4)(a) was given the opportunity to verify the pensionable earnings declared for them in the annual reconciliation notice; and
- (f) the name and dentist’s reference number of any type 1 dental practitioner who—
 - (i) failed to verify; or
 - (ii) disagrees with,the amounts declared for them in the annual reconciliation notice and, where paragraph (ii) applies, the reason for the disagreement.

(6) Within 3 months of the end of each financial year, each type 1 dental practitioner who performed services under the contract or agreement referred to in sub-paragraph (4)(a) must return the performers’ notice to the host Trust or Board, stating—

(a) Sub-paragraph (2L) was amended by S.I.2010/1634, regulation 1(2).

(b) Paragraph 23 was inserted by S.I.2005/661, regulation 11(1), (10), substituted by S.I.2009/381, regulation 13(1), (4) and amended by S.I.2009/2446, regulations 2, 10, Schedule 1, Part 1, paragraph 1(b).

- (a) that they were (or were not, as the case may be) in pensionable employment for the period covered by the performer's notice;
 - (b) that they were (or were not, as the case may be) directly employed by the contractor referred to in sub-paragraph (4)(a) during the period covered by the performer's notice;
 - (c) in the case of a practitioner, who was in pensionable employment during the period covered by the notice, the pensionable earnings they received under the contract or agreement during that period;
 - (d) in the case of a practitioner whose earnings, during the period covered by the performer's notice, fell within paragraph 3(2A)(b) of this Schedule, the earnings that would otherwise have been pensionable if that paragraph did not apply;
 - (e) the amount of any monthly seniority payments, maternity leave payments, paternity leave payments, adoption leave payments, parental leave payments or sickness leave payments received by the practitioner under the contract or agreement during the financial year; and
 - (f) whether the practitioner and contractor have together verified that any amounts the practitioner has declared in respect of sub-paragraph (6)(c), (d) or (e) are the same as the equivalent amounts declared in the annual reconciliation notice referred to in sub-paragraph (5).
- (7) Within 3 months of the end of each financial year, a type 2 dental practitioner must provide the host Trust or Board with whom their employer has entered into a GDS contract or a PDS agreement, with a notice of their pensionable earnings based on—
- (a) the payments they have received from their employer for practitioner services provided under that GDS contract or PDS agreement during that financial year; and
 - (b) the pensionable earnings they have received, as a type 2 dental practitioner, from all other type 2 dental practitioner sources during that financial year.
- (8) An employing authority may, in exceptional circumstances, and with the agreement of the Secretary of State, arrange or agree a different time limit for the issue and return of the certificates, notices or statements referred to in sub-paragraphs (2) to (7) and may, if a material particular has changed, accept a replacement.
- (9) Subject to sub-paragraph (10), an annual reconciliation notice will be invalid if—
- (a) it contains information that the employing authority's records show is inaccurate or misleading in a material particular;
 - (b) subject to sub-paragraph (8), it is not received within the specified time limit;
 - (c) the total of the amounts specified in it in respect of each type 1 dental practitioner that performed services under the contract or agreement referred to in sub-paragraph (4)(a) is greater than the aggregate of the pensionable earnings ceiling referred to in sub-paragraph (4)(a) and the amount referred to in sub-paragraph 5(c);
 - (d) it is incomplete in any material particular; or
 - (e) one or more of the practitioners referred to in it did not, for whatever reason, verify the earnings figure the contractor has declared for them.
- (10) Where an employing authority has received an annual reconciliation notice which is valid for some or all of the practitioners listed in it, the amounts notified to that employing authority for the financial year to which the notice relates will, subject to sub-paragraphs (16), (17) and (18), be the pensionable earnings for those practitioners.
- (11) Where an employing authority has received an annual reconciliation notice which is invalid for some or all of the practitioners listed in it, the pensionable earnings for those practitioners for the financial year to which the notice relates will be—

- (a) zero, where the employing authority's records show that value or the authority is unable to estimate the value of the practitioner's pensionable earnings; or
- (b) the figure that the employing authority estimates will represent that practitioner's share of the aggregate of the pensionable earnings ceiling referred to in sub-paragraph 4(a) and the amount referred to in sub-paragraph (5)(c) ("the maximum amount"), less the difference between—
 - (i) that maximum amount, and
 - (ii) the total of the monthly amounts in respect of which estimated contributions to this Section of the scheme under regulation D1 (contributions by members) were paid on account during the financial year to which the earnings relate, but if the total mentioned in sub-paragraph (ii) is greater than the maximum amount, then no amount is to be deducted pursuant to this sub-paragraph.

(12) In respect of each scheme year, each employing authority and GDS or PDS contractor shall provide the Secretary of State with a statement of estimated pensionable earnings in respect of any—

- (a) non-GP provider that is a GMS or PMS practice or an APMS contractor who assists in the provision of NHS services provided by that GMS or PMS practice or APMS contractor;
- (b) type 1 medical practitioner who performs medical services as, or on behalf of, the practice or contractor;
- (c) type 2 medical practitioner employed by the practice or contractor;
- (d) type 1 dental practitioner who performs services under a GDS contract or a PDS agreement, or
- (e) type 2 dental practitioner employed or engaged to perform services under a GDS contract or a PDS agreement.

(13) In respect of each scheme year, each employing authority and GDS or PDS contractor shall, in respect of type 2 medical or dental practitioners employed or engaged by the practice or contractor, provide the Secretary of State with an end-of-year statement of—

- (a) pensionable earnings;
- (b) contributions to this Section of the scheme made under regulation D1 (contributions by members) and the modifications to that regulation referred to in paragraph 10 of this Schedule;
- (c) contributions to this Section of the scheme made under regulation D2 (contributions by employing authorities) and the modifications to that regulation referred to in paragraph 10 of this Schedule; and
- (d) any pensionable earnings deemed in accordance with regulation P1 (absence because of illness or injury or certain types of leave) and the modifications to that regulation referred to in paragraph 19 of this Schedule.

(14) The Secretary of State shall be provided with—

- (a) the statement referred to in sub-paragraph (12) at least 1 month before the beginning of that scheme year;
- (b) the statement referred to in sub-paragraph (13) no later than 3 months after the end of that scheme year.

(15) A host Trust or Board shall, for each scheme year and no later than 13 months after the end of each scheme year, forward to the Secretary of State a copy of the records the host Trust or Board maintains in respect of—

- (a) all contributions to this Section of the scheme made under paragraph 10 of this Schedule in respect of type 1 medical practitioners and non-GP providers; and
- (b) their pensionable earnings.

(16) Subject to sub-paragraphs (17) and (18), if, in respect of a scheme year, a practitioner or non-GP provider has failed to comply with the requirements of whichever of sub-paragraphs (2), (3), (5), (6) or (7) applies to that member, the member's pensionable earnings for that scheme year shall be zero.

(17) If, in respect of a scheme year, the employing authority of a practitioner or non-GP provider member is in possession of a figure representing all or part of that member's pensionable earnings for that year, the Secretary of State may treat that figure as the amount of that member's pensionable earnings for that year where—

- (a) that member has failed to comply with the requirements of whichever of sub-paragraphs (2), (3), (5), (6) or (7) applies to them, and
- (b) a benefit in respect of that member's service as a practitioner or non-GP provider is payable to, or in respect of them, under these Regulations.

(18) If, in respect of a scheme year, a practitioner or non-GP provider—

- (a) dies without complying with the requirements of whichever of sub-paragraphs (2), (3), (5), (6) or (7) applies to them; or
- (b) is, in the opinion of the Secretary of State, unable to look after their own affairs by reason of illness or lack of capacity within the meaning of the Mental Capacity Act 2005,

the Secretary of State may require that practitioner's or non-GP provider's personal representatives or person (or persons) duly authorised to act on the member's behalf to provide the relevant certificate, notice or statement within the period specified in sub-paragraph (19).

(19) The period is—

- (a) that referred to in whichever of sub-paragraphs (2), (3), (5), (6) or (7) was or is applicable to them; or
- (b) such other period as the Secretary of State permits.

(20) The certificates, notices and statements referred to in this paragraph—

- (a) shall be in such form as the Secretary of State shall from time to time require;
- (b) may be provided to the Secretary of State in such manner as the Secretary of State may from time to time permit.”.

Amendment of Schedule 2A

13. In paragraph 7 of Schedule 2A (pension sharing on divorce or nullity of marriage or on the dissolution or nullity of a civil partnership)(a), in sub-paragraph (5), after “paragraph (1)”, insert “dies on or before 5th April 2011 and”, and for “has” substitute “had”.

PART 3

Amendment of the National Health Service Pension Scheme Regulations 2008

Part 3: General

14. The National Health Service Pension Scheme Regulations 2008(b) are amended in accordance with this Part.

(a) Schedule 2A was inserted by S.I.2001/1428, regulation 3, Schedule 1, paragraph 3 and amended by S.I.2005/3074, regulation 2(1), (30).

(b) S.I.2008/653 as amended by S.I.2008/2263, 2009/381, 1298 and 2446, 2010/492 and 1634 and 2011/591.

Amendment of regulation 2.A.5

15. In regulation 2.A.5(1) (meaning of “qualifying service”)—

- (a) at the end of sub-paragraph (f)(a) omit “and”; and
- (b) after sub-paragraph (g), add—
 - “(h) in the case of a Waiting Period Joiner referred to in regulation 2.L.1(b), a period equal in length to the period of qualifying service which the member is entitled to count under the 1995 Section; and
 - (i) in the case of a person who is eligible to join this Section of the Scheme by virtue of regulation 2.B.1(5)(e), (g) or (h) (eligibility: general), a period equal in length to the period of qualifying service which the member is entitled to count under the 1995 Section.”.

Amendment of regulation 2.C.1

16. In paragraph (8) of regulation 2.C.1(c) (contributions by members), for “(3)” substitute “(3A)”.

Amendment of regulation 2.D.15

17. In paragraphs (4)(d) and (5)(e) of regulation 2.D.15 (option for members in serious ill-health to exchange whole pension for lump sum), the words “and before reaching the age of 75” are omitted.

Amendment of regulation 2.E.9

18. In paragraph (1)(c)(i) of regulation 2.E.9 (meaning of “dependent child”) for “whilst the deceased was an active member” substitute “before the deceased ceased to be an active member”.

Amendment of regulation 2.E.20A

19. In paragraph (1) of regulation 2.E.20A(f) (pension payable when member dies on or after reaching age 75), after “If” insert “, on or before 5th April 2011,”.

Amendment of regulation 2.H.6

20. In paragraph (2) of regulation 2.H.6 (meaning of “previous pay”: members with concurrent employments), for “2.H.(4)” substitute “2.H.5(4)”.

Amendment of regulation 2.J.5

21. In paragraph (2)(g) of regulation 2.J.5 (commutation of small pensions),—

- (a) the “and” at the end of sub-paragraph (e) is omitted; and
- (b) after sub-paragraph (f), add—
 - “; and
 - (g) regulation 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 (payments by larger pension schemes).”.

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- (a) Sub-paragraph (f) was inserted by S.I.2008/2263, regulation 28(b).
 - (b) Chapter 2.L was inserted by S.I. 2010/492, regulations 16 and 35.
 - (c) Regulation 2.C.1 was substituted by S.I.2010/1634, regulation 10.
 - (d) Paragraph (4) was amended by S.I.2009/381, regulation 33(b).
 - (e) Paragraph (5) was substituted by S.I.2009/381, regulation 33(c).
 - (f) Regulation 2.E.20A was inserted by S.I. 2008/2263, regulation 37.
 - (g) In paragraph (2), sub-paragraph (d) was revoked by S.I.2009/381, regulation 49.

Amendment of regulation 2.J.8

22. At the end of regulation 2.J.8 (deduction of tax)(a), add—

“(5) Paragraph (6) applies if—

- (a) a lump sum death benefit is payable on the death of a pensioner member in accordance with paragraph (2) of regulation 2.E.17 (amount of lump sum: single capacity members and recent leavers (disregarding regulation 2.D.5 employments)); and
- (b) that lump sum is payable in respect of a member who had reached the age of 75 at the date of the member’s death.

(6) Without prejudice to the generality of paragraph (1), when the lump sum is paid, the Scheme administrator may deduct the tax payable under section 206 of the 2004 Act (special lump sum death benefits charge).

(7) Paragraph (8) applies if—

- (a) an active, non-contributing or pension credit member opts to exchange a relevant pension for a lump sum in accordance with paragraph (3)(a) of regulation 2.D.15 (option for members in serious ill-health to exchange whole pension for lump sum); and
- (b) that lump sum payment is made to a member who has reached the age of 75.

(8) Without prejudice to the generality of paragraph (1), when the lump sum is paid, the Scheme administrator may deduct the tax payable under section 205A of the 2004 Act (serious ill-health lump sum charge).”.

Amendment of regulation 2.J.11

23. After paragraph (2)(f)(b) of regulation 2.J.11(determinations by medical practitioners), add—

“(g) determining whether an individual satisfies the severe ill health condition for the purposes of subsection (3)(a) of section 229 of the 2004 Act (total pension input amount)(c).”.

Amendment of regulation 3.A.5

24. In regulation 3.A.5(1) (meaning of “qualifying service”)—

- (a) at the end of sub-paragraph (e), omit “and”; and
- (b) after sub-paragraph (f)(d), add—

“(g) in the case of a Waiting Period Joiner referred to in regulation 3.L.1(e), a period equal in length to the period of qualifying service which the member is entitled to count under the 1995 Section; and

- (h) in the case of a person who is eligible to join this Section of the Scheme by virtue of regulation 3.B.1(5)(e), (g) or (h) (eligibility: general), a period equal in length to the period of qualifying service which the member is entitled to count under the 1995 Section.”.

Amendment of regulation 3.A.7

25. For paragraph (3)(b) of regulation 3.A.7 (meaning of “pensionable earnings”), substitute—

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- (a) Regulation 2.J.8 was amended by S.I. 2009/2446, regulations 11, 103, Schedule 2, Part 1, paragraph 1(a).
 - (b) Paragraph (2) was amended by S.I. 2008/2263, regulation 52 and by S.I.2009/381, regulation 51.
 - (c) 2004 c. 12. Section 229 has been amended by the Finance Act 2011 (c.11), section 66, Schedule 17, Part 1, paragraphs 1, 6(1) and (4).
 - (d) Sub-paragraph (f) was inserted by S.I.2009/2446, regulations 11, 55(b).
 - (e) Chapter 3.L was inserted by S.I. 2010/492, regulations 16, 52.

“(b) but does not include—

- (i) charges collected from patients which are not required, by virtue of such directions, to be so set off,
- (ii) income received by a practitioner to whom regulation 3.B.2 (restrictions on eligibility: general), regulation 3.B.5 (opting out of this section of the scheme) or regulation 3.B.6 (restriction on further participation in this section of the scheme) applies, or
- (iii) income received on or after 7th November 2011 by a practitioner in respect of the performance of services under a GDS contract or a PDS agreement to which the practitioner’s employer is not a party.”.

Omission of regulation 3.A.12

26. Regulation 3.A.12 (distribution of pensionable earnings between type 1 dental practitioners employed or engaged by the same GDS or PDS contractor)(a) is omitted.

Amendment of regulation 3.C.1

27. In paragraph (3) of regulation 3.C.1 (contributions by members)(b), for “(3)” substitute “(3A)”.

Amendment of regulation 3.C.2

28. Regulation 3.C.2 (members’ contribution rate)(c) is amended as follows—

- (a) in paragraph (6)—
 - (i) for “, which” substitute “on the basis of whichever of the following the host Trust or Board considers the most appropriate in the circumstances”; and
 - (ii) in sub-paragraphs (a), (b) and (c), at the beginning, insert “the amount of the practitioner’s (other than a dentist performer) earnings that”;
- (b) in paragraph (8)—
 - (i) in sub-paragraph (a), at the beginning, insert “reconciled or”;
 - (ii) in sub-paragraph (b), after “required to” insert “reconcile or”; and
 - (iii) in paragraph (i) of sub-paragraph (b), insert “reconciled,” before the word “certified” in both places where it occurs;
- (c) in paragraph (9)—
 - (i) for “, which” substitute “on the basis of whichever of the following the host Trust or Board considers the most appropriate in the circumstances”;
 - (ii) in sub-paragraphs (a), (b) and (c), at the beginning, insert “the amount of the performer’s earnings that”; and
 - (iii) in sub-paragraph (b), after “most recent” insert “reconciled,”.

Amendment of regulation 3.D.11

29. In paragraphs (4)(d) and (5)(e) of regulation 3.D.11 (option for members in serious ill-health to exchange whole pension for lump sum), the words “and before reaching the age of 75” are omitted.

(a) Regulation 3.A.12 was amended by S.I. 2010/492, regulations 16, 37.
(b) Regulation 3.C.1 was amended by S.I.2009/2446 and by 2010/1634.
(c) Paragraphs (6), (8) and (9) were amended by S.I. 2010/1634, regulations 8, 16(1), (3).
(d) Paragraph (4) was amended by S.I.2009/381, regulation 63(b).
(e) Paragraph (5) was substituted by S.I.2009/381, regulation 63(c).

Amendment of regulation 3.E.9

30. In paragraph (1)(c)(i) of regulation 3.E.9 (meaning of “dependent child”) for “whilst the deceased was an active member” substitute “before the deceased ceased to be an active member”.

Amendment of regulation 3.E.20A

31. In paragraph (1) of regulation 3.E.20A (pension payable when member dies on or after reaching age 75)(a), after “If” insert “, on or before 5th April 2011,”.

Amendment of regulation 3.J.5

32. In paragraph (2)(b) of regulation 3.J.5 (commutation of small pensions),—

- (a) the “and” at the end of sub-paragraph (e) is omitted; and
- (b) after sub-paragraph (f), add—
 - “; and
 - (g) regulation 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 (payments by larger pension schemes).”.

Amendment of regulation 3.J.8

33. At the end of regulation 3.J.8 (deduction of tax)(c), add—

“(5) Paragraph (6) applies if—

- (a) a lump sum death benefit is payable on the death of a pensioner member in accordance with paragraph (2) of regulation 3.E.17 (amount of lump sum: single capacity members and recent leavers (disregarding regulation 3.D.5 employments)); and
- (b) that lump sum is payable in respect of a member who had reached the age of 75 at the date of the member’s death.

(6) Without prejudice to the generality of paragraph (1), when the lump sum is paid, the Scheme administrator may deduct the tax payable under section 206 of the 2004 Act (special lump sum death benefits charge).

(7) Paragraph (8) applies if—

- (a) an active, non-contributing or pension credit member opts to exchange a relevant pension for a lump sum in accordance with paragraph (3)(a) of regulation 3.D.11 (option for members in serious ill-health to exchange whole pension for lump sum); and
- (b) that lump sum payment is made to a member who has reached the age of 75.

(8) Without prejudice to the generality of paragraph (1), when the lump sum is paid, the Scheme administrator may deduct the tax payable under section 205A of the 2004 Act (serious ill-health lump sum charge).”.

Amendment of regulation 3.J.11

34. After paragraph (2)(f)(d) of regulation 3.J.11(determinations by medical practitioners), add—

(a) Regulation 3.E.20A was inserted by S.I.2008/2263, regulation 69.
(b) In paragraph (2), sub-paragraph (d) was revoked by S.I.2009/381, regulation 80.
(c) Regulation 3.J.8 was amended by S.I. 2009/2446, regulations 11, 103, Schedule 2, Part 1, paragraph 1(a).
(d) Paragraph (2) was amended by S.I. 2008/2263, regulation 82 and by S.I.2009/381, regulation 82.

“(g) determining whether an individual satisfies the severe ill health condition for the purposes of subsection (3)(a) of section 229 of the 2004 Act (total pension input amount)(a).”.

Amendment of regulation 3.J.14

35.—(1) Regulation 3.J.14 (employing authority and certain member record keeping and contribution estimates)(b) is amended as follows.

(2) For paragraphs (3) to (14), substitute—

“(3) Within 1 month of the end of each financial year, a host Trust or Board must give to each—

- (a) GDS or PDS contractor with which that host Trust or Board is a party to a GDS contract or a PDS agreement, a notice which sets out, in accordance with the host Trust or Board’s records, the amount of the pensionable earnings ceiling and the amount of the pensionable earnings the contractor has paid to every type 1 dental practitioner who has performed services under that contract or agreement during that financial year (“an annual reconciliation notice”); and
- (b) type 1 dental practitioner referred to in (a), a notice which sets out the amount of pensionable earnings each practitioner has been paid for that financial year as indicated in the host Trust or Board’s records (“a performer’s notice”).

(4) Within 3 months of the end of each financial year the GDS or PDS contractor must return the annual reconciliation notice to the host Trust or Board stating—

- (a) that the amounts referred to in paragraph (3)(a) are correct or, where either, or both, of those amounts are incorrectly shown in the notice, the correct figure or figures;
- (b) in the case of a type 1 dental practitioner whose earnings, during the period covered by the annual reconciliation notice, are not pensionable because they fall within paragraph (3)(b) of regulation 3.A.7, the earnings that would otherwise have been pensionable if that paragraph did not apply;
- (c) the amount of any monthly seniority payments, maternity leave payments, paternity leave payments, adoption leave payments, parental leave payments or sickness leave payments paid under the contract or agreement during the financial year;
- (d) the amount of pensionable earnings the contractor has paid to each type 1 dental practitioner under the contract or agreement during the financial year;
- (e) whether each type 1 dental practitioner who performed services under the contract or agreement referred to in paragraph (3)(a) was given the opportunity to verify the pensionable earnings declared for them in the annual reconciliation notice; and
- (f) the name and dentist’s reference number of any type 1 dental practitioner who—
 - (i) failed to verify; or
 - (ii) disagrees with,the amounts declared for them in the annual reconciliation notice, and, where paragraph (ii) applies, the reason for the disagreement.

(5) Within 3 months of the end of each financial year, each type 1 dental practitioner who performed services under the contract or agreement referred to in paragraph (3)(a) must return the performers’ notice to the host Trust or Board, stating—

(a) 2004 c.12. Section 229 has been amended by the Finance Act 2011 (c.11), section 66, Schedule 17, Part 1, paragraphs 1, 6(1) and (4).
(b) Regulation 3.J.14 was substituted by S.I.2009/381, regulation 83 and amended by S.I.2009/2446, regulations 11, 103, Schedule 2, Part 1, paragraph 1(a).

- (a) that they were (or were not, as the case may be) in pensionable employment for the period covered by the performer's notice;
 - (b) that they were (or were not, as the case may be) directly employed by the contractor referred to in paragraph (3)(a) during the period covered by the performer's notice;
 - (c) in the case of a practitioner, who was in pensionable employment during the period covered by the notice, the pensionable earnings they received under the contract or agreement during that period;
 - (d) in the case of a practitioner whose earnings, during the period covered by the performer's notice, fell within paragraph (3)(b) of regulation 3.A.7, the earnings that would otherwise have been pensionable if that paragraph did not apply;
 - (e) the amount of any monthly seniority payments, maternity leave payments, paternity leave payments, adoption leave payments, parental leave payments or sickness leave payments received by the practitioner under the contract or agreement during the financial year; and
 - (f) whether the practitioner and contractor have together verified that any amounts the practitioner has declared in respect of sub-paragraphs (c), (d) or (e) are the same as the equivalent amounts declared in the annual reconciliation notice referred to in paragraph (4).
- (6) Within 3 months of the end of each financial year, a type 2 dental practitioner must provide the host Trust or Board with whom their employer has entered into a GDS contract or a PDS agreement, with a notice of their pensionable earnings based on—
- (a) the payments they have received from their employer for practitioner services provided under that GDS contract or PDS agreement during that financial year; and
 - (b) the pensionable earnings they have received, as a type 2 dental practitioner, from all other type 2 dental practitioner sources during that financial year.
- (7) An employing authority may, in exceptional circumstances, and with the agreement of the Secretary of State, arrange or agree a different time limit for the issue and return of the certificates, notices or statements referred to in paragraphs (1) to (6) and may, if a material particular has changed, accept a replacement.
- (8) Subject to paragraph (9), an annual reconciliation notice will be invalid if—
- (a) it contains information that the employing authority's records show is inaccurate or misleading in a material particular;
 - (b) subject to paragraph (7), it is not received within the specified time limit;
 - (c) the total of the amounts specified in it in respect of each type 1 dental practitioner that performed services under the contract or agreement referred to in paragraph (3)(a) is greater than the aggregate of the pensionable earnings ceiling referred to in paragraph (3)(a) and the amount referred to in paragraph (4)(c);
 - (d) it is incomplete in any material particular; or
 - (e) one or more of the practitioners referred to in it did not, for whatever reason, verify the earnings figure the contractor has declared for them.
- (9) Where an employing authority has received an annual reconciliation notice which is valid for some or all of the practitioners listed in that notice, the amounts notified to it for the financial year to which the notice relates will, subject to paragraphs (16), (17) and (18), be the pensionable earnings for those practitioners.
- (10) Where an employing authority has received an annual reconciliation notice which is invalid for some or all of the practitioners listed in that notice, the pensionable earnings for those practitioners will be—
- (a) zero, where the employing authority's records show that value or the authority is unable to estimate the value of the practitioner's pensionable earnings; or

- (b) the figure that the employing authority estimates will represent that practitioner's share of the aggregate of the pensionable earnings ceiling referred to in paragraph (3)(a) and the amount referred to in paragraph (4)(c) ("the maximum amount"), less the difference between—
 - (i) that maximum amount; and
 - (ii) the total of the monthly amounts in respect of which estimated contributions to this Section of the Scheme under regulation 3.C.2 (members' contribution rate) were paid on account during the financial year to which the earnings relate,

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

(11) In respect of each scheme year, a GMS or PMS practice, an APMS contractor or a GDS or PDS practice shall provide the Secretary of State with a statement of estimated pensionable earnings in respect of any—

- (a) non-GP provider that is a GMS or PMS practice or an APMS contractor who assists in the provision of NHS services provided by that GMS or PMS practice or APMS contractor;
- (b) type 1 medical practitioner who performs medical services as, or on behalf of, the practice or contractor;
- (c) type 2 medical practitioner employed by the practice or contractor;
- (d) type 1 dental practitioner who performs services under a GDS contract or a PDS agreement, or
- (e) type 2 dental practitioner employed to perform services under a GDS contract or a PDS agreement.

(12) In respect of each scheme year, each employing authority and GDS or PDS contractor shall, in respect of any of the persons referred to in paragraph (11)(a) to (e), provide the Secretary of State with an end-of-year statement of—

- (a) pensionable earnings;
- (b) contributions to this Section of the Scheme made under regulation 3.C.2 (members' contribution rate);
- (c) contributions to this Section of the Scheme made under regulation 3.C.3 (contributions by employing authorities: general); and
- (d) any pensionable earnings deemed in accordance with regulation 3.A.8 (pensionable earnings-breaks in service).

(13) The Secretary of State shall be provided with—

- (a) the statement referred to in paragraph (11) at least 1 month before the beginning of that scheme year;
- (b) the statement referred to in paragraph (12) no later than 3 months after the end of that scheme year.

(14) All employing authorities must, for each scheme year—

- (a) provide the Secretary of State with a statement of estimated total contributions due to this Section of the Scheme under regulation 3.C.1 (contributions by members) and 3.C.3 (contributions by employing authorities: general); and
- (b) maintain, in a manner approved by Secretary of State from time to time, the records of contributions to this Section of the Scheme made under regulations 3.C.1 and 3.C.3.

(15) The statement referred to in paragraph (14)(a) must be provided to the Secretary of State no later than 2 months after the end of each scheme year and, except where the Secretary of State waives such requirement, an employing authority must provide the Secretary of State with a statement of contributions to this Section of the Scheme recorded

in accordance with paragraph (14)(b) no later than 2 months after the end of each scheme year.

(16) Subject to paragraphs (17) and (18), if, in respect of a scheme year, a member has failed to comply with the requirements of whichever of paragraphs (1), (2), (4), (5) or (6) applies to that member, the member's pensionable earnings for that scheme year shall be zero.

(17) If, in respect of a scheme year, the employing authority of a practitioner or non-GP provider member is in possession of a figure representing all or part of that member's pensionable earnings for that year, the Secretary of State may treat that figure as the amount of that member's pensionable earnings for that year where—

- (a) that member has failed to comply with the requirements of whichever of paragraphs (1), (2), (4), (5) or (6) applies to them, and
- (b) a benefit in respect of that member's service as a practitioner or non-GP provider is payable to, or in respect of them, under these Regulations.

(18) If, in respect of a scheme year, a practitioner or non-GP provider—

- (a) dies without complying with the requirements of whichever of paragraphs (1), (2), (4), (5) or (6) applies to them; or
- (b) is, in the opinion of the Secretary of State, unable to look after their own affairs by reason of illness or lack of capacity within the meaning of the Mental Capacity Act 2005,

the Secretary of State may require that practitioner's or non-GP provider's personal representatives or person (or persons) duly authorised to act on the member's behalf to provide the relevant certificate, notice or statement within the period specified in paragraph (19).

(19) The period is—

- (a) that referred to in whichever of paragraphs (1), (2), (4), (5) or (6) was or is applicable to them; or
- (b) such other period as the Secretary of State permits.

(20) A host Trust or Board shall, for each scheme year and no later than 13 months after the end of each scheme year, forward to the Secretary of State a copy of the records that the host Trust or Board maintains in respect of practitioners under regulation 3.C.5(17)(b)(payment of contributions).

(21) The certificates, notices and statements referred to in this regulation—

- (a) shall be in such form as the Secretary of State shall from time to time require;
- (b) may be provided to the Secretary of State in such manner as the Secretary of State may from time to time permit.”.

PART 4

Amendment of the National Health Service (Injury Benefits) Regulations 1995

Amendment of regulation 2

36. In regulation 2 (interpretation) of the National Health Service (Injury Benefits) Regulations 1995(a), in the definitions of “APMS contract” and “APMS contractor” for “section 80(2)(b) of the 2006 Act” substitute “section 83(2)(b) of the 2006 Act”.

(a) S.I.1995/866. The relevant amending instrument is S.I.2008/655, regulation 3(1), (2)(a) and (b).

PART 5

Amendment of the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000

Amendment of regulation 10

37. Regulation 10 (outward transfers) of the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000(a) is amended as follows—

(a) for paragraph (1) substitute—

“(1) Subject to—

(a) paragraphs (4) to (7); and

(b) the cancellation, pursuant to regulation 5(1) or (2), of any election made under regulation 3(1),

the Secretary of State shall, as soon as reasonably practicable after having received a notice in writing from an eligible person requesting a transfer of the value of that person’s investments made in relation to that person under regulation 7(1), 8(2) or, as the case may be 9(4), pay a transfer value representing the value of all such investments at that person’s option to any other registered pension scheme in which the person may be participating.”;

(b) paragraph (3) is omitted; and

(c) in paragraph (8)(b)(i), for “60 years” substitute “75 years”.

PART 6

Miscellaneous

Option to persons detrimentally affected by these Regulations

38.—(1) This regulation applies in relation to any benefit which is being paid, or may become payable, under the regulations amended by these Regulations (“the amended regulations”) to or in respect of a person who having served in an employment or office which qualified the person to participate in the benefits provided under the amended regulations, ceased to serve in that office or employment before these Regulations came into force.

(2) Where, in a case to which this regulation applies, any provision of these Regulations would operate in relation to any person so as to place that person in a worse position than that person would have been if that provision had not applied, that person may elect that the provision shall not apply by giving notice in accordance with paragraph (3).

(3) A notice given pursuant to paragraph (2) shall be in writing and shall be delivered to the Secretary of State within 6 months of the coming into force of these Regulations.

(4) An election pursuant to paragraph (2) shall have effect in relation to the benefit referred to in paragraph (1) only to the extent that such benefit has accrued by virtue of periods of service rendered prior to the cessation referred to in paragraph (1) (or, if there has been more than one such cessation, the last of them before the coming into force of these Regulations) and in determining entitlement to, and the amount of, the benefit to that extent, such person shall be treated as if that person had never recommenced service at any time after that cessation (or, as the case may be, the last such cessation).

Signed by authority of the Secretary of State for Health.

(a) S.I. 2000/619. Regulation 10 was substituted by S.I.2002/610, regulations 2, 5. In paragraph (1), sub-paragraph (a) was substituted by S.I.2006/600, regulation 31(1), (2) and paragraph (3) was substituted by S.I. 2006/600, regulation 31(1), (4).

25th October 2011

Simon Burns
Minister of State,
Department of Health

We consent

Angela Watkinson
Michael Fabricant

27th October 2011

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the National Health Service Pension Scheme Regulations 1995 (S.I.1995/300) (“the 1995 Regulations”), the National Health Service Pension Scheme Regulations 2008 (S.I.2008/653) (“the 2008 Regulations”), the National Health Service (Injury Benefits) Regulations 1995 (S.I.1995/866) (“the Injury Benefits Regulations”) and the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000 (S.I. 2000/619) (“the Additional Voluntary Contributions Regulations”).

Regulation 1 provides for citation, commencement and effect, including that certain provisions of this instrument are to take effect from a date before the date of commencement. Section 12(1) of the Superannuation Act 1972 (c.11) provides authority for the regulations specified in regulation 1(3) to (6) to take effect as from a date earlier than the making of these Regulations.

Amendments particular to the 1995 Regulations:

Regulations 3 (amendment of regulation A2) and 4 (amendment of regulation B2), make minor and technical amendments only.

Regulation 5 amends regulation D2 (contributions by employing authorities) in order to clarify that the Secretary of State must consider, rather than take, the advice of the scheme actuary when determining the rate of employer contributions. This amendment is made in response to comments made by the Joint Committee on Statutory Instruments in relation to S.I. 2010/1634 in their Fourth Report of 2010/11.

Regulation 6(a) amends regulation E6 (lump sum on retirement) in order to clarify that where an additional pension is purchased by members it does not attract the fixed lump sum on retirement provided for by this regulation.

Regulation 8 amends regulation S2 (reduction of pension on return to NHS employment) in order to insert a missing cross reference to regulation R3(9) which deals with the payment of a deferred pension to a mental health officer. As a result of this amendment, such a pension will be subject to the abatement provisions of regulation S2.

Regulation 10 amends regulation T7 (commutation of trivial pensions) as a result of the provisions of the Registered Pension Schemes (Authorised Payments) Regulations 2009 in relation to the circumstances in which a small NHS pension can be regarded as a trivial amount for permissive commutation to a one-off lump sum payment.

In regulation 12 (amendment of Schedule 2), paragraphs (2), (3)(b) and (6) make technical amendments to correct references and clarify wording.

Amendments particular to the 2008 Regulations:

Regulations 15 and 24 amend regulations 2.A.5 and 3.A.5 (meaning of “qualifying service”), in order to enable members of the 1995 Section who are eligible to join the 2008 Section to count their 1995 Section qualifying service as qualifying service in the 2008 Section. They will qualify

for a pension no matter how short their service is in the 2008 Section. Prior to this amendment such members were required to accrue a further 2 years of qualifying service in order to qualify for a pension under the 2008 Section.

Regulations 16 and 27 amend regulations 2.C.1 and 3.C.1 (contributions by members), in order to correct a cross reference.

Regulations 18 and 30 amend regulations 2.E.9 and 3.E.9 (meaning of “dependent child”), in order to ensure that children born before the member became an active member of the 2008 Section should also be included in the definition.

Regulation 20 amends 2.H.6 (meaning of “previous pay”: members with concurrent employments), in order to correct an incomplete cross reference.

Regulations 21 and 32 make amendments to regulations 2.J.5 and 3.J.5 relating to the commutation of small pensions which are similar to those in regulation 10 for the purposes of the 1995 Regulations.

Amendments common to both the 1995 and 2008 Regulations in relation to dentists:

Regulations 12 (with the exception of paragraphs (2), (3)(b) and (6)), 25, 26 and 35 introduce changes to the administrative and governance arrangements for recording the pensionable earnings of type 1 dental practitioners. In particular, they—

- regularise and set revised deadlines for issuing annual schedules of pensionable earnings in respect of each GDS contract or PDS agreement and introduce the concept of an “annual reconciliation notice”;
- prescribe deadlines, for a new “performer’s notice” to confirm the pensionable earnings of each type 1 dentist performer;
- require GDS/PDS contractors and type 1 dentist performers annually to confirm (or correct) the pensionable earnings recorded for them; and
- re-locate certain provisions as a consequence of the above changes.

Changes to the 1995 and 2008 Regulations consequent on the Finance Act 2011

Regulations 6(b), 7, 11, 13, 17, 19, 23, 29, 31 and 34 amend various provisions of the 1995 and 2008 Regulations as a result of changes made by the Finance Act 2011 in relation to—

- (a) the lifting of the age limit on the payment of a lump sum in circumstances where the member retires, is terminally ill or dies after the age of 75; and
- (b) the determination by medical practitioners as to whether an individual meets the severe health condition referred to in section 229 of the Finance Act 2004.

Regulations 9, 22 and 33 amend the 1995 and 2008 Regulations in order to permit the scheme administrator to deduct the extended special lump sum death benefits charge and serious ill health lump sum charge from the payment due to the member or beneficiary.

Regulations 12(5) and 28 make technical changes in order to bring the wording of paragraph 10(2I), (2K) and (2L) of Schedule 2 to the 1995 Regulations and regulation 3.C.2(6), (8) and (9) of the 2008 Regulations into line with the wording of regulation 2.C.4(7) of the 2008 Regulations.

Amendment to the Injury Benefits Regulations

Regulation 36 amends regulation 2 (interpretation) of the Injury Benefits Regulations to correct a cross reference.

Amendment to the Additional Voluntary Contributions Regulations

Regulation 37 amends regulation 10 (outward transfers) of the Additional Voluntary Contributions Regulations in order to allow all members to transfer the value of their Additional Voluntary

Contributions (“AVCs”) to any registered pension scheme and to increase the upper age limit (from 60 to 75) at which members can transfer the value of their AVCs to another provider.

Miscellaneous

Part 6 provides that deferred members, or members in receipt of a relevant benefit, who are detrimentally affected by these Regulations may elect for the provisions not to apply to them by giving notice within six months of the coming into force of these Regulations (regulation 38).

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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