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## STATUTORY INSTRUMENTS

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# 2015 No. 94

## The National Health Service Pension Scheme Regulations 2015

### PART 5

#### Members' benefits

##### CHAPTER 1

##### Qualification

#### Qualifying for retirement benefits

72. A member is qualified for retirement benefits under this scheme if—

- (a) the member has at least 2 years' qualifying service; or
- (b) a transfer payment otherwise than from another occupational pension scheme has been accepted in relation to the member.

##### CHAPTER 2

##### Age retirement

#### Entitlement to age retirement pension

73.—(1) A member is entitled to payment of an age retirement pension from the entitlement day if the member—

- (a) has reached normal pension age;
- (b) is qualified for retirement benefits or the member ceases pensionable service after reaching normal pension age;
- (c) has left all NHS employment or reached age 75; and
- (d) has applied under paragraph 4 of Schedule 3 for the payment of an age retirement pension.

(2) An age retirement pension is payable for life.

(3) This regulation does not apply to a pension derived from pension credit rights (see section 101B of the 1993 Act <sup>M1</sup>).

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#### Marginal Citations

**M1** Section 101B was inserted by section 37 of the [Welfare Reform and Pensions Act 1999 \(c.30\)](#).

#### Annual rate of age retirement pension

74. The annual rate of age retirement pension payable to an active member or a deferred member who becomes entitled to payment of an age retirement pension is calculated in accordance with paragraph 1 of Schedule 13.

**Late payment of pension with actuarial increase**

**75.**—(1) Paragraph (2) applies where a member becomes entitled to the immediate payment of an age retirement pension on ceasing pensionable employment after reaching normal pension age.

(2) An increase amount (“the late payment actuarial increase”) must be calculated in accordance with paragraph 2 of Schedule 13.

**Pension credit member**

**76.**—(1) A pension credit member is entitled to a pension derived from the member's pension credit rights (see section 101B of the 1993 Act) if—

- (a) the relevant event occurs; and
- (b) the member claims payment of the pension.

(2) The relevant event is whichever is the later of the following—

- (a) the pension credit member reaches whichever is the later of the age of 65 or state pension age; and
- (b) the date on which the pension sharing order or provision under which the member is entitled to the pension credit takes effect.

(3) The pension becomes payable on the occurrence of the relevant event.

(4) The amount of the pension is equal to the member's pension credit calculated in accordance with regulations under paragraph 5(b) of Schedule 5 to the 1999 Act.

(5) A pension credit member who does not fall within paragraph (2)(a) is entitled to immediate payment of a reduced pension if the member—

- (a) has reached normal minimum pension age; and
- (b) claims payment of the pension.

(6) The amount of the pension under paragraph (5) is—

- (a) the amount calculated pursuant to paragraph (4), less
- (b) such amount as the scheme manager determines to be appropriate in consequence of payment of the pension before the pension credit member is within paragraph (2)(a).

(7) For the purposes of making a determination under paragraph (6)(b), the scheme manager must consult the scheme actuary.

(8) A claim under paragraph (1) or (5)—

- (a) must be made in writing in such form as the scheme manager requires;
- (b) takes effect from the date specified in the claim as the date on which the pension is to become payable.

(9) A pension credit member in relation to whom the relevant event has not occurred is entitled to immediate payment of a pension if, in the opinion of the scheme manager, the pension credit member—

- (a) meets the ill-health condition in paragraph 1 of Schedule 28 to the 2004 Act;
- (b) had previously been engaged in regular employment but is now permanently incapable of engaging in regular employment due to mental or physical infirmity; and
- (c) claims payment of the pension.

(10) The amount of the pension under paragraph (9) is calculated as mentioned in paragraph (4).

(11) For the purposes of paragraph (9), the scheme manager may require whatever medical evidence the scheme manager thinks necessary.

(12) A pension sharing order or provision is an order or provision mentioned in section 28(1) of the 1999 Act <sup>M2</sup>.

**Marginal Citations**

**M2** Section 28(1) has been amended by section 261(1) of, and paragraph 159(1) to (7) of Schedule 27 to, the Civil Partnership Act 2004 (c.33).

**Conversion of part of pension into lump sum**

77.—(1) Subject to paragraph (2) and Part 2 of Schedule 13, the following members may apply to the scheme manager to receive a lump sum in place of part of a pension—

- (a) a member who is entitled to payment of a retirement pension;
- (b) a pension credit member who is entitled to payment of a pension credit retirement pension.

(2) Paragraph (1)(b) only applies if—

- (a) the member's pension credit is derived from rights attributable to the pensionable service of a pension debit member; and
- (b) a retirement pension does not become payable to the pension debit member before the day on which a pension sharing order takes effect in respect of that pensionable service.

(3) Subject to paragraph (4), where an application is made pursuant to paragraph (1), the amount of pension converted into a lump sum is £1 for every £12 paid as a lump sum to the member.

(4) Paragraph (5) applies if a retirement pension converted under this regulation—

- (a) is adjusted by virtue of regulation 93, or
- (b) is abated to zero by virtue of regulation 86(3) and regulation 87 applies.

(5) The amount of pension converted into a lump sum for any retirement pension that subsequently becomes payable to the member is an amount determined by the scheme manager after consulting the scheme actuary.

(6) If the pension is an ill-health pension under regulation 90, the option under this regulation may only be exercised by giving notice to the scheme manager—

- (a) at the time of claiming the pension; or
- (b) before such later time as the scheme manager specifies in writing.

(7) If the pension is a Tier 2 IHP under regulation 93 in substitution for a Tier 1 IHP under regulation 90, the option under this regulation may only be exercised—

- (a) in relation to the difference between the Tier 1 IHP that ceases to be payable pursuant to sub-paragraph (a) of regulation 93(5) and the Tier 2 IHP to which the member becomes entitled under sub-paragraph (b) of that regulation; and
- (b) by giving notice to the scheme manager—
  - (i) at the time of the award of the Tier 2 IHP, or
  - (ii) before such later time as the scheme manager specifies in writing.

(8) Notice under paragraph (6) or (7) must be—

- (a) given in writing;
- (b) in such form as the scheme manager requires.

(9) In paragraph (7) the references to a Tier 1 IHP and a Tier 2 IHP must be construed in accordance with regulation 90.

*Status: Point in time view as at 01/07/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Pension Scheme Regulations 2015, PART 5. (See end of Document for details)*

(10) This regulation does not apply to a pension credit member whose rights under this scheme are attributable to a disqualifying pension credit for the purposes of paragraph 2 of Schedule 29 to the 2004 Act<sup>M3</sup>.

#### **Marginal Citations**

**M3** Paragraph 2 of Schedule 29 has been amended by section 161(1) of, and paragraphs 1 and 23 of Schedule 23 to, the [Finance Act 2006 \(c.25\)](#), [section 70](#) of, and paragraphs 1 and 11(1) and (4) of Schedule 20 to, the [Finance Act 2007 \(c.11\)](#), [section 65](#) of, and paragraphs 23 and 25 of Schedule 16 to, the [Finance Act 2011 \(c.11\)](#) and section 48(5) of, and paragraphs 5 and 8(1) and (2) of Schedule 22 to, the [Finance Act 2013 \(c.29\)](#).

#### **Entitlement day**

**78.**—(1) The entitlement day for the purposes of an age retirement pension is—

- (a) if the member (M) is in NHS employment on the day on which M reaches normal pension age—
  - (i) the day after M ceases to be in NHS employment; or
  - (ii) the day on which M reaches the age of 75;
- (b) if M is not in NHS employment on the day on which M reaches normal pension age, that day.

(2) If regulation 98 applies to M, for the purposes of M's entitlement to a pension in respect of old employment (within the meaning of regulation 101(3)) a reference in this regulation to M ceasing to be in NHS employment must be treated as a reference to M ceasing to be in the old employment.

### CHAPTER 3

#### Early and premature retirement

#### **Early retirement**

**79.**—(1) A member (M) is entitled to payment of a reduced pension (an early retirement pension) from the entitlement day if M—

- (a) has reached normal minimum pension age but has not reached normal pension age;
- (b) is qualified for retirement benefits;
- (c) has ceased all NHS employment; and
- (d) has applied under paragraph 4 of Schedule 3 for payment of an early retirement pension.

(2) M is not entitled to payment of an early retirement pension if the scheme manager, after consultation with the scheme actuary, decides that the amount of the pension would be less than the amount of the guaranteed minimum pension (if any) to which M is entitled.

(3) An early retirement pension is payable for life.

(4) Part 3 of Schedule 13 has effect in respect of the calculation of the amount of an early retirement pension.

#### **Entitlement day**

**80.**—(1) The entitlement day for the purposes of an early retirement pension is—

- (a) in the case of a deferred member, the date specified in the claim as the date on which the pension is to become payable;

- (b) in the case of an active member, the day immediately following the day on which M ceased to be employed in NHS employment.

(2) If regulation 98 applies to M, for the purposes of M's entitlement to a pension in respect of old employment (within the meaning of regulation 101(3)) a reference in this regulation to M ceasing to be in NHS employment must be treated as a reference to M ceasing to be in the old employment.

### **Premature retirement in the interests of efficiency**

**81.**—(1) A relevant member (M) is entitled to payment of a premature retirement pension from the entitlement day if—

- (a) M has reached normal minimum pension age but has not reached normal pension age;
- (b) M is qualified for retirement benefits;
- (c) M's pensionable employment has been terminated by M's employing authority in the interests of the efficient discharge of the functions of M's employing authority;
- (d) M's employing authority gives written notice to the scheme manager pursuant to paragraph (2);
- (e) the scheme manager certifies that M's employment is terminated in the interests of the efficient discharge of the employing authority's functions;
- (f) M has ceased to be employed in NHS employment; and
- (g) not later than 6 months after M's employment is terminated, M applies under paragraph 4 of Schedule 3 for payment of a premature retirement pension.

(2) The notice must state that—

- (a) M's pensionable employment was terminated in the interests of the efficient discharge of the employing authority's functions;
- (b) M has at least 2 years' continuous employment determined in accordance with any terms and conditions applying to the employment;
- (c) the employing authority agrees that a premature retirement pension should become payable to M; and
- (d) M has not unreasonably refused—
  - (i) to seek suitable alternative employment; or
  - (ii) to accept an offer of such employment.

(3) A certificate under paragraph (1)(e) may be given only with the agreement of M's employing authority.

(4) A premature retirement pension is payable for life.

(5) A relevant member is a member who is not—

- (a) a practitioner;
- (b) a non-GP provider; or
- (c) practice staff.

(6) Part 4 of Schedule 13 has effect in respect of the calculation of the amount of a premature retirement pension.

### **Premature retirement on grounds of redundancy**

**82.**—(1) A relevant member (M) is entitled to payment of a premature retirement pension from the entitlement day if—

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- (a) M has reached normal minimum pension age but has not reached normal pension age;
  - (b) M is qualified for retirement benefits;
  - (c) M's pensionable employment has been terminated by M's employing authority by reason of M's redundancy;
  - (d) M's employing authority gives written notice to the scheme manager pursuant to paragraph (2);
  - (e) the scheme manager certifies that M's employment is terminated by reason of redundancy;
  - (f) M has ceased to be employed in NHS employment; and
  - (g) not later than 6 months after M's employment is terminated, M applies under paragraph 4 of Schedule 3 for payment of a premature retirement pension.
- (2) The notice must state—
- (a) that M's pensionable employment was terminated by reason of M's redundancy;
  - (b) that M has at least 2 years' continuous employment determined in accordance with any terms and conditions applying to the employment;
  - (c) that the employing authority agrees that a premature retirement pension should become payable to M;
  - (d) that M has not unreasonably refused—
    - (i) to seek suitable alternative employment; or
    - (ii) to accept an offer of such employment;
  - (e) that M is entitled to claim a pension under this regulation as an alternative to receiving (in whole or in part) the lump sum payment otherwise payable to M in accordance with those terms and conditions; and
  - (f) whether the additional contribution option applies to M.
- (3) A certificate under paragraph (1)(e) may be given only with the agreement of M's employing authority.
- (4) A premature retirement pension is payable for life.
- (5) M is not entitled to payment of a premature retirement pension if the scheme manager, after consultation with the scheme actuary, decides that the amount of the pension would be less than the amount of the guaranteed minimum pension to which M is entitled.
- (6) If the additional contribution option applies, the payment of M's pension does not start until M's employing authority has at the same time—
- (a) remitted to the scheme manager M's contribution paid to the employing authority pursuant to regulation 32(6); and
  - (b) paid the contribution required under regulation 35(2).
- (7) Sub-paragraph (a) of paragraph (6) does not apply if—
- (a) M has chosen not to pay a contribution as mentioned in regulation 32(2); and
  - (b) the employing authority gives confirmation of that in writing to the scheme manager.
- (8) A relevant member is a member who is not—
- (a) a practitioner;
  - (b) a non-GP provider; or
  - (c) practice staff.

(9) The additional contribution option applies if the terms and conditions of M's employment entitle M optionally to make an additional contribution towards the cost of paying the pension if the lump sum payment is insufficient to meet that cost in full.

(10) Part 4 of Schedule 13 has effect in respect of the calculation of the amount of a premature retirement pension.

### **Premature retirement entitlement day**

**83.** The entitlement day for a premature retirement pension is the day immediately following the day on which M ceased to be employed in NHS employment.

## CHAPTER 4

### Partial retirement

### **Election for partial retirement (members over normal minimum pension age)**

**84.—**(1) This regulation applies to a member (M) if—

- (a) M has reached normal minimum pension age;
- (b) M continues to be employed in an employment in which M is an active member;
- (c) M is qualified for retirement benefits;
- (d) the terms on which M holds or engages in the employment mentioned in sub-paragraph (b) change; and
- (e) as a result of the change, M is subject to a relevant reduction.

(2) In paragraph (1), M is subject to a relevant reduction if—

- (a) where M is neither a practitioner nor a non-GP provider, M's pensionable earnings in the employment mentioned in paragraph (1)(b) are reduced to 90% or less of the amount of M's pensionable earnings during the period of 12 months ending with the election day;
- (b) where M is a practitioner or a non-GP provider, M's engagement in the employment is reduced to 90% or less of its level during that period.

(3) If this regulation applies M may elect to claim immediate payment of pension as specified in the election pursuant to paragraphs (a) and (b)—

- (a) M must specify the percentage of pension M claims (the specified percentage);
- (b) M must specify whether M claims any additional pension to which M is entitled.

(4) The election must be exercised by notice in writing to the scheme manager in such form as the scheme manager determines and must be accompanied by—

- (a) where M is neither a practitioner nor a non-GP provider, a statement in writing by the employing authority that the conditions in paragraph (1)(d) and (e) are met;
- (b) where M is a practitioner or a non-GP provider—
  - (i) appropriate supporting evidence; and
  - (ii) a statement in writing by the host Board that the conditions in paragraph (1)(d) and (e) are met.

(5) The specified percentage must be such that—

- (a) the amount of the pension to which M becomes entitled as a result of the election—
  - (i) is not less than 20% of the pension that would have been payable if M had ceased to be employed in all of M's employments at the end of the election day; and

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- (ii) taken together with any increase to which M is entitled in consequence of the election, is not less than 0.05% of M's lifetime allowance on the election day;
- (b) the amount of the pension in respect of which M does not require immediate payment is not less than 20% of the amount that would have been payable if M had ceased to be employed in all of M's employments at the end of the election day.
- (6) In applying paragraph (5)—
- (a) any additional pension to which M is entitled must be ignored; and
- (b) the amount in sub-paragraph (a) is the amount of the pension disregarding the effect of an application under regulation 77.
- (7) An election under this regulation may be made on not more than two occasions and the scheme manager must take advice from the scheme actuary regarding—
- (a) any benefits to be paid after the first election (but before the second election);
- (b) any benefits to be paid after a second election; and
- (c) the final payment.
- (8) If M was not an active member during the whole of the period of 12 months mentioned in paragraph (2)(a), that paragraph applies as if M's pensionable earnings during that period were—

$$PE \times \frac{365}{N}$$

where—

PE is M's pensionable earnings for the part of that period during which M was an active member; and

N is the number of days in that period on which M was an active member.

(9) In this regulation and regulations 85 to 89, the election day is the day before the relevant reduction takes effect.

**Modifications etc. (not altering text)**

- C1** Reg. 84(5) modified (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) Regulations 2015 \(S.I. 2015/95\)](#), regs. 1(b), **31(3)**

**Effect of election**

- 85.**—(1) This regulation applies if a member (M) makes an election under regulation 84.
- (2) M is entitled—
- (a) if M has reached normal pension age, to immediate payment of the specified percentage of the pension to which M would be entitled by virtue of regulation 73(1) if M had ceased to be employed in one or more employments on election day;
- (b) if M has not reached normal pension age, to immediate payment of the specified percentage of the pension to which M would be entitled by virtue of regulation 79 if M had ceased to be employed in one or more employments on election day; and
- (c) if the election specifies that M claims immediate payment of additional pension, to the additional pension subject—



- (i) where sub-paragraph (a) applies, to an increase of the same amount as would be made in that pension pursuant to paragraph 2 of Schedule 13 if M had ceased to be employed on the election day; and
  - (ii) where sub-paragraph (b) applies, to a reduction of the same amount as would have been made in that pension pursuant to regulation 79 if M had so ceased to be employed.
- (3) For the purposes of this Part—
- (a) M is a pensioner member as respects—
    - (i) the pension to which M is immediately entitled as a result of making the election; and
    - (ii) the specified percentage of the pensionable service that pension represents, in respect of which M is an active member on the election day;
  - (b) if M continues in pensionable service after the election day, M is an active member as respects—
    - (i) the pensionable service after that day in which M continues; and
    - (ii) so much of the pensionable service in respect of which M is an active member as is not within sub-paragraph (a) (the unspecified service); and
  - (c) if M does not continue in pensionable service after the election day, M is a deferred member as respects the unspecified service.

### **Terms of employment improve after election**

- 86.**—(1) This regulation applies if—
- (a) a member (M) has made an election under regulation 84(3);
  - (b) during the period of 12 months beginning with the day following election day the terms on which M holds the employment (or employments) mentioned in regulation 84(1)(b) change again; and
  - (c) as a result M is subject to a relevant increase.
- (2) In paragraph (1) M is subject to a relevant increase if—
- (a) where M is neither a practitioner nor a non-GP provider, M's pensionable earnings in the employment (or employments) is increased to more than 90% of M's pensionable earnings during the period of 12 months ending with the election day;
  - (b) where M is a practitioner or a non-GP provider, the level of M's engagement in the employment is increased to more than 90% of M's pre-change level.
- (3) [<sup>F1</sup>The amount of M's pension mentioned in regulation 85(2) is abated to zero from the first pension day following the day on which the relevant increase occurred.]
- (4) If, during the period of 12 months beginning with the day following election day, M enters further employment in which M is an active member—
- (a) the terms on which M holds the employment in respect of which the election was made (the election employment) are treated as having changed again; and
  - (b) for the purpose of determining whether M is subject to a relevant increase—
    - (i) where M is a practitioner or a non-GP provider, M's level of engagement in the further employment is treated as engagement in the election employment; and
    - (ii) where M is neither a practitioner nor a non-GP provider, M's pensionable earnings in the further employment are treated as pensionable earnings from the election employment.

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- (5) Paragraph (3) does not apply if—
- (a) the only change to M's terms as mentioned in paragraph (1)(b) is to M's pensionable earnings;
  - (b) the scheme manager considers that the annual rate of M's pensionable earnings at the time of the change would have exceeded the annual rate mentioned in paragraph (2)(a).
- (6) If M was not an active member during the whole of the period of 12 months mentioned in paragraph (1)(b), that paragraph applies as if M's pensionable earnings during that period were—

$$PE \times \frac{365}{N}$$

where—

PE is M's pensionable earnings for the part of the period during which M was an active member; and

N is the number of days in the period on which M was an active member.

- (7) In paragraph (2)(b), the pre-change level is the level of M's engagement in the employment during the period of 12 months ending on the election day.

#### Textual Amendments

- F1** Reg. 86(3) omitted (temp.) (25.3.2020) by virtue of [Coronavirus Act 2020 \(c. 7\), ss. 45\(3\), 87\(1\)](#) (with [ss. 89, 90](#)) (which affecting provision expires (25.3.2022) by virtue of [Coronavirus Act 2020 \(c. 7\), s. 89](#))

#### Member becomes subject to reduction following abatement

**87.**—(1) This regulation applies if—

- (a) regulation 86 applies to a member (M) such that M's pension is abated to zero pursuant to paragraph (3) of that regulation; and
- (b) M again becomes subject to a relevant reduction (within the meaning of regulation 84(2)).

(2) The scheme manager must restore the payment of M's pension with effect from the first pension day immediately following the day on which M became subject to the relevant reduction as mentioned in paragraph (1)(b).

(3) The scheme manager must not act under paragraph (2) unless the scheme manager obtains and has regard to advice of the scheme actuary as to whether the amount of the pension should be adjusted in view of the length of time during which it was abated to zero.

#### Payment of pension after abatement

**88.**—(1) This regulation applies if—

- (a) a member's (M) pension is abated pursuant to regulation 86(3); and
- (b) M's pensionable earnings are not reduced in consequence of M again becoming subject to a relevant reduction as mentioned in regulation 87(2).

(2) M's pension is payable by the scheme manager—

- (a) when M partially retires or retires again from pensionable employment; or
- (b) M attains the age of 75.

- (3) For the purposes of paragraph (2), the scheme manager must—
  - (a) have regard to any pension already paid, including any lump sum paid as a result of M making an application under regulation 77 (conversion of part of pension into lump sum); and
  - (b) obtain advice from the scheme actuary.

### **Application of regulations 84 to 88: concurrent employments**

**89.**—(1) This regulation applies if a person (M) is an active member in two or more employments held concurrently on the election day.

(2) Regulations 84 to 88 apply in relation to each of the employments as if it were the only employment held by M on that day, subject to the following modifications.

- (3) In regulation 84—
  - (a) for paragraph (2)(a) substitute—
    - “(a) where M is neither a practitioner nor a non-GP provider, if the sum of the annual rate of M’s pensionable earnings in that employment and every other employment held by M on the election day is reduced to 90% or less of the sum of—
      - (i) M’s pensionable earnings in the employment during the period of 12 months ending with the election day; and
      - (ii) M’s pensionable earnings during that period in every other employment held by M on that day.”; and
  - (b) in paragraph (8), after “paragraph (2)(a)” insert “ in respect of any of the employments held by M ”.

- (4) In regulation 86, for paragraph (2)(a) substitute—
  - “(a) where M is neither a practitioner nor a non-GP provider, the annual rate of M’s pensionable earnings in the employment is increased to more than 90% of the sum of—
    - (i) M’s pensionable earnings in the employment during the period of 12 months ending with the election day; and
    - (ii) M’s pensionable earnings during that period in every other employment held by M on that day.”.

(5) In the case of a practitioner or a non-GP provider, a reference to M’s employment is a reference to M’s pensionable service as a practitioner together with any concurrent NHS employment, and “terms of employment” must be construed accordingly.

## **CHAPTER 5**

### **Ill-health pension**

#### **Entitlement to ill-health pension**

- 90.**—(1) An active member (M) is entitled to immediate payment of—
- (a) an ill-health pension at Tier 1 (a Tier 1 IHP) if the Tier 1 conditions are satisfied in relation to M;
  - (b) an ill-health pension at Tier 2 (a Tier 2 IHP) if the Tier 2 conditions are satisfied in relation to M.
- (2) The Tier 1 conditions are that—
- (a) M [F2is qualified for retirement benefits and] has not attained normal pension age;

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- (b) M has ceased to be employed in NHS employment;
  - (c) the scheme manager is satisfied that M suffers from a physical or mental infirmity as a result of which M is permanently incapable of efficiently discharging the duties of M's employment;
  - (d) M's employment is terminated because of the physical or mental infirmity; and
  - (e) M <sup>F3</sup>...claims payment of the pension.
- (3) The Tier 2 conditions are that—
- (a) the Tier 1 conditions are satisfied in relation to M; and
  - (b) the scheme manager is also satisfied that M suffers from a physical or mental infirmity as a result of which M is permanently incapable of engaging in regular employment of like duration.
- (4) M is not entitled to payment of a pension under this regulation if M's NHS employment is terminated because—
- (a) M is dismissed (unless the scheme manager is satisfied that the dismissal was because of M's infirmity);
  - (b) M retires or resigns at a time when—
    - (i) M is subject to disciplinary proceedings; or
    - (ii) had been notified that such proceedings were being contemplated; or
  - (c) M otherwise retires or resigns, unless—
    - (i) at the time of doing so M's employing authority has notified the scheme manager in writing that M's physical or mental infirmity is the reason for the termination; and
    - (ii) the scheme manager is satisfied that is the case.
- (5) In paragraph (3)(b), “regular employment of like duration” means—
- (a) in the case of a practitioner or a non-GP provider, such employment as the scheme manager thinks would involve a similar level of engagement to M's current pensionable service as a practitioner or non-GP provider;
  - (b) in any other case, where prior to ceasing NHS employment, M was employed—
    - (i) on a whole-time basis, regular employment on a whole-time basis;
    - (ii) on a part-time basis, regular employment on a part-time basis, regard being had to the number of hours, half days and sessions M worked in the employment.
- (6) A pension under this regulation is payable for life: but see regulations 95 and 96.

#### Textual Amendments

- F2** Words in [reg. 90\(2\)\(a\)](#) inserted (1.4.2017) by [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), regs. 2(c), **39(2)(a)**
- F3** Word in [reg. 90\(2\)\(e\)](#) omitted (1.4.2017) by virtue of [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), regs. 2(c), **39(2)(b)**

#### Member's incapacity

**91.**—(1) For the purpose of determining whether a member (M) is permanently incapable of discharging the duties of M's employment efficiently, the scheme manager must—

- (a) have regard to the factors in paragraph (2), no one of which is to be decisive; and
  - (b) disregard M's personal preference for or against engaging in the employment.
- (2) The factors mentioned in paragraph (1)(a) are—
- (a) whether M has received appropriate medical treatment in respect of the infirmity;
  - (b) M's mental capacity;
  - (c) M's physical capacity;
  - (d) the type and period of rehabilitation it would be reasonable for M to undergo in respect of the infirmity, regardless of whether M has undergone the rehabilitation; and
  - (e) any other matter the scheme manager thinks appropriate.
- (3) For the purpose of determining whether M is permanently incapable of engaging in regular employment of like duration as mentioned in paragraph (3)(b) of regulation 90, the scheme manager must—
- (a) have regard to the factors in paragraph (4), no one of which is to be decisive; and
  - (b) disregard the factors in paragraph (5).
- (4) The factors mentioned in paragraph (3)(a) are—
- (a) whether M has received appropriate medical treatment in respect of the infirmity;
  - (b) such reasonable employment as M would be capable of engaging in if due regard is given to—
    - (i) M's mental capacity;
    - (ii) M's physical capacity;
    - (iii) M's previous training; and
    - (iv) M's previous practical, professional and vocational experience,irrespective of whether or not such employment is available to M.
  - (c) the type and period of rehabilitation it would be reasonable for M to undergo in respect of the infirmity, regardless of whether M has undergone the rehabilitation, having regard to—
    - (i) M's mental capacity; and
    - (ii) M's physical capacity;
  - (d) the type and period of training it would be reasonable for M to undergo in respect of the infirmity, regardless of whether M has undergone the training, having regard to—
    - (i) M's mental capacity;
    - (ii) M's physical capacity;
    - (iii) M's previous training; and
    - (iv) M's previous practical, professional and vocational experience; and
  - (e) any other matter the scheme manager thinks appropriate.
- (5) The factors mentioned in paragraph (3)(b) are—
- (a) M's personal preference for or against engaging in any particular employment; and
  - (b) the geographical location of M.
- (6) In this regulation—
- “appropriate medical treatment” means such medical treatment as it would be normal to receive in respect of the infirmity, but does not include any treatment that the scheme manager considers—
- (a) that it would be reasonable for M to refuse;

*Status: Point in time view as at 01/07/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Pension Scheme Regulations 2015, PART 5. (See end of Document for details)*

- (b) would provide no benefit to restoring M's capacity for—
- (i) discharging the duties of M's employment efficiently for the purposes of paragraph (2)(c) of regulation 90 [<sup>F4</sup>before M reaches prospective normal pension age]; or
  - (ii) engaging in regular employment of like duration for the purposes of paragraph (3) (b) of that regulation [<sup>F5</sup>before M reaches prospective normal pension age; or ]
- (c) that, through no fault on the part of M, it is not possible for M to receive before M reaches [<sup>F6</sup>prospective] normal pension age.

“permanently” means until M attains M's prospective normal pension age; and

“regular employment of like duration” has the same meaning as in regulation 90.

#### Textual Amendments

- F4** Words in [reg. 91](#) inserted (1.4.2017) by [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), regs. 2(c), [40\(2\)\(a\)](#)
- F5** Words in [reg. 91](#) inserted (1.4.2017) by [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), regs. 2(c), [40\(2\)\(b\)](#)
- F6** Word in [reg. 91](#) inserted (1.4.2017) by [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), regs. 2(c), [40\(2\)\(c\)](#)

#### Annual rate of ill-health pension

- 92.**—(1) The annual rate of Tier 1 IHP payable to a member (M) is found by—
- (a) taking the amount of full retirement earned pension specified in M's pensioner member's account;
  - (b) subtracting the conversion amount (if any) specified in that account in relation to that amount; and
  - (c) adding the amount of accrued additional pension (if any) calculated in accordance with regulation 70(3)(b) less the conversion amount (if any) specified in the account in relation to the additional pension.
- (2) The annual rate of Tier 2 IHP payable to M is the sum of—
- (a) the annual rate of Tier 1 IHP; and
  - (b) the Tier 2 addition.
- (3) The Tier 2 addition is found by applying the following formula:

$$\frac{A \times (C + E)}{C} - A$$

where—

A is the aggregate of the amounts of all of M's pensions from pensionable service on the day after M's last day of pensionable service (L+1)—

- (i) disregarding any additional pension; and
- (ii) including any increases applied by virtue of the Pensions (Increase) Act 1971 <sup>M4</sup>;

C is the total period of pensionable service counted in days over which the pensions aggregated to find A were accrued; and

E is the period counted in days equal to 50% of the length of the period starting on L+1 and ending on [F7the day before M reaches] prospective normal pension age, and any part of a day must be taken to be a whole day.

#### Textual Amendments

- F7** Words in [reg. 92\(3\)](#) substituted (1.4.2015) by [The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions \(Amendment\) Regulations 2016 \(S.I. 2016/245\)](#), [regs. 1\(8\)](#), [66](#) (with [reg. 105](#))

#### Marginal Citations

- M4** [1971 c.56](#).

### Re-assessment of entitlement

**93.**—(1) This regulation applies if—

- (a) in respect of a member (M) the scheme manager is satisfied as mentioned in regulation 90(2)(c); and
- (b) at the time M is awarded a pension the scheme manager gives M notice in writing as mentioned in paragraph (2).

(2) The notice is that M's case may be considered once within a period of three years beginning with the date of the award to determine whether, at the date of the consideration, M meets the condition in regulation 90(3)(b).

(3) M may apply to the scheme manager for a review of whether M subsequently meets the condition in regulation 90(3)(b) if—

- (a) M makes the application in writing no later than the relevant date;
- (b) the application is accompanied by further written medical evidence—
  - (i) relating to whether, at the date of the scheme manager's review, M has the physical or mental infirmity mentioned in regulation 90(3)(b); and
  - (ii) that relates to the same physical or mental infirmity as a result of which M met the condition in regulation 90(2)(c);
- (c) no previous application for a review has been made under this paragraph; and
- (d) M has not become entitled to a Tier 2 IHP in respect of any later service under regulation 97.

(4) The relevant date in paragraph (3)(a) is—

- (a) the last day of the period of three years after the giving of notice under paragraph (1)(b); or
- (b) if M engages in further NHS employment during that period, the first anniversary of the day on which the employment commences or, if sooner, the last day of that period.

(5) If, after considering the further medical evidence the scheme manager determines that M has the physical or mental infirmity for the purposes of regulation 90(3)(b), with effect from the date the determination is made, M—

- (a) ceases to be entitled to a Tier 1 IHP; and
- (b) becomes entitled to a Tier 2 IHP.

(6) If a determination is made under paragraph (5), in calculating the Tier 2 addition pursuant to regulation 92(3), in the explanation of factor E for “period starting on L+1” substitute “ period starting on day of the determination under regulation 93(5) ”.

*Status: Point in time view as at 01/07/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Pension Scheme Regulations 2015, PART 5. (See end of Document for details)*

### Early retirement on ill-health (deferred members)

- 94.**—(1) A deferred member (DM) is entitled to immediate payment of a pension if—
- (a) DM is not in NHS employment;
  - (b) DM has not attained normal pension age;
  - (c) the scheme manager is satisfied that DM suffers from physical or mental infirmity as a result of which DM is permanently incapable of engaging in regular employment of like duration; and
  - (d) DM claims payment of the pension.
- (2) DM is entitled to immediate payment of a pension if—
- (a) DM is in NHS employment;
  - (b) DM has not attained normal pension age;
  - (c) the scheme manager is satisfied that DM—
    - (i) is not within [<sup>F8</sup>paragraph (1)]; but
    - (ii) suffers from a physical or mental infirmity as a result of which DM is permanently incapable of discharging the duties of DM's employment efficiently; and
  - (d) DM leaves the employment and claims payment of the pension.
- (3) The amount of a pension payable under this regulation is found by applying regulation 92(1) as if—
- (a) a reference to M is a reference to DM; and
  - (b) the pension under this regulation is a Tier 1 IHP.
- (4) Regulation 91 applies for the purposes of this regulation as if—
- (a) a reference to M is a reference to DM; and
  - (b) a reference to regular employment of like duration is a reference to such employment for the purposes of paragraph (1)(c).

#### Textual Amendments

**F8** Words in [reg. 94\(2\)\(c\)\(i\)](#) substituted (1.4.2015) by [The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions \(Amendment\) Regulations 2016 \(S.I. 2016/245\)](#), regs. 1(8), 67 (with [reg. 105](#))

### Effect of re-employment on Tier 2 IHP

- 95.**—(1) This regulation applies if a member (M)—
- (a) is entitled to a Tier 2 IHP under regulation 90 in respect of earlier service;
  - (b) did not opt to exchange the pension for a lump sum in accordance with regulation 109; and
  - (c) has re-entered employment (M's further employment).
- (2) M continues to be entitled to a Tier 2 IHP if M's further employment—
- (a) is not NHS employment; and
  - (b) is an excluded employment.
- (3) M continues to be entitled to a Tier 2 IHP during the initial period if M's further employment—
- (a) is NHS employment; and
  - (b) is an excluded employment.



- (4) M ceases to be entitled to a Tier 2 IHP and is treated as being entitled to a Tier 1 IHP if—
- (a) M's employment—
    - (i) is not NHS employment; and
    - (ii) is not an excluded employment; or
  - (b) during the initial period, M's employment—
    - (i) is NHS employment; and
    - (ii) is not an excluded employment; or
  - (c) after the initial period, M's employment is NHS employment.
- (5) As regards further employment in NHS employment—
- (a) paragraph (4)(c) applies from the first day on which payment of a Tier 1 IHP falls after the first anniversary of M's re-entry into NHS employment, whether or not that day is part of a continuous period of further NHS employment beginning with entry into that employment;
  - (b) M may not re-join the scheme in respect of that employment or any other NHS employment until after the first anniversary of M's re-entry into NHS employment, whether or not that or any other NHS employment is an excluded employment.
- (6) For the purposes of this regulation—
- (a) an employment is an excluded employment at any time in a tax year, in relation to M, if M's earnings from the employment and any other employments are such that the lower earnings limit for that year is not exceeded;
  - (b) for the purposes of paragraph (4) an employment that has been an excluded employment in a tax year is not treated as ceasing to be such an employment until the first day following the end of the pension pay period for the Tier 2 IHP in which the limit described in subparagraph (a) is first exceeded; and
  - (c) “the initial period” means the period of 12 months beginning with the day on which M first enters an employment which results in this regulation applying.
- (7) M must—
- (a) notify the scheme manager if M is in NHS employment at the end of the initial period;
  - (b) notify the scheme manager if M's aggregate earnings for the purposes of national insurance from employments held in a tax year are such that the lower earnings limit for that year is exceeded; and
  - (c) provide the scheme manager or any other person specified by the scheme manager with such further information as the scheme manager specifies concerning any further employment.
- (8) In this regulation—
- (a) the lower earnings limit must be read in accordance with section 5 of the Social Security Contributions and Benefits Act 1992<sup>M5</sup>;
  - (b) “tax year” means a year of assessment for income tax purposes.

#### Marginal Citations

**M5** Section 5 was substituted by section 73 of, and paragraph 1 of Schedule 9 to, the [Welfare Reform and Pensions Act 1999 \(c.30\)](#) and amended by sections 7(1) and (3) and 27(2) of, and Part 4 of Schedule 7 to, the [Pensions Act 2007 \(c.22\)](#) and sections 1(1) and 4(2) of, and Schedule 2 to, the [National Insurance Contributions Act 2008 \(c.16\)](#).

**Renewed entitlement to Tier 2 IHP**

- 96.**—(1) This regulation applies to a member (M) who—
- (a) has not attained normal pension age; and
  - (b) has ceased to be entitled to a Tier 2 IHP by virtue of regulation 95(4).
- (2) M may apply to the scheme manager under this regulation to become entitled to a Tier 2 IHP if—
- (a) M is in further NHS employment and ceases to be employed at all during the initial period; or
  - (b) M is in further employment that is not NHS employment and ceases to be employed in that further employment within a period of one year beginning with the day on which the further employment ceased to be an excluded employment.
- (3) An application to which paragraph (2)(a) applies must—
- (a) state that M has ceased to be employed at all;
  - (b) be made within the initial period;
  - (c) be in writing and be accompanied by evidence from a registered medical practitioner that M has the physical or mental infirmity mentioned in regulation 90(3)(b).
- (4) An application to which paragraph (2)(b) applies must—
- (a) state that M has ceased to be employed at all;
  - (b) be made within the period of one year beginning with the day on which the employment ceased to be an excluded employment;
  - (c) be in writing and be accompanied by evidence from a registered medical practitioner that M has the physical or mental infirmity mentioned in regulation 90(3)(b).
- (5) If the scheme manager is satisfied that M has the physical or mental infirmity mentioned in regulation 90(3)(b), from the day following that on which M's last employment ceased—
- (a) M ceases to be treated as entitled to the Tier 1 IHP; and
  - (b) M becomes entitled to a Tier 2 IHP in respect of the earlier service.
- (6) Expressions used in this regulation and in regulation 95 have the same meaning as in that regulation.

**Re-employed Tier 1 IHP members**

- 97.**—(1) This regulation applies to a member (M) if M is entitled to a Tier 1 IHP in respect of M's earlier service.
- (2) M is entitled to the benefits in paragraph (3) if—
- (a) M became entitled to a Tier 1 IHP for the earlier service; and
  - (b) on the termination of the later service, M becomes entitled to a Tier 1 IHP or a Tier 2 IHP.
- (3) The benefits are—
- (a) M's original Tier 1 IHP in respect of M's earlier service; and
  - (b) a Tier 1 IHP or a Tier 2 IHP (as the case may be) in respect of M's later service.
- (4) M is entitled to the benefits in paragraph (5) if—
- (a) M ceases to be entitled to a Tier 1 IHP in respect of the earlier service;
  - (b) M becomes entitled to a Tier 2 IHP in respect of the earlier service in accordance with regulation 93(5); and

- (c) on the termination of the later service, M becomes entitled to a Tier 1 IHP or a Tier 2 IHP (as the case may be) in respect of the later service.
- (5) The benefits are—
  - (a) a Tier 2 IHP paid in accordance with regulation 93 in respect of M's earlier service; and
  - (b) a Tier 1 IHP in respect of M's later service.

## CHAPTER 6

### Dual capacity and multiple employment

#### **Dual capacity membership: pension benefits**

- 98.**—(1) This paragraph applies if a member is—
- (a) a member of this scheme in two or more of the kinds specified in paragraph (2);
  - (b) a pensioner member in respect of two or more pensions; or
  - (c) a deferred member in respect of two or more pensions.
- (2) The kinds of member are—
- (a) an active member;
  - (b) a deferred member;
  - (c) a pensioner member;
  - (d) a pension credit member.
- (3) If paragraph (1) applies—
- (a) pension benefits are payable to the member (or to a person to whom the member has elected to allocate a pension under regulation 51) as if the member were two or more members of the kind in question (so that two or more pensions or lump sums are payable in respect of one member); and
  - (b) the amounts payable are determined accordingly.
- (4) If a person who is a pension credit member is entitled to two or more pension credits—
- (a) benefits are payable to the member under this scheme as if the member were two or more persons, each being entitled to one of the pension credits (so that two or more pensions or lump sums are payable in respect of one pension credit member); and
  - (b) the amounts payable are determined accordingly.

#### **Deferred pension becomes payable during NHS re-employment following transfer of undertaking**

- 99.**—(1) A member is not prevented from becoming entitled to a relevant pension because of continuing NHS employment if—
- (a) the member is an active member in the NHS employment which is employment into which the member has been transferred as a result of a transfer of an undertaking to the employing authority; and
  - (b) the member is a deferred member in respect of pensionable service that ceased before the member commenced the employment mentioned in sub-paragraph (a).
- (2) Benefits payable in respect of new employment (within the meaning of regulation 101(3)) are calculated without regard to pensionable service in respect of the old employment (within the meaning of that regulation).

*Status: Point in time view as at 01/07/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Pension Scheme Regulations 2015, PART 5. (See end of Document for details)*

(3) A relevant pension is a pension in respect of the pensionable service referred to in paragraph (1)(b).

### **Retirement benefits for members with more than one employment**

**100.**—(1) This regulation applies to a member (M) who is in receipt of pensionable earnings in respect of two or more employments each of which is attributable to M belonging to any of groups A to C in the table in regulation 27(1).

(2) Subject to paragraphs (4) and (5), M does not become entitled to a pension under any of the regulations specified in paragraph (3) until—

- (a) the termination of all of M's NHS employments (including employment as a practitioner), or
- (b) M reaches the age of 75.

(3) The regulations are—

- (a) regulation 73;
- (b) regulation 79;
- (c) regulation 81;
- (d) regulation 82;
- (e) regulations 90 to 97.

(4) Paragraph (5) applies if M—

- (a) leaves employment (“past employment”) with one employing authority; and
- (b) in relation to the past employment, becomes entitled to a pension under regulation 81 or 82.

(5) M may elect—

- (a) to take benefits only in respect of the past employment; and
- (b) to continue to accrue rights in respect of any other continuing pensionable employment.

(6) If M elects as mentioned in paragraph (5), paragraph (2) applies in relation to an employment in respect of which M continues to accrue rights to benefits.

(7) Chapter 7 of Part 5 applies if M becomes entitled to a pension under paragraph (5) while continuing in other NHS employment.

(8) Paragraphs (9) and (10) apply if—

- (a) M becomes entitled to a pension under regulation 81 or 82; and
- (b) terminated concurrent employment as a practitioner not more than 12 months before becoming entitled to the pension.

(9) M is not entitled to receive a pension under regulation 81 or 82 in respect of any employment as practitioner, but is entitled only to receive a pension in respect of that employment pursuant to regulation 73 or 79.

(10) M may exercise a right to transfer out under Section 2 of Chapter 2 of Part 7 only if M leaves all pensionable service—

- (a) before reaching normal pension age; and
- (b) before becoming entitled to a pension under this scheme.

## CHAPTER 7

### Abatement on re-employment

#### Application of Chapter

**101.**—(1) This Chapter applies if—

- (a) a person who is a pensioner member of this scheme is employed in NHS employment;
- (b) the pensioner member's employment is not employment to which the pensioner member was transferred as a result of a transfer of an undertaking to the pensioner member's employer;
- (c) the pensioner member's pension is a pension under—
  - (i) regulation 90;
  - (ii) regulation 94; or
  - (iii) regulation 81; and
- (d) the pensioner member has not reached normal pension age.

(2) In this Part “NHS employment” includes—

- (a) employment in which a person of a category or description listed in Schedule 6 is engaged if the scheme manager has made a determination under section 25(5) of the 2013 Act in respect of the person; and
- (b) employment to which a corresponding health service scheme applies.

(3) In this Chapter—

- (a) a person to whom this Chapter applies is referred to as an “employed pensioner”;
- (b) the pension to which the employed pensioner is entitled is referred to as the “old service pension”;
- (c) the employment in respect of which the pension is payable is referred to as the “old employment”;
- (d) the employment in which the employed pensioner is employed is referred to as the “new employment”.

(4) For the purposes of this Chapter it is immaterial whether or not the employed pensioner is an active member of this scheme in the new employment.

(5) This Chapter does not apply to a person who is a pensioner member of this scheme if—

- (a) the person is employed by an independent provider—
  - (i) on the day the provider's status as an employing authority takes effect in accordance with regulation 152 (the effective date); and
  - (ii) on the day immediately before the effective date; and
- (b) any of paragraphs (6) to (8) apply to the person.

(6) This paragraph applies to a person who is not eligible to be an active member of this scheme on the effective date and remains ineligible to be such a member.

(7) This paragraph applies to a person who exercises an option not to re-join this scheme which takes effect from the effective date and has not been cancelled.

(8) This paragraph applies to a person who—

- (a) is not eligible to re-join this scheme on the effective date;
- (b) becomes eligible to do so on the day immediately after the first anniversary of the person entering NHS employment in accordance with regulation 95(5)(b) (the eligibility day); and

*Status: Point in time view as at 01/07/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Pension Scheme Regulations 2015, PART 5. (See end of Document for details)*

- (c) exercises an option not to re-join this scheme that takes effect from the eligibility day which has not been cancelled.

#### Modifications etc. (not altering text)

- C2** Reg. 101(1) modified (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) Regulations 2015 \(S.I. 2015/95\)](#), regs. 1(b), **39**

#### Information

- 102.**—(1) A person who becomes an employed pensioner must—
- (a) inform the employed pensioner's employer in the new employment and any other specified person that the old service pension is payable; and
  - (b) where requested, provide specified information about the employed pensioner's relevant income in the new employment to the scheme manager or a specified person.
- (2) A person who ceases to be an employed pensioner in one new employment and becomes an employed pensioner in another new employment must—
- (a) inform the person's employer in the other new employment, and any specified person that the old service pension is payable;
  - (b) where requested, provide specified information about the employed pensioner's relevant income in the other new employment to the scheme manager or a specified person.
- (3) In this regulation, “specified” means specified by the scheme manager.
- (4) Relevant income must be construed in accordance with regulation 104.

#### Reduction of pension

- 103.**—(1) If the condition in paragraph (2) is met, the amount of the old service pension for a scheme year is reduced.
- (2) The condition is that the employed pensioner's relevant income for the scheme year exceeds the employed person's previous earnings.
- (3) The amount of the reduction under paragraph (1)—
- (a) is equal to the excess; but
  - (b) must not exceed the enhancement amount.
- (4) Relevant income and the enhancement amount must be construed in accordance with regulation 104.
- (5) Previous earnings must be construed in accordance with regulations 105 and 106.
- (6) For the purpose of calculating the reduction to be made under paragraph (1) in respect of any part of a scheme year, the amount of the employed pensioner's previous earnings must be reduced proportionately.
- (7) If the employed pensioner has a guaranteed minimum under section 14 of the 1993 Act <sup>M6</sup> in relation to the old service pension, nothing in this regulation requires the reduction of that pension below the amount of the guaranteed minimum.

#### Marginal Citations

- M6** [Section 14](#) has been amended by sections 151 and 177 of, and paragraphs 27(a) and (b) of Schedule 5 and Part 3 of Schedule 7 to, the [Pensions Act 1995 \(c.26\)](#), [section 1\(1\)](#) of, and paragraph 38(a) to

(c) of Schedule 1 to, the [Social Security Contributions \(Transfer of Functions, etc\) Act 1999 \(c.2\)](#), [section 456](#) of, and paragraphs 1 and 22(1) and (3) of Schedule 11 to, the [Proceeds of Crime Act 2002 \(c.29\)](#), and is prospectively amended by section 24(1) of, and paragraphs 1 and 15(1) to (3) of Schedule 13 to, the [Pensions Act 2014 \(c.19\)](#).

### Relevant income and enhancement amount

- 104.**—(1) An employed pensioner's relevant income for a scheme year is the aggregate of—
- (a) the amount of earnings received by the employed person during the year from the new employment; and
  - (b) the enhancement amount.
- (2) The enhancement amount is the difference between—
- (a) the amount of the old service pension for that scheme year; and
  - (b) the amount the pension would have been had it been payable under regulation 79 (early retirement).
- (3) If the old service pension is payable under regulation 90 or 94 (ill-health pensions) to an employed pensioner who had not attained normal minimum pension age at the time when entitlement to the pension arose, for the purposes of paragraph (2)(b)—
- (a) the fact that entitlement to a pension under regulation 79 depends on reaching that age is ignored; but
  - (b) the employed pensioner's actual age at the relevant time is taken into account in determining the reduction to be made under Part 3 of Schedule 13.
- (4) If the old service pension is an ill-health pension at Tier 2, for the purposes of paragraph (2)(b), only the employed pensioner's actual pensionable service at the time when entitlement to the pension arose is taken into account in determining the amount that would have been payable under regulation 79.
- (5) If the employed pensioner exercised the option under regulation 77 (conversion of part of pension into lump sum) in relation to the old service pension, the resulting reduction in the pension is ignored for the purposes of this regulation.
- (6) If the employed pensioner exercised the option under regulation 51 (election to allocate pension) in relation to the old service pension, the resulting reduction is taken into account for the purpose of this regulation.
- (7) References to the amount of a pension for a scheme year are to its amount for that year after any increases payable in respect of the pension under the Pensions (Increase) Act 1971 <sup>M7</sup>, including increases that would have been payable in respect of an amount not paid because of a reduction ignored under paragraph (5).
- (8) For the purposes of paragraph (1)(a), the employed pensioner is assumed to be an active member of this scheme in the new employment.

#### Marginal Citations

M7 1971 c.56.

### Previous earnings: general

- 105.**—(1) For the purposes of this Chapter, an employed pensioner's previous earnings is construed in accordance with this regulation.

*Status: Point in time view as at 01/07/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Pension Scheme Regulations 2015, PART 5. (See end of Document for details)*

(2) If the employed pensioner's old employment was neither as a practitioner nor as a non-GP provider, the previous earnings is the greater of—

- (a) the optimum re-valued pensionable earnings in the old employment; and
- (b) the annual rate of pay for the old employment at the time it ceased.

(3) If the employed pensioner's old employment was as a practitioner or non-GP provider the previous earnings is the average of the annual amounts of the person's re-valued pensionable earnings in respect of practitioner service.

(4) The optimum re-valued pensionable earnings is the re-valued pensionable earnings for the scheme year in the earnings reference period for which the employed pensioner has the greatest amount of re-valued pensionable earnings.

(5) The annual rate of pay is the sum of—

- (a) the annual rate of so much of the employed pensioner's pensionable earnings immediately before the old service pension became payable as consisted of salary, wages, or other regular payments of a fixed nature; and
- (b) so much of any fees and other regular payments not of a fixed nature as—
  - (i) was payable to the employed pensioner during the period of 12 months ending with the day the old employment ceased, and
  - (ii) formed part of the employed pensioner's pensionable earnings.

(6) The amount to be taken as the employed pensioner's previous earnings must be adjusted in each scheme year by increasing it by the same amount as that by which an annual pension equal to that amount would have been increased under the Pensions (Increase) Act 1971 at 6th April in that scheme year if—

- (a) the pension was eligible to be so increased; and
- (b) the beginning date for the pension were the same as the beginning date for the old service pension.

(7) In this regulation and regulation 106—

“re-valued pensionable earnings” means, in relation to each scheme year in the earnings reference period, the pensionable earnings for that year increased up to the beginning date for the old service pension by the rate of change in prices specified by the Treasury by order under section 9 of the 2013 Act; and

“the earnings reference period” is the period ending on the last day of the scheme year immediately preceding the scheme year in which the employed pensioner left the old employment and starting on the later of—

- (a) the first day of the scheme year in which the employed pensioner first joined this scheme; and
- (b) the first day of the tenth scheme year preceding the scheme year in which the employed pensioner left the old employment.

(8) In paragraph (6) the beginning date, in relation to a pension, is the date on which it is deemed to begin for the purposes of the Pensions (Increase) Act 1971 (see section 8(2) of that Act <sup>M8</sup>).

#### **Marginal Citations**

**M8** 1971 c.56. Section 8(2) has been amended by section 1(5) of the [Pensions \(Miscellaneous Provisions\) Act 1990 \(c.7\)](#) and section 39(1) and (4) of the [Welfare Reform and Pensions Act 1999 \(c.30\)](#).



### **Previous earnings: continuing and concurrent employments**

**106.**—(1) This regulation applies if an employed pensioner has held one or more other NHS employments at the same time as the old employment.

(2) If the employed pensioner's old employment was neither as a practitioner nor as a non-GP provider, the previous earnings is the amount determined under regulation 105 increased as follows—

- (a) if the person holds a continuing non-practitioner employment on becoming entitled to the old service pension, the increase is the annual rate of earnings in respect of the continuing employment;
- (b) if the person holds a continuing practitioner employment on becoming entitled to the old service pension, the increase is the average of the annual amounts of the person's re-valued pensionable earnings in respect of practitioner employment.

(3) If the employed pensioner's old employment was as a practitioner, the previous earnings is the amount determined under regulation 105 increased as follows—

- (a) if the person becomes entitled to receive simultaneously a pension in respect of rights accrued from non-practitioner employment, the increase is the amount of previous earnings in respect of the non-practitioner employment;
- (b) if the person holds a continuing non-practitioner employment on becoming entitled to the old service pension, the increase is the annual rate of earnings of the continuing employment.

(4) Paragraph (5) applies if—

- (a) the employed pensioner held a part-time pensionable employment immediately before the old service pension becomes payable;
- (b) in the 12 months preceding the date on which the old service pension becomes payable the person held concurrent part-time pensionable employment; and
- (c) the employment mentioned in paragraph (b) terminated before the old service pension becomes payable.

(5) The employed pensioner's previous earnings are increased by—

- (a) the annual rate of earnings in respect of the concurrent part-time pensionable employment; or
- (b) if higher, that part of the pensionable earnings for the employment which is attributable to any part of the period of 12 months mentioned in paragraph (4)(b).

(6) Paragraph (7) applies if—

- (a) in the period of 12 months before the date on which the old service pension becomes payable the employed pensioner was in pensionable employment as a practitioner; and
- (b) the pensionable employment terminated before the old service pension became payable.

(7) The previous earnings are increased by the average of the annual amounts of the person's re-valued pensionable earnings in respect of the employment mentioned in paragraph (6).

(8) Paragraph (9) applies if—

- (a) a practitioner becomes entitled to payment of a pension under this scheme;
- (b) in the 12 months before the entitlement arises the practitioner held concurrent pensionable non-practitioner employment; and
- (c) the employment is terminated before the pension becomes payable.

(9) The previous earnings are increased by—

- (a) the annual rate of earnings in respect of the employment mentioned in paragraph (8); or

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- (b) if higher, that part of the pensionable earnings for the employment which is attributable to any part of the period of 12 months mentioned in paragraph (8)(b).
- (10) Non-practitioner employment is employment which is neither as a practitioner nor as a non-GP provider, and references to practitioner employment must be construed accordingly.
- (11) Continuing employment is pensionable employment—
  - (a) which a person held immediately before becoming entitled to payment of a pension under this scheme; and
  - (b) which the person continues to hold whether it is pensionable or not.

### Multiple pensions

**107.**—(1) This regulation applies if an employed pensioner is entitled to more than one old service pension within regulation 101(1)(c) in a scheme year.

(2) In regulation 103, for paragraphs (1) and (2) substitute—

“(1) If the condition in paragraph (2) is met, the amount of the old service pensions for a scheme year are reduced.

(2) The condition is that the employed pensioner's relevant income for the scheme year exceeds the employed person's previous earnings for all old employments.

(2A) The amount of the reduction under paragraph (1) in the case of each of the pensions is equal to the same proportion of the excess as the amount of the pension for the scheme year before the reduction bears to the sum of the pensions for that year before the reduction.”.

(3) In regulation 104—

(a) for paragraph (2) substitute—

“(2) The enhancement amount is the difference between—

- (a) the aggregate amount of all old service pensions for that scheme year, and
- (b) the aggregate amount all of those pensions would have been if they had each been payable under regulation 79 (early payment of pension with actuarial reduction).”;

(b) subsequent references to the old service pension must be taken as references to every old service pension to which the substituted paragraph (2) applies.

(4) Regulation 108 applies as if references to an old service pension were references to every such pension.

### Adjustment of reductions

**108.**—(1) If the old service pension for a scheme year is being reduced under this Chapter, the scheme manager must review the amount of the reduction—

- (a) at the end of the scheme year; and
- (b) at any time during the scheme year if it appears to the scheme manager that—
  - (i) the amount of the reduction made for the year is, or may become, incorrect; or
  - (ii) no reduction should be made.

(2) If at any time during the scheme year it appears to the scheme manager as mentioned in paragraph (1)(b), the scheme manager must make such adjustments as appear to be required, whether by—

- (a) altering the amount of the reduction; or

- (b) repaying to the employed pensioner any amount that should not have been deducted from the pension.
- (3) If at the end of the scheme year it is apparent that—
  - (a) the reduction in the old service pension for the year was excessive; or
  - (b) no such reduction should have been made,the scheme manager must repay the amount due to the employed pensioner.
- (4) If at the end of the scheme year it is apparent that the old service pension paid for the year exceeded the amount due because the reduction in the old service pension required under regulation 103 was not made, the employed pensioner must repay the excess to the scheme manager.
- (5) Paragraph (4) does not affect the right of the scheme manager to recover a payment or overpayment which is due.

## CHAPTER 8

### Serious ill health option

#### **Option for members in serious ill health to exchange pension for lump sum**

- 109.**—(1) An active member, a deferred member or a pension credit member may opt to exchange a relevant pension for a lump sum if the scheme manager is satisfied that the conditions for the lump sum to be a serious ill-health lump sum for the purposes of the 2004 Act will be met (see paragraph 4 of Schedule 29 to that Act <sup>M9</sup>).
- (2) For the purposes of paragraph (1), a “relevant pension” is a pension payable to that member under regulation 73, 76, 90 or 94.
  - (3) The option may only be exercised—
    - (a) in the case of a pension payable under regulation 73 or 76, before or at the time when the pension becomes payable;
    - (b) in the case of a pension payable under regulation 90 or 94, before the pension becomes payable to the member.
  - (4) An active member who has reached normal pension age who exercises the option is to be paid, as soon as is reasonably practicable, an amount equal to the sum of—
    - (a) the maximum lump sum to which the member could have become entitled on exercising the option under regulation 77 if at the appropriate time the member had become entitled to a pension under regulation 73; and
    - (b) the annual rate of the pension to which the member would have been entitled under regulation 73 after exercising that option, multiplied by 5.
  - (5) An active member entitled to a pension under regulation 90 who exercises the option is to be paid, as soon as is reasonably practicable, an amount equal to the sum of—
    - (a) the maximum lump sum to which the member could have become entitled on exercising the option under regulation 77 at the appropriate time; and
    - (b) the annual rate of the pension to which the member is entitled under regulation 90 after exercising that option, multiplied by 5.
  - (6) A pension credit member entitled to a pension under regulation 76 who exercises the option is to be paid as soon as reasonably practicable, amount equal to the sum of—
    - (a) the maximum lump sum (if any) to which the pension credit member could have become entitled on exercising the option under regulation 77 at the appropriate time; and

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- (b) the total annual amount of the pension to which the pension credit member is entitled under regulation 76 after exercising the option multiplied by 5.
- (7) A deferred member entitled to a pension under regulation 94 who exercises the option is to be paid, as soon as is reasonably practicable, an amount equal to the sum of—
- (a) the maximum lump sum to which the member could have become entitled on exercising the option under regulation 77 at the appropriate time; and
- (b) the annual rate of the pension to which the member is entitled under regulation 94 after exercising that option, multiplied by 5.
- (8) “The appropriate time” means—
- (a) for the purposes of paragraphs (4) and (6), the time when the option under this regulation is exercised; and
- (b) for the purposes of paragraphs (5) and (7), the time payment of the pension under regulation 90 or, as the case may be, 94 would otherwise first be due.
- (9) References to the annual rate of a pension are to the amount of the annual pension to which the member would be entitled, together with any increases payable under the Pensions (Increase) Act 1971 <sup>M10</sup>, calculated as at the appropriate time.
- (10) The option under this regulation may only be exercised by notice in writing to the scheme manager in such form as the scheme manager requires.

#### Marginal Citations

**M9** Paragraph 4 of Schedule 29 has been amended by section 65 of, and paragraphs 23 and 28 of Schedule 16 to, the [Finance Act 2011 \(c.11\)](#).

**M10** 1971 c.56.

## CHAPTER 9

### Contracting out obligations

#### Guaranteed minimum pension etc.

- 110.**—(1) If a member (M) has a guaranteed minimum under section 14 of the 1993 Act <sup>M11</sup> in relation to benefits under this scheme, nothing in these Regulations—
- (a) permits or requires anything that would cause requirements made by or under that Act in relation to M and M's rights under this scheme not to be met in the case of M; or
- (b) prevents anything from being done which is necessary or expedient for the purposes of meeting such requirements in the case of M.
- (2) Paragraph (3) applies if apart from this regulation—
- (a) no pension would be payable to M under this scheme; or
- (b) the weekly rate of the pensions payable would be less than the guaranteed minimum.
- (3) Where this paragraph applies, as the case may be—
- (a) a pension at a weekly rate equal to the guaranteed minimum is payable to M for life from the date on which M reaches State pension age; or
- (b) pensions, the aggregate weekly rate of which is equal to the guaranteed minimum, are so payable.
- (4) If—

- (a) on reaching State pension age M is still in employment (whether or not it is scheme employment); and
- (b) if it is not scheme employment, M consents to a postponement of M's entitlement under paragraph (3),

paragraph (3) does not apply until M leaves employment.

(5) If M continues in employment for a further 5 years after reaching State pension age and does not then leave employment, M is entitled from the end of that period to so much of the member's pension under this Part as equals M's guaranteed minimum (or, as the case may be, to so much of M's pensions under this Part as together have a weekly rate equal to M's guaranteed minimum), unless M consents to a further postponement of that entitlement.

(6) If paragraph (4) or (5) applies, the amount of the guaranteed minimum to which M is entitled under this regulation is increased in accordance with section 15 of the 1993 Act.

(7) If—

- (a) before State pension age M becomes entitled to the immediate payment of a pension; and
- (b) M has a guaranteed minimum under section 14 of the 1993 Act in relation to the whole or part of the pension,

the weekly rate of the pension, so far as attributable to that service, must not be less than that guaranteed minimum, multiplied by such factor as is indicated in tables provided by the scheme actuary for a person of M's age and sex at the date on which the pension becomes payable.

(8) This paragraph applies if a person has ceased to be in employment that is contracted-out by reference to this scheme, and either—

- (a) all the person's rights to benefits under this scheme, except the person's rights in respect of the person's guaranteed minimum or [<sup>F9</sup>the person's section 9(2B) rights] (“the person's contracting-out rights”), have been transferred under Part 7 (transfers); or
- (b) the person has no rights to benefits under this scheme apart from the person's contracting-out rights.

(9) If paragraph (8) applies—

- (a) from the date on which the person reaches State pension age the person is entitled to a pension payable for life at a weekly rate equal to his guaranteed minimum, if any; and
- (b) from the date on which the person reaches pension age the person is entitled to a pension in respect of [<sup>F10</sup>the person's section 9(2B) rights],

but a person falling within paragraph (8) is not to be regarded as a pensioner for the purposes of Part 6 (survivor benefits).

(10) Paragraphs (2) to (9) do not apply to—

- (a) a pension that is forfeited—
  - (i) as a result of a conviction for treason; or
  - (ii) in a case where an offence within paragraph 12(2)(b) of Schedule 3 (Official Secrets Acts offences) is committed;
- (b) a pension that is commuted under regulation 109 (option for members in serious ill- health to exchange whole pension for lump sum); or
- (c) a pension that is commuted under paragraph 6 of Schedule 3 (commutation of small pensions) where the conditions in [<sup>F11</sup>regulation 25 of the Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015] are met,

but if any other provision of this scheme is inconsistent with this regulation, this regulation prevails.

(11) In this regulation—

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- (a) “scheme employment”, in relation to a member, means employment in the employment by virtue of which the member is eligible for membership of this scheme; and
- (b) references to the amount of a pension are to its amount—
  - (i) disregarding any additional pension;
  - (ii) after the subtraction of any amount exchanged under regulation 77 (option to exchange part of pension for lump sum); and
  - (iii) before the subtraction of any amount allocated under regulation 51 (election to allocate pension).

#### Textual Amendments

- F9** Words in reg. 110(8)(a) substituted (6.4.2019) by [The National Health Service Pension Schemes, Additional Voluntary Contributions and Injury Benefits \(Amendment\) Regulations 2019 \(S.I. 2019/418\)](#), regs. 1(3), **85(2)**
- F10** Words in reg. 110(9)(b) substituted (6.4.2019) by [The National Health Service Pension Schemes, Additional Voluntary Contributions and Injury Benefits \(Amendment\) Regulations 2019 \(S.I. 2019/418\)](#), regs. 1(3), **85(3)**
- F11** Words in reg. 110(10)(c) substituted (6.4.2016) by [The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions \(Amendment\) Regulations 2016 \(S.I. 2016/245\)](#), regs. 1(3), **68** (with reg. 105)

#### Marginal Citations

- M11** Section 14 has been amended by sections 151 and 177 of, and paragraphs 27(a) and (b) of Schedule 5 and Part 3 of Schedule 7 to, the [Pensions Act 1995 \(c.26\)](#), [section 1\(1\)](#) of, and paragraph 38(a) to (c) of Schedule 1 to, the [Social Security Contributions \(Transfer of Functions, etc\) Act 1999 \(c.2\)](#), [section 456](#) of, and paragraphs 1 and 22(1) and (3) of Schedule 11 to, the [Proceeds of Crime Act 2002 \(c.29\)](#), and is prospectively amended by section 24(1) of, and paragraphs 1 and 15(1) to (3) of Schedule 13 to, the [Pensions Act 2014 \(c.19\)](#).

## CHAPTER 10

### Pension debit members

#### Reduction in pension debit member's benefits

**111.** The benefits to which a pension debit member is entitled under this Part are subject to reduction pursuant to section 31 of the 1999 Act.

**Status:**

Point in time view as at 01/07/2021.

**Changes to legislation:**

There are currently no known outstanding effects for the The National Health Service Pension Scheme Regulations 2015, PART 5.