

EXPLANATORY MEMORANDUM TO
THE NATIONAL HEALTH SERVICE PENSION SCHEME
(TRANSITIONAL AND CONSEQUENTIAL PROVISIONS) REGULATIONS
2015

2015 No. 95

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 This instrument implements transitional and consequential arrangements for members of the new 2015 NHS pension scheme for England & Wales (“the new scheme”) who have pension rights accrued in either the 1995 or 2008 Section of the NHS pension scheme (“the old scheme”). These arrangements make provision for the treatment and payment of old scheme benefits during or following a period of membership of the new scheme. They also include protections permitting members close to normal pension age to remain in the old scheme.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 This instrument forms part of a group of three linked instruments that together implement reforms to pension scheme arrangements for health service workers. The other two linked instruments are:
 - (a) The National Health Service Pension Scheme 2015 (SI 2015/94) which establishes a new, reformed pension scheme, and
 - (b) The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions (Amendment) Regulations 2015 (SI 2015/96) implements reforms and makes technical clarifications to the old scheme including new contribution rates and provisions to support future contractual terms relating to redundancy retirement.
 - 4.2 This instrument implements transitional and consequential measures relating to the introduction of a reformed pension scheme for health service workers in England and Wales under the powers provided in the Public Service Pensions Act 2013 (“the Act”) and the Superannuation Act 1972.
 - 4.3 The Act was enacted in response to the recommendations of the Independent Public Service Pensions Commission (the Commission) chaired by Lord Hutton of Furness. The Commission published its final report on 10 March 2011. This recommended a series of changes to public service pension

arrangements in order to secure long term sustainability of the pension schemes together with a more balanced distribution of costs between scheme members and, via the employer, the taxpayer.

4.4 The old scheme is divided into two Sections, each providing entitlement to pension and other benefits calculated in accordance with the provisions of that particular Section. The 1995 Section is established by the National Health Service Pension Scheme Regulations 1995 (SI 1995/300); the 2008 Section by the National Health Service Pension Scheme Regulations 2008 (SI 2008/653).

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Transitional arrangements were first set out in the Proposed Final Agreement published by the Department of Health on 9 March 2012. Following this, trades unions while recognising their continued opposition to these reforms have actively engaged with the Department in developing the detailed provisions of the reformed scheme, including transitional and consequential arrangements. Discussions on these detailed provisions and scheme rules began in April 2012 with over 80 meetings held with trades unions and employer representatives.

7.2 The transitional and consequential arrangements take the form of four broad areas. First, to implement protections permitting members close to normal pension age to remain in the old scheme. Second, for members without such protection, to provide a smooth transfer between old and new schemes such that the qualifying service, notices and earnings under the old scheme have effect for the corresponding purposes of the new scheme. Third, to implement measures that protect the value and functionality of pension benefits a member has built up in the old scheme before moving to the new scheme. Fourth, to ensure that where appropriate the rules and entitlements of the new scheme apply in relation to old scheme benefits when certain events occur – for instance when a member dies in service or claims ill-health retirement benefits.

7.3 Specifically, Chapter 1 of Part 2 and Schedule 1 provide for the circumstances in which individuals who are in receipt of a pension from the old scheme may join the new scheme. Chapter 2 allows relevant options, nominations, notices & declarations made in respect of old scheme benefits to have equal application regarding new scheme benefits and membership.

7.4 Chapter 3 is concerned with transitional arrangements regarding the treatment of service and various breaks in service and absences during which a member may be moved across to the new scheme. Provision is made here to allow a member to be treated as though active in the old scheme whilst simultaneously remaining active in the new scheme and for qualifying service in the old scheme to count as such in the new scheme (and vice versa).

7.5 Where a member is moved to the new scheme during a period of authorised absence from employment of up to 24 months, Chapter 3 also provides for the period of absence under the old scheme to be taken into account when determining how long the absence period may be under the new scheme. In addition, provision is also made so that in certain circumstances members may repay refunded contributions in the old scheme following a break in service after which they return to the new scheme.

7.6 Chapter 4 establishes the method for determining the rate of member contributions payable under the new scheme for active members who are moved across to the new scheme. Pensionable pay or earnings for purposes relating to the old scheme, such as calculation of benefits, would be determined in accordance with the provisions of that scheme.

7.7 Schedule 7 of the Act provides a facility for the old scheme retirement pension to be calculated using earnings at retirement or upon leaving the new scheme, thereby enabling those pension rights to be honoured in full (“the final salary link”). Chapter 4 provides that this facility may only be exercised once and that any subsequent period of scheme membership will not lead to a recalculation of the old scheme pension that is in payment. Provision is also made to apply an equivalent of the final salary link to scheme members who are practitioners with old scheme benefits built up partially on a career average basis.

7.8 Chapter 5 provides for the continuation of additional voluntary contribution contracts to purchase supplementary old scheme benefits during active membership of the new scheme. Where the benefits purchased relate to the 1995 section of the old scheme, the member can choose to claim these upon reaching normal pension age without leaving pensionable service in the new scheme. Chapter 6 allows the portion of a bulk transfer payment that relates to a member’s rights in a final salary pension scheme to be received into the old scheme.

7.9 Chapter 7 makes arrangements relating to the payment of old scheme retirement benefits. Provision is made to extend eligibility to participate in the old scheme whilst an application for ill-health retirement and any appeal process are in train. Where a member of the new scheme claims ill-health retirement, any pension resulting from service under the old scheme becomes payable through and in accordance with the terms of the new scheme. Where a member retires from the new scheme on a partial or premature basis, provision is made for the retirement event to also have effect in relation to the member’s old scheme benefits. Equally, any old scheme pension in payment will be

taken into account alongside a new scheme pension for the purposes of determining whether those pensions are to be abated upon re-employment.

7.10 Chapter 8 establishes that where a new scheme member dies, the benefit entitlement derived from any old scheme service is calculated in accordance with the rules of the new scheme rather than the old scheme.

7.11 Chapter 9 provides a further option for members of the 1995 Section of the NHS Pension Scheme to convert that period of membership to membership of the 2008 Section. Benefits are built up more quickly under the 2008 Section but with a later retirement age of 65. Members of the old scheme were first given this option before development of the reformed pension scheme. Those members who chose not to convert membership and are eligible to join the new scheme will therefore have a second opportunity to do so.

7.12 Part 3 and Schedule 2 amend the old scheme to implement a number of transitional protections.

7.13 Section 18(1) of the Act prevents an individual building up benefits in the old scheme beyond 31 March 2015. However scheme regulations are permitted by section 18(5) to make limited exceptions. The PFA provided that members of the old scheme who on 1 April 2012 were less than 10 years from their normal pension age could exceptionally continue that membership (“full protection”).

7.14 A further tapering protection is provided to mitigate the ‘cliff edge’ effect for members who as at 1 April 2012 are more than 10 but less than 13 years and 5 months away from normal pension age. Tapered protection delays the point at which a member moves from the old to the new scheme. Members who do not qualify for protection are moved to the new scheme on 1 April 2015. The same protection principles apply to special class members of the 1995 section where the potential to qualify for a lower normal pension age is taken into account. Arrangements are made for members who return from a break in service of less than five years to retain protection and resume membership of the old scheme.

7.15 Provision is made so that members of the new scheme who have lost entitlement to a final salary link in respect of old scheme benefits or the equivalent for practitioners with old scheme benefits built up partially on a career average basis, are able to claim those old service benefits without needing to leave the employment that entitles membership of the new scheme.

7.16 The protection principles are also applied to transfers received from other public service pension schemes including corresponding NHS pension schemes in Scotland and Northern Ireland. In addition, former members of the scheme to whom the Treasury’s ‘Fair Deal’ policy applies may be admitted to the old scheme if that person would have been eligible for protection after 1 April 2015 had their employment not been transferred out of the public sector. New provisions are inserted that give a member of the new scheme the option

to transfer the cash equivalent value of their deferred old scheme benefits into the new scheme following a break in service of five years or more. The option is only exercisable at the first opportunity that it arises.

7.17 Schedule 2 also makes arrangements dealing with the transfer of final salary benefits in the old scheme from the corresponding final salary NHS pension schemes in Scotland and Northern Ireland, and from other final salary public service schemes via the Public Sector Transfer Arrangements.

7.18 Finally, new provisions are inserted that require each member to be sent a 'benefit information statement' annually, in accordance with the Public Service Pensions Act 2013. The statement will describe the level of pension scheme benefits that the member has so far built up.

Consolidation

7.19 The instrument makes freestanding provision save for Part 3 which amends both the National Health Service Pension Schemes Regulations 1995 and 2008. The Department has previously advised that work to consolidate those regulations would be undertaken after implementation of these long term reforms to NHS pension scheme arrangements, of which this instrument forms part.

8. Consultation outcome

8.1 The Department consulted on the instrument from 14 November 2014 to 15 December 2014. Ahead of this, as noted at paragraph 7.1, the Department held extensive discussions with trades unions and employer representatives from April 2012 with over 80 meetings through which the detailed elements of the new scheme and transitional arrangements were developed. A workshop was held during the consultation period at which the Department presented the draft regulations and explained the effects to NHS trades unions and employer representatives.

8.2 In addition, the Department published a document on 1 August 2014 communicating an update on those discussions and the proposed detailed scheme design and transitional arrangements for members of the existing scheme. A copy can be found at www.gov.uk/government/publications/nhs-pension-scheme-reforms-and-contribution-rates-update.

8.3 Eight responses were received. The few comments received in relation to this instrument raised technical points and sought clarification, rather than objections to the transitional arrangements. The Department has published a document summarising and replying to the responses received in relation to this and the other two instruments referred to in paragraph 4.1. A copy can be found at www.gov.uk/government/consultations/nhs-pension-scheme-draft-regulations-2015-part-3.

9. Guidance

9.1 Details of the new pension scheme, transitional arrangements and contribution rates are been available on the NHS Business Service Authority's (the scheme administrator). This has been continually updated with new material and resources developed through a partnership approach with trade union representatives. Guidance is provided via a range of resources including factsheets, online videos and scheme guides. A payslip leaflet will also be issued to all members of the current scheme during February and March 2015. This will provide an overview of the new arrangements.

9.2 An extensive communication campaign targeting employers is underway, providing supportive resources in the form of Frequently Asked Questions, readiness checklists, communication packs for local use (posters, screensavers etc.), internet seminars and an e-learning package. Employer material is promoted via regular electronic Technical Newsletters and engagement with the scheme's National Pension Managers Forum.

9.3 Dedicated communication activities are also in place to support the scheme's 'Choice 2' exercise. This utilises the same methods for delivering the communication above products and additionally includes sending targeted letters to all affected individuals via their employer.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil. The regulations implement a new pension scheme that replaces previous arrangements for health service workers.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The instrument implements transitional arrangements that apply only to specific cohorts of scheme members. Both the new and old pension schemes will be subject to regular actuarial valuations which will evaluate the effect of these provisions as members move into the new scheme over time.

13. Contact

Gareth Probert at the Department of Health Tel: 0113 2545491 or email: gareth.probert@dh.gsi.gov.uk can answer any queries regarding the instrument.