
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the National Health Service Pension Scheme Regulations 1995 (S.I.1995/300) (“the 1995 Regulations”), the National Health Service Pension Scheme Regulations 2008 (S.I. 2008/653) (“the 2008 Regulations”), the National Health Service Pension Scheme Regulations 2015 (S.I. 2015/94) (“the 2015 Regulations”), the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000 (S.I. 2000/619) (“the AVC Regulations”), the National Health Service (Injury Benefits) Regulations 1995 (S.I. 1995/866) (“the Injury Benefits Regulations”) and the National Health Service Pension Scheme (Transitional and Consequential Provisions) Regulations 2015 (S.I. 2015/95) (“the Transitional Regulations”).

The Regulations come into force on 1st April 2019, although regulation 1(3) provides for certain provisions to come into force on 6th April 2019 and regulation 1(4) to (10) provides for certain provisions to take effect from an earlier date. Section 12(1) of the Superannuation Act 1972 (c.11) and section 3(3)(b) of the Public Service Pensions Act 2013 (c. 25) provide that Scheme Regulations may make retrospective provision.

The Regulations are divided into eight Parts, amending the 1995 Regulations, the 2008 Regulations, the 2015 Regulations, the AVC Regulations, the Injury Benefits Regulations and the Transitional Regulations respectively.

The following are the main changes brought about by this instrument.

First it amends the provisions relating to contributions.

The changes regarding contributions are twofold, in that they affect both employee and employer contributions.

In particular, regulations 4, 40(3)(a), 45, 46, 63(b), 78 and 79 provide that the current rate of employee contributions will continue. The 1995 Regulations, the 2008 Regulations and the 2015 Regulations currently provide the contribution rates from Scheme year 2015-16 to Scheme year 2018-19. These regulations remove the reference to Scheme year 2018-19 to make clear that the contribution rates will apply for all Scheme years from 2015-16.

Regulations 5, 47, 64 and 80 increase the employer contribution rate from 14.3% to 20.6%.

Second the instrument amends the provisions relating to survivor benefits. In particular the requirement that a cohabiting surviving partner must have been nominated by the member in order to qualify for a surviving nominated partner’s pension (i.e. they must have been a “nominated partner”) is removed. There remain (unchanged) a number of conditions that a cohabiting surviving partner must satisfy in order to qualify for a “survivor pension”. The removal of the nomination requirement has retrospective effect and starts on 1st April 2008; this is the date that survivor pensions were introduced for unmarried partners.

The main changes in respect of this are as follows.

Regulation 18 replaces the current provisions in regulation G14 of the 1995 Regulations regarding eligibility for a surviving nominated partner’s pension (in particular the requirement that the Secretary of State is in receipt of a nomination is removed), with provisions regarding the eligibility of a surviving scheme partner to receive a surviving scheme partner’s pension. Regulation 3(3) inserts the definitions “scheme partner” and “surviving scheme partner” into the 1995 Regulations. Regulations 10, 12, 13, 21(b), 22 to 26, 32(3), 33(3), 34 to 36, 37(2) and 40(5) make consequential changes i.e. the replacement of references to “nominated partner” with “scheme

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partner”, “nominated partner’s pension” with “scheme partner’s pension” and “nominated partner pension” with “surviving scheme partner pension”.

Regulations 51 and 68 introduce a new definition of “surviving scheme partner” into the 2008 Regulations in place of “surviving nominated partner” and consequential changes are provided in regulations 50, 54, 55(2), 67, 71 and 72(2) to replace references to “nominated partner” with “scheme partner” or “surviving scheme partner” as appropriate.

Similarly, regulation 87 introduces a new provision setting out the requirement to be a “surviving scheme partner” (instead of a “nominated partner”) into the 2015 Regulations and regulations 86, 90 and 91(2) makes consequential changes to terminology.

In the 1995 Scheme only, survivor pensions for nominated partners and spouses of female members are generally based on the member’s service from 6th April 1988 onwards. As a consequence, an additional survivor pension (for dependent surviving spouses and co-habiting partners) based on the member’s service before that date may be available, if certain qualifying criteria are met. Regulation G15 of the 1995 Regulations provides for this additional survivor pension. Regulation 19 makes consequential amendment to this to reflect the removal of the nomination requirement in regulation G14 but the nomination requirement in respect of the additional survivor pension remains in regulation G15.

Provisions that allow a partner nomination made under the 1995 Regulations to have effect under the 2008 Regulations are removed by regulations 57, 58, 74 and 75.

Further consequential amendments relating to survivor benefits are also made by regulations 96 to 98 (the AVC Regulations), regulations 100 to 105 (the Injury Benefits Regulations) and regulation 107 (the Transitional Regulations).

The third main purpose of this instrument is to provide the survivors of civil partners and same sex spouses with the same pension as widows, in the 1995 Regulations. The amendments are made with retrospective effect: to 5th December 2005 for civil partners (the date civil partnerships were introduced) and to 13th March 2014 for same sex couples (the date marriage of same sex couples was introduced).

Survivor benefits for civil partners and same sex spouses are already the same as opposite sex spouses in the 2008 Regulations and the 2015 Regulations; therefore amendments are not being made to those regulations. Under regulation A4 of the 1995 Regulations, the provisions relating to civil partnerships apply to same sex spouses with effect from 13th March 2014; therefore amendments are only necessary to the provisions regarding civil partners.

The main changes in respect of this are as follows.

Survivor benefits for same sex couples are the same as for widows, with a number of variations. This instrument removes those variations.

In particular, regulation 14 removes the provision that provides that a member’s service before 6th April 1988 is disregarded for the purposes of calculating survivor pensions for civil partners or same sex spouses.

Regulation 15 removes the requirement for a member to nominate their civil partner or same sex spouse to receive an additional survivor’s pension in respect of that service as that is unnecessary.

Regulations 16, 17 and 40(4) remove further provisions in relation to purchasing a survivor pension for service before 6th April 1988, again because these are no longer necessary. Regulations 20, 21(a) and (c), 32(2), 33(2) and 38 make further consequential changes.

The fourth main purpose of this instrument is to amend the provisions regarding forfeiture of pension. The 1995 Regulations, the 2008 Regulations and the 2015 Regulations include provisions giving the Secretary of State power to forfeit a right to pension and other benefits where a member (or their beneficiary) has been convicted of certain offences. Regulations 37(3), 55(3), 72(3) and 91(3) amend these provisions to give the Secretary of State further power to suspend a right to pension

benefits prior to a forfeiture decision, where a member or beneficiary has been charged with, or convicted of, an offence and the Secretary of State is of the opinion the charge or conviction relates to an offence which may lead to benefits being forfeited. In circumstances where benefits otherwise due for payment are suspended, the amendments also contain provisions regarding the payment of those benefits plus interest where there is subsequently no forfeiture. Where the amount suspended is greater than any amount forfeited, payment of the difference between the two, together with interest will be made.

The fifth main purpose of this instrument is to exempt certain pay increases from final pay control charges. This is in respect of the 1995 Regulations and is achieved by regulation 6.

Regulation D3 of the 1995 Regulations (which is a final salary scheme), contains provisions regarding final pay controls, the aim of which is to protect the pension scheme from excessive pensionable pay increases for members nearing retirement. The pay controls are not intended to capture pay increases which have been awarded under an agreement between the NHS and Trade Unions, known as the Framework agreement on the reform of Agenda for Change. Regulation 6 of this instrument makes that clear.

The sixth main purpose of this instrument is to reflect changes to provisions regarding the contracting-out of scheme members from the Additional State Pension Scheme. The Pensions Act 2014 made various amendments to the legislation regarding contracting-out; in particular these amendments provided for the end of contracting-out with effect from 6th April 2016 and the preservation of contracting-out rights earned by members up to that date, although some of the provisions remained in force for a transitional period, pursuant to the Pensions Act 2014 (Savings) Order 2015, until 6th April 2019. This instrument now amends the 1995 Regulations, the 2008 Regulations and the 2015 Regulations to reflect the end of the transitional period.

The main changes in respect of this are as follows.

Regulations 3(2), 43(3)(a), 59(2), 94(a) insert a definition of the “2016 Order” into the 1995 Regulations, the 2008 Regulations and the 2015 Regulations.

Regulations 11, 28, 29, 31, 44, 48, 52, 53, 60, 65, 69, 70, 77, 84, 88 and 89 are amended to ensure that the provisions relating to the payment of Contribution Equivalent Premiums are made in accordance with that legislation.

Section 9(2B) of the Pensions Schemes Act 1993 set out members’ rights in respect of contracted-out service after 5th April 1997. Those rights are now defined in the Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015. Regulations 3(7), 43(3)(a), 49, 66, 85 and 94(c) insert a revised definition of “section 9(2B) rights” and update related references to reflect this updated legislation.

Regulation 3(4) inserts a revised definition of “contracting-out requirements” in the 1995 Regulations to reflect updated legislation. This definition is used in the 1995 Regulations in regulations E1, E2, E2A and L1 and these are amended by regulations 7 to 9 and 30. The term is no longer used in the 2008 Regulations and accordingly is removed by regulation 43(3)(c) and 59(3).

Regulation 27 amends the definition of “contracting-out conditions” in the 1995 Regulations to refer to relevant updated legislation.

These regulations also amend certain other definitions and clarify certain provisions. The main changes in this respect are as follows.

To update the definition of NHS standard sub-contract and refer to up-to-date guidance (regulations 3(5), 43(3)(d), 59(4), 94(b)).

To provide that where particular practices and contractors do not provide a statement of the annual estimated pension contributions of some of its practitioners in accordance with the requirements in the Regulations, those particular practitioners will pay contributions at the highest level, based on estimated pensionable pay as determined by the host Board. The schemes have arrangements in

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place in practice if it transpires that a member has paid too high a rate as a result (regulations 40(6), 73(2), 93(2)).

Regulations 40(3)(b), 63(a), 82 and 83 substitute a new definition for how the number of days of dentist performer service (and in the 2015 regulations, practitioners and non-GP provider service) (NDPS) is calculated. The scheme Regulations are now clear that NDPS is calculated by reference to the number of days of pensionable service in the scheme year. These changes are retrospective to reflect how the calculation has always been carried out. No one will be detrimentally affected by this change.

Regulations 39, 56(3), 73(3) and 81 ensure that employing authorities are only required to provide statements of estimated contributions if the Secretary of State or the scheme manager (as the case may be) requests it rather than the requirement being mandatory. The changes do not extend to GPs or Independent Providers.

Provisions regarding pensionable earnings are clarified so that certain payments (in respect of health related functions exercised under section 75 of the 2006 Act), are pensionable if they are made by an employing authority or a local authority (regulations 40(2), 61, 62(2) and 92).

Provisions in the 1995 Regulations regarding the payment of the supplementary charge on the late payment of employer contribution surcharges (regulation 41) are substituted to refer to “further” supplementary charges instead of “a” supplementary charge.

To remove the definition of CCT in the 1995 Regulations as this is no longer necessary (regulation 3(8)).

To amend the definition of officer in the 1995 Regulations and 2008 Regulations to reflect the definition in the 2015 Regulations (regulations 3(6), 43(3)(e), 59(5)).

To amend the provisions in the 2008 Regulations regarding the provision of statements of pensionable earnings (regulation 56(2)). The provisions clarify that the GMS, PMS or APMS contractor must provide a statement of estimated pensionable earnings for any non-GP provider to the host Board.

To amend the provisions in the 2008 Regulations regarding when employing authorities must provide the Secretary of State with statements of estimated contributions (regulation 73(4)). This is now one month before the beginning of each scheme year and not two months after the end of each scheme year.

To remove superfluous paragraph numbering in the 2008 Regulations (regulation 43(2)).

To insert a definition of “the health service” into the 2008 Regulations (regulation 43(3)(b)).

To amend a provision in the 2015 Regulations to provide that the scheme may recover arrears of contributions from benefits on retirement provided that it notifies the member. There is no longer the requirement to seek consent. This makes the 2015 Regulations consistent with the 1995 and 2008 Regulations (regulation 93(3)).

Part 8 provides that deferred members or members who are in receipt of a relevant benefit who may be detrimentally affected by these Regulations may elect for the provisions not to apply to them by giving notice in writing within six months of the coming into force of these Regulations (regulation 108).

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.