

This Statutory Instrument has been made partly to correct errors in S.I. 2015/95 and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2022 No. 327

PUBLIC SERVICE PENSIONS, ENGLAND AND WALES

NATIONAL HEALTH SERVICE, ENGLAND AND WALES

The National Health Service Pension Schemes (Amendment) Regulations 2022

<i>Made</i>	- - - -	<i>17th March 2022</i>
<i>Laid before Parliament</i>		<i>18th March 2022</i>
<i>Coming into force</i>	- -	<i>1st April 2022</i>

The Secretary of State for Health and Social Care makes the following Regulations in exercise of the powers conferred by sections 1(1) and (2)(e), 2(1) and 3(1) to (3) of, and paragraph 5(a) of Schedule 2 and Schedule 3 to, the Public Service Pensions Act 2013(a) (“the 2013 Act”).

In accordance with section 3(5) of the 2013 Act, these Regulations are made with the consent of the Treasury.

In accordance with section 21(1) of the 2013 Act(b), the Secretary of State has consulted the representatives of such persons as appear to the Secretary of State likely to be affected by these Regulations.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the National Health Service Pension Schemes (Amendment) Regulations 2022.

(2) These Regulations come into force on 1st April 2022.

(3) These Regulations extend to England and Wales.

(a) 2013 c. 25. Section 3(1) and (2) were amended by section 94(2) and (3) of the Public Service Pensions and Judicial Offices Act 2022 (c. 7) (“the 2022 Act”). For the meaning of “health service workers” in paragraph 5(a) of Schedule 2 to the 2013 Act, see paragraph 5 of Schedule 1 to that Act. For the meaning of “responsible authority” in section 3(1) of the 2013 Act, see section 2(2) of that Act.

(b) Section 21 has been amended by section 94(8) of the 2022 Act. The Secretary of State has published a statement pursuant to section 21(2) of the 2013 Act indicating the persons the Secretary of State would normally expect to consult under section 21(1) of that Act. An up-to-date version of that list may be found at www.gov.uk/government/publications/nhs-pension-scheme-consultee-list or by writing to the Department of Health and Social Care, Quarry House, Quarry Hill, Leeds, West Yorkshire, LS2 7UE.

Amendment of the National Health Service Pension Scheme Regulations 1995

2. In the National Health Service Pension Scheme Regulations 1995(a), in regulation B3 (restriction on further participation in this Section of the scheme)(b), at the beginning insert—

“(A1) A person may not contribute to or accrue further pensionable service under this Section of the scheme in relation to the person’s service after 31st March 2022.

(A2) Paragraphs (1) to (9) of this regulation apply to a person’s service under this Section of the scheme before 1st April 2022.”.

Amendment of the National Health Service Pension Scheme Regulations 2008

3.—(1) The National Health Service Pension Scheme Regulations 2008(c) are amended as follows.

(2) In regulation 2.B.2 (restrictions on eligibility: general)(d), at the beginning insert—

“(A1) A person is not eligible to be an active member of this Section of the Scheme in respect of service in NHS employment after 31st March 2022.

(A2) Paragraphs (1) to (14) of this regulation apply in respect of service in NHS employment before 1st April 2022.”.

(3) In regulation 3.B.2 (restrictions on eligibility: general)(e), at the beginning insert—

“(A1) A person is not eligible to be an active member of this Section of the Scheme in respect of practitioner service after 31st March 2022.

(A2) Paragraphs (1) to (7) of this regulation apply in respect of practitioner service before 1st April 2022.”.

Amendment of the National Health Service Pension Scheme Regulations 2015

4. In the National Health Service Pension Scheme Regulations 2015(f), in regulation 19(1) (restrictions on membership), for sub-paragraph (c) substitute—

“(c) is on 31st March 2022—

(i) a member of the 1995 Section who is no longer required to pay contributions pursuant to regulation D1(3) or (4) (contributions by members: age and pensionable service limits)(g) of the 1995 Regulations; or

(ii) in relation to the 2008 Section, a non-contributing member within the meaning of regulation 2.A.1 (interpretation of Part 2: officers)(h) or 3.A.1 (interpretation of Part 3: practitioners and out-of-hours providers)(i) of the 2008 Regulations;”.

(a) S.I. 1995/300.

(b) Regulation B3 was amended by S.I. 2008/654, 2009/381, 2009/1298, 2009/2446, 2014/570, 2015/95 and 2016/245.

(c) S.I. 2008/653.

(d) Regulation 2.B.2 was amended by S.I. 2008/2263, 2009/381, 2009/1298, 2009/2446, 2010/492, 2014/570, 2015/95, 2015/96, 2016/245 and 2017/275.

(e) Regulation 3.B.2 was amended by S.I. 2008/2263, 2009/381, 2009/2446, 2010/492, 2015/95, 2015/96, 2016/245 and 2017/275.

(f) S.I. 2015/94, to which there are amendments not relevant to these Regulations.

(g) Regulation D1(4) was amended by S.I. 2008/654.

(h) This definition of “non-contributing member” was inserted by regulation 16(b) of S.I. 2009/381 and subsequently amended by paragraph 1(a) of Schedule 2 to S.I. 2009/2446.

(i) This definition of “non-contributing member” was inserted by regulation 53(c) of S.I. 2009/381 and subsequently amended by paragraph 1(a) of Schedule 2 to S.I. 2009/2446.

Amendment of the National Health Service Pension Scheme (Transitional and Consequential Provisions) Regulations 2015

5.—(1) The National Health Service Pension Scheme (Transitional and Consequential Provisions) Regulations 2015^(a) are amended as follows.

(2) In regulation 11 (contribution rate setting: Groups A to C)—

- (a) in paragraph (1), in the words before sub-paragraph (a), for “2015”, in the second place it occurs, substitute “2022”;
- (b) in paragraph (2)—
 - (i) in the words before sub-paragraph (a), for “2015” substitute “2022”;
 - (ii) in sub-paragraph (b), in the words before paragraph (i)—
 - (aa) for “2014” substitute “2021”;
 - (bb) for “2015” substitute “2022”.

(3) In regulation 12 (contribution rate setting: Group D)—

- (a) in paragraph (1), in the words before sub-paragraph (a), for “2015”, in the second place it occurs, substitute “2022”;
- (b) in paragraph (2), in the words before sub-paragraph (a), for “2015”, in the first place it occurs, substitute “2022”.

(4) In regulation 18(1) (uprating of old scheme practitioner earnings)^(b), in the words before sub-paragraph (a), for “after 31st March 2015” substitute “in which the member is a member of the new scheme”.

(5) In regulation 25 (decoupling of benefits derived from additional contributions)—

- (a) in paragraph (2)—
 - (i) in sub-paragraph (a), after “Q6(3)),” insert “or, if later, the date on which the member joins the new scheme,”;
 - (ii) in sub-paragraph (b), after “Q8),” insert “or, if later, the date on which the member joins the new scheme,”;
 - (iii) in the words after sub-paragraph (b)—
 - (aa) after “date or”, omit “the member’s”;
 - (bb) at the end, insert “or, if later, the date on which the member joins the new scheme”;

(b) in paragraph (6), for the words from “requires,” to the end substitute—

“requires—

- (a) no later than one month before the member’s chosen date or chosen birthday (as applicable); or
- (b) if—
 - (i) the member joins the new scheme less than six months before the member’s chosen date or chosen birthday (as applicable); or
 - (ii) the member joins the new scheme on or after the member’s chosen date or chosen birthday (as applicable),
no later than five months after the date on which the scheme administrator provides the notification referred to in paragraph (9).”;

(c) in paragraph (9), in the words before sub-paragraph (a), for the words from “regulation” to the end substitute—

“regulation—

(a) S.I. 2015/95.

(b) Regulation 18 was amended by regulation 51 of S.I. 2017/275.

- (a) at least six months before the member’s chosen date or chosen birthday (as applicable); or
- (b) if the member joins the new scheme at a time specified in paragraph (6)(b)(i) or (ii), no later than three months after the date on which the member joins the new scheme.”;
- (d) after paragraph (9), insert—
 - “(9A) A notice for the purposes of paragraph (9) must specify—
 - (a) the date on which any pension payable pursuant to this regulation would come into payment were an election to be made;
 - (b) the amount of any pension payable under this regulation (before any option to commute part of the pension into a lump sum); and
 - (c) the date by which the election under this regulation must be received by the scheme administrator pursuant to paragraph (6).”.
- (6) In regulation 27 (ill-health benefits: continuity of existing applications)—
 - (a) in paragraph (1)(a)—
 - (i) in the words before sub-paragraph (a), after “applies” insert “during the application period”;
 - (ii) in sub-paragraph (a)—
 - (aa) in the words before paragraph (i), for “apart from the operation of this regulation” substitute “on 1st April 2022 (“the transition date”)—”;
 - (bb) in paragraph (i), after “further” insert “pensionable”; for “Section—” substitute “Section; and”, and omit sub-paragraph (aa) to the end;
 - (cc) in paragraph (ii), omit the words from “on” to the end;
 - (iii) in sub-paragraph (b)—
 - (aa) for “if” substitute “(if”;
 - (bb) for the words from “regulation E2A” to “2008 Section” substitute “1995 regulation E2A (ill health pension on early retirement), 2008 regulation 2.D.8 or 2008 regulation 3.D.7 (early retirement on ill-health: active members and non-contributing members)”;
 - (iv) in sub-paragraph (c)—
 - (aa) after “AW33E” insert “(or such other form as the Secretary of State accepted)”;
 - (bb) after “evidence” insert “(“the member’s application for ill-health pension”)”;
 - (b) in paragraph (2)—
 - (i) for the words before sub-paragraph (a) substitute “For the purposes of paragraph (1), “the application period” in relation to a member is the period which ends with the day on which—”;
 - (ii) in sub-paragraph (b)—
 - (aa) after “to” insert “an”;
 - (bb) for the words from “under” to “applicable)” substitute “in respect of that application”;
 - (c) in paragraph (3)—
 - (i) for the words before sub-paragraph (a) substitute “For the purposes of paragraph (2)(b), a determination becomes final and binding when—”;
 - (ii) in sub-paragraph (a), for paragraph (iii) (but not the “or” after it) substitute—

(a) Regulation 27(1) was amended by regulation 94 of S.I. 2016/245.

- “(iii) by proceedings before a court or tribunal;”;
- (iii) in sub-paragraph (b), in the words before paragraph (i), in the first place it occurs, omit “that”;
- (d) omit paragraphs (4) to (6);
- (e) at the end insert—
 - “(7) Where this regulation applies—
 - (a) the member’s application for ill-health pension is considered in accordance with paragraph (8) or (9) (whichever is relevant); and
 - (b) the member’s benefits, if any, are paid in accordance with paragraph (10) and the further provisions referred to in that paragraph (whichever are relevant).
 - (8) If the member was in pensionable employment in the 1995 Section on 31st March 2022, the member’s application for ill-health pension is considered—
 - (a) as an application for ill-health pension for the purposes of 2015 regulation 90 (entitlement to ill-health pension); and
 - (b) as if it were also an application for ill-health pension for the purposes of 1995 regulation E2A.
 - (9) If the member was an active member of the 2008 Section on 31st March 2022, the member’s application for ill-health pension is considered—
 - (a) as an application for ill-health pension for the purposes of 2015 regulation 90; and
 - (b) as if it were also an application for ill-health pension for the purposes of 2008 regulation 2.D.8 or 2008 regulation 3.D.7.
 - (10) The member’s benefits will be paid in accordance with—
 - (a) paragraph (13) if, as a result of consideration under paragraph (8), the member satisfies the tier 1 condition in paragraph (2)(b)(i) of 1995 regulation E2A but does not satisfy the Tier 1 condition in paragraph (2)(c) of 2015 regulation 90;
 - (b) paragraph (14) if, as a result of consideration under paragraph (9), the member satisfies the tier 1 condition in paragraph (2)(a) of 2008 regulation 2.D.8 or 2008 regulation 3.D.7 but does not satisfy the Tier 1 condition in paragraph (2)(c) of 2015 regulation 90;
 - (c) paragraph (16) if—
 - (i) as a result of—
 - (aa) consideration under paragraph (8), the member satisfies the tier 1 condition in paragraph (2)(b)(i), or that condition and the tier 2 condition in paragraph (2)(b)(ii), of 1995 regulation E2A and also satisfies the Tier 1 condition in paragraph (2)(c), or that condition and the Tier 2 condition in paragraph (3)(b), of 2015 regulation 90 (together “the 2015 regulation 90 ill-health conditions”); or
 - (bb) consideration under paragraph (9), the member satisfies the tier 1 condition in paragraph (2)(a), or that condition and the tier 2 condition in paragraph (3)(a), of 2008 regulation 2.D.8 or the tier 1 condition in paragraph (2)(a), or that condition and the tier 2 condition in paragraph (3)(a), of 2008 regulation 3.D.7 and also satisfies one or both of the 2015 regulation 90 ill-health conditions; and
 - (ii) the annual rate of ill-health pension to which the member would have been entitled under 1995 regulation E2A, 2008 regulation 2.D.8 or 2008 regulation 3.D.7 if the member had retired from pensionable employment or ceased NHS employment on 31st March 2022 is, subject to paragraphs (11) and (12), greater than the annual rate of ill-health pension to which the member is entitled under paragraph (3)(a) or (4) of regulation 28 (ill health benefits: members below old scheme normal pension age) as at the date the member

ceased NHS employment for the purposes of the 2015 Regulations (“the pension comparison calculation”);

- (d) regulation 28(3) or (4) if—
 - (i) sub-paragraph (c)(i)(aa) or (bb) applies to the member; and
 - (ii) the annual rate of ill-health pension payable to the member under regulation 28(3)(a) or (4) is greater than the annual rate of ill-health pension to which the member would have been entitled under 1995 regulation E2A, 2008 regulation 2.D.8 or 2008 regulation 3.D.7, as determined in accordance with the pension comparison calculation, if the member had retired from pensionable employment or ceased NHS employment on 31st March 2022.

(11) If the member was in pensionable employment in the 1995 Section on 31st March 2022, for the purposes of the pension comparison calculation, the pensions (“P”) under—

- (a) 1995 regulation E2A; and
- (b) regulation 28(3)(a)(ii),

are each increased by the amount found by applying the formula—

$3 \times P/12$

(12) If the member was an active member of the 2008 Section on 31st March 2022 who is entitled to a lump sum (“LS”) under regulation 28(3)(b)(ii) or (iii), for the purposes of the pension comparison calculation, the pensions under—

- (a) 2008 regulation 2.D.8 or 2008 regulation 3.D.7; and
- (b) regulation 28(3)(a)(ii),

are each increased by the amount found by applying the formula—

$LS/12$

(13) Where this paragraph applies to the member (see paragraph (10)(a)), the annual rate of ill-health pension and the lump sum payable from the new scheme is equal to—

- (a) either—
 - (i) if the member satisfies the tier 1 condition in paragraph (2)(b)(i), but not the tier 2 condition in paragraph (2)(b)(ii), of 1995 regulation E2A, the tier 1 ill-health pension the member would have been entitled to under that regulation if the member had retired from pensionable employment on 31st March 2022; or
 - (ii) if the member satisfies the tier 2 condition in paragraph (2)(b)(ii) of 1995 regulation E2A, the tier 2 ill-health pension the member would have been entitled to under that regulation if the member had retired from pensionable employment on 31st March 2022; and
- (b) the lump sum to which the member would have been entitled under regulation E6 (lump sum on retirement) of the 1995 Regulations^(a) as a consequence of becoming entitled to the payment of one of those pensions.

(14) Where this paragraph applies to the member (see paragraph (10)(b)), the annual rate of ill-health pension and the lump sum payable from the new scheme is equal to—

- (a) if the member satisfies the tier 1 condition in paragraph (2)(a), but not the tier 2 condition in paragraph (3)(a), of 2008 regulation 2.D.8 or the tier 1 condition in paragraph (2)(a), but not the tier 2 condition in paragraph (3)(a), of 2008 regulation 3.D.7, the tier 1 ill-health pension the member would have been entitled to under whichever of those regulations applies to the member if the member had ceased to be employed in NHS employment on 31st March 2022; or

^(a) Regulation E6 was amended by S.I. 2006/600, 2007/3280, 2009/381, 2010/492 and 2011/2586.

- (b) if the member satisfies the tier 2 condition in paragraph (3)(a) of 2008 regulation 2.D.8 or paragraph (3)(a) of 2008 regulation 3.D.7, the tier 2 ill-health pension the member would have been entitled to under whichever of those regulations applies to the member if the member had ceased to be employed in NHS employment on 31st March 2022.

(15) On the payment of a pension to a member in accordance with paragraph (13) or (14), all rights in respect of that member under the old scheme are extinguished.

(16) Where this paragraph applies to the member (see paragraph (10)(c))—

- (a) the annual rate of ill-health pension payable from the new scheme under regulation 28 is increased by an amount equal to the difference between the annual rate of the member's ill-health pension under 1995 regulation E2A, 2008 regulation 2.D.8 or 2008 regulation 3.D.7 and the annual rate of the member's ill-health pension under regulation 28(3)(a) or (4), determined in accordance with the pension comparison calculation; and
- (b) that increase is applied to the member's ill-health pension under regulation 28 after the calculation of the Tier 2 addition (if any) in accordance with paragraph (4)(b) of that regulation.

(17) Paragraphs (18) and (19) apply if a member receiving an ill-health pension under paragraph (10)(a) or (b) dies ("the deceased member").

(18) If a surviving adult dependant of the deceased member is entitled to a pension in accordance with regulation 116 (amount of pension: survivor of pensioner member) of the 2015 Regulations, the annual rate of the adult survivor pension payable under paragraph (4)(a) of that regulation is—

- (a) 50% of the pension to which the member was entitled at the date of death (disregarding any additional pension) if the member was receiving a pension under paragraph (10)(a) of this regulation on that date; and
- (b) 37.5% of the pension to which the member was entitled at the date of death (disregarding any additional pension) if the member was receiving a pension under paragraph (10)(b) of this regulation on that date.

(19) If a child's pension becomes payable in respect of an eligible child of the deceased member in accordance with regulation 124 (amount of child pension: deceased pensioner member) of the 2015 Regulations, the basic death pension for the purposes of paragraph (3)(a)(a) of that regulation is—

- (a) 100% of the pension to which the member was entitled at the date of death (disregarding any additional pension) if the member was receiving a pension under paragraph (10)(a) of this regulation on that date; and
- (b) 75% of the pension to which the member was entitled at the date of death (disregarding any additional pension) if the member was receiving a pension under paragraph (10)(b) of this regulation on that date.

(20) For the purposes of the 2015 Regulations—

- (a) a member's pension entitlement under the new scheme that is equivalent to entitlement to one of the following pensions is treated as if it were entitlement to an ill-health pension at Tier 1 under 2015 regulation 90—
 - (i) a tier 1 pension under 1995 regulation E2A referred to in paragraph (13)(a)(i);
 - (ii) a tier 1 pension under 2008 regulation 2.D.8 or 2008 regulation 3.D.7 referred to in paragraph (14)(a);
- (b) a member's pension entitlement under the new scheme that is equivalent to entitlement to one of the following pensions is treated as if it were entitlement to an ill-health pension at Tier 2 under 2015 regulation 90—

(a) Regulation 124(3) was amended by regulation 72 of S.I. 2016/245.

- (i) a tier 2 pension under 1995 regulation E2A referred to in paragraph (13)(a)(ii);
- (ii) a tier 2 pension under 2008 regulation 2.D.8 or 2008 regulation 3.D.7 referred to in paragraph (14)(b);
- (iii) a pension under regulation 28 that is increased in accordance with paragraph (16) by an amount equal to the difference between the annual rate of the ill-health pension payable under regulation 28(3)(a) and the annual rate of the member's tier 2 ill-health pension under 1995 regulation E2A, 2008 regulation 2.D.8 or 2008 regulation 3.D.7 as determined in accordance with the pension comparison calculation.

(21) In this regulation—

“1995 regulation E2A” means regulation E2A of the 1995 Regulations;

“2008 regulation 2.D.8” means regulation 2.D.8 of the 2008 Regulations;

“2008 regulation 3.D.7” means regulation 3.D.7 of the 2008 Regulations;

“2015 regulation 90” means regulation 90 of the 2015 Regulations;

“the 2015 regulation 90 ill-health conditions” has the meaning given in paragraph (10)(c)(i)(aa);

“the application period” has the meaning given in paragraph (2);

“the deceased member” has the meaning given in paragraph (17);

“the member's application for ill-health pension” has the meaning give in paragraph (1)(c);

“the pension comparison calculation” has the meaning given in paragraph (10)(c)(ii).”.

(7) In regulation 28 (ill health benefits: members below old scheme normal pension age)(a)—

(a) in paragraph (6B) (amount of pension: survivor of pensioner member)—

(i) in the words before sub-paragraph (a), omit “the sum of”;

(ii) for sub-paragraphs (a) and (b) substitute—

“(a) if the member was in pensionable employment in the 1995 Section before becoming an active member of the new scheme, the sum of—

(i) 33.75% of the pension to which the member was entitled at the date of death (disregarding any additional pension) under the new scheme;

(ii) 16.25% of the amount (if any) by which that pension has been increased in accordance with regulation 27(16); and

(iii) 16.25% of the old scheme pension to which the member was entitled at the date of death in accordance with paragraph (3)(a)(ii) of this regulation; or

(b) if the member was an active member of the 2008 Section before becoming an active member of the new scheme, the sum of—

(i) 33.75% of the pension to which the member was entitled at the date of death (disregarding any additional pension) under the new scheme;

(ii) 3.75% of the amount (if any) by which that pension has been increased in accordance with regulation 27(16); and

(iii) 3.75% of the old scheme pension to which the member was entitled at the date of death in accordance with paragraph (3)(a)(ii) of this regulation.”;

(b) in paragraph (6C) (amount of child pension: deceased pensioner member)—

(i) in the words before sub-paragraph (a), omit “the sum of”;

(ii) for sub-paragraphs (a) and (b) substitute—

(a) Regulation 28 was amended by regulation 52 of S.I. 2017/275 which inserted paragraphs (6A) to (6C) into that regulation.

- “(a) if the member was in pensionable employment in the 1995 Section before becoming an active member of the new scheme, the sum of—
- (i) 67.5% of the deceased member’s annual pension (disregarding any additional pension) under the new scheme;
 - (ii) 32.5% of the amount (if any) by which that pension has been increased in accordance with regulation 27(16); and
 - (iii) 32.5% of the old scheme pension to which the member was entitled at the date of death in accordance with paragraph (3)(a)(ii) of this regulation; or
- (b) if the member was an active member of the 2008 Section before becoming an active member of the new scheme, the sum of—
- (i) 67.5% of the deceased member’s annual pension (disregarding any additional pension) under the new scheme;
 - (ii) 7.5% of the amount (if any) by which that pension has been increased in accordance with regulation 27(16); and
 - (iii) 7.5% of the old scheme pension to which the member was entitled at the date of death in accordance with paragraph (3)(a)(ii) of this regulation.”.

(8) In regulation 37(1) (variations to lump sums for 1995 and 2008 pensioners joining new scheme)—

- (a) for “and 6” substitute “, 6 and 7”;
- (b) after “1 to 4”, in the second place it occurs, insert “, 6 and 7”.

(9) In regulation 40(1) (death in service – entitlement of or in respect of a transition member)(a), in the words before the table, for “transitional”, in both places it occurs, substitute “transition”.

(10) In Schedule 1 (eligibility of pensioners)—

- (a) in paragraph 1 (eligibility of 1995 Section pensioners to join new scheme), at the end of the table insert—

“7	a 1995 Section member in receipt of a pension under regulation E2 or a tier 1 pension under regulation E2A of the 1995 Regulations who— (a) is in further pensionable employment in the 1995 Section on 31st March 2022; or (b) would have been eligible to join the 1995 Section on 31st March 2022 if the member had been in employment with an employing authority on that day.	eligible to be an active member of the new scheme on the first day on or after 1st April 2022 on which the member is in an employment that would, apart from the operation of regulation 19(1)(d) of the 2015 Regulations, otherwise be eligible for membership under those Regulations.
8	a 1995 Section member in receipt of a redundancy etc. pension under regulation E3 or a termination of employment pension under regulation E3A of the 1995 Regulations who— (a) made an election under paragraph (6) of regulation R4 of the 1995 Regulations in respect of that pension;	eligible to be an active member of the new scheme on the first day on or after 1st April 2022 on which the member is in an employment that would, apart from the operation of regulation 19(1)(d) of the 2015 Regulations, otherwise be eligible for membership under those Regulations.”;

(a) The table in regulation 40(1) has been amended but the amendments are not relevant to these Regulations.

	(b) is in further pensionable employment in the 1995 Section on 31st March 2022; or (c) would have been eligible to join the 1995 Section on 31st March 2022 if the member had been in employment with an employing authority on that day.	
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(b) in paragraph 2 (eligibility of 2008 Section pensioners to join new scheme), in the table—

(i) in the row in respect of Group 4, in column 2, for “regulation 2.G.5(5)(b)” substitute “regulation 2.G.4(5)(b)”;

(ii) at the end, insert—

“6	a 2008 Section pensioner other than a tier 2 ill-health pensioner who— (a) is also an active member of the 2008 Section on 31st March 2022; or (b) would have been eligible to be an active member of the 2008 Section if the member had been in NHS employment on that day.	eligible to be an active member of the new scheme on the first day on or after 1st April 2022 on which the member is in an employment that would, apart from the operation of regulation 19(1)(d) of the 2015 Regulations, otherwise be eligible for membership under those Regulations.”.
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Signed by authority of the Secretary of State for Health and Social Care

17th March 2022

Edward Argar
Minister of State,
Department of Health and Social Care

We consent

16th March 2022

Alan Mak
Michael Tomlinson
Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend National Health Service pension scheme instruments in consequence of provision made by the Public Service Pensions and Judicial Offices Act 2022 (c. 7). They 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”) and the National Health Service Pension Scheme (Transitional and Consequential Provisions) Regulations 2015 (S.I. 2015/95) (“the Transitional Regulations”). The amendments ensure that the pension schemes established by the 1995 Regulations (“the 1995 Section”) and the 2008 Regulations (“the 2008 Section”) will, except for limited purposes, be closed to the accrual of pension benefits on and after 1st April 2022 and that any members currently in pensionable service under those pension schemes will, on that date, begin accruing benefits in the scheme established by the 2015 Regulations.

Regulation 2 amends the 1995 Regulations to make it clear on the face of those Regulations that the further contribution to or accrual of pensionable service after 31st March 2022 by members who had been allowed to remain after 31st March 2015 in the 1995 Section is prohibited and the transitional protections introduced for those members on 1st April 2015 apply only in respect of

service before 1st April 2022. Regulation 3 amends the 2008 Regulations for the same purpose and in an equivalent way in relation to members who had been allowed to remain after 31st March 2015 in the 2008 Section.

In this note, reference to the “the legacy scheme” includes the 1995 Section and the 2008 Section and reference to “the new scheme” is a reference to the pension scheme established by the 2015 Regulations.

Regulation 4 amends the 2015 Regulations so that members of the legacy scheme (other than pensioners) whose accrual of pensionable service ceased in that scheme on 31st March 2022 are eligible to join the new scheme from 1st April 2022.

Regulation 5 amends the Transitional Regulations, which apply to persons who are members of the legacy scheme and the new scheme.

Paragraphs (2) and (3) amend regulations relating to the setting of contribution rates for the scheme year commencing 1st April 2022. Paragraph (2) amends the regulation applicable to employed members of the new scheme to provide that where the member’s contribution rate is to be set by reference to that member’s pensionable earnings during a previous scheme year, those earnings can be derived from the member’s service in the legacy scheme. Paragraph (3) amends the regulation applicable to self-employed practitioners and non-GP providers to provide that where the member’s contribution rate is to be set by reference to that member’s most recently certified or final pensionable earnings, those earnings can be also derived from the member’s service in the legacy scheme.

Paragraph (4) amends the regulation relating to the uprating of the earnings of practitioners who are members of the legacy scheme and the new scheme so that it applies after such a member joins the new scheme on or after 1st April 2022.

Paragraph (5) amends the regulation which provides for members of the 1995 Section to elect to take benefits derived from additional voluntary contributions at their chosen birthday without having to retire so that it also allows for elections by reference to the date on which the member joins the new scheme in circumstances where members have passed or are near to their chosen birthday on that date.

Paragraphs (6) and (7) amend the regulations which set out transitional arrangements relating to ill-health benefits to ensure that legacy members and their dependants are not placed in a less beneficial position than they would have been in had the outcome of their application been determined under legacy scheme criteria and their retirement on ill-health grounds had taken place before the closure of the legacy scheme on 31st March 2022.

Paragraph (10)(a) and (b)(ii) adds to the groups of legacy scheme pensioners set out in Schedule 1 so that re-employed pensioners no longer able to accrue benefits in that scheme from 1st April 2022 are eligible to join the new scheme from that date. Paragraph (8) amends the regulation which provides for which of the pensioner groups set out in Schedule 1 are entitled to a lump sum death benefit different from the one otherwise provided to active members of the new scheme by adding the relevant new groups inserted by paragraph (10)(a) and (b)(ii).

Paragraphs (6)(a)(iii)(aa) and (iv)(aa), (b)(ii)(aa) and (c)(ii), (9) and (10)(b)(i) correct pre-existing errors in the Transitional Regulations.

A full impact assessment has not been produced for this instrument.

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