

EXPLANATORY MEMORANDUM TO
THE NATIONAL HEALTH SERVICE PENSION SCHEMES (AMENDMENT)
REGULATIONS 2023

2023 No. 301

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 There are two NHS Pension Schemes. There is the legacy pension scheme, which is closed to future accrual and made up of two ‘sections’ and legislated for by the National Health Service Pension Scheme Regulations 1995 (S.I. 1995/300) (the “1995 Section”) and the National Health Service Pension Scheme Regulations 2008 (S.I. 2008/654) (the “2008 Section”). This instrument amends the 1995 Section, 2015 Scheme and the National Health Service Pension Scheme (Transitional and Consequential Provisions) Regulations 2015 (S.I. 2015/95) (“the 2015 Transitional Regulations”) and makes temporary modifications of certain member contributions provisions in the 2015 Scheme to deliver four policy changes across the NHS Pension Schemes:
 - The introduction of new retirement flexibilities to the 1995 Section. These will allow staff who retire and claim benefits from that scheme to re-join the 2015 Scheme should they return to work. They will also permanently remove the 16-hour rule, which restricts the number of hours re-employed staff can work after claiming their 1995 benefits.
 - Technical amendments to align the timing of Consumer Price Index (CPI) inflation rates used for in-service revaluation of accrued pensions in the 2015 Scheme and the CPI used in the calculation of pension input amounts for annual allowance. This change will move the date that yearly in-service revaluation is applied to career average revalued earnings (CARE) pensions in the 2015 Scheme by 5 days, from 1 April to 6 April, from 6 April 2023.
 - An amendment to scheme access policy to allow staff working in Primary Care Networks (PCN) and on PCN subcontracting arrangements to access the 2015 Scheme. This change will ensure that eligible primary care staff working in PCNs can continue to access the NHS Pension Scheme.
 - Technical amendments to the provision of member contributions in the 2015 Scheme. The amendments reflect the mid-scheme year rate change on 1 October 2022 and will ensure practitioner members such as GPs and dentists pay the correct rate of member contributions over a full scheme year in 2022/23. The amendments also provide for member contribution rates to be determined for scheme year 2023/24.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 As set out in paragraphs 7.7 and 7.20 below, this instrument includes corrections to defects in regulations 38 and 86 of the 2015 Regulations. In accordance with paragraph 4.7.6 of Statutory Instrument Practice, the Department has consulted with the SI Registrar as to whether or not to provide free replacement copies and has decided not to do so as the corrections represent a relatively small part of this instrument and any users would be buying this instrument for its other amendments to the NHS Pension Scheme Regulations and not just the correcting provisions.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The Public Service Pensions Act 2013 (the “2013 Act”) provides the power for the Secretary of State to make regulations establishing the 2015 Scheme. The Superannuation Act 1972 provided equivalent powers with regard to the 1995 Section. This instrument amends the 1995 Section, 2015 Scheme and the 2015 Transitional Regulations.

7. Policy background

What is being done and why?

New retirement flexibilities

- 7.1 Regulation 22 of this statutory instrument inserts two further groups (9 and 10) to paragraph 1 of Schedule 1 to the 2015 Transitional Regulations. Schedule 1 sets out when pensioner members of the 1995 Section and 2008 Section are eligible to become members of the 2015 Scheme. Inserting Group 9 allows members in receipt of a tier 2 pension under regulation E2A of the 1995 Regulations who return to NHS employment to join the 2015 Scheme after their protection period in regulation E2C(6)(b) of the 1995 Regulations ends, if the first anniversary of their return to NHS employment is on or after 1st April 2023 and their protection period for the purposes of regulation E2C of the 1995 Regulations spans 1st April 2023 or begins on or after 1st April 2023. Inserting group 10 allows all other 1995 Section pensioners (with the exception of tier 2 ill-health pensioners) who do not fall within one of the other groups at schedule 1 to join or re-join the 2015 Scheme on the first day on or after 1st April 2023 on which they are in an employment that would, apart from the operation of regulation 19(1)(d) of the 2015 Regulations, allow them to be a member of the 2015 Scheme. Regulation 19(1)(d) of the 2015 Regulations restricts pensioner

members of the 1995 Section and 2008 Section from joining the 2015 Scheme unless they are covered by the 2015 Transitional Regulations.

- 7.2 As a consequence of regulation 22, regulation 21 of this statutory instrument amends regulation 37(1) of the 2015 Transitional Regulations such that it includes the new groups at Schedule 1. Regulation 37(1) details the lump sums payable for 1995 and 2008 pensioners who join the 2015 Scheme.
- 7.3 Regulation 5 of this statutory instrument omits regulation S1 (suspension of pension on return to NHS employment) in the 1995 Regulations. Regulation S1 means that if a pensioner enters NHS employment of more than 16 hours per week, the pension must cease to be paid for a period of one month.
- 7.4 As a consequence of regulation 5, regulation 3 of this statutory instrument also amends regulation K2 of the 1995 Regulations, such that it does not refer to S1.
- 7.5 Also as a consequence of regulation 5, regulation 6 of this statutory instrument amends the definition of ‘NHS employment’ in regulation S2, such that it does not refer to the definition previously provided at S1.
- 7.6 Regulation 4 of this statutory instrument omits paragraph (8) at regulation R4 of the 1995 Regulations. This paragraph applies to members with more than one employment and means that if they retire from at least one NHS employment, they can remain working in the NHS and still be entitled to claim their pension, provided they do not work for more than 16 hours per week. This is the same number of hours members can currently work on their first month back after retirement without impacting their pension, as at regulation S1. Given that regulation 5 of this statutory instrument will permanently remove regulation S1, it is also appropriate to remove regulation R4(8).
- 7.7 Regulation 13 of this statutory instrument amends regulation 86 of the 2015 Regulations. This is a correction to the rules surrounding draw down abatement, following retirement from that scheme where members hold additional pension (AP) to ensure consistency with the rules in the 2008 Section.

Changes to the 2015 Regulations regarding inflation

- 7.8 The technical amendments at regulations 14 and 17 in Part 3 of this instrument ensure that the date on which CARE pensions accruing in the 2015 Scheme are revalued each year is aligned with the date on which the annual Public Service Pensions Revaluation Order 2023 and subsequent orders will come into effect. In respect of the 2015 Scheme, this date will change from 1 April each year to the 6 April each year with effect from the financial year commencing 6 April 2023. This will align the rate of CPI used in the in-service revaluation of CARE pensions and the pension benefit growth calculation for annual allowance purposes.
- 7.9 Regulation 14 of this statutory instrument amends regulation 105 of the 2015 Regulations to change the definition of “re-valued pensionable earnings” so that it refers to the part of the Public Service Pensions Revaluation Order that applies in respect of the 2015 Scheme.
- 7.10 Regulation 17 of this statutory instrument amends Schedule 9 of the 2015 Regulations to change the definitions of “index adjustment”, “AP index adjustment”, “leaver index adjustment” and “AP leaver index adjustment” so that “the percentage increase or decrease in prices” references in scheme regulations are those specified in the Public

Service Pensions Revaluation Order 2023 and subsequent orders, that apply in respect of the 2015 Scheme.

Changes to NHS Pension Scheme access policy

- 7.11 The amendments at regulations 8, 11, 15, 16, 18 and 19 of Part 3 of this instrument ensure that NHS staff working for PCN management companies and on PCN sub-contracting arrangements which follow the standard PCN subcontract can access the NHS Pension Scheme.
- 7.12 Regulation 8 of this instrument amends regulation 19 of the 2015 Regulations to add a person who is employed by “a primary care network management company” but who is not assisting with the provision of services for the purposes of a “primary care network standard sub-contract”, to those employees who are not eligible to be a member of the Scheme. This ensures scheme access for staff working in PCN management companies and on PCN sub-contract agreements is consistent with primary care scheme access more generally.
- 7.13 Regulation 11 amends regulation 33 of the 2015 Regulations to state who a member’s employing authorities are where they are an employee of a PCN management company or a medical practitioner employed by the same. Adding a PCN management company ensures these companies can be NHS Pension Scheme employing authorities.
- 7.14 Regulation 15 of this instrument amends regulation 150 (3)(b) of the 2015 Regulations to add “a Primary Care Network standard sub-contract” to the list of qualifying contracts for Independent Provider access. This will allow employers who hold such a contract and meet the other requirements in regulation 150 to apply to the scheme to be an Independent Provider.
- 7.15 Regulation 16 amends regulation 166 of the 2015 Regulations to add practitioners working as partners, shareholders or certain employed practitioners of a PCN management company to the definition of ‘medical practitioner’. This will allow medical practitioners who are partners, shareholders or who are employed by a PCN management organisation but who deliver services in practices to access the scheme. This is on the basis that they meet other requirements of being a ‘medical practitioner’ such as registration on the medical performers list.
- 7.16 Regulation 18 amends Schedule 10 to add “a primary care network standard sub-contract” as a contract from which practitioner pensionable income may be derived. This will allow self-employed practitioner who perform work under a PCN standard subcontract agreement to pension their income, subject to them meeting the broader definition of a medical practitioner.
- 7.17 Regulation 19 amends Schedule 15 of the 2015 regulations to add “primary care network”, “primary care network management company” and “primary care network standard sub-contract” to the table of definitions that apply throughout the 2015 Regulations. Primary Care Networks are defined as “a network of primary medical services contractors and other providers of services which has been approved by the Board, serving an identified geographical area”. This change ensures that practitioner members who work for PCNs can pension their income.

Technical amendments to member contributions provisions

- 7.18 Regulations 9 and 10 in Part 3 of this instrument make permanent amendments to the 2015 Regulations, primarily to provide a mechanism for continuing to collect member contributions beyond 1 April 2023. These amendments update the tables in regulations 30 and 31 of the 2015 Regulations to reflect the mid-year rate change on 1 October 2022 and to reflect pensionable earnings bands and rates for the 2023/24 scheme year. Without these amendments, the NHS Pension Scheme would not have a continuing legislative mechanism to collect member contributions.
- 7.19 Regulation 12 corrects a typographical error in regulation 38 of the 2015 Regulations.
- 7.20 Part 5 of this instrument contains temporary modifications which expire on 31 March 2024. These reflect the mid-year rate change on 1 October 2022 and ensure that practitioners can accurately reconcile their pensionable earnings and pay the correct amount of member contributions for the 2022 to 2023 scheme year.
- 7.21 Regulation 25 of this instrument temporarily modifies regulation 31 of the 2015 Regulations to split the scheme year 2022/23 into two relevant periods (from 1 April 2022 to 30 September 2022 and 1 October 2022 to 31 March 2023). The instrument defines this as the “*relevant period of scheme year 2022/23*” This is required because there was a change in member contribution rates part way through the scheme year, on 1 October 2022.
- 7.22 Regulation 26 of this instrument temporarily modifies regulation 38 of the 2015 Regulations to ensure that medical practitioners and non- GP providers can reconcile their contributions payable for each relevant period of the scheme year 2022/23. The modifications to paragraphs (2) and (3) of regulation 38 apply to those medical practitioners and non-GP providers who can identify precisely in which relevant period of scheme year 2022/23 their pensionable earnings fall. These earnings are then annualised to apply the correct contribution rates for the pensionable earnings in each relevant period. Temporary new paragraphs (2A) and (3A) make similar provision for those medical practitioners and non- GP providers who are unable to identify precisely when in scheme year 2022/23 their pensionable earnings fall. Such members will apply the formulas set out in paragraph (3A) to determine their annualised pensionable earnings for each relevant period of the scheme year 2022/23 and the contribution rate that should be applied for each relevant period.
- 7.23 Regulation 27 of this instrument temporarily modifies regulation 39 of the 2015 Regulations to make equivalent provision as described in the paragraph above for dental practitioners to reconcile their contributions payable for each relevant period of the scheme year 2022/23.

Explanations

What did any law do before the changes to be made by this instrument?

New retirement flexibilities

- 7.24 Prior to this instrument the 1995 Section of the NHS Pension Scheme did not allow members to build further pension if they claimed their pension and returned to work. This meant that members of this Section were unable to access pensionable re-employment, unlike members of the 2008 Section or 2015 Scheme.

- 7.25 Prior to this instrument, re-employed pensioner members of the 1995 Section could not work more than 16 hours per week in their first month back, unlike members of the 2008 Section and 2015 Scheme.
- 7.26 Also prior to this instrument, members with more than one NHS employment who retired from at least one of these could remain working in the NHS and still be entitled to claim their pension, provided they did not work for more than 16 hours per week.
- 7.27 Prior to this instrument, 2015 Scheme members who partially retired with AP and were subject to draw down abatement, were also subject to abatement on their AP, unlike members of the 2015 Scheme for whom their AP continued in payment.

Changes to the 2015 Regulations regarding inflation

- 7.28 Prior to this instrument, the in-service revaluation date for NHS Pension Scheme benefits was 1st April of each year. This instrument will amend that date to 6th April commencing from 6th April 2023. This ensures the in-service revaluation date for NHS Pension Scheme benefits and the pension benefit growth calculation for annual allowance purposes use the same CPI figure.

Changes to NHS Pension Scheme access policy

- 7.29 Prior to this instrument the NHS Pension Scheme regulations did not provide automatic access for PCNs, or recognise the Standard PCN Subcontract as a qualifying NHS Pension Scheme contract.

Technical amendments to member contributions provisions

- 7.30 Prior to this instrument, the existing regulations provided the mechanism for members' contributions to be collected for the 2022 to 2023 scheme year.

Why is it being changed?

New retirement flexibilities

- 7.31 This instrument amends regulations to allow pensioner members of the 1995 Section to access new retirement flexibilities. This will allow them to build up further pension after taking their 1995 Section benefits, and to work more than 16 hours per week in their first month back if they wish to do so. The aim of these changes is to improve the retention of skilled and experienced staff up to and beyond retirement age and to improve staff members' work/life balance by giving them increased options for flexible retirement. These changes will also better align the provisions for pensionable re-employment across the 1995 Section, 2008 Section and 2015 Scheme.
- 7.32 When designing the regulations set out in this instrument, DHSC noticed an error in the 2015 Regulations. This means that whilst under the 2008 Section regulations, if members who partially retire are subject to draw down abatement, then their AP continues in payment, under the 2015 Scheme regulations the AP is also subject to abatement. As AP should not be subject to draw down abatement, the 2015 Regulations require a correction.

Changes to the 2015 Regulations regarding inflation

- 7.33 This instrument also amends the in-service revaluation date for NHS Pension Scheme benefits from 1st April to 6th April from 6th April 2023. This means the in-service revaluation date for the NHS Pension Scheme and the pension benefit growth

calculation for annual allowance purposes uses the same CPI figure. The aim of this change is to ensure NHS Pension Scheme members only pay annual allowance charges based on pension growth after inflation, and that periods of high inflation do not lead to members receiving a charge or a greater charge purely due to inflation.

Changes to NHS Pension Scheme access policy

- 7.34 The instrument also amends NHS Pension Scheme regulations to recognise PCNs as a qualifying NHS employer, and the Standard PCN Subcontract as a qualifying NHS contract. This means that staff working in PCNs and on PCN Subcontract arrangements can access the scheme. The purpose of this change is to provide ongoing pension access to a new model of primary care delivery.

Technical amendments to member contributions provisions

- 7.35 This instrument amends the 2015 Scheme regulations to provide the mechanism to collect members' contributions for the 2023/24 scheme year. The instrument also ensures that practitioner members, such as GPs and dentists, pay the correct amount of contributions over the 2022/23 scheme year. The member contribution structure changed mid-way through 2022/23 and this instrument will ensure practitioner members pay the correct contribution rate on their pensionable income at the time it was earned.

What will it now do?

New retirement flexibilities

- 7.36 Once this instrument is introduced those members of the 1995 Section of the NHS Pension Scheme, who are not already entitled to, will be able to access pensionable re-employment, such that they can join (or re-join) the 2015 Scheme after taking their 1995 Section benefits. Those members will also be entitled to the correct lump sum for death in service.
- 7.37 This instrument will also permanently remove the 16-hour rule, such that re-employed pensioners will be able to work more than 16 hours per week in their first month back, without it impacting their pension.
- 7.38 This instrument will also mean that members of the 1995 Section with more than one employment must cease them all to be able to claim their pension. This will align the rules for these members with those for 2008 Section and 2015 Scheme members.
- 7.39 This instrument will also correct the error found in the 2015 Regulations, such that a member's AP will continue in payment even if the member is subject to draw down abatement. This will align the rules surrounding abatement of AP across the 2008 Section and 2015 Scheme.

Changes to the 2015 Regulations regarding inflation

- 7.40 This instrument will also amend the in-service revaluation date in the NHS Pension Scheme from 1st April to 6th April, from 6th April 2023.

Changes to NHS Pension Scheme access policy

- 7.41 This instrument will also make PCNs and Standard PCN Subcontract holders qualifying employers for NHS Pension Scheme access, meaning qualifying staff who work under these arrangements can access the scheme.

Technical amendments to member contributions provisions

- 7.42 This instrument will ensure practitioner members such as GPs and dentists pay the correct member contributions over the 2022/23 scheme year and provides the member contribution rates for the 2023/24 scheme year.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 The Department recognises that formal consolidated regulations are good practice and intends to undertake a formal consolidation once Government business allows. In the interim period, the Department has informal full consolidations of NHS Pension Schemes and Injury Benefits regulations incorporating all the changes implemented up to and including those which came into force on 1 April 2022. These are available on the scheme administrator's website: <https://www.nhsbsa.nhs.uk/nhs-pension-scheme-regulations>

10. Consultation outcome

- 10.1 The proposals in this instrument were published for consultation between 5th December 2022 and 30th January 2023. 1,099 responses were received via an online survey, 2,287 via email, and 51 were received from NHS organisations and stakeholders including NHS Employers and Trade Unions. 2,241 of the email responses were received from members of the British Medical Association (the "BMA"), who had been encouraged to complete a template form provided by the BMA.
- 10.2 Respondents to the online survey were very supportive of the proposals. 87% of respondents agreed with the proposal to introduce retirement flexibilities, 82% with the CPI disconnect fix, 81% with the changes to scheme access, and 77% with the technical amendments to member contributions provisions. The technical amendments to the member contribution provisions implement changes to the member contribution structure which were subject to the enhanced procedure for protected elements under section 22 of the 2013 Act. The consultation responses were published and reports were laid before Parliament on 15th February 2022, 8th September 2022 and 10th March 2022 and 8th September 2022 respectively. The consultation responses are available at: [NHS Pension Scheme: proposed changes to member contributions: consultation response - GOV.UK \(www.gov.uk\)](#) and [NHS Pension Scheme: proposed uplifts to the member contribution tier thresholds – consultation response - GOV.UK \(www.gov.uk\)](#).
- 10.3 The template responses provided by BMA members argued that the partial retirement flexibilities did not go far enough in addressing the recruitment and retention issues facing doctors. They also argued that the CPI disconnect proposals should be expanded to allow members to offset perceived 'negative' growth in legacy scheme benefits against positive Career Average Revalued Earnings benefits for the purposes of the annual allowance calculation. Perceived 'negative' growth occurs when a member has deferred final salary benefits and has a below inflation growth in pensionable pay for that year.

- 10.4 The consultation response document is available at:
<https://www.gov.uk/government/consultations/nhs-pension-scheme-proposed-amendments-to-scheme-regulations>

11. Guidance

- 11.1 Pension scheme guidance is provided via a range of resources including factsheets, online videos and scheme guides on the scheme administrator's website:
<https://www.nhsbsa.nhs.uk/nhs-pensions>

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 The impact on the public sector is minimal, but these changes will impact the NHS workforce and members of the NHS Pension Scheme who are able to benefit from the four policy changes detailed in paragraph 2.1 of this document.
- 12.3 An Impact Assessment has not been prepared for this instrument.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 In accordance with section 7 of the 2013 Act, there is a Scheme Advisory Board comprising representatives of NHS employers, NHS trade unions and the scheme administrator. The Board discusses changes to the NHS Pension Schemes and provides advice to the Secretary of State for Health and Social Care where requested on scheme policy.
- 14.2 The instrument does not provide for a review pursuant to section 28 of the Small Business, Enterprise and Employment Act 2015 (S.I. 2015/26) (Duty to review regulatory provisions in secondary legislation).
- 14.3 The Department does not consider that the NHS Pension Schemes Regulations amended by this instrument make regulatory provision in relation to a qualifying activity or amend any regulatory provision relating to that activity for the purpose of section 28 of the Small Business, Enterprise and Employment Act 2015. They regulate only the activities of public bodies. The exempting provision of section 29(3)(b) of the same Act therefore applies.

15. Contact

- 15.1 Adam Stewart at the Department of Health and Social Care Telephone: 011325 45775 or email: adam.stewart@dhsc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Tim Sands, Deputy Director for NHS Pensions policy at the Department of Health and Social Care, can confirm that this explanatory memorandum meets the required standard.
- 15.3 Will Quince MP, Minister of State for Health and Secondary Care at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.