

2023 No. 952

PUBLIC SERVICE PENSIONS, ENGLAND AND WALES

NATIONAL HEALTH SERVICE, ENGLAND AND WALES

The National Health Service Pension Schemes (Partial Retirement etc.) (Amendment) Regulations 2023

<i>Made</i>	- - - -	<i>31st August 2023</i>
<i>Laid before Parliament</i>		<i>4th September 2023</i>
<i>Coming into force</i>		<i>1st October 2023</i>

The Secretary of State for Health and Social Care makes the following Regulations in exercise of the powers conferred by section 10(1) and (2) of, and Schedule 3 to, the Superannuation Act 1972(a) (“the 1972 Act”) and 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(b) (“the 2013 Act”).

In accordance with section 10(4) of the 1972 Act and section 21(1) of the 2013 Act, the Secretary of State has consulted such persons or representatives of such persons as appear to the Secretary of State likely to be affected by these Regulations.

In accordance with section 10(1) of the 1972 Act(c) and section 3(5) of the 2013 Act, these Regulations are made with the consent of the Treasury.

PART 1

Introductory

Citation, commencement and extent

1.—(1) These Regulations may be cited as the National Health Service Pension Schemes (Partial Retirement etc.) (Amendment) Regulations 2023.

(2) These Regulations come into force on 1st October 2023.

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- (a) 1972 c. 11. Section 10(1) was amended by sections 57 and 58 of, and Schedule 5 to, the National Health Service Reorganisation Act 1973 (c.32) and section 4(2) of the Pensions (Miscellaneous Provisions) Act 1990 (c.7) (“the 1990 Act”). Section 10(2A) was inserted by section 8(5) of the 1990 Act. Section 12(2) was amended by section 10(1) of the 1990 Act.
- (b) 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).
- (c) The functions of the Minister for the Civil Service under section 10 of the 1972 Act were transferred to the Treasury by article 2 of S.I. 1981/1670.

- (3) These Regulations extend to England and Wales.

PART 2

Amendments to the National Health Service Pension Scheme Regulations 1995

General

2. The National Health Service Pension Scheme Regulations 1995^(a) are amended in accordance with this Part.

Amendment of regulation A2

3. In regulation A2 (interpretation), at the appropriate place in alphabetical order insert—
““active member” means a person who is in pensionable service under the scheme;”.

Amendment of regulation C1

4.—(1) Regulation C1 (meaning of “pensionable pay” and “final year’s pensionable pay”)^(b) is amended as follows.

- (2) In paragraph (6), for “paragraph (6A)”, substitute “paragraphs (6A) and (6B)”.
- (3) After paragraph (6A), insert—

“(6B) If a member becomes entitled to a pension under regulation E5A (partial retirement pension), “final year’s pensionable pay” means pensionable pay in respect of the year immediately preceding the day on which the reduction in the member’s pensionable pay takes effect by virtue of which the member becomes entitled to the partial retirement pension.”.

Amendment of regulation C2

5.—(1) Regulation C2 (meaning of “pensionable service”)^(c) is amended as follows.

- (2) In paragraph (2), for sub-paragraph (b) substitute—

“(b) in the case of a member who has become entitled to a pension (including a preserved pension) any period taken into account—

- (i) in determining the member’s entitlement to the pension in payment or, as the case may be, the preserved pension, or
- (ii) in calculating the amount of that pension,

but, in the case of a member entitled to a pension under regulation E5A (partial retirement pension), subject to paragraph (7);”.

- (3) After paragraph (6), insert—

“(7) In the case of a member entitled to a pension under regulation E5A (partial retirement pension), paragraph (2)(b) only applies to so much of the member’s pensionable service as is mentioned in regulation E5A(11)(a) (the pension to which the member is immediately entitled as a result of exercising the option and the specified percentage of the pensionable service that pension represents).”.

(a) S.I. 1995/300.

(b) Relevant amending instrument is S.I. 2008/654.

(c) Relevant amending instruments are S.I. 2008/654 and 2009/2446.

New regulations E5A, E5B and E5C

6. After regulation E5 (early retirement pension (with actuarial reduction)), insert—

“Partial retirement pension

E5A.—(1) A member who is in pensionable employment may exercise an option under this regulation if—

- (a) the member—
 - (i) has reached normal minimum pension age or, where relevant, protected pension age;
 - (ii) has at least two years’ qualifying service; and
 - (iii) continues to be in pensionable employment or, where the member is in more than one pensionable employment, the member continues to be in at least one of those pensionable employments;
- (b) the terms on which the member holds the pensionable employment or employments referred to in sub-paragraph (a)(iii) change; and
- (c) as a result, the annual rate of the member’s pensionable pay is reduced to 90% or less of the amount of the member’s pensionable pay during the period of 12 months ending with the option day.

(2) If the member was not in pensionable employment during the whole of the period of 12 months referred to in paragraph 1(c), that paragraph applies as if the member’s pensionable pay during that period were—

$$PP \times (365 / N)$$

where—

PP is the member’s pensionable pay for the part of that period during which the member was in pensionable employment, and

N is the number of days in that period on which the member was in pensionable employment.

(3) The option may only be exercised by notice in writing in such form as the Secretary of State requires and must be accompanied by a statement in writing by the member’s employing authority, or employing authorities, that the conditions in paragraph (1)(b) and (c) are met.

(4) The option must specify—

- (a) the percentage of the member’s pension (excluding any additional pension) in respect of which the member claims immediate payment (“the specified percentage”);
- (b) whether the pensionable service used to calculate the pension referred to at sub-paragraph (a) is to include additional service (if any) that the member has purchased under regulation Q1 (right to buy additional service); and
- (c) whether the member claims immediate payment of additional pension (if any).

(5) A member who duly exercises the option under this regulation is entitled—

- (a) in the case of a member who has reached the age of 60, to immediate payment of the specified percentage of the pension to which the member would be entitled under regulation E1 (normal retirement pension) if the member had retired from pensionable employment on the option day (including any additional service specified under paragraph (4)(b) but disregarding any additional pension);
- (b) in the case of a member who has not reached the age of 60, to immediate payment of the specified percentage of the pension to which the member would be entitled under regulation E5 (early retirement pension with actuarial reduction) if the member had retired from pensionable employment on the option day (including

any additional service specified under paragraph (4)(b) but disregarding any additional pension);

- (c) in the case of a special class officer who meets the retirement condition in paragraph (12) of this regulation and has reached the age of 55, to immediate payment of the specified percentage of the pension to which the member would be entitled under regulation E1 (normal retirement pension) if the member had retired from pensionable employment on the option day (including any additional service specified under paragraph (4)(b) but disregarding any additional pension); and
- (d) where the option specifies that the member claims immediate payment of additional pension—
 - (i) if the option day falls after the member's chosen birthday, to the immediate payment of the additional pension; and
 - (ii) if the option day falls before the member's chosen birthday, to the immediate payment of the additional pension reduced in accordance with paragraphs (5) and (6) of regulation Q15 (effect of death or early payment of pension after option exercised under regulation Q8, Q10 or Q11).

(6) If—

- (a) the option specifies that the pensionable service used to calculate the pension referred to at paragraph (5)(a), (b) or (c) is to include additional service that the member has purchased under regulation Q1;
- (b) the member's method of payment for the additional service is regular additional contributions; and
- (c) the option day falls before the member's chosen date,

then the proportion of additional service to be included in the pensionable service used to calculate that pension will be reduced in accordance with paragraph (6) of regulation Q7 (part payment for additional service or unreduced retirement sum).

(7) Subject to paragraph (8), the specified percentage must be such that the pension to which the member becomes entitled as a result of the option (before the exercise of the option under regulation E7 (general option to exchange part of pension for lump sum) and disregarding any additional benefits)—

- (a) is not less than the amount of the pension payable by reference to 20% of the member's pensionable service at the end of the option day (disregarding any additional benefits); and
- (b) is not less than 0.05% of the member's lifetime allowance on the option day.

(8) Where a member has reached protected pension age but not yet reached normal minimum pension age, the specified percentage must be 100% of the member's pensionable service at the end of the option day (disregarding any additional benefits).

(9) Where a pension is payable under paragraph (5)(b), the lump sum payable under regulation E6 (lump sum on retirement) will be reduced in accordance with paragraph (7) of regulation E6.

(10) The option under this regulation may only be exercised on no more than two occasions and the Secretary of State shall take advice from the Scheme Actuary regarding—

- (a) any benefits to be paid after the exercise of the first option (but before the exercise of the second option);
- (b) any benefits to be paid after the exercise of the second option; and
- (c) the final payment.

(11) For the purposes of these Regulations, a member who has exercised the option under this regulation—

- (a) is a member to whom a pension has become payable in respect of the pension to which the member is immediately entitled as a result of exercising the option and the specified percentage of the pensionable service that that pension represents;
- (b) if the member continues as an active member of the 2015 Scheme after the option day, is treated as a member who is in pensionable employment in respect of so much of the member's pensionable service in this Section of the scheme that does not fall within sub-paragraph (a) ("the unspecified service"); and
- (c) if the member does not continue as an active member of the 2015 Scheme after the option day, is a member with a preserved pension in respect of the unspecified service.

(12) In this regulation—

"additional benefits" means any additional service specified under paragraph (4)(b) and any additional pension specified under paragraph (4)(c);

"chosen birthday" has the meaning given in paragraph (9) of regulation Q8 (option to pay additional periodical contributions to purchase additional pension);

"chosen date" has the meaning given in paragraph (3) of regulation Q6 (paying for additional service or unreduced retirement lump sum by regular additional contributions);

"the option day" means the day before the reduction in pensionable pay by virtue of which the option is exercisable takes effect;

"the retirement condition" is met if the Secretary of State determines that regulation R2(3)(a) or regulation R3(5) (whichever applies) would have applied to the special class officer if the officer's pensionable employment had terminated on the option day.

Increase in pensionable pay following exercise of option under regulation E5A

E5B.—(1) This regulation applies if, in a case where a member has exercised the option under regulation E5A—

- (a) during the period of 12 months beginning with the day after the option day the terms on which the member holds the employment or employments referred to in regulation E5A(1)(a)(iii) change again; and
- (b) as a result, the member's pensionable pay in that employment or those employments is increased to more than 90% of the member's pensionable pay during the period of 12 months ending with the option day; or
- (c) following an increase referred to in sub-paragraph (b), the member's pensionable pay in that employment or those employments is reduced to less than 90% of the member's pensionable pay during the period of 12 months ending with the option day.

(2) In the circumstances referred to in—

- (a) paragraph (1)(b), the amount of the member's pension mentioned in sub-paragraphs (a), (b) and (c) of regulation E5A(5) (excluding any additional benefits) shall be abated to zero from the first pension day immediately following the day on which the level of the member's pensionable pay increased;
- (b) paragraph (1)(c), subject to any adjustments in accordance with sub-paragraph (c), the member shall again be entitled to receive payment of the full amount of the pension mentioned in sub-paragraphs (a), (b) and (c) of regulation E5A(5) as from the first pension day immediately following the day on which the level of the member's pensionable pay reduced;
- (c) where sub-paragraph (b) applies, before restoring the payment of a pension the Secretary of State shall have regard to the 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 in accordance with sub-paragraph (a).

(3) If the member was not in pensionable employment during the whole of the period of 12 months mentioned in paragraph 1(b), that paragraph applies as if the member's pensionable pay during that period were—

$PP \times (365/N)$

where—

PP is the member's pensionable pay for the part of that period during which the member was in pensionable employment; and

N is the number of days in that period on which the member was in pensionable employment.

(4) If, in the opinion of the Secretary of State, had the terms and conditions of the member's employment remained the same after the option day (apart from pensionable pay), the annual rate of pensionable pay for the employment as at the time of the change mentioned in paragraph (1)(a) would have exceeded the annual rate referred to in paragraph (1)(b)—

(a) paragraph (2)(a) does not apply; and

(b) this regulation applies as if paragraph (1)(b) referred to that annual rate instead of the actual annual rate.

(5) For the purposes of this regulation, if during the period of 12 months beginning with the day after the option day the member enters a further pensionable employment or employments—

(a) that event is treated as if the terms on which the member holds the employment in respect of which the option was exercised ("the option employment") had changed again; and

(b) the member's pensionable pay in the further employment is treated as an increase in the member's pay in the option employment.

(6) In this regulation "the option day" and "additional benefits" have the same meaning as in regulation E5A(12).

Application of regulations E5A and E5B with modifications where concurrent part-time employments held

E5C.—(1) This regulation provides for the application of regulations E5A and E5B with modifications if a member is in pensionable employment in two or more part-time employments held concurrently on the option day.

(2) Those regulations apply in relation to each of the employments as if it were the only employment held by the member on that day, but with the modifications set out in paragraphs (3) to (8).

(3) In regulation E5A(1), for sub-paragraph (c) substitute—

"(c) as a result of that change, the sum of the annual rate of the member's pensionable pay in that employment and every other employment held by the member on the option day is reduced to 90% or less of the sum of—

(i) the member's pensionable pay in the employment during the period of 12 months ending with the option day; and

(ii) the member's pensionable pay during that period in every other employment held by the member on the option day."

(4) In regulation E5A(2)—

(a) after "paragraph 1(c)", insert "in the employment or any other employment referred to in that paragraph"; and

(b) after "that period", insert "in that employment".

(5) In regulation E5B(1), for sub-paragraph (b) substitute—

“(b) as a result the annual rate of the member’s pensionable pay in that employment is increased to more than 90% of the sum of—

- (i) the member’s pensionable pay in the employment during the period of 12 months ending with the option day; and
- (ii) the member’s pensionable pay during that period in every other employment held by the member on the option day.”.

(6) In regulation E5B(3)—

- (a) after “paragraph (1)(b)”, insert “in the employment or any other employment referred to in that paragraph”; and
- (b) after “that period”, insert “in that employment”.

(7) For regulation E5B(4), after “referred to in paragraph (1)(b)”, insert “for that employment”.

(8) Where—

- (a) a member’s pension is abated in accordance with regulation E5B(2)(a), in the circumstances described in regulation E5B(1)(b); and
- (b) the member’s pensionable pay does not reduce in the manner described in regulation E5B(1)(c),

the pension will (in any event) be payable by the Secretary of State when the member retires, or partially retires again, from pensionable employment or attains the age of 75 and in doing so the Secretary of State shall—

- (i) have regard to any pensions already paid, including any lump sum paid as a result of the member exercising an option under regulation E7 (general option to exchange part of pension for lump sum); and
- (ii) take advice of the Scheme Actuary.

(9) In this regulation “the option day” has the same meaning as in regulation E5A(12).”.

Amendment of regulation E6

7.—(1) Regulation E6 (lump sum on retirement)(a) is amended as follows.

(2) In paragraph (1), for “E5”, substitute “E5A”.

(3) In paragraph (7)—

- (a) for “E5 applies (early retirement pension with actuarial reduction)”, substitute “E5 (early retirement pension with actuarial reduction) or regulation E5A (partial retirement pension) applies”; and
- (b) in sub-paragraph (a), after “regulation E5(2)”, insert “or regulation E5A(5)(b);”.

Amendment of regulation F2

8.—(1) Regulation F2 (member dies after pension becomes payable) is amended as follows.

(2) At the end of the regulation’s heading, add “(other than a pension under regulation E5A)”.

(3) For paragraph (1) substitute—

“(1) Subject to paragraph (7), if a member dies after the member’s pension under any of regulations E1 to E5 becomes payable, a lump sum on death shall be payable in accordance with regulation F5.”.

New regulation F2A

9. After regulation F2 (member dies after pension becomes payable) insert—

(a) Relevant amending instruments are S.I. 2006/600, 2007/3280 and 2010/492.

“Member dies after a pension under regulation E5A becomes payable

F2A.—(1) If a member dies after one or more pensions under regulation E5A become payable to the member, a lump sum on death shall be payable in accordance with regulation F5.

(2) The lump sum on death will be equal to 5 times the yearly rate of each of the member’s pensions (less the amount of pension already paid) provided that the maximum payment under this paragraph shall not exceed the aggregate lump sum cap.

(3) The aggregate lump sum cap is equal to twice the appropriate fraction of the member’s final year’s pensionable pay by reference to which the pension to which the member became entitled on last exercising the option under regulation E5A was calculated, less an amount equal to the aggregate of—

- (a) the member’s retirement lump sum under regulation E6, and
- (b) any lump sum paid to the member under regulation E7.

(4) In this regulation—

“the appropriate fraction” means—

$DPS / TDPS$

where

DPS is, where the member continues in pensionable service as an active member of the 2015 Scheme on the option day (or the last such option day if the option has been exercised more than once), the total number of days of pensionable service in that Scheme and this Section of the scheme which do not relate to the specified percentage of pension on the option day;

TDPS is the aggregate of DPS and the total number of days of pensionable service (at the option day or the last such option day if the option has been exercised more than once) which relate to the specified percentage of pension payable;

“the option day” has the meaning given in paragraph (12) of regulation E5A; and

“specified percentage” has the meaning given in paragraph (4)(a) of regulation E5A.”.

Amendment of regulation G3

10. In regulation G3 (member dies after pension becomes payable), in paragraph (5) after “(early retirement pension with actuarial reduction)” insert “or regulation E5A (partial retirement pension)”.

Amendment of regulation H4

11. In regulation H4 (member dies after pension becomes payable), in paragraph (9)(a) after “(further employment after a benefit is paid under regulation E2A)” insert “or regulation E5A (partial retirement pension)”.

Amendment of regulation H5

12. In regulation H5 (member dies with preserved pension), for paragraph (3)(b) substitute—

“(3) Subject to paragraph (3A), if the member dies 12 months or more after leaving pensionable employment, the allowance will be calculated as described in whichever of paragraphs (4) or (5) apply, as a proportion of the amount of the member’s preserved pension if paragraph (11)(c) of regulation E5A applies to the member, otherwise the greater of—

(a) Paragraphs (9) and (10) were inserted by S.I. 2008/654.
(b) Paragraphs (3) and (3A) were substituted by S.I. 2008/654.

- (a) the member's preserved pension; and
- (b) the amount that the preserved pension would have been if it had been based on 10 years' pensionable service."

Amendment of regulation J1

13. In regulation J1 (allocation of pension)(a), in paragraph (4)(a), after "put into payment" insert "other than a pension payable under regulation E5A (partial retirement pension)".

Amendment of regulation L1

14. In regulation L1 (preserved pension)(b), in paragraph (14), for the definition of "NHS employment", substitute—

"“NHS employment” does not include employment with an employing authority in respect of which—

- (a) a member is eligible to join the 2008 Section; or
- (b) a member, other than a member who is no longer required to pay contributions pursuant to regulation D1(3) or (4) (contributions by members), is eligible to join the 2015 Scheme and that member's service in this Section does not qualify as, or has ceased to be, pensionable service to which paragraphs 1(2)(i) and (ii) or paragraphs 2(2)(i) and (2)(ii) of Schedule 7 (final salary link) to the 2013 Act applies;”.

Amendment of regulation Q1

15. In regulation Q1 (right to buy additional service)(c), in paragraph (4), after sub-paragraph (b), insert—

"(c) for the purpose of calculating any pension the member becomes entitled to under paragraph (5)(a), (b) or (c) of regulation E5A (partial retirement pension), unless the member specifies that any additional service is to be included in the calculation of that pension in accordance with paragraph (4)(b) of that regulation.”.

Amendment of regulation Q15

16. In regulation Q15 (effect of death or early payment of pension after option exercised under regulation Q8, Q10 or Q11), in paragraph (5), at the end of sub-paragraph (c), insert “; or” and then add—

"(d) becomes entitled to a pension under regulation E5A before the member's chosen birthday;”.

Amendment of Schedule 2

17. In Schedule 2 (medical and dental practitioners), after paragraph 12, insert—

“Partial retirement pension

12A.—(1) In the case of members who are or have been practitioners, regulations E5A (partial retirement pension) and E5B (increase in pensionable pay following exercise of option under regulation E5A) are modified as follows.

(2) Regulation E5A is modified so that—

(a) Relevant amending instruments are S.I. 2007/3280, 2008/654 and 2009/2446.
(b) Relevant amending instruments are S.I. 2008/654 and 2015/95.
(c) Relevant amending instruments are S.I. 2008/654 and 2009/2446.

- (a) the reference to holding pensionable employment in paragraph (1)(b) is treated as a reference to engaging in pensionable employment;
 - (b) the condition in paragraph (1)(c), for the reduction of the member's pensionable pay to 90% or less of the member's pensionable pay during the period of 12 months ending with the option day, is treated as a condition for the reduction of the member's engagement in such employment to 90% or less of its pre-change level;
 - (c) paragraph (2) is omitted;
 - (d) the requirement in paragraph (3), for a statement in writing by the member's employing authority that the conditions in paragraph 1(b) and (c) are met, is treated as a requirement for appropriate supporting evidence and a statement in writing approved by the host Board that the conditions in paragraph 1(b) and (c) are met;
 - (e) the requirement in paragraph (7)(a), for the pension to which the member becomes entitled to not be less than the amount of the pension payable by reference to 20% of the member's pensionable service at the end of the option day (disregarding any additional benefits), is treated as a requirement for the pension to which the member becomes entitled to not be less than 20% of the pension that would have been payable if the member had ceased to be employed in all of his employments at the end of the option day (disregarding any additional benefits);
 - (f) for the purposes of regulation E5A—
 - (i) "pre-change level" means the level of the member's engagement in the employment referred to in regulation E5A(1)(a)(iii) during the period of 12 months ending with the option day; and
 - (ii) "pension" means the pension that a member would have been entitled to on the option day if the member had ceased to be employed in all of his employments and, in the case of practitioner services, the pensionable earnings taken into account when working out the pension will be drawn from the latest certificate referred to in paragraph 23 of this Schedule (accounts and actuarial reports), or the latest scheme year's final pensionable earnings referred to in paragraph 10 of this Schedule (contributions to this Section of the scheme), and agreed with each relevant host Board.
- (3) Regulation E5B is modified so that—
- (a) the condition in paragraph (1)(b), for the member's pensionable pay to increase to more than 90% of the member's pensionable pay during the period of 12 months ending with the option day, is treated as a condition for the level of the member's engagement in the employment or employments referred to in regulation E5A(1)(a)(iii) to increase to more than 90% of the member's pre-change level;
 - (b) for the purposes of regulation E5B—
 - (i) "pre-change level" has the meaning given in paragraph (2)(f)(i);
 - (ii) a member's "employment" means practitioner service together with any concurrent NHS employment."

PART 3

Amendments to the National Health Service Pension Scheme Regulations 2008

General

18. The National Health Service Pension Scheme Regulations 2008(a) are amended in accordance with this Part.

Amendment of regulation 2.D.5

19. In regulation 2.D.5 (partial retirement (members aged at least 55)), omit paragraphs (6)(b) and (c).

Amendment of regulation 2.D.13

20. In regulation 2.D.13 (exceptions to requirement that NHS employment must have ceased), in paragraph (2A), after “if the member” insert “is not a non-contributing member and”.

Amendment of regulation 3.D.5

21. In regulation 3.D.5 (partial retirement (members aged at least 55)), omit paragraph (5)(b).

PART 4

Amendments to the National Health Service Pension Scheme Regulations 2015

General

22. The National Health Service Pension Scheme Regulations 2015(b) are amended in accordance with this Part.

Amendment of regulation 19

23. In regulation 19 (restrictions on membership)(c), omit paragraph (1)(c).

Amendment of regulation 84

24. In regulation 84 (election for partial retirement (members over normal minimum pension age)), omit paragraph (5)(b).

PART 5

Amendments to the National Health Service Pension Scheme (Transitional and Consequential Provisions) Regulations 2015

General

25. The National Health Service Pension Scheme (Transitional and Consequential Provisions) Regulations 2015(d) are amended in accordance with this Part.

(a) S.I. 2008/653.

(b) S.I. 2015/94.

(c) Relevant amending instruments are S.I. 2009/381, 2009/2446, 2022/327 and 2023/301.

(d) S.I. 2015/95.

Amendment of regulation 2

26.—(1) Regulation 2 (interpretation) is amended as follows.

(2) In the appropriate place, insert—

““non-pensionable 1995 Section member” means a member of—

(a) the 1995 Section who, on 31st March 2022, is no longer required to pay contributions under regulation D1(3) or (4) (contributions by members: age and pensionable service limits) of the 1995 Regulations; and

(b) the new scheme in respect of service on or after 1st October 2023;

“non-pensionable 2008 Section member” means a member of—

(a) the 2008 Section who, on 31st March 2022, is a non-contributing member within the meaning of regulation 2.A.1 (interpretation of Part 2: officers) or 3.A.1 (interpretation of Part 3: general) of the 2008 Regulations; and

(b) the new scheme in respect of service on or after 1st October 2023;

“non-pensionable old scheme member” means—

(a) a non-pensionable 1995 Section member; or

(b) a non-pensionable 2008 Section member;”.

(3) In the definition of “officer transition member”, after “a person” insert “other than a non-pensionable old scheme member”.

(4) In the definition of “practitioner transition member”, after “a person” insert “other than a non-pensionable old scheme member”.

Amendment of regulation 10A

27. In regulation 10A (effect of recommencing service after break)(a), in paragraph (1)(a), after “a person” insert “other than a non-pensionable old scheme member”.

Amendment of regulation 14

28.—(1) Regulation 14 (determination of pensionable pay, final pensionable pay and reckonable pay) is amended as follows.

(2) In paragraph (1), after “a 1995 officer transition member” insert “or a non-pensionable 1995 Section member”.

(3) In paragraph (2), after “a 2008 officer transition member” insert “or a non-pensionable 2008 Section member”.

Amendment of regulation 15

29. In regulation 15 (no refund of contributions in cases of inordinate pay) substitute “1995 officer transition member’s final year’s pensionable pay” with “member’s final years’ pensionable pay in respect of a 1995 officer transition member or a non-pensionable 1995 Section member”.

Amendment of regulation 16

30. In regulation 16 (cessation of final salary link on payment of benefits), after “member’s benefits” insert “or a non-pensionable old scheme member’s benefits”.

New regulation 17A

31. After regulation 17 (final salary link: Mental Health Officers), insert—

(a) Regulation 10A was inserted by S.I. 2016/245.

“Final salary link: non-pensionable old scheme members

17A.—(1) This regulation applies if benefits under the old scheme payable to or in respect of a non-pensionable old scheme member are to be calculated by reference to that member’s final salary as determined in accordance with Schedule 7 to the 2013 Act (“the member’s final salary link”).

(2) Where this regulation applies, the benefits under the old scheme payable to or in respect of the member may be calculated without reference to the member’s final salary link if it would be more beneficial to the member or other beneficiary to do so.”.

Amendment of regulation 31

32.—(1) Regulation 31 (partial retirement)(a) is amended as follows.

(2) For paragraph (1) substitute—

“(1) Where a transition member or non-pensionable old scheme member elects to claim a specified percentage of that member’s pension pursuant to regulation 84 of the 2015 Regulations, that election is to be treated as also being an option for the purposes of partial retirement pension pursuant to whichever of the following regulations applies to the member—

- (a) regulation E5A of the 1995 Regulations (with or without the modifications made in paragraph 12A of Schedule 2); or
- (b) regulations 2.D.5 or 3.D.5 of the 2008 Regulations.”.

(3) For paragraph (2) substitute—

“(2) A transition member or non-pensionable old scheme member does not become entitled to a specified percentage of a pension under regulation 84 of the 2015 Regulations until the member has become entitled to and claimed all the benefits in—

- (a) the 1995 Section; or
- (b) the 2008 Section.”.

(4) For paragraph (3) substitute—

“(3) For the purposes of regulation E5A(7) of, and paragraph 12A to Schedule 2 to, the 1995 Regulations, regulation 2.D.5(6) and 3.D.5(5) of the 2008 Regulations and regulation 84(5) of the 2015 Regulations (as the case may be)—

- (a) the pension, other than the pension claimed in respect of additional benefits (in the case of regulation E5A of the 1995 Regulations) or additional pension (in the case of regulation 2.D.5 and 3.D.5 of the 2008 Regulations), to which the member becomes entitled as a result of the option or election (before converting pension to lump sum) is not to be less than the amount of pension payable by reference to 20% of the aggregate of the member’s pensionable service under the 1995 Regulations, or the 2008 Regulations (as the case may be), and the 2015 Regulations at the end of the option day; and
- (b) taken together with any increase to which the member has become entitled as a result of the option or election, the aggregate of the member’s pension under the 1995 Regulations, or the 2008 Regulations (as the case may be), and the 2015 Regulations is not less than 0.05% of the member’s lifetime allowance on the option day.”.

Amendment of regulation 37

33.—(1) Regulation 37 (variations to lump sums for 1995 and 2008 pensioners joining new scheme) is amended as follows.

(a) Relevant amending instrument is S.I. 2016/245.

(2) At the end of the regulation heading, add “(other than pensioners who have taken a partial retirement pension)”.

(3) In paragraph (1), after “paragraph 2 of Schedule 1” add “other than persons who have taken a partial retirement pension.”.

(4) For paragraph (3) substitute—

“(3) In this regulation—

“partial retirement pension” means a pension under—

- (a) regulation E5A of the 1995 Regulations;
- (b) regulation 2.D.5 or 3.D.5 of the 2008 Regulations; or
- (c) regulation 84 of the 2015 Regulations; and

“the relevant pension” means where the member has not taken partial retirement from the new scheme pursuant to regulation 84 of the 2015 Regulations, an amount equal to—

- (a) if the member dies before reaching normal pension age in the new scheme, a tier 2 IHP within the meaning of regulation 90(1)(b) of the 2015 Regulations; or
- (b) if the member dies on or after reaching normal pension age in the new scheme, a pension under regulation 73 of the 2015 Regulations.”.

New regulation 37A

34.—(1) After regulation 37 (variations to lump sums for 1995 and 2008 pensioners joining new scheme) insert—

“37A Variations to lump sums for 1995 and 2008 pensioners joining new scheme (pensioners who have taken a partial retirement pension)

(1) This regulation applies to persons falling in Groups 1 to 4, 6, 7, 9 and 10 in the table at paragraph 1 of Schedule 1 and Groups 1 to 4, 6 and 7 in the table at paragraph 2 of Schedule 1 who have taken a partial retirement pension.

(2) Where this regulation applies the lump sum payable on the death of an active member in place of any lump sum otherwise payable in respect of that member under regulation 112(a) of the 2015 Regulations and regulation 2.E.19(2)(a) or regulation 3.D.19(2)(a) of the 2008 Regulations are the lump sums found under—

- (a) paragraph (3) if the member has taken an old scheme partial retirement pension but has not taken a new scheme partial retirement pension; and
- (b) paragraph (4), if the member has taken a new scheme partial retirement pension.

(3) Where paragraph (2)(a) applies, the lump sum is an amount equal to the appropriate fraction of an amount that is the better of—

- (a) twice the member’s relevant earnings calculated in accordance with paragraph 7(2)(a)(i) of Schedule 14 to the 2015 Regulations (death of a partial retirement pensioner); and
- (b) twice the member’s re-valued pensionable earnings for the scheme year falling in the earnings reference period which has the largest re-valued pensionable earnings calculated in accordance with paragraph 7(2)(a)(ii) of Schedule 14 (lump sum on death) to the 2015 Regulations that Schedule.

(4) Where paragraph (2)(b) applies, the lump sum is an amount determined by the scheme manager after taking advice from the scheme actuary.

(5) In this regulation—

“appropriate fraction” means—

DPS / TDPS

where—

DPS is, where the member continues in pensionable service as an active member of the 2015 Scheme on the option day (or the last such option day if the option has been exercised more than once), the total number of days of pensionable service in that Scheme and this Section of the scheme which do not relate to the specified percentage of pension at the option day; and

TDPS is the aggregate of DPS and the total number of days of pensionable service (at the option day or the last such option day if the option has been exercised more than once) which relate to the specified percentage of pension payable;

“old scheme partial retirement pension” means a pension under—

- (a) regulation E5A of the 1995 Regulations; or
- (b) regulation 2.D.5 or 3.D.5 of the 2008 Regulations (whichever applies);

“option day” has the meaning given in—

- (a) paragraph (11) of regulation E5A of the 1995 Regulations in the case of a member who has taken a partial retirement pension under that regulation;
- (b) paragraph (8) of regulation 2.D.5 of the 2008 Regulations in the case of a member who has taken a partial retirement pension under that regulation; and
- (c) paragraph (7)(b)(ii) of regulation 3.D.5 of the 2008 Regulations in the case of a member who has taken a partial retirement pension under that regulation; and

“specified percentage of pension” has the meaning given in—

- (a) paragraph (4) of regulation E5A of the 1995 Regulations in the case of a member who has taken a partial retirement pension under that regulation;
- (b) paragraph (4) of regulation 2.D.5 of the 2008 Regulations in the case of a member who has taken a partial retirement pension under that regulation; and
- (c) paragraph (3) of regulation 3.D.5 of the 2008 Regulations in the case of a member who has taken a partial retirement pension under that regulation.”.

Amendment of regulation 40

35.—(1) Regulation 40 (death in service) is amended as follows.

(2) In paragraph (1)—

- (a) for “the table” substitute “Table 1”;
- (b) for the heading “Table” substitute “Table 1 - Transition member entitlements”.

(3) After paragraph (1), insert—

“(1A) As regards a non-pensionable old scheme member, or a person who derives a benefit from the old scheme or new scheme in respect of a non-pensionable old scheme member, the entitlement listed in column 1 of Table 2 is disapplied and the corresponding entitlement in column 2 applies instead.

Table 2 - Non-pensionable old scheme member entitlements

<i>Column 1</i>	<i>Column 2</i>
<i>Original entitlement</i>	<i>Revised entitlement</i>
PART 1	
Entitlements derived from the 1995 Section	
a lump sum on death under regulation F1.	a lump sum on death under regulation 112(a) of the 2015 Regulations which is equal to the greater of— (a) the lump sum calculated in accordance with paragraph 2 (death of active member) of Schedule 14 (lump sum on death) to the 2015 Regulations; and (b) the lump sum otherwise due under the

	original entitlement to a lump sum on death under regulation F1 of the 1995 Regulations.
an initial adult survivor pension under regulation G2(3B) at the rate of the member's pensionable pay for the first six months after the member's death.	a pension payable from the new scheme during the initial period at the rate which is equal to the greater of— (a) the rate of the member's pensionable earnings under regulation 115(4) of the 2015 Regulations; and (b) the rate of the member's pensionable pay that would have applied under the original entitlement in respect of the member under regulation G2(3B) of the 1995 Regulations, where references in regulations G2(3C) and H3(4B) and (4C) of the 1995 Regulations to regulation G2(3B) are to be taken to be a reference to a pension payable under regulation 115(4) of the 2015 Regulations.
an ongoing pension under regulation G2(3C) based on one half of the member's notional ill-health pension had the member become entitled to a tier 2 pension under regulation E2A on the member's last day of pensionable employment.	(a) payable from the 1995 Section in respect of service in that Section, an ongoing adult survivor pension equal to the pension that would have been payable to the adult survivor under Part G of the 1995 Section if the member had retired with a pension under regulation E1 of the 1995 Regulations on the member's last day of pensionable employment; and (b) payable from the new scheme in respect of service in that scheme, an ongoing survivor pension based on a Tier 2 IHP under regulation 115(5) of the 2015 Regulations.
a dependant child's pension under regulation H3 equal to the rate of the member's final year's pensionable pay, payable for the first— (a) three months under paragraph (4C); (b) six months under paragraph (4D); (c) six months under paragraph (4E).	an initial pension payable from the new scheme equal to the greater of— (a) an initial pension of the same amount and for the same duration under paragraph (6) or (7) of regulation 123 of the 2015 Regulations; and (b) an initial pension of the same amount and for the same duration as the original entitlement in respect of the member under regulation H3 of the 1995 Regulations.
an ongoing pension under regulation H3(2A) based on a proportion of the member's notional ill-health pension had the member become entitled to a tier 2 pension under regulation E2A on the member's last day of pensionable employment or, if greater, the amount that pension would have been had it been based on 10 years pensionable service.	(a) payable from the 1995 Section in respect of service in that Section, an ongoing pension equal to the relevant proportion of the pension that would have been payable to the member if the member had retired with a pension under regulation E1 of the 1995 Regulations on the member's last day of pensionable employment; and (b) payable from the new scheme in respect of service in that scheme, an ongoing pension based on the appropriate fraction of the basic death pension specified under regulation 123(3) and (4) of the 2015 Regulations.

PART 2	
Entitlement derived from the 2008 Section	
<p>a lump sum on death under regulation 2.E.17(1) or 3.E.17(1).</p>	<p>a lump sum on death under regulation 112(a) of the 2015 Regulations which is equal to the greater of— (a) the lump sum calculated in accordance with paragraph 2 (death of active member) of Schedule 14 (lump sum on death) to the 2015 Regulations; and (b) the lump sum otherwise due under the original entitlement to a lump sum on death under regulation 2.E.17(1) or 3.E.17(1) of the 2008 Regulations.</p>
<p>a surviving adult dependent’s pension during the initial period of six months— (a) under regulation 2.E.3(1)(b) equal to the deceased’s reckonable pay; or (b) under regulation 3.E.3(1)(b) equal to the monthly average of the deceased’s uprated earnings on the member’s last day of pensionable service.</p>	<p>a pension payable from the new scheme during the initial period at the rate which is equal to the greater of— (a) the rate of the member’s pensionable earnings under regulation 115(4) of the 2015 Regulations; and (b) the rate of the deceased’s reckonable pay under regulation 2.E.3(1)(b) of the 2008 Regulations or the monthly average of the deceased’s uprated earnings on the member’s last day of pensionable service under regulation 3.E.3(1)(b) of the 2008 Regulations, where references in regulations 2.E.3(2) and 3.E.3(2) of the 2008 Regulations to “after the initial period” are to be taken to be a reference to the period for which the initial pension payable under regulation 115(4) of the 2015 Regulations is payable.</p>
<p>If the member has not reached the age of 65, an ongoing pension after the initial period— (a) under regulation 2.E.3(2)(a) equal to 37.5% of the tier 2 ill-health pension under regulation 2.D.8 to which the member would have been entitled if, on the date of death, the member had become entitled to such a pension; or (b) under regulation 3.E.3(2)(a) equal to the appropriate proportion of the tier 2 ill-health pension under regulation 3.D.7 to which the member would have been entitled if, on the date of death, the member had become entitled to such a pension. If the member has reached the age of 65: an ongoing pension after the initial period— (a) under regulation 2.E.3(2)(b) equal to 37.5% of the pension under regulation 2.D.1 to which the member would have been entitled if, on the date of death, the member had become entitled to such a pension in respect of any period of pensionable service; or (b) under regulation 3.E.3(2)(b) equal to the</p>	<p>(a) payable from the 2008 Section in respect of service in that Section, an ongoing adult survivor pension after the initial period equal to— (i) 37.5% of the pension under regulation 2.D.1 to which the member would have been entitled if, on the date of death, the member had become entitled to such a pension in respect of any period of pensionable service that the member is entitled to count; or (ii) the appropriate proportion of the pension under regulation 3.D.1 to which the member would have been entitled if, on the date of death, the member had become entitled to such a pension in respect of any period of pensionable service that the member is entitled to count; and (b) payable from the new scheme in respect of service in that scheme, an ongoing survivor pension based on a Tier 2 IHP under regulation 115(5) of the 2015 Regulations.</p>

appropriate proportion of the tier 2 ill health pension under regulation 3.D.1 to which the member would have been entitled if, on the date of death, the member had become entitled to such a pension in respect of any period of pensionable service.	
a dependant child's pension under— (a) regulation 2.E.10 equal to the rate of the deceased member's reckonable pay, payable for the first— (i) three months under paragraph (6)(ii); (ii) six months under paragraph (7)(ii); or (b) regulation 3.E.10 equal to the rate of the monthly average of the deceased's uprated earnings on the member's last day of pensionable service, payable for the first— (i) three months under paragraph (5)(ii); (ii) six months under paragraph (6)(b).	an initial pension payable from the new scheme equal to the greater of— (a) an initial pension of the same amount and for the same duration under paragraph (6) or (7) of regulation 123 of the 2015 Regulations; and (b) an initial pension of the same amount and for the same duration as the original entitlement in respect of the member under regulation 2.E.10 or 3.E.10 of the 2008 Regulations.
an ongoing pension under regulation 2.E.10(3) or 3.E.10(3) equal to the appropriate fraction of the basic death pension.	(a) payable from the 2008 Section in respect of service in that Section, an ongoing pension equal to the appropriate fraction of the basic death pension payable under – (i) regulation 2.E.10(3) of the 2008 Regulations; or (ii) regulation 3.E.10(3) of the 2008 Regulations where that pension is based on the pensionable service that the deceased was entitled to count at the date of death; and (b) payable from the new scheme in respect of service in that scheme, an ongoing pension based on the appropriate fraction of the basic death pension specified under regulation 123(3) and (4) of the 2015 Regulations.”

(4) In paragraph (2)—

- (a) for “the table”, in both places it occurs, substitute “Table 1 or Table 2” and
- (b) after the first occurrence of “column 1” add “of either table”.

Signed by authority of the Secretary of State for Health and Social Care

29th August 2023

Neil O'Brien
Parliamentary Under Secretary of State,
Department of Health and Social Care

We consent

31st August 2023

Stuart Anderson
Scott Mann
Two of the Lords Commissioners of Her Majesty's Treasury

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”) and the National Health Service Pension Scheme (Transitional and Consequential Provisions) Regulations 2015 (S.I. 2015/95) (“the 2015 Transitional Regulations”).

These Regulations come into force on 1st October 2023.

Part 1 provides for citation, commencement and extent.

Part 2 makes amendments to the 1995 Regulations to provide for partial retirement for 1995 Section members. Regulations 3, 4 and 5 update various definitions and add a new definition of “active member”. Regulation 6 inserts new regulations E5A, E5B and E5C. New regulation E5A sets out the qualifying requirements for partial retirement and the entitlements. New regulation E5B deals with abatement of partial retirement benefits where members who partially retire then increase their pensionable pay. New regulation E5C makes provision for how new regulations E5A and E5B apply in circumstances where a member is in pensionable employment in two or more part-time employments. Regulation 7 updates the provisions for lump sum on retirement. Regulation 8 makes a consequential amendment to regulation F2 and regulation 9 inserts new regulation F2A to provide for lump sums for members who die after a partial retirement pension becomes payable. Regulation 10 provides that any actuarial reduction applied to a partial retirement pension is not applied to the corresponding widow’s pension that is payable. Regulation 11 provides that any actuarial reduction is not applied to any child survivor pension payable. Regulation 12 disapplies the 10 year underpin from the calculation of child survivor pension payable where members have taken partial retirement. Regulation 13 provides that members taking partial retirement are not entitled to allocate part of that pension to their partner or spouse on death. Regulation 14 makes an amendment to exclude non-pensionable members becoming entitled to their pension without having to leave NHS employment. Regulation 15 prevents added years being included automatically in the calculation of partial retirement and Regulation 16 ensures that partial retirement pensions are in scope of the rules on reduction of added years. Regulation 17 amends the provisions in Schedule 2 on partial retirement pensions for medical and dental practitioners.

Part 3 makes amendments to the 2008 Regulations. Regulations 19 and 21 make amendments to allow 100% drawdown for 2008 Section members. Regulation 20 makes an amendment to exclude non-pensionable members becoming entitled to their pension without having to leave NHS employment.

Part 4 makes amendments to the 2015 Regulations. Regulation 23 makes an amendment to allow non-pensionable old scheme members to join the 2015 Scheme. Regulation 24 makes an amendment to allow 100% drawdown in the 2015 Scheme.

Part 5 makes amendments to the 2015 Transitional Regulations. Regulation 26 inserts new terms to the interpretation provisions for “non-pensionable old scheme members”. Regulation 27 makes amendment in respect of such a member recommencing service after a break. Regulation 28 makes provision on the determination of such a member’s pensionable pay, final pensionable pay and reckonable pay. Regulation 29 makes provision regarding the refund of contributions in cases of inordinate pay. Regulation 30 makes provision regarding cessation of the final salary link on payment of benefits. Regulation 31 makes provision that the final salary link may not be applied to non-pensionable old scheme members joining the 2015 scheme, if to not apply it would be more beneficial to the member. Regulation 32 makes amendments requiring members who take partial retirement to claim their benefits from the old scheme before claiming any benefits in the new scheme. Regulations 33 and 34 make provision regarding the variation of lump sums for members who have taken partial retirement. Regulation 35 makes provision for death benefits for non-pensionable old scheme members, inserting a new Table 2 setting out the benefits payable to non-

pensionable old scheme members who join the 2015 scheme, ensuring their entitlements under the new scheme are not worse than under the old scheme.

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.

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