

EXPLANATORY MEMORANDUM TO
THE NATIONAL HEALTH SERVICE PENSION SCHEMES (PARTIAL
RETIREMENT ETC.) (AMENDMENT) REGULATIONS 2023

2023 No. 952

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.

2. Purpose of the instrument

2.1 There are two NHS Pension Schemes. The legacy pension scheme, which is made up of two sections, is 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”). The reformed pension scheme is legislated for by the National Health Service Pension Scheme Regulations 2015 (S.I. 2015/94) (the “2015 Scheme”).

2.2 This instrument amends the 1995 Section, the 2008 Section, the 2015 Scheme and the National Health Service Pension Scheme (Transitional and Consequential Provisions) Regulations 2015 (S.I. 2015/95) (“the 2015 Transitional Regulations”) principally to deliver policy changes in relation to partial retirement.

2.3 The amendments in this instrument implement the second of two phases of changes to introduce new retirement flexibilities to the 1995 Section.

2.4 The first phase of changes, implemented via The National Health Service Pension Schemes (Amendment) Regulations 2023, created provision for pensionable re-employment for members of the 1995 Section. This means that staff who retire and claim benefits from that scheme can, from 1 April 2023, re-join the 2015 Scheme should they return to work. That instrument also permanently removed the 16-hour rule from 1 April 2023, meaning that the number of hours re-employed staff can work after claiming their 1995 benefits is no longer restricted.

2.5 This second phase creates provision for partial retirement for members of this section, and makes other changes related to the over-arching retirement flexibility policy, which are a) allowing members of the 1995 and 2008 Sections who had previously breached the maximum service limits to join the 2015 Scheme if they wish and b) allowing 2008 Section and 2015 Scheme members to draw down 100% of their benefits if partially retiring.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to the 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 legacy scheme (made up of the 1995 and 2008 Sections). This instrument amends the 1995 Section, 2008 Section, 2015 Scheme and the 2015 Transitional Regulations.
- 6.2 A separate instrument, (The National Health Service Pension Schemes (Remedial Service) Regulations 2023), remedying, for NHS Pension Scheme members, the discrimination caused by the transitional protections given to members of existing public service pension schemes when reformed public service pension schemes were introduced in 2015, will be laid before parliament shortly after this instrument. The provisions in that instrument are aligned with changes to other public service pension schemes to implement a consistent cross-government remedy in response to the discrimination under the Public Service Pensions and Judicial Offices Act 2022. The provisions in this instrument are specific to the NHS Pension Scheme and do not relate to the discrimination related to the transitional provisions. Therefore, whilst both relating to the NHS Pension Scheme and coming into effect at the same time, the two instruments are separated to provide clarity and aid understanding.

7. Policy background

What is being done and why?

- 7.1 This statutory instrument is made up of five parts. Part 1 is introductory, Part 2 is made up of amendments to the 1995 Section, Part 3 amendments to the 2008 Section, Part 4 amendments to the 2015 Scheme and Part 5 amendments to the 2015 Transitional Regulations.
- 7.2 Part 2 (Amendments to the National Health Service Pension Scheme Regulations 1995) makes amendments effecting the 1995 Section and those members who have benefits in it.
- 7.3 Regulation 3 of this statutory instrument adds a definition of “active member” to regulation A2, as a consequence of the new provisions.
- 7.4 Regulation 4 of this statutory instrument amends regulation C1 to update the definition of final pensionable pay so that where a member takes partial retirement, the term ‘final year’s pensionable pay’ refers to their pensionable pay for the year immediately before they take partial retirement.
- 7.5 Regulation 5 of this statutory instrument amends the definition of ‘pensionable service’ in regulation C2 such that where a member takes partial retirement, the definition only includes the percentage of their pension that they have taken.
- 7.6 Regulation 6 of this statutory instrument inserts new regulations E5A, E5B and E5C. New regulation E5A allows members in pensionable employment in the 1995 Section the option to take partial retirement. New regulation E5B details the abatement provisions for those who take partial retirement but then receive an increase in pensionable pay in the following 12 months. New regulation E5C details the partial

retirement provisions for members with two or more part-time employments, such that the 10% reduction in pensionable pay is required for the total of their employments, not for each employment.

- 7.7 Regulation 7 of this statutory instrument amends regulation E6 to ensure that partial retirement pensions are included in the section of the regulations that detail provisions for retirement lump sums.
- 7.8 Regulation 8 of this statutory instrument amends regulation F2, such that this provision excludes members who die whilst in receipt of partial retirement pensions.
- 7.9 Regulation 9 of this statutory instrument inserts new regulation F2A, which provides for lump sums for members who die after a partial retirement pension has become payable.
- 7.10 Regulation 10 of this statutory instrument amends regulation G3, such that any actuarial reduction applied to a partial retirement pension is not applied to the corresponding widow's pension that is payable.
- 7.11 Regulation 11 of this statutory instrument amends regulation H4 such that any actuarial reduction is not applied to the child survivor pension that is payable.
- 7.12 Regulation 12 of this statutory instrument amends regulation H5 to disapply the 10 year underpin from the calculation of the child survivor pension that is payable for preserved pensions where members have taken partial retirement.
- 7.13 Regulation 13 of this statutory instrument amends regulation J1, such that members taking partial retirement are excluded from the regulation which allows members to allocate part of their pension to their partner or spouse after they die.
- 7.14 Regulation 14 of this statutory instrument amends regulation L1, which allows members who have lost a final salary link in respect of their legacy benefits to be able to claim those benefits without leaving NHS employment which qualifies them to be members of the 2015 Scheme. Regulation 16 excludes non-pensionable members who have previously breached the maximum service limits from this regulation, as this may otherwise apply to them if they choose to join the 2015 Scheme after 1 October 2023.
- 7.15 Regulation 15 of this statutory instrument amends regulation Q1 to prevent added years being included automatically in the calculation of partial retirement pensions and ensures consistency with the provisions at regulation E5A which detail that members who take partial retirement must specify if they wish to take their added years or not.
- 7.16 Regulation 16 of this statutory instrument amends regulation Q15 to ensure that the same rules on reduction of added years apply to partial retirement pensions.
- 7.17 Regulation 17 of this statutory instrument amends Schedule 2 to provide the necessary modifications to regulation E5A for practitioner members.
- 7.18 Turning to Part 3 (Amendments to the National Health Service Pension Scheme Regulations 2008), regulation 19 of this statutory instrument amends regulation 2.D.5, such that officer members of the 2008 Section who take partial retirement can take up to 100% of their benefits rather than 80%.
- 7.19 Regulation 20 of this statutory instrument amends regulation 2.D.13, which allows members who have lost a final salary link in respect of their legacy benefits to be able

to claim those benefits without leaving NHS employment which qualifies them to be members of the 2015 Scheme.

- 7.20 Regulation 21 of this statutory instrument amends regulation 3.D.5 to be consistent with regulation 2.D.5, such that practitioner members of the 2008 Section who take partial retirement can take up to 100% of their benefits rather than 80%.
- 7.21 In Part 4 (Amendments to the National Health Service Pension Scheme Regulations 2015), regulation 23 of this statutory instrument amends regulation 19 of the 2015 Scheme to permit members who are currently non-pensionable in the 1995 and 2008 Sections because they have breached the maximum service limits to join the 2015 Scheme for future accrual.
- 7.22 Regulation 24 of this statutory instrument amends regulation 84, such that members of the 2015 Scheme who take who take partial retirement can take up to 100% of their benefits rather than 80%.
- 7.23 Finally, in Part 5 (Amendments to the National Health Service Pension Scheme (Transitional and Consequential Provisions) Regulations 2015), regulation 26 of this statutory instrument amends regulation 2 to provide a definition for members who are currently non-pensionable because they have breached the maximum service limits in the 1995 and 2008 Sections (“non-pensionable old scheme members”). These members are not “transition members” but the following amendments (regulations 27-35) ensure that they are covered by the transitional regulations where and as necessary.
- 7.24 Regulation 27 of this statutory instrument amends regulation 10A (effect of recommencing service after a break), such that it does not apply to non-pensionable old scheme members.
- 7.25 Regulation 28 of this statutory instrument amends regulation 14, such that the definitions of pensionable pay, final pensionable pay and reckonable pay also apply to non-pensionable old scheme members.
- 7.26 Regulation 29 of this statutory instrument amends regulation 15 (no refund of contributions in cases of inordinate pay), such that it also applies to non-pensionable 1995 Section members.
- 7.27 Regulation 30 of this statutory instrument amends regulation 16 (cessation of final salary link on payment of benefit), such that it also applies to non-pensionable old scheme members.
- 7.28 Regulation 31 of this statutory instrument inserts new regulation 17A, allowing the Final Salary link to be disapplied to non-pensionable old scheme members in cases where to do so would be more beneficial to the member than if the Final Salary link was applied when calculating their benefits.
- 7.29 Regulation 32 of this statutory instrument amends regulation 31, with the effect that members who take partial retirement must take their benefits sequentially and cannot partially retire from the 2015 Scheme if they have not already taken all their 1995 Section benefits.
- 7.30 Regulation 33 of this statutory instrument amends regulation 37 (variations to lump sums for 1995 and 2008 pensioners joining new scheme), so that it does not apply to members who have taken a partial retirement pension.

- 7.31 Regulation 34 of this statutory instrument inserts new regulation 37A, which provides a new formula for calculating the lump sum payable where a partially retired member has service in both the legacy scheme (1995/2008 Section) and the new scheme (2015 Scheme).
- 7.32 Regulation 35 of this statutory instrument amends regulation 40, such that the existing table is renamed “Table 1” and does not apply to non-pensionable old scheme members and a new “Table 2” is inserted which details the death in service benefits payable to non-pensionable old scheme members should they join the 2015 Scheme.

Explanations

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

- 7.33 Prior to this instrument, the 1995 Section of the NHS Pension Scheme did not contain any provisions for partial retirement. This meant that members of this Section were unable to partially retire, unlike members of the 2008 Section or the 2015 Scheme.
- 7.34 Also prior to this instrument, members of the 2008 Section and the 2015 Scheme could only take a maximum of 80% of their benefits if they chose to partially retire. They could not take 100% of their benefits unless they were willing to take full retirement and then return to work after the necessary break.
- 7.35 Also prior to this instrument, members of the 1995 Section and the 2008 Section who had previously breached the maximum service limits were not permitted to join the 2015 Scheme. This meant that they were unable to build up any further benefits if they continued in NHS service after reaching those maximum service limits.

Why is it being changed?

- 7.36 This instrument amends regulations to allow members of the 1995 Section, with the exception of those who have previously breached the maximum service limits, to access partial retirement. This will allow these members to claim part or all of their pension benefits whilst continuing to work and build up further pension benefits if they wish to do so. The aim of this change 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. It may also support staff to bridge the gap between claiming their NHS pension benefits and receiving their State Pension.
- 7.37 This instrument also amends the partial retirement regulations in the 2008 Section and 2015 Scheme to allow members to claim up to 100% of their pension benefits. The aim of this change is to better align the provisions for partial retirement in the 2008 Section and 2015 Scheme with the new provisions for partial retirement in the 1995 Section.
- 7.38 This instrument amends regulations to allow members who have previously breached the maximum service limits to join the 2015 Scheme for future accrual. The aim of this change is to support the retention of skilled and experienced staff, by making continuing in NHS service a more attractive option.

What will it now do?

- 7.39 Once this instrument is introduced, eligible members of the 1995 Section will be able to access partial retirement, such that they can claim their pension benefits and continue working and building further pension benefits if they wish to do so.

- 7.40 This instrument will also mean that members of the 2008 Section and 2015 Scheme who wish to partially retire will be able to claim up to 100% of their pension benefits, much like members of the 1995 Section.
- 7.41 This instrument will also allow members who have previously breached the maximum service limits in the 1995 or 2008 Section to join the 2015 Scheme and continue building pension benefits if they wish to do so.

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 31 October 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. This consultation included a number of other proposals, including aligning the timing of CPI inflation rates used for revaluing pension benefits and the annual allowance tax calculation, changes to scheme access for primary care networks ("PCNs"), and technical updates to member contributions provisions. The specific proposals in this instrument were consulted on as part of a broader package of new retirement flexibilities.
- 10.2 Implementation of these flexibilities was in two phases. The first phase was delivered on 1 April 2023, via the National Health Service Pension Schemes (Amendment) Regulations 2023. This instrument, the National Health Service Pension Schemes (Partial Retirement etc.) (Amendment) Regulations 2023, will deliver the second phase.
- 10.3 The Department received a total of 3,386 consultation responses. Of these, 1,099 responses were received through the consultation platform, and 2,287 responses were received by email. 51 responses 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.
- 10.4 Respondents to the consultation were generally supportive of the proposals. 87% of the responses received via the online platform agreed with the proposal to introduce the new retirement flexibilities, including partial retirement. However, many respondents commented that while they believed that partial retirement should be introduced, they disagreed with the proposed requirement for staff to reduce their pensionable pay by 10% in order to access this flexibility.

- 10.5 The Department's view is that in order for staff to partially retire, some reduction in pensionable workload is required, and as the NHS Pension Scheme records members' pensionable pay, this is a reasonable way of assessing if members are taking steps towards retirement. This is also consistent with the existing partial retirement provisions in the 2008 Section and 2015 Scheme, and in other public sector pension schemes. The Department therefore set out in the consultation response that it intended to implement the policy as planned, with the 10% reduction requirement.
- 10.6 No substantive comments were received on the other proposed changes to NHS Pension Scheme regulations relating to retirement flexibilities during the consultation process.
- 10.7 The consultation response was published on 7 March 2023 and is available from: <https://www.gov.uk/government/consultations/nhs-pension-scheme-proposedamendments-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>.
- 11.2 Following the feedback received during consultation, the Department also commissioned NHS Employers and NHS England to produce further guidance for members and employers.

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 policy changes detailed in paragraph 2.3 of this document.
- 12.3 A full Impact Assessment has not been prepared for this instrument because no impact on business is foreseen.

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 Kate Solomon at the Department of Health and Social Care Telephone: 0113 254 6863 or email: kate.solomon@dhsc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Gavin Lerner, Director of NHS Workforce at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Neil O'Brien, Parliamentary Under Secretary of State for Primary Care and Public Health at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.