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STATUTORY INSTRUMENTS

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**2017 No. 275**

**The National Health Service Pension Scheme and Additional Voluntary Contributions (Amendment) Regulations 2017**

**PART 4**

**Amendment of the National Health Service Pension Scheme Regulations 2015**

**General**

**29.** The National Health Service Pension Scheme Regulations 2015<sup>(1)</sup> are amended in accordance with this Part.

**Amendment of regulation 36**

**30.**—(1) Regulation 36 (interest and administration charges: late paid contributions) is amended as follows.

(2) In sub-paragraph (a) of paragraph (1)—

- (a) after “contributions”, insert “and the scheme administration charge”;
- (b) after “35,”, insert “36A,”.

(3) In paragraph (2), after “contributions” (three times) insert “or, as the case may be, the scheme administration charge”.

(4) For paragraph (3), substitute—

“(3) Where there is a chargeable event, the employing authority is liable to pay—

- (a) standard rate interest on the amount of unpaid contributions constituting that event or the amount of unpaid scheme administration charge constituting that event; or
- (b) both interest and the charge referred to in (a); and
- (c) a supplementary charge in respect of each such event.”.

(5) In paragraph (4)—

- (a) in sub-paragraph (b), after “contributions” insert “or, as the case may be, the scheme administration charge”;
- (b) in sub-paragraph (d), for “administration charge” substitute “supplementary charge”;
- (c) in sub-paragraph (e), for “administration charges” substitute “supplementary charges”.

(6) In paragraph (5), for “administration charge” substitute “supplementary charge”.

(7) In paragraph (6), for “administration charges” substitute “supplementary charges”.

(8) In paragraph (8), for “administration charge” substitute “supplementary charge”.

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(1) [S.I. 2015/94](#) amended by [S.I. 2015/581](#), [S.I. 2016/245](#) and [S.I. 2016/481](#).

### **New regulation 36A**

**31.** After regulation 36 (interest and administration charges: late paid contributions), insert—

#### **“Scheme Administration Charge**

**36A.—**(1) Each employing authority must, in respect of each member who is liable to contribute to this scheme, pay a scheme administration charge in accordance with this regulation.

(2) The scheme administration charge is to be paid to the scheme manager on the same day, and in respect of the same period, as the employer’s standard rate contributions under regulation 33 are to be paid by that employing authority in respect of the member referred to in paragraph (1).

(3) The scheme administration charge is to be calculated as a percentage of that member’s pensionable earnings, for period mentioned in paragraph (2).

(4) The percentage mentioned in paragraph (3) is to be determined by the scheme manager taking into account the administrative costs of running the scheme and notified to each employing authority.”.

### **Amendment of regulation 43**

**32.—**(1) Regulation 43 (eligibility to make buy-out election) is amended as follows.

(2) In sub-paragraph (a) of paragraph (3), after “this scheme” insert “in accordance with paragraph (3A)”.

(3) After paragraph (3), insert—

“(3A) For the purposes of paragraph (3)(a), M is treated as entering pensionable service on each occasion that an active member’s account is established in respect of that service in accordance with regulation 24(1)(a).”.

(4) For paragraph (5), substitute—

“(5) M may make an election under this regulation on one occasion only during each period of pensionable service in respect of which an active member’s account is established in accordance with regulation 24(1)(a).”.

### **Amendment of regulation 58**

**33.** After paragraph (4) of regulation 58 (making an additional pension election), insert—

“(5) For the purposes of this Chapter—

(a) a member is treated as having made an additional pension election on the date on which the employing authority receives the member’s notice under paragraph (1); and

(b) an employing authority is treated as having made an additional pension election on the date on which the scheme manager receives the authority’s notice under paragraph (2).”.

### **Amendment of regulation 63**

**34.—**(1) Regulation 63 (repayment of lump sum contributions)(2) is amended as follows.

(2) In sub-paragraph (a) of paragraph (2), before “representatives” insert “personal”.

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(2) Paragraphs (2) and (3) were substituted by regulations 58 and 64 of [S.I. 2016/245](#).

(3) In sub-paragraph (c) of each of paragraphs (2) and (3), before “pension account” insert “additional”.

(4) In paragraph (3), after “payable to M” insert “in consequence of a claim made”.

#### **Amendment of regulation 66**

**35.** In sub-paragraph (b) of paragraph (7) of regulation 66 (revoking an additional pension election (periodic payments)), before “representatives” insert “personal”.

#### **Amendment of regulation 67**

**36.—**(1) Regulation 67 (revocation of election by scheme manager (lump sum)) is amended as follows.

(2) In sub-paragraph (a) of paragraph (1), after “the election” insert “was made”.

(3) In sub-paragraph (a) of paragraph (2), before “representatives” insert “personal”.

#### **Amendment of regulation 69**

**37.—**(1) Regulation 69 (death in service before end of contributions payment period) is amended as follows.

(2) For sub-paragraph (a) of paragraph (1), substitute—

“(a) whose additional pension election is for—

(i) an additional (self only) pension; or

(ii) an additional (self only) pension and an additional (survivor’s) pension; and”

(3) In paragraph (2)—

(a) in sub-paragraph (a)—

(i) before “representatives” insert “personal”;

(ii) after “representatives;” insert “and”;

(b) omit sub-paragraph (b).

#### **Amendment of regulation 70**

**38.—**(1) Regulation 70 (ill-health pension becomes payable before end of contributions payment period) is amended as follows.

(2) In paragraph (2)—

(a) in sub-paragraph (a) after “M;” insert “and”;

(b) omit sub-paragraph (b).

(3) For paragraph (3), substitute—

“(3) If an ill-health pension becomes payable to M in consequence of a claim made after the end of the refund period—

(a) the periodic payments under the additional pension election are treated as being paid until the end of the contributions payment period for the election; and

(b) paragraph (4) applies.

(4) For the purpose of calculating the annual rate of ill-health pension—

(a) if the scheme manager believes that the declaration that accompanied the additional pension election was made in good faith, the amount of accrued

additional pension is calculated under paragraph 28 of Schedule 9 as at the last day of pensionable service;

- (b) if the scheme manager believes that the declaration was not made in good faith, paragraph (2)(a) and (c) applies.”.

#### **Amendment of regulation 90**

**39.**—(1) Regulation 90 (entitlement to ill-health pension) is amended as follows.

(2) In paragraph (2)—

- (a) in sub-paragraph (a), after “M”, insert “is qualified for retirement benefits and”;
- (b) in sub-paragraph (e), after “M” omit “has”.

#### **Amendment of regulation 91**

**40.**—(1) Regulation 91 (member’s incapacity) is amended as follows.

(2) In the definition of “appropriate medical treatment”, in paragraph (6)—

- (a) in sub-paragraph (b)(i), after “regulation 90” insert “before M reaches prospective normal pension age”;
- (b) in sub-paragraph (b)(ii), after “that regulation” insert “before M reaches prospective normal pension age; or”;
- (c) in sub-paragraph (c), after “reaches” insert “prospective”.

#### **Amendment of regulation 123**

**41.** In sub-paragraph (ii) of the definition of “A” in paragraph (3) of regulation 123 (amount of child pension: deceased active member), after “the Pensions (Increase) Act 1971” insert “on L+1”.

#### **Amendment of regulation 150**

**42.**—(1) Regulation 150 (interpretation) is amended as follows.

(2) For paragraph (3), substitute—

“(3) A qualifying contract is a contract between a relevant commissioning party and an independent provider the primary purpose of which is the provision of clinical health care services for the NHS and which is—

- (a) an NHS standard contract;
- (b) an APMS contract;
- (c) a contract entered into by a local authority pursuant to its functions under the 2006 Act relating to the improvement and protection of public health and which the Secretary of State agrees to treat as a qualifying contract for these purposes; or
- (d) an NHS standard sub-contract.”.

#### **Amendment of regulation 151**

**43.**—(1) Regulation 151 (application for employing authority status) is amended as follows.

(2) After sub-paragraph (b) insert—

“; and

(c) who—

- (i) is performing services pursuant to a qualifying contract; and

- (ii) satisfies the wholly or mainly condition”.

#### **Amendment of regulation 166**

**44.** In paragraph (7) of regulation 166 (medical practitioner), after “an NHS standard contract” insert “, an NHS standard sub-contract”.

#### **Amendment of Schedule 8**

**45.** In sub-paragraph (3) of paragraph 2 (persons subject to retention arrangements) of Schedule 8, after “A person who on,” insert “or after, 2nd April 2014 and”.

#### **Amendment of Schedule 9**

**46.**—(1) Schedule 9 (pensions accounts) is amended as follows.

(2) In paragraph 3 (meaning of “leaver index adjustment”)—

(a) in each of sub-paragraphs (1) and (3), for “The” substitute “Subject to sub-paragraph 2A, the”;

(b) After sub-paragraph (2), insert—

“(2A) If the amount of the leaver index adjustment under sub-paragraphs (1) or (2) is an amount that is less than zero, the amount of the leaver index adjustment for the purposes of those paragraphs is zero.”.

(3) After paragraph 15 of Part 2 of Schedule 9 (actuarial reduction buy-out), insert—

## **“PART 2A**

### **Active member’s account for unqualified members**

#### **Closure of an active member’s account**

**15A.** When an active member leaves all pensionable service but does not qualify for benefits under regulation 72 (in this Part “an unqualified member”) the active member’s account for that unqualified member must be closed.

#### **Active member’s account for unqualified member re-established after break not exceeding 5 years**

**15B.**—(1) This paragraph applies if—

(a) an unqualified member re-enters pensionable service under this scheme after a break in service not exceeding 5 years; and

(b) the rights of that member in respect of the service before the break have not been extinguished pursuant to regulation 42 (effect of refund) or regulation 140 (effect of transfer-out).

(2) When the unqualified member re-enters pensionable service under this scheme the active member’s account must be re-established.

(3) The active member’s account—

(a) must specify the amount of accrued earned pension as at the beginning of the break in service; and

- (b) must be adjusted as if the member had continued as an active member during the break in service but had received no pensionable earnings.

**Active member's account for unqualified member remains closed after break exceeding 5 years**

**15C.**—(1) This paragraph applies if an unqualified member re-enters pensionable service under this scheme after a break in service exceeding five years.

(2) When the unqualified member re-enters pensionable service under the scheme (“the further service”)—

- (a) the active member's account in respect of the service before the break remains closed; and
- (b) a new active member's account must be established in respect of the further service.”.

**Amendment of Schedule 10**

**47.**—(1) Schedule 10 (practitioner income) is amended as follows.

(2) At the end of sub-paragraph (2)(b) of paragraph 2 (medical practitioner), insert—

“; and

(c) in the case of a practitioner referred to in regulation 166(7), bonuses”.

**Amendment of Schedule 14**

**48.**—(1) Schedule 14 (lump sum on death) is amended as follows.

(2) In sub-paragraph (1) of paragraph 3 (death of deferred member), after “deferred member” insert “who is not also an active member”.

(3) In sub-paragraph (3) of paragraph 7 (death of partial retirement pensioner), for the definition of “re-valued pensionable earnings” substitute—

““re-valued pensionable earnings” means, in relation to a scheme year, an amount equal to the actual pensionable earnings for the year increased by the same amount as that by which an annual pension equal to that amount would have been increased for the first time under the Pensions (Increase) Act 1971 at the relevant day if—

- (a) the pension was eligible to be so increased;
- (b) the beginning date for the pension was the first day of the following scheme year; and
- (c) the relevant day was the member's last day of pensionable service.”.

**Amendment of Schedule 15**

**49.**—(1) Schedule 15 (definitions) is amended as follows.

(2) At the appropriate place in the alphabetical order, insert the following rows—

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NHS standard sub-contract	a sub-contract that complies with the Department of Health guidance “NHS Standard Sub-Contract for the Provision of Clinical Services 2016/17”(3)
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(3) Electronic copies of the guidance referred to in that definition can be obtained from [www.gov.uk/dh](http://www.gov.uk/dh). Hard copies may be obtained from the Department of Health, Quarry House, Quarry Hill, Leeds LS2 7UE.

scheme administration charge	the charge provided for in regulation 36A
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(3) In column 2 of the entry for “practice staff”(4) in paragraph (c), after “NHS standard sub-contract”(5) insert “where the party to the NHS standard contract in question is an employing authority”.

(4) This definition was last amended by regulations 58 and 89(b) of [S.I.2016/245](#).

(5) This definition was inserted by regulations 58 and 89(c) of [S.I.2016/245](#).

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