

2001 No. 1428

**NATIONAL HEALTH SERVICE, ENGLAND AND
WALES**

**The National Health Service (Pension Scheme and
Additional Voluntary Contributions) (Pension Sharing)
Amendment Regulations 2001**

<i>Made</i> - - - -	<i>9th April 2001</i>
<i>Laid before Parliament</i>	<i>10th April 2001</i>
<i>Coming into force</i>	<i>1st May 2001</i>

The Secretary of State for Health, in exercise of the powers conferred upon him by section 10(1), (2), (2A) and (3) of, and Schedule 3 to, the Superannuation Act 1972^(a), section 42 of the Welfare Reform and Pensions Act 1999^(b), and of all other powers enabling him in that behalf, after consulting such representatives of persons likely to be affected by these Regulations as appear to him to be appropriate^(c) and with the consent of the Treasury^(d) hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the National Health Service (Pension Scheme and Additional Voluntary Contributions) (Pension Sharing) Amendment Regulations 2001 and shall come into force on 1st May 2001.

Interpretation

2. In these Regulations—

“the AVC Regulations” means the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000^(e);

“the Pension Scheme Regulations” means the National Health Service Pension Scheme Regulations 1995^(f).

Amendment of the Pension Scheme Regulations

3. The Pension Scheme Regulations shall be amended in accordance with Schedule 1 to these Regulations.

^(a) 1972 c.11; subsection (1)(a) of section 10 was amended by Schedule 5 to the National Health Service Reorganisation Act 1973 (c.32); subsection (1) was amended, and subsection (2A) was inserted, by the Pensions (Miscellaneous Provisions) Act 1990 (c.7), sections 4(2) and 8(5).

^(b) 1999 c.30.

^(c) See section 10(4) of the Superannuation Act 1972.

^(d) See section 10(1) of the Superannuation Act 1972, and article 2 of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I. 1981/1670).

^(e) S.I. 2000/619.

^(f) S.I. 1995/300, as amended by S.I. 1997/80, 1888, 1998/666, 2216 and 2000/605.

Amendment of the AVC Regulations

4. The AVC Regulations shall be amended in accordance with Schedule 2 to these Regulations.

Signed by authority of the Secretary of State for Health

9th April 2001

John Denham
Minister of State,
Department of Health

We consent to the making of these Regulations.

9th April 2001

Jim Dowd
Clive Betts
Lords Commissioners of
Her Majesty's Treasury

AMENDMENT OF THE PENSION SCHEME REGULATIONS

Amendment of regulation A2

1. In regulation A2 (interpretation) there shall be inserted in the appropriate places in alphabetical order the following definitions—

““the 1993 Act” means the Pension Schemes Act 1993(a);

“the 1999 Act” means the Welfare Reform and Pensions Act 1999;

“normal benefit age”, in relation to the scheme, means the age of 60;

“pension credit” means a credit under section 29(1)(b) of the 1999 Act and includes a credit under corresponding Northern Ireland legislation;

“pension credit benefit” has the meaning given by section 101B of the 1993 Act(b);

“pension credit member” has the meaning given by section 124(1) of the Pensions Act 1995(c);

“pension credit rights” has the meaning given by section 101B of the 1993 Act;

“pension sharing order or provision” means an order or provision which is mentioned in section 28(1) of the 1999 Act;

“safeguarded percentage” has the meaning given by section 68A(3) of the 1993 Act(d);

“safeguarded rights” has the meaning given by section 68A(1) of the 1993 Act;

“valuation day” means the day referred to in section 29(7) of the 1999 Act.”.

Insertion of new regulation in Part R

2. In Part R (special provision for certain members), after regulation R11(e) there shall be inserted the following regulation—

“Pension sharing on divorce or nullity of marriage

R12.—(1) Schedule 2A shall have effect in relation to—

(a) pension credit rights; and

(b) pension credit benefit payable,

under the scheme.

(2) Except as provided for in this regulation and in Schedule 2A, Parts B to V of these Regulations shall not apply to a person entitled to a pension credit or to a pension credit member.”.

Insertion of new Schedule

3. After Schedule 2 there shall be inserted the following Schedule—

“SCHEDULE 2A

Regulation R12

PENSION SHARING ON DIVORCE OR NULLITY OF MARRIAGE**Discharge of liability in respect of a pension credit following the death of the person entitled to the pension credit**

1.—(1) The Secretary of State shall, following the death of the person entitled to a pension credit before liability in respect of that credit has been discharged, discharge his

(a) 1993 c.48.

(b) Section 101B is inserted by section 37 of the Welfare Reform and Pensions Act 1999.

(c) 1995 c.26. The definition of “pension credit member” is inserted by paragraph 61(3) of Schedule 12 to the Welfare Reform and Pensions Act 1999.

(d) Section 68A was inserted by section 36 of the Welfare Reform and Pensions Act 1999.

(e) Regulation R11 was inserted by S.I. 1998/666.

liability in respect of that credit by way of the payment of a lump sum in accordance with paragraph (2)(a)(i) of regulation 6 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000^(a) (discharge of liability in respect of a pension credit following the death of the person entitled to the pension credit).

(2) The amount of a lump sum payable under this paragraph shall be—

- (a) payable in accordance with regulation F5^(b) as modified by paragraph 11 below; and
- (b) equal to 3 times the annual rate of the pension credit benefit to which the person entitled to the pension credit would have been entitled had he reached normal benefit age on or before the date of death.

Safeguarded rights

2.—(1) Sub-paragraph (a) of section 68A(2) of the 1993 Act (safeguarded rights) applies in relation to the safeguarded rights of a pension credit member.

(2) Safeguarded rights shall be identified in the scheme as being the safeguarded percentage of the pension credit rights.

Pension credit benefit

3.—(1) A pension credit member shall be entitled under the scheme to pension credit benefit which shall consist of—

- (a) a pension; and
- (b) where the member, from whose rights the pension credit member's pension credit rights are derived, has not received a lump sum on or before the day on which the pension sharing order or provision takes effect, a lump sum.

(2) Subject to paragraph 4, a pension credit member shall be entitled to the payment of the pension credit benefit when he reaches normal benefit age.

(3) Payment of the pension credit benefit to which a pension credit member is entitled shall not be deferred beyond normal benefit age.

(4) A pension payable in accordance with this paragraph shall be payable to the pension credit member for life.

(5) The value of the pension referred to in this paragraph shall be equal to the value of the pension credit rights which have accrued to or in respect of the pension credit member.

(6) The lump sum referred to in this paragraph shall be equal to 3 times the annual rate of the pension.

Commutation of the whole of pension credit benefit before normal benefit age

4.—(1) A pension credit member shall be entitled to the commutation of the whole of his pension credit benefit before reaching normal benefit age in the circumstances described in regulation 3(2) of the Pension Sharing (Pension Credit Benefit) Regulations 2000^(c) (commutation of pension credit benefit).

(2) The pension credit benefit payable in the circumstances described in paragraph 2(a) of regulation 3 of those Regulations shall consist of—

- (a) a lump sum equal to 5 times the annual rate of the pension otherwise payable under paragraph 3 of this Schedule had the pension credit member reached normal benefit age on the date when commutation in accordance with this paragraph is applied for; and
- (b) where paragraph 3(1)(b) applies, a lump sum equal to 3 times the annual rate of the pension referred to in sub-paragraph (2)(a) above.

(a) S.I. 2000/1053. Regulation 6 was substituted by S.I. 2000/2691.

(b) Regulation F5 was amended by S.I. 2000/605.

(c) S.I. 2000/1054, as amended by S.I. 2000/2691.

Commutation of the whole of pension credit benefit at normal benefit age

5.—(1) Where—

- (a) the pension credit member is suffering from serious ill health at normal benefit age; or
- (b) the total benefits payable to the pension credit member, including any pension credit benefit, does not exceed £260 per annum at normal benefit age,

the Secretary of State may discharge his liability in respect of the payment of pension credit benefit by the payment of a lump sum to the pension credit member at normal benefit age.

(2) The pension credit benefit payable in the circumstances described in sub-paragraph (1)(a) shall consist of—

- (a) a lump sum equal to 5 times the annual rate of the pension otherwise payable under paragraph 3 of this Schedule; and
- (b) where paragraph 3(1)(b) applies, a lump sum equal to 3 times the annual rate of the pension.

(3) In this paragraph “serious ill health” means ill health which is such as to give rise to a life expectancy of less than one year from the date on which the payment of the pension credit benefit of the pension credit member is applied for.

Pension credit member dies before pension credit benefit becomes payable

6.—(1) If a pension credit member dies before his pension under the scheme becomes payable under paragraph 3, a lump sum on death shall be payable in accordance with regulation F5 as modified by paragraph 9 below.

(2) The lump sum shall be equal to 3 times the annual rate of the pension credit member’s pension, to which he would have been entitled had he reached normal benefit age on or before the date of death, calculated in accordance with paragraph 3(5).

Pension credit member dies after pension credit benefit becomes payable

7.—(1) If a pension credit member dies within 5 years after his pension under the scheme became payable under paragraph 3 of this Schedule, a lump sum on death shall be payable in accordance with regulation F5 as modified by paragraph 9 below.

(2) Subject to sub-paragraph (3), the lump sum on death shall be equal to 5 times the annual rate of the pension credit member’s pension less the amount of pension already paid.

(3) The maximum payment under this regulation shall not exceed the amount calculated in accordance with sub-paragraph (4), less the amount of any lump sum paid to the pension credit member in accordance with paragraph 3(6).

(4) An amount calculated in accordance with this sub-paragraph is an amount equal to twice the amount on the valuation day of the final year’s pensionable pay of the member from whose rights the pension credit is derived.

Excluded membership

8. Where a pension credit member is also a member of the scheme, any period which may count for any purpose in connection with his pension credit benefit shall not be taken into account for the purpose of ascertaining his entitlement to, or, as the case may be, the calculation of, benefits other than pension credit benefits under the scheme.

Payment of lump sum on death

9. Regulation F5 (payment of lump sum) shall apply in respect of a person entitled to a pension credit or a pension credit member, as the case may be, with the following modifications—

- (a) the reference in that regulation to “any of regulations F1 to F4” shall be a reference to “paragraph 1, 6 or 7 of Schedule 2A”;
- (b) the reference in paragraph (2) of that regulation to “member’s personal representative” shall be a reference to “personal representative of the person entitled to a pension credit or, as the case may be, the pension credit member”;

- (c) the reference in paragraphs (3), (3A) and (3B) of that regulation to “member” shall be references to “person entitled to a pension credit or, as the case may be, pension credit member”;
- (d) in paragraph (3B) for sub-paragraph (a) substitute the following sub-paragraph—
“(a) shall be given only by a person entitled to a pension credit or, as the case may be, a pension credit member under the scheme;”.

Transfers

10. The Secretary of State shall not pay or accept a transfer value in respect of any pension credit rights or pension credit benefits.

General rules about benefits

11. Regulations T1 (claims for benefits), T2 (deduction of tax), T3 (benefits not assignable) and T4 (beneficiary who is incapable) of these Regulations shall apply to a pension credit member.

Offset for crime, negligence or fraud

12. Regulation T5 (offset for crime, negligence or fraud) shall apply to a pension credit member with the following modifications wherever the words to be modified appear—

- (a) the reference to “member’s” or “member” shall be a reference to “pension credit member’s” or “pension credit member”, as the case may be; and
- (b) the reference to “(other than guaranteed minimum pensions and benefits arising out of a transfer payment)” shall be a reference to “(other than safeguarded rights which are derived from rights to a guaranteed minimum pension)”.

Loss of rights to benefits

13. Regulation T6 (loss of rights to benefits) shall apply to a pension credit member with the following modifications wherever the words to be modified appear—

- (a) the reference to “member” shall be a reference to “pension credit member”; and
- (b) the reference in paragraph (2) to “A guaranteed minimum pension” shall be a reference to “Safeguarded rights which are derived from rights to a guaranteed minimum pension”.

Interest on late payment of benefits

14. Regulation T8(a) (interest on late payment of benefits) shall apply in respect of a pension credit member with the following modifications—

- (a) in paragraph (2) of that regulation references to “member” or “member’s” shall be references to “pension credit member”;
- (b) in the definition of “due date”—
 - (i) in sub-paragraph (a) the reference to “a lump sum under Part F above” shall be a reference to “a lump sum under paragraph 1, 6 or 7 of Schedule 2A”;
 - (ii) in sub-paragraph (a) the reference to “the member’s death” shall be a reference to “the death of the person entitled to the pension credit or the pension credit member”;
 - (iii) sub-paragraphs (b), (c) and (d) shall be omitted;
 - (iv) in sub-paragraph (e) the reference to “of the member’s retirement from pensionable employment” shall be a reference to “when the pension credit member becomes entitled to the payment of pension credit benefit”;
- (c) in the definition of “qualifying payment” the reference to “, or by way of a refund of contributions,” shall be omitted.

(a) Regulation T8 was inserted by S.I. 2000/605.

Administrative matters

15. Regulation U2 (determination of questions) shall apply to a person who is entitled to a pension credit or, as the case may be, a pension credit member.”.

SCHEDULE 2

Regulation 4

AMENDMENT OF THE AVC REGULATIONS AND THEIR APPLICATION TO PENSION SHARING ON DIVORCE

Application of the AVC Regulations to a person entitled to a pension credit or a pension credit member

1. Except as provided for in this Schedule the AVC Regulations shall not apply to a person entitled to a pension credit or to a pension credit member.

Amendment of regulation 2

2. In regulation 2 (interpretation)—

(a) there shall be inserted in the appropriate places in alphabetical order the following definitions—

“the 1993 Act” means the Pension Schemes Act 1993;

“the 1999 Act” means the Welfare Reform and Pensions Act 1999;

“the AVC scheme” means the scheme whose rules are set out in these Regulations;

“appropriate rights” means rights which are described in paragraph 5 of Schedule 5 to the 1999 Act (pension credits: mode of discharge—appropriate rights);

“eligible member” has the meaning given by section 101P(1) of the 1993 Act^(a);

“NHS Pension Scheme” means the National Health Service Pension Scheme for England and Wales, the rules of which are set out in the Pension Scheme Regulations;

“normal benefit age”, in relation to the AVC scheme, means the age of 60;

“pension credit” means a credit under section 29(1)(b) of the 1999 Act and includes a credit under corresponding Northern Ireland legislation;

“pension credit benefit” has the meaning given by section 101B of the 1993 Act;

“pension credit member” has the meaning given by section 124(1) of the Pensions Act 1995;

“pension credit rights” has the meaning given by section 101B of the 1993 Act;”;

and

(b) the definition of “the Schedule” shall be omitted.

Amendment of regulation 13

3. In regulation 13(1) and (2) (benefit limits) for “the Schedule” in each place where those words appear there shall be substituted “Schedule 1” and accordingly the Schedule to these Regulations shall become Schedule 1 to these Regulations.

Amendment of regulation 15

4. In regulation 15 (payments by the Secretary of State)—

(a) in paragraph (2) after “participator” there shall be inserted “or a person entitled to a pension credit”;

(b) in paragraph (3)—

(i) after “regulation 11(7) or 12” there shall be inserted “or paragraph 3(2), 8 or 9 of Schedule 2”; and

^(a) Section 101P is inserted by section 37 of the Welfare Reform and Pensions Act 1999.

- (ii) after “regulation F5(3) of the Pension Scheme Regulations (payment of lump sum)” there shall be inserted “or, as the case may be, paragraph 11 of Schedule 2 to these Regulations”.
- (c) in paragraphs (5), (6) and (7) for “the Schedule” in each place where those words appear there shall be substituted “Schedule 1”.

Insertion of new regulation in Part IV

5. In Part IV (miscellaneous provisions), after regulation 17 there shall be inserted the following regulation—

“Pension sharing on divorce or nullity of marriage

17A.—Schedule 2 shall have effect in relation to—

- (a) pension credit rights; and
- (b) pension credit benefit payable,
under the AVC scheme.”.

Insertion of new Schedule

6. After Schedule 1 there shall be inserted the following Schedule—

“SCHEDULE 2

Regulation 17A

PENSION SHARING ON DIVORCE OR NULLITY OF MARRIAGE

Discharge of liability in respect of a pension credit

1.—(1) Where the Secretary of State discharges his liability in respect of a pension credit in accordance with sub-paragraph (2) of paragraph 1 of Schedule 5 to the 1999 Act (pension credits: mode of discharge: funded pension schemes—internal transfers) the appropriate rights shall be invested under paragraph 2 below to provide for the purchase from an insurance company of an annuity which complies with the requirements of sub-paragraph (5) below.

(2) Where sub-paragraph (1) applies, the person entitled to the pension credit may elect, by giving written notice to the Secretary of State, the authorised fund or funds in which the appropriate rights are to be invested.

(3) The Secretary of State shall notify in writing the person who has made an election under sub-paragraph (2) of the Secretary of State’s acceptance of that election.

(4) Where an election has been made under sub-paragraph (2) it shall not be varied or cancelled after liability in respect of the pension credit has been discharged by the Secretary of State.

(5) An annuity complies with the requirements of this sub-paragraph if—

- (a) it provides a pension which commences not earlier than normal benefit age and is payable to the pension credit member for life;
- (b) any dependant’s pension which is payable under it is payable only on the death of the pension credit member after he has reached normal benefit age and is payable to the dependant for life, except that in the case of a dependant who is a child to whom Part H of the Pension Scheme Regulations (child allowance) would apply if the pension credit member were a member of the NHS Pension Scheme, it shall cease to be payable when that person ceases to be a dependent child within the meaning of those Regulations; and
- (c) it is not capable in whole or in part of surrender, assignment or commutation.

Investment of appropriate rights

2. Any appropriate rights invested under this paragraph shall be invested by the Secretary of State as soon as is reasonably practicable in accordance with any notice given under sub-paragraph (2) of paragraph 1.

Discharge of liability in respect of a pension credit following the death of the person entitled to the pension credit

3.—(1) The Secretary of State shall, following the death of the person entitled to a pension credit before liability in respect of that credit has been discharged, discharge his liability in respect of that credit by making a payment of a lump sum in accordance with paragraph (2)(a)(i) of regulation 6 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000.

(2) The lump sum payable under this paragraph shall be paid in accordance with regulation 15(3) (payments by the Secretary of State) of these Regulations.

Pension credit benefit

4.—(1) The pension credit benefit to which a pension credit member shall be entitled under the AVC scheme shall consist of a pension.

(2) A pension credit member shall be entitled to the payment of the pension credit benefit when he reaches normal benefit age.

(3) A pension payable in accordance with this paragraph shall be payable to the pension credit member for life.

(4) The value of the pension referred to in this paragraph shall be equal to the value of the pension credit rights which have accrued to or in respect of the pension credit member.

(5) Not earlier than 3 months before the date he reaches normal benefit age, a pension credit member, by giving notice to the Secretary of State, shall make a benefits election which shall specify—

- (a) whether only a pension payable for life is to be provided;
- (b) for whom, if anyone, a dependant's pension is to be provided;
- (c) if more than one such pension is to be provided, either—
 - (i) the proportion of the amount secured by the total investments made under paragraph 2 that is to be applied to the purchase of each of them; or
 - (ii) the dependants' pensions to be provided expressed as a percentage of the pension for life;
- (d) in respect of each pension to be provided, whether the annual rate of the pension—
 - (i) is to be fixed; or
 - (ii) is to vary in accordance with the Index; or
 - (iii) is to increase yearly by a specified percentage or, if lower than that percentage, by the increase in the Index for the year in question; and
- (e) the authorised provider who is to provide each pension.

(6) For the purposes of this Schedule the authorised provider must meet the requirements referred to in regulations 12 to 14 of the Pension Sharing (Pension Credit Benefit) Regulations 2000.

(7) Upon receipt of a notice of election under sub-paragraph (5) the Secretary of State shall, as soon as reasonably practicable, realise the investments made under paragraph 2 and apply the proceeds to the purchase of an annuity from the authorised provider specified in the notice of election.

(8) Notwithstanding that benefits under Part E or regulation L1 of the Pension Scheme Regulations (benefits for members or preserved pension) may be payable to a pension credit member by virtue of him being a member of the NHS Pension Scheme, where a pension credit member has reached normal benefit age on or after 1st May 2001 and has—

- (a) reached the age of 75; and
- (b) failed to give a notice of election under sub-paragraph (5) on or before the date of his 75th birthday,

the Secretary of State may realise the investments made under paragraph 2 and apply the proceeds to the purchase of a pension policy which satisfies the requirements of regulations 12 to 14 of the Pension Sharing (Pension Credit Benefit) Regulations 2000 from an insurance company in order to provide such benefits as appear to him to be suitable.

Outward transfers

5.—(1) The Secretary of State shall, upon receipt of a notice in writing under section 101F(1) of the 1993 Act^(a) (power to give transfer notice) from an eligible member, pay a transfer value in accordance with the provisions of Chapter II of Part IVA of the 1993 Act^(b) (requirements relating to pension credit benefit: transfer values) and Part III of the Pension Sharing (Pension Credit Benefit) Regulations 2000 (provision of benefits).

(2) The transfer value referred to in sub-paragraph (1) shall represent the value of the appropriate rights invested under paragraph 2 calculated in accordance with regulation 24 of the Pension Sharing (Pension Credit Benefit) Regulations 2000^(c) (manner of calculation and verification of cash equivalents).

Commutation of the whole of pension credit benefit before normal benefit age

6.—(1) A pension credit member shall be entitled to the commutation of the whole of his pension credit benefit before having reached normal benefit age in the circumstances described in regulation 3(2) of the Pension Sharing (Pension Credit Benefit) Regulations 2000 (commutation of pension credit benefit).

(2) In the case of a pension credit member to whom this paragraph applies, the Secretary of State may realise the investments made under paragraph 2 without purchasing an annuity and the proceeds shall be payable to the pension credit member as a lump sum.

Commutation of the whole of pension credit benefit at normal benefit age

7.—(1) A pension credit member shall be entitled to the commutation of the whole of his pension credit benefit at normal benefit age in the circumstances described in sub-paragraph (2).

(2) The circumstances described in this sub-paragraph are—

- (a) the pension credit member is suffering from serious ill health at normal benefit age; or
- (b) the aggregate of total benefits payable to the pension credit member, including any pension credit benefit, does not exceed £260 per annum at normal benefit age.

(3) In the case of a pension credit member to whom this paragraph applies, the Secretary of State may realise the investments made under paragraph 2 without purchasing an annuity and the proceeds shall be payable to the pension credit member as a lump sum.

(4) In this paragraph “serious ill health” means ill health which is such as to give rise to a life expectancy of less than one year from the date on which the payment of the pension credit benefit of the pension credit member is applied for.

Pension credit member dies before pension credit benefit becomes payable

8. If a pension credit member dies before his pension under the AVC scheme becomes payable under paragraph 4 of this Schedule, the Secretary of State may realise the investments made under paragraph 2 without purchasing an annuity and the proceeds shall be payable as a lump sum in accordance with regulation 15(3) of these Regulations.

Pension credit member dies after pension credit benefit becomes payable

9. If a pension credit member dies within the period of 5 years beginning with the date upon which payments of pension credit benefit under paragraph 4 of this Schedule commence, the balance that would have been payable during the remainder of that period, if the payments of pension credit benefit had continued at the rate in force at the time of the pension credit member’s death, shall be payable as a lump sum in accordance with regulation 15(3) of these Regulations.

(a) Section 101F is inserted by section 37 of the Welfare Reform and Pensions Act 1999.

(b) Part IVA is inserted by Section 37 of the Welfare Reform and Pensions Act 1999.

(c) Regulation 24 is amended by S.I. 2000/2691.

Excluded membership

10. Where a pension credit member is also a participator in the AVC scheme, any period which may count for any purpose in connection with his pension credit benefit shall not be taken into account for the purpose of ascertaining his entitlement to, or as the case may be, the calculation of, benefits other than pension credit benefits under the AVC scheme.

Payment of lump sum on death

11.—(1) Where a lump sum is payable under any of paragraphs 3, 8 or 9 of this Schedule, unless sub-paragraph (2) or (3) below applies, the lump sum shall be paid to the personal representative of the person entitled to a pension credit or, as the case may be, the pension credit member.

(2) Where the person entitled to a pension credit or, as the case may be, the pension credit member dies and leaves a widow or widower, the lump sum may be paid to the widow or widower, unless—

(a) the person entitled to a pension credit or, as the case may be, the pension credit member has given notice to the Secretary of State in accordance with sub-paragraph (4) below that the widow or widower is not to receive the payment, and has not revoked that notice; or

(b) sub-paragraph (3) below applies.

(3) Where the person entitled to a pension credit or, as the case may be, the pension credit member has given notice to the Secretary of State in accordance with sub-paragraphs (4) and (5) below that the lump sum is to be paid to a person specified in the notice, and has not revoked that notice, the lump sum may be paid to that person unless—

(a) that person has died before the payment can be made; or

(b) payment to that person is not, in the opinion of the Secretary of State, reasonably practicable.

(4) Notice to the Secretary of State for the purpose of sub-paragraph (2) or (3) above—

(a) shall be given only by a person entitled to a pension credit or, as the case may be, a pension credit member under the AVC scheme;

(b) shall be given in writing; and

(c) may at any time be revoked in writing,

and a person entitled to a pension credit or, as the case may be, a pension credit member who revokes such a notice may give further notice for the purpose of one of those sub-paragraphs.

(5) A notice given for the purpose of sub-paragraph (3) above shall specify one person, who may be—

(a) an individual;

(b) a body corporate; or

(c) an unincorporated body.

Miscellaneous provisions

12. Regulations 17 (payments in respect of deceased persons), 18 (benefits not assignable on bankruptcy) and 21 (determination of questions) of these Regulations shall apply in respect of a person entitled to a pension credit or, as the case may be, a pension credit member.

Offset for crime, negligence or fraud

13.—(1) Where, on or after the date on which this Schedule comes into force—

(a) the circumstances set out in regulation T5 of the Pension Scheme Regulations (offset for crime, negligence or fraud) have occurred in respect of a pension credit member who is also a member of the NHS Pension Scheme; and

(b) there has been a loss to public funds,

the Secretary of State may, in relation to pension credit benefit which arises by virtue of pension credit rights which are derived from any employer's contributions paid on or after the date on which the AVC Regulations came into force in respect of the relevant participator, reduce the amount of any pension credit benefit payable to or in respect of a pension credit member under this Schedule, to the extent set out, and subject to the conditions specified, in that regulation.

(2) In this paragraph and in paragraph 14 "relevant participator" means the participator in relation to whose rights under the AVC scheme the pension sharing order or provision, which gave the pension credit member in question entitlement to a pension credit, was made.

Loss of rights to benefits

14.—(1) Where—

- (a) a pension credit member is convicted of an offence referred to in paragraph (1) of regulation T6 of the Pension Scheme Regulations (loss of rights to benefits), which was committed on or after the date on which this Schedule comes into force; and
- (b) the circumstances are such that a direction may be made by the Secretary of State under regulation T6 of those Regulations,

the Secretary of State may direct that all or part of any rights to pension credit benefit under this Schedule which arise by virtue of pension credit rights which are derived from any employer's contributions paid on or after the date on which the AVC Regulations came into force in respect of the relevant participator, are to be forfeited.

(2) "Relevant participator" has the meaning given to that expression in paragraph 13(2) of this Schedule."

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the National Health Service Pension Scheme Regulations 1995 (“the Pension Scheme Regulations”) which provide for the superannuation of persons engaged in the National Health Service, and amend the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000 (“the AVC Regulations”) which make provision for the payment of additional voluntary contributions by persons who are members of the NHS Pension Scheme, or by their employers, in order to secure additional pension benefits.

The amendments make provision in relation to rights resulting in the payment of pension credit benefit to or in respect of those entitled to pension credits as a result of the sharing of pensions following divorce or nullity of marriage.

Regulations 1 and 2 provide for citation, commencement and interpretation.

Regulation 3 and Schedule 1 amend the Pension Scheme Regulations. Paragraph 1 of Schedule 1 inserts new definitions into regulation A2 of the Pension Scheme Regulations.

Paragraph 2 of Schedule 1 inserts a new regulation R12 into the Pension Scheme Regulations which gives effect to a new Schedule 2A (inserted by paragraph 3 of Schedule 1).

The new Schedule 2A makes provision for the discharge of liability if the person entitled to the pension credit dies before liability has been discharged, the identification of safeguarded rights, the commutation of pension credit benefit before or at normal benefit age (age 60), the payment of pension credit benefit at normal benefit age, after the death of the pension credit member before the pension credit benefit becomes payable and after it becomes payable.

Paragraph 10 of Schedule 2A provides that transfers in or out of the NHS Pension Scheme in respect of pension credit rights or pension credit benefit shall not be allowed.

Schedule 2A also provides that any period of time which may be taken into account in relation to the pension credit benefit shall not count for any other purpose under the Pension Scheme Regulations.

Regulations F5 (payment of lump sum), T5 (offset for crime, negligence and fraud), T6 (loss of rights to benefits) and T8 (interest on late payment of benefits) are modified in their application to pension credit members.

Regulation 4 and Schedule 2 amend the AVC Regulations. Regulations 2, 13 and 15 of the AVC Regulations are amended (paragraphs 2 to 4 of Schedule 2). A new regulation 17A is inserted into the AVC Regulations which gives effect to a new Schedule 2 (paragraphs 5 and 6 of Schedule 2 to these Regulations).

The new Schedule 2 to the AVC Regulations makes provision for the discharge of liability in respect of a pension credit by the Secretary of State, the discharge of liability if the person entitled to the pension credit dies before liability has been discharged, the commutation of pension credit benefit before or at normal benefit age (age 60), the payment of pension credit benefit at normal benefit age, and after the death of the pension credit member before the pension credit benefit becomes payable and after it becomes payable.

Provision is also made for the investment of pension credit rights in a way which is similar to the investment of additional voluntary contributions under regulation 7 of the AVC Regulations. The transfer of pension credit rights out of the AVC scheme is also provided for.

Paragraph 11 of the new Schedule 2 enables a person entitled to a pension credit or a pension credit member to nominate someone other than a surviving spouse to receive the lump sum payable upon his death.

Paragraphs 13 and 14 of the new Schedule 2 to the AVC Regulations contain provisions regarding the reduction and forfeiture of rights to pension credit benefit to the extent that those rights are originally derived from contributions made by the employer of the pension credit member’s former spouse and against whom the pension sharing order or provision was made. The provisions are similar to regulations 19 and 20 of the AVC Regulations.

These Regulations do not impose any costs on business.

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**NATIONAL HEALTH SERVICE, ENGLAND AND
WALES**

**The National Health Service (Pension Scheme and
Additional Voluntary Contributions) (Pension Sharing)
Amendment Regulations 2001**

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