
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 Pension Scheme Regulations”), the National Health Service (Injury Benefits) Regulations 1995 (S.I.1995/866) (“the Injury Benefits Regulations”) and the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000 (S.I.2000/619) (“the AVC Regulations”).

Regulation 1(2)(c) provides that regulation 21(4) (which deals with “pensionable earnings” for medical practitioners and non-GP providers) shall have effect as from 1st April 2004.

Regulations 2 to 22 amend the Pension Scheme Regulations.

Regulation 2 amends regulation A2 (definitions) by inserting various definitions relating to the types of dental services provided, and the persons or bodies who provide them. It also inserts definitions which are needed to give effect to the provisions of the Finance Act 2004 (c. 12).

Regulation 3 amends regulation B2 (restrictions on membership) by substituting existing references to dental pilot scheme employees with a reference to employees of new contractors.

Regulation 4 amends regulation B5 (opting into the scheme: mis-sold pensions) by amending the definition of “personal pension scheme” to take account of the change in status of such schemes to “registered schemes” for the purposes of the Finance Act 2004.

Regulation 5 amends regulation E2 (early retirement pension (ill-health)) so that any lump sum payment is consistent with the Pension Schemes Act 1993 (c. 48) provisions relating to contracting-out and preservation of benefits and the new lump sum rule from the Finance Act 2004. It also amends that regulation so as to provide for the calculation of such a lump sum.

Regulation 6 amends regulation E3 (early retirement pension (redundancy etc.)) so as to refer to those who are to have the normal minimum pension age of 55 or, where provided for under the Finance Act 2004, a lower protected pension age. It also amends that regulation to remove references to dental pilot schemes and services.

Regulation 7 amends regulation E4 (early retirement pension (employers consent)) in the same way as regulation 6 amends regulation E3. Regulation 8 makes the same amendment (as regards minimum pension age) in respect of regulation E5 (early retirement pension (with actuarial reduction)).

Regulation 9 amends regulation E6 (lump sum on retirement) so as to provide that where a member of the scheme has attained the age of 75, he shall no longer be entitled to a lump sum but shall instead have his pension increased in lieu of that lump sum.

Regulation 10 amends regulation F2 (member dies after pension becomes payable) so as to provide that a member may notify the scheme administrator that he wants a lump sum payable under the regulation to be treated as a pension protection lump sum death benefit in accordance with the provisions of the Finance Act 2004.

Regulation 11 amends regulation H1 (dependent child) so that it refers to a child aged 17 or over but who has not reached the age of 23. It also makes transitional provision for children who may become entitled to a child allowance before 6th April 2006 or whose dependency is to be assessed in relation to a person who became entitled to a pension on or before that date.

Regulation 12 amends regulation J1 (allocation of pension) so as to provide that a member who wishes to allocate part of his pension to another person must do so before the date on which that pension becomes payable to him.

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Regulation 13 amends regulation L1 (preserved pension) so as to refer to a normal minimum pension age or, where the Finance Act 2004 provides, a protected pension age.

Regulation 14 amends regulation L2 (refund of contributions) so as to provide that a member who becomes entitled to a refund of his contributions shall receive a lump sum less tax at 20 per cent on such part of that sum which does not exceed £10,800 and at 40 per cent on such part of that sum which exceeds that limit.

Regulation 15 amends regulation N1 (member's right to transfer accrued rights to benefits to the scheme) so as to provide that a member may, within 12 months of joining the scheme, request the Secretary of State to accept a transfer payment in respect of his rights under certain other schemes except rights under a free-standing AVC scheme which was established on, or after, 6th April 2006 or which existed prior to that date and became a free-standing AVC scheme for the purposes of the Finance Act 2004 on that date.

Regulation 16 amends regulation R1 (practitioners and trainee practitioners) so as to replace references to a Health Authority with references to a Local Health Board.

Regulation 17 omits regulation R11 (participators in pilot schemes) following the abolition of dental pilot schemes.

Regulation 18 inserts a new regulation (regulation T2A (deduction of tax: further provisions)) after regulation T2. New regulation T2A provides, amongst other things, for any lifetime charge under the Finance Act 2004 to be paid by the scheme administrator (who is to be the NHS Business Services Authority), for a person entitled to a benefit under the Regulations to be able to waive part of it and for such a person to notify the scheme administrator of certain matters if he wishes to rely on protections provided for under the Finance Act 2004 (i.e. enhanced lifetime allowance protection).

Regulation 19 amends regulation T7 (commutation of trivial pensions) so as to provide that any commutation must be consistent not only with the contracting-out and preservation requirements of the Pension Schemes Act 1993 but also the lump sum and lump sum death benefit rules provided for in the Finance Act 2004.

Regulation 20 amends regulation U3 (accounts and actuarial reports) to provide for the change in terminology from "principal practitioners" to "type 1 medical practitioners".

Regulation 21 amends Schedule 2 (medical and dental practitioners) to give effect to changes required by the introduction of the General Dental Contract, omitting or amending existing definitions, or introducing new definitions, as required. It also makes changes to the manner in which practitioner income and pensionable income are calculated for dentists, and applies a pensionable earnings ceiling. Paragraph (7) introduces a new paragraph 5A to the Schedule under which dental practitioners are required to notify their employing authority by a specified date each year of the proportion of total pensionable earnings under the dental contract that is to be allocated to each practitioner. In default of such a notice, each practitioner is taken to have an equal proportion of the total pensionable earnings for the year. Paragraph (9) preserves the existing treatment of assistant practitioners for type 1 practitioners who are employed by a contractor but who are neither directors nor partners of the contractor.

Regulation 22 amends Schedule 2A (pension sharing on divorce or nullity of marriage or, on the dissolution or nullity of a civil partnership) so as to provide that any pension credit benefit which is to be commuted has to satisfy the requirements of the Finance Act 2004 in respect of trivial commutation of lump sums.

Regulations 23 to 25 amend the Injury Benefits Regulations.

Regulation 23 amends regulation 2 (interpretation) to give effect to changes required by the introduction of the General Dental Contract, omitting or amending existing definitions, or introducing new definitions, as required. Sub-paragraph (d) preserves the right of a person to claim an injury benefit in respect of an injury or disease he has already suffered notwithstanding the subsequent omission of his employer from the definition of "employing authority" in the regulations.

Regulation 24 amends regulation 3 (persons to whom the regulations apply) to omit references to dental pilot schemes.

Regulation 25 amends regulation 4A (recovery of costs) to omit references to dental pilot schemes and to provide that the Local Health Board or Primary Care Trust is responsible for the costs of providing injury benefits to practitioners.

Regulations 26 to 40 amend the AVC Regulations.

Regulation 26 amends regulation 2 (interpretation) by inserting certain definitions to give effect to the provisions of the Finance Act 2004 (e.g. “lifetime allowance”).

Regulation 27 amends regulation 3 (making and acceptance of elections) so as to provide that an AVC scheme may provide either for an annuity or for both a pension commencement lump sum and an annuity on retirement.

Regulation 28 amends regulation 4 (payment and amount of additional voluntary contributions) so as to enable a person to make contributions to an AVC scheme which do not exceed 100 per cent of his salary (subject to certain exceptions).

Regulation 29 amends regulation 6 (circumstances when elections cease to have effect) so as to refer to the correct sections of the Finance Act 2004.

Regulation 30 amends regulation 8 (inward transfers) so as to provide that a person who has paid contributions to a registered AVC scheme for the purposes of the Finance Act 2004 can give notice to the Secretary of State saying that he wishes the Secretary of State to accept a transfer from that scheme.

Regulation 31 amends regulation 10 (outward transfers) so that it correctly refers to the Finance Act 2004.

Regulation 32 amends regulation 11 (retirement and dependants pensions) so as to reflect the fact that investments made under a scheme may be realised so as to provide not just an annuity but also a pension commencement lump sum and an annuity on retirement.

Regulation 33 amends regulation 12 (lump sums on death) so as to provide that a lump sum payable on death cannot exceed the limits set down in the Finance Act 2004.

Regulation 34 amends regulation 13 (benefit limits) to make it clear that any benefits paid under the Regulations are limited by reference to the person’s lifetime allowance under the Finance Act 2004.

Regulation 35 amends regulation 14 (repayment of investments in certain cases) to correctly refer to the provisions of the Finance Act 2004.

Regulation 36 amends regulation 15 (payments by the Secretary of State) to reflect the fact that AVC investments may be realised and used to purchase either an annuity or a pension commencement lump sum or lump sum death benefit.

Regulation 37 amends regulation 16 (information) to impose an obligation on a person who wishes to take advantage of an entitlement to an enhanced lifetime allowance in accordance with the Finance Act 2004 to provide the AVC provider with certain information.

Regulation 38 inserts a new regulation (regulation 22: tax) making it clear that benefits payable under the Regulations are paid net of tax due under the Finance Act 2004.

Regulation 39 amends Schedule 1 (benefit limits) to reflect the fact that the benefit limits are now subject to the Finance Act 2004 (see new regulation 22).

Regulation 40 amends Schedule 2 (pension sharing on divorce or nullity of marriage or, on dissolution or nullity of civil partnership) to reflect the fact that an AVC investment may be realised so as to provide a pension commencement lump sum, and to allow for a percentage of the proceeds of any investment specified in a notice of election to be used in that manner.

A regulatory impact assessment has not been produced for this Instrument as it has no additional impact on business, charities, voluntary bodies or any public bodies distinct from that of the Finance

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Act 2004 itself. A regulatory impact assessment in respect of the provisions of Part 4 of the Finance Act 2004 and subordinate legislation under it was published by the Board of Inland Revenue on 8 April 2004, and is available on the website of Her Majesty's Revenue and Customs at <http://www.hmrc.gov.uk/ria/simplifying-pensions.pdf> or (for hard copies) by writing to the Ministerial Correspondence Unit, Capital and Savings 1st Floor Ferrers House, PO Box 38, Castle Meadow Road, Nottingham, NG2 1BB.