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STATUTORY INSTRUMENTS

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**2008 No. 2263**

**NATIONAL HEALTH SERVICE,  
ENGLAND AND WALES**

**The National Health Service Pension Scheme and  
Injury Benefits (Amendment) Regulations 2008**

*Made - - - - 22nd August 2008*

*Laid before Parliament 3rd September 2008*

*Coming into force in accordance with regulation 1(2)*

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 10(1) and (2), 12(1), (2) and (4) of, and Schedule 3 to, the Superannuation Act 1972<sup>(1)</sup>, with the consent of the Treasury<sup>(2)</sup>.

In accordance with section 10(4) of that Act, the Secretary of State has consulted with representatives of persons likely to be affected by these Regulations, as appeared to the Secretary of State to be appropriate.

**Citation, commencement and effect**

1.—(1) These Regulations may be cited as the National Health Service Pension Scheme and Injury Benefits (Amendment) Regulations 2008.

(2) These Regulations shall come into force on 1st October 2008.

(3) Save as provided in paragraphs (4) to (7), these Regulations shall have effect from 1st October 2008.

(4) Regulation 3(h) and (j) shall have effect from 1st April 2004.

(5) The following regulations shall have effect from 14th December 2007—

(a) regulation 3(b);

(b) regulation 6.

(6) The following regulations shall have effect from 1st April 2008—

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(1) 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). Section 12(2) was amended by section 10(1) of the Pensions (Miscellaneous Provisions) Act 1990.

(2) 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).

- (a) regulation 19;
  - (b) regulation 22(8)(b);
  - (c) regulation 25(2)(a);
  - (d) regulation 28(b);
  - (e) regulation 29(d);
  - (f) regulation 33(b);
  - (g) regulation 35;
  - (h) regulation 36;
  - (i) regulation 41(d);
  - (j) regulation 47;
  - (k) regulation 48;
  - (l) regulation 52(a)(i);
  - (m) regulation 54(2)(a), (h) and (j);
  - (n) regulation 57(b);
  - (o) regulation 59(b);
  - (p) regulation 62;
  - (q) regulation 67;
  - (r) regulation 68;
  - (s) regulation 73(d);
  - (t) regulation 76(b) and (c);
  - (u) regulation 82(a)(i); and
  - (v) regulation 88.
- (7) The following regulations shall have effect from 1st August 2008—
- (a) regulation 3(d), (e) and (i); and
  - (b) regulation 54(2)(d), (e) and (i).

## PART 1

### Amendment of the National Health Service Pension Scheme Regulations 1995

#### Interpretation of Part 1

2. In this Part an alphanumerical reference to a regulation or a reference to a Schedule is a reference to a provision of the National Health Service Pension Scheme Regulations 1995(3) bearing that designation.

#### Amendment of regulation A2

3. In regulation A2 (interpretation)—
- (a) at the appropriate place in the alphabetical order, insert—

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(3) S.I. 1995/300, amended by S.I. 1997/80 and 1888, 1998/666 and 2216, 2000/605, 2001/1428 and 3649, 2002/561 and 2469, 2003/631 and 2322, 2004/665 and 696, 2005/661 and 3074, 2006/600 and 2919, 2007/2054 and 3280 and 2008/654, and modified by S.I. 1996/971.

“the 2008 scheme” means the provisions of the National Health Service Pension Scheme set out in the National Health Service Pension Scheme Regulations 2008;”

“electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(4);”;

(b) in the definition of “APMS contract” and “APMS contractor”, for “80(2)(b)” substitute “83(2)(b)”;

(c) in the definition of “employing authority”, omit paragraph (f);

(d) after the definition of “GDS contract” insert—

“general ophthalmic services” means—

(a) as regards England, mandatory services and additional services as defined in regulation 2(1) of the General Ophthalmic Services Contracts Regulations 2008(5), and

(b) as regards Wales, general ophthalmic services within the meaning of section 71(10) of the 2006 (Wales) Act;”;

(e) after the definition of “GMS practice” insert—

“GOS contract” means a contract under section 117 of the 2006 Act (general ophthalmic services contracts) for the provision of mandatory services and additional services as defined in regulation 2(1) of the General Ophthalmic Services Contracts Regulations 2008;”;

(f) in the definition of “host Trust or Board”, for paragraph (b) substitute—

“(b) in respect of a registered medical practitioner, means each Primary Care Trust or Local Health Board with whom the practitioner is contracted, or has entered into an agreement, to provide GMS, PMS or APMS and, where appropriate, on whose medical performers list the practitioner’s name appears;”;

(g) in the definition of “OOH services”, for “GMS practice to patients to whom the practice is required by its GMS contract” substitute “GMS practice, PMS practice or an APMS contractor to patients to whom the practice or contractor is required by its contract or agreement”;

(h) after the definition of “OOH services”, insert—

“ophthalmic provider” means a registered medical practitioner who is included in an ophthalmic list kept and published by a Primary Care Trust or Local Health Board pursuant to regulation 6(1) of the National Health Service (General Ophthalmic Services) Regulations 1986(6) (ophthalmic list);”;

(i) for the newly inserted definition of “ophthalmic provider”, substitute—

“ophthalmic provider” means a registered medical practitioner who—

(a) as regards England—

(i) is included in an ophthalmic performers list prepared and published by a Primary Care Trust pursuant to regulation 3(1) of the National Health Service (Performers Lists) Regulations 2004(7) (performers lists); and

(ii) holds a GOS contract; and

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(4) 2000 c.7.  
(5) S.I. 2008/1185.  
(6) S.I.1986/975.  
(7) S.I. 2004/585.

- (b) as regards Wales, is included in an ophthalmic list kept and published by a Local Health Board pursuant to regulation 6(1) of the National Health Service (General Ophthalmic Services) Regulations 1986 (ophthalmic list);”;
- (j) in the definition of “type 1 medical practitioner”, after “means” insert “an ophthalmic provider or”.

#### **Amendment of regulation B2**

- 4.—(1) Regulation B2 (restrictions on membership) shall be amended as follows.
- (2) In paragraph (1), for sub-paragraph (i) substitute—
- “(i) that person is a person who has been a member of the 2008 scheme;
  - (j) that person is a person who—
    - (i) ceased to be in pensionable employment on or before 31st March 2008,
    - (ii) on so ceasing was entitled to a preserved pension in accordance with regulation L1,
    - (iii) returns to NHS employment on or after 1st October 2008 and before returning exercises the member’s right to transfer out all of that person’s benefits in the scheme in accordance with regulation M1,
    - (iv) has had a break in pensionable employment for any one period of five years or more beginning with the day immediately following the cessation of employment referred to in paragraph (i) and ending on the day immediately before the employment referred to in paragraph (iii) commences, and
    - (v) is not in receipt of a pension under regulation E2 or E2A;
  - (k) that person is a person who—
    - (i) is entitled to a preserved pension in accordance with regulation L1,
    - (ii) returns to NHS employment on or after 1st October 2008,
    - (iii) has had a break in pensionable employment for any one period of five years or more beginning with the day immediately following the cessation of the pensionable employment in respect of which that person is entitled to the pension referred to in paragraph (i) and ending on the day immediately before the employment referred to in paragraph (ii) commences, and
    - (iv) is not in receipt of a pension under regulations E2 or E2A.”.
- (3) In paragraph (2)—
- (i) in sub-paragraph (a), for “NHS Pension Scheme 2008” substitute “2008 scheme”;
  - (ii) after sub-paragraph (b) insert—
    - “(c) a reference to regulations L1, L2, M1 and M2 includes the equivalent of those regulations in a health service scheme the provisions of which correspond to the provisions of the NHS Pension Scheme for England and Wales as set out in these Regulations.”.
- (4) For paragraph (3), substitute—
- “(3) The Secretary of State may permit a person who would otherwise not be permitted to join the scheme in accordance with sub-paragraphs (1)(f), (g), (h) or (k) to do so if—
    - (a) that person’s NHS employment was transferred to another employer by virtue of

- (i) a transfer of undertakings or arrangements equivalent to a transfer of undertakings, and
  - (ii) at no time since that transfer (or the last of them if more than one) has the person had a break in pensionable employment for any one period of five years or more, or
- (b) that person's employment is transferred to an employing authority by virtue of—
- (i) a transfer of undertakings, or
  - (ii) arrangements equivalent to a transfer of undertakings,
- (whether or not the transferring employer is in the public sector provided that person's employment was originally transferred out of the public sector); and
- (c) the employment from which the member is transferred—
- (i) qualified the member for benefits under an occupational pension scheme, and
  - (ii) the rules of that scheme (in the opinion of the Secretary of State) entitle the member to receive benefits on retirement upon, or prior to, attaining the age of 60 years. ”.
- (5) In paragraph (4) for “(3)(a)”, substitute “(3)”.
- (6) In paragraph (5) for “(3)(b)(ii)”, substitute “(3)(c)(ii)”.

#### **Amendment of regulation D1**

5. In regulation D1 (contributions by members)—
- (a) in paragraph (2), after “may” insert “, with the consent of the Treasury,”;
  - (b) in paragraph (2Q)(a), for “2007-2008” substitute “2008-2009”.

#### **Amendment of regulation D2**

6. In regulation D2(10)(a)(ii) (contributions by employing authorities), for “22(4)(a)” substitute “22(4)(b)”.

#### **Amendment of regulation E2B**

7. For paragraph (2)(b) of regulation E2B (re-assessment of ill health condition determined under regulation E2A), substitute—

- “(b) the member provides further medical evidence to the Secretary of State relating to the satisfaction of the tier 2 condition at the date of the Secretary of State's consideration and that further medical evidence is provided—
- (i) in the case of a member who does not engage in further NHS employment during the three year period referred to in (a), before the end of that period;
- (ii) in the case of a member who does engage in further NHS employment during the three year period referred to in (a), before the first anniversary of the day on which that employment commences or before the end of that period if sooner, and”.

#### **Amendment of regulation F2**

- 8.—(1) Regulation F2 (member dies after pension becomes payable) is amended as follows.
- (2) In paragraph (1), for “If” substitute “Subject to paragraph (7), if”.

(3) After paragraph (6) insert—

“(7) Where a member referred to in paragraph (1) has attained the age of 75 at the date of the member’s death—

- (a) the lump sum referred to in that paragraph shall cease to be payable, and
- (b) shall instead be converted into an annual pension to be determined and paid in accordance with paragraph (8).

(8) The pension referred to in paragraph (7) shall be—

- (a) determined in accordance with guidance and tables provided by the Scheme Actuary for the purpose of converting the amount of the lump sum into an annual pension;
- (b) paid to the person who would otherwise be entitled to receive the lump sum in accordance with regulation F5; and
- (c) paid to that person from the day after the member’s death until the fifth anniversary of the day the member’s pension under the scheme became payable.

(9) If, in accordance with regulation F5, a member has given notice that more than one person is to receive a share of the lump sum, each such person shall receive the same percentage of the annual pension as was specified for that person in the member’s notice.

(10) If, in accordance with regulation F5, the annual pension is to be paid to the member’s personal representatives they may, as part of the distribution of the member’s estate, give irrevocable notice to the Secretary of State—

(a) specifying—

- (i) one or more individuals, or
- (ii) one incorporated or unincorporated body,

to whom the benefit of the pension under this regulation from the date of receipt of the notice by the Secretary of State is to be assigned, and

(b) where two or more individuals are specified, specifying the percentage of the pension payable to each of them,

and the pension (or, as the case may be, the percentage of it specified in respect of the person) may be paid to the person or body, unless paragraph (11) applies.

(11) This paragraph applies if—

- (a) the person specified in the notice has died before payment can be made,
- (b) payment to the person or body specified in the notice is not, in the opinion of the Secretary of State, reasonably practicable, or
- (c) the person to whom the pension (or a specified percentage of the pension) would otherwise be payable has been convicted of an offence specified in regulation T6(1A) and the Secretary of State has directed, as a consequence of that conviction, that the person’s right to a payment in respect of the member’s death is forfeited.

(12) The prohibition on assignment of benefits in regulation T3 (benefits not assignable) shall not apply to an assignment by personal representatives under this regulation.”

#### **Amendment of regulation H5**

9.—(1) Regulation H5 (member dies with preserved pension) is amended as follows.

(2) In paragraph (2), for “H3(2)” substitute “H3(2A)”.

(3) In paragraphs (4) and (5), omit “or (3)”.

### **Amendment of regulation L1**

10. In regulation L1(14) (preserved pension), insert (at the appropriate place in the alphabetical order)—

““NHS employment” does not include employment with an employing authority in respect of which the member is eligible to join the 2008 scheme;”.

### **Amendment of regulation L2**

11. After regulation L2(2) (refund of contributions), insert—

“(2A) An application in writing referred to in paragraph (2) may be—

- (a) made or given by means of an electronic communication that is approved by the Secretary of State for that purpose;
- (b) given to the Secretary of State by a person other than the member.”.

### **Amendment of regulation M3**

12.—(1) Regulation M3 (amount of member’s cash equivalent) is amended as follows.

(2) In paragraph (1), omit the words “, calculated and verified as required by Chapter IV of Part IV of the 1993 Act”.

(3) After paragraph (1), insert—

“(1A) The Secretary of State shall—

- (a) take advice from the Scheme Actuary before determining the factors to be used in the calculation of the member’s guaranteed cash equivalent, and
- (b) calculate and verify the amount of the guaranteed cash equivalent in accordance with the Occupational Pension Schemes (Transfer Values) Regulations 1996(8).”.

### **Insertion of new regulation M7**

13. After regulation M6 (special terms for transfer out (bulk transfers etc)) insert—

#### **“Member’s right to transfer a preserved pension to the 2008 Scheme**

**M7.**—(1) If a member meets the conditions referred to in paragraph (3), and subject to the following provisions of this regulation, a member may require the Secretary of State to use the cash equivalent of the member’s rights under the scheme referred to in these Regulations to acquire rights in the 2008 scheme.

(2) A member’s right to require the Secretary of State to use the cash equivalent of the member’s rights in the way referred to in paragraph (1) may only be exercised once.

(3) The conditions referred to in paragraph (1) are that the member—

- (a) is entitled to a deferred benefit under regulation L1,
- (b) may not join the scheme in respect of any further NHS employment by virtue of regulation B2(1)(k), and
- (c) becomes an active member of the 2008 scheme before attaining the age of 60.

(4) The Secretary of State shall provide a member to whom this regulation applies with a statement of the amount of the cash equivalent of the member’s benefits accrued in accordance with these Regulations at the guarantee date (“a statement of entitlement”).

- (5) In this regulation “the guarantee date” means any date that—
- (a) falls within the required period,
  - (b) is chosen by the Secretary of State,
  - (c) is specified in the statement of entitlement, and
  - (d) is within the period of 10 days ending with the date on which the member is provided with the statement of entitlement.
- (6) In counting the period of 10 days referred to in paragraph (5)(d), Saturdays, Sundays, Christmas Day, New Year’s Day and Good Friday are excluded.
- (7) In paragraph (5), “the required period” means—
- (a) the period of three months beginning with the date that the Secretary of State receives notification from the member’s employing authority that the member has joined the 2008 scheme; or
  - (b) such longer period beginning with that date (but not exceeding six months) as may be reasonably required if, for reasons beyond the control of the Secretary of State, the requisite information cannot be obtained to calculate the amount of the cash equivalent.
- (8) Subject to paragraphs (9) to (11), the member’s guaranteed cash equivalent shall be equal to the capitalised value of all of the member’s rights to benefits accrued under these Regulations and any associated rights under Part I of the Pensions (Increase) Act 1971.
- (9) The Secretary of State shall—
- (a) take advice from the Scheme Actuary before determining the factors to be used in the calculation of the member’s guaranteed cash equivalent, and
  - (b) calculate and verify the amount of the guaranteed cash equivalent in accordance with the Occupational Pension Schemes (Transfer Values) Regulations 1996.
- (10) Except in the case of a transfer payment accepted under regulation N3A (transfers in respect of members who were mis-sold pensions and who elect to join or re-join the scheme), a member’s cash equivalent will be at least equal to the amount of any transfer payments accepted in respect of the member under regulation N1(4) (which deals with the crediting of additional service upon transfer), plus the amount of the member’s contributions to the scheme.
- (11) Any part of the cash equivalent that relates to service before 29th January 1988 will be calculated as described in the previous Regulations as applicable immediately before that date, if this would be more favourable to the member.
- (12) A member who has received a statement of entitlement in accordance with paragraph (4) may apply to the Secretary of State for the cash equivalent of the member’s rights under the scheme to be used to acquire rights under the 2008 scheme.
- (13) An application under this regulation must be made in respect of each and every portion of the cash equivalent and shall be—
- (a) made in writing on the form provided for this purpose by the Secretary of State;
  - (b) made before the end of the period of three months beginning with the guarantee date;
  - (c) irrevocable.
- (14) On the making of such an application—
- (a) a member becomes entitled to be credited with a period of pensionable service or an equivalent increase to the member’s pensionable earnings in the 2008 scheme in respect of the cash equivalent value of the member’s benefits under the scheme

calculated in accordance with whichever of regulations 2.F.17 or 3.F.17 of the 2008 scheme apply to the member, and

- (b) the member's rights under the scheme are extinguished on the day that the member is credited with a period of pensionable service or pensionable earnings in accordance with regulations 2.F.17 or 3.F.17 (as the case may be) of the 2008 scheme."

#### **Amendment of regulation P2**

**14.** For paragraphs (1) and (2) of regulation P2 (other leave of absence) substitute—

"(1) If, on or after 1st April 2008, a member is on a leave of absence for reasons other than those referred to in regulation P1 the maximum period of such leave that will count as pensionable employment under this paragraph is—

- (a) where the member, for a continuous period of six months commencing with the member's first day of leave of absence, pays to the scheme contributions due from the member in accordance with regulation D1, six months;
- (b) where the member, for a continuous period of less than six months commencing with the member's first day of leave of absence, pays to the scheme contributions due from the member in accordance with regulation D1, the period in respect of which those contributions were paid.

(2) If, having paid contributions for the period referred to in paragraph (1)(a), a member remains on leave of absence for reasons other than those referred to in regulation P1 the maximum period of such leave that will count as pensionable employment under this paragraph is—

- (a) where the member pays to the scheme both contributions due from the member in accordance with regulation D1 and contributions due from the member's employer in accordance with regulation D2 for a continuous period of 18 months commencing immediately after the expiry of the period referred to in paragraph (1)(a), 18 months;
- (b) where the member pays to the scheme both contributions due from the member in accordance with regulation D1 and contributions due from the member's employer in accordance with regulation D2 for a continuous period of less than 18 months commencing immediately after the expiry of the period referred to in paragraph (1)(a), the period in respect of which those contributions were paid."

#### **Amendment of regulation S2**

**15.** For paragraph (2) of regulation S2 (reduction of pension on return to NHS employment), substitute—

"(2) A member to whom this regulation applies must—

- (a) inform the member's employer, and any other person that the Secretary of State may specify, that the member's pension under the scheme has become payable, and
- (b) if requested to do so, provide any information (or authorise any other person to provide information) about the member's pay from NHS employment to the Secretary of State or to any other person the Secretary of State may specify."

#### **Amendment of regulation S4**

16.—(1) Regulation S4 (benefits on death in pensionable employment after pension under regulation E2 becomes payable) is amended as follows.

(2) In paragraph (1A)—

- (i) for “This regulation”, substitute “Subject to the modifications set out in paragraph (1B), this regulation”;
- (ii) in sub-paragraph (b)(iii), after “members)” insert “on or before 1st April 2008”.

(3) After paragraph (1A), insert—

“(1B) The modifications referred to in paragraph (1A) are—

- (a) in paragraph (3A), for “on the date of the member’s death” substitute “on the member’s last day of pensionable employment”;
- (b) in paragraph (7), for “pensionable pay when he died” substitute “final year’s pensionable pay”;
- (c) in paragraph (8), for “the 6 months immediately following the member’s death” substitute “the 3 months immediately following the member’s death or the 6 months immediately following the member’s death if he leaves a dependent child”;
- (d) in paragraph (11), for “the 6 month period” substitute “the 3 month or, as the case may be, the 6 month period”;
- (e) in paragraph (12)—
  - (i) for “rate of pensionable pay when he died” substitute “final year’s pensionable pay”, and
  - (ii) for “at that time” substitute “when he died”.

(1C) Subject to the modifications set out in paragraph (1D), this regulation shall also apply to a member in respect of whom a pension is payable under regulation E2 (early retirement on grounds of ill-health) who—

- (a) returns to pensionable employment after that pension becomes payable, and
- (b) on the day the member dies, the member is—
  - (i) under the age of 75,
  - (ii) in NHS employment,
  - (iii) no longer required to pay contributions pursuant to regulation D1(3) or (4) (contributions by members) on, or after, 2nd April 2008, and
  - (iv) except where regulation R4(6) applies, not in receipt of a pension under any of regulations E1 to E5 in respect of the member’s later service.

(1D) The modifications referred to in paragraph (1C) are—

- (a) in paragraph (3A), for “on the date of the member’s death” substitute “on the member’s last day of pensionable employment”;
- (b) in paragraph (7), for “pensionable pay when he died” substitute “final year’s pensionable pay”;
- (c) in paragraph (12)—
  - (i) for “rate of pensionable pay when he died” substitute “final year’s pensionable pay”, and
  - (ii) for “at that time” substitute “when he died”.

### **Amendment of regulation S4A**

17. In regulation S4A (benefits on death in pensionable employment after pension under regulation E2A becomes payable) after paragraph (1), insert—

“(1A) Subject to the modifications set out in paragraph (1B), this regulation shall also apply to a member in respect of whom a pension is payable under regulation E2A who—

- (a) returns to pensionable employment after that pension becomes payable, and
- (b) on the day the member dies, the member is—
  - (i) under the age of 75,
  - (ii) in NHS employment,
  - (iii) no longer required to pay contributions pursuant to regulation D1(3) or (4) (contributions by members), and
  - (iv) except where regulation R4(6) applies, not in receipt of a pension under any of regulations E1 to E5 in respect of the member’s later service.

(1B) The modifications referred to in paragraph (1A) are—

- (a) in paragraph (6), for “on the date of the member’s death” substitute “on the member’s last day of pensionable employment”;
- (b) in paragraph (10), for “rate of pensionable pay when the member died” substitute “final year’s pensionable pay”;
- (c) in paragraph (15)(a), for “rate of pensionable pay when the member died” substitute “final year’s pensionable pay”;
- (d) in paragraph (15)(b), for “at that time” substitute “when he died”.

### **Amendment of regulation T1**

18. For regulation T1 (claims for benefits), substitute—

#### **“Claims for benefits**

**T1.—**(1) A person claiming to be entitled to benefits under these Regulations (“the claimant”) shall make a claim in writing to the Secretary of State in such form as the Secretary of State may from time to time require.

(2) Pursuant to such a claim, the claimant and the member’s employing authority (including any previous employing authority of the member) shall provide such—

- (a) evidence of entitlement,
- (b) authority or permission as may be necessary for the release by third parties of information in their possession relating to the member or, where relevant, the claimant, and
- (c) other information the Secretary of State considers is relevant to the claim,

as the Secretary of State may from time to time require for the purposes of these Regulations.

(3) A claim referred to in paragraph (1) may be given to the Secretary of State by a person other than the claimant.

(4) The Secretary of State may accept any claim for benefits to which this regulation applies, and any evidence, authority or permission given in connection with that claim, if it is made or given by means of an electronic communication that is approved by the Secretary of State for that purpose.”.

### **Amendment of regulation T6**

- 19.** In regulation T6(1A) (loss of rights to benefits)—
- (a) in sub-paragraph (a), after “widower” insert “, surviving nominated partner”;
  - (b) in sub-paragraph (c)—
    - (i) after “notice” insert “or nomination”;
    - (ii) for “F5(3A)” substitute “F5”.

### **Amendment of regulation T8**

- 20.** In regulation T8(4) (interest on late payment of benefits), in the definition of “due date”—
- (a) after sub-paragraph (a) insert—
    - “(aa) in the case of an amount in respect of a pension under regulation F2 that is payable to—
      - (i) the member’s personal representatives, the date on which probate or letters of administration were produced to the Secretary of State,
      - (ii) any person or body to whom the pension has been assigned by the member’s personal representatives, the date on which the notice under regulation F2(10) was received by the Secretary of State, and
      - (iii) any person or body other than those referred to in (i) and (ii), the day immediately following the day of the member’s death;”;
  - (b) in sub-paragraph (b), after “member’s death” insert “other than a pension payable under regulation F2”.

### **Amendment of regulation U1A**

- 21.**—(1) Regulation U1A (determinations by medical practitioners) is amended as follows.
- (2) Before “The Secretary of State may”, insert “(1)”.
  - (3) In sub-paragraph (b), for “or regulation G11(2)” substitute “, regulation G11(2) or regulation G15(2)(a)”.
  - (4) After sub-paragraph (f), insert—
    - “(g) expected to live for less than one year for the purposes of the lump sum rule referred to in regulations E1(4)(b) and E2A(7)(b).”.
  - (5) After the newly numbered paragraph (1), insert—
    - “(2) In relation to the decisions referred to in paragraph (1), the Secretary of State may require any person referred to in that paragraph to submit to a medical examination by a registered medical practitioner selected by the Secretary of State, and in that event, the Secretary of State shall—
      - (a) also offer the person an opportunity of submitting a report from that person’s own medical adviser as a result of an examination by such an adviser, and
      - (b) take that report into consideration together with the report of the medical practitioner selected by the Secretary of State.”.

### **Amendment of Schedule 2**

- 22.**—(1) Schedule 2 (medical and dental practitioners) is amended as follows.

(2) In paragraph 1 (additional definitions used in this Schedule), omit the definitions of “Local Health Group” and “Primary Care Group”.

(3) In paragraph 2(1) (application of regulations with modifications), after “Primary Care Trust” (twice) insert “or Local Health Board”.

(4) In paragraph 3 (meaning of pensionable earnings)—

(a) in sub-paragraph (2)(a)(vii), after “OOH provider” insert “or other employing authority providing OOH services”;

(b) in sub-paragraph (2)(a)(viii), for “ophthalmic” substitute “ophthalmic”;

(c) for sub-paragraph (2B)(a)(ii) substitute—

“(ii) adoption leave, maternity leave, parental leave or paternity leave payments;”.

(5) In sub-paragraphs (4), (5) and (6) of paragraph 5 (elections relating to calculation of pensionable earnings in medical partnerships), after “Primary Care Trust” insert “or Local Health Board”.

(6) In sub-paragraph (3) of paragraph 8 (limit on pensionable earnings – dental practitioners), after “Primary Care Trust” insert “or Local Health Board”.

(7) In paragraph 9 (officer service treated as practitioner service)—

(a) for sub-paragraph (1), substitute—

“(1) Subject to sub-paragraph (3), if a member does not have more than 10 years’ officer service on first becoming a type 1 practitioner, the member’s officer service before first becoming a type 1 practitioner will be treated as practitioner service.”;

(b) in sub-paragraph (3)—

(i) omit paragraph (aa);

(ii) in paragraph (b), omit “principal practitioner or”;

(c) in sub-paragraph (5), omit “(early retirement pension on grounds of ill-health)”;

(d) in sub-paragraph (5A)—

(i) in paragraph (a), omit “or a principal practitioner; or”;

(ii) omit paragraph (b);

(e) omit sub-paragraph (5AA);

(f) in sub-paragraph (8), omit the words from “(other than a type 1 dental practitioner” to “a Primary Care Trust”;

(g) omit sub-paragraph (12).

(8) In paragraph 10 (contributions to the scheme) —

(a) in sub-paragraphs (2L) and (2U), for “determined in accordance with paragraph (2J)” substitute “as that which applied to the earlier employment”;

(b) in sub-paragraph (3)(a), for “70” substitute “75”;

(c) in sub-paragraph (9), for “Where an” substitute “Where a”.

(9) In sub-paragraph (2) of paragraph 23 (accounts and actuarial reports)—

(a) for “provide the host”, substitute “provide each relevant host”;

(b) for “Inland Revenue” (twice), substitute “Her Majesty’s Revenue and Customs”.

## **Amendment of Schedule 2A**

**23.** In Schedule 2A (pension sharing on divorce or nullity of marriage or on the dissolution or nullity of a civil partnership)—

- (a) after sub-paragraph (4) of paragraph 7 (pension credit member dies after pension credit benefit becomes payable) insert—

“(5) Where a pension credit member referred to in paragraph (1) has attained the age of 75 at the date of the pension credit member’s death—

- (a) the lump sum referred to in that paragraph shall cease to be payable, and
- (b) shall instead be converted into an annual pension to be determined and paid in accordance with paragraph (6).

- (6) The pension referred to in paragraph (5) shall be—

- (a) determined in accordance with guidance and tables provided by the Scheme Actuary for the purpose of converting the amount of the lump sum into an annual pension;
- (b) paid to the person who would otherwise be entitled to receive the lump sum in accordance with regulation F5; and
- (c) paid to that person from the day after the pension credit member’s death until the fifth anniversary of the day the pension credit member’s pension under the scheme became payable.

(7) If, in accordance with regulation F5, a pension credit member has given notice that more than one person is to receive a share of the lump sum, each such person shall receive the same percentage of the annual pension as was specified for that person in the pension credit member’s notice.

(8) If, in accordance with regulation F5, the annual pension is to be paid to the pension credit member’s personal representatives they may, as part of the distribution of the pension credit member’s estate, give irrevocable notice to the Secretary of State—

- (a) specifying—

- (i) one or more individuals, or
- (ii) one incorporated or unincorporated body,

to whom the benefit of the pension under this regulation from the date of receipt of the notice by the Secretary of State is to be assigned, and

- (b) where two or more individuals are specified, specifying the percentage of the pension payable to each of them,

and the pension (or, as the case may be, the percentage of it specified in respect of the person) may be paid to the person or body, unless paragraph (9) applies.

- (9) This paragraph applies if—

- (a) the person specified in the notice has died before payment can be made,
- (b) payment to the person or body specified in the notice is not, in the opinion of the Secretary of State, reasonably practicable, or
- (c) the person to whom the pension (or a specified percentage of the pension) would otherwise be payable has been convicted of an offence specified in regulation T6(1A) and the Secretary of State has directed, as a consequence of that conviction, that the person’s right to a payment in respect of the pension credit member’s death is forfeited.

(10) The prohibition on assignment of benefits in regulation T3 (benefits not assignable) shall not apply to an assignment by personal representatives under this regulation.”;

- (b) after sub-paragraph (b)(ii) of paragraph 14 (interest on late payment of benefits), insert—

“(ia) in sub-paragraph (aa)—

- (aa) the reference to a pension under regulation F2 shall be a reference to a pension under sub-paragraph (5) of paragraph 7 of Schedule 2A;
- (bb) the reference to the member’s personal representatives shall be a reference to the personal representatives of the person entitled to the pension credit or the pension credit member, and
- (cc) 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.”.

## PART 2

### Amendment of the National Health Service Pension Scheme Regulations 2008

#### Interpretation of Part 2

**24.** In this Part an alphanumerical reference to a regulation is a reference to a provision of the National Health Service Pension Scheme Regulations 2008<sup>(9)</sup> bearing that designation.

#### Amendment of regulation 2.A.1

**25.—**(1) Regulation 2.A.1 (interpretation: general) is amended as follows.

(2) In regulation 2.A.1—

- (a) in the definition of “APMS contract” and “APMS contractor”, for “80(2)(b)” substitute “83(2)(b)”;
- (b) before the definition of “corresponding health service scheme” insert—
  - ““corresponding 1995 scheme” means a corresponding health service scheme the provisions of which the Secretary of State has determined correspond to the provisions of the 1995 Regulations;
  - “corresponding 2008 scheme” means a corresponding health service scheme the provisions of which the Secretary of State has determined correspond to the provisions of these Regulations;”;
- (c) for the definition of “corresponding health service scheme” substitute—
  - ““corresponding health service scheme” means—
  - (a) a superannuation scheme provided under regulations made under section 10 of the Superannuation Act 1972<sup>(10)</sup> and having effect in Scotland,
  - (b) a superannuation scheme provided under Article 12 of the Superannuation (Northern Ireland) Order 1972<sup>(11)</sup>,
  - (c) a scheme made under section 2 of the Superannuation Act 1984<sup>(12)</sup> (an Act of Tynwald) applies, and
  - (d) any other occupational pension scheme approved for the purposes of this regulation by the Secretary of State;”;

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<sup>(9)</sup> S.I. 2008/653.

<sup>(10)</sup> 1972 c.11.

<sup>(11)</sup> S.I. 1972/1073.

<sup>(12)</sup> 1984 c.8 (Tynwald).

- (d) for the definition of “host Trust or Board” substitute—
- ““host Trust or Board”, in respect of a person who is a registered medical practitioner or non-GP provider who is—
- (a) a partner in a partnership—
    - (i) that is a GMS practice; or
    - (ii) that has entered into a PMS agreement or is an APMS contractor that has entered into an APMS contract for the provision of primary medical services;
  - (b) a shareholder in a company limited by shares that is a GMS practice, PMS practice or an APMS contractor that has entered into a PMS agreement or APMS contract for the provision of primary medical services;
  - (c) an individual who is a GMS practice, PMS practice or an APMS contractor, means each Primary Care Trust or Local Health Board with which that partnership (in the case of (a)), company (in the case of (b)) or practice or contractor (in the case of (c)) has entered into an agreement or contract referred to in those provisions and (in the case of a registered medical practitioner) the relevant Trust or Board on whose medical performers’ list that practitioner’s name appears, and such a person shall be deemed to be employed by the appropriate Trust or Board for the purposes of this Part;”;
- (e) in the definition of “OOH services”—
- (i) after “GMS practice” insert “, APMS contractor”;
  - (ii) after “to whom the practice” insert “or contractor”; and
  - (iii) after “GMS contract” insert “, APMS contract”.

#### **Amendment of regulation 2.A.2**

- 26.** In regulation 2.A.2 (meaning of “pensionable service”)—
- (a) in paragraph (6), for “2.D.5(8)(a)” substitute “2.D.5(9)(a)”; and
  - (b) after paragraph (7) insert—

**26.**—“(8) Where a member is also a member of the NHS Pension Scheme 1995, any reference in this Part to “45 years” shall be taken to be a reference to a shorter period determined by the formula—

$$SP = 45\text{years} \square ?? LPS$$

where—

SP is the shorter period, measured in years and days, and

LPS is the length of pensionable service (within the meaning of the 1995 Regulations), measured in years and days, giving rise to membership of the NHS Pension Scheme 1995 and, in the case of a member of that Scheme who has become entitled to a pension (including a preserved pension) under that Scheme, including any period that was taken into account for the purpose of determining whether the member was entitled to that pension, or for the purpose of calculating the amount of that pension.”.

#### **Amendment of regulation 2.A.4**

- 27.** In regulation 2.A.4 (pensionable service: breaks in service), for paragraph (3) substitute—

“(3) If a member is on leave of absence but does not fall within paragraph (1)(a) to (e), and contributes to the Scheme under regulation 2.C.1 by contributions made at the same intervals as those made by the member before the absence, the maximum period of such leave that can be counted as pensionable service under this paragraph is—

- (a) where the member contributes for a continuous period of 6 months commencing with the first day of the member’s leave of absence, 6 months, and
- (b) where the member contributes for a continuous period of less than 6 months commencing with the first day of the member’s leave of absence, the period in respect of which the member pays those contributions.

(3A) If, having paid contributions for the period mentioned in paragraph (3)(a) a member remains on a leave of absence that does not fall within paragraph (1)(a) to (e) and contributes to the Scheme both member contributions under regulation 2.C.1 and employer contributions under regulation 2.C.5 by contributions made at the same intervals as those made by the member before the absence, the maximum period of such leave that can be counted as pensionable service under this paragraph is—

- (a) where the member contributes for a continuous period of 18 months commencing immediately after the expiry of the period mentioned in paragraph (3)(a), 18 months, and
- (b) where the member contributes for a continuous period of less than 18 months commencing immediately after the expiry of the period mentioned in paragraph (3)(a), the period in respect of which the member pays those contributions.”.

#### **Amendment of regulation 2.A.5**

**28.** In regulation 2.A.5 (meaning of “qualifying service”)—

- (a) in paragraph (1)(b), after “pension arrangement” insert “(including the NHS Pension Scheme 1995)”;
- (b) after paragraph (1)(e) insert—
  - “(f) in the case of a person—
    - (i) who is eligible to join the Scheme by virtue of regulation 2.B.1(5)(c), and
    - (ii) for whom the interval between leaving the NHS Pension Scheme 1995 and joining the Scheme is less than one month,

a period equal to the period of qualifying service (within the meaning of the 1995 Regulations), measured in years and days, that the member was entitled to count under regulation C3 of the 1995 Regulations when the member left that scheme.”.

#### **Amendment of regulation 2.A.9**

**29.** In regulation 2.A.9 (pensionable pay: breaks in service)—

- (a) in paragraph (2), after “paragraph (3)” insert “in the case of a member who is not a non-GP provider and paragraph (7) in the case of a member who is a non-GP provider”;
- (b) in paragraph (3), before “falling” insert “who is not a non-GP provider”;
- (c) in paragraph (6), for “(up to 6” substitute “or (3A) (up to 24”;
- (d) in paragraph (7), for “2.A.8(9)” substitute “2.A.8(8)”;
- (e) for paragraph (8), substitute—

“(8) If the earnings used to calculate a member’s pensionable pay cease during a period of absence to which this regulation applies—

- (a) a non-GP provider falling within paragraph (1)(a) will, subject to subparagraph (b), be treated as having continued in pensionable employment for a period of 12 months from the date on which the member’s earnings ceased and the member will not be treated as having left pensionable employment until the end of that 12 month period;
- (b) a non-GP provider falling within paragraph (1)(b) to (e) of this regulation who paid contributions on the basis of reduced earnings in accordance with paragraph (4)(b) will, subject to paragraph (9), continue to pay contributions at that rate, except that no refund of contributions or other benefit will be payable until the member actually leaves pensionable employment;
- (c) a member other than a non-GP provider will, subject to paragraph (5), be treated as having left pensionable employment except that no refund of contributions or other benefit will be payable until the member actually leaves pensionable employment.

(8A) For the purposes of paragraph (8)(a)—

- (a) during the 12 month period, the non-GP provider’s pensionable earnings will be calculated as described in paragraph (7)(a) or (b);
- (b) at the end of the 12 month period, when the member is regarded as having left pensionable employment, no refund of contributions or other benefit will be payable until the member actually leaves employment.”;

(f) in paragraph (9), after “paragraph (8)” insert “(b)”;

(g) in paragraph (10), for “non-GP provider” (three times) substitute “member”;

(h) in paragraph (11)—

- (i) for “non-GP provider” (twice) substitute “member”;
- (ii) omit “paragraph (7) of”;
- (iii) for “(7)(a) or (8)” substitute “(8)(c), (8A)(b) or (10)”;

(i) in paragraph (12), for “non-GP provider” (three times) substitute “member”.

### **Amendment of regulation 2.B.1**

**30.** In regulation 2.B.1(5) (eligibility: general)—

(a) after paragraph (d) insert—

“(e) the person—

- (i) ceased to be an active member of the NHS Pension Scheme 1995 on leaving NHS employment,
- (ii) became a deferred member of that Scheme on leaving that employment and has not become a pensioner member of that Scheme between the date of leaving that employment and joining the Scheme, and
- (iii) re-entered NHS employment on or after 1st October 2008 and 5 or more years since last leaving NHS employment, or

(f) the person—

- (i) ceased to be an active member of the NHS Pension Scheme 1995 before 1st April 2008 on leaving NHS employment,
- (ii) became a deferred member of that Scheme on leaving that employment,

- (iii) re-entered NHS employment on or after 1st October 2008 and 5 or more years since last leaving NHS employment, and
- (iv) before the person re-entered such employment—
  - (aa) a transfer payment was made in respect of the person under Part M of that Scheme, or
  - (bb) the person made an application under regulation M2 of that Scheme (exercising a right to transfer or buy-out) from which the person may not withdraw;
- (b) in the full-out words, for “sub-paragraph (d)” substitute “sub-paragraphs (d) to (f)”.

#### **Amendment of regulation 2.B.2**

- 31.** In regulation 2.B.2 (restrictions on eligibility: general)—
- (a) in paragraph (1)(a), for “parital” substitute “partial”;
  - (b) for paragraph (2)(b) substitute—
    - “(b) became a pensioner member of that Scheme on or after that date, or
    - (c) is a deferred member of that Scheme, but is not a deferred member—
      - (i) to whom regulation 2.B.1(5)(e) or (f) applies, and
      - (ii) in respect of whom permission of the Secretary of State to rejoin the NHS Pension Scheme 1995 has not been granted pursuant to regulation B2(3) of that Scheme.”.

#### **Amendment of regulation 2.C.2**

**32.** In regulation 2.C.2(3) (members’ contribution rate), after “may” insert “, with the consent of the Treasury,”.

#### **Amendment of regulation 2.C.5**

- 33.** In regulation 2.C.5 (contributions by employing authorities: general)—
- (a) for paragraph (2), substitute—
    - “(2) In specifying such a rate, the Secretary of State must—
      - (a) obtain the consent of the Treasury, and
      - (b) take account of the advice of the Scheme actuary and the cost of providing for any increase in pensions under the Scheme as a result of orders made under the provisions of the Pensions (Increase) Act 1971(13) and section 59 of the Social Security Pensions Act 1975(14).”;
  - (b) after paragraph (5), insert—
    - “(6) In any particular case the Secretary of State may direct that, for the purposes of this Chapter, “employing authority” includes one or more of—
      - (a) the transferee under a transfer of staff order pursuant to—
        - (i) in the case of England, section 28(4)(b) of, or paragraph 29(3) of Schedule 4 to, the 2006 Act;

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(13) 1971 c.56.

(14) 1975 c.60.

- (ii) in the case of Wales, section 22(4)(b) of, or paragraph 8 of Schedule 3 to, the 2006 (Wales) Act;
- (b) without limiting sub-paragraph (a), a successor, transmittee or assignee of an employing authority's business or functions; and
- (c) the last employing authority of a person to whom these Regulations apply.”.

#### **Amendment of regulation 2.D.9**

**34.** In regulation 2.D.9 (re-assessment of entitlement to an ill-health pension determined under regulation 2.D.8), for paragraph 2(a), substitute—

- “(a) in the case of a member who does not engage in further NHS employment during the period of three years referred to in paragraph (1)(b), the member makes the application in writing before the end of that period,
- (aa) in the case of a member who does engage in further NHS employment during the period of three years referred to in paragraph (1)(b), the member makes the application in writing before the first anniversary of the day on which that employment commences or before the end of that period if sooner.”.

#### **Amendment of regulation 2.D.10**

**35.** In regulation 2.D.10 (early retirement on ill-health (deferred members))—

- (a) in paragraph (1)(a), before “incapable” insert “permanently”;
- (b) in paragraph (2)(a)(ii), for “impairment” substitute “infirmity”.

#### **Amendment of regulation 2.E.10**

**36.** In regulation 2.E.10(7) (amount of children's pension under regulation 2.E.8: deceased active members), for “paragraph (4)(b) or (c)” substitute “paragraph (5)(b) or (c)”.

#### **Insertion of new regulation 2.E.20A**

**37.** After regulation 2.E.20 (amount of lump sum: pension credit members), insert—

##### **“Pension payable when member dies on or after reaching age 75**

**2.E.20 A.—**(1) If a pensioner member or a pension credit member dies—

- (a) on or after reaching age 75, and
- (b) before the fifth anniversary of the date on which the member's pension became payable,

an annual pension, calculated in accordance with paragraph (2), may be payable from the day following the date of the member's death until the anniversary referred to in sub-paragraph (b).

(2) The pension payable under paragraph (1) is determined by—

- (a) calculating the amount of the lump sum that would have been payable in respect of the pensioner member or pension credit member under regulation 2.E.17(2) or, as the case may be, 2.E.20 as if on the day the member died the member had not reached the age of 75, and

- (b) converting any amount determined in sub-paragraph (a) to an annual pension payable for the period specified in paragraph (1), by reference to guidance and tables provided by the Scheme actuary for the purpose.
- (3) The “beginning date” of the pension calculated in paragraph (2) will, for the purposes of the Pensions (Increase) Act 1971, be the day immediately following the date of death of the pensioner member or pension credit member.
- (4) The pension calculated under this regulation will be payable in accordance with regulation 2.E.21.”.

### **Amendment of regulation 2.E.21**

- 38.** In regulation 2.E.21 (payment of lump sums on death)—
- (a) in the heading to that regulation, after “lump sums” insert “or pensions”;
  - (b) in paragraph (1), after “regulation 2.E.16” insert “or a pension payable under regulation 2.E.20A”;
  - (c) in paragraph (2)—
    - (i) after “lump sum” insert “or pension”, and
    - (ii) for “under paragraph (4) or (6)” substitute “or body under paragraph (4), (6) or (10)”;
  - (d) in paragraphs (3), (4) and (6), after “lump sum” in each paragraph insert “or pension”;
  - (e) in paragraph (7), after “lump sum” (twice) insert “or pension”;
  - (f) after paragraph (9), insert—
    - “(10) The member’s personal representatives may, as part of the distribution of the member’s estate, give irrevocable notice to the Secretary of State—
      - (a) specifying—
        - (i) one or more individuals, or
        - (ii) one incorporated or unincorporated body,to whom the benefit of the pension under regulation 2.E.20A from the date of receipt of the notice by the Secretary of State is to be assigned, and
      - (b) where two or more individuals are specified, specifying the percentage of the pension payable to each of them,and the pension (or, as the case may be, the percentage of it specified in respect of the person) may be paid to the person or body, unless paragraph (11) applies.
    - (11) This paragraph applies if—
      - (a) the person specified in the notice has died before the payment can be made,
      - (b) payment to that person or body is not, in the opinion of the Secretary of State, reasonably practicable, or
      - (c) the person to whom the pension (or a specified percentage of the pension) would otherwise be payable has been convicted of an offence specified in regulation 2.J.7(4) (forfeiture of rights to benefit) and the Secretary of State has directed, as a consequence of that conviction, that the person’s right to a payment in respect of the member’s death is forfeited.
    - (12) The prohibition on assignment of benefits in regulation 2.J.13 (prohibition on assignment or charging of benefits) shall not apply to an assignment by personal representatives under this regulation.”.

#### **Amendment of regulation 2.E.25**

**39.** In regulation 2.E.25(5) (dual capacity membership: death benefits), after sub-paragraph (h) insert—

“(hh) regulation 2.E.20A (pension payable when member dies on or after reaching age 75),”.

#### **Amendment of regulation 2.F.6**

**40.** In regulation 2.F.6 (calculating amounts of transfer value payments), for paragraphs (1) and (2) substitute—

“(1) The amount of the guaranteed cash equivalent transfer value payment is to be calculated and verified by the Secretary of State in accordance with the Occupational Pension Schemes (Transfer Values) Regulations 1996(15).

This is subject to paragraphs (2), (3) and (5).

(2) Before determining the factors to be used in the calculation of the member’s guaranteed cash equivalent, the Secretary of State shall take advice from the Scheme actuary.”.

#### **Amendment of regulation 2.F.8**

**41.** In regulation 2.F.8 (right to apply for acceptance of transfer value payment from another scheme)—

(a) in paragraph (2)(a), after “scheme” insert “other than a corresponding health service scheme”;

(b) for paragraph (2)(d) substitute—

“(d) a corresponding 1995 scheme, and

(e) a corresponding 2008 scheme.”;

(c) after paragraph (2) insert—

“(2A) a member who makes an application for a transfer value to be accepted by the Secretary of State in respect of his rights under a corresponding 2008 scheme may not also make an application for a transfer value to be accepted in respect of his rights under a corresponding 1995 scheme.”;

(d) in paragraph (4)(a)(ii), for “purposes of that Act” substitute “purposes of the 2004 Act”.

#### **Amendment of regulation 2.F.9**

**42.** In regulation 2.F.9 (procedure for applications under regulation 2.F.8)—

(a) in paragraph (1)(d)(ii), after “those arrangements” insert “(including a transfer of rights from a corresponding 1995 scheme)”;

(b) in paragraph (2), for “a such a” substitute “such a”;

(c) after paragraph (2) insert—

“(3) A statement given to the member of a corresponding 1995 scheme in pursuance of such a request as is mentioned in paragraph (1)(d) must inform the member of the amount of pensionable service that will count under this Scheme for the purposes of—

(a) calculating benefits payable to or in respect of the member, and

- (b) determining whether or not the member has reached 45 years of pensionable service for the purposes of regulation 2.A.3.”.

#### **Amendment of regulation 2.F.10**

- 43.** In regulation 2.F.10 (acceptance of transfer value payments), after paragraph (3) insert—
- “(3A) If the Secretary of State accepts the payment from the member of a corresponding 1995 scheme, the relevant period of pensionable service shall count when determining whether or not the member has reached 45 years of pensionable service for the purposes of regulation 2.A.3.
  - (3B) In paragraph (3A) “the relevant period” means the period calculated in accordance with regulation 2.F.11.”.

#### **Amendment of regulation 2.F.11**

- 44.** In regulation 2.F.11 (calculation of transferred-in pensionable service)—
- (a) in paragraph (6), for “corresponding health service scheme” substitute “corresponding 2008 scheme”;
  - (b) omit paragraph (7).

#### **Insertion of new regulation 2.F.17**

- 45.** After regulation 2.F.16 (EU and other overseas transfers), insert—

#### *“Transfers across*

#### **Transfers across from the NHS Pension Scheme 1995**

**2.F.17.—**(1) An active member who is entitled to have a cash equivalent value calculated in respect of the entirety of the member’s rights under the NHS Pension Scheme 1995, pursuant to regulation M7 of the 1995 Regulations, may apply to convert that cash equivalent value into rights under this Scheme.

- (2) An application under paragraph (1)—
  - (a) must be made in writing using an application form provided for the purpose by the Secretary of State,
  - (b) may only be made before the end of the period of three months beginning with the guarantee date established under regulation M7 of the 1995 Regulations,
  - (c) may only be made if the member has first been furnished with a statement of the pensionable service that the member will be entitled to count under this Scheme if the application is accepted by the Secretary of State,
  - (d) must meet such other conditions as the Secretary of State may require, and
  - (e) is irrevocable.
- (3) The statement mentioned in paragraph (2)(c) must—
  - (a) inform the member of the amount of pensionable service that will count under this Scheme for the purposes of calculating benefits payable to or in respect of the member,

- (b) inform the member of the amount of pensionable service that will count under this Scheme when determining whether or not the member has reached 45 years of pensionable service for the purposes of regulation 2.A.3, and
  - (c) be calculated in accordance with any guidance, tables and other relevant factors provided by the Scheme actuary for that purpose.
- (4) If the Secretary of State accepts an application under paragraph (1)—
- (a) the member is entitled to count under this Scheme the periods of pensionable service mentioned in paragraphs (3)(a) and (b) for the purposes specified therein, and
  - (b) those periods of pensionable service shall be credited to the member on the day that the Secretary of State received the member's application.”.

#### **Amendment of regulation 2.H.2**

**46.** For regulation 2.H.2 (information), substitute—

- “(1) A person who becomes an employed pensioner must—
- (a) inform the person's employer in the new employment and any other person that the Secretary of State may specify that the old service pension is payable, and
  - (b) where requested, provide any information about their relevant income in the new employment to the Secretary of State or to any other person that the Secretary of State may specify.
- (2) A person who ceases to be an employed pensioner in one new employment and becomes an employed pensioner in another new employment must—
- (a) inform the person's employer in the other new employment, and any other person that the Secretary of State may specify, that the old service pension is payable, and
  - (b) where requested, provide any information about their relevant income in the other new employment to the Secretary of State or to any person that the Secretary of State may specify.
- (3) For the meaning of “relevant income” see regulation 2.H.4.”.

#### **Amendment of regulation 2.H.5**

**47.** In regulation 2.H.5(1) (meaning of “previous pay”: general), for “regulation 2.H.6” substitute “regulations 2.H.6 and 2.H.7”.

#### **Amendment of regulation 2.H.7**

**48.** In regulation 2.H.7 (application of this Chapter to part-time employment), for paragraph (2) substitute—

- “(2) The amount of the employed pensioner's reckonable pay for the purposes of the old service pension, as referred to in regulation 2.H.5(1)(a), shall be determined without reference to regulation 2.A.13 or 2.A.14 (reckonable pay for concurrent and non-concurrent part-time workers).”.

#### **Amendment of regulation 2.J.2**

**49.** For regulation 2.J.2 (claims for benefits), substitute—

- “(1) A person claiming to be entitled to benefits under this Part (“the claimant”) shall make a claim in writing to the Secretary of State.

(2) Pursuant to such a claim, the claimant and, where appropriate, the member's employing authority (including any previous employing authority of the member) shall provide such—

- (a) evidence of entitlement,
- (b) information required in order to deal with the claim, and
- (c) authority or permission as may be necessary for the release by third parties of information in their possession relating to the claimant or member,

as the Secretary of State may from time to time require for the purposes of this Part.

(3) A claim referred to in paragraph (1) may be made by a person or persons other than the claimant where the Secretary of State so provides.

(4) Any claim for benefit required in writing under this Part, and any evidence, information, authority or permission given in connection with that claim, may be made or given by means of an electronic communication where such method of communication is approved by the Secretary of State from time to time.

(5) In this regulation, "electronic communication" has the same meaning as in section 15(1) of the Electronic Communications Act 2000(16)."

#### **Amendment of regulation 2.J.7**

**50.** In regulation 2.J.7(5)(c) (forfeiture of rights to benefits)—

- (a) after "2.E.21(3)" insert "or (10)";
- (b) for "lump sum" substitute "lump sum or pension".

#### **Amendment of regulation 2.J.9**

**51.** In regulation 2.J.9(5) (interest on late payment of benefits and refunds of contributions)—

- (a) in sub-paragraph (b), after "member's death" insert ", other than a pension payable under regulation 2.E.20A (pension payable when member dies on or after reaching age 75)";
- (b) after sub-paragraph (e) insert—
  - "(f) in the case of an amount in respect of a pension under regulation 2.E.20A that is payable to—
    - (i) the member's personal representatives, the date on which probate or letters of administration were produced to the Secretary of State,
    - (ii) any person or body to whom the pension has been assigned by the member's personal representatives, the date on which the notice under regulation 2.E.21(10) was received by the Secretary of State, and
    - (iii) any person or body other than those referred to in (i) and (ii), the day immediately following the day of the member's death."

#### **Amendment of regulation 2.J.11**

**52.** In regulation 2.J.11 (determinations by medical practitioners)—

- (a) in paragraph (2)—
  - (i) omit "or impairment";
  - (ii) after paragraph (2)(c) insert—

“(cc) regulation 2.D.15(1) (option for members in serious ill-health to exchange whole pension for lump sum),”;

(b) after paragraph (2) insert—

“(3) In relation to decisions within paragraph (2), the Secretary of State may require any person entitled, or claiming to be entitled, to a benefit under this Part to submit to a medical examination by a registered medical practitioner selected by the Secretary of State, and in that event, the Secretary of State shall also offer the person an opportunity of submitting a report from the person’s own medical adviser as a result of an examination by that medical adviser, and the Secretary of State shall take that report into consideration together with the report of the medical practitioner selected by the Secretary of State.”.

#### **Amendment of regulation 2.J.14**

**53.** In regulation 2.J.14 (employing authority record keeping and contribution estimates)—

- (a) in the heading to that regulation, after “employing authority” insert “and certain member”; and
- (b) in paragraph (1), for “the host” substitute “each relevant host”.

#### **Amendment of regulation 3.A.1**

**54.—**(1) Regulation 3.A.1 (interpretation of Part 3: general) is amended as follows.

(2) In regulation 3.A.1—

- (a) in the definition of “APMS contract” and “APMS contractor”, for “80(2)(b)” substitute “83(2)(b)”;
- (b) before the definition of “corresponding health service scheme” insert—
  - ““corresponding 1995 scheme” means a corresponding health service scheme the provisions of which the Secretary of State has determined correspond to the provisions of the 1995 Regulations;
  - “corresponding 2008 scheme” means a corresponding health service scheme the provisions of which the Secretary of State has determined correspond to the provisions of these Regulations;”;
- (c) for the definition of “corresponding health service scheme” substitute—
  - ““corresponding health service scheme” means—
  - (a) a superannuation scheme provided under regulations made under section 10 of the Superannuation Act 1972<sup>(17)</sup> and having effect in Scotland,
  - (b) a superannuation scheme provided under Article 12 of the Superannuation (Northern Ireland) Order 1972<sup>(18)</sup>,
  - (c) a scheme made under section 2 of the Superannuation Act 1984<sup>(19)</sup> (an Act of Tynwald) applies, and
  - (d) any other occupational pension scheme approved for the purposes of this regulation by the Secretary of State;”;
- (d) after the definition of “GDS contractor” insert—
  - ““general ophthalmic services” means—

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<sup>(17)</sup> 1972 c.11.

<sup>(18)</sup> S.I. 1972/1073.

<sup>(19)</sup> 1984 c.8 (Tynwald).

- (a) as regards England, mandatory services and additional services as defined in regulation 2(1) of the General Ophthalmic Services Contracts Regulations 2008(20), and
  - (b) as regards Wales, general ophthalmic services within the meaning of section 71(10) of the 2006 Wales Act;”;
- (e) after the definition of “GMS practice” insert—
- ““GOS contract” means a contract under section 117 of the 2006 Act (general ophthalmic services contracts) for the provision of mandatory services and additional services as defined in regulation 2(1) of the General Ophthalmic Services Contracts Regulations 2008;”;
- (f) for the definition of “host Trust or Board” substitute—
- ““host Trust or Board”, in respect of a person who is a registered medical practitioner or non-GP provider who is—
- (a) a partner in a partnership—
    - (i) that is a GMS practice; or
    - (ii) that has entered into a PMS agreement or is an APMS contractor that has entered into an APMS contract for the provision of primary medical services;
  - (b) a shareholder in a company limited by shares that is a GMS practice or a PMS practice or an APMS contractor that has entered into a PMS agreement or APMS contract for the provision of primary medical services;
  - (c) an individual who is a GMS practice, PMS practice or an APMS contractor, means each Primary Care Trust or Local Health Board with which that partnership (in the case of (a)), company (in the case of (b)) or practice or contractor (in the case of (c)) has entered into an agreement or contract referred to in those provisions and (in the case of a registered medical practitioner) the relevant Trust or Board on whose medical performers’ list that practitioner’s name appears, and such a person shall be deemed to be employed by the appropriate Trust or Board for the purposes of this Part;”;
- (g) in the definition of “OOH services”—
- (i) after “GMS practice” insert “, APMS contractor”;
  - (ii) after “to whom the practice” insert “or contractor”; and
  - (iii) after “GMS contract” insert “, APMS contract”;
- (h) after the definition of “OOH services”, insert—
- ““ophthalmic provider” means a registered medical practitioner who is included in an ophthalmic list kept and published by a Primary Care Trust or Local Health Board pursuant to regulation 6(1) of the National Health Service (General Ophthalmic Services) Regulations 1986(21) (ophthalmic list);”;
- (i) for the newly inserted definition of “ophthalmic provider”, substitute—
- ““ophthalmic provider” means a registered medical practitioner who—
- (a) as regards England—
    - (i) is included in an ophthalmic performers list prepared and published by a Primary Care Trust pursuant to regulation 3(1) of the National

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(20) S.I. 2008/1185.

(21) S.I.1986/975.

Health Service (Performers Lists) Regulations 2004(22) (performers lists); and

- (ii) holds a GOS contract; and
- (b) as regards Wales, is included in an ophthalmic list kept and published by a Local Health Board pursuant to regulation 6(1) of the National Health Service (General Ophthalmic Services) Regulations 1986 (ophthalmic list);”;
- (j) in the definition of “type 1 medical practitioner”, after “means” insert “an ophthalmic provider or”.

### **Amendment of regulation 3.A.3**

**55.** In regulation 3.A.3 (meaning of “pensionable service”), after paragraph (8) insert—

**55.**—“(9) Where a member is also a member of the NHS Pension Scheme 1995, any reference in this Part to “45 years” shall be taken to be a reference to a shorter period determined by the formula—

$$SP = 45years \square?? LPS$$

where—

SP is the shorter period, measured in years and days, and

LPS is the length of pensionable service (within the meaning of the 1995 Regulations), measured in years and days, giving rise to membership of the NHS Pension Scheme 1995 and, in the case of a member of that Scheme who has become entitled to a pension (including a preserved pension) under that Scheme, including any period that was taken into account for the purpose of determining whether the member was entitled to that pension, or for the purpose of calculating the amount of that pension.”.

### **Amendment of regulation 3.A.4**

**56.** In regulation 3.A.4 (pensionable service: breaks in service)—

- (a) in paragraph (2)—
  - (i) for “Subject to paragraph (5), a” substitute “A”;
  - (ii) for “scheme” substitute “Scheme under regulation 3.C.1 in respect of the period of absence”;
- (b) for paragraph (3) substitute—
 

“(3) If a member is on leave of absence but does not fall within paragraph (1)(a) to (e), and contributes to the Scheme under regulation 3.C.1 by contributions made at the same intervals as those made by the member before the absence, the maximum period of such leave that can be counted as pensionable service under this paragraph is—

  - (a) where the member contributes for a continuous period of 6 months commencing with the first day of the member’s leave of absence, 6 months, and
  - (b) where the member contributes for a continuous period of less than 6 months commencing with the first day of the member’s leave of absence, the period in respect of which the member pays those contributions.

(3A) If, having paid contributions for the period mentioned in paragraph (3)(a) a member remains on a leave of absence that does not fall within paragraph (1)(a) to (e) and contributes to the Scheme both member contributions under regulation 3.C.1 and employer contributions under regulation 3.C.3 by contributions made at the same intervals as those made by the member before the absence, the maximum period of such leave that can be counted as pensionable service under this paragraph is—

- (a) where the member contributes for a continuous period of 18 months commencing immediately after the expiry of the period mentioned in paragraph (3)(a), 18 months, and
- (b) where the member contributes for a continuous period of less than 18 months commencing immediately after the expiry of the period mentioned in paragraph (3)(a), the period in respect of which the member pays those contributions.”.

#### **Amendment of regulation 3.A.5**

**57.** In regulation 3.A.5 (meaning of “qualifying service”)—

- (a) in paragraph (1)(b), after “pension arrangement” insert “(including the NHS Pension Scheme 1995)”;
- (b) after paragraph (1)(d) insert—

“(e) in the case of a person—

- (i) who is eligible to join the Scheme by virtue of regulation 3.B.1(5)(c), and
- (ii) for whom the interval between leaving the NHS Pension Scheme 1995 and joining the Scheme is less than one month,

a period equal to the period of qualifying service (within the meaning of the 1995 Regulations), measured in years and days, that the member was entitled to count under regulation C3 of the 1995 Regulations when the member left that scheme.”;

- (c) after paragraph (3) insert—

“(4) For the other rules applying where there is a short break in service, see regulation 3.A.6.”.

#### **Amendment of regulation 3.A.7**

**58.** In regulation 3.A.7(2)(a)(vii) (meaning of “pensionable earnings”), after “OOH provider” insert “or other employing authority providing OOH services”.

#### **Amendment of regulation 3.A.8**

**59.** In regulation 3.A.8 (pensionable earnings—breaks in service)—

- (a) in paragraph (2)(a), for “regulation 3.C.1” substitute “regulations 3.C.1 and 3.C.2”;
- (b) in paragraph (8), for “(3)(a) or (4)” substitute “(5)(b) or (7)”;
- (c) after paragraph (9) insert—

“(10) For the purposes of making contributions to the Scheme under regulations 3.C.1 and 3.C.3, during any period of absence which counts as pensionable service under regulation 3.A.4(3) or (3A), amounts equal to the rate of the member’s pensionable earnings calculated as described in paragraph (3)(a) or (b) of this regulation will be treated as pensionable earnings.”.

### **Amendment of regulation 3.B.1**

**60.** In regulation 3.B.1(5) (eligibility: general), for paragraph (e) substitute—

- “(e) the person—
  - (i) ceased to be an active member of the NHS Pension Scheme 1995 on leaving NHS employment,
  - (ii) became a deferred member of that Scheme on leaving that employment and has not become a pensioner member of that Scheme between the date of leaving that employment and joining the Scheme, and
  - (iii) re-entered NHS employment on or after 1st October 2008 and 5 or more years since last leaving NHS employment, or
- (f) the person—
  - (i) ceased to be an active member of the NHS Pension Scheme 1995 before 1st April 2008 on leaving NHS employment,
  - (ii) became a deferred member of that Scheme on leaving that employment,
  - (iii) re-entered NHS employment on or after 1st October 2008 and 5 or more years since last leaving NHS employment, and
  - (iv) before the person re-entered such employment—
    - (aa) a transfer payment was made in respect of the person under Part M of that Scheme, or
    - (bb) the person made an application under regulation M2 of that Scheme (exercising a right to transfer or buy-out) from which the person may not withdraw,

but sub-paragraphs (d) to (f) will not apply if the Secretary of State has permitted such a person to rejoin the NHS Pension Scheme 1995 in the circumstances described in regulation B2(3) of the 1995 Regulations.”.

### **Amendment of regulation 3.B.2**

**61.** In regulation 3.B.2 (restrictions on eligibility: general), for paragraph (1)(b) substitute—

- “(b) became a pensioner member of that Scheme on or after that date, or
- (c) is a deferred member of that Scheme, but is not a deferred member—
  - (i) to whom regulation 3.B.1(5)(e) or (f) applies, and
  - (ii) in respect of whom permission of the Secretary of State to rejoin the NHS Pension Scheme 1995 has not been granted pursuant to regulation B2(3) of that Scheme.”.

### **Amendment of regulation 3.B.5**

**62.** In regulation 3.B.5(7) (opting out of the scheme)—

- (a) after “contribute to the scheme” insert “in respect of one or more employments as a practitioner under this Part must do so”; and
- (b) before “may” insert “but”.

### **Amendment of regulation 3.C.2**

**63.** In regulation 3.C.2 (members’ contribution rate)—

- (a) in paragraph (3), after “may” insert “, with the consent of the Treasury,”;
- (b) in the full-out words of paragraph (8), for “paragraph (6) of this regulation in respect of the earlier service” substitute “paragraph (12) of this regulation in respect of the earlier dentist performer service”;
- (c) in the full-out words of paragraph (9), for “paragraph (6) of this regulation in respect of the earlier service” substitute “regulation 2.C.2 in respect of the earlier officer service”;
- (d) in the full-out words of paragraph (14), for “paragraph (12) of this regulation in respect of the earlier service” substitute “paragraph (6) of this regulation in respect of the earlier service as a practitioner (other than a dentist performer)”.

### **Amendment of regulation 3.C.3**

**64.** In regulation 3.C.3 (contributions by employing authorities: general), for paragraph (2) substitute—

- “(2) In specifying such a rate, the Secretary of State must—
- (a) obtain the consent of the Treasury, and
  - (b) take account of the advice of the Scheme actuary and the cost of providing for any increase in pensions under the Scheme as a result of orders made under the provisions of the Pensions (Increase) Act 1971<sup>(23)</sup> and section 59 of the Social Security Pensions Act 1975<sup>(24)</sup>.”.

### **Amendment of regulation 3.D.6**

**65.** In the heading to regulation 3.D.6 (increase in pensionable earnings following exercise of option under regulation 3.D.5), for “pensionable earnings” substitute “level of engagement”.

### **Amendment of regulation 3.D.8**

**66.** In regulation 3.D.8 (re-assessment of entitlement to an ill-health pension determined under regulation 3.D.7), for paragraph 2(a), substitute—

- “(a) in the case of a member who does not engage in further NHS employment during the period of three years referred to in paragraph (1)(b), the member makes the application in writing before the end of that period,
- (aa) in the case of a member who does engage in further NHS employment during the period of three years referred to in paragraph (1)(b), the member makes the application in writing before the first anniversary of the day on which that employment commences or before the end of that period if sooner.”.

### **Amendment of regulation 3.D.9**

**67.** In regulation 3.D.9 (early retirement on ill-health (deferred members))—

- (a) in paragraph (1)(a), before “incapable” insert “permanently”;
- (b) in paragraph (2)(a)(ii), for “impairment” substitute “infirmity”.

### **Amendment of regulation 3.E.10**

**68.** In regulation 3.E.10(2) (amount of children’s pension under regulation 3.E.8: deceased active members), for “paragraphs (6) and (7)” substitute “paragraphs (5) and (6)”.

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(23) 1971 c.56.

(24) 1975 c.60.

### Insertion of new regulation 3.E.20A

69. After regulation 3.E.20 (amount of lump sum: pension credit members), insert—

#### “Pension payable when member dies on or after reaching age 75

**3.E.20 A.**—(1) If a pensioner member or a pension credit member dies—

- (a) on or after reaching age 75, and
- (b) before the fifth anniversary of the date on which the member’s pension became payable,

an annual pension, calculated in accordance with paragraph (2), may be payable from the day following the date of the member’s death until the anniversary referred to in sub-paragraph (b).

(2) The pension payable under paragraph (1) is determined by—

- (a) calculating the amount of the lump sum that would have been payable in respect of the pensioner member or pension credit member under regulation 3.E.17(2) or, as the case may be, 3.E.20 as if on the day the member died the member had not reached the age of 75, and
- (b) converting any amount determined in sub-paragraph (a) to an annual pension payable for the period specified in paragraph (1), by reference to guidance and tables provided by the Scheme actuary for the purpose.

(3) The “beginning date” of the pension calculated in paragraph (2) will, for the purposes of the Pensions (Increase) Act 1971, be the day immediately following the date of death of the pensioner member or pension credit member.

(4) The pension calculated under this regulation will be payable in accordance with regulation 3.E.21.”.

### Amendment of regulation 3.E.21

70. In regulation 3.E.21 (payment of lump sums on death)—

- (a) in the heading to that regulation, after “lump sums” insert “or pensions”;
- (b) in paragraph (1), after “regulation 3.E.16” insert “or a pension payable under regulation 3.E.20A”;
- (c) in paragraph (2)—
  - (i) after “lump sum” insert “or pension”, and
  - (ii) for “under paragraph (4) or (6)” substitute “or body under paragraph (4), (6) or (10)”;
- (d) in paragraphs (3), (4) and (6), after “lump sum” in each paragraph insert “or pension”;
- (e) in paragraph (7), after “lump sum” (twice) insert “or pension”;
- (f) after paragraph (9), insert—

“(10) The member’s personal representatives may, as part of the distribution of the member’s estate, give irrevocable notice to the Secretary of State—

- (a) specifying—
  - (i) one or more individuals, or
  - (ii) one incorporated or unincorporated body,

to whom the benefit of the pension under regulation 3.E.20A from the date of receipt of the notice by the Secretary of State is to be assigned, and

(b) where two or more individuals are specified, specifying the percentage of the pension payable to each of them,  
and the pension (or, as the case may be, the percentage of it specified in respect of the person) may be paid to the person or body, unless paragraph (11) applies.

(11) This paragraph applies if—

- (a) the person specified in the notice has died before the payment can be made,
- (b) payment to that person or body is not, in the opinion of the Secretary of State, reasonably practicable, or
- (c) the person to whom the pension (or a specified percentage of the pension) would otherwise be payable has been convicted of an offence specified in regulation 3.J.7(4) (forfeiture of rights to benefit) and the Secretary of State has directed, as a consequence of that conviction, that the person's right to a payment in respect of the member's death is forfeited.

(12) The prohibition on assignment of benefits in regulation 3.J.13 (prohibition on assignment or charging of benefits) shall not apply to an assignment by personal representatives under this regulation.”.

#### **Amendment of regulation 3.E.25**

**71.** In regulation 3.E.25(5) (dual capacity membership: death benefits), after sub-paragraph (h) insert—

“(hh) regulation 3.E.20A (pension payable when member dies on or after reaching age 75),”.

#### **Amendment of regulation 3.F.6**

**72.** In regulation 3.F.6 (calculating amounts of transfer value payments), for paragraphs (1) and (2) substitute—

“(1) The amount of the guaranteed cash equivalent transfer value payment is to be calculated and verified by the Secretary of State in accordance with the Occupational Pension Schemes (Transfer Values) Regulations 1996(25).

This is subject to paragraphs (2), (3) and (5).

(2) Before determining the factors to be used in the calculation of the member's guaranteed cash equivalent, the Secretary of State shall take advice from the Scheme actuary.”.

#### **Amendment of regulation 3.F.8**

**73.** In regulation 3.F.8 (right to apply for acceptance of transfer value payment from another scheme)—

(a) in paragraph (2)(a), after “scheme” insert “other than a corresponding health service scheme”;

(b) for paragraph (2)(d) substitute—

“(d) a corresponding 1995 scheme, and

(e) a corresponding 2008 scheme.”;

(c) after paragraph (2) insert—

“(2A) a member who makes an application for a transfer value to be accepted by the Secretary of State in respect of his rights under a corresponding 2008 scheme may not also make an application for a transfer value to be accepted in respect of his rights under a corresponding 1995 scheme.”;

(d) in paragraph (4)(a)(ii), for “purposes of that Act” substitute “purposes of the 2004 Act”.

#### **Amendment of regulation 3.F.9**

74. In regulation 3.F.9 (procedure for applications under regulation 3.F.8)—

- (a) in paragraph (1)(d)(ii), after “those arrangements” insert “(including a transfer of rights from a corresponding 1995 scheme)”;
- (b) after paragraph (2) insert—

“(3) A statement given to the member of a corresponding 1995 scheme in pursuance of such a request as is mentioned in paragraph (1)(d) must inform the member of the amount of pensionable service that will count under this Scheme for the purposes of—

- (a) calculating benefits payable to or in respect of the member, and
- (b) determining whether or not the member has reached 45 years of pensionable service for the purposes of regulation 3.A.3.”.

#### **Amendment of regulation 3.F.10**

75. In regulation 3.F.10 (acceptance of transfer value payments), after paragraph (3) insert—

“(3A) If the Secretary of State accepts the payment from the member of a corresponding 1995 scheme, the relevant period of pensionable service shall count when determining whether or not the member has reached 45 years of pensionable service for the purposes of regulation 3.A.3.

(3B) In paragraph (3A) “the relevant period” means the period calculated in accordance with any guidance, tables and other relevant factors provided by the Scheme actuary for that purpose, having regard to the period of employment that qualified the member for the rights in the corresponding 1995 scheme.”.

#### **Amendment of regulation 3.F.11**

76. In regulation 3.F.11 (calculation of transferred-in pensionable service)—

- (a) for paragraph (2) substitute—

“(2) Subject to paragraph (4), for the purposes of the calculation under paragraph (1), the benefits in respect of the transfer payment will be calculated by increasing the member’s pensionable earnings for—

- (a) the financial year in which the member joined the Scheme; or
- (b) the financial year in which the transfer payment is received if the payment is received more than 12 months after the member joined the Scheme.”;

- (b) in paragraph (3)(b), for “final year’s pensionable” substitute “reckonable”;
- (c) in paragraph (3)(c), for “final year’s pensionable” substitute “reckonable”;
- (d) in paragraph (4), for “paragraph (3)” substitute “paragraph (2)(b)”;
- (e) in paragraph (6), for “corresponding health service scheme” substitute “corresponding 2008 scheme”; and
- (f) omit paragraph (7).

### Insertion of new regulation 3.F.17

77. After regulation 3.F.16 (EU and other overseas transfers), insert—

*“Transfers across*

#### **Transfers across from the NHS Pension Scheme 1995**

**3.F.17.**—(1) An active member who is entitled to have a cash equivalent value calculated in respect of the entirety of the member’s rights under the NHS Pension Scheme 1995, pursuant to regulation M7 of the 1995 Regulations, may apply to convert that cash equivalent value into rights under this Scheme.

(2) An application under paragraph (1)—

- (a) must be made in writing using an application form provided for the purpose by the Secretary of State,
- (b) may only be made before the end of the period of three months beginning with the guarantee date established under regulation M7 of the 1995 Regulations,
- (c) may only be made if the member has first been furnished with a statement of the pensionable service and increase in pensionable earnings that the member will be entitled to count under this Scheme if the application is accepted by the Secretary of State,
- (d) must meet such other conditions as the Secretary of State may require, and
- (e) is irrevocable.

(3) The statement mentioned in paragraph (2)(c) must—

- (a) inform the member of the amount of increase in pensionable earnings that will count under this Scheme for the purposes of calculating benefits payable to or in respect of the member, and
- (b) inform the member of the amount of pensionable service that will count under this Scheme when determining whether or not the member has reached 45 years of pensionable service for the purposes of regulation 3.A.3.

(4) The amount of the increase in pensionable earnings mentioned in paragraph (3)(a) will be calculated by—

- (a) treating the member as entitled to a period of officer service equal to the period of employment that qualified the member for the rights in the NHS Pension Scheme 1995,
- (b) calculating the reckonable pay that would have given rise to a cash equivalent in respect of that officer service under regulation 2.F.6 (calculating amounts of transfer value payments), and
- (c) increasing the member’s pensionable earnings by an amount equal to the pensionable pay that the member would have received during that period of officer service if the member’s pensionable pay had been equal to the reckonable pay mentioned in paragraph (b) throughout that period.

(5) The amount of pensionable service mentioned in paragraph (3)(b) will be calculated in accordance with any guidance, tables and other relevant factors provided by the Scheme actuary for that purpose, having regard to the period of employment that qualified the member for the rights in the NHS Pension Scheme 1995.

(6) If the Secretary of State accepts an application under paragraph (1)—

- (a) the member is entitled to count under this Scheme the period of pensionable service mentioned in paragraph (3)(b) for the purpose specified therein,
- (b) that period of pensionable service shall be credited to the member on the day that the Secretary of State received the member's application,
- (c) the member is entitled to count the increase in pensionable earnings calculated under paragraph (4) for the purposes of calculating benefits payable to or in respect of the member under this Scheme, and
- (d) that increase in pensionable earnings shall be credited to the member in the financial year during which the day that the Secretary of State received the member's application falls.”.

### **Amendment of regulation 3.H.2**

**78.** For regulation 3.H.2 (information), substitute—

- “(1) A person who becomes an employed pensioner must—
  - (a) inform the person's employer in the new employment, and any other person that the Secretary of State may specify, that the old service pension is payable, and
  - (b) where requested, provide any information about their relevant income in the new employment to the Secretary of State or to any other person that the Secretary of State may specify.
- (2) A person who ceases to be an employed pensioner in one new employment and becomes an employed pensioner in another new employment must—
  - (a) inform the person's employer in the other new employment, and any other person that the Secretary of State may specify, that the old service pension is payable, and
  - (b) where requested, provide any information about their relevant income in the new employment to the Secretary of State or to any other person that the Secretary of State may specify.
- (3) For the meaning of “relevant income” see regulation 3.H.4.”.

### **Amendment of regulation 3.J.2**

**79.** For regulation 3.J.2 (claims for benefits), substitute—

- “(1) A person claiming to be entitled to benefits under this Part (“the claimant”) shall make a claim in writing to the Secretary of State.
- (2) Pursuant to such a claim, the claimant and, where appropriate, the member's employing authority (including any previous employing authority of the member) shall provide such—
  - (a) evidence of entitlement,
  - (b) information required in order to deal with the claim, and
  - (c) authority or permission as may be necessary for the release by third parties of information in their possession relating to the claimant or member,

as the Secretary of State may from time to time require for the purposes of this Part.

(3) A claim referred to in paragraph (1) may be made by a person or persons other than the claimant where the Secretary of State so provides.

(4) Any claim for benefit required in writing under this Part, and any evidence, information, authority or permission given in connection with that claim, may be made or

given by means of an electronic communication where such method of communication is approved by the Secretary of State from time to time.

(5) In this regulation, “electronic communication” has the same meaning as in section 15(1) of the Electronic Communications Act 2000(26).”.

#### **Amendment of regulation 3.J.7**

**80.** In regulation 3.J.7(5)(c) (forfeiture of rights to benefits)—

- (a) after “3.E.21(3)” insert “or (10)”;
- (b) after “lump sum” insert “or pension”.

#### **Amendment of regulation 3.J.9**

**81.** In regulation 3.J.9(5) (interest on late payment of benefits and refunds of contributions)—

- (a) in sub-paragraph (b), after “member’s death” insert “, other than a pension payable under regulation 3.E.20A (pension payable when member dies on or after reaching age 75)”;
- (b) after sub-paragraph (e) insert—
  - “(f) in the case of an amount in respect of a pension under regulation 3.E.20A that is payable to—
    - (i) the member’s personal representatives, the date on which probate or letters of administration were produced to the Secretary of State,
    - (ii) any person or body to whom the pension has been assigned by the member’s personal representatives, the date on which the notice under regulation 3.E.21(10) was received by the Secretary of State, and
    - (iii) any person or body other than those referred to in (i) and (ii), the day immediately following the day of the member’s death.”.

#### **Amendment of regulation 3.J.11**

**82.** In regulation 3.J.11 (determinations by medical practitioners)—

- (a) in paragraph (2)—
  - (i) omit “or impairment”;
  - (ii) after paragraph (2)(c) insert—
    - “(cc) regulation 3.D.11(1) (option for members in serious ill-health to exchange whole pension for lump sum),”;
- (b) after paragraph (2) insert—
  - “(3) In relation to decisions within paragraph (2), the Secretary of State may require any person entitled, or claiming to be entitled, to a benefit under this Part to submit to a medical examination by a registered medical practitioner selected by the Secretary of State, and in that event, the Secretary of State shall also offer the person an opportunity of submitting a report from the person’s own medical adviser as a result of an examination by that medical adviser, and the Secretary of State shall take that report into consideration together with the report of the medical practitioner selected by the Secretary of State.”.

**Amendment of regulation 3.J.14**

**83.** For regulation 3.J.14(1) (employing authority and certain member record keeping and contribution estimates) substitute—

“(1) As regards a member who is a type 1 medical practitioner, in respect of each financial year—

(a) the member shall provide each relevant host Trust or Board with a certificate of their pensionable earnings based on—

(i) the accounts drawn up in accordance with generally accepted accounting practice by the practice of which the member is a member; and

(ii) the return that member has made to Her Majesty’s Revenue & Customs in respect of their earnings for that year,

no later than 1 month from the date on which that return was required to be submitted to Her Majesty’s Revenue & Customs;

(b) a host Trust or Board shall forward to the Secretary of State a copy of the records maintained under regulation 3.C.5(17)(b) within 1 month of the end of the financial year immediately following the financial year to which the return in paragraph (1)(a)(ii) relates.”.

**Amendment of regulation 4.A.2**

**84.** In regulation 4.A.2 (interpretation: general), for the definition of “type 1 practitioner” substitute—

““type 1 practitioner” has the same meaning as in Part 3;”.

**Amendment of regulation 4.D.1**

**85.** In regulation 4.D.1 (pensionable service limit), after paragraph (4) insert—

**85.**—“(5) Where a member is also a member of the NHS Pension Scheme 1995, any reference in this Part to “45 years” shall be taken to be a reference to a shorter period determined by the formula—

$$SP = 45years \square?? LPS$$

where—

SP is the shorter period, measured in years and days, and

LPS is the length of pensionable service (within the meaning of the 1995 Regulations), measured in years and days, giving rise to membership of the NHS Pension Scheme 1995 and, in the case of a member of that Scheme who has become entitled to a pension (including a preserved pension) under that Scheme, including any period that was taken into account for the purpose of determining whether the member was entitled to that pension, or for the purpose of calculating the amount of that pension.”.

**Amendment of regulation 4.D.2**

**86.** In regulation 4.D.2 (applications, claims and notices), for the table substitute—

<i>“Column 1</i>	<i>Column 2</i>
<i>Regulation in Part 2</i>	<i>Regulation in Part 3</i>

2.D.1	3.D.1
2.D.8	3.D.7
2.D.10	3.D.9
2.D.14	3.D.10
2.D.15	3.D.11
2.D.18	3.D.14
2.E.2	3.E.2
2.E.21	3.E.21
2.F.2	3.F.2
2.F.3	3.F.3”

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## PART 3

### Amendment of the National Health Service (Injury Benefits) Regulations 1995

#### Interpretation of Part 3

**87.** In this Part an alphanumerical reference to a regulation is a reference to a provision of the National Health Service (Injury Benefits) Regulations 1995(27) bearing that designation.

#### Amendment of regulation 2

**88.** In regulation 2(1) (interpretation), omit the words ““PMS practice” has the same meaning as in the Pension Scheme Regulations;”.

#### Amendment of regulation 4

**89.** In regulation 4 (scale of benefits), for paragraph (4)(6)(a) substitute—

“(a) any pension payable to the person under a relevant pension scheme, disregarding any

—

(i) reduction in the amount of that pension under regulation T5 or T6 of the 1995 Regulations (offset for crime, negligence or fraud and loss of rights to benefits) or regulation 2.J.6, 2.J.7, 3.J.6 or 3.J.7 (reduction in benefits in cases where loss caused by member’s crime, negligence or fraud and forfeiture of right to benefits) of the 2008 Regulations;

(ii) reduction in the amount of that pension under regulation E2A(7), E7 or L1(5) (lump sum for members in serious ill-health, general option to exchange part of pension for lump sum and lump sum for deferred members in serious ill-health) of the 1995 Regulations or regulation 2.D.14, 2.D.15, 3.D.10 or 3.D.11 (general option to exchange part of pension for lump sum and option for members in serious ill-health to exchange whole pension for lump sum) of the 2008 Regulations; and

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(27) S.I. 1995/866 as amended by S.I. 1997/646, 1998/667 and 2217, 2000/606, 2002/2469, 2003/631, 2004/696, 865 and 1016, 2005/661 and 3074, 2006/600, 2007/3280 and 2008/655, and modified by S.I. 1996/971.

- (iii) increase in the amount of that pension, under the Pensions (Increase) Act 1971(28), after the date at which the average remuneration used in the calculation of the allowance was calculated.”.

#### **Amendment of regulation 4A**

**90.** In regulation 4A (recovery of costs), after paragraph (8) insert—

“(9) Where a person has more than one employing authority, the Secretary of State may direct what proportion, if any, of the contribution due under this regulation shall be payable by each of those employing authorities.”.

#### **Amendment of regulation 18A**

**91.** In regulation 18A (claims for benefits)—

- (a) before “A person claiming to be entitled”, insert “(3)”;  
(b) before the newly numbered paragraph (3), insert—

“(1) No person shall be entitled to any benefit under these Regulations unless, in addition to any other conditions relating to that benefit being satisfied, that person makes a claim for it—

- (a) in writing (or in such manner as the Secretary of State may from time to time accept), and  
(b) within—
  - (i) 6 months commencing with the day on which the other conditions relating to the benefit in question are satisfied, or
  - (ii) such other longer period as the Secretary of State may from time to time accept.

(2) If during the whole or part of the period mentioned in paragraph (1)(b) the person

- - (a) lacks capacity (within the meaning of the Mental Capacity Act 2005(29)), or
  - (b) is prevented by fraud or concealment from discovering the facts entitling that person to apply for a benefit,

a claim may be made at any time before the end of the period of 6 months from the date on which that person no longer lacks capacity or, as the case may be, could with reasonable diligence have discovered those facts.”.

#### **Insertion of new regulation 21B**

**92.** After regulation 21A (decisions by medical practitioners and other persons), insert—

##### **“Notification requirements**

**21B.—**(1) Where an employing authority makes a payment of a benefit pursuant to regulation 4(5), that employing authority shall—

- (a) within 14 days of making the first such payment, provide the Secretary of State with—

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(28) 1971 c.56.  
(29) 2005 c.9.

- (i) the full name and national insurance number of the person in respect of whom the payment is being made; and
  - (ii) the date on which that individual first became entitled to the benefit;
- (b) within 14 days of making the last such payment, provide the Secretary of State with—
  - (i) the full name and national insurance number of the person in respect of whom the payment has been made;
  - (ii) the date on which that individual ceased to be entitled to the benefit; and
  - (iii) a statement of the total amount paid to the person pursuant to regulation 4(5) during that period of absence from employment.
- (2) Where a person recovers any damages or compensation mentioned in regulation 17, that person shall, within 14 days of a right to and the amount of such damages or compensation finally being determined, provide written notice to the Secretary of State containing—
  - (a) the person's full name;
  - (b) the person's national insurance number; and
  - (c) the total amount of damages or compensation recovered.
- (3) Where a person fails to provide the notice required by paragraph (2), no benefits shall be payable under these Regulations in respect of the period from the expiry of the 14th day mentioned in paragraph (2) until the date on which the notice is received by the Secretary of State, and where benefits have been paid to the person before the failure to give notice has been determined by the Secretary of State, the Secretary of State shall withhold all or part of any further benefits payable to the person under these Regulations until the amount of the payments made by the Secretary of State in respect of that period has been recovered.”

## PART 4

### Miscellaneous

#### **Option to persons detrimentally affected by these Regulations**

**93.**—(1) This regulation applies in relation to any benefit which is being paid or may become payable under the regulations amended by these Regulations to or in respect of a person who, having served in an employment or office, service in which qualified the person to participate in the benefits provided under the regulations amended by these Regulations, ceased to serve therein before these Regulations came into force.

(2) Where, in a case to which this regulation applies, any provision of these Regulations would operate in relation to any person so as to place that person in a worse position than that person would have been if that provision had not applied, that person may elect that the provision shall not apply by giving notice in accordance with paragraph (3).

(3) A notice given pursuant to paragraph (2) shall be in writing and shall be delivered to the Secretary of State within 6 months of the coming into force of these Regulations or such longer period as the Secretary of State may allow.

(4) An election pursuant to paragraph (2) shall have effect in relation to the benefit referred to in paragraph (1) only to the extent that such benefit has accrued by virtue of periods of service rendered prior to the cessation referred to in paragraph (1) (or, if there has been more than one such cessation, the last of them before the coming into force of these Regulations) and in determining entitlement to,

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and the amount of, the benefit to that extent, such person shall be treated as if that person had never recommenced service at any time after that cessation (or, as the case may be, the last such cessation).

Signed by authority of the Secretary of State for Health.

20th August 2008

*Ann Keen*  
Parliamentary Under-Secretary of State,  
Department of Health

We consent

22nd August 2008

*Dave Watts*  
*Alan Campbell*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations 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”) and the National Health Service (Injury Benefits) Regulations 1995 (S.I. 1995/866) (“the Injury Benefits Regulations”).

Regulation 1 provides for citation, commencement and effect, including that certain provisions of this instrument are to take effect from various dates before commencement. Section 12(1) of the [Superannuation Act 1972 \(c.11\)](#) provides authority for the regulations specified in regulation 1(4) to (7) to take effect as from a date earlier than the making of these Regulations.

The remainder of the Regulations are divided into four Parts, with Parts 1 to 3 amending the 1995 Regulations, the 2008 Regulations and the Injury Benefits Regulations respectively, and Part 4 providing that certain persons detrimentally affected by these Regulations may elect for the provisions not to apply to them.

Parts 1 and 2 make similar amendments in respect of both the 1995 Regulations and the 2008 Regulations. They also introduce amendments specific to either the 1995 Regulations or the 2008 Regulations.

The changes dealing with similar issues in Parts 1 and 2—

- exclude certain returning deferred members from the 1995 Regulations (regulation 4);
- provide for an option to transfer out their benefits to the 2008 Regulations (regulations 3(a), 10 and 13);
- include in the 2008 Regulations certain deferred members excluded from the 1995 Regulations (regulations 30, 31(b), 60 and 61);
- provide for an option to transfer their benefits into the 2008 Regulations (regulations 45 and 77);
- adjust the definition of “qualifying service” in the 2008 regulations (regulations 28(a) and 57(a));
- ensure that the 45 year service limit takes account of service in both the 1995 Regulations and 2008 Regulations (regulations 26(b), 55 and 85);
- ensure that similar principles apply to transfers from corresponding NHS schemes in Scotland, Northern Ireland and the Isle of Man (regulations 25(2)(b) and (c), 41(a), (b) and (c), 42 to 44, 54(2)(b) and (c), 73(a) to (c), 74, 75 and 76(e) and (f));
- make miscellaneous amendments to statutory cross-references (regulations 3(b), 6, 25(2)(a) and 54(2)(a));
- continue provision of pension benefits for ophthalmic medical practitioners (regulations 3(d), (e), (h), (i), and (j), 54(2)(d), (e), (h), (i) and (j));
- cater for practitioners who have an agreement with more than one Primary Care Trust or Local Health Board (regulations 3(f), 22(9)(a), 25(2)(d), 53(b), 54(2)(f) and 83);
- update the definition of Out of Hours Services to cater for Alternative Provider Medical Services contracts and contractors (regulations 3(g), 25(2)(e) and 54(2)(g));
- allow the use of electronic communications (regulations 3(a), 11, 18, 49 and 79);

require the consent of the Treasury before the members' contribution rate is adjusted (regulations 5(a), 32, 33(a), 63(a) and 64);

adjust the period for ill-health reviews (regulations 7, 34 and 66);

provide for lump sums on death of a pensioner over age 75 to be converted to a pension (regulations 8, 20, 23, 37 to 39, 50, 51, 69 to 71, 80 and 81);

require the Scheme Manager to be responsible for the calculation and verification of cash equivalent transfer values (regulations 12, 40 and 72);

allow authorised unpaid leave to be pensionable for up to 24 months (regulations 14, 27, 29(c), 56(a)(ii) and (b) and 59(c));

provide that pensioners returning to work in the NHS must provide information about their new NHS pay (regulations 15, 46 and 78);

provide that certain determinations may be made by medical practitioners or that medical examinations may be required (regulations 21, 52(a)(ii) and (b) and 82(a)(ii) and (b)).

The changes specific to Part 1—

remove obsolete references (regulation 3(c));

replace a scheme year reference (regulation 5(b));

amend cross-references in provisions dealing with child allowances (regulation 9);

amend the benefits payable on death in pensionable service where the member returns after leaving on ill-health under the old rules (regulation 16);

amend the benefits payable on death in pensionable service where the member returns after leaving on ill-health under the new rules (regulation 17);

amend the rules on forfeiture of pension to cater for nominated surviving partners (regulation 19);

make various amendments to Schedule 2 of the 1995 Regulations to remove obsolete definitions, insert references to "Local Health Board" in various places, and change the age to which contributions must be paid (regulation 22).

The changes specific to Part 2—

amend a cross-reference in the regulations setting out the meaning of pensionable service (regulation 26(a));

provide for qualifying service under the 1995 Regulations to count where a former member of the scheme under the 1995 Regulations re-joins under the 2008 Regulations within one month of leaving (regulations 28(b) and 57(b) and (c));

clarify the arrangements for non-GP providers on breaks of service (regulation 29(a), (b) and (d) to (i));

correct a minor typographical error (regulation 31(a));

allow for employer contributions to be recovered from successor and assignee employers (regulation 33(b));

remove references to "impairment" and insert a reference to permanence in ill-health provisions (regulations 35, 52(a)(i), 67 and 82(a)(i));

change cross-references in provisions relating to children's pensions (regulations 36 and 68);

replace references to the Income and Corporation Taxes Act 1988 (c.1) with references to the Finance Act 2004 (c.12) (regulation 41(d) and 73(d));

clarify the rules on previous pay for abatement purposes (regulation 47 and 48);

change the heading to regulation 2.J.14 to make it consistent with the equivalent regulation in Part 3 of the 2008 Regulations (regulation 53(a));

omit an unnecessary cross-reference in the provision on breaks in pensionable service (regulation 56(a)(i));

clarify the pensionable earnings of a type 1 medical practitioner performing Out of Hours Services (regulation 58);

bring the cross-references in regulation 3.A.8 into line with the equivalent regulation in Part 2 of the 2008 Regulations (regulation 59(a) and (b));

clarify the provisions on opting-out of the Scheme (regulation 62);

make changes to the level of contributions due from a member in respect of later employments (regulation 63(b) to (d));

amend the heading to regulation 3.D.6 of the 2008 Regulations (regulation 65);

changes the point at which credit is given in respect of transferred-in pensionable service (regulation 76);

simplify the definition of “type 1 practitioner” (regulation 84);

update the table of equivalent regulations in regulation 4.D.2 of the 2008 Regulations (regulation 86).

The changes made to the Injury Benefits Regulations by Part 3—

remove the specified definition of “PMS practice” (regulation 88);

provide that the unreduced amount of a pension under the 1995 Regulations or the 2008 Regulations (before any pension is converted to lump sum) is used for the purposes of the Injury Benefits Regulations (regulation 89);

amend the provisions on re-charging benefits to employers to deal with situations of multiple employers (regulation 90);

amend the provisions on claiming benefits to require a claim in writing within 6 months of becoming entitled (regulation 91);

provide for new notification requirements, obliging employers to notify the Secretary of State when temporary injury allowance is paid under the Injury Benefits Regulations, and obliging claimants to notify the Secretary of State if they recover damages in respect of the injury for which they receive benefits under the scheme (regulation 92).

Part 4 provides that deferred members, or members in receipt of a relevant benefit, who are detrimentally affected by these Regulations may elect for the provisions not to apply to them by giving notice within six months of the coming into force of these Regulations (regulation 93).

A full impact assessment has not been produced for this instrument as it has no impact on the costs of business, charities or the voluntary sector.