
STATUTORY INSTRUMENTS

2009 No. 2446

**The National Health Service Pension Scheme,
Injury Benefits and Additional Voluntary
Contributions (Amendment) Regulations 2009**

PART 2

Amendment of the National Health Service Pension Scheme Regulations 1995

Interpretation of Part 2

2. The National Health Service Pension Scheme Regulations 1995(1) shall be amended as follows.

Amendment of regulation A2

3. In regulation A2 (interpretation) in the definition of—

- (a) “pensionable employment”, after “the Scheme” insert “in accordance with this Section”;
- (b) “Scheme”, after “these Regulations” insert “and the National Health Service Pension Scheme Regulations 2008”.

Amendment of regulation E2B

4. In paragraph (2) of regulation E2B (re-assessment of ill-health condition determined under regulation E2A)—

- (a) at the end of sub-paragraph (c), omit “and”;
- (b) at the end of sub-paragraph (d), insert—
“; and
- (e) the member is not a 2008 Section Optant within the meaning of regulation 2.K.1 or 3.K.1 of the 2008 Section of the Scheme (application of Chapter 2.K and Chapter 3.K, respectively) who has become entitled to a tier 2 ill-health pension under regulation 2.D.8 or 3.D.7 of that Section (which deal with early retirement on ill-health (active members and non contributing members)).”.

Amendment of regulation G3

5. For paragraph (3) of regulation G3 (member dies after pension becomes payable), substitute—

“(3) For the purposes of paragraph (2), no account will be taken of any reduction to the member’s pension under regulation S2 unless—

(1) [S.I. 1995/300](#), as modified by [S.I. 1996/971](#) and 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](#), [2008/654](#) and [2263](#) and [2009/381](#).

- (a) the member is a 2008 Section Optant within the meaning of regulation 2.K.1 or regulation 3.K.1 of the 2008 Section of the Scheme, and
- (b) on the date of the member's death the member is an active or non-contributing member of that Section."

Amendment of regulation G14

6. In paragraph (1) of regulation G14 (surviving nominated partner's pension), for "who has pensionable service" substitute "whose pensionable employment ceases".

Amendment of regulation H3

7. In paragraph (2A)(b) of regulation H3 (member dies in pensionable employment), omit "the member's".

Amendment of regulation H4

8. For paragraph (2) of regulation H4 (member dies after pension becomes payable), substitute—
- "(2) Subject to paragraphs (2A) and (8)—
 - (a) the allowance will be calculated as described in whichever of paragraphs (3) or (4) apply, and
 - (b) where the member was, on the date of the member's death—
 - (i) not a 2008 Section Optant within the meaning of regulation 2.K.1 or regulation 3.K.1 of the 2008 Section of the Scheme (application of Chapter 2.K and Chapter 3.K, respectively), whose pensionable service—
 - (aa) equalled, or exceeded, 10 years, as a proportion of the amount of the member's pension based on that service;
 - (bb) was less than 10 years, as a proportion of the amount the member's pension would have been if it had been based on 10 years pensionable service;
 - (ii) such a 2008 Section Optant, as a proportion of the amount of the member's pension."

Amendment of Schedule 2

- 9.—(1) Schedule 2 (Medical and Dental Practitioners) shall be amended as follows.
- (2) In paragraph 9 (officer service treated as practitioner service)—
- (a) in sub-paragraph (1), omit "type 1" (twice);
 - (b) in sub-paragraph (3)(a), omit "principal";
 - (c) in sub-paragraph (3)(b), omit "type 1";
 - (d) in sub-paragraph (5A)(a), omit "type 1";
 - (e) after sub-paragraph (5B), insert—
 - "(5C) If—
 - (a) any part of the period of a member's officer service is treated as practitioner service for the purposes of sub-paragraph (1) or (5A) ("the converted service") and,

- (b) any part of the converted service has been credited to the member as a result of a transfer-in under regulations N2 or N3 (but not regulation R8(2)) (“the converted service credit”),
the amount of pensionable pay deemed to be received in respect of the converted service credit will be calculated in accordance with paragraph 18 of this Schedule.”;
 - (f) in sub-paragraph (8), for “been a type 1 practitioner” substitute “officer service before first becoming a practitioner”.
- (3) In paragraph 11A (practitioners with benefits from both practitioner and officer service) after sub-paragraph (5), insert—
- “(6) A member who, before commencing the member’s final period of practitioner service, has service as an officer (whether that service as an officer consists of a separate period of such service or two or more such periods), and—
 - (a) that officer service is preceded by an earlier period of practitioner service, and
 - (b) some or all of the officer service is not concurrent with practitioner service,shall, if it would be more favourable, be entitled to receive a separate pension and retirement lump sum for such part of that officer service that is not concurrent with the member’s practitioner service.
 - (7) The amounts of the pension and retirement lump sum referred to in sub-paragraph (6) —
 - (a) shall be subject to a 1.5% increase for each whole year or part of a year within the increment period,
 - (b) that increase shall be applied in like manner and at the same intervals as an increase applied to a pension under the Pensions (Increase) Act 1971(2), and
 - (c) that increase shall be effective immediately before the pension and lump sum become payable under these Regulations.
 - (8) The increment period referred to in sub-paragraph (7) shall—
 - (a) begin with the day immediately following the day on which the member’s service as an officer referred to in sub-paragraph (6) ceased for the last time, and
 - (b) end with the day immediately before the pension and retirement lump sum become payable under these Regulations.”.

Schedule

10. Schedule 1 shall have effect.