

EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE PENSION SCHEME, INJURY BENEFITS AND ADDITIONAL VOLUNTARY CONTRIBUTIONS (AMENDMENT) REGULATIONS 2009

2009 No.2446

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

The memorandum contains information for the Joint Committee on Statutory Instruments and for publication on the Office of Public Sector Information website.

2. Purpose of the instrument

2.1 This instrument amends four statutory instruments relating to pensions and benefits provided to National Health Service staff.

2.2 The main purpose of this instrument is to allow eligible members of the 1995 Section of the Scheme (those with a protected Normal Pension Age (NPA) of 60 or 55) to choose whether to transfer all their service to the 2008 Section or to remain a member of the 1995 Section of the NHS Pension Scheme.

2.3 The instrument also:

- introduces a refinement to the calculation of benefits where a practitioner is entitled to both career average and final salary benefits
- makes various miscellaneous amendments to clarify the working of certain regulations, and
- makes technical changes to terminology to clarify that there is one NHS Pension Scheme that comprises two Sections.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Regulations 6, 7, 13(d), 16(4)¹, 53(c)(ii), 59, 66, 85(2)², 104 and 105 make amendments with retrospective effect from 1 April 2008.

3.2 Regulations 30(2) and 72(2) make amendments with retrospective effect from 1 April 2009.

¹ in respect of sub-paragraph (11)(a) of regulation 2.A.10

² as it relates to paragraph (2)(b) of regulation 3.E.19

4. Legislative Context

4.1 **Part 2** of the SI amends the National Health Service Pension Scheme Regulations 1995 (S.I.1995/300) **(the 1995 Section)**.

4.2 **Part 3** of the SI amends the National Health Service Pension Scheme Regulations 2008 (SI 2008/653) **(the 2008 Section)**.

4.3 **Part 4** of the SI amends the National Health Service (Injury Benefits) Regulations 1995 (S.I. 1995/866).

4.4 **Part 5** of the SI amends the National Health Service (Additional Voluntary Contributions) Regulations 2000 (SI 2000/619)

4.5 All the above regulations were made under section 10 of, and Schedule 3 to, the Superannuation Act 1972.

4.6 **Part 6** of the SI provides an option to persons detrimentally affected by these Regulations to elect for those provisions not to apply in certain circumstances.

5. Territorial Extent and Application

5.1 The instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

A choice between the two Sections of the NHS Pension Scheme

7.1 Following a review of the NHS Pension Scheme³ led by the NHS Employers organisation⁴ in partnership with NHS trade unions (the NHS Review Partners), a new Section of the NHS Pension Scheme was introduced for new entrant NHS staff with effect from 1 April 2008.

³ The NHS Scheme (both 1995 and 2008 Sections) provides benefits on a career average earnings basis for members who are General Medical and Dental Practitioners and benefits on a final salary basis for all other members.

⁴ Initially led by the NHS Confederation which transferred responsibility for the Review to NHS Employers a part of the Confederation which represents NHS Trusts in England and Wales

Key features of the new “2008 Section” are:

- a normal retirement age of 65,
- a pension equal to 1/60th of final pay for each year of membership or a pension based on 1.87% of career average earnings for self-employed general medical and dental practitioners
- an option to exchange pension for lump sum.

(See SI 2008 No 653 and associated Explanatory Memorandum).

7.2 Existing members of the NHS Pension Scheme at 1 April 2008 retain access to the “1995 Section” of the Scheme.

Key features of the existing 1995 Section are:

- a normal retirement age of 60,
- a pension equal to 1/80th of final pay for each year of membership, or a pension based on 1.4% of career average earnings for self-employed general medical and dental practitioners
- a fixed (three times pension) lump sum.

7.3 The NHS Review Partners also recommended that, subject to certain transitional arrangements, eligible members of the 1995 Section of the Scheme should be offered a choice to transfer past and future service to the 2008 Section. This decision accords with a central principal of the PSF⁵ agreement that there should be “scope to improve individual choice over how long to work for, including increased flexibility to choose a retirement date different from normal pension age.”

7.4 This choice to move to the 2008 Section of the NHS Pension Scheme will be extended to members who are active in the 1995 Section on or after 1 October 2009. The Scheme administrators (the Pensions Division of the NHS Business Services Authority) will run an exercise over a two year period to offer this option to approximately 1.3 million Scheme members (“the pension choice exercise”). The regulations covering the choice exercise and the transitional arrangements for those members who do choose to transfer to the 2008 Section are explained in detail at paragraphs 7.8 (1) to (25).

Other changes made by this instrument

The calculation of mixed final salary and career average benefits for practitioner members

7.5 Benefits are provided for general practitioners based on a percentage of their uprated earnings throughout their time in practice. However, most general practitioners also accrue

⁵ REFORM OF PUBLIC SERVICE PENSION SCHEMES: THE WAY FORWARD FOR TEACHERS, THE NHS AND THE CIVIL SERVICE, October 2005.

benefits on a final salary basis as the result of work undertaken in a hospital setting. The current regulations make specific provisions for the calculation of final retirement benefits in these circumstances to ensure that moves between the final salary and career average regimes, in otherwise unbroken membership, do not devalue the benefits for earlier periods of membership.

The amendments contained in this SI supplement those provisions by enhancing the indexation of final salary benefits in certain circumstances and those amendments are explained in more detail at 7.9.

Miscellaneous and technical amendments

7.6 In order to better differentiate between the 1995 and the 2008 pension Scheme regulations, references have been changed throughout both sets of regulations so that they refer to the 1995 Section and the 2008 Section of the NHS Pension Scheme. More detail is provided at paragraph (7.10).

7.7 This amending SI also makes further technical and consequential changes to the 1995 and 2008 Pension Scheme Regulations (see 7.10) , the National Health Service (Injury Benefits) Regulations (7.11), and the National Health Service (Additional Voluntary Contributions) Regulations 2000 (7.12).

7.8 Amendments relating to the Pensions Choice in detail

(1) Two new Chapters have been inserted into the 2008 Regulations which contain specific provisions covering the choice 1995 Section members will have and the transitional arrangements for such members who decide to move all their benefits to the 2008 Section.

- **Amending regulation 52** inserts **Chapter 2.K** (2008 Section Optants) and covers members who are entitled to final salary benefits
- **Amending regulation 94** inserts **Chapter 3.K** (2008 Section Optants) and covers members who are entitled to career average benefits.

(2) A summary of the regulations contained in these two new chapters and the consequential amendments inserted elsewhere in the 2008 Regulations is provided below.

Regulation 2.K.1 Application of Chapter 2.K and Regulation 3.K.1 Application of Chapter 3.K

(3) These regulations introduce the new Chapters confirming that they apply to 1995 Section members who are active on or after 1 October 2009 and who opt to join the 2008 Section. 1995 Section members specifically excluded are those in receipt of an enhanced ill health pension paid under provisions that have now been discontinued and members who have previously declined an option to join the 2008 Section of a ‘sister’ Health Service Scheme (Northern Ireland, Scotland and the Isle of Man).

Amendments made elsewhere as a consequence of new Chapters 2.K.1 and 3.K.1 are as follows:

Amending regulation 13 inserts a definition of “2008 Section Optant” into regulation 2.A.1 (interpretation: general)

Amending regulation 53 inserts a definition of “2008 Section Optant” into regulation 3.A.1 (interpretation of Part 3: general)

Regulations 2.K.2 Options for 1995 Section members to join this Section of the Scheme under Chapter 2.K, and

Regulation 3.K.2 Options for 1995 Section members to join this Section of the Scheme under Chapter 3.K

(4) These regulations deal with the process, time limits and the effective date of an option to join the 2008 Section. Eligible members will be provided with a comparative statement of benefits under both the 1995 Section and the 2008 Section. Members must be active in the 1995 Section on the date their decision is notified to the Secretary of State and must make their decision by the return date on their statement. The return date will be at least four months from the date the statement is sent to the member and, where the statement is sent via the member’s employer, the member must have at least three months in which to consider their decision. The Secretary of State may extend the time limits. Members who are in the process of retiring may opt to delay the payment of benefits whilst considering whether to join the 2008 Section and may make their decision after they have left the Scheme. (Members who have applied for ill health retirement benefits are covered specifically by regulations 2.K.19 and 3.K.20).

If a member chooses to join the 2008 Section the option will be effective from 1 April 2008 and the member will be treated as if they had been a member of the 2008 Section from that date.

Amendments made elsewhere as a consequence of 2.K.2 and 3.K.2 are as follows:

Service an Optant is entitled to count under new Chapter 2.K and/or Chapter 3.K is included in the meaning of pensionable service.

Regulation 14 amends 2.A.2 (meaning of “pensionable service”)

Regulation 54 amends 3.A.3 (meaning of “pensionable service”)

Service an Optant is entitled to count as qualifying service under new Chapter 2.K and/or Chapter 3.K is included in the meaning of qualifying service.

Regulation 15 amends 2.A.5 (meaning of “qualifying service”)

Regulation 55 amends 3.A.5 (meaning of “qualifying service”)

2008 Section Optants are permitted to be members of the 2008 Section.

Regulation 18(1) amends 2.B.1A (Eligibility: transitional)

Regulation 60(1) amends 3.B.1A (Eligibility: transitional)

Adds any “pensionable earnings” the practitioner is entitled to count under Chapter 3.K (2008 Section Optants), to the earnings a type 1 practitioner is entitled to count under the 2008 Section for benefit purposes.

Regulation 56 amends 3.A.7 (meaning of pensionable earnings)

Adds any “pensionable earnings” the practitioner is entitled to count under Chapter 3.K (2008 Section Optants), to the earnings other (type 2) practitioners are entitled to count under the 2008 Section for benefit purposes.

Regulation 58 amends 3.A.13 (meaning of pensionable earnings in relation to other practitioners)

Regulation 2.K.3 Service credited from the 1995 Section

Regulation 3.K.3 Service and pensionable earnings credited from the 1995 Section

(5) This regulation provides for the terms on which service in the 1995 Section up to and including 31 March 2008 (excluding added years⁶ and Mental Health Officer doubled years and transfers in for members who joined the 1995 Section after 1 April 2008) will transfer to the 2008 Section.

A 2008 Section Optant will be entitled to count:

- a period of “qualifying service” equal in length to their 1995 Section qualifying service up to 31.3.2008 (maximum 45 years), and

if the Optant is under age 60 on 1.10.2009,

- a period of “pensionable service” or “pensionable earnings” (in the case of a practitioner member) equal in length to their 1995 pensionable service or earnings up to 31.3.2008,

or

where the Optant is age 60 or over on 1.10.2009,

- a period of “pensionable service” or “pensionable earnings” (in the case of a practitioner member) equal in length to their 1995 Section pensionable service or earnings up to 31.3.2008, multiplied by an actuarial factor that will reduce the period of service or earnings.

The amount by which the period of service or earnings are reduced will depend on the member’s age in years and months on 1.10 2009. 1995 Section service that was part-time will count in the 2008 Section at its whole-time equivalent length, in accordance with regulation R5 of the 1995 Section. If a member becomes a 2008 Section Optant, all rights under the 1995 Section of the Scheme will be extinguished.

Amendments made elsewhere as a consequence of 2.K.3 and 3.K.3 are as follows:

Excludes the pensionable service the member is entitled to count under 2.K.3 for the purposes of calculating “reckonable pay”

Regulation 16 amends 2.A.10 (meaning of “reckonable pay”)

Regulation 2.K.4 and 3.K.4

“Treatment of Additional Pension”

(6) New arrangements to buy amounts of ‘additional pension’ (AP) by paying additional voluntary contributions (AVCs) were introduced into both the 1995 and the 2008 Section from 1 April 2008. All AP contracts that 2008 Section Optants have started in the 1995 Section will transfer **automatically** to the 2008 Section. The cost and general procedures involved for buying AP are the same in either Section but, because of the earlier normal pension age in the 1995 Section (60), members are able to buy AP in that Section priced for payment at that age. This means that some adjustments are required to take account of the later normal retirement age (65) in the 2008 Section. In these circumstances:

- if all AVCs to complete the purchase have been paid - the amount of pension purchased (for payment at 65 instead of 60) will increase, or

⁶ See regulation 2.K.5 Treatment of Additional Service, 2.K.13 Transfers in: transitional provision and 2.K.18 Transitional Provision: Treatment of additional service in respect of Optants retiring on the grounds of Ill Health under regulation 2.D.8 .

- if contributions are still being made, these will reduce to secure exactly the same amount of AP that the member contracted to buy (for payment at 65 instead of 60) In some circumstances this adjustment may result in a purchase that is larger than the permitted maximum. If this happens the member will receive an actuarial increase to their main Scheme pensionable service (or pensionable earnings for a practitioner), to the value of the ‘excess’ AP payment made.

Amendments made elsewhere as a consequence of 2.K.4 and 3.K.4 are as follows:

“In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.4.” is inserted by

Regulation 20 at paragraph (9) of 2.C.8 (member's option to pay additional periodical contributions to purchase additional pension)

Regulation 21 at paragraph (7) of 2.C.10 (member's option to pay lump sum contribution to purchase additional pension),

Regulation 22 at paragraph (6) of 2.C.11 (payment of additional lump sum contributions by employing authority),

Regulation 23(3) at paragraph (11) of 2.C.14 (effect of payment of additional contributions under this Chapter)

Regulation 24 at paragraph (6) of 2.C.16 (effect of part payment of periodical contributions)

“In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.4” is inserted by

Regulation 61 at paragraph (9) of 3.C.6 (member's option to pay additional periodical contributions to purchase additional pension),

Regulation 62 at paragraph (7) of 3.C.8 (member's option to pay lump sum contribution to purchase additional pension),

Regulation 63 at paragraph (6) of 3.C.9 (payment of additional lump sum contributions by employing authority),

Regulation 64(3) at paragraph (11) of 3.C.12 (effect of payment of additional contributions under this Chapter)

Regulation 65 at paragraph (6) of 3.C.14 (effect of part payment of periodical contributions)

Regulation 2.K.5 and 3.K.5

“Treatment of Additional Service (and pensionable earnings in the case of a practitioner)”

(7) Arrangements to buy ‘added years’ of service at normal cost were withdrawn from the 1995 Section from 1 April 2008 and are not available in the 2008 Section. Where a 2008 Section Optant has completed an added years purchase or is still in the process of doing so, their purchase will be automatically ‘wound up’ under 1995 regulations and an additional pensionable service credit added to the main Scheme pensionable service credit transferred to the 2008 Section. For those remaining members who bought additional service under ‘old-style’ arrangements in the previous regulations (the National Health Service (Superannuation) Regulations 1980) but have not yet retired, paragraphs 2 and 3.K.5(2)(b) make equivalent arrangements. The service credited will transfer on the same terms as worked service up to 31.3.2008 (see explanation at paragraph 7.8 (5) for 2.K.3 and 3.K.3).

Regulation 2.K.6 and 3.K.6

“Treatment of unreduced retirement lump sum”

(8) Arrangements in the 1995 Section to buy a bigger retirement lump sum, where that lump sum would otherwise be reduced to pay for widow’s pension cover before 25 March 1972, or to buy a bigger dependant’s pension for service before 6 April 1988, in the case of widower’s and civil or nominated partners, will not apply in the 2008 Section. All members who transfer to the 2008 Section will enjoy full and equal dependant’s benefits cover. This means that 1995 Section ‘additional service style’ contracts to purchase increased lump sum or pension in these circumstances (URLS contracts) will have no further value on transfer to the 2008 Section. New regulations 2.K.6 and 3.K.6 will provide for members with existing URLS contracts in 1995 that transfer on ‘Choice’ **automatically** to have:

- any ongoing regular contribution contract(s) stopped, and
- any previously agreed contract(s) to pay for increased benefits by deduction from retirement lump sum cancelled
- any lump sum or regular contributions paid in error (because of the date they were able to exercise their ‘Choice’) between 1 April 2008, when they will effectively join the 2008 Section, and the ‘Choice’ ‘option date’ described in new 2.K.2, or 3.K.2 will be returned

Regulation 2.K.7 and 3.K.7

“Treatment of 2008 Section Optants to whom regulation L4(3) of the 1995 regulations applied immediately before 1 April 2008”

(9) Regulation L4(3) of the 1995 Section provides for a separate pension to be paid in respect of service before a break of more than 12 months if this would be more favourable to the member than treating the member’s service as continuous. Regulations 2.K.7 and 3.K.7 provide for this facility to carry forward into the 2008 Section. This means that if a 2008 Section Optant has a period of service in the 1995 Section that accrued before a break of 12 months or more, the service credited in the 2008 Section for that period may also attract a separate pension if this is more favourable. The separate pension will be based on the pensionable pay (or the uprated pensionable earnings in the case of a practitioner) that would have applied in the 1995 Section.

Amendments made elsewhere as a consequence of 2.K.7 and 3.K.7 are as follows:

If more beneficial, 1995 pensionable pay may be used to calculate benefits for the relevant period of service in place of ‘reckonable pay’ determined under regulation 2.A.10.

Regulation 16(2) amends 2.A.10 (meaning of “reckonable pay: general”)

A 2008 Section Optant whose service is treated separately under regulation 2.K.7 or 3.K.7 will not qualify for Tier 2 ill health enhancements (this applies in the 1995 Section where service is treated separately under regulation L4(3))

Regulation 29(2) amends 2.D.8 (early retirement on ill-health (active members and non-contributing members))

Regulation 71(2) amends 3.D.7 (early retirement on ill-health (active members and non-contributing members))

Regulation 2.K.8 and 3.K.8

“Pension Debit Members”

(10) These regulations do two things in circumstances where a 1995 Section member with a pension sharing debit elects to join the 2008 Section.

Firstly, the amount of the pension and lump sum to be debited from benefits will be increased by a factor to take account of the later normal retirement age of 65 in the 2008 Section. Secondly, because the member may choose the amount of lump sum that is taken instead of pension in the 2008 Section, regulations 2.K.8 and 3.K.8 also allow the Secretary of State to vary how the member takes their retirement benefits, if, for example

- The member does not elect to take enough lump sum to cover the amount of the lump sum debit, or
- The member elects to take too much lump sum so that there is not enough pension left to cover the amount of the pension debit.

Amendments made elsewhere as a consequence of 2.K.8 and 3.K.8 are as follows:

Any amount of lump sum the Optant chooses to take in place of pension is subject to the provisions contained in new regulation 2.K.8/ 3.K.8

Regulation 33 amends 2.D.14 (general option to exchange part of pension for lump sum)

Regulation 74 amends 3.D.10 (general option to exchange part of pension for lump sum)

The debit in respect of a 2008 Section Optant determined under the 1999 Act (Welfare Reform and Pensions Act 1999) is subject to the increase determined under new regulation 2.K.8/3.K.8

Regulation 34 amends 2.D.16 (reduction in pension debit member's benefits)

Regulation 75 amends 3.D.12 (reduction in pension debit member's benefits)

Regulation 2.K.9 Treatment of 2008 Section Optants to whom regulation R9 of the 1995 Regulations applied immediately before 1 April 2008

(11) Regulation R9 of the 1995 Section provides for the protection of a member's pensionable pay and service in circumstances where earnings reduce through no fault of the member. This means that, if more favourable, the member will receive a separate pension at retirement in respect of service and pensionable pay up to the date earnings reduced. Regulation 2.K.9 provides for this protection to carry forward into the 2008 Section. This means that if a member has protection for a period of 1995 service, the service credited in the 2008 Section for that period will also be protected if this is more favourable. The separate (protected) pension is based on the pensionable pay that would have applied in the 1995 Section.

Amendments made elsewhere as a consequence of 2.K.9

Regulation 16(1) amends regulation 2.A.10 (meaning of "reckonable pay": general) so that, if more beneficial, 1995 pensionable pay may be used to calculate benefits for the relevant period of service in place of 'reckonable pay' determined under regulation 2.A.10.

Regulation 2.K.10 Restriction on pensionable pay used for calculating benefits in respect of capped Optant service and Regulation 2.K.11 meaning of "capped Optant service"

Regulation 3.K.9 Pensionable earnings credited under regulations 3.K.3 and 3.K.5 to be treated as capped Optant pensionable earnings

(12) These regulations provide for the earnings cap to continue to apply in the 2008 Section if it applied to a period of service (or pensionable earnings in the case of a

practitioner) in the 1995 Section up to and including 31 March 2008 that is transferred across.

For members who will have benefits calculated on a final salary basis, the proportion of the service credited that will become subject to the earnings cap in the 2008 Section will be in the same proportion as the 1995 capped service was to the whole of the member's service in the 1995 Section up to 31 March 2008.

If the member's reckonable pay at retirement is higher than the earnings cap that applies at that time, a separate pension will be calculated in respect of capped service using the earnings cap as at retirement instead of the member's reckonable pay.

(The earnings cap was lifted by HMRC from 6 April 2006 and the equivalent cap that continued after that date in the NHS Scheme was lifted from 1 April 2008).

Amendments made elsewhere as a consequence of 2.K.10 and 3.K.11 are as follows:

Regulation 16(2) amends regulation 2.A.10 (meaning of "reckonable pay": general) so that, the earnings cap will be used to calculate benefits in respect of any 'capped Optant service' in place of 'reckonable pay' determined under regulation 2.A.10.

Regulation 2.K.12 and 3.K.11

"Amount of pension and lump sum to be paid to a 2008 Section Optant"

(13) 2008 Section Optants will be required to take a minimum amount of retirement lump sum in place of pension (MLS). The MLS will approximate to the amount of lump sum the Optant would have been required to take from the 1995 Section for service up to 31 March 2008 plus any added years purchased.

For final salary benefits the MLS on retirement after age 60 or on transfer of benefits will be equal to 3/80ths of the 2008 Section Optant's final salary for each year of 1995 service that transferred across plus any added years. The answer will be rounded down to the nearest multiple of 12 and the Optant's pension will be reduced by that amount divided by 12. The amount of MLS will be reduced if claimed before age 60 with an actuarial reduction or if the member was subject to a pension debit in the 1995 Section. If part of the 2008 Section Optants service is subject to the earnings cap separate calculations will be made for the MLS in respect of any capped and uncapped service.

The calculation of MLS set out in regulation 3.K.11 for practitioner Scheme members generally follows the same final salary benefit principles described for regulation 2.K.2 above. However, there are 2 differences.

In accordance with career average benefit principles, the MLS is 3 x 1.4% (4.2%) of the relevant uprated (i.e. revalued) pensionable earnings for each year of 1995 service transferred across, plus any added years.

In addition, where a practitioner has membership under both the career average and final salary regimes, and the modifications to benefits set out in Part 4 of the 2008 Section apply, MLS is calculated separately for the member's practitioner and final salary membership, and the amounts totalled. The total MLS is then applied to the member's final retirement benefits; irrespective of the way those benefits fall to be calculated according to Part 4. This approach removes the risk of significant variation in MLS, depending on e.g. whether a period of final salary membership remains treated as such, or is treated as practitioner membership, in accordance with Part 4.

Amendments made elsewhere as a consequence of 2.K.12 and 3.K.11 are
“In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.12”
is inserted by

Regulation 25 at paragraph (8) of regulation 2.D.1 (normal retirement pensions),
Regulation 27 at paragraph (5) of regulation 2.D.4 (early payment of pensions with actuarial reduction),
Regulation 28 at paragraph (10) of regulation 2.D.5 (partial retirement (members aged at least 55))
Regulation 29(4) at paragraph (18) of regulation 2.D.8 (early retirement on ill-health (active members and non-contributing members))
Regulation 31 at paragraph (10) of regulation 2.D.10 (early retirement on ill-health (deferred members)),
Regulation 32 at paragraph (9) of regulation 2.D.11 (early retirement on termination of employment by employing authority),
Regulation 33 at paragraph (10) of regulation 2.D.14 (general option to exchange part of pension for lump sum)
Regulation 46(3) at paragraph (6) of regulation 2.F.6 (calculating amounts of transfer value payments)

“In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.11”
is inserted by

Regulation 67 at paragraph (8) of regulation 3.D.1 (normal retirement pensions),
Regulation 69 at paragraph (5) of regulation 3.D.4 (early payment of pensions with actuarial reduction),
Regulation 70 at paragraph (9) of regulation 3.D.5 (partial retirement (members aged at least 55))
Regulation 71(4) at paragraph (18) of regulation 3.D.7 (early retirement on ill-health (active members and non-contributing members))
Regulation 73 at paragraph (10) of regulation 3.D.9 (early retirement on ill-health (deferred members))
Regulation 74 at paragraph (10) of regulation 3.D.10 (general option to exchange part of pension for lump sum),
Regulation 87(4) at paragraph (6) of regulation 3.F.6 (calculating amounts of transfer value payments)

Consequential amendments are also inserted by the following amending regulations. These ensure that the amount of the member’s pension used to calculate death benefits are the amount of that pension before it has been reduced to take account of the lump sum that was paid under either regulations 2.K.12 or 3.K.11 (but see further amendments below in respect of re-employed pensioners)

Regulation 37 at paragraph (3) and new (3A) of regulation 2.E.4 (amount of pensions under regulation 2.E.1: pensioner members),
Regulation 40(3) at paragraph (8) of regulation 2.E.11 (amount of children’s pension under regulation 2.E.8: deceased pensioner members)
Regulation 42(3) and (4) at paragraph (2)(b) and (6) of regulation 2.E.17 (amount of lump sum: single capacity members and recent leavers (disregarding regulation 2.D.5 employments))
Regulation 43 at new paragraph (4) of regulation 2.E.18 (amount of lump sum; dual capacity members (disregarding regulation 2.D.5 employments))

Regulation 44(3) at paragraph (4) of regulation 2.E.19 (amount of lump sum; dual capacity members; members with pensions under regulation 2.D.5)

Regulation 78 at paragraph (3) and new (3A) of regulation 3.E.4 (amount of pensions under regulation 3.E.1: pensioner members)

Regulation 81(3) at paragraph (8) of regulation 3.E.11 (amount of children's pension under regulation 3.E.8: deceased pensioner members)

Regulation 83(3) and (4) at paragraph (2)(b) and (6) of regulation 3.E.17 (amount of lump sum: single capacity members and recent leavers (disregarding regulation 3.D.5 employments))

Regulation 84 at new paragraph (4) at regulation 3.E.18 (amount of lump sum; dual capacity members (disregarding regulation 3.D.5 employments))

Regulation 85(3) at paragraph (4) of regulation 3.E.19 (amount of lump sum: dual capacity members: members with pensions under regulation 3.D.5)

The following amendments ensure that the amount of any initial partner pension paid after the death of a re-employed pensioner will be based on the amount of the member's pension after it has been reduced to take account of the lump sum that was paid under either regulations 2.K.12 or 3.K.11

Regulation 38 amends paragraph 3(b) of regulation 2.E.7 re-employed pensioners: adult survivor pensions in the initial period)

Regulation 79 amends paragraph 3(b) of regulation 3.E.7 re-employed pensioners: adult survivor pensions in the initial period)

The following amendments provide for interest to be paid if a lump sum due under regulation 2.K.12 or 3.K.11 is paid late.

Regulation 51 amends paragraph 5(a) of regulation 2.J.9 (interest on late payment of benefits and refunds of contributions)

Regulation 93 amends paragraph 5(a) of regulation 3.J.9 (interest on late payment of benefits and refunds of contributions)

Regulation 2.K. 13 and 3.K.10

“Transfers in: Transitional Provision”

(14) In keeping with the principle that 1995 Section members who opt to join the 2008 Section are treated as if they had been members of the 2008 Section from 1 April 2008, any such members who:

- joined the 1995 Section after 1 April 2008 , and
 - who bring with them an incoming transfer value payment
- will have the service to be credited as a result of the transfer calculated (if not yet finalised) or recalculated (if the transfer payment has already been received) as if it had been received in the 2008 Section. However, the ‘relevant date’ for the purpose of calculating the service credit will be the relevant date that was or would have been used in the 1995 Section.

Amendments made elsewhere as a consequence of 2.K.13 and 3.K.10 are

Sub-paragraph (11)(b)(iii) excludes the pensionable service an Optant is entitled to count under regulation 2.K.13 for the purposes of calculating ‘pensionable pay’

Regulation 16(4) amends 2.A.10 (meaning of “reckonable pay”: general)

“In the case of a 2008 Section Optant this regulation is subject to regulation 2.K.13” is inserted at:

Regulation 47 at paragraph (5) of regulations 2.F.8 (right to apply for acceptance of transfer value payment from another scheme)

Regulation 48 at paragraph (7) of regulation 2.F.10 (acceptance of transfer value payments)

Regulation 49 at paragraph (7) of regulation 2.F.11 (calculation of transferred-in pensionable service)

Regulation 50 at paragraph (5) of regulation 2.F.12 (meaning of “capped transferred-in service”)

“In the case of a 2008 Section Optant this regulation is subject to regulation 3.K.10”

Regulation 88 at paragraph (5) of regulation 3.F.8 (right to apply for acceptance of transfer value payment from another scheme)

Regulation 90 at paragraph (12) of regulation 3.F.10 (acceptance of transfer value payments)

Regulation 91 at paragraph (7) of regulation 3.F.11 (calculation of increased pensionable earnings as a result of a transfer-in)

Regulation 92 at paragraph (5) of regulation 3.F.12 (meaning of capped increase to pensionable earnings)

The definition of “minimum transfer value payment” is also amended to take account of contributions paid and transfers into the 1995 Section in respect of a 2008 Section Optant,

Regulation 46 amends 2.F.6 (calculating amounts of transfer value payments)

Regulation 87 amends 3.F.6 (calculating amounts of transfer value payments)

Regulation 2.K.14 and 3.K.13

“2008 Section Optants: Transitional Tier 2 ill-health pension”

(15) These regulations make provision for 2008 Section Optants who applied for ill health retirement under regulation E2A of the 1995 Section before their option to join the 2008 Section was received. It works in conjunction with the amended definition of “permanently” inserted into regulation 2.D.8 (3.D.7 in the case of a practitioner) by amending regulation 29(3) (71(3) in the case of a practitioner). The amended definition allows a decision by medical advisers that a member qualifies for either a tier 1 or tier 2 ill-health pension in the 1995 Section to count for the same purposes under the 2008 Section.

Therefore:

- if the member qualified for a tier 2 ill health pension under the 1995 regulations before their option to join the 2008 Section is received, and
- they subsequently opt to join the 2008 Section, and
- claim a tier 2 ill-health pension under 2008 Section ill health retirement regulations within one year of joining,

the amount of enhancement the Optant will receive will be calculated under 2.K.14 (3.K.13 in the case of a practitioner) instead of 2.D.8 or 3.D.7. The period is known as the ‘transitional enhancement period’.

The transitional enhancement period is 2/3rds of the Optant’s prospective service to age 60 subject to a minimum amount of enhancement. The minimum amount is the lesser of 4 years service and full prospective service to age 60.

Amendments made elsewhere as a consequence of 2.K.14 and 3.K.13

Inserts a revised definition of “permanently” and makes 2.D.8 subject to 2.K.14
Regulation 29(3) amends 2.D.8 (early retirement on ill-health (active members and non-contributing members))

Inserts a revised definition of “permanently” and makes 3.D.7 subject to regulation 3.K.13.
Regulation 71(3) amends 3.D.7 (early retirement on ill-health (active members and non-contributing members))

Regulations 2.K.15 and 3.K.14

“Treatment of ill-health retirement applications made by 2008 Section Optants within one year of joining this Section of the Scheme”

(16) These regulations make provision for 2008 Section Optants who submit an application (AW33E) for ill health retirement under the 2008 Section within one year of the Secretary of State receiving their option to join that Section. If a 2008 Section Optant becomes entitled to a tier 2 ill-health pension in these circumstances as a result of that application, any enhancement due will be calculated as described in regulation 2.K.14 or 3.K.13 in the case of a practitioner (the transitional enhancement period will apply in place of the enhancement period calculated under regulation 2.D.8 or 3.D.7)

Amendments made elsewhere as a consequence of 2.K.15 and 3.K.14

Regulation 2.D.8 is made subject to regulation 2.K.15 so that the transitional enhancement period under 2.K.14 applies in place of the enhancement period in 2.D.8.

Regulation 29(4) amends 2.D.8 (early retirement on ill-health (active members and non-contributing members))

Regulation 3.D.7 is made subject to regulation 3.K.14 so that the transitional enhancement period under 3.K.13 applies in place of the enhancement period in 3.D.7.

Regulation 71(4) amends 3.D.7 (early retirement on ill-health (active members and non-contributing members))

Regulation 2.K.16 Application of regulation 2.D.9 where a 2008 Section Optant has submitted an application for ill-health retirement under the 1995 Section

Regulation 3.K.15 Application of regulation 3.D.8 where a 2008 Section Optant has submitted an application for ill-health retirement under the 1995 Section

(17) These regulations make provision for 2008 Section Optants who applied for ill health retirement under regulation E2A of the 1995 Section before their option to join the 2008 Section was received. It also works in conjunction with the amended definition of “permanently” inserted into regulation 2.D.8 and 3.D.7. The amended definition allows a decision by medical advisers that a member qualifies for a tier 1 ill –health pension in the 1995 Section to count for the same purposes under the 2008 Section.

Therefore:

- if the member qualified for a tier 1 ill health pension under the 1995 regulations before their option to join the 2008 Section is received, and
- they were also notified that they could ask the SofS to re-assess this decision within a period of three years, and
- they subsequently opt to join the 2008 Section, and

- claim a tier 1 ill-health pension under 2008 Section ill health retirement regulations within one year of joining,

they will also be entitled to ask for the decision to be reassessed under regulation 2.D.9 (3.D.8 in the case of a practitioner) of the 2008 regulations. For the purpose of the reassessment, the permanence criteria for a tier 2 ill-health pension will be to age 60.

If, following the reassessment, the Optant qualifies for a tier 2 ill-health pension to be paid in place of their tier 1 ill-health, the enhancements will be calculated under regulation 2.K.14 or 3.K.13 (in the case of a practitioner) and will apply from the date of the SofS's decision that the Optant meets the tier 2 ill-health criteria.

Amendments made elsewhere as a consequence of 2.K.16 and 3.K.15

The following regulations are made 'subject to' regulation 2.K.16

Regulation 29(4) amends paragraph (18) of regulation 2.D.8 (early retirement on ill-health (active members and non-contributing members))

Regulation 30(3) amends paragraph (4) of regulation 2.D.9 (re-assessment of entitlement to an ill-health pension determined under regulation 2.D.8)

The following regulations are made 'subject to' regulation 3.K.15

Regulation 71(4) amends paragraph (18) of regulation 3.D.7 (early retirement on ill-health (active members and non-contributing members))

Regulation 72(3) amends paragraph (4) of regulation 3.D.8 (re-assessment of entitlement to an ill-health pension determined under regulation 3.D.7)

1995 Regulations

Regulation 4 amends E2B (re-assessment of ill-health condition determined under regulation E2A) to ensure that members cannot become entitled to a 1995 tier 2 ill-health pension for 1995 service and 2008 tier 2 ill- health pension for their later service.

Regulation 2.K.17 Application of regulation 2.D.9 where a 2008 Section Optant has submitted an application for ill-health retirement under the 2008 Section within a year of joining the 2008 Section

Regulation 3.K.16 Application of regulation 3.D.8 where a 2008 Section Optant has submitted an application for ill-health retirement under the 2008 Section within a year of joining the 2008 Section

(18) These regulations make provision for 2008 Section Optants who submit an application (AW33E) for ill health retirement under the 2008 Section within one year of the SofS receiving their option to join that Section and who become entitled to a tier 1 ill-health pension as a result. If, at the time that pension is awarded, the Optant is notified that they may ask the SofS to reassess this decision within a period of three years and their subsequent application for a reassessment to a tier 2 ill-health pension is successful any enhancement due will be calculated as described in regulation 2.K.14 or 3.K.13 (in the case of a practitioner). The transitional enhancement period will apply in place of the enhancement period calculated under regulation 2.D.8 or 3.D.7 and will apply from the date of the SofS's decision that the Optant meets the tier 2 ill-health criteria.

Amendments made elsewhere as a consequence of 2.K.17 and 3.K.16

The following regulations are made ‘subject to’ regulation 2.K.17

Regulation 29(4) amends paragraph (18) of regulation 2.D.8 (early retirement on ill-health (active members and non-contributing members))

Regulation 30(3) amends paragraph (4) of regulation 2.D.9 (re-assessment of entitlement to an ill-health pension determined under regulation 2.D.8)

The following regulations are made ‘subject to’ regulation 3.K.16

Regulation 71(4) amends paragraph (18) of regulation 3.D.7 (early retirement on ill-health (active members and non-contributing members))

Regulation 72(3) amends paragraph (4) of regulation 3.D.8 (re-assessment of entitlement to an ill-health pension determined under regulation 3.D.7)

Regulation 2.K.18 Transitional Provision: Treatment of additional service in respect of Optants retiring on the grounds of Ill- Health

Regulation 3.K.18 Transitional Provision: Treatment of additional service in respect of Optants retiring on the grounds of Ill- Health

(19) In the 1995 Section, members who successfully apply for an ill health retirement (IHR) pension under regulation E2 or E2A of that Section, before age 60 and at least 12 months after starting to pay regular additional contributions, are credited with the full amount of the additional service that they contracted to buy and any outstanding additional contributions are deemed to have been paid. 1995 Section members who have been making regular additional contributions for less than 12 months have their contract cancelled and their additional contributions to date refunded less tax. New regulations 2.K.18 and 3.K.18 mirror these arrangements for members who successfully apply for IHR before the date on which the member’s option to join the 2008 Section of the Scheme is received.

Amendments made elsewhere as a consequence of 2.K.18 and 3.K.18

Regulation 29(4) makes regulation 2.D.8 (early retirement on ill-health (active members and non-contributing members)) ‘subject to’ **regulation 2.K.18**

Regulation 71(4) makes regulation 3.D.7 (early retirement on ill-health (active members and non-contributing members)) ‘subject to’ **regulation 3.K.18**

Regulation 2.K.19 Circumstances in which a 1995 Section member may defer making an option to join this Section of the Scheme under regulation 2.K.2

Regulation 3.K.20 Circumstances in which a 1995 Section member may defer making an option to join this Section of the Scheme under regulation 3.K.2

(20) These regulations allow a 1995 Section member to defer making an option to join the 2008 Section until the outcome of an ill health application under the 1995 regulations is known. The application for ill health retirement (AW33E) must be received before a comparative statement of benefits is issued or before the date specified in the statement if the application is made after a statement has been issued.

In these circumstances a member may defer their decision on whether to join the 2008 Section until four months after they receive a decision on their ill health application.

If the application is not agreed and the member appeals against that decision within 12 months of the termination of their contract, a decision may be deferred until four months after they are notified of the outcome of the 1st appeal.

If the 1st appeal is not agreed and a second appeal is submitted within six months of the notification of the 1st appeal decision, their decision to join the 2008 Section may be deferred until four months after they are notified of the outcome of the 2nd appeal.

If the 2nd appeal is not agreed and a request for a determination by the Pensions Ombudsman is made within three years of the notification of the 2nd appeal decision, their decision to join the 2008 Section may be deferred until four months after they are notified of the outcome of the Pensions Ombudsman's investigation.

The option to defer a decision to join the 2008 Section under this regulation ceases if the member becomes re-employed in the NHS or if an actuarially reduced pension under the 1995 regulations is claimed.

Regulation 2.K.20 Nominations and notices accepted by the Secretary of State under the 1995 regulations to apply under Chapter 2.E of these Regulations

Regulation 3.K.12 Nominations and notices accepted by the Secretary of State under the 1995 regulations to apply under Chapter 3.E of these Regulations

(21) These regulations provide for 2008 Optants who have made nominations or given notices in the 1995 Section for:

- a lump sum nomination under regulations F1 to 4 of that Section,
- a notice under regulation F5(3)(a) that the member's surviving partner is not to receive a lump sum under regulations F1 to 4, or
- a notice for the purposes of regulation G14 of that Section nominating a partner to receive a surviving nominated partner pension

to have those notices or nominations treated as if they were notices or nominations made under the 2008 Section.

Amendments made elsewhere as a consequence of 2.K.20 and 3.K.12

“In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.20 (nominations and notices accepted by the Secretary of State under the 1995 Regulations to apply under Chapter 2.E of these Regulations)” is inserted by

Regulation 35 at paragraph (3) of regulation 2.E.2 (meaning of “surviving nominated partner”)
Regulation 45 at paragraph (13) of regulation 2.E.21 (payment of lump sums or pensions on death)

“In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.12 (nominations and notices accepted by the Secretary of State under the 1995 Regulations to apply under Chapter 3.E of these Regulations)” is inserted by

Regulation 76 at paragraph (3) of regulation 3.E.2 (meaning of “surviving nominated partner”)

Regulation 86 at paragraph (13) of regulation 3.E.21 (payment of lump sums or pensions on death)

Regulations 2.K. 21 and 3.K.17

“Late payment of pension with actuarial increase for a 2008 Optant”

(22) Pensions payable after the normal retirement age of 65 in the 2008 Section attract a ‘late retirement factor’ (LRF) increase in respect of pensionable service up to age 65 under regulation 2.D.3. or 3.D.3 (in the case of a practitioner). Service after age 65 does not attract an increase.

These regulations entitle a 2008 Section Optant to reckon **all** their 1995 Section service up to 31 March 2008 that counts under regulation 2.K.3 or 3.K.3 of the 2008 Section for a LRF increase, even if some of that 1995 service fell after age 65. The service a 2008 Section Optant will be able to count for a LRF increase is:

- all the service and pensionable earnings the Optant can count under regulation 2.K.3 or 3.K.3,
- any additional service (added years) the Optant is entitled to count under regulation 2.K.5 or 3.K.5,
- service in the 2008 Section on or after 1.4.2008 and **before** age 65, and
- any contributions payable before age 65 for Additional Pension

Service in the 2008 Section **after** age 65 from and including 1 April 2008 will continue to attract no late retirement increase.

Amendments made elsewhere as a consequence of 2.K.21 and 3.K.17

Regulation 26 makes Regulation 2.D.3 (late payment of pension with actuarial increase) ‘subject to’ regulation 2.K.21

Regulation 68 makes Regulation 3.D.3 (late payment of pension with actuarial increase) ‘subject to’ regulation 3.K.17.

Regulations 2.K.22 and 3.K.21

“2008 Section Optants who are in receipt of a tier 1 ill-health pension under Regulation E2A of the 1995 Regulations”

(23) Some members who choose to transfer to the 2008 Section may already be in receipt of a 1995 Section Tier 1 (unenhanced) ill-health pension (“a re-employed 2008 Section Optant”). The amendment ensures that where such a member’s 1995 tier 1 ill-health pension converts to a tier 2 pension under regulation E2B, any further ill health pension, for service in the 2008 Section, is restricted to tier 1. And, because such an Optant may be in the process of applying for a tier 2 ill health pension for their re-employment in the 1995 Section, the regulation is made subject to the transitional arrangements in regulation 2.K.14 onwards (3.K.13 onwards for a practitioner).

Amendments made elsewhere as a consequence of 2.K.22 and 3.K.21

Prevents a re-employed 2008 Section Optant from accruing further service in the 2008 Section if, on review, their 1995 tier 1 ill-health pension is converted into an enhanced tier 2-ill health pension.

Regulation 18(2) amends paragraph (2) of regulation 2.B.1A (eligibility: transitional)

Regulation 60(2) amends paragraph (2) of regulation 3.B.1A (eligibility: transitional)

Regulation 2.K.23 and 3.K.22

“Lump sum payable on the death of a 2008 Section Optant who is in receipt of a tier 1 ill-health pension under regulation E2A of the 1995 Regulations”

(24) Regulations 2.K.23 and 3.K.22 ensure that the death benefit lump sum paid in respect of a re-employed 2008 Section Optant will not be twice their reckonable pay. In common with re-employed pensioners whose service is all within one Section of the NHS Scheme, the lump sum on death in these circumstances will be equal to five times the value of a tier 2 ill health- pension.

Amendments made elsewhere as a consequence of 2.K.23 and 3.K.22

“In the case of a 2008 Section Optant, this is subject to regulation 2.K.23 (lump sum payable on the death of a 2008 Section Optant who is in receipt of a tier 1 ill-health pension under regulation E2A of the 1995 Regulations)” is inserted by

Regulation 42(2) at paragraph (1) of 2.E.17 (amount of lump sum: single capacity members and recent leavers (disregarding regulation 2.D.5 employments)),

Regulation 44(2) at paragraph (2) of 2.E.19 (amount of lump sum; dual capacity members; members with pensions under regulation 2.D.5)

“In the case of a 2008 Section Optant, this is subject to regulation 3.K.22 of a tier 1 ill-health pension under regulation E2A of the 1995 Regulations)” is inserted by

Regulation 83(2) at paragraph (1) of 3.E.17 (amount of lump sum: single capacity members and recent leavers (disregarding regulation 3.D.5 employments))

Regulation 85(2) at paragraph (2) of 3.E.19 (amount of lump sum: dual capacity members with pensions under regulation 3.D.5)

1995 Regulations

Regulation 5 revises paragraph (3) of regulation G3 (member dies after pension becomes payable) This amendment ensures that the initial rate of any partner pension paid in respect of a 1995 pensioner who is also a 2008 Section Optant is reduced to take account of any pension abatement in force as a result of pensionable service in the 2008 Section.

Regulation 2.K.24 and 3.K.23

“Children’s pensions payable on the death of a 2008 Section Optant who is in receipt of a tier 1 ill health pension under regulation E2A of the 1995 Regulations”

(25) Children’s pensions are based on a proportion of the member’s pension based on a minimum of 10 years service. In the case of re-employed pensioners the minimum only applies if both the earlier and the later service (in re-employment) combined is less than ten years. If the member’s combined service is less than 10 years the later service is increased by the difference.

These regulations ensure that the 10 years service minimum takes account of service in both the 1995 and the 2008 Section. Where the combined service across the two Sections is less than 10 years, the later 2008 active service will be increased by the shortfall.

Amendments made elsewhere as a consequence of 2.K.24 and 3.K.23

“In the case of a 2008 Section Optant, this is subject to regulation 2.K.24 (children’s pensions payable on the death of a 2008 Section Optant who is in receipt of a tier 1 ill-health pension under regulation E2A of the 1995 Regulations)” is inserted by

Regulation 39 at paragraph (4) of 2.E.10 (amount of children’s pension under regulation 2.E.8: deceased active members and deceased non-contributing members)

Regulation 40(2) at paragraph (3) of 2.E.11 (amount of children’s pension under regulation 2.E.8: deceased pensioner members)

Regulation 41 at paragraph (3) of 2.E.12 (amount of children’s pension under regulation 2.E.8: deceased deferred members)

“In the case of a 2008 Section Optant, this is subject to regulation 3.K.23 (children’s pensions payable on the death of a 2008 Section Optant who is in receipt of a tier 1 ill-health pension under regulation E2A of the 1995 Regulations)” is inserted by

Regulation 80 at paragraph (3) of 3.E.10 (amount of children’s pension under regulation 3.E.8: deceased active members and deceased non-contributing members)

Regulation 81(2) at paragraph (3) of 3.E.11 (amount of children’s pension under regulation 3.E.8: deceased pensioner members)

Regulation 82 at paragraph (3) of 3.E.12 (amount of children’s pension under regulation 3.E.8: deceased deferred members)

1995 Regulations

Regulation 8 amends paragraph (2) of regulation H4 (member dies after pension becomes payable) so that where a 2008 Section Optant’s service is less than ten years, for the purposes of calculating any children’s pension payable the shortfall is added to the later 2008 Section membership.

7.9 The calculation of mixed final salary and career average benefits for practitioner members (changes to both the 1995 and the 2008 Sections) - in detail

1995 Section	
Amending regulation	Regulation amended
9	Schedule 2 to the 1995 Regulations, paragraphs 9 and 11A
2008 Section	
95	4.A.2 (interpretation: general)
96	4.B.1 (application of Chapter 4.B)
97	4.B.2 (cases with up to 10 years of officer service)
98	4.B.3 (cases with more than 10 years of officer service)
99	Inserts new 4.B.7A (cases with non-concurrent officer service between periods of practitioner service)
101	Inserts new 4.B.11 (calculation method D)
102	4.C.1 (top up where reference amount greater than base amount)

(1) These amendments refine existing provisions for the calculation of retirement benefits for general medical and dental practitioners with membership under both the career average and final salary regimes. The changes have the same effect in both Sections of the Scheme and will apply to practitioner members who retire on or after 1 October 2009, for membership accrued before and after that date.

Amending regulations 9 (schedule 2(9)), and 95 to 98 remove references to ‘Type 1’ practitioner from 1995 (schedule 2(9)) and 2008 4.A.2 and 4.B.1 to 4.B.3, respectively. This will ensure that the provisions to treat up to 10 years of officer service before first becoming a ‘Type 1’ practitioner as if it were practitioner service, will be available to all types of practitioner, where this is beneficial.

Amending regulations 9 (schedule 2 (11A)), 99, 101 and 102 make changes to 1995 (schedule 2(11A)) and 2008 4.B.7A, 4.B.11 and 4.C.1 that will apply to one or more periods of final salary membership ‘sandwiched’ between periods of practitioner membership. The change will ensure that members with this service pattern are not disadvantaged if their final salary benefit cannot be linked to final pensionable pay, by improving the revaluation of the benefit, from RPI, to RPI+1.5%, for the period between the end of ‘sandwiched’ membership and final retirement.

The improved revaluation is “Calculation method D” in new regulation 4.B.11. Briefly, the basic pension and any lump sum amounts will first be calculated in the normal way, and then revalued (increased) by 1.5% per annum, in the same way that a pension would be under the Pensions (Increase) Act 1971. The additional revaluation will be applied up to the date the pension is put into payment only, followed by normal increases under the PI Act, so that ‘double indexation’ will be avoided.

7.10 Miscellaneous and technical amendments in detail

(1) Miscellaneous Amendments made to the 1995 Section Regulations

Amending regulation	1995 Regulation amended	Change
6	G14 (surviving nominated partner's pension)	Ensures that members who are on unpaid sick leave on and after 1 April 2008 may nominate a partner to receive a surviving partner pension.
7	H3 (member dies in pensionable employment)	Ensure that any added years purchased are included in the service used to calculate a child allowance after that service has been increased to ten years if appropriate.
9(2)(e)	Paragraph (9) of Schedule 2 (Medical and Dental Practitioners)	Clarifies the way in which pensionable earnings will be determined, if a member has officer service before practitioner service that was the result of a transfer-in.
3 10	A2 (interpretation) Gives effect to Schedule 1	In order to better differentiate between the 1995 and the 2008 regulations, references have been changed throughout both sets of regulations so that they refer to the 1995 Section and the 2008 Section of the NHS Pension Scheme.

(2) Miscellaneous Amendments made to the 2008 Section Regulations

Amending regulation	2008 Regulation amended	Change
12 7.11 13 17 53 103	1.B.3 (provision of information relevant for tax purposes) Amendments made to the Injury Benefit Regulations 2.A.1(interpretation: general) 2.B.1(eligibility: general) 3.A.1(interpretation: general) Gives effect to Schedule 2	In order to better differentiate between the 1995 and the 2008 regulations, references have been changed throughout both sets of regulations so that they refer to the 1995 Section and the 2008 Section of the NHS Pension Scheme.
13 & 53 19	2.A.1 and 3.A.1 (interpretation: general) (definition of “Host Trust or Board”) 2.C.5 (contributions by employing authorities: general)	Clarifies the operation of “host Trust or Board” in relation to general medical and dental practitioners and non-GP providers and exceptions to the circumstances when the Host Trust or Board will be deemed to be the employer of such persons.
59	3.B.1(eligibility: general)	Ensures the “other scheme condition” applies correctly to deferred members of the 1995 Section who have not since become pensioner members of that Section.
30(2) 72(2)	2.D.9 (re-assessment of entitlement to an ill-health pension determined under regulation 2.D.8) 3.D.8 (re-assessment of entitlement to an ill-health pension determined under regulation 3.D.7)	The drafting of paragraph (2) of these regulations has been brought into line.
89 90 91 92	3.F.9 (procedure for applications under regulation 3.F.8) 3.F.10 (acceptance of transfer value payments) 3.F.11(calculation of transferred in pensionable service) 3.F.12 (meaning of “capped transferred-in service”)	These amendments clarify the way the earnings cap operates for practitioner members. The changes underline that, for practitioner members, a period of capped service is given effect by restricting the pensionable earnings used to calculate Scheme benefits. The amendment also makes clear that any part of an increase to pensionable earnings, following a transfer-in, that the practitioner is entitled to count under regulation 3.F.10(2)(a) as a result of <u>capped service</u> is a “ <i>capped increase to pensionable earnings</i> ” for the purposes of this Section of the Scheme.
100	4.B.8 (calculation method A)	clarifies the way in which pensionable earnings will be determined, if a member has officer service before practitioner service that was the

Amending regulation 104 puts right the omission of the NHS Pension Scheme Regulations 2008 from the definition of “NHS employment”.

7.12 **Amendments made to the Additional Voluntary Contribution Regulations**

Amending regulation 105 corrects the omission of a cross-reference to regulations 2.J.7 and 3.J.7 of the 2008 Regulations from regulation 20 and in paragraph (14)(1)(b) of Schedule 2 and updates certain references in accordance with the Finance Act 2004.

7.13 **Option to persons detrimentally affected by these amending regulations**

Amending regulation 106 (Option to persons detrimentally affected by these regulations) provides for a deferred member, or a member in receipt of a relevant benefit, whose position under these regulations would be worsened by any retrospective provision, to elect that that provision will not apply to them.

Consolidation

7.14 An informal consolidated text of both 1995 and 2008 Regulations incorporating changes up to 1 October 2009 has been made available to NHS Trade Unions and other stakeholders during the consultation period. Resource permitting, a consolidation exercise will commence during 2010.

Consultation on the draft regulations

7.15 A formal consultation exercise on the amending regulations began on the 5 March 2009 and ended on 13 May 2009.

7.16 Amongst those consulted were: NHS Trades Union representatives, NHS Employers; NHS Pensions (the Scheme Administrators); other public service pension Schemes; Government Actuary’s Department; the National Audit Office; the devolved administrations; and HM Treasury. In addition, workshops were provided to allow stakeholders the opportunity to ask any questions and to make comments on the Draft SI. These were attended by NHS Trades Union representatives, representatives of the devolved administrations and NHS Pensions (the Scheme Administrators) and the Government Actuary’s Department.

8. Consultation outcome

8.1 A number of helpful comments were received from Scheme Stakeholders following on from the regulation workshops and in subsequent correspondence from NHS Pensions. As a result, a significant number of further amendments were included in the draft SI and a supplementary consultation exercise on these ran from 22 May 2009 to 19 June 2009. The need for this further consultation period meant that it was not possible to lay the amending SI before the start of the summer recess.

8.2 Two NHS Trades Unions made representations (independent from their role as NHS Review Partners) requesting that further amendments be included in relation to the position of members whose employment is being transferred to another non NHS organisation and those who are in the process of retiring on health grounds. However, these were not supported by the Review Partners and no further changes were made as a result.

9. Guidance (for NHS Staff and NHS employers)

- 9.1 Information about the Pensions Choice Exercise was first made available via a leaflet enclosed with the pay slips of all NHS Staff in May of this year. Since then more detailed guidance (including the anticipated timetable for individual members to access their personalised 'Choice' packs) has been building in the dedicated 'Choice' area of the NHS Pension Website. A link to that area is here <http://www.nhsbsa.nhs.uk/Choice.aspx>
- 9.2 There is also a dedicated member and employer 'Choice' helpline available to answer questions which can be accessed via email, letter or telephone.
- 9.3 NHS Pensions and NHS Employers will provide further dedicated support to each Strategic Health Authority region throughout the exercise. This will include delivery of a series of targeted Employer Newsletters, an Employer Choice 'toolkit' and, where required, the co-location of NHS Pensions and NHS Employer staff to assist employers run the exercise locally.

10. Impact

An impact assessment is attached.

11. Regulating small business

11.1 The legislation applies to a number of small businesses, who are classed as NHS Pension Scheme Employing Authorities, and required or able to offer the NHS Pension Scheme to their staff, e.g. GP Practices, Out Of Hours and Direction Bodies. However the impact of the changes to the Scheme are generally beneficial, with any 'negative' effects confined to changes in administrative procedures.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to ensure good consultative links with representatives of small businesses who are NHS Pension Scheme employers and easy access to guidance, publicity materials and helpline points for all NHS Scheme employers and members, as exemplified in paragraph 9 above.

11.3 The basis for the final decision on what action to take to assist small business administering the NHS Pension Scheme is agreed in partnership with NHS Trades Union and Employer representatives.

12. Monitoring & review

NHS Pension Scheme changes are developed, monitored and reviewed in partnership with the NHS Employers organisation and NHS trade unions (the NHS Review Partners), in the light of formal and informal consultation procedures. The Partners report and recommend changes to a 'Governance Group' representing employers, the Council of NHS Trades Unions and the Department of Health, which in turn makes recommendations to the Secretary of State for Health and HM Treasury.

13. Contact

Mrs Angie Walsh at the Department of Health Pensions Policy Team, Tel: 01253 774510 or e-mail Angie.Walsh@dh.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency:	Title: Impact Assessment of the NHS Pension Scheme, Injury Benefits and AVC (Amendment) Regulations 2009	
Stage: Final	Version: 1	Date: 28 August 2009
Related Publications: NHS Pension Scheme (1995 & 2008), NHS Injury Benefits, and NHS Additional Voluntary Contributions Regulations (S.I's 1995/300, 2008/653, 1995/866 and 2000/619)		

Available to view or download at:

<http://www.opsi.gov.uk/legislation/original>

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What is the problem under consideration? Why is government intervention necessary?

This main purpose of this instrument is to authorise an NHS Pension Scheme 'Pensions Choice Exercise' (PCE). Existing members of the 1995 Section of the scheme (who have a protected Normal Pension Age (NPA) of 60 or 55) will be able to choose whether to transfer all their service to the 2008 Section of the Scheme (which has a NPA of 65) or to retain their service in the 1995 Section. Under existing regulations, only new staff can join the 2008 (NPA 65) Section.

What are the policy objectives and the intended effects?

The Government initiated public sector pension scheme reviews in 2004 culminated in the 'Public Services Forum' Agreement (PSF). PSF provided for future members to join new NPA 65 schemes whilst enabling existing members to retain access to current benefits and NPA. A central principle of PSF was the improvement of individual choice retirement date and how long to work for. The PCE supports this aim and the retention of valuable skills in the NHS. The PCE also supports the Government's wider later retirement objectives and provides a defence against any charge of member discrimination.

What policy options have been considered? Please justify any preferred option.

NHS Scheme Review Partners considered having no PCE and having a PCE on different terms. Their preferred option is a PCE allowing transferring members a years 2008 Section membership for each 1995 Section year up to age 60, and decreasing service for ages 60+. Having a PCE supports NHS and wider policy objectives, and counters potential discrimination costs of up to £1bn pa. Implementation costs are £22.5m over 3 years. The transfer terms balance the risk of higher scheme costs from members most likely to gain, with the benefits of NHS skills retention through making PCE attractive.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? NHS Pensions, the Department, and NHS Employers and Trade Unions will monitor the PCE during the 3 year implementation to March 2012. The Scheme Actuary reviews NHS Pension Scheme costs 4 yearly.

Ministerial Sign-off For SELECT STAGE Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Phil HopeDate: **2nd September 2009**

Summary: Analysis & Evidence

Policy Option:	Description:
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' NHS Pensions, the division of the Business Services Authority responsible for the administration of the NHS Pension Scheme, estimates the total (administrative) costs for the PCE will be £22.5m over 3 years.			
	One-off (Transition) Yrs		3		
	£ 22.5m				
	Average Annual Cost (excluding one-off)				
		Total Cost (PV)	£ 22.5m		
Other key non-monetised costs by 'main affected groups' It is impossible to firmly estimate the (non administrative) costs to the NHS Scheme of the PCE. However, the Scheme Actuary has modelled a range of possible TOTAL costs, over 30 years, of between £500m and £1.4bn.					

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' It is impossible to forecast the final outcome of a PCE. However conservative modelling of the wider NHS reform savings flowing from later retirements and reduced skills loss is estimated at £430m pa, with a total saving over 50 years of £33bn.			
	One-off Yrs				
	£				
	Average Annual Benefit (excluding one-off)				
	£ 430m	Total Benefit (PV)	£ 33bn		
Other key non-monetised benefits by 'main affected groups' The Scheme Actuary has estimated that the PCE provides potential savings of up to £1bn pa, by providing a good defence against any legal challenge that resulted in pensionable reemployment having to be made available in the 1995 Section of the Scheme as well as the new 2008 Section.					

Key Assumptions/Sensitivities/Risks That PCE is attractive enough to encourage 1995 Section (NPA 55, 60) members to move to the 2008 (NPA65) Section of the Scheme, whilst controlling costs from older members most likely to gain from moving. That the PCE is a good defence against any charge of discrimination from members in the separate NHS Scheme Sections.

Price Base Year 2004	Time Period Years 50	Net Benefit Range (NPV) £ N/A	NET BENEFIT (NPV Best estimate) £ N/A
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What is the geographic coverage of the policy/option?	England and Wales			
On what date will the policy be implemented?	1 October 2009			
Which organisation(s) will enforce the policy?	NHS Pensions (BSA)			
What is the total annual cost of enforcement for these organisations?	£ 7.5m (for 3 yrs)			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ N/A			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro 0	Small 0	Medium 0	Large 0
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of	£ 0	Decrease of	£ 0
		Net Impact	£ 0

Key:

Annual costs and benefits: Constant
(Net) Present

1. The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions (Amendment) Regulations 2009 effective 1 October 2009

Objectives

2. To introduce regulations which will underpin the delivery of the NHS Pension Choice Exercise (PCE) - The PCE will allow members of the 1995 section of the NHS Pension Scheme to transfer past and future service, on a voluntary basis, to the 2008 section of the NHS Pension Scheme. The PCE follows a root and branch review of the NHS Pension Scheme led by the NHS Employers organisation in partnership with NHS trades unions. The NHS Pension Review Final Agreement⁷ contained the following statement:

“There will be a choice exercise in which members will be given a choice to move to the New NHS Pension Scheme. ...This choice will be for past and future pensionable service only (including any prior service not yet aggregated). The basis of the transfer, including the treatment of those with added years contracts, is yet to be agreed but will be determined by the Secretary of State in the light of future negotiations under the governance framework.”

3. The Government initiated reviews of public sector pension schemes in 2004 culminated in the Public Services Forum Agreement (PSF⁸). The PSF enabled existing scheme members to retain access to existing benefits including a Normal Pension Age (NPA) of 60 with new members joining a new scheme with a later retirement age of 65. The PCE accords with a central principal of the PSF agreement that there should be “scope to improve individual choice over how long to work for, including increased flexibility to choose a retirement date different from normal pension age.” It also meets a key requirement of employers in the NHS to retain skills and experience for longer.

4. There are significant differences between the 1995 and 2008 sections of the NHS Pension Scheme. In particular, provisions in the 2008 section allow members to retire and return to pensionable employment or to draw down part of their benefits while continuing in pensionable employment. These particular provisions were unaffordable in the 1995 section. However, legal advice confirmed that participation in a Choice Exercise which allowed eligible members to move from the 1995 Section to the 2008 Section would also be an ‘absolute defence’ against any challenge brought by members on the grounds that provisions in either the 2008 or 1995 sections were discriminatory.

Background

5. One of the stated policy intentions of the Government initiated reviews of public sector pension schemes in 2004 was to increase the Normal Pension Age (NPA) to 65 for all members.

⁷ NHS PENSION REVIEW: Agreement between NHS Employers and NHS Trade Unions in September 2007

<http://www.nhsemployers.org/PayAndContracts/NHSPensionSchemeReview/SchemeChanges/FinalAgreement/Pages/PensionReview-DetailFinalAgreement.aspx>) The terms of the PCE are contained in the Addendum to the NHS Pension Scheme Review Agreement

⁸ Reform of Public Service Pension Schemes: The way forward for Teachers, the NHS and the Civil Service, October 2005
REFORM OF PUBLIC SERVICE PENSION SCHEMES: THE WAY FORWARD FOR TEACHERS, THE NHS AND THE CIVIL SERVICE October 2005

The underpinning reasons for the proposed increase to the NPA included, amongst others, recognition that:

- people were living longer
- many people had not saved enough for retirement
- the pension scheme represented an important recruitment and retention tool
- the changing demographics gave rise to an imperative to extend working lives.
- the ageing workforce meant large numbers of skilled employees were approaching retirement and would not be easily replaced by new starters at the beginning of their working lives
- skills retention and the provision of the opportunity to extend working lives were therefore paramount.

6. This Government review, followed by the PSF, led directly to the introduction of the new 2008 Section of the NHS Pension Scheme from 1 April 2008. From that date, the NHS Pension Scheme provides retirement benefits for new entrant staff only at the later normal retirement age of 65, but with an accrual rate improved from $\frac{9}{80}$ of final salary with a fixed lump sum to $\frac{1}{60}$ of final salary for each year of membership and an option to commute pension to lump sum.

7. Prior to the introduction of new pension arrangements from 1 April 2008, the Department's key initiative 'Improving Working Lives'¹⁰ attempted to highlight existing pension flexibilities in order to support recruitment, retention and return strategies. There was however little flexibility because the Scheme was designed to support a typical male full time career of around 40yrs.

8. Current pensions strategies for the NHS are designed to build on the 'Improving Working Lives' initiative, the need to increase flexibility, and incentives to extend working lives. They are designed to meet the key challenge of encouraging NHS staff to consider working past retirement age, or at least beyond the retirement ages, which are the norm in the 1995 section of the NHS Pension Scheme (the average retirement age is 62¹¹). The PCE provides an opportunity to use the new pension arrangements to improve the employment offer and help:

- Retain the workforce necessary to achieve the Government's targets on service to patients** - the policy to introduce NPA65 by 2013 for existing staff was an important element of the Department's strategy to deal with the financial implications, which follow improvements in longevity. Through reviews of public service pension schemes and in consultation with employers and employer representatives, the objective was to raise the NPA in public service pension schemes from age 60 to age 65. It was envisaged that by 2006 all new staff who join such schemes would have a NPA of 65. However, the Government made it clear at that time, that for existing members, pension rights already accrued from past service would be fully protected.

⁹ 1.4% to 1.87% of career average earnings for self-employed general medical and dental practitioners

¹⁰ The Improving Working Lives Standard (IWL) is a blueprint by which NHS employers and staff can measure the management of human resources. Organisations are kite-marked against their ability to demonstrate a commitment to improving the working lives of their employees.
http://www.dh.gov.uk/en/Managingyourorganisation/Humanresourcesandtraining/Modelemployer/Improvingworkinglives/DH_417

¹¹ The average NPA across the 1995 section is 62. The average across non-special class members only is 63. Special Class members are those with the right to retire from age 55 with an unreduced pension. From 6 March 1995, these special retirement rights were removed for new entrants.

The Department see the PCE as an opportunity to deal with the 'retirement bulge' that is approaching. In the NHS, we expect around 50% of our current workforce to reach NPA60 by 2025. For example, around 10% of the existing workforce is currently in their mid-forties. This is particularly important since a large number of these are nurses, who make up about half of the NHS workforce.

- ii) **Consider the opportunities presented by an increase in the State Pension Age (SPA)** - the Labour Force Survey 2004 showed that the public sector workforce has a far greater proportion of older female and male workers than the private sector. In light of the state pension age increasing to 66 from 2024, engagement with staff in their 40s, with the aim to encourage them to reflect on their combined occupational and state income at retirement is important because:
 - over 60% of our existing members will be subject to a SPA higher than 65
 - about 90% of our female members (date of birth since 1950) will be subject to a SPA over 60
- iii) **Encourage a later Retirement Culture** - the new pension arrangements are designed to encourage staff to think about retirement as a gradual transition from work, rather than a once and for all event.

9. However, notwithstanding the opportunities outlined earlier, the Review Partners spent some considerable time trying to anticipate behavioural change so any proposals would mitigate selection risks. The key selection risks identified were:

- i) **Age** the older the member the greater the selection risk because older members are more likely to have an idea of when they plan to retire
- ii) **Known behaviour** -. Actuaries advise that it is impossible to know categorically how members might behave, especially younger members (say under age 50). However, it is possible to assume that those at or near the higher NPA of 65, may secure an immediate 'windfall' gain by moving to the 2008 section because of the higher accrual rate. The Review Partners understand that the key plank of pension reform is retention of the lower NPA for existing members, but this does not mean that members, once they understand the financial advantages, will not opt for a scheme with a higher NPA, especially those who were in any case planning to retire after 60

Members who know they are likely to work in the NHS for their entire career and choose to transfer could cause selective costs, where age related conversion factors include an allowance for the decrease in value of deferred benefits in the 2008 section

- iii) **Preference for pension rather than lump sum** - members who move to the 2008 section may take all their retirement benefits as pension rather than taking a lump sum. (A key assumption underpinning pension reform is that 50% of members will take a fixed lump sum equal to around 3/80ths and 50% the maximum lump sum allowed under HMRC reforms)
- iv) **Ill Health Retirement** - linked to known behaviour (e.g. those who may have an ill health retirement application in train during the PCE) where members may have the opportunity to choose between benefits based on 1/80^{ths} enhanced to normal pension age 60 or 1/60^{ths} enhanced to NPA 65¹². Such costs, unlike say redundancy benefits,

¹² By 2/3rd prospective service to respective normal pension ages 60 or 65

are borne by the Scheme.

- v) **Pre-88 service** - members with pre-1988 service may move to the NPA65 section to take advantage of partners' benefits receiving full cover for all service including pre-88 service
- vi). **Retirement during Choice** whilst not a selection risk per se, planning assumes that members who retire during the PCE, get a choice immediately prior to retirement. This will effectively present members with a choice similar to ill health retirees during the PCE; such members might always make decisions based on whether they receive a bigger pension under the existing or new arrangements.

10. Therefore, setting the 'right' conversion rate and implementing appropriate transitional arrangement for members choosing to transfer to the 2008 Section is particularly important, not least to trades unions since under the cost sharing agreement¹³, allowing too generous a conversion rate would see costs falling to employees. However, costs arising from Choice will take some considerable time to come through and it is not possible for the Government Actuary's Department (GAD) or anyone else to accurately anticipate now what proportion of future costs, if any, can be 'ring fenced' to the PCE. We know that experience following the PCE will not be reliable (since if older staff transfer, Scheme experience in both the 1995 and the 2008 sections will be distorted for some time) and we will need to wait for analysis of data provided for the 2016 valuation, before any useful evidence about the impact on retirement patterns becomes available. This might provide some idea, albeit it highly uncertain, of costs arising specifically from the PCE.

Rationale

11. The rationale for the PCE is that it should:

- i) be reasonably attractive to members who were interested in working towards 65 or who may be attracted to other benefits provided in the 2008 section.
- ii) be equitable overall in not unduly benefiting members in particular circumstances compared with the generality of members. This is arguably an issue of equity between members rather than cost falling to the sponsor because, through the operation of cost sharing, additional costs would be borne by other members
- iii) not increase significantly the costs of the NHS Pension Scheme overall. This requires avoiding windfall gains by those entitled to payment of benefits soon after transferring to the 2008 section
- iv) broadly reflect the fact that older members, who would have worked toward or beyond age 65, will receive a higher accrual rate in the NPA65 section. The conversion factors from age 60 ensure that such members do not secure windfall gains at the expense of other members. The factors also allow for the effect of Late Retirement Factors in the NPA65 section
- vi) be consistent with the views of trades union representatives. This was achieved via the Governance Group framework, which reports into the NHS Staff Council. All NHS trades unions have been fully consulted throughout the entire pension NHS Pension Review process, not just in relation to conversion terms.

¹³ Under the cost sharing agreement, employer contributions will be capped at 14.2% from 2012 and at 14% from 2016. If the cap is breached, scheme members will meet any additional cost.

Consultation

12. Discussions on the principles, policies and implementation of the PCE and transitional provisions have taken place between officials involved with the NHS Pension Scheme, Health Schemes in Scotland and Northern Ireland and other public service schemes.

Public consultation

13. A statutory consultation exercise on the PCE and transitional regulations began on 5 March 2009 and ended on 13 May 2009. This was extended by a further one-month period (22 May 2009 to 19 June 2009) in consideration of further amendments included following the initial consultation period.

14. The regulations reflect the agreement reached by the Review Partners contained in the addendum to the NHS Pension Review Agreement between NHS Employers and the NHS trade unions, 'Choice Terms: Agreed Statement by the Review Partners'.

15. The main features of the PCE provide that eligible members, on transfer to the 2008 section:

- i) must be active on or after 1 April 2008 and must be active at the point they receive their Choice Statement and make their decision. The only exception, applies to those members who are in the process of retiring or seeking agreement to retirement on health grounds.
- ii) under age 60 on 1 October 2009, will receive one years membership in the 2008 section for one years membership in the 1995 section
- iii) aged 60 or older on that date, will receive slightly less based on actuarial factors applicable from age 60 to age 70
- iv) will be entitled to widowers or partners benefits for all service transferred across.

16. The draft regulations and Explanatory Note were sent to:

The Royal College of Nursing,
Amicus
The British Medical Association
The British Dental Association
Unison
GMB
Society of Podiatrists
Chartered Society of Physiotherapy
Society of Radiographers

The Business Services Authority, Pensions Division

NHS Employers
Government Actuary Department
National Audit Office
HM Treasury
Department for Constitutional Affairs

The Devolved Administrations

Other Government Departments with public service pension interests
(Including the Cabinet Office, the Home Office, and the Department for Children, Schools and Families)

17. In addition, as part of the Governance Group¹⁴ the Department maintained a high level of engagement with key stakeholders throughout the consultation period in order to explain and respond to queries about the PCE. As a result, we revised several elements of the draft Choice Regulations to ensure the regulations met the spirit and intention of the Review Partners agreement and that NHS Pensions¹⁵ implementation plans were consistent with the regulations.

18. The draft regulations and Explanatory Note were made available via the NHS Pensions website <http://www.nhsbsa.nhs.uk/2726.aspx>. The Department held regulation workshops for NHS trades unions, NHS employers, the Government Actuary, the independent actuary on 22 April and 17 June 2009 and for NHS Pensions on 7 April and 16 June 2009. The aim of the workshops was to explain the intention and effect of the draft regulations and to ensure that the stakeholders had an opportunity to question, in some detail, any aspects of the draft regulations. A total of six responses were received by the close of the consultation.

19. An analysis of the response(s) from the statutory consultation and regulation workshops led to a number of changes which better align the regulations with the rationale and intention of the Review Partner's agreement and NHS Pensions administrative processes.

20. These alterations include refinements to the regulations providing for the calculation of the minimum lump sum that must be taken by members transferring to the 2008 Section, especially in the case of dental and medical practitioners and further regulations to provide consistent death benefits in respect of re-employed 1995 pensioners who chose to move to the 2008 Section.

Options

21. During negotiations, the Review Partners considered a number of options in relation to the value of service in the 1995 and its value when transferred to the 2008 section:

- i) one years membership in the 2008 section for one years membership in the 1995 section up to age 60 with decreasing factors thereafter
- ii) age related factors for all members. The Review Partners did not want to provide more than 1:1 for younger members. Assuming younger members conclude that they are likely to work to age 65 anyway; 1:1 is an attractive proposition. If factors were materially less than 1:1 for those in their late 40s and 50s (our target audience), there would conversely be little incentive to transfer even if they did envisage working until age 65
- iii) 0.95 for each year of service in the 2008 section for 1 year of membership in the 1995 section for all members. Not favoured by the Review Partners nor the Department because such a reduction in the amount of service on transfer to the 2008 section, would do little to encourage staff to transfer and would not meet the Department's wider retention objectives

¹⁴ The Governance Group is a social partnership between NHS Employers and national NHS trades unions and acts under the authority of the NHS Staff Council. The group is attended by the Department of Health, NHS Pensions, Welsh Assembly, Scotland and Northern Ireland Health Departments, all of these acting as observers.

¹⁵ NHS Pensions is a division of the Business Services Authority, which is a Special Health Authority responsible for NHS Pension Scheme administration in England and Wales

22. Under the cost sharing agreement, following the Scheme valuation exercise for the period 2004 to 2008, there will be a cap on the employer contribution rate of 14.2% when the results of the valuation exercise are implemented in 2012.

23. Notwithstanding the PSF agreement, there is a realisation that staff may need to work longer. Trades unions representatives were particularly drawn to option i) since it mitigates the risk presented by the age groups that would be most likely to secure windfall gains, but is also attractive enough to encourage those who want to work longer to consider carefully the advantages of transfer to the 2008 section.

Costs and Benefits

24. Options for the PCE. The business case argued that the Review Partners' recommendations were reasonable and should be endorsed because:

- i) the NHS needs to retain its experienced staff beyond the current average retirement age of 62. The conversion rates should be attractive enough to encourage members of the 1995 section (NPA60) to transfer to the 2008 section (NPA 65)
- ii) it is not possible to know the actual cost of Choice. However, based on conservative modelling, selection costs in respect of service transferred in the PCE could generate a total cost of between £500m and £1400m, against wider reform savings of £430m pa initially with total estimated savings of £33bn over 50 years. These Choice costs will only emerge gradually over a period of several decades. Any costs that do occur will not result in an increase in the employer contribution rate because of the cost sharing agreement, but will be met by increased employee contributions, benefit changes or a mixture of both.
- iii) the Government Actuary Department (GAD) has estimated the number of delayed age retirements of each Choice optant in each future year on the assumption that optants delay their retirement by around two years on average beyond the age at which (in the absence of the incentives of early retirement reductions and late retirement uplifts) they would otherwise have been expected to retire. The savings in terms of training costs are of course quite small and would not in any significant way, offset costs at the higher end of the possible range of costs for the PCE. However, training costs are met by the taxpayer and of course exclude the largely intangible value of skills and experience that is not being lost (to the extent that those extra skills and experience are not fully rewarded through higher remuneration compared with the new recruit). In contrast, the estimated potential costs of Choice are extremely modest and are in any case, met by members under the cost sharing regulations.
- iv) the GAD also estimated that permitting pensionable re-employment in the 1995 as well as the 2008 section, could lead to behaviour change and encourage staff to withdraw benefits earlier than they might otherwise, i.e. at NPA60 rather than the average of 62, at an ongoing cost approaching up to 3% of pensionable payroll (or £1bn a year). For this reason, pensionable re-employment was not made available in the 1995 section of the scheme. However, legal advice is that participation in the PCE would be an 'absolute defense' against challenge on discrimination grounds.
- v) NHS Pensions estimate implementation costs, over three years of approximately £22.5m. These costs must be set against the potential costs of a successful charge of discrimination of up to £1bn a year, if pensionable re-employment had to be offered retrospectively to staff in the 1995 section of the NHS Pension Scheme

25. HM Treasury officials agreed the Department's business case on conversion rates.

Sectors and groups affected

26. The PCE affects the public service employers and employees in the NHS and those outside the NHS allowed to operate the NHS Pension Scheme. Those outside the NHS include Direction Employers, typically 'not for profit' organisations operating in the voluntary sector such as Hospices and Care in the Community¹⁶. The latest figures indicate that 75% of Scheme members are women and that around half work part-time. The average retirement age of all members is 62 and the average pension is £7,000 a year based on 18 years service. The average pension for women is £5,000, but more than half retire on a pension of less than £3,500 a year.

27. NHS Pensions¹⁷ do not provide Annual Benefit Statements (estimates of NHS pension benefits are provided on request) so for many staff the PCE will be the first time they will see how much they have saved for their retirement. The Review Partners intention is to ensure that staff are aware of their pension savings and that they understand the implications of working longer in the 1995 and 2008 sections. The PCE is also a unique opportunity for employers to engage with staff about the options for flexible working and when they might expect to receive their State Pension. This will help those who want or need to work longer to make an informed decision.

28. NHS Pensions will lead the PCE and develop the necessary systems, secure additional staff, training and communications. Employers are required to distribute comparative Choice Statements to all their staff, ensure staff have access to material on the NHS Pensions website and to ensure they meet their disclosure obligations under the Occupational Pension Scheme Disclosure Regulations.

Gender equality assessment

29. Up to 1.3 million Scheme members may be eligible to participate in the PCE. Around 75% of Scheme members are women and for the reasons explained at paragraph 26, indicate the importance of ensuring that the PCE is gender-equitable and accessible to all male and female employees.

30. The Gender Equality Duty (GED) came into force on 6 April 2007 and requires public authorities to promote gender equality and eliminate unlawful sex discrimination. Instead of depending on individuals making complaints about unlawful sex discrimination, the duty also requires public authorities to be proactive in promoting equality of opportunity between women and men. In effect, this means that individual needs of women and men will have to be taken to account in a public authority's employment practices, policy functions and in their service delivery.

31. All public authorities including the NHS Pension Scheme have a duty to demonstrate how they are meeting GED requirements and this includes the NHS Scheme. The provisions now set out in the PCE regulations do not contravene the GED regulations. The PCE fully meets the GED objective as it provides equal access to the Scheme and equal treatment in terms of accruing pension rights for both men and women who join.

32. The Scheme reforms, introduced in April 2008 SI 653, directly and positively address these principles. The terms of the PCE are also designed to ensure that particular groups do not gain an advantage at the expense of the generality of the membership.

¹⁶ The Secretary of State is able to offer continued membership of the NHS Pension Scheme under Section 7(1) and 7(2) of the Miscellaneous Act 1967

¹⁷ NHS Pensions is a division of the Business Services Authority and is responsible for NHS Pension Scheme Administration in England and Wales

Age and Scheme Selection Risks

33. The recommendation that conversion factors reduce from age 60 onwards, is designed to avoid these groups receiving a disproportionate benefit at the expense of the other members of the scheme. The Partners were at pains to ensure that potential costs were as far as possible contained, whilst encouraging members to consider carefully the potential advantages of transfer to the NPA65 section. This is achieved by ensuring that:

- i) those aged 60 and over at the time of choice are offered terms that progressively reduce the number of years of service given in the 2008 section for each year in the NPA60 section. This is in order to avoid giving staff that have already started to work beyond 60 a windfall benefit from transfer
- ii) transferees have to take a minimum lump sum equivalent to 3/80ths of their final salary times the service credit they transfer. This is in order to avoid reducing the conversion transfer terms being offered to take account of those who would like to take more pension and less lump sum than in the 1995 section thereby increasing costs. This is particularly important in the NHS Pension Scheme since for high-earning members, the ability to maximise annual pension may be more attractive than maximising the retirement lump sum
- iii) members of the Special Classes will only be able to transfer actual years of service on the same terms as members of the NPA 60 section. This is to avoid allowing Special Class members who are part of a closed sub section within the 1995 section, to transfer their current advantageous terms into the open 2008 section
- iv) members who joined after 1989 will retain the salary cap on pre April 2008 service transferred into the new scheme. This is to avoid other members paying for members whose final salary is above the earnings cap to uncap their service
- v) members who retire on ill health within 12 months of exercising choice, will receive benefits based on 1/60ths rather than 1/80ths, but will only receive enhancements for higher tier ill health retirement based on service up to NPA60. This is to avoid these members receiving a windfall increase in their ill health pension compared with other members simply because of the accident of the timing of their ill health

34. Legal advice is that the rationale described at paragraph 7 provide a sound basis from which to build objective justification arguments for the reduction to the conversion factors from age 60 onwards.

Race equality assessment

35. It is for individual employers operating within the framework provided to ensure they are not operating discriminatory provisions in the workplace and to promote the equality of opportunity. The framework of the Scheme meets the objective of not being discriminatory on grounds of race as it provides full and equal access to all eligible members of the NHS Pension Scheme.

Health including disability and human rights impacts

36. Any individual employed by an employing authority, who is fit to work, is automatically enrolled in the Scheme, but can choose to opt out, if it is their preference at any time. There are no disability related rules or requirements for NHS Pension Scheme membership. The Pensions Choice Exercise will have only positive impacts in terms of Human Rights legislation, by ensuring that all active NHS Scheme members can choose the Scheme terms that best suit their circumstances.

37. The aim of PCE is to ensure eligible members are able to make a voluntary choice about their future pension accrual. Members, who may be in the process of applying for retirement on ill health grounds, will be able to defer their Choice until the outcome of their ill health application is known.

38. Flexible retirement provisions in the benefit package introduced from 1 April 2008, subject to the agreement of employers, can allow Scheme members to balance their income in retirement by reducing their hours and/or grade, whilst drawing part of their pension. At the same time, members can accrue further pension for their final retirement. This allows for a smoother transition from full-time working to full retirement and helps both employers and employees manage the last years of their working lives in the most effective way. The PCE provides employers with a unique opportunity to review their local work force planning strategies and to consider how they might improve the employment offer to their older workforce in particular, such that members considering transfer to the 2008 section are able to take advantage of the pension flexibilities if they wish to do so.

Rural considerations

39. There are no specific rural considerations applying to the NHS Pension Choice Regulations.

Environmental

40. There are no direct environmental costs or benefits to the NHS Pensions Choice Regulations.

41. Social Benefits

Social benefits are that flexible retirement options will enable members to better achieve work life balance. Employers may be better placed to improve the employment offer by introducing flexible working arrangements designed to retain valuable skills and experience. This is increasingly important with an ageing population.

Costs

42. A failure to deliver the PCE risk treating members unfairly as outlined at paragraph 4. Without the PCE, we would not deal adequately with the risk that members of the 1995 section might successfully challenge their inability to access the flexible retirement provisions and pensionable re-employment of the 2008 section. The estimated cost of a successful challenge lies in the region of £1bn a year. This is illustrative of the cost of providing pensionable re-employment in the 1995 section of the NHS Pension Scheme. These costs would fall on the Scheme, be outside the cost sharing agreement, and fall ultimately to be met by the taxpayer.

Economic Benefits

43. The economic benefits of the PCE are that staff are able to make informed decisions about their future retirement plans. Given the demographic pressures¹⁸ the PCE presents employers with a unique opportunity to review their work force planning strategies, so that they are better able to retain the skills and experience of staff by improving the employment offer they make to their older staff in particular.

¹⁸by 2014 the projected annual net loss from the nursing workforce will be around 25,000 a year

44. The NHS Pension Review Technical Advisory Group¹⁹ (TAG) supported by the GAD and independent actuary, exhaustively considered the Choice terms that should be offered to members. GAD has given some indication of the possible broad range of costs that might fall to the Scheme because of past service converting from the 1995 section to the 2008 section. However, because neither the number nor the characteristics of members taking up Choice are known, it is not possible to quantify the costs with any certainty. The illustrations of potential costs are based on two scenarios; where first, higher numbers of younger, then older numbers of members transfer²⁰.

45. The independent actuary agreed that GAD's analysis was sound and that the results were reasonable, albeit merely illustrative of the potential cost implications. Scenarios 3, 4 and 5, as explained by the GAD, attempt to capture a 'worst case scenario' based on intermediate take up of between 10% and 50%.

Figure 1

Scenario	0 total take up across all age ranges	1 high take up amongst younger members	2 high take up amongst older members	3 Most of the take up amongst older members	4 Most of the take up amongst older members	5 Most of the take up amongst older members
Take up rate excluding the closed groups ²¹	10%	50%	50%	20%	30%	40%
Capital cost (£m) in terms of 2004 liabilities	900	500	900	1,250	1,400	1,300
Cost as a percentage of current payroll	2 3/4	1 1/2	2 3/4	3 3/4	4	3 3/4
Cost spread over 30 years	0.10%	0.05%	0.10%	0.15%	0.20%	0.15%

¹⁹ A sub group of the Governance Group and responsible for making recommendations to the Governance Group on the policy objectives and intention of the Pension Choice Exercise.

²⁰ GAD pdf documents, 'TAG 2008-06A- costs of selection through choice (continued) - ' and 'TAG 2008-09 impact of Choice on the 2012 Valuation - ', are available on the NHS Employers website at <http://www.nhsemployers.org/PayAndContracts/NHSPensionSchemeReview/Pages/NHSPensionScheme.aspx>

²¹ Eligible members with special retirement rights nurse, midwives, health visitors and physiotherapists with the right to an unreduced pension from age 55 and Mental Health Officers able to double service and retire with an unreduced service after 20years

46. Although staff have been able to retain their current normal pension age of 60²², benefit reforms and contribution rate increases have offset the cost of allowing existing employees to retain their current normal pension ages.

47. The GAD advised the Review Partners that the true costs of choice would never be known. This is because although the valuation process examines changes in the retirement behaviour of staff and the cost implications, it can never be known whether those changes occurred *because* of choice. GAD modelled costs on a range of scenarios and found that the theoretical capital costs of choice under the high take-up scenarios examined varied from £500m to £1.4bn. GAD anticipated that these costs would only emerge over a number of valuations over several decades. This led GAD to illustrate the impact spread over 30 years varying from 0.05% to 0.2% of pensionable pay (1% of pensionable pay roll equates to around £350m)

Small Firms' Impact Test (SFIT)

48. There are around 8,600 small organisations, which operate the NHS Pension Scheme for their staff. These include Direction employers and General Medical Practices. There is no absolute requirement for the SFIT, as the Choice regulations relate only to those able to operate the NHS Pension Scheme. The key requirement is to distribute the Choice Statement to staff. Distribution of employment material is a regular feature of employer responsibilities and we do not expect the PCE to have a detrimental impact. NHS Pensions and NHS Employers will provide dedicated support to each region during the PCE and will ensure that employers are 'Choice ready' before the Choice Statements are distributed to each organisation.

Competition Assessment

49. This is not required for this proposal.

Enforcement, Sanctions and Monitoring

Enforcement

50. This is not required for this proposal. However, the PCE is referenced in both the NHS Operating Framework²³ and the Standard NHS Contract²⁴. All employers have a duty (rooted in a duty of good faith and confidence) to ensure staff are aware of and receive information about the PCE. Monitor²⁵ is aware that this responsibility falls to all NHS organisations, including Foundation Trusts. An internal framework document, the 'Employer Engagement Strategy' has been developed in partnership with NHS Employers and NHS Trades Unions with input from Strategic Health Authority workforce leads²⁶. The Strategy sets out employer obligations and responsibilities during the PCE and includes:

- an **Employer Charter** which aligns operational requirements and strategic staff engagement

²² 55 for qualifying Nurses, midwives, Health Visitors and Physiotherapists

²³ The operating framework sets out an overview of the priorities for the NHS over the year.
http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_091445

²⁴ The Standard Contract – Terms and Conditions for the provision of Health Care Services
http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_081100

²⁵ Monitor is the Independent Regulator of Foundation Trusts

²⁶ NHS Workforce Leads are Directors within Strategic Health Authorities responsible for workforce planning at a regional level

- **State of Readiness Criteria** underpinning the Employer Charter is a set of key criteria, which will document and assess an employers' State of Readiness before they receive and distribute Choice Statements, e.g. that pension data is clean, robust distribution mechanisms are in place, legal disclosure obligations are understood and that they are able to handle staff queries.
- **Performance Management** NHS Pensions and NHS Employers will provide dedicated support to each region during the PCE. NHS Pensions will raise any performance issues regarding operational delivery directly with the SHA or Foundation Trust.

Sanctions

51. This is not required for this proposal.

Monitoring and review

52. The co-operation of employers is critical to the success of the exercise. NHS Pensions and NHS Employers will provide dedicated support to each SHA region throughout the PCE.

53. Underpinning the 'Employer Charter', is a set of key criteria which will document and assess an employers' State of Readiness before they receive and distribute Choice Statements, e.g. that pension data is 'clean' (free from errors/anomalies), robust distribution mechanisms are in place, legal disclosure obligations are understood and that they are able to handle staff queries.

Implementation and Delivery Plan

54. The regulations will take full effect on 1 October 2009. Given the scale of the exercise, the PCE will be delivered in a phased manner between July 2009 and 31 March 2012. During Phase One, Early Adopters involving a PCT and Foundation Trust in the Southwest²⁷ will carry out the PCE. Lessons learnt will inform a 'Health Check'²⁸ and reported to Department in its capacity as Senior Responsible Officer, for the pensions modernisation programme, before Phase Two is rolled out.

55. Under Phase Two, the PCE is planned to deliver Choice Statements regionally from January 2010 and will start in the South West, moving up the country to the North East and finishing in Wales. Each SHA region will see two periods of Choice activity with staff aged 50 and over offered Choice during 2010/2011 and staff aged 49 and younger during 2011/2012. For efficiency reasons, all staff in smaller organisations, e.g. General Practices, will receive their Choice during 2010 aligned to their SHA region.

Post-Implementation Review

56. NHS Pensions, following delivery of the PCE to the Early Adopters, will draw up evaluation criteria. The Department will contribute to the development of the evaluation criteria, which will seek evidence and assurance about Choice communications and strategic engagement. For example, evidence that Choice communications were received and distributed by employers, that employees had access to literature about the PCE, that they received their Choice Statements, that they had access to NHS Pensions website material and that employers

²⁷ Yeovil Foundation Trust and Cornwall and Isles of Scilly PCT

²⁸ A 'Health Check' is a formal review process, which focus on the readiness of the organisation to go live with the necessary business changes, and the arrangements for management of the operational service.

understand and make appropriate links to Age Discrimination legislation and local workforce planning.

Summary

57. The Review Partners²⁹ reached agreement in September 2007 on new pension arrangements) effective from 1 April 2008. The agreement includes a Pension Choice Exercise (PCE). Members of the current 1995 section can choose whether to transfer their service to the new 2008 section. A business case was submitted to and agreed by HM Treasury:

- i) the Review Partners recommended the following conversion rates. For all members under age 60, all service up to 31 March 2008 is converted at the rate of one year in the NPA65 section for one year in the NPA60 section. The factors are given by the attained years of age on 1 October 2009, so the year for year terms apply to members whose 60th birthday falls on or after 1 October 2009.
- ii) the conversion factors will decrease thereafter for all members aged 60 or older based on interpolated factors, which will change at the end of each full month of attained age on 1 October 2009. Legal advice confirms that the rationale for the conversion factors is a strong basis from which to build a robust objective justification should the need arise
- iii) the NHS needs to retain its experienced staff beyond the current average retirement age of around 62. The conversion rates should be attractive enough to encourage staff, who plan to work beyond the NPA of 60, to transfer to the 2008 section
- iv) it is not possible to know the actual cost of Choice. However, based on conservative modelling, selection costs in respect of service transferred in Choice could generate a total cost of between £500m and £1400m, against wider reform savings of £430m pa initially .
- v) Any costs that do occur will not result in an increase in the employer contribution rate because of the cost sharing agreement, but will be met by increased employee contributions, benefit changes or a mixture of both.
- vi) the Government Actuary Department (GAD) has estimated the number of delayed age retirements of each Choice optant in each future year on the assumption that optants delay their retirement by around two years on average beyond the age at which (in the absence of the incentives of early retirement reductions and late retirement uplifts) they would otherwise have been expected to retire.
- vii) the GAD estimated that pensionable re-employment in both the 1995 and 2008 sections, could lead to behavioural change and encourage staff to withdraw benefits earlier than they might otherwise, i.e. at NPA60 rather than the average of 62, at an ongoing cost approaching up to 3% of pensionable payroll (or £1bn a year).
- viii) NHS Pensions estimate implementation costs, over three years of approximately £22.5m. These costs must be set against the potential costs of successful challenge of up to £1bn a year.

²⁹ The NHS Pension Scheme Review is led by NHS Employers in partnership with NHS trades unions

Specific Impact Tests: Checklist

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

Annexes

N/A.