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## STATUTORY INSTRUMENTS

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**2009 No. 381**

### **NATIONAL HEALTH SERVICE, ENGLAND AND WALES**

#### **The National Health Service Pension Scheme and Injury Benefits (Amendment) Regulations 2009**

*Made* - - - - - *23rd February 2009*

*Laid before Parliament* *3rd March 2009*

*Coming into force* - - - *1st April 2009*

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

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

## PART 1

### Introductory

#### **Citation, commencement and effect**

- 1.—(1) These Regulations may be cited as the National Health Service Pension Scheme and Injury Benefits (Amendment) Regulations 2009.  
(2) These Regulations shall come into force on 1st April 2009 and, save as provided in paragraphs (3) to (6), shall have effect from 1st April 2009.  
(3) The following regulations shall have effect from 6th April 2009—
  - (a) regulation 14;

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- (1) [1972 c.11](#). Section 10(1) was amended by sections 57 and 58 of, and Schedule 5 to, the National Health Service Reorganisation Act [1973 \(c.32\)](#) and section 4(2) of the Pensions (Miscellaneous Provisions) Act [1990 \(c.7\)](#). Section 12(2) was amended by section 10(1) of the Pensions (Miscellaneous Provisions) Act 1990.
  - (2) See section 10(1) of the Superannuation Act 1972 and article 2 of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 ([S.I. 1981/1670](#)).

- (b) regulation 23;
  - (c) regulations 32(a);
  - (d) regulation 33(c);
  - (e) regulation 34;
  - (f) regulation 49;
  - (g) regulation 51;
  - (h) regulation 56;
  - (i) regulations 62(a);
  - (j) regulation 63(c);
  - (k) regulation 64;
  - (l) regulation 80;
  - (m) regulation 82.
- (4) The following regulations shall have effect from 1st April 2008—
- (a) regulation 16;
  - (b) regulation 38;
  - (c) regulation 40(c);
  - (d) regulation 43;
  - (e) regulation 46(b);
  - (f) regulation 53(a);
  - (g) regulation 66(b);
  - (h) regulation 68;
  - (i) regulation 71(c);
  - (j) regulation 74;
  - (k) regulation 77(b);
  - (l) regulation 78(b).
- (5) Regulation 85 and 86 shall have effect from 1st April 2004.
- (6) Regulation 13(3) shall have effect from 6th March 1995.

## PART 2

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

#### Interpretation of Part 2

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

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(3) S.I. 1995/300, amended by S.I. 1997/80 and 1888, 1998/666 and 2216, 2000/605, 2001/1428 and 3649, 2002/561 and 2469, 2003/631 and 2322, 2004/665 and 696, 2005/661 and 3074, 2006/600 and 2919, 2007/2054 and 3280 and 2008/654 and 2263, and modified by S.I. 1996/971.

### **Amendment of regulation B3**

**3.** In regulation B3 (restriction on further participation in the scheme) for paragraph (2), substitute—

“(2) Persons whose pensions under the scheme are payable may not contribute to or accrue further pensionable service under the scheme, except in the cases referred to in—

- (a) regulation E2(11);
- (b) regulation E2A(11) but subject to paragraph (3);
- (c) regulation R4(6).

(3) Persons to whom—

- (a) regulation E2B(3)(a) applies may not (except where paragraph (b) applies) contribute to or accrue further pensionable service under the scheme from the date the Secretary of State makes a determination under that regulation;
- (b) paragraph (a) applies may contribute to or accrue further pensionable service under the scheme from the day after the first anniversary of that person’s NHS employment following the date of the Secretary of State’s determination under regulation E2B if that person is under the age of 50 on that day.”.

### **Amendment of regulation D1**

**4.** For paragraphs (1) to (2T) of regulation D1 (contributions by members), substitute—

“(1) Each member in pensionable employment must contribute to the scheme in accordance with the following paragraphs of this regulation.

(1A) For the 2009-2010 scheme year and each subsequent scheme year, a member whose pensionable pay falls into a pay band specified in column 1 of the following table must contribute the percentage of the member’s pensionable pay specified in column 2 of that table in respect of that amount.

<i>Column 1</i>	<i>Column 2</i>
<i>Pay band</i>	<i>Contribution percentage rate</i>
Up to £20,224	5%
£20,225 to £66,789	6.5%
£66,790 to £105,318	7.5%
£105,319 to any higher amount	8.5%

(2) The Secretary of State may, with the consent of the Treasury, make a determination substituting any or all of the pay bands or contribution percentage rates specified in paragraph (1A) with effect from a date specified in the determination.

(2A) Before making a determination under paragraph (2), the Secretary of State must consider—

- (a) the advice of the Scheme Actuary, and
- (b) in accordance with regulation U4 (cost sharing), advice from such employee and employer representatives as the Secretary of State considers appropriate.

(2B) For the purposes of this regulation—

- (a) “previous scheme year” means the scheme year immediately preceding the scheme year in respect of which contributions are payable in accordance with this regulation (“the current scheme year”); and
- (b) if a member holds two or more pensionable employments at the same time—
  - (i) the determinations referred to in paragraphs (2E) to (2V) shall apply to each such employment separately; and
  - (ii) each such employment shall be treated separately for the purpose of paying contributions.

(2C) Subject to paragraphs (2Q) and (2R), for the purposes of determining the relevant annual contribution rate for the current scheme year paragraphs (2D) to (2P) apply to a member who is in pensionable employment with the same employing authority on both the last day of the previous scheme year and the first day of the current scheme year.

(2D) For the purposes of paragraphs (2E) to (2P)—

- (a) a member shall be regarded as being in pensionable employment throughout the previous scheme year regardless of any period in that year during which the member continued to be employed by the same employer but did not make contributions to the scheme;
- (b) for the purposes of calculating the member’s pensionable pay—
  - (i) contributions for any period referred to in (a) shall be deemed to have been paid, and
  - (ii) any additional pensionable pay that the member is treated as having received during an absence from work in accordance with regulation P1 or P2 shall be included;
- (c) the amount of pensionable pay determined in accordance with those paragraphs shall be rounded down to the nearest whole pound.

(2E) If a member—

- (a) was in pensionable employment with an employing authority on a whole-time basis throughout the previous scheme year;
- (b) paid contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member’s pensionable pay received during the previous scheme year.

(2F) If a member—

- (a) was in pensionable employment with an employing authority on a part-time basis throughout the previous scheme year;
- (b) paid contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member’s pensionable pay determined by reference to the amount the Secretary of State determines would have

been paid in respect of a single comparable whole-time employment during the previous scheme year.

(2G) If a member—

- (a) was in pensionable employment with an employing authority on a combination of a whole-time and part-time basis throughout the previous scheme year;
- (b) paid contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the aggregate of—

- (i) the member's pensionable pay received during the previous scheme year in respect of the member's whole-time employment, and
- (ii) the amount the Secretary of State determines would have been paid in respect of a single comparable whole-time employment for that period in respect of the member's part-time employment.

(2H) If a member—

- (a) was in pensionable employment with an employing authority on a whole-time basis throughout the previous scheme year;
- (b) did not pay contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula—

$$\frac{RPP}{NDPE} \times 365$$

where—

RPP is the pensionable pay received in respect of that employment for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

NDPE is the number of days of pensionable employment with that authority commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(2I) If a member—

- (a) was in pensionable employment with an employing authority on a part-time basis throughout the previous scheme year;
- (b) did not pay contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula—

$$\frac{CWTE}{NDPE} \times 365$$

where—

CWTE is the amount the Secretary of State determines would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment with that authority for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

NDPE is the number of days of pensionable employment with that authority commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(2J) If a member—

- (a) was in pensionable employment with an employing authority on a combination of a whole-time and part-time basis throughout the previous scheme year;
- (b) did not pay contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula—

$$\frac{(RPP + CWTE)}{NDPE} \times 365$$

where—

RPP is the pensionable pay received for the whole-time employment with that authority for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

CWTE is the amount the Secretary of State determines would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment with that authority for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

NDPE is the number of days of pensionable employment with that authority for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(2K) If a member—

- (a) commenced pensionable employment with an employing authority on a whole-time basis during the previous scheme year;
- (b) paid contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred

to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

$$\frac{RPP}{NDPE} \times 365$$

where—

RPP is the pensionable pay received in respect of that employment during the previous scheme year;

NDPE is the number of days of pensionable employment with that authority during the previous scheme year.

(2L) If a member—

- (a) commenced pensionable employment with an employing authority on a part-time basis during the previous scheme year;
- (b) paid contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

$$\frac{CWTE}{NDPE} \times 365$$

where—

CWTE is the amount the Secretary of State determines would have been paid for that employment during the previous scheme year in respect of a single comparable whole-time employment;

NDPE is the number of days of pensionable employment with that authority during the previous scheme year.

(2M) If a member—

- (a) commenced pensionable employment with an employing authority during the previous scheme year and has since been employed on both a whole-time and part-time basis;
- (b) paid contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

$$\frac{(RPP + CWTE)}{NDPE} \times 365$$

where—

RPP is the pensionable pay received for the whole-time employment with that authority during the previous scheme year;

CWTE is the amount the Secretary of State determines would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment with that authority during the previous scheme year;

NDPE is the number of days of pensionable employment with that authority during the previous scheme year.

(2N) If a member—

- (a) commenced pensionable employment with an employing authority on a whole-time basis during the previous scheme year;
- (b) did not pay contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

$$\frac{RPP}{NDPE} \times 365$$

where—

RPP is the pensionable pay received in respect of that employment for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

NDPE is the number of days of pensionable employment with that authority commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(2O) If a member—

- (a) commences pensionable employment with an employing authority on a part-time basis during the previous scheme year;
- (b) did not pay contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

$$\frac{CWTE}{NDPE} \times 365$$

where—

CWTE is the amount the Secretary of State determines would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment with that authority for the period commencing on the date the

member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

NDPE is the number of days of pensionable employment with that authority commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(2P) If a member—

- (a) commenced pensionable employment with an employing authority during the previous scheme year and has since been employed on both a whole-time and part-time basis with that employing authority;
- (b) did not pay contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula—

$$\frac{(RPP + CWTE)}{NDPE} \times 365$$

where—

RPP is the pensionable pay received for the whole-time employment with that authority for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

CWTE is the amount the Secretary of State determines would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment with that authority for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

NDPE is the number of days of pensionable employment with that authority for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(2Q) If, at any time during the current scheme year, a member commences a new employment, the member shall pay contributions in respect of that employment at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (2U).

(2R) Subject to paragraph (2S), if at any time during the current scheme year, a change is made to a member's annual rate of pensionable pay or pensionable allowances in respect of an existing employment the member shall pay contributions—

- (a) from the first day of the next pay period immediately following the pay period in which the change is made at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (2U), and
- (b) as if the member's employment had commenced on that date.

(2S) Paragraph (2R) does not apply to a change made to a member's annual rate of pensionable allowances in respect of an existing employment that is determined by that member's employer to have been made in respect of—

- (a) unplanned changes to that member's duties, or
- (b) changes to that member's duties that are unlikely to persist for at least 12 months.

(2T) If the change to a member's pensionable pay referred to in paragraph (2R) is made in respect of an existing part-time employment, that paragraph shall not apply unless there is a corresponding change to the amount of pensionable pay that would be paid to that member in respect of a whole-time comparable employment.

(2U) Where paragraph (2Q) or (2R) apply the Secretary of State shall determine the member's pensionable pay—

- (a) by applying the formula—

$$\frac{EPP}{NDPE} \times 365$$

where—

EPP is the estimated pensionable pay that the member's employing authority estimates will be payable to the member in respect of the employment referred to in paragraph (2Q) or, as the case may be, paragraph (2R) during the current scheme year;

NDPE is the number of days of pensionable employment from the date employment commences to the end of the current scheme year, and

- (b) if that employment is part-time employment, by determining how much would be paid in respect of a whole-time comparable employment,

with the amount determined under (a) being the member's pensionable pay for the purposes of this paragraph if that employment is whole-time employment and the amount determined under (b) being the member's pensionable pay for the purposes of this paragraph if the further employment is part-time employment.

(2V) If none of paragraphs (2E) to (2R) apply—

- (a) the Secretary of State must determine the amount of the member's pensionable pay, and in doing so shall, in addition to the matters referred to in paragraph (2A), have regard to the pensionable pay attributable to pensionable employment comparable to the member's employment, prevailing pay scales and prevailing rates of pensionable allowances, and
- (b) the member shall pay contributions at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (a).

(2W) If, during the current scheme year—

- (a) a payment is made to a member in respect of work that was undertaken by that member—
  - (i) during an earlier scheme year, or
  - (ii) during a period before the percentage rate at which contributions are due from that member changed by virtue of paragraphs (2Q) or (2R) of this regulation, or
  - (iii) in part during the scheme year referred to in paragraph (i) and in part during the period referred to in paragraph (ii);

- (b) that member is in pensionable employment with the employing authority making that payment on the day that it is made; and

- (c) that payment does not exceed £150,

for all purposes other than for the purpose of calculating benefits under the scheme—

- (i) that payment shall be treated as if it has been made to the member in respect of work undertaken by that member in the current scheme year, and

- (ii) contributions shall be payable in respect of that payment at the rate applicable to the member on the day that the payment is made.

(2X) If, during the current scheme year—

- (a) a payment is made to a member in respect of work that was undertaken by that member—

- (i) during an earlier scheme year, or

- (ii) during a period before the percentage rate at which contributions are due from that member changed by virtue of paragraphs (2Q) or (2R) of this regulation, or

- (iii) in part during the scheme year referred to in paragraph (i) and in part during the period referred to in paragraph (ii);

- (b) that member is not in pensionable employment with the employing authority making that payment on the day that it is made; and

- (c) that payment does not exceed £150,

for all purposes other than for the purpose of calculating benefits under the scheme—

- (i) that payment shall be treated as if it has been made to the member in respect of work undertaken by that member in the scheme year in which the member's pensionable employment with that employing authority ceased, and

- (ii) contributions shall be payable in respect of that payment at the rate applicable to the member on the day that the member's employment ceased.

(2Y) If, during the current scheme year—

- (a) a payment is made to a member that is determined by that member's employing authority to have been made in respect of work done during unsocial hours;

- (b) that payment is made in respect of work undertaken by that member during a period falling within the two calendar months immediately preceding the calendar month in which that payment is made; and

- (c) on the day that payment is made that member is in pensionable employment with the employing authority by which that payment is made,

for all purposes other than for the purpose of calculating benefits under the scheme—

- (i) that payment shall be treated as if it has been made to that member in respect of work undertaken by that member in the current scheme year, and

- (ii) contributions shall be payable in respect of that payment at the rate applicable to the member on the day that the payment is made.

(2Z) If, during the current scheme year—

- (a) a payment is made to a member that is determined by that member's employing authority to have been made in respect of work done during unsocial hours;

- (b) that payment is made in respect of work undertaken by that member during a period falling within the two calendar months immediately preceding the calendar month in which that payment is made; and
- (c) on the day that payment is made that member is not in pensionable employment with the employing authority by which that payment is made,

for all purposes other than for the purpose of calculating benefits under the scheme—

- (i) that payment shall be treated as if it has been made to that member in respect of work undertaken by that member in the current scheme year, and
- (ii) contributions shall be payable in respect of that payment at the rate applicable to the member on the day the member's pensionable employment with that employing authority ceased as determined in accordance with this regulation.”.

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

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

- (a) at the end of sub-paragraph (b) omit “and”;
- (b) after sub-paragraph (c), add—  
“; and
- (d) the member has not become entitled to a tier 2 pension in respect of any later service under regulation S3A(6).”.

#### **Amendment of regulation E6**

**6.** In regulation E6 (lump sum on retirement)—

- (a) in paragraph (2) after “paragraphs”, insert “(2A),”;
- (b) after paragraph (2), insert—  
“(2A) Where regulation E2B(3) applies, the lump sum payable shall be equal to the difference between—
  - (a) three times the yearly rate of pension calculated in accordance with regulation E2A(3)(a), and
  - (b) three times the yearly rate of pension calculated in accordance with regulation E2B(3)(b).”.

#### **Amendment of regulation E7**

**7.** In regulation E7 (general option to exchange part of pension for lump sum)—

- (a) in paragraph (8) for “The option” substitute, “Subject to paragraphs (9) and (10), the option”;
- (b) after paragraph (8), add—

“(9) If the pension is an ill-health pension under regulation E2A, the option under this regulation may only be exercised by giving notice in writing to the scheme administrator in the form required by the Secretary of State—

- (a) where the member is awarded—
  - (i) a tier 1 pension under paragraph (3)(a) of that regulation, at the time of claiming that tier 1 pension,

(ii) a tier 2 pension under paragraph (3)(b) of that regulation, at the time of claiming that tier 2 pension; or

(b) before such later time as the scheme administrator specifies in writing.

(10) If the pension is a tier 2 ill-health pension under regulation E2B to be paid in place of a tier 1 ill-health pension under regulation E2A, the option under this regulation may only be exercised—

(a) in relation to the difference between the tier 1 pension that is replaced by the tier 2 pension in accordance with paragraph (3) of regulation E2B and the tier 2 pension to which the member becomes entitled under that paragraph, and

(b) by giving notice in writing to the scheme administrator in the form required by the Secretary of State—

(i) at the time of award of the tier 2 pension under that paragraph, or

(ii) before such later time as the scheme administrator specifies in writing.”.

#### **Amendment of regulation H4**

**8.** In regulation H4 (member dies after pension becomes payable), in—

(a) paragraph (4) after “civil partner”, insert “or nominated partner”;

(b) paragraph (5) after—

(i) “civil partner”, insert “or nominated partner”,

(ii) “surviving civil partner’s”, insert “or surviving nominated partner’s”;

(c) paragraph (6) after—

(i) “surviving civil partner’s”, insert “or surviving nominated partner’s”,

(ii) “surviving civil partner”, insert “or surviving nominated partner”;

(d) paragraph (7) after—

(i) “surviving civil partner’s”, insert “or surviving nominated partner’s”,

(ii) “surviving civil partner”, insert “or surviving nominated partner”.

#### **Amendment of regulation L1**

**9.** In paragraph (5) of regulation L1 (preserved pension) after “a lump sum”, add—

“of an amount consistent with—

(a) the contracting-out and preservation requirements of the 1993 Act; and

(b) the lump sum rule”.

#### **Amendment of regulation S3A**

**10.** In regulation S3A (benefits in respect of pensionable employment after pension becomes payable under regulation E2A) after paragraph (6), add—

“(7) A member—

(a) to whom a tier 2 pension is payable in place of a tier 1 pension in respect of the member’s previous service in accordance with regulation E2B(3), and

(b) who satisfies the tier 1 condition or, as the case may be the tier 2 condition, in respect of the member’s later service,

shall be entitled to the following benefit.

- (8) That benefit is the aggregate of—
- a tier 2 pension paid in accordance with regulation E2B in respect of the member’s previous service; and
  - a tier 1 pension in respect of the member’s later service.”.

#### **Amendment of regulation T8**

- 11.** In paragraph (4) of regulation T8 (interest on late payment of benefits)—
- in the definition of “due date” after “possession of all information” insert, “(including information which the Secretary of State obtains as result of a determination under regulation E2B(3))”;
  - in the definition of “qualifying payment” for paragraph (b), substitute—
    - “(b) any amount paid that increases the amount of an earlier payment due to—
      - a backdated or later increase in pensionable pay, or
      - the payment of a tier 2 pension under regulation E2A in place of a tier 1 pension being paid to a member following a determination by the Secretary of State under regulation E2B(3),”.

#### **Amendment of regulation U1A**

- 12.** In paragraph (1)(g) of regulation U1A (determinations by medical practitioners) for “and E2A(7)(b)”, substitute “, E2A(7)(b) and L1(5)(b)”.

#### **Amendment of Schedule 2**

- 13.—(1)** Schedule 2 (medical and dental practitioners) shall be amended as follows.
- (2) For sub-paragraphs (1) to (2Z) of paragraph 10 of Schedule 2 (medical and dental practitioners), substitute—
- “(1) In the case of members who are practitioners or non-GP providers, regulation D1 (contributions by members) and regulation D2 (contributions by employing authorities) are modified as described in the following sub-paragraphs.
- (2) Subject to sub-paragraph (2A), for the 2009-2010 scheme year and each subsequent scheme year, a member’s contribution rate is the percentage specified in column 2 of the following table in respect of the corresponding amount of pensionable earnings specified in column 1 of the table into which the member’s earnings fall.

<i>Column 1</i> <i>Amount of pensionable earnings</i>	<i>Column 2</i> <i>Contribution percentage rate</i>
Up to £20,224	5%
£20,225 to £66,789	6.5%
£66,790 to £105,318	7.5%
£105,319 to any higher amount	8.5%

- (2A) The Secretary of State may, with the consent of the Treasury, make a determination substituting any or all of the amounts of pensionable earnings or contribution rates specified in the table in sub-paragraph (2) with effect from a date specified in the determination.

(2B) Before making a determination under sub-paragraph (2A), the Secretary of State must consider—

- (a) the advice of the Scheme Actuary; and
- (b) in accordance with regulation U4 (cost sharing), advice from such employee and employer representatives as the Secretary of State considers appropriate.

(2C) If, apart from this sub-paragraph, the earnings for a scheme year in respect of a member's practitioner or non-GP provider service would not be a whole number of pounds, those earnings will be rounded down to the nearest whole pound.

(2D) If a member is in practitioner or non-GP provider service as well as (concurrently) employment other than as a practitioner or non-GP provider in respect of which the member is liable to pay contributions in accordance with regulation D1, the contributions payable in respect of the member's—

- (a) practitioner or non-GP provider service, shall be determined in accordance with the provisions of these regulations that apply to a practitioner or non-GP provider, and
- (b) employment as an officer, shall be determined in accordance with the provisions of these regulations that apply to an officer.

(2E) Where a practitioner (other than a dentist performer) or a non-GP provider is also in service as a dentist performer (or vice versa) the practitioner service as a practitioner (other than as a dentist performer) or as a non-GP provider and the practitioner service as a dentist performer will each be treated separately under this paragraph.

(2F) In determining the contributions payable in accordance with sub-paragraph (2) of this regulation, a host Trust or Board must take account of pensionable earnings as a practitioner or as a non-GP provider or, as the case may be, a dentist performer, from all practitioner or non-GP provider or, as the case may be, dentist performer sources, including any such pensionable earnings determined by another host Trust or Board.

(2G) An employing authority that is not a host Trust or Board shall, in respect of any pensionable earnings it pays to a practitioner or to a non-GP provider, take advice from the relevant host Trust or Board in determining the contributions payable in accordance with sub-paragraph (2) of this regulation.

(2H) If, in respect of a scheme year, a practitioner (other than a dentist performer) or a non-GP provider has—

- (a) certified their pensionable earnings in accordance with paragraph 23 of this Schedule and forwarded a record of those earnings to the host Trust or Board, or
- (b) was not required to certify their earnings in accordance with that paragraph but the host Trust or Board has the figure that represents the practitioner's or non-GP provider's pensionable earnings for that scheme year,

contributions payable for that scheme year, shall be those specified in column 2 of the table in sub-paragraph (2) in respect of the amount of pensionable earnings referred to in column 1 of that table which corresponds to the aggregate of—

- (i) certified or final pensionable earnings from all practitioner or non-GP provider sources, and
- (ii) any additional pensionable earnings the practitioner (other than a dentist performer) or non-GP provider is treated as having received during an absence from work in accordance with regulation P1 or P2 and the modifications described in paragraph 19 of this Schedule.

(2I) Subject to sub-paragraph (2J), if sub-paragraph (2H) does not apply to a practitioner (other than a dentist performer) or to a non-GP provider in respect of a scheme year, that practitioner or non-GP provider shall pay contributions at the rate in column 2 of the table in sub-paragraph (2), which—

- (a) has been agreed between the host Trust or Board on the one hand and the practitioner or non-GP provider on the other hand, or
- (b) corresponds to the practitioner's or non-GP provider's most recent certified or final pensionable earnings referred to in sub-paragraph (2H), or
- (c) corresponds to the host Trust or Board's estimate of the practitioner's or non-GP provider's pensionable earnings from all practitioner or non-GP provider sources for that year.

(2J) If sub-paragraph (2I) applies to a practitioner (other than a dentist performer) or to a non-GP provider in respect of a scheme year and sub-paragraph (2H)(a) or (b) is subsequently satisfied in respect of that scheme year, that practitioner or non-GP provider shall pay contributions at the rate determined in accordance with sub-paragraph (2H).

(2K) If, in respect of a scheme year, a dentist performer has—

- (a) certified their pensionable earnings in accordance with paragraph 23 of this Schedule and forwarded a record of those earnings to the host Trust or Board, or
- (b) was not required to certify their earnings in accordance with that paragraph but the host Trust or Board has the figure that represents the dentist performer's pensionable earnings for that scheme year,

contributions payable for that scheme year, shall be those specified in column 2 of the table in sub-paragraph (2) in respect of the amount of pensionable earnings referred to in column 1 of that table which corresponds to the aggregate of—

- (i) certified or final pensionable earnings from all dentist performer sources, uprated according to the formula—

$$(PE / NDPS) \times 365$$

where—

PE is the certified or final amount of dentist performer's pensionable earnings from all dentist performer sources for that year;

NDPS is the number of days of dentist performer service from the date the dentist performer service commenced in the scheme year to the end of the scheme year, and

- (ii) any additional pensionable earnings the dentist performer is treated as having received during an absence from work in accordance with regulation P1 or P2 and the modifications described in paragraph 19 of this Schedule.

(2L) Subject to sub-paragraph (2M), if sub-paragraph (2K) does not apply to a dentist performer in respect of a scheme year, that dentist performer shall pay contributions at the rate in column 2 of the table in sub-paragraph (2), which—

- (a) has been agreed between the host Trust or Board on the one hand and the dentist performer on the other hand, or
- (b) corresponds to the dentist performer's most recent certified or final pensionable earnings referred to in sub-paragraph (2K), or

(c) corresponds to the host Trust or Board's estimate of the dentist performer's pensionable earnings from all dentist performer sources for that year uprated according to the formula referred to in sub-paragraph (2K).

(2M) If sub-paragraph (2L) applies to a dentist performer in respect of a scheme year and sub-paragraph (2K)(a) or (b) is subsequently satisfied in respect of that scheme year, that dentist performer shall pay contributions at the rate determined in accordance with sub-paragraph (2K).

(2N) A host Trust or Board may adjust a practitioner's or a non-GP provider's contribution rate for any scheme year determined in accordance with sub-paragraphs (2I) or (2L)—

- (a) by agreement between the host Trust or Board on the one hand and the practitioner or non-GP provider on the other hand, or
- (b) without such agreement, if the host Trust or Board is satisfied that pensionable earnings will exceed the amount used to determine the contribution rate in accordance with those paragraphs.”.

(3) For paragraph 14 (lump sum on member's death in pensionable employment or after pension becomes payable), substitute—

**“Lump sum on member’s death in pensionable employment or after pension becomes payable**

14.—(1) In the case of members who die in pensionable employment as practitioners, regulation F1 (lump sum payable on member's death in pensionable employment) is modified so that, in relation to the member's employment as a practitioner, the reference to final year's pensionable pay in regulation F1(2) is treated as a reference to—

- (a) in the case of a member who is required to pay contributions under regulation D1(4), the yearly average of the member's uprated earnings at the date of death, or
- (b) in the case of a member who is no longer required to pay contributions under regulation D1(4), the yearly average of the member's uprated earnings on the member's last day of pensionable service.

(2) In the case of members who die after a pension under the scheme in respect of practitioner service becomes payable, regulation F2 (lump sum payable on member's death after pension becomes payable) is modified so that, in relation to the member's employment as a practitioner, the reference to final year's pensionable pay in regulation F2(2) is treated as a reference to the yearly average of the member's uprated earnings on the member's last day of pensionable service.”.

(4) For paragraph 23 (accounts and actuarial reports), substitute—

**“Accounts and actuarial reports**

23.—(1) In the case of members who are practitioners or non-GP providers, regulation U3 (accounts and actuarial reports) is modified as described in this paragraph.

(2) In respect of each scheme year, a type 1 medical practitioner and a non-GP provider shall provide each relevant host Trust or Board with a certificate of their pensionable earnings based on—

- (a) the accounts drawn up in accordance with generally accepted accounting practice by the practice of which the member is a member; and
- (b) the return that member has made to Her Majesty's Revenue and Customs in respect of their earnings for that year,

no later than 1 month after the date on which that return was required to be submitted to Her Majesty's Revenue and Customs.

(3) In respect of each scheme year, a type 2 medical practitioner and a locum practitioner shall provide each relevant host Trust or Board with a certificate of their pensionable earnings based on—

- (a) the payments they receive from employing authorities for practitioner services, and
- (b) the return that member has made to Her Majesty's Revenue and Customs in respect of their earnings for that year,

no later than 1 month after the date on which that return was required to be submitted to Her Majesty's Revenue and Customs.

(4) In respect of each scheme year, a type 1 dental practitioner shall provide each relevant host Trust or Board with a certificate of their pensionable earnings based on—

- (a) the notice of pensionable earnings referred to in paragraph 5A of this Schedule; and
- (b) their pensionable earnings as a type 1 dental practitioner from all other type 1 dental practitioner sources,

no later than 6 months after the end of that scheme year.

(5) In respect of each scheme year, a type 2 dental practitioner shall provide each relevant host Trust or Board with a certificate of their pensionable earnings based on—

- (a) the payments they receive from employing authorities for practitioner services, and
- (b) their pensionable earnings as a type 2 dental practitioner from all other type 2 dental practitioner sources,

no later than 6 months after the end of that scheme year.

(6) In respect of each scheme year, a GMS or a PMS practice or an APMS contractor shall provide the Secretary of State with—

- (a) a statement of estimated pensionable earnings in respect of any—
  - (i) non-GP provider that is a PMS practice or APMS contractor or who assists in the provision of NHS services provided by that GMS or PMS practice or APMS contractor,
  - (ii) type 1 medical practitioners who perform medical services as, or on behalf of, the practice or contractor, and
  - (iii) type 2 medical practitioners employed by the practice or contractor, and
- (b) an end-of-year statement of—
  - (i) pensionable earnings,
  - (ii) contributions to the Scheme made under regulation D1 (contributions by members),
  - (iii) contributions to the Scheme made under regulation D2 (contributions by employing authorities), and
  - (iv) any pensionable earnings deemed in accordance with regulation P1 and the modifications to that regulation referred to in paragraph 19 of this Schedule, in respect of type 2 medical practitioners employed by the practice or contractor.

(7) The Secretary of State shall be provided with—

- (a) the statement referred to in sub-paragraph (6)(a) at least 1 month before the beginning of that scheme year;

(b) the statement referred to in sub-paragraph (6)(b) no later than 3 months after the end of that scheme year.

(8) A host Trust or Board shall, for each scheme year and no later than 13 months after the end of each scheme year, forward to the Secretary of State a copy of the records the host Trust or Board maintains in respect of—

(a) all contributions to the Scheme made under paragraph 10 of this Schedule in respect of type 1 medical practitioners and non-GP providers, and

(b) their pensionable earnings.

(9) Subject to paragraph (10), if, in respect of a scheme year, a member has failed to comply with the requirements of whichever of sub-paragraphs (2) to (5) applies to that member, the member's pensionable earnings for that scheme year shall be zero.

(10) If, in respect of a scheme year—

(a) a practitioner or non-GP provider has failed to comply with the requirements of whichever of sub-paragraphs (2) to (5) applies to them,

(b) a benefit in respect of such service is payable to, or in respect of that member, under these Regulations, and

(c) the member's employing authority is in possession of a figure representing all or part of the member's pensionable earnings for that year,

the Secretary of State may treat that figure as the amount of the member's pensionable earnings for that year.

(11) If, in respect of a scheme year, a practitioner or non-GP provider—

(a) dies without complying with the requirements of whichever of sub-paragraphs (2) to (5) applies to them, or

(b) is, in the opinion of the Secretary of State, unable to look after their own affairs by reason of illness or lack of capacity within the meaning of the Mental Capacity Act 2005(4),

the Secretary of State may require that practitioner or non-GP provider's personal representatives or person (or person's) duly authorised to act on the member's behalf to provide the relevant certificate—

(i) within the period referred to in whichever of sub-paragraphs (2) to (5) was or is applicable to them, or

(ii) within such other period as the Secretary of State permits.

(12) The certificates and statements referred to in this regulation—

(a) shall be in such form as the Secretary of State shall from time to time require;

(b) may be provided to the Secretary of State in such manner as the Secretary of State may from time to time permit.”.

## **Amendment of Schedule 2A**

**14.—(1)** Schedule 2A (Pension Sharing on Divorce or Nullity of Marriage or, on the Dissolution or Nullity of a Civil Partnership) shall be amended as follows.

(2) Omit paragraph 2 (safeguarded rights).

(3) In paragraph 3 (pension credit benefit)—

(a) in the heading, after “benefit” insert “on attaining normal benefit age”;

- (b) in sub-paragraph (2), for “paragraph 4” substitute “paragraphs 3A to 4”;
- (c) in sub-paragraph (5), for “The value” substitute “Subject to paragraph (7), the value”;
- (d) after sub-paragraph (6), add—

“(7) A pension credit member who is entitled to a lump sum in accordance with sub-paragraph (1)(b) may opt to exchange part of a pension to which the pension credit member would otherwise be entitled for a lump sum, which must be an evenly divisible multiple of £12.

(8) If a pension credit member so opts, for every £1 by which the pension credit member’s annual pension is reduced, the pension credit member is to be paid a lump sum of £12.

(9) An option under paragraph (7) must relate to an annual amount of pension that is a whole number of pounds (and accordingly the lump sum will be exactly divisible by 12).

(10) In paragraph (9) “annual amount” in relation to a pension means the amount of the annual pension to which the pension credit member would be entitled under these regulations apart from the option, together with any increases payable under the Pensions (Increase) Act 1971, calculated as at the time the payment would be first due.

(11) A pension credit member may not exchange pension for lump sum under this paragraph to the extent that it would result in a scheme chargeable payment for the purposes of Part 4 of the 2004 Act.

(12) The option under sub paragraph (7) may only be exercised by giving notice in writing to the scheme administrator in the form required by the Secretary of State—

- (a) at the time of claiming the pension; or
- (b) before a later time specified in writing by the scheme administrator.”.

- (4) After paragraph 3, insert—

#### **“Pension credit benefit before attaining normal benefit age (with actuarial reduction)**

**3A.—(1)** Subject to sub-paragraph (2), a pension credit member shall be entitled to the payment of the pension credit benefit described in paragraph 3 of this Schedule on or after attaining normal minimum pension age but before attaining normal benefit age.

(2) The pension and the lump sum (if any) described in that paragraph will be reduced by such amount as the Secretary of State, after taking the advice of the Scheme Actuary, may determine.

#### **Pension credit benefit before attaining normal benefit age (on grounds of ill health)**

**3B.—(1)** A pension credit member shall be entitled to the payment of the pension credit benefit described in paragraph 3 of this Schedule before attaining normal benefit age if the Secretary of State is satisfied that the pension credit member—

- (a) meets the ill-health condition specified in paragraph 1 of Schedule 28 to the 2004 Act, and
- (b) had previously been engaged in regular employment but is now permanently incapable of engaging in regular employment due to mental or physical infirmity.

(2) For the purpose of sub-paragraph (1), the Secretary of State may require whatever medical evidence that the Secretary of State considers necessary.”.

- (5) In paragraph 4 (commutation of the whole of pension credit benefit before normal benefit age)—

- (a) in sub-paragraph (1), for “in the circumstances described in regulation 3(2)(a) of the Pension Sharing (Pension Credit Benefit) Regulations 2000 (commutation of pension credit benefit)” substitute “in the circumstances permitted by paragraph (b) of the lump sum rule in section 166(1) of the 2004 Act”;
- (b) after sub-paragraph (1), insert—  
“(1A) For the purpose of sub-paragraph (1), the Secretary of State may require whatever medical evidence that the Secretary of State considers necessary.”;
- (c) for sub-paragraph (2), substitute—  
“(2) The pension credit payable in the circumstances described in sub-paragraph (1) shall consist of—  
(a) where paragraph 3(1)(b) applies, a lump sum equal to the aggregate of—  
(i) 3 times the annual rate of the pension otherwise payable under paragraph 3 of this Schedule had the pension credit member reached normal benefit age on the date when commutation in accordance with this paragraph is applied for,  
(ii) 5 times the annual rate of the pension referred to in paragraph (i) after that annual rate has been reduced by the maximum amount of pension that the pension credit member may exchange for a lump sum under paragraph 3(7) of this Schedule, and  
(iii) the lump sum resulting from the reduction to the pension credit member’s pension referred to in paragraph (ii);  
(b) where paragraph 3(1)(b) does not apply, a lump sum equal to 5 times the annual rate of the pension otherwise payable under paragraph 3 of this Schedule had the pension credit member reached normal benefit age on the date when commutation in accordance with this paragraph is applied for.”.
- (6) In paragraph 5 (commutation of the whole of pension credit benefit at normal benefit age) for sub-paragraph (2), substitute—  
“(2) The pension credit payable in the circumstances described in sub-paragraph (1)(a) shall consist of—  
(a) where paragraph 3(1)(b) applies, a lump sum equal to the aggregate of—  
(i) 3 times the annual rate of the pension otherwise payable under paragraph 3 of this Schedule,  
(ii) 5 times the annual rate of the pension referred to in paragraph (i) after that annual rate has been reduced by the maximum amount of pension that the pension credit member may exchange for a lump sum under paragraph 3(7) of this Schedule, and  
(iii) the lump sum resulting from the reduction to the pension credit member’s pension referred to in paragraph (ii);  
(b) where paragraph 3(1)(b) does not apply, a lump sum equal to 5 times the annual rate of the pension otherwise payable under paragraph 3 of this Schedule.”.
- (7) In paragraph 7 (pension credit member dies after pension credit benefit becomes payable) for sub-paragraph (3), substitute—  
“(3) The maximum payment under this regulation shall not exceed the amount calculated in accordance with sub-paragraph (4), less the aggregate of—  
(a) the amount of any lump sum paid to the pension credit member in accordance with paragraph 3(6), and

- (b) the amount of any lump sum paid to the pension credit member in accordance with paragraph 3(7).”.
- (8) In paragraph 12 (offset for crime, negligence or fraud), omit sub-paragraph (b).
- (9) In paragraph 13 (loss of rights to benefits), omit sub-paragraph (b).
- (10) After paragraph 15 (administrative matters), add—

#### “Medical determinations

**16.** The Secretary of State may make arrangements for the Secretary of State’s functions under this Schedule in relation to a decision whether a person is—

- (a) permanently incapable of regular employment because of physical or mental infirmity for the purpose of paragraph 3B;
- (b) expected to live for less than one year for the purposes of the lump sum rule referred to in paragraph 4,

to be discharged by—

- (i) a registered medical practitioner (whether practising on his own or as part of a group); or
- (ii) a body corporate or unincorporate employing such practitioners (whether under a contract of service or for services),

approved by the Secretary of State to act on the Secretary of State’s behalf.”.

## PART 3

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

#### Interpretation of Part 3

**15.** In this Part an alphanumerical reference to a regulation is a reference to a provision of the National Health Service Pension Scheme Regulations 2008(5) bearing that designation.

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

**16.** In regulation 2.A.1 (interpretation: general)—

- (a) in the definition of “member” after “active member,”, insert “a non-contributing member,”;
- (b) at the appropriate place in the alphabetical order, insert—  
““non-contributing member” means a member who—
  - (a) is under the age of 75 and in NHS employment,
  - (b) is no longer required to make contributions to the Scheme in accordance with regulation 2.C.1(1), but
  - (c) will be entitled to a pension under these Regulations—
    - (i) on ceasing to be employed in NHS employment and making a claim for the pension, or
    - (ii) upon reaching age 75;”.

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

**17.** In paragraph (7)(a) of regulation 2.A.9 (pensionable pay: breaks in service) for “pay”, substitute “earnings”.

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

**18.** In regulation 2.A.10 (meaning of “reckonable pay”: general)—

(a) in paragraph (1)—

(i) at the end of sub-paragraph (a), omit “or”;

(ii) at the end of sub-paragraph (b), add—

“; or

(c) a non-contributing member.”;

(b) in paragraph (5)—

(i) at the end of sub-paragraph (a)(i), omit “and”;

(ii) after sub-paragraph (a)(ii), add—

“(iii) in a case within paragraph (1)(c), the member’s last day of pensionable service.”.

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

**19.** In regulation 2.B.2 (restrictions on eligibility: general) after paragraph (6), add—

“(7) A person is not eligible to be an active member of the Scheme in any future employment if the person—

(a) ceases to be entitled to a tier 1 ill-health pension under regulation 2.D.8, and

(b) becomes entitled to a tier 2 ill-health pension under that regulation on the date the Secretary of State makes a determination under regulation 2.D.9(3).

This is subject to paragraph (8).

(8) A person to whom paragraph (7) applies is eligible to be an active member of the Scheme in any further employment after the first anniversary of that person’s first day of such employment following the date of the Secretary of State’s determination under regulation 2.D.9.”.

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

**20.** For paragraph (2) of regulation 2.C.2 (members’ contribution rate), substitute—

“(2) Subject to paragraph (3), for the 2009-2010 scheme year and each subsequent scheme year a member’s contribution rate for that period is the percentage specified in column 2 of the following table in respect of the corresponding pensionable pay range (where regulation 2.C.3 applies) or pensionable earnings range (where regulation 2.C.4 applies) specified in column 1 of the table into which the member’s pensionable pay, or as the case may be, pensionable earnings falls.

**Table**

<i>Column 1</i>	<i>Column 2</i>
<i>Amount of pensionable pay/earnings</i>	<i>Contribution percentage rate</i>
Up to £20,224	5%
£20,225 to £66,789	6.5%
£66,790 to £105,318	7.5%
£105,319 to any higher amount	8.5%*

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

21. For regulation 2.C.3 (employees), substitute—

**“Employees**

2.—(1) For the purposes of this regulation—

- (a) “previous scheme year” means the scheme year immediately preceding the scheme year in respect of which contributions are payable in accordance with this part (“the current scheme year”); and
- (b) if a member holds two or more pensionable employments at the same time—
  - (i) the determinations referred to in paragraphs (4) to (21) shall apply to each such employment separately; and
  - (ii) each such employment shall be treated separately for the purpose of paying contributions.

(2) For the purposes of determining the relevant annual contribution rate for the current scheme year paragraphs (3) to (15) apply to a member who is in pensionable employment with the same employing authority on both the last day of the previous scheme year and the first day of the current scheme year.

This is subject to paragraphs (16) and (17).

(3) For the purposes of paragraphs (4) to (15)—

- (a) a member shall be regarded as being in pensionable employment throughout the previous scheme year regardless of any period in that year during which the member continued to be employed by the same employer but did not make contributions to the scheme;
- (b) for the purposes of calculating the member’s pensionable pay—
  - (i) contributions for any period referred to in (a) shall be deemed to have been paid;
  - (ii) any additional pensionable pay that the member is treated as having received during an absence from work in accordance with regulation 2.A.9 shall be included;
- (c) the amount of pensionable pay determined in accordance with those paragraphs shall be rounded down to the nearest whole pound.

(4) If a member—

- (a) was in pensionable employment with an employing authority on a whole-time basis throughout the previous scheme year;

- (b) paid contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and

- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 2.C.2 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay received during the previous scheme year.

(5) If a member—

- (a) was in pensionable employment with an employing authority on a part-time basis throughout the previous scheme year;

- (b) paid contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and

- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 2.C.2 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by reference to the amount the Secretary of State determines would have been paid in respect of a single comparable whole-time employment during the previous scheme year.

(6) If a member—

- (a) was in pensionable employment with an employing authority on a combination of a whole-time and part-time basis throughout the previous scheme year;

- (b) paid contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and

- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 2.C.2 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the aggregate of—

- (i) the member's pensionable pay received during the previous scheme year in respect of the member's whole-time employment, and

- (ii) the amount the Secretary of State determines would have been paid in respect of a single comparable whole-time employment for that period in respect of the member's part-time employment.

(7) If a member—

- (a) was in pensionable employment with an employing authority on a whole-time basis throughout the previous scheme year;

- (b) did not pay contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and

- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 2.C.2 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula—

$$\frac{RPP}{NDPE} \times 365$$

where—

RPP is the pensionable pay received in respect of that employment for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

NDPE is the number of days of pensionable employment with that authority commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(8) If a member—

(a) was in pensionable employment with an employing authority on a part-time basis throughout the previous scheme year;

(b) did not pay contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and

(c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 2.C.2 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula—

$$\frac{CWTE}{NDPE} \times 365$$

where—

CWTE is the amount the Secretary of State determines would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment with that authority for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

NDPE is the number of days of pensionable employment with that authority commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(9) If a member—

(a) was in pensionable employment with an employing authority on a combination of a whole-time and part-time basis throughout the previous scheme year;

(b) did not pay contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and

(c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 2.C.2 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula—

$$\frac{(RPP + CWTE)}{NDPE} \times 365$$

where—

RPP is the pensionable pay received for the whole-time employment with that authority for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

CWTE is the amount the Secretary of State determines would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment with that authority for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

NDPE is the number of days of pensionable employment with that authority for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(10) If a member—

- (a) commenced pensionable employment with an employing authority on a whole-time basis during the previous scheme year;
- (b) paid contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 2.C.2 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

$$\frac{RPP}{NDPE} \times 365$$

where—

RPP is the pensionable pay received in respect of that employment during the previous scheme year;

NDPE is the number of days of pensionable employment with that authority during the previous scheme year.

(11) If a member—

- (a) commenced pensionable employment with an employing authority on a part-time basis during the previous scheme year;
- (b) paid contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 2.C.2 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

$$\frac{CWTE}{NDPE} \times 365$$

where—

CWTE is the amount the Secretary of State determines would have been paid for that employment during the previous scheme year in respect of a single comparable whole-time employment;

NDPE is the number of days of pensionable employment with that authority during the previous scheme year.

## (12) If a member—

- (a) commenced pensionable employment with an employing authority during the previous scheme year and has since been employed on both a whole-time and part-time basis;
- (b) paid contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 2.C.2 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

$$\frac{(RPP + CWTE)}{NDPE} \times 365$$

where—

RPP is the pensionable pay received for the whole-time employment with that authority during the previous scheme year;

CWTE is the amount the Secretary of State determines would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment with that authority during the previous scheme year;

NDPE is the number of days of pensionable employment with that authority during the previous scheme year.

## (13) If a member—

- (a) commenced pensionable employment with an employing authority on a whole-time basis during the previous scheme year;
- (b) did not pay contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year;

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 2.C.2 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

$$\frac{RPP}{NDPE} \times 365$$

where—

RPP is the pensionable pay received in respect of that employment for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

NDPE is the number of days of pensionable employment with that authority commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

## (14) If a member—

- (a) commences pensionable employment with an employing authority on a part-time basis during the previous scheme year;

- (b) did not pay contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and

(c) is employed by that authority on the first day of the current scheme year,  
the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 2.C.2 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

$$\frac{CWTE}{NDPE} \times 365$$

where—

CWTE is the amount the Secretary of State determines would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment with that authority for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

NDPE is the number of days of pensionable employment with that authority commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(15) If a member—

- (a) commenced pensionable employment with an employing authority during the previous scheme year and has since been employed on both a whole-time and part-time basis with that employing authority;
- (b) did not pay contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 2.C.2 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula—

$$\frac{(RPP + CWTE)}{NDPE} \times 365$$

where—

RPP is the pensionable pay received for the whole-time employment with that authority for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

CWTE is the amount the Secretary of State determines would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment with that authority for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

NDPE is the number of days of pensionable employment with that authority for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(16) If, at any time during the current scheme year, a member commences a new employment, the member shall pay contributions in respect of that employment at the rate specified in column 2 of the table in paragraph (2) of regulation 2.C.2 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (20).

(17) Subject to paragraph (18), if at any time during the current scheme year, a change is made to a member's annual rate of pensionable pay or pensionable allowances in respect of an existing employment the member shall pay contributions—

- (a) from the first day of the next pay period immediately following the pay period in which the change is made at the rate specified in column 2 of the table in paragraph (2) of regulation 2.C.2 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (20), and

(b) as if the member's employment had commenced on that date.

(18) Paragraph (17) does not apply to a change made to a member's annual rate of pensionable allowances in respect of an existing employment that is determined by that member's employer to have been made in respect of—

- (a) unplanned changes to that member's duties, or
- (b) changes to that member's duties that are unlikely to persist for at least 12 months.

(19) If the change to a member's pensionable pay referred to in paragraph (17) is made in respect of an existing part-time employment, that paragraph shall not apply unless there is a corresponding change to the amount of pensionable pay that would be paid to that member in respect of a whole-time comparable employment.

(20) Where paragraph (16) or (17) apply the Secretary of State shall determine the member's pensionable pay—

- (a) by applying the formula—

$$\frac{EPP}{NDPE} \times 365$$

where—

EPP is the estimated pensionable pay that the member's employing authority estimates will be payable to the member in respect of the employment referred to in paragraph (16) or, as the case may be, paragraph (17) during the current scheme year;

NDPE is the number of days of pensionable employment from the date that employment commences to the end of the current scheme year, and

- (b) if that employment is part-time employment, by determining how much would be paid in respect of a whole-time comparable employment,

with the amount determined under (a) being the member's pensionable pay for the purposes of this paragraph if that employment is whole-time employment and the amount determined under (b) being the member's pensionable pay for the purposes of this paragraph if the further employment is part-time employment.

(21) If none of paragraphs (4) to (17) apply—

- (a) the Secretary of State must determine the amount of the member's pensionable pay, and in doing so shall, in addition to the matters referred to in paragraph (4) of regulation 2.C.2, have regard to the pensionable pay attributable to pensionable employment comparable to the member's employment, prevailing pay scales and prevailing rates of pensionable allowances, and

- (b) the member shall pay contributions at the rate specified in column 2 of the table in paragraph (2) of regulation 2.C.2 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (a).

(22) If, during the current scheme year—

- (a) a payment is made to a member in respect of work that was undertaken by that member—

- (i) during an earlier scheme year, or
- (ii) during a period before the percentage rate at which contributions are due from that member changed by virtue of paragraphs (16) or (17) of this regulation, or
- (iii) in part during the scheme year referred to in paragraph (i) and in part during the period referred to in paragraph (ii);

- (b) that member is in pensionable employment with the employing authority making that payment on the day that it is made; and

- (c) that payment does not exceed £150,

for all purposes under the scheme—

- (i) that payment shall be treated as if it has been made to the member in respect of work undertaken by that member in the current scheme year, and

- (ii) contributions shall be payable in respect of that payment at the rate applicable to the member on the day that the payment is made.

(23) If, during the current scheme year—

- (a) a payment is made to a member in respect of work that was undertaken by that member—

- (i) during an earlier scheme year, or

- (ii) during a period before the percentage rate at which contributions are due from that member changed by virtue of paragraphs (16) or (17) of this regulation, or

- (iii) in part during the scheme year referred to in paragraph (i) and in part during the period referred to in paragraph (ii);

- (b) that member is not in pensionable employment with the employing authority making that payment on the day that it is made; and

- (c) that payment does not exceed £150,

for all purposes under the scheme—

- (i) that payment shall be treated as if it has been made to the member in respect of work undertaken by that member in the scheme year in which the member's pensionable employment with that employing authority ceased, and

- (ii) contributions shall be payable in respect of that payment at the rate applicable to the member on the day that the member's employment ceased.

(24) If, during the current scheme year—

- (a) a payment is made to a member that is determined by that member's employing authority to have been made in respect of work done during unsocial hours;

- (b) that payment is made in respect of work undertaken by that member during a period falling within the two calendar months immediately preceding the calendar month in which that payment is made, and
- (c) on the day that payment is made that member is in pensionable employment with the employing authority by which that payment is made,

for all purposes under the scheme—

- (i) that payment shall be treated as if it has been made to that member in respect of work undertaken by that member in the current scheme year,
- (ii) contributions shall be payable in respect of that payment at the rate applicable to the member on the day that the payment is made.

(25) If, during the current scheme year—

- (a) a payment is made to a member that is determined by that member's employing authority to have been made in respect of work done during unsocial hours;
- (b) that payment is made in respect of work undertaken by that member during a period falling within the two calendar months immediately preceding the calendar month in which that payment is made, and
- (c) on the day that payment is made that member is not in pensionable employment with the employing authority by which that payment is made,

for all purposes under the scheme—

- (i) that payment shall be treated as if it has been made to that member in respect of work undertaken by that member in the current scheme year,
- (ii) contributions shall be payable in respect of that payment at the rate applicable to the member on the day the member's pensionable employment with that employing authority ceased as determined in accordance with this regulation.

(26) In any case where paragraph (16) applies and it is apparent at the time when the person becomes an active member in an employment under this Part that the person's pensionable pay in that employment includes any amount that is variable, that amount is to be taken as such amount as the employing authority consider appropriate for the 2008-2009 scheme year and, in the case of a member who works part time, is the variable amount that would be paid in respect of a comparable whole time employment.

(27) If a transfer payment from a corresponding health service scheme is accepted in respect of a person, the person is treated for the purposes of this regulation as if—

- (a) the person was an active member of the Scheme during any period during which the person was an active member of that scheme, and
- (b) the pay by reference to which the person's benefits under that scheme were calculated was pensionable pay for the purposes of the Scheme.”.

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

**22.** For regulation 2.C.4 (part-time employees), substitute—

##### **“Non-GP providers**

- 2.C.4.—(1)** If, in respect of a scheme year, a member who is a non-GP provider—
- (a) has certified their pensionable earnings in accordance with regulation 2.J.14 and forwarded a record of those earnings to the host Trust or Board, or

- (b) was not required to certify their earnings in accordance with that regulation but the host Trust or Board has the figure that represents the non-GP provider's pensionable earnings for that scheme year,

contributions payable for that scheme year, shall be those specified in column 2 of the table in paragraph (2) of regulation 2.C.2, in respect of the amount of pensionable earnings referred to in column 1 of that table which corresponds to the certified or final pensionable earnings from all non-GP provider sources and any additional pensionable earnings the non-GP provider is treated as having received during a break in service in accordance with regulation 2.A.9.

(2) If paragraph (1) does not apply to a non-GP provider in respect of a scheme year, that non-GP provider shall pay contributions at the rate in column 2 of the table in paragraph (2) of regulation 2.C.2, which—

- (a) has been agreed between the host Trust or Board on the one hand and the non-GP provider on the other hand, or
- (b) corresponds to the non-GP provider's most recent certified or final pensionable earnings referred to in paragraph (1), or
- (c) corresponds to the host Trust or Board's estimate of the non-GP provider's pensionable earnings from all non-GP provider sources for that year.

This is subject to paragraph (3).

(3) If paragraph (2) applies to a non-GP provider in respect of a scheme year and paragraph (1)(a) or (b) is subsequently satisfied in respect of that scheme year, that non-GP provider shall pay contributions at the rate determined in accordance with paragraph (1).

(4) A host Trust or Board may adjust a non-GP provider's contribution rate for any scheme year determined in accordance with paragraph (2)—

- (a) by agreement between the host Trust or Board on the one hand and the non-GP provider on the other hand, or
- (b) without such agreement, if the host Trust or Board is satisfied that pensionable earnings will exceed the amount used to determine the contribution rate in accordance with that paragraph.

(5) If a member is in non-GP provider service and concurrently in practitioner service in respect of which the member is liable to pay contributions in accordance with regulation 3.C.1, contributions payable in respect of the member's non-GP provider service shall be determined under this regulation and contributions payable in respect of the member's practitioner service shall be determined under regulation 3.C.2.

(6) In determining the contributions payable in accordance with this regulation, a host Trust or Board must take account of pensionable earnings as a non-GP provider from all non-GP provider sources, including any pensionable earnings as a non-GP provider determined by another host Trust or Board.

(7) An employing authority that is not a host Trust or Board shall, in respect of any pensionable earnings it pays to a non-GP provider, take advice from any relevant host Trust or Board in determining the contributions payable in accordance with this regulation.

(8) If, apart from this paragraph, the earnings for a scheme year in respect of a member's non-GP provider service would not be a whole number of pounds, those earnings must be rounded down to the nearest whole pound.”.

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

- 23.** In regulation 2.D.2 (pension credit members)—

- (a) in paragraph (2) at the end, add (as full-out words) “This is subject to paragraphs (5) and (8).”;
- (b) after paragraph (4), add—
  - “(5) A pension credit member who has not reached the age of 65 is entitled to immediate payment of a reduced pension payable for life if the pension credit member has—
    - (a) reached the age of 55, and
    - (b) claimed the payment of the pension.
  - (6) The amount of the annual pension under paragraph (5)—
    - (a) is first calculated as mentioned in paragraph (3) of this regulation, and
    - (b) then that amount is reduced by such amount as the Secretary of State determines, after consulting the Scheme actuary, to be appropriate by reason of the payment of the pension before the member reaches 65.
  - (7) A claim under paragraph (5) must be made by notice in writing in such form as the Secretary of State requires and takes effect from the date specified in the claim as the date on which the pension is to become payable.
  - (8) A pension credit member who has not reached the age of 65 is entitled to immediate payment of a pension payable for life if, in the opinion of the Secretary of State, the pension credit member—
    - (a) meets the ill-health condition specified in paragraph 1 of Schedule 28 to the 2004 Act,
    - (b) had previously been engaged in regular employment but is now permanently incapable of engaging in regular employment due to mental or physical infirmity, and
    - (c) has claimed the pension.
  - (9) The amount of the pension under paragraph (8) is calculated as specified in paragraph (3) of this regulation.
  - (10) For the purpose of paragraph (8), the Secretary of State may require whatever medical evidence that the Secretary of State considers necessary.”.

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

- 24.** In paragraph (3)(b) of regulation 2.D.4 (early payment of pensions with actuarial reduction) after “active member”, insert “or a non-contributing member”.

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

- 25.** In paragraphs (1) and (9)(b) (twice) of regulation 2.D.5 (partial retirement (members aged at least 55)) after “active member”, insert “or a non-contributing member”.

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

- 26.** In paragraphs (3) (three times) and (5) of regulation 2.D.6 (increase in pensionable pay following exercise of option under regulation 2.D.5) after “active member”, insert “or a non-contributing member”.

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

**27.** In paragraph (1) of regulation 2.D.7 (application of regulations 2.D.5 and 2.D.6 where concurrent part-time employments held) after “active member”, insert “or a non-contributing member”.

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

**28.** In regulation 2.D.8 (early retirement on ill-health (active members)) in—

- (a) the heading after “active members”, insert “and non-contributing members”;
- (b) paragraph (2) after “active member”, insert “or a non-contributing member”.

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

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

- (a) at the end of sub-paragraph (c)(ii), omit “and”;
- (b) after sub-paragraph (d), add—  
“; and
- (e) the member has not become entitled to a tier 2 ill-health pension in respect of any later service under regulation 2.G.5.”.

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

**30.** In paragraph (1)(a) of regulation 2.D.11 (early retirement on termination of employment by employing authority) after “active member”, insert “or a non-contributing member”.

### **Amendment of regulation 2.D.13**

**31.** In paragraph (2)(a) of regulation 2.D.13 (exceptions to requirement that NHS employment must have ceased) after “active member”, insert “or a non-contributing member”.

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

**32.** In regulation 2.D.14 (general option to exchange part of pension for lump sum)—

- (a) for paragraph (1) substitute—  
“(1) A member (other than a pension credit member whose rights under the Scheme are attributable to a disqualifying pension credit for the purpose of paragraph 2 of Schedule 29 to the 2004 Act) may opt to exchange part of a pension to which the member would otherwise be entitled for a lump sum.”;
- (b) in paragraph (7) at the end, add (as full-out words) “This is subject to paragraphs (8) and (9).”;
- (c) after paragraph (7), add—

“(8) If the pension is an ill-health pension under regulation 2.D.8, the option under this regulation may only be exercised by giving notice in writing to the scheme administrator in such form as the Secretary of State requires—

- (a) where the member is awarded—

- (i) a tier 1 ill-health pension under paragraph (2) of that regulation, at the time of claiming that tier 1 ill-health pension,

(ii) a tier 2 ill-health pension under paragraph (3) of that regulation, at the time of claiming that tier 2 ill-health pension; or

(b) before such later time as the scheme administrator specifies in writing.

(9) If the pension is a tier 2 ill-health pension under regulation 2.D.9, in substitution for a tier 1 ill-health pension under regulation 2.D.8, the option under this regulation may only be exercised—

(a) in relation to the difference between the tier 1 ill-health pension that ceases to be payable in accordance with paragraph (3) of regulation 2.D.9 and the tier 2 ill-health pension to which the member becomes entitled under that paragraph, and

(b) by giving notice in writing to the scheme administrator in such form as the Secretary of State requires—

(i) at the time of award of the tier 2 ill-health pension under that paragraph, or

(ii) before such later time as the scheme administrator specifies in writing.”.

#### **Amendment of regulation 2.D.15**

**33.** In regulation 2.D.15 (option for members in serious ill-health to exchange whole pension for lump sum)—

(a) in paragraph (1) after “active member”, insert “or a non-contributing member”;

(b) in paragraph (4) after “active member”, insert “or a non-contributing member”;

(c) for paragraph (5), substitute—

“(5) A pension credit member who exercises the option is to be paid, as soon as reasonably practicable and before reaching the age of 75, an amount equal to the sum of—

(a) the maximum lump sum (if any) to which the pension credit member could have become entitled on exercising the option under regulation 2.D.14 at the appropriate time, and

(b) the total annual amount of the pension to which the pension credit member is entitled under regulation 2.D.2 after exercising that option, multiplied by 5.”;

(d) in paragraph (6) after “active member”, insert “or a non-contributing member”.

#### **Omission of regulation 2.D.17**

**34.** Omit regulation 2.D.17 (pension credit member’s rights).

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

**35.** In paragraphs (2)(a) and (4)(b) of regulation 2.D.21 (dual capacity membership) after “active member”, insert “or a non-contributing member”.

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

**36.** In paragraph (1) of regulation 2.E.1 (surviving adult dependants’ pensions) after “active member”, insert “, a non-contributing member”.

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

**37.** In regulation 2.E.3 (amount of pensions under regulation 2.E.1: active members)—

(a) in the heading after “active”, insert “and non-contributing”;

(b) for paragraph (1), substitute—

“(1) In the case of an active member or a non-contributing member, for the period of 6 months beginning with the day after the member’s death (“the initial period”) the rate of the pension payable under regulation 2.E.1 (if that amount is greater than the amount of the pension payable to the surviving adult under this Chapter apart from this paragraph), is equal to—

- (a) in the case of a deceased active member, the rate of the member’s pensionable pay at the time of death; and
- (b) in the case of a deceased non-contributing member, the rate of the deceased’s reckonable pay.”.

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

**38.** In paragraph (3) of regulation 2.E.4 (amount of pensions under regulation 2.E.1: pensioner members) after “paragraph (1)”, insert “and (2)”.

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

**39.** In paragraph (3) of regulation 2.E.7 (re-employed pensioners: adult survivor pensions in initial period) for sub-paragraphs (a) and (b), substitute—

- “(a) in the case of—
  - (i) a deceased active member, the rate of the deceased’s pensionable pay at the time of death, or
  - (ii) a deceased non-contributing member, the rate of the deceased’s reckonable pay on the deceased’s last day of pensionable service, and
- (b) the rate of the deceased member’s pension payable at the time of death after taking account of any reduction in the rate of the pension under Chapter 2.H (abatement).”.

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

**40.** In regulation 2.E.10 (amount of children’s pension under regulation 2.E.8: deceased active members)—

- (a) in the heading after “deceased active members” insert, “and deceased non-contributing members”;
- (b) in paragraph (1) after “active” insert, “, or a non-contributing member”;
- (c) for paragraph (4), substitute—
  - “(4) For this purpose “relevant service” means—
    - (a) in the case of an active member, the greater of—
      - (i) the pensionable service the deceased was entitled to count on the date of death, increased by the enhancement period (if any) that would have applied for the purposes of regulation 2.D.8(5) if the deceased had become entitled to a tier 2 ill-health pension on the date of death, and
      - (ii) 10 years’ pensionable service;
    - (b) in the case of a non-contributing member, the pensionable service that the deceased was entitled to count on the date of death.”;
  - (d) in paragraph (6) for “equal to the rate of the deceased’s pensionable pay at the date of death.”, substitute—
    - “equal to—

- (i) in the case of a deceased active member, the rate of the deceased's pensionable pay at the date of death, and
  - (ii) in the case of a deceased non-contributing member, the rate of the deceased's reckonable pay.”;
- (e) in paragraph (7) for “equal to the rate of the deceased's pensionable pay at the date of death.”, substitute—  
“equal to—
- (i) in the case of a deceased active member, the rate of the deceased's pensionable pay at the date of death, and
  - (ii) in the case of a deceased non-contributing member, the rate of the deceased's reckonable pay.”.

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

**41.** In paragraph (1) of regulation 2.E.11 (amount of children's pension under regulation 2.E.8: deceased pensioner members) after “active member”, insert “or a non-contributing member”.

#### **Amendment of regulation 2.E.12**

**42.** In paragraphs (1) and (3)(a) of regulation 2.E.12 (amount of children's pension under regulation 2.E.8: deceased deferred members) after “active member”, insert “or a non-contributing member”.

#### **Amendment of regulation 2.E.13**

**43.** In paragraph (3) of regulation 2.E.13 (amount of children's pension under regulation 2.E.8: recent leavers) for sub-paragraph (a), substitute—

- “(a) “the basic death pension” means 75% of the pension to which the deceased would have been entitled if the deceased had become entitled to—
- (i) a pension under regulation 2.D.8(5) on the date of death, or
  - (ii) if greater, the amount that the member's pension would have been if it had been based on 10 years' pensionable service (disregarding any additional pension), and”.

#### **Amendment of regulation 2.E.15**

**44.** In regulation 2.E.15 (amount of children's pension under regulation 2.E.8: re-employed pensioners)—

- (a) in paragraph (1) after “active member”, insert “or a non-contributing member”;
- (b) for paragraph (2)(a), substitute—
- “(a) in the case of—
- (i) a deceased active member, the rate of the deceased's pensionable pay at the date of death, or
  - (ii) a deceased non-contributing member, the rate of the deceased's reckonable pay, and”;
- (c) in paragraph (5)—
- (i) in sub-paragraph (a) after “active member”, insert “or a non-contributing member”;
  - (ii) in sub-paragraph (b) after “active members”, insert “or non-contributing members”.

### **Amendment of regulation 2.E.17**

**45.** In regulation 2.E.17 (amount of lump sum: single capacity members and recent leavers (disregarding regulation 2.D.5 employments))—

- (a) in paragraph (1) after “active member”, insert “or a non-contributing member”;
- (b) in paragraph (2)—
  - (i) after “active member”, insert “or a non-contributing member”;
  - (ii) at the end, insert (as full-out words) “This is subject to regulations 2.E.20A and 2.E.21.”;
- (c) in paragraph (3) for “is not an active member”, substitute “was not an active member or a non-contributing member”;
- (d) in paragraph (8)(a) for “is an active member”, substitute “was an active member or a non-contributing member”.

### **Amendment of regulation 2.E.18**

**46.** In regulation 2.E.18 (amount of lump sum: dual capacity members (disregarding regulation 2.D.5 employments))—

- (a) in paragraph (1) after “active member”, insert “or a non-contributing member”;
- (b) in paragraph (2) for sub-paragraph (a), substitute—
  - “(a) five times the annual rate of pension—
    - (i) payable under regulation 2.D.8(5) (tier 2 ill-health pension), if the deceased had not reached the age of 65,
    - (ii) payable under regulation 2.D.1 (normal retirement pensions), if the deceased had reached the age of 65,
- to which the member would have been entitled—
  - (aa) in the case of a deceased active member, at the member’s date of death, or
  - (bb) in the case of a deceased non-contributing member, on the last day of the member’s pensionable service, and”.

### **Amendment of regulation 2.E.19**

**47.** In regulation 2.E.19 (amount of lump sum: dual capacity members: members with pensions under regulation 2.D.5)—

- (a) in paragraph (1)—
  - (i) in sub-paragraph (a) for “is an active member”, substitute “was an active member or a non-contributing member”,
  - (ii) in sub-paragraph (b) for “is”, substitute “was”;
- (b) in paragraph (2)(a) for “final pensionable pay”, substitute “reckonable pay”;
- (c) in paragraph (5) (in the definition of “DPS”) after “active member”, insert “or a non-contributing member”.

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

**48.** In regulation 2.G.5 (re-employed tier 1 ill-health pensioners)—

- (a) in paragraph (4) at the end, insert (as full-out words) “This is subject to paragraph (5).”;
- (b) after paragraph (4) add—

- “(5) If the re-employed member—
- (a) ceases to be entitled to a tier 1 ill-health pension in respect of the earlier service,
  - (b) becomes entitled to a tier 2 ill-health pension in respect of that earlier service in accordance with regulation 2.D.9(3), and
  - (c) on the termination of the later service, the member becomes entitled to a tier 1 or, as the case may be, tier 2 ill-health pension in respect of that later service,
- the re-employed member is entitled to the benefits set out in paragraph (6).
- (6) The benefits mentioned in paragraph (5) are—
- (a) a tier 2 ill-health pension paid in accordance with regulation 2.D.9 in respect of the member’s earlier service, and
  - (b) a tier 1 ill-health pension in respect of the member’s later service.”.

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

- 49.** In paragraph (2) of regulation 2.J.5 (commutation of small pensions), omit sub-paragraph (d).

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

- 50.** In regulation 2.J.9 (interest on late payment of benefits and refunds of contributions)—
- (a) in paragraph (2) after “interim” insert, “or substitute”;
  - (b) for paragraph (3), substitute—
 

“(3) The Secretary of State must pay interest on the amount of a pension, lump sum, refund of contributions or an interim or substitute award which is unpaid (“the unpaid amount”) to the person to whom it should have been paid unless the Secretary of State is satisfied that the unpaid amount was not paid on the due date because of some act or omission on the part of the member or other person to whom it should have been paid.”;
  - (c) in paragraph (5) after “unpaid amount”, insert “(other than an unpaid amount in respect of an interim or substitute award)”;
  - (d) for paragraph (6), substitute—
 

“(6) The due date for an unpaid amount—

    - (a) referred to in paragraph (5) in respect of which the Secretary of State was not in possession of all the information necessary for the calculation of the amount of the pension, lump sum or refund of contributions referred to in that paragraph on the date which would, in accordance with paragraph (5) be the due date; or
    - (b) in respect of an interim or substitute award,

shall be the first day on which the Secretary of State was in possession of all the information necessary to calculate that pension, lump sum, refund of contributions or interim or substitute award.”;
  - (e) in paragraph (7)—
    - (i) for “interim award” substitute “interim or substitute award”,
    - (ii) at the end of sub-paragraph (a), omit “and”,
    - (iii) at the end of sub-paragraph (b), add—
 

“; and
    - (c) any amount paid that increases the amount of an earlier payment due to the payment of a tier 2 ill-health pension under regulation 2.D.8 paid

to a member in substitution for a tier 1 ill-health pension under that regulation following a determination by the Secretary of State under regulation 2.D.9.”.

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

**51.** In paragraph (2) of regulation 2.J.11 (determinations by medical practitioners) before subparagraph (a), insert—

“(za) regulation 2.D.2(8) (pension credit members);”.

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

**52.** For regulation 2.J.14 (employing authority and certain member record keeping contribution estimates), substitute—

#### **“Employing authority and certain member record keeping and contribution estimates**

**2.J.14.**—(1) As regards a member who is a non-GP provider who derives practitioner income from the contracts, agreements or payments referred to in regulation 2.A.8(6), in respect of each scheme year, the member shall provide each relevant host Trust or Board with a certificate of their pensionable earnings based on—

- (a) the accounts drawn up in accordance with generally accepted accounting practice by the practice of which the member is a member; and
- (b) the return that member has made to Her Majesty’s Revenue and Customs in respect of their earnings for that year,

no later than 1 month after the date on which that return was required to be submitted to Her Majesty’s Revenue and Customs.

(2) As regards a GMS or a PMS practice or an APMS contractor, in respect of each scheme year, the practice or contractor shall provide the Secretary of State with a statement of estimated pensionable earnings in respect of any non-GP provider that is a PMS practice or APMS contractor or who assists in the provision of NHS services provided by that GMS or a PMS practice or an APMS contractor, at least 1 month before the beginning of that scheme year.

(3) If, in respect of a scheme year, a non-GP provider has failed to comply with the requirements of paragraph (1), the non-GP provider’s pensionable earnings for that scheme year shall be zero.

This is subject to paragraph (4).

(4) If, in respect of a scheme year—

- (a) a non-GP provider has failed to comply with the requirements of paragraph (1),
- (b) a benefit is payable for, or in respect of their non-GP provider service, and
- (c) the non-GP provider’s employing authority is in possession of a figure representing all or part of the non-GP provider’s pensionable earnings for that year,

the Secretary of State may treat that figure as the amount of the non-GP provider’s pensionable earnings for that year.

(5) If, in respect of a scheme year, a non-GP provider—

- (a) dies without complying with the requirements of paragraph (1), or

- (b) is, in the opinion of the Secretary of State, unable to look after the non-GP provider's own affairs by reason of illness or mental disorder,  
the Secretary of State may require that non-GP provider's personal representatives to provide the relevant certificate—
  - (i) within the period referred to in paragraph (1), or
  - (ii) within such other period as the Secretary of State permits.
- (6) All employing authorities under this Part of the Regulations shall, for each scheme year—
  - (a) provide the Secretary of State with a statement of estimated total contributions due to the Scheme under regulation 2.C.1 (contributions by members) and 2.C.5 (contributions by employing authorities: general), and
  - (b) maintain records of contributions to the Scheme made under regulations 2.C.1 and 2.C.5.
- (7) The statement referred to in paragraph (6)(a) shall be provided to the Secretary of State and no later than 2 months after the end of each scheme year.
- (8) Except where the Secretary of State waives such requirement, an employing authority shall provide the Secretary of State with a statement of contributions to the Scheme recorded in accordance with paragraph (6)(b) no later than 2 months after the end of each scheme year.
- (9) The certificates and statements referred to in this regulation—
  - (a) shall be in such form as the Secretary of State shall from time to time require;
  - (b) may be provided to the Secretary of State in such manner as the Secretary of State may from time to time permit.”.

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

53. In regulation 3.A.1 (interpretation of Part 3: general)—
- (a) in the definition of “active member” for “3.D.5(9)”, substitute “3.D.5(8)”;
  - (b) in the definition of “member” after “active member”, insert “a non-contributing member,”;
  - (c) at the appropriate place in the alphabetical order, insert—  
““non-contributing member” means a member who—
    - (a) is under the age of 75 and in NHS employment,
    - (b) is no longer required to make contributions to the Scheme in accordance with regulation 3.C.1(1), but
    - (c) will be entitled to a pension under these Regulations—
      - (i) on ceasing to be employed in NHS employment and making a claim for the pension, or
      - (ii) upon reaching age 75;”.

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

54. In regulation 3.B.2 (restrictions on eligibility: general) after paragraph (5), add—
- “(6) A person is not eligible to be an active member of the Scheme in any future employment if the person—
    - (a) ceases to be entitled to a tier 1 ill-health pension under regulation 3.D.7, and

- (b) becomes entitled to a tier 2 ill-health pension under that regulation on the date the Secretary of State makes a determination under regulation 3.D.8(3).

This is subject to paragraph (7).

- (7) A person to whom paragraph (6) applies is eligible to be an active member of the Scheme in any further employment after the first anniversary of that person's first day of such employment following the date of the Secretary of State's determination under regulation 3.D.8.”.

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

- 55.** For regulation 3.C.2 (members' contribution rate), substitute—

#### **“Members’ contribution rate**

**3.C.2.—(1)** Contributions under regulation 3.C.1(1) must be paid in accordance with the following paragraphs of this regulation.

(2) Subject to paragraph (3), for the 2009-2010 scheme year and each subsequent scheme year, a member's contribution rate is the percentage specified in column 2 of the following table in respect of the corresponding pensionable earnings band specified in column 1 of the Table into which the member's earnings fall.

**Table**

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
Up to £20,224	5%
£20,225 to £66,789	6.5%
£66,790 to £105,318	7.5%
£105,319 to any higher amount	8.5%

(3) The Secretary of State may, with the consent of the Treasury, make a determination substituting any or all of the earnings bands or contribution percentage rates specified in the table in paragraph (2) with effect from a date specified in the determination.

(4) Before making a determination under paragraph (3), the Secretary of State must consider—

- (a) the advice of the Scheme actuary; and
- (b) in accordance with regulation 1.B.2 (cost sharing), advice from such employee and employer representatives as the Secretary of State considers appropriate.

(5) If, in respect of a scheme year, a practitioner (other than a dentist performer) has—

- (a) certified their pensionable earnings in accordance with regulation 3.J.14 and forwarded a record of those earnings to the host Trust or Board, or
- (b) was not required to certify their earnings in accordance with that regulation but the host Trust or Board has the figure that represents the practitioner's pensionable earnings for that scheme year,

contributions payable for that scheme year, shall be those specified in column 2 of the table in paragraph (2) in respect of the amount of pensionable earnings referred to in column 1 of that table which corresponds to aggregate of—

(i) the certified or final pensionable earnings from all practitioner sources, and

(ii) any additional pensionable earnings the practitioner (other than a dentist performer) is treated as having received during a break in service in accordance with regulation 3.A.8.

(6) If paragraph (5) does not apply to a practitioner (other than a dentist performer) in respect of a scheme year, contributions are payable for that scheme year at the rate in column 2 of the table in paragraph (2), which—

- (a) has been agreed between the host Trust or Board on the one hand and the practitioner on the other hand, or
- (b) corresponds to the practitioner's most recent certified or final pensionable earnings referred to in paragraph (5), or
- (c) corresponds to the host Trust or Board's estimate of the practitioner's pensionable earnings from all practitioner sources for that year.

This is subject to paragraph (7).

(7) If paragraph (6) applies to a practitioner (other than a dentist performer) in respect of a scheme year and paragraph (5)(a) or (b) is subsequently satisfied in respect of that scheme year, that practitioner (other than a dentist performer) shall pay contributions at the rate determined in accordance with paragraph (5).

(8) If, for any scheme year, a dentist performer has—

- (a) certified their pensionable earnings in accordance with regulation 3.J.14 and forwarded a record of those earnings to the host Trust or Board, or
- (b) was not required to certify their earnings in accordance with that regulation but the host Trust or Board has the figure that represents the dentist performer's pensionable earnings for that scheme year,

contributions payable for that scheme year, shall be those specified in column 2 of the table in paragraph (2) in respect of the amount of pensionable earnings referred to in column 1 of that table which corresponds to the aggregate of—

(i) certified or final pensionable earnings from all dentist performer sources, up rated according to the formula—

$$(PE / NDPS) \times 365$$

where—

PE is the certified or final amount of dentist performer's pensionable earnings

from all dentist performer sources for that year;

NDPS is the number of days of dentist performer service from the date the

dentist performer service commenced in the scheme year to the end of the

scheme year; and

(ii) any additional pensionable earnings the dentist performer is treated as having received during a break in service in accordance with regulation 3.A.8.

(9) If paragraph (8) does not apply to a dentist performer in respect of a scheme year, that dentist performer shall pay contributions at the rate in column 2 of the table in paragraph (2), which—

- (a) has been agreed between the host Trust or Board on the one hand and the dentist performer on the other hand, or
- (b) corresponds to the dentist performer's most recent certified or final pensionable earnings referred to in paragraph (8), or
- (c) corresponds to the host Trust or Board's estimate of the dentist performer's pensionable earnings from all dentist performer sources for that year uprated according to the formula referred to in paragraph (8).

This is subject to paragraph (10).

(10) If paragraph (9) applies to a dentist performer in respect of a scheme year and paragraph (8)(a) or (b) is subsequently satisfied in respect of that scheme year, that dentist performer shall pay contributions at the rate determined in accordance with paragraph (8).

(11) A host Trust or Board may adjust a practitioner's contribution rate for any scheme year determined in accordance with paragraph (6) or (9)—

- (a) by agreement between the host Trust or Board on the one hand and the practitioner on the other hand, or
- (b) without such agreement, if the host Trust or Board is satisfied that pensionable earnings will exceed the amount used to determine the contribution rate in accordance with those paragraphs.

(12) If a member is in practitioner service and concurrently in NHS employment in respect of which the member is liable to pay contributions in accordance with regulation 2.C.1 of these Regulations, contributions payable in respect of the member's practitioner service shall be determined under this Part of these Regulations and contributions payable in respect of the member's NHS employment shall be determined under Part 2 of these Regulations.

(13) Where a practitioner (other than a dentist performer) is also in service as a dentist performer (or vice versa) the practitioner service as a practitioner (other than as a dentist performer) and the practitioner service as a dentist performer will each be treated separately under this regulation.

(14) In determining the contributions payable in accordance with paragraph 2 of this regulation, a host Trust or Board must take account of pensionable earnings as a practitioner or, as the case may be, a dentist performer, from all practitioner or, as the case may be, dentist performer sources, including any such pensionable earnings determined by another host Trust or Board.

(15) An employing authority that is not a host Trust or Board shall, in respect of any pensionable earnings it pays to a practitioner, take advice from the relevant host Trust or Board in determining the contributions payable in accordance with paragraph 2 of this regulation.

(16) If, apart from this paragraph, the earnings for a scheme year in respect of a member's practitioner service would not be a whole number of pounds, those earnings must be rounded down to the nearest whole pound.”.

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

**56.** In regulation 3.D.2 (pension credit members)—

(a) in paragraph (2) at the end, add (as full-out words) “This is subject to paragraphs (5) and (8).”;

(b) after paragraph (4), add—

“(5) A pension credit member who has not reached the age of 65 is entitled to immediate payment of a reduced pension payable for life if the pension credit member has—

(a) reached the age of 55, and

(b) claimed the payment of the pension.

(6) The amount of the annual pension under paragraph (5)—

(a) is first calculated as mentioned in paragraph (3) of this regulation, and

(b) then that amount is reduced by such amount as the Secretary of State determines, after consulting the Scheme actuary, to be appropriate by reason of the payment of the pension before the member reaches 65.

(7) A claim under paragraph (5) must be made by notice in writing in such form as the Secretary of State requires and takes effect from the date specified in the claim as the date on which the pension is to become payable.

(8) A pension credit member who has not reached the age of 65 is entitled to immediate payment of a pension payable for life if, in the opinion of the Secretary of State, the pension credit member—

(a) meets the ill-health condition specified in paragraph 1 of Schedule 28 to the 2004 Act,

(b) had previously been engaged in regular employment but is now permanently incapable of engaging in regular employment due to mental or physical infirmity, and

(c) has claimed the pension.

(9) The amount of the pension under paragraph (8) is calculated as specified in paragraph (3) of this regulation.

(10) For the purpose of paragraph (8), the Secretary of State may require whatever medical evidence that the Secretary of State considers necessary.”.

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

**57.** In paragraph (3)(b) of regulation 3.D.4 (early payment of pensions with actuarial reduction) after “active member”, insert “or a non-contributing member”.

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

**58.—(1)** In regulation 3.D.5 (partial retirement (members aged at least 55))—

(a) in paragraph (1) after “active member” (twice), insert “or a non-contributing member”;

(b) in paragraph (7)(b)(i) for “latest GP certificate referred to in regulation 3.J.14” to “in any other case”, substitute “latest certificate referred to in regulation 3.J.14, or the latest scheme year’s final pensionable earnings referred to in regulation 3.C.2, of these Regulations and agreed with each relevant host Trust or Board”;

(c) in paragraph (8)(b) (twice) after “active member”, insert “or a non-contributing member”.

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

**59.** In paragraph (4) of regulation 3.D.6 (increase in level of engagement following exercise of option under regulation 3.D.5) after “active member”, insert “or a non-contributing member”.

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

- 60.** In regulation 3.D.7 (early retirement on ill-health (active members)) in—
- (a) the heading after “active members”, insert “and non-contributing members”;
  - (b) paragraph (2) after “active member”, insert “or a non-contributing member”.

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

- 61.** In paragraph (2) of regulation 3.D.8 (re-assessment of entitlement to an ill-health pension determined under regulation 3.D.7)—
- (a) at the end of sub-paragraph (c)(ii) omit “and”;
  - (b) after sub-paragraph (d), add—
    - “; and
  - (e) the member has not become entitled to a tier 2 ill-health pension in respect of any later service under regulation 3.G.5.”.

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

- 62.** In regulation 3.D.10 (general option to exchange part of pension for lump sum)—
- (a) in paragraph (1) for “other than a pension credit member”, substitute “(other than a pension credit member whose rights under the Scheme are attributable to a disqualifying pension credit for the purpose of paragraph 2 of Schedule 29 to the 2004 Act)”;
  - (b) in paragraph (7) at the end, add (as full-out words) “This is subject to paragraphs (8) and (9).”;
  - (c) after paragraph (7), add—
    - “(8) If the pension is an ill-health pension under regulation 3.D.7, the option under this regulation may only be exercised by giving notice in writing to the scheme administrator in such form as the Secretary of State requires—
      - (a) where the member is awarded—
        - (i) a tier 1 ill-health pension under paragraph (2) of that regulation, at the time of claiming that tier 1 ill-health pension,
        - (ii) a tier 2 ill-health pension under paragraph (3) of that regulation, at the time of claiming that tier 2 ill-health pension; or
      - (b) before such later time as the scheme administrator specifies in writing.
    - (9) If the pension is a tier 2 ill-health pension under regulation 3.D.8, in substitution for a tier 1 ill-health pension under regulation 3.D.7, the option under this regulation may only be exercised—
      - (a) in relation to the difference between the tier 1 ill-health pension that ceases to be payable in accordance with paragraph (3) of regulation 3.D.8 and the tier 2 ill-health pension to which the member becomes entitled under that paragraph, and
      - (b) by giving notice in writing to the scheme administrator in such form as the Secretary of State requires—
        - (i) at the time of award of the tier 2 ill-health pension under that paragraph, or
        - (ii) before such later time as the scheme administrator specifies in writing.”.

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

**63.** In regulation 3.D.11 (option for members in serious ill-health to exchange whole pension for lump sum)—

- (a) in paragraph (1) after “active member”, insert “or a non-contributing member”;
- (b) in paragraph (4) after “active member”, insert “or a non-contributing member”;
- (c) for paragraph (5), substitute—  
“(5) A pension credit member who exercises the option is to be paid, as soon as reasonably practicable and before reaching the age of 75, an amount equal to the sum of—  
(a) the maximum lump sum (if any) to which the pension credit member could have become entitled on exercising the option under regulation 3.D.10 at the appropriate time, and  
(b) the total annual amount of the pension to which the pension credit member is entitled under regulation 3.D.2 after exercising that option, multiplied by 5.”;
- (d) in paragraph (6) after “active member”, insert “or a non-contributing member”.

### **Omission of regulation 3.D.13**

**64.** Omit regulation 3.D.13 (pension credit member’s rights).

### **Amendment of regulation 3.D.17**

**65.** In paragraphs (2)(a) and (4)(b) of regulation 3.D.17 (dual capacity membership) after “active member”, insert “or a non-contributing member”.

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

**66.** In regulation 3.E.1 (surviving adult dependants’ pensions)—

- (a) in paragraph (1) after “active member”, insert “, a non-contributing member”;
- (b) in paragraph (3) for “3.C.14(4) and 3.C.16(3)”, substitute “3.C.12(4) and 3.C.14(3)”.

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

**67.** In regulation 3.E.3 (amount of pensions under regulation 3.E.1: active members)—

- (a) in the heading after “active”, insert “and non-contributing”;
- (b) for paragraph (1), substitute—

“(1) In the case of an active member or a non-contributing member, for the period of 6 months beginning with the day after the member’s death (“the initial period”) the rate of the pension payable under regulation 3.E.1 (if that amount is greater than the amount of the pension payable to the surviving adult under this Chapter apart from this paragraph), is equal to—

- (a) in the case of a deceased active member, the rate of the member’s pensionable earnings during the last complete quarter before the member’s death;
- (b) in the case of a deceased non-contributing member, the monthly average of the deceased’s uprated earnings on the member’s last day of pensionable service.”.

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

**68.** For paragraph (3) of regulation 3.E.4 (amount of pensions under regulation 3.E.1: pensioner members), substitute—

- “(3) Any reduction made in the rate of the pension—
  - (a) under Chapter 3.H (abatement) is ignored for the purposes of paragraphs (1) and (2), and
  - (b) under regulation 3.D.4 (early payment of pensions with actuarial reduction) is ignored for the purposes of paragraph (2).”.

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

**69.** In paragraph (3) of regulation 3.E.7 (re-employed pensioners: adult survivor pensions in initial period) for sub-paragraphs (a) and (b), substitute—

- “(a) in the case of—
  - (i) a deceased active member, the rate of the deceased’s pensionable earnings during the last complete quarter before the member’s death, or
  - (ii) a deceased non-contributing member, the rate of the monthly average of the deceased’s uprated earnings on the member’s last day of pensionable service, and
- (b) the rate of the deceased member’s pension (if any) payable at the time of death.”.

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

**70.** In paragraph (10) of regulation 3.E.8 (surviving children’s pensions) for “3.C.14(4) and 3.C.16(3)”, substitute “3.C.12(4) and 3.C.14(3)”.

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

**71.** In regulation 3.E.10 (amount of children’s pension under regulation 3.E.8: deceased active members)—

- (a) in the heading after “deceased active members” insert, “and deceased non-contributing members”;
- (b) in paragraph (1) after “active” insert, “,or a non-contributing member”;
- (c) for paragraph (3), substitute—
  - “(3) In this regulation “the basic death pension” means twice the appropriate proportion of the deceased member’s pension under regulation 3.D.1 and—
    - (a) in the case of an active member, that pension will include the greater of—
      - (i) any increase due to such enhancement period (if any) that would have applied for the purposes of regulation 3.D.7(5) if the deceased had become entitled to a tier 2 ill-health pension on the date of death, and
      - (ii) 10 years’ pensionable service;
    - (b) in the case of a non-contributing member, will be based on the pensionable service that the deceased was entitled to count on the date of death.”;
  - (d) in paragraph (5) for “equal to the average rate of the member’s pensionable earnings during the complete quarter before he died.”, substitute—
    - “equal to—

- (i) in the case of a deceased active member, the average rate of the deceased's pensionable earnings during the last complete quarter before the member died, and
  - (ii) in the case of a deceased non-contributing member, the rate of the monthly average of the deceased's uprated earnings on the member's last day of pensionable service.”;
- (e) for paragraph (6), substitute—
- “(6) In a case within paragraph (4)(b) or (c), the rate of pension in respect of the dependent child or children for the period of 6 months beginning with the deceased's death is equal to—
- (a) in the case of a deceased active member, the average rate of the deceased's pensionable earnings during the last complete quarter before the member died, and
  - (b) in the case of a deceased non-contributing member, the rate of the monthly average of the deceased's uprated earnings on the member's last day of pensionable service.”.

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

**72.** In paragraph (1) of regulation 3.E.11 (amount of children's pension under regulation 3.E.8: deceased pensioner members) after “active member”, insert “or a non-contributing member”.

#### **Amendment of regulation 3.E.12**

**73.** In paragraphs (1) and (3)(a) of regulation 3.E.12 (amount of children's pension under regulation 3.E.8: deceased deferred members) after “active member”, insert “or a non-contributing member”.

#### **Amendment of regulation 3.E.13**

**74.** In paragraph (3) of regulation 3.E.13 (amount of children's pension under regulation 3.E.8: recent leavers) for sub-paragraph (a), substitute—

- “(a) “the basic death pension” means twice the appropriate proportion of the pension to which the deceased would be entitled to—
- (i) if the deceased had become entitled to a pension under regulation 3.D.7(5), or
  - (ii) if greater, the amount that the member's pension would have been if it had been based on 10 years' pensionable service (disregarding any additional pension), and”.

#### **Amendment of regulation 3.E.15**

**75.** In regulation 3.E.15 (amount of children's pension under regulation 3.E.8: re-employed pensioners)—

- (a) in paragraph (1) after “active member”, insert “or a non-contributing member”;
  - (b) for sub-paragraphs (a) and (b) of paragraph (2), substitute—
- “(a) in the case of—
- (i) a deceased active member, the rate of the deceased's pensionable earnings during the last complete quarter before the member died, or

- (ii) a deceased non-contributing member, the rate of the monthly average of the deceased's uprated earnings on the last day of the member's pensionable service, and
- (b) the rate of the pension being received by the deceased (if any) at the date of death.”;
- (c) in paragraph (5)—
  - (i) in sub-paragraph (a) after “active member”, insert “or a non-contributing member”;
  - (ii) in sub-paragraph (b) after “active members”, insert “or non-contributing members”;
- (d) for paragraph (6)(a), substitute—
  - “(a) the service taken into account (in regulation 3.E.10(3)) for the purposes of the calculation of the amount referred to in paragraph (5)(a), and”.

#### **Amendment of regulation 3.E.17**

**76.** In regulation 3.E.17 (amount of lump sum: single capacity members and recent leavers (disregarding regulation 3.D.5 employments))—

- (a) for paragraph (1), substitute—
  - “(1) The lump sum payable on death of an active member or a non-contributing member, who is not a deferred member or a pensioner member, is an amount equal to—
    - (a) in the case of a deceased active member, twice the annual average of the member’s uprated earnings at the date of death, or
    - (b) in the case of a deceased non-contributing member, twice the annual average of the member’s uprated earnings on the member’s last day of pensionable service.”;
- (b) in paragraph (2)—
  - (i) after “active member”, insert “or a non-contributing member”;
  - (ii) in sub-paragraph (b) for “at the date of death”, substitute “by which the pension was calculated”;
  - (iii) at the end, insert (as full-out words) “This is subject to regulations 3.E.20A and 3.E.21.”;
- (c) in paragraph (3) for “is not an active member”, substitute “was not an active member or a non-contributing member”;
- (d) in paragraph (8)(a) for “is an active member”, substitute “was an active member or a non-contributing member”.

#### **Amendment of regulation 3.E.18**

**77.** In regulation 3.E.18 (amount of lump sum: dual capacity members (disregarding regulation 3.D.5 employments))—

- (a) in paragraph (1)—
  - (i) in sub-paragraph (a) for “is an active member”, substitute “was an active member or a non-contributing member”;
  - (ii) in sub-paragraph (b) for “is”, substitute “was”;
- (b) in paragraph (2) for sub-paragraph (a), substitute—
  - “(a) five times the annual rate of pension—

- (i) payable under regulation 3.D.7(5) (tier 2 ill-health pension), if the deceased had not reached the age of 65,
  - (ii) payable under regulation 3.D.1 (normal retirement pensions), if the deceased had reached the age of 65,
- to which the member would have been entitled—
- (aa) in the case of a deceased active member, at the member's date of death, or
  - (bb) in the case of a deceased non-contributing member, on the last day of the member's pensionable service, and”

#### **Amendment of regulation 3.E.19**

**78.** In regulation 3.E.19 (amount of lump sum: dual capacity members: members with pensions under regulation 3.D.5)—

- (a) in paragraph (1)—
  - (i) in sub-paragraph (a) for “is an active member”, substitute “was an active member or a non-contributing member”;
  - (ii) in sub-paragraph (b) for “is”, substitute “was”;
- (b) for paragraph (2), substitute—
 

“(2) The lump sum is an amount—

  - (a) equal to the sum of—
    - (i) in the case of a deceased active member, twice the appropriate fraction of the annual average of the member’s uprated earnings at the date of death, or
    - (ii) in the case of a deceased non-contributing member, twice the appropriate fraction of the annual average of the member’s uprated earnings at the member’s last day of pensionable service, and”;
- (c) in paragraph (5) (in the definition of “DPS”) after “active member”, insert “or a non-contributing member”.

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

**79.** In regulation 3.G.5 (re-employed tier 1 ill-health pensioners)—

- (a) in paragraph (4) at the end, insert (as full-out words) “This is subject to paragraph (5).”;
- (b) after paragraph (4) add—
 

“(5) If the re-employed member—

  - (a) ceases to be entitled to a tier 1 ill-health pension in respect of the earlier service,
  - (b) becomes entitled to a tier 2 ill-health pension in respect of that earlier service in accordance with regulation 3.D.8(3), and
  - (c) on the termination of the later service, the member becomes entitled to a tier 1 or, as the case may be, tier 2 ill-health pension in respect of that later service, the re-employed member is entitled to the benefits set out in paragraph (6).
- (6) The benefits mentioned in paragraph (5) are—
  - (a) a tier 2 ill-health pension paid in accordance with regulation 3.D.7 in respect of the member’s earlier service, and
  - (b) a tier 1 ill-health pension in respect of the member’s later service.”.

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

**80.** In paragraph (2) of regulation 3.J.5 (commutation of small pensions), omit sub-paragraph (d).

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

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

- (a) in paragraph (2) after “interim” insert, “or substitute”;
- (b) for paragraph (3), substitute—
  - “(3) The Secretary of State must pay interest on the amount of a pension, lump sum, refund of contributions or an interim or substitute award which is unpaid (“the unpaid amount”) to the person to whom it should have been paid unless the Secretary of State is satisfied that the unpaid amount was not paid on the due date because of some act or omission on the part of the member or other person to whom it should have been paid.”;
  - (c) in paragraph (5) after “unpaid amount”, insert “(other than an unpaid amount in respect of an interim or substitute award)”;
  - (d) for paragraph (6), substitute—
    - “(6) The due date for an unpaid amount—
      - (a) referred to in paragraph (5) in respect of which the Secretary of State was not in possession of all the information necessary for the calculation of the amount of the pension, lump sum or refund of contributions referred to in that paragraph on the date which would, in accordance with paragraph (5) be the due date;
      - (b) in respect of an interim or substitute award,  
shall be the first day on which the Secretary of State was in possession of all the information necessary to calculate that pension, lump sum, refund of contributions or interim or substitute award.”;
    - (e) in paragraph (7)—
      - (i) for “interim award” substitute “interim or substitute award”,
      - (ii) at the end of sub-paragraph (a), omit “and”,
      - (iii) at the end of sub-paragraph (b), add—
        - “; and
      - (c) any amount paid that increases the amount of an earlier payment due to the payment of a tier 2 ill-health pension under regulation 3.D.7 paid to a member in substitution for a tier 1 ill-health pension under that regulation following a determination by the Secretary of State under regulation 3.D.8.”.

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

**82.** In paragraph (2) of regulation 3.J.11 (determinations by medical practitioners) before sub-paragraph (a), insert—

“(za) regulation 3.D.2(8) (pension credit members);”.

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

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

### **“Employing authority and certain member record keeping and contribution estimates**

**3.J.14.**—(1) As regards a type 1 medical practitioner, in respect of each scheme year, the member shall provide each relevant host Trust or Board with a certificate of their pensionable earnings based on—

- (a) the accounts drawn up in accordance with generally accepted accounting practice by the practice of which the member is a member; and
- (b) the return that member has made to Her Majesty’s Revenue and Customs in respect of their earnings for that year,

no later than 1 month after the date on which that return was required to be submitted to Her Majesty’s Revenue and Customs.

(2) As regards a type 2 medical practitioner or a locum practitioner, in respect of each scheme year, the member shall provide each relevant host Trust or Board with a certificate of their pensionable earnings based on—

- (a) the payments they receive from employing authorities for practitioner services, and
- (b) the return that member has made to Her Majesty’s Revenue and Customs in respect of their earnings for that year,

no later than 1 month after the date on which that return was required to be submitted to Her Majesty’s Revenue and Customs.

(3) As regards a type 1 dental practitioner, in respect of each scheme year, the member shall provide each relevant host Trust or Board with a certificate of their pensionable earnings based on—

- (a) the notice of pensionable earnings referred to in regulation 3.A.12; and
- (b) their pensionable earnings as a type 1 dental practitioner from all other type 1 dental practitioner sources,

no later than 6 months after the end of that scheme year.

(4) As regards a type 2 dental practitioner, in respect of each scheme year, the member shall provide each relevant host Trust or Board with a certificate of their pensionable earnings based on—

- (a) the payments they receive from employing authorities for practitioner services, and
- (b) their pensionable earnings as a type 2 dental practitioner from all other type 2 dental practitioner sources,

no later than 6 months after the end of that scheme year.

(5) As regards a GMS or PMS practice or APMS contractor, in respect of each scheme year, the practice or contractor shall provide the Secretary of State with—

- (a) a statement of estimated pensionable earnings in respect of type 1 medical practitioners who perform medical services as, or on behalf of, the practice or contractor and type 2 medical practitioners employed by the practice or contractor, and
- (b) an end-of-year statement of—
  - (i) pensionable earnings,
  - (ii) contributions to the Scheme made under regulation 3.C.1 (contributions by members),

(iii) contributions to the Scheme made under regulation 3.C.3 (contributions by employing authorities: general), and

(iv) any pensionable earnings deemed in accordance with regulation 3.A.8 of this Part,

in respect of type 2 medical practitioners employed by the practice or contractor.

(6) The Secretary of State shall be provided with—

(a) the statement referred to in paragraph (5)(a) at least 1 month before the beginning of that scheme year;

(b) the statement referred to in paragraph (5)(b) no later than 3 months after the end of that scheme year.

(7) A host Trust or Board shall, for each scheme year and no later than 13 months after the end of each scheme year, forward to the Secretary of State a copy of the records the host Trust or Board maintains in respect of practitioners under regulation 3.C.5(17)(b).

(8) All employing authorities shall, for each scheme year—

(a) provide the Secretary of State with a statement of estimated total contributions due to the Scheme under regulation 3.C.1 (contributions by members) and 3.C.3 (contributions by employing authorities: general), and

(b) maintain records of contributions to the Scheme made under regulation 3.C.1 and regulation 3.C.3.

(9) The statement referred to in paragraph (8)(a) shall be provided to the Secretary of State no later than 2 months after the end of each scheme year.

(10) Except where the Secretary of State waives such requirement, an employing authority shall provide the Secretary of State with a statement of contributions to the Scheme recorded in accordance with paragraph (8)(b) no later than 2 months after the end of each scheme year.

(11) If, in respect of a scheme year, a member has failed to comply with the requirements of whichever of paragraphs (1) to (4) applies to that member, the member's pensionable earnings for that scheme year shall be zero.

This is subject to paragraph (12).

(12) If, in respect of a scheme year—

(a) a member has failed to comply with the requirements of whichever of paragraphs (1) to (4) applies to the member,

(b) a benefit is payable to, or in respect of that member, under this Part of these Regulations, and

(c) the member's employing authority is in possession of a figure representing all or part of the member's pensionable earnings for that year,

the Secretary of State may treat that figure as the amount of the member's pensionable earnings for that year.

(13) If, in respect of a scheme year, a member—

(a) dies without complying with the requirements of whichever of paragraphs (1) to (4) applies to the member, or

(b) is, in the opinion of the Secretary of State, unable to look after the member's own affairs by reason of illness or lack of capacity within the meaning of the Mental Capacity Act 2005<sup>(6)</sup>,

the Secretary of State may require that member's personal representatives or person, or persons, duly authorised to act on that member's behalf, to provide the relevant certificate—

(i) within the period referred to in whichever of paragraphs (1) to (4) was or is applicable to the member, or

(ii) within such other period as the Secretary of State permits.

(14) The certificates and statements referred to in this regulation—

(a) shall be in such form as the Secretary of State shall from time to time require;

(b) may be provided to the Secretary of State in such manner as the Secretary of State may from time to time permit.”.

## PART 4

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

#### Interpretation of Part 4

**84.** In this Part an alphanumerical reference to a regulation is a reference to a provision of the National Health Service (Injury Benefits) Regulations 1995<sup>(7)</sup> bearing that designation.

#### Amendment of regulation 2

**85.** In regulation 2(1) (interpretation) at the appropriate place in the alphabetical order, insert—  
“‘ophthalmic provider’ has the same meaning as in whichever of the 1995 Regulations or 2008 Regulations apply to that provider;”.

#### Amendment of regulation 2A

**86.** In regulation 2A (meaning of “practitioner”—

(a) after paragraph (1)(b)(ii)(bb), add—

“or

(c) an ophthalmic provider.”;

(b) after paragraph (2)(b)(ii)(bb), add—

“or

(c) an ophthalmic provider.”.

#### Amendment of regulation 4

**87.** In paragraph (6) of regulation 4 (scale of benefits), after sub-paragraph (b)(v), add—

“(vi) employment and support allowance payable under section 1(2)(a) of the Welfare and Reform Act 2007<sup>(8)</sup>, in respect of the injury or disease, during the ‘assessment phase’ referred to in section 2 of that Act, or as the case may be, after that phase has ended.”.

#### Amendment of regulation 13

**88.** In regulation 13 (review and adjustment of allowance), after paragraph (1) insert—

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

(8) 2007 c. 5.

“(1A) For the purposes of paragraph (1)(b)—

- (a) employment and support allowance payable during the assessment phase for that benefit and employment and support allowance payable after that phase has ended shall be treated as separate benefits; and
- (b) where employment and support allowance was awarded to a person prior to 1st April 2009 and that person continues to be entitled to that allowance on that day, payment of that allowance shall be deemed to have commenced on that day.”.

## PART 5

### Miscellaneous

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

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

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

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

(4) An election pursuant to paragraph (2) shall have effect in relation to the benefit referred to in paragraph (1) only to the extent that such benefit has accrued by virtue of periods of service rendered prior to the cessation referred to in paragraph (1) (or, if there has been more than one such cessation, the last of them before the coming into force of these Regulations) and in determining entitlement to, and the amount of, the benefit to that extent, such person shall be treated as if that person had never recommenced service at any time after that cessation (or, as the case may be, the last such cessation).

Signed by authority of the Secretary of State for Health.

18th February 2009

*Ben Bradshaw*  
Minister of State,  
Department of Health

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We consent

*Tony Cunningham  
Bob Blizzard*

Two of the Lords Commissioners of Her Majesty's Treasury

23rd February 2009

## EXPLANATORY NOTE

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

These Regulations amend the National Health Service Pension Scheme Regulations 1995 ([S.I. 1995/300](#)) (“the 1995 Regulations”), the National Health Service Pension Scheme Regulations 2008 ([S.I. 2008/653](#)) (“the 2008 Regulations”) and the National Health Service (Injury Benefits) Regulations 1995 ([S.I. 1995/866](#)) (“the Injury Benefits Regulations”).

Regulation 1 provides for citation, commencement and effect, including that certain provisions of this instrument are to take effect from various dates before the date of commencement.

The remainder of the Regulations are divided into four Parts, with Parts 2 to 4 amending the 1995 Regulations, the 2008 Regulations and the Injury Benefits Regulations respectively, and Part 5 providing that certain persons detrimentally affected by these Regulations may elect for the provisions not to apply to them.

Parts 2 and 3 make similar amendments in respect of both the 1995 Regulations and the 2008 Regulations. They also introduce amendments specific to either the 1995 Regulations or the 2008 Regulations.

The changes dealing with similar issues in Parts 2 and 3—

- introduce changes to the way tiered contributions rates for members are assessed for the Scheme year 2009-10 and subsequently (regulations 4, 13, 20, 21, 22 and 55);
- introduce a new end-of-year certificate of NHS Scheme pensionable earnings and contributions, for type 2 medical practitioner completion, and GP Practice start-of-year statements of estimated practitioner and Non-GP Provider earnings and contributions, and end-of-year statements for type 2 medical practitioners. (regulations 13(4), 52 and 83);
- clarify the benefits payable in respect of a period of re-employment following ill health retirement and the benefits payable in respect of ill-health pensioners whose tier 1 ill-health pension is replaced by a tier 2 ill-health pension including, where appropriate, the payment of statutory interest (regulations 3, 5, 6, 7, 10, 11, 19, 29, 32(b) and (c), 48, 50, 54, 61, 62(b) and (c) 79 and 81);
- provide for pension debit members to access benefits on health grounds, or after minimum retirement age, with an actuarial reduction and to exchange an amount of pension for lump sum (regulations 14, 23, 32(a), 33(c), 34, 49, 51, 56, 62(a), 63(c), 64, 80 and 82);
- clarify the pay on which a lump sum death benefit is paid in respect of a practitioner (regulations 13(3), 67, 69 and 78).

The changes specific to Part 2 are—

- the inclusion of a reference to nominated partners in regulations providing for child pensions paid following the death of a pensioner (regulation 8);
- the inclusion of a reference to the requirements of the lump sum rule in the Finance Act 2004 in connection with benefits to be commuted on terminal illness (regulation 9);
- the authority for the Scheme’s Medical Advisers to make a decision on behalf of the Secretary of State as to whether a deferred member is entitled to commutation of their benefits because of terminal illness (regulation 12).

The changes specific to Part 3 are—

- the introduction of a new definition of “non-contributing member” and the revision of the existing definition of “member” to include “non-contributing members” (regulations 16 and 53(b) and (c));

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provision for the benefits to be paid on the retirement or death of a non-contributing member (regulations 18, 24 to 28, 30, 31, 33(a) and (b), 35, 36, 37, 39, 40(a), (b), (d) and (e), 41, 42, 44 and 45, 46, 47, 57 to 60, 63(a) and (b), 65, 66(a), 67, 69, 71(a), (b), (d) and (e), 72, 73, 75, 76, 77, and 78); provision for the amount of service to be used when calculating a child's pension (regulations 40(c), 43, 71(c) and 74);

provision for abatement to be disregarded in certain circumstances following the death of a pensioner (regulations 38 and 68);

changes cross references in regulations dealing with breaks in service and children's pensions (regulation 17, and 70);

changes a cross reference in the definition of "active member" (regulation 53(a)).

The changes made to the Injury Benefits Regulations by Part 4—

insert a definition of "ophthalmic provider" (regulation 85);

amends the definition of practitioner to include an ophthalmic provider (regulation 86);

provide for employment and support allowance payable under section 1(2)(a) of the Welfare and Reform Act 2007 (c. 5) to be taken into account in calculating benefits under the Injury Benefits Regulations (regulation 87);

provide when employment and support allowance payable is taken into account in that calculation (regulation 88).

Part 5 provides that deferred members, or members in receipt of a relevant benefit, who are detrimentally affected by these Regulations may elect for the provisions not to apply to them by giving notice within six months of the coming into force of these Regulations (regulation 89).