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STATUTORY INSTRUMENTS

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**2010 No. 492**

**The National Health Service Pension Scheme,  
Injury Benefits and Additional Voluntary  
Contributions (Amendment) Regulations 2010**

**PART 2**

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

**Part 2: General**

2. The National Health Service Pension Scheme Regulations 1995(1) are amended in accordance with this Part.

**Amendment of regulation A2**

3. In regulation A2 (interpretation)—

(a) in the definition of “GMS practice”—

(i) in paragraph (a), after “registered medical practitioner” insert “who is a type 1 medical practitioner”,

(ii) in paragraph (b), after “or more” insert “such”;

(b) in the definition of “host Trust or Board”—

(i) in paragraph (a), for “the Primary Care Trust” substitute “each Primary Care Trust”,

(ii) for paragraph (b), substitute—

“(b) in respect of a type 1 medical practitioner, means each Primary Care Trust or Local Health Board with whom the practitioner has contracted, or entered into an agreement, to provide GMS, PMS or APMS and, where appropriate, on whose medical performers list the practitioner’s name appears;”;

(c) in the definition of “ophthalmic provider”, after “who” insert “is a type 1 medical practitioner and who”;

(d) in the definition of “practitioner”, at the end of paragraph (b) add—

“or

(c) an ophthalmic provider;”;

(e) at the appropriate place in the alphabetical order, insert—

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(1) S.I. 1995/300, as amended by S.I. 1997/80 and 1888, 1998/666 and 2216, 2000/605, 2001/1428 and 3649, 2002/561 and 2469, 2003/631 and 2322, 2004/665 and 696, 2005/661 and 3074, 2006/600 and 2919, 2007/2054 and 3280, 2008/654 and 2263 and 2009/381, 1298 and 2466 and as modified by S.I. 1996/971.

““registered medical practitioner” has the meaning given in section 55 of the Medical Act 1983(2);

“Waiting Period Joiner” has the meaning given in regulation 2.L.1, or as the case may be, 3.L.1 of the 2008 Section.”.

### **Amendment of regulation B2**

4.—(1) Regulation B2 (restrictions on membership) is amended as follows.

(2) In paragraph (1)—

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

“(f) that person enters NHS employment for the first time on, or after, 1st April 2008 and has not previously been a member of this Section of the Scheme or a health service scheme corresponding to this Section;”;

(b) in sub-paragraph (g)—

(i) after “returns to”, insert “or commences”;

(ii) after “last left”, insert “pensionable”;

(c) in sub-paragraph (h)(ii) after “returning to”, insert “or commencing”;

(d) for sub-paragraph (j)(iii), substitute—

“(iii) returns to, or commences for the first time, NHS employment on or after 1st October 2008 and, before that employment starts (whether it is employment that has been returned to or commenced for the first time), exercises the member’s right to transfer out all of that person’s benefits in accordance with regulation M1;”;

(e) in sub-paragraph (k)(ii), after “returns to” insert “or commences”;

(f) after sub-paragraph (k), add—

“(l) that person’s pension under a health service scheme is payable and in the opinion of the Secretary of State that person would not be eligible to—

(i) join this Section of the Scheme, or

(ii) where appropriate, accrue further pensionable service under this Section of the Scheme,

if the pensionable employment to which that health service scheme applied, and in respect of which that pension is being paid, had been pensionable employment in this Section of the Scheme;

(m) that person is a person who—

(i) is entitled to a preserved pension in accordance with regulation L1,

(ii) has given notice in accordance with paragraph (1) or (1A) of regulation B4 that the person does not wish to, or no longer wishes to, participate in this Section of the Scheme,

(iii) as a result of that notice, has been treated as having left all pensionable employments, and

(iv) pursuant to that notice remains opted-out of this Section of the Scheme for any one period of five years or more beginning on the date that notice takes effect;

- (n) that person is a person who—
    - (i) is entitled to a preserved pension in accordance with regulation L1,
    - (ii) has given notice in accordance with paragraph (1) or (1A) of regulation B4 that the person does not wish to, or no longer wishes to, participate in this Section of the Scheme,
    - (iii) following that notice, has had a break in pensionable employment for any one period of five years or more, comprising the aggregate of—
      - (aa) any period during which the person leaves NHS employment, and
      - (bb) any period during which the person is treated as never having been included in this Section of the Scheme in accordance with paragraph (3) of regulation B4 in respect of one or more later periods of NHS employment entered into after having given the notice referred to in (ii);
  - (o) that person is a person who—
    - (i) enters NHS employment before 1st April 2008,
    - (ii) has given notice in respect of that employment (and all other such employments with an employing authority) that that person does not wish to participate in the Scheme in accordance with paragraph (1) or (1A) of regulation B4, and
    - (iii) as a result of that notice on 1st April 2008 is treated as never having been in pensionable employment with any employing authority in accordance with paragraph (3) of regulation B4;
  - (p) that person is a person who—
    - (i) enters NHS employment before 1st April 2008,
    - (ii) has given notice in respect of that employment (and all other such employments with an employing authority) that that person does not wish to, or no longer wishes to, participate in the Scheme in accordance with paragraph (1) or (1A) of regulation B4,
    - (iii) as a result of that notice has been treated as having left pensionable employment with all employing authorities for a period of 12 months or more, and
    - (iv) is not entitled to a preserved pension in accordance with regulation L1;
  - (q) that person is a person who—
    - (i) enters pensionable employment before 1st April 2008,
    - (ii) has given notice in respect of that employment (and all other such employments with an employing authority) that that person does not wish to, or no longer wishes to, participate in the Scheme in accordance with paragraph (1) or (1A) of regulation B4,
    - (iii) is not entitled to a preserved pension in accordance with regulation L1, and
    - (iii) has, in respect of that pensionable employment, either received a repayment of contributions or exercised the right to a transfer payment under Part M.”.
- (3) In paragraph (2)(c), for “regulations L1, L2,” substitute “regulations E2, E2A, L1, L2, L4,”.

### **Amendment of regulation E2B**

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

- “(e) the member is not—
- (i) a 2008 Section Optant within the meaning of regulation 2.K.1 or 3.K.1 of the 2008 Section of the Scheme, or
  - (ii) a Waiting Period Joiner within the meaning of regulation 2.L.1 or 3.L.1 of the 2008 Section of the Scheme,
- who has become entitled to a tier 2 ill-health pension under regulation 2.D.8 or 3.D.7 of that Section.”.

### **Amendment of regulation E5**

6. In paragraph (2) of regulation E5 (early retirement pension (with actuarial reduction)), for “but” substitute “and, except for any pension in respect of service calculated as a result of exercising the right to buy additional service under regulation Q1 or the right to buy an unreduced retirement lump sum under regulation Q2,”.

### **Amendment of regulation E6**

7. In paragraph (7)(b) of regulation E6 (lump sum on retirement), after “will” insert “, except for any lump sum in respect of service calculated as a result of exercising the right to buy additional service under regulation Q1 or the right to buy an unreduced retirement lump sum under regulation Q2,”.

### **Amendment of regulation F5**

8. After paragraph (12) of regulation F5 (payment of lump sum), add—

- “(13) In the case of a Waiting Period Joiner, a notice given by a member for the purposes of regulation 2.E.21 or 3.E.21 of the 2008 Section of the Scheme shall be treated as a nomination or notice given by the member for the purposes of this regulation.”.

### **Amendment of regulation G3**

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

- “(a) the member is—
- (i) a 2008 Section Optant within the meaning of regulation 2.K.1 or regulation 3.K.1 of the 2008 Section of the Scheme, or
  - (ii) a Waiting Period Joiner within the meaning of regulation 2.L.1 or 3.L.1 of that Section, and”.

### **Amendment of regulation G14**

10. After paragraph (9) of regulation G14 (surviving nominated partner’s pension), add—

- “(10) In the case of a Waiting Period Joiner, a declaration or notice given by a member for the purposes of regulation 2.E.2 or 3.E.2 of the 2008 Section of the Scheme shall be treated as a declaration or notice given by that member for the purposes of this regulation.”.

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

11. In paragraph (2) of regulation H4 (member dies after pension becomes payable)—
- (a) in sub-paragraph (b)(i), after “regulation 3.K.1” insert “or a Waiting Period Joiner within the meaning of regulation 2.L.1 or 3.L.1”;
  - (b) in sub-paragraph (b)(ii), after “2008 Section Optant” insert “or Waiting Period Joiner”.

#### **Amendment of regulation M7**

12. In paragraph (3)(b) of regulation M7 (member’s right to transfer a preserved pension to the 2008 Section), after “B2(1)(k)” insert “or B2(1)(m) or (n)”.

#### **Amendment of regulation Q7**

13. For paragraph (6) of regulation Q7 (part payment for additional service or unreduced retirement sum), substitute—

“(6) If the member becomes entitled to receive benefits before the chosen date under regulation Q6(3), the proportion of additional service or unreduced retirement lump sum to be credited to the member will be—

- (a) calculated as described in paragraph (5), and
- (b) then reduced by reason of the early payment of the pension and the lump sum by such amounts as the Secretary of State, after taking the advice of the Scheme Actuary, shall determine.”.

#### **Substitution of regulation Q17**

14. For regulation Q17 (revaluation of increases bought under options: members’ pensions), substitute—

##### **“Revaluation of increases bought under options: members’ pensions**

**Q17.**—(1) Where an option under regulation Q8, Q10 or Q11 has been exercised, the final amount of the increase in a member’s pension immediately before the beginning date for that pension shall be determined in accordance with this regulation.

(2) Where the increase in pension is in respect of an option that was exercised less than 2 months before the increase becomes payable, the final amount is calculated in accordance with paragraph (4).

(3) Where the increase in pension is in respect of an option that was exercised 2 or more months before the increase in pension becomes payable, the final amount is calculated in accordance with paragraph (5).

(4) The calculation referred to in paragraph (2) is as follows—

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- Step 1 – Calculate the basic amount of the increase in accordance with regulations Q14 to Q16, to find the Step 1 amount.
  - Step 2 – Add to the Step 1 amount an amount that is equal to any increases that would be due under the Pensions (Increase) Act 1971(3) on a pension of the same amount as the Step 1 amount when it first falls into payment, to find the Step 2 amount.
  - Step 3 – Divide the Step 2 amount by the Step 1 amount, to find the Step 3 factor.

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(3) 1971 c.56.

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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Step 4 – Divide the Step 1 amount by the Step 3 factor to find the final amount referred to in paragraph (1).

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(5) The calculation referred to in paragraph (3) is as follows—

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Step 1 – Calculate the basic amount of the increase in accordance with regulations Q14 to Q16, to find the Step 1 amount.

Step 2 – Multiply the Step 1 amount by the retail prices index for the second month before the month in which the increase in pension will become payable, to find the Step 2 amount.

Step 3 – Divide the Step 2 amount by the retail prices index for the month in which the option was exercised, to find the Step 3 amount.

Step 4 – Take the greater of the Step 1 amount and Step 3 amount, to find the Step 4 amount.

Step 5 – Add to the Step 4 amount an amount that is equal to any increases that would be due under the Pensions (Increase) Act 1971 on a pension of the same amount as the Step 4 amount when it first falls into payment, to find the Step 5 amount.

Step 6 – Divide the Step 5 amount by the Step 4 amount, to find the Step 6 factor.

Step 7 – Divide the Step 4 amount by the Step 6 factor to find the final amount referred to in paragraph (1).

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(6) In this regulation, “the beginning date”, in relation to a pension, means the date on which it is treated as beginning for the purposes of the Pensions (Increase) Act 1971 (see section 8(2) of that Act).”.

## **Amendment of Schedule 2**

**15.—**(1) Schedule 2 (Medical and Dental Practitioners) is amended as follows.

(2) For sub-paragraph (1) of paragraph 5A (distribution of pensionable earnings between type 1 dental practitioners employed or engaged by the same GDS or PDS contractor), substitute—

“(1) After the end of each financial year, each GDS or PDS contractor must by a date to be decided by the Secretary of State, send to the employing authority with which that contractor is a party to a GDS contract or PDS agreement a notice (in the format specified by the Secretary of State), specifying in respect of that financial year—

- (a) the pensionable earnings ceiling for that contract or agreement;
- (b) the amount of any monthly seniority payments, maternity leave payments, paternity leave payments, adoption leave payments, parental leave payments or sickness leave payments paid under that contract or agreement;
- (c) how much of the practitioner income that relates to that contract or agreement each type 1 dental practitioner that performed services under that contract or agreement is to be treated as having earned during that financial year, and
- (d) any partners, shareholders or directors of that contractor.”.

(3) In paragraph 10(8)(b) (contributions to this Section of the Scheme), after “shall pay” insert “D2(1)”.