

**EXPLANATORY MEMORANDUM TO**  
**THE NATIONAL HEALTH SERVICE PENSION SCHEME, INJURY**  
**BENEFITS AND ADDITIONAL VOLUNTARY CONTRIBUTIONS**  
**(AMENDMENT) REGULATIONS 2011**

**2011 No 2586**

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

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

- 2.2 The main purpose of the instrument is to improve the governance and record keeping arrangements relating to the pensions of NHS Dentists.

- 2.3 The instrument also makes some miscellaneous and minor changes including a number that are consequential upon changes made by the Finance Act 2011.

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

Section 12(1) of the Superannuation Act 1972 confers a power to make regulations having effect from a date earlier than the date of their making. Regulations 18 and 30 have retrospective effect from 1 April 2008. Regulations 15 and 24 have retrospective effect from 9 February 2011. Regulations 6(b), 7, 9, 13, 17, 19, 22, 29, 31 and 33 have retrospective effect from 6 April 2011. Regulations 11, 23 and 34 have retrospective effect from 19 July 2011.

4. **Legislative Context**

- 4.1 Sections 10 and 12 of and Schedule 3 to the Superannuation Act 1972 provide powers for regulations to define, amongst other matters, the administration, nature of benefits, entitlements and membership requirements for the NHS Pension Scheme.

- 4.2 In 2008 the NHS Pension Scheme divided into two ‘sections’ when a new benefit structure was introduced for new entrants. Membership and administration of the ‘1995 Section’ is governed by the National Health Service Pension Scheme Regulations 1995 (Statutory Instrument (S.I) 1995/300). Part 2 of this SI amends those regulations.

- 4.3 Similarly, the ‘2008 Section’ was created by the National Health Service Pension Scheme Regulations 2008 (S.I. 2008/653). Part 3 of this SI amends those regulations.

- 4.4 Certain payments are made to NHS staff following a work-related illness or injury. The National Health Service (Injury Benefits) Regulations 1995 (S.I. 1995/866) provide for such payments to be made. Part 4 of this SI amends those regulations.
- 4.5 Members and their employers are able to pay additional voluntary contributions in order to secure extra pension benefits at retirement. The National Health Service (Additional Voluntary Contributions) Regulations 2000 (S.I. 2000/619) makes the relevant provisions. Part 5 of this SI amends those regulations.

## **5. Territorial Extent and Application**

The instrument applies to England and Wales.

## **6. European Convention on Human Rights**

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

## **7. Policy Background - What is being done and why**

### **Improved Governance and record keeping for members who are NHS Dentists**

- 7.1 Existing administrative and governance arrangements for recording the pensionable earnings of dental practitioners require strengthening in order to improve accuracy and limit further the potential for fraud in respect of members across both Sections of the NHS Pension Scheme. This is to be achieved through the introduction of a revised 'Annual Reconciliation Notice' and a new 'Performer's Notice', requiring annual confirmation of the pensionable earnings recorded for each dentist performer. Amending regulations 12 (3), (4) and (7), 25, 26, and 35 support the introduction of the new and revised notices, clarify items of dental practitioner income which are, and are not, pensionable and confirm, in more detail, existing administrative arrangements.

### **Compliance with the Finance Act 2011**

- 7.2 From 6 April 2011, the Finance Act 2011 amended the Finance Act 2004 to remove age restrictions on the payment of lump sums in certain circumstances. Amending regulations 6(b), 7, 13, 17, 19, 29 and 31 make commensurate changes to both Sections of the NHS Pension Scheme. These amendments are made with retrospective effect from 6 April 2011.
- 7.3 Amending regulation 37 extends the provision allowing deferred members to transfer their investment with NHS Additional Voluntary Contribution providers to any registered pension provider to active members, and increases the upper age limit for transfers from age 60 to 75.

- 7.4 The Finance Act 2011 also extends the coverage of the special lump sum death benefits tax charge so that it will apply to any lump sums due on the death of a member over age 75. The Act also introduces a new tax charge “the serious ill health lump sum charge” which will apply where a serious ill health lump sum is paid after a member reaches age 75. Both charges are 55% of the value of the lump sum and, where scheme rules permit, may be deducted from the payment due to the member. Amending regulations 9, 22 and 33 implement the new and extended charges in the 1995 and 2008 Section regulations. These amendments are also made with retrospective effect from 6 April 2011.
- 7.5 Finally, amending regulations 11, 23 and 34 provide for the Scheme’s medical advisers to determine whether a member is exempt from the new annual allowance tax charge. Medical Advisers will be able to decide whether members are exempt because they meet the severe ill health condition newly inserted into the Finance Act 2004 by the Finance Act 2011. These amendments are made with retrospective effect from 19 July 2011.

### **Other Miscellaneous and minor technical changes**

#### **The 1995 Section of the NHS Pension Scheme**

- 7.6 (1) Amending regulation 3 adjusts the wording in the definition of “host Trust or Board” in regulation A2 (interpretation) to bring it into line with that used in the 2008 Regulations and inserts a definition of “GDS contractor”.
- (2) Amending regulation 4 corrects a duplicate paragraph number in regulation B2 (restrictions on membership).
- (3) Amending regulation 5 amends regulation D2 (contributions by employing authorities) to clarify that the Secretary of State for Health must “consider” rather than “take” the advice of the Scheme Actuary when determining the rate of contributions to be paid by employers. This amendment brings regulation D2 into line with other similar provisions.
- (4) Amending regulation 6(a) amends regulation E6 (lump sum on retirement) to clarify that additional pension purchased by members does not attract a fixed lump sum payment.
- (5) Amending regulation 8 amends regulation S2 (reduction of pension on return to NHS employment) to include a missing cross reference to regulation R3(9).
- (6) Amending regulation 12(2) corrects a cross reference in paragraph (1) of Schedule 2 to the 1995 regulations.
- (7) Amending regulation 12(6) omits paragraph 13 of Schedule 2 in order to remove an outdated reference to regulation E4 (early retirement pension with employer consent).

## **The 2008 Section of the NHS Pension Scheme**

7.7 (1) Amending regulations 15 and 24 amend regulations 2.A.5 and 3.A.5 (meaning of “qualifying service”) respectively. These amendments ensure that deferred and pensioner members of the 1995 Section who are eligible to join the 2008 Section on return to work in the NHS will now be able to count their earlier service in the 1995 Section as qualifying service in the 2008 Section of the Scheme. These amendments are made with retrospective effect from 9 February 2011.

(2) Amending regulations 16 and 27 amend regulations 2.C.1 and 3.C.1 (contributions by members) respectively to correct a cross reference in those regulations.

(3) Amending regulations 18 and 30 amend regulations 2.E.9 and 3.E.9 (meaning of “dependent child”) respectively with retrospective effect from 1 April 2008. These amendments extend the definition of a “dependent child” to include children born before the member joined the scheme.

(4) Amending regulation 20 corrects an incomplete cross reference in regulation 2.H.6 (meaning of “previous pay” members with concurrent employments).

## **Amendment of both the 1995 Section and the 2008 Section of the NHS Pension Scheme**

7.8 (1) Amending regulations 10, 21 and 32 extend the circumstances in which small pensions may be commuted into a lump sum payment to include those provided under regulation 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009.

(2) Amending regulations 12(5) and 28 amend paragraph 10(2I), (2K) and (2L) of Schedule 2 to the 1995 Section Regulations and regulation 3.C.2 (6), (8) and (9) of the 2008 Section Regulations so that the wording of those regulations is brought into line with the wording of regulation 2.C.4 (7).

## **Amendments to the Injury Benefit Regulations**

7.9 Amending regulation 36 amends regulation 2 (interpretation) of the Injury Benefits Regulations to correct a cross reference to the NHS Act 2006.

## **Consolidation**

- 7.10 An informal consolidated text of the Regulations amended by this instrument was made available to NHS Trade Unions and other stakeholders during the consultation period. Informally consolidated texts of both sets of NHS Pension Scheme regulations incorporating all changes implemented up to and including those which came into effect on 1 April 2011 are available on the NHS Pensions website and may be viewed here <http://www.nhsbsa.nhs.uk/Pensions/2963.aspx>

Whilst the necessary scoping work to consolidate both the 1995 and 2008 Regulations has started, further work on the project has been deferred pending publication of the Government's proposals for long term reform of public service pensions schemes.

## **8. Consultation outcome**

- 8.1 A formal consultation exercise on the amending regulations began on 4 March 2011 and ended on 27 May 2011. Amongst those consulted were: NHS Trades Union representatives, NHS Employers; NHS Pensions (the Scheme Administrators); other public service pension Schemes; Government Actuary's Department; the devolved administrations; and HM Treasury.
- 8.2 In addition, a workshop was provided to allow stakeholders the opportunity to ask any questions and to make comments on the draft amendments. The workshop was attended by representatives of NHS Trades Unions, the devolved administrations, NHS Pensions (the Scheme Administrators), NHS Employers and the Government Actuary's Department.
- 8.3 Two responses to the consultation exercise were received. The British Dental Association (BDA) sought a specific assurance that amending regulations 12(3)(a) (new (b)(iii)) and 25 (new (b)(iii)) would operate prospectively, and so the drafting of these amendments was changed to include the agreed effective date of 7 November 2011. Technical adjustments were also made because of comments made by the Scheme Administrators.

## **9. Guidance**

Guidance on improvements to administrative arrangements for Dentists was issued to Primary Care Trusts and Strategic Health Authorities on 9 September 2011. Guidance for individual Dentists was issued during week commencing 3 October 2011. Guidance on changes to the taxation of pensions is available on the member suite of NHS Pensions Website. There is a ready reckoner on the NHS Employers organisations website to help individual employers identify members of staff who may be liable for a tax charge under new Annual and Lifetime Allowance tax arrangements.

**10. Impact**

An impact assessment has not been prepared for this instrument because it will not lead to costs or savings for business, public or civil society organisations, regulators or consumers.

**11. Regulating small business**

The changes do not affect small business.

**12. Monitoring & review**

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

**13. Contact**

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