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STATUTORY INSTRUMENTS

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**2016 No. 245**

The National Health Service Pension Scheme,  
Injury Benefits and Additional Voluntary  
Contributions (Amendment) Regulations 2016

Part 3

Amendment of the National Health Service Pension Scheme Regulations 2008

**General**

**20.** The National Health Service Pension Scheme Regulations 2008(1) are amended as follows.

**Amendment of regulation 2.A.1**

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

(a) for the definition of “buy-out policy”, substitute—

““buy-out policy” means a policy of insurance or annuity contract that is appropriate for the purposes of section 19 of the 1993 Act(2) and satisfies any requirement of Her Majesty’s Revenue and Customs: and “buy-out” shall be construed accordingly;”;

(b) for the definition of “cash equivalent”, substitute—

““cash equivalent” is to be construed in accordance with Chapter 1 of Part 4ZA of the 1993 Act;”;

(c) for the definition of “practice staff”, substitute—

““practice staff” means a person who is not a registered medical practitioner, a GP registrar or a non-GP provider and who is employed by a GMS practice, a PMS practice, an APMS contractor or an OOH Provider to assist in the provision of any of the following—

- (a) OOH services or services that practice or provider provides pursuant to a GMS contract, PMS agreement or an APMS contract;
- (b) services pursuant to an NHS standard contract;
- (c) services pursuant to an NHS standard sub-contract;
- (d) clinical health care services for the NHS commissioned by an employing authority that is not a GMS practice, a PMS practice, an APMS contractor, an OOH provider or an Independent Provider;”;

(d) omit the definitions of “safeguarded percentage” and “safeguarded rights”;

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(1) [S.I. 2008/653](#).

(2) Section 19 is concerned with the discharge of liability where a guaranteed minimum pension is secured by insurance policies or annuity contract. Subsection (4) of section 19 specifies when a policy of insurance or an annuity contract is appropriate for the purposes of that section.

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

““NHS standard sub-contract” means a sub-contract that complies with the Department of Health guidance “NHS Standard Sub-Contract for the Provision of Clinical Services 2015/16”<sup>(3)</sup>;

“shared parental leave” has the meaning given in regulation 3(1) of the Shared Parental Leave Regulations 2014<sup>(4)</sup>.”

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

**22.**—(1) Regulation 2.A.4 (pensionable service: breaks in service) is amended as follows.

(2) In sub-paragraph (e) of paragraph (1), after “leave” insert “or shared parental leave”.

(3) In sub-paragraph (e) of paragraph (7), after “leave” insert “or shared parental leave”.

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

**23.** In sub-paragraph (e) of paragraph (1) of regulation 2.A.9 (pensionable pay: breaks in service), after “leave” insert “or shared parental leave”.

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

**24.**—(1) Regulation 2.B.2 (restrictions on eligibility: general) is amended as follows.

(2) After paragraph (1L), insert—

“(1LA) Paragraph (1LE) applies to a person if—

- (a) paragraph (1LB) is satisfied, and
- (b) that person’s employment was originally transferred out of the public sector (whether or not the employment from which that person is being transferred for the purposes of paragraph (1LB) to (1LF) is in the public sector).

(1LB) This paragraph is satisfied if, in the opinion of the Secretary of State—

- (a) the person’s employment is transferred to an employing authority by virtue of—
  - (i) a transfer of undertakings, or
  - (ii) arrangements equivalent to a transfer of undertakings; and
- (b) the employment from which the person is transferred—
  - (i) qualified that person for benefits under an occupational pension scheme, and
  - (ii) the rules of that scheme (in the opinion of the Secretary of State) entitle that person to receive benefits on retirement upon attaining the age of 65 years.

(1LC) The reference in paragraph (1LB) to arrangements equivalent to a transfer of undertakings is to arrangements—

- (a) which the Secretary of State considers to be equivalent to the transfer of an undertaking, and
- (b) under which the parties to the arrangements have agreed that the rights of a person whose employment is being transferred should, as far as practicable, be treated in the same way as they would have been under a transfer of an undertaking.

(1LD) For the purposes of paragraph (1LB)(b)(ii), a person is not to be treated as being entitled under the rules of a pension scheme to receive benefits upon, or prior to, attaining

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(3) Electronic copies of the guidance can be obtained from [www.gov.uk/dh](http://www.gov.uk/dh). Hard copies may be obtained from Department of Health, Quarry House, Quarry Hill, Leeds LS2 7UE.

(4) [S.I. 2014/3050](#).

the age of 65 years, where such entitlement arises by virtue of any scheme rule making special provision—

- (a) as to early retirement on the grounds of ill health, redundancy or otherwise, or
- (b) for benefits to be reduced for early payment.

(1LE) The Secretary of State may permit a person referred to in paragraph (1LA) who would otherwise not be permitted to join this Section of the Scheme in accordance with regulation 2.B.1 to do so and, for the purposes of paragraphs (1C) to (1G), the member's previous service as an active member under the occupational pension scheme referred to in paragraph (1LB)(b)(i) will be treated as if it were previous service as an active member of this Section of the Scheme.

(1LF) Before permitting a person referred to in paragraph (1LE) to join this Section of the Scheme the Secretary of State must take advice from the Scheme actuary.”

- (3) In paragraph (1M), for “or (1K)” substitute “, (1K) or (1LE)”.
- (4) In paragraph (2) of regulation 2.B.2 (restrictions on eligibility: general)—
  - (a) omit the “or” at the end of sub-paragraph (b); and
  - (b) omit sub-paragraph (c).

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

**25.** For paragraphs (5) and (6) of regulation 2.C.1 (contributions by members), substitute—

“(5) Paragraph (6) applies where, despite the provisions of this regulation—

- (a) a member who—
  - (i) is not a non-GP provider, has failed to pay member contributions; or
  - (ii) is a non-GP provider, has failed to pay such contributions; or
- (b) an employing authority has failed to deduct such contributions in respect of a member referred to in paragraph (a).

(6) The Secretary of State may recover any sum that remains due in respect of contributions referred to in paragraph (5)—

- (a) in any case where an employing authority has ceased to exist and the member is a non-GP provider member referred to in paragraph (5)(a)(ii), by adding those contributions to the amount of contributions that the non-GP provider is due to pay to the host Board;
- (b) by deduction from any benefit payable to, or in respect of, a member where the Secretary of State has notified the member of an intention to do so.

(6A) Where paragraph (6)(a) applies, the non-GP provider must record the amount of unpaid contributions in a certificate referred to in regulation 2.J.14.”

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

**26.** In sub-paragraph (e) of paragraph (1) of regulation 2.C.9 (effect of member being absent or leaving and rejoining this Section of the Scheme during the contribution option period), after “leave” insert “or on shared parental leave”.

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

**27.—**(1) Regulation 2.C.18 (repayment of contributions) is amended as follows.

(2) In sub-paragraph (b) of paragraph (1), for “Chapter 5 of Part 4” substitute “Chapter 2 of Part 4ZA”.

(3) In paragraph (3), for “Chapter 5 of Part 4” substitute “Chapter 2 of Part 4ZA”.

(4) In paragraph (8), for “Chapter 5 of Part 4” substitute “Chapter 2 of Part 4ZA”.

#### **Amendment of regulation 2.D.22**

**28.** In sub-paragraph (c) of paragraph (9) of regulation 2.D.22 (guaranteed minimum pensions etc), for “regulation 60 of the Occupational Pension Schemes (Contracting-out) Regulations 1996” substitute “regulation 25 of the Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015”(5).

#### **Amendment of regulation 2.E.23**

**29.** For sub-paragraph (d) of paragraph (1) of regulation 2.E.23 (death during period of absence), substitute—

“(d) is on paternity leave, parental leave or shared parental leave.”.

#### **Amendment of regulation 2.E.26**

**30.** For paragraph (3) of regulation 2.E.26 (guaranteed minimum pensions for surviving spouses and civil partners), substitute—

“(3) Paragraph (2) does not apply to a pension that is forfeited following a conviction for any of the following—

- (a) treason;
- (b) an offence under the Official Secrets Acts 1911 to 1989 referred to in regulation 2.J.7(2)(b);
- (c) murder or manslaughter or any other offence of unlawful killing referred to in regulation 2.J.7(4).”.

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

**31.—**(1) Regulation 2.F.1 (introduction: rights to transfer value payment) is amended as follows.

(2) In paragraph (1), for “Chapter 4 of Part 4 of the 1993 Act (transfer values)” substitute “Chapter 1 of Part 4ZA of the 1993 Act (transfer rights: general)”.

(3) In paragraph (2), for “Chapter 5” substitute “Chapter 2”.

(4) In paragraph (3)—

- (a) in sub-paragraph (a)(6), for “Chapter 4” substitute “Chapter 1”;
- (b) in sub-paragraph (b), for “Chapter 5” substitute “Chapter 2”.

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

**32.—**(1) Regulation 2.F.5 (ways in which transfer value payments may be applied) is amended as follows.

(2) In paragraph (1)(7), for “If Chapter 4 of Part 4 of the 1993 Act applies to a member, that member” substitute “A deferred member”.

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(5) [S.I. 2015/1677](#). Regulation 25 is concerned with the payment of a lump sum instead of a pension.

(6) Sub-paragraph (a) was last amended by regulations 17 and 31 of [S.I. 2015/96](#).

(7) Paragraph (1) was last amended by regulations 17 and 31 of [S.I. 2015/96](#).

(3) After paragraph (5), add—

“(6) Paragraph (1) applies whether or not the deferred member is entitled to a guaranteed cash equivalent transfer value payment under Chapter 1 of Part 4ZA of the 1993 Act.”.

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

**33.** For paragraph (ii) of sub-paragraph (c) of paragraph (1) of regulation 2.F.9 (procedure for applications under regulation 2.F.8), substitute—

“(ii) where the applicant is not eligible to be an active member of this Section of the Scheme and the application is made in respect of a transfer from a corresponding 2008 Scheme, during the period of one year beginning with the day on which the applicant becomes eligible to be an active member of the 2015 Scheme if either—

(aa) paragraph 2 of Schedule 7 to the 2013 Act, or

(bb) paragraph 2 of Schedule 7 to the Public Service Pensions Act (Northern Ireland) 2014(8),

applies to the period of service in respect of which that transfer value payment is made.”.

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

**34.** Omit sub-paragraph (a) of paragraph (2) of regulation 2.J.5 (commutation of small pensions).

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

**35.** For sub-paragraph (a) of paragraph (2) of regulation 2.J.6 (reduction in benefits in cases where loss caused by member’s crime, negligence or fraud), substitute—

“(a) is a guaranteed minimum pension, or”.

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

**36.** For paragraph (6) of regulation 2.J.7 (forfeiture of rights to benefits), substitute—

“(6) A guaranteed minimum pension may be forfeited only if paragraph (1) applies in the case of an offence within paragraph (2)(b) or to which paragraph (4) applies.”.

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

**37.—(1)** For paragraphs (4) to (6) of regulation 2.M.3 (approval applications), substitute—

“(4) An approval application may nominate a date (“the nominated date”) from which approval by the Secretary of State (if granted) is to have effect.

(5) Where paragraph (4) applies and—

(a) the Secretary of State is satisfied that the Independent Provider will satisfy the conditions in paragraph (3) at the nominated date,

(b) the Secretary of State accepts the nominated date for approval purposes, and

(c) the nominated date is later than the date on which the Secretary of State approves the application,

approval takes effect from the nominated date.

(5A) Where paragraph (4) applies and—

- (a) the Secretary of State is satisfied that the Independent Provider did satisfy the conditions in paragraph (3) at the nominated date,
  - (b) the Secretary of State accepts the nominated date for approval purposes,
  - (c) the nominated date is earlier than the date on which the Secretary of State approves the application, and
  - (d) the Secretary of State has received the contributions referred to in paragraphs (iv) and (v) of paragraph (3),
- approval takes effect from the nominated date.
- (6) Where an approval application—
    - (a) does not include a nominated date, or
    - (b) does include such a date, but which the Secretary of State does not accept for approval purposes,
 approval takes effect from the date that it is granted by the Secretary of State.”.

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

- 38.** After sub-paragraph (a) of paragraph (3) of regulation 2.M.8 (pension returns), insert—
- “(ab) a complete list of such of the contracts referred to in sub-paragraph (a) which the Independent Provider has sub-contracted by way of NHS standard sub-contract to a third party: that list must identify the third party and also specify the total gross amounts expressed to be payable under such sub-contracts to that third party;”.

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

- 39.** In paragraph (1) of regulation 3.A.1 (interpretation of Part 3: general)—
- (a) for the definition of “buy-out policy”, substitute—
 

““buy-out policy” means a policy of insurance or annuity contract that is appropriate for the purposes of section 19 of the 1993 Act<sup>(9)</sup> and satisfies any requirement of Her Majesty’s Revenue and Customs: and “buy-out” shall be construed accordingly;”;
  - (b) for the definition of “cash equivalent”, substitute—
 

““cash equivalent” is to be construed in accordance with Chapter 1 of Part 4ZA of the 1993 Act;”;
  - (c) for the definition of “practice staff”, substitute—
 

““practice staff” means a person who is not a registered medical practitioner, a GP registrar or a non-GP provider and who is employed by a GMS practice, a PMS practice, an APMS contractor or an OOH Provider to assist in the provision of any of the following—

    - (a) OOH services or services that practice or provider provides pursuant to a GMS contract, PMS agreement or an APMS contract;
    - (b) services pursuant to an NHS standard contract;
    - (c) services pursuant to an NHS standard sub-contract;

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(9) Section 19 is concerned with the discharge of liability where a guaranteed minimum pension is secured by insurance policies or annuity contract. Subsection (4) of section 19 specifies when a policy of insurance or an annuity contract is appropriate for the purposes of that section.

- (d) clinical health care services for the NHS commissioned by an employing authority that is not a GMS practice, a PMS practice, an APMS contractor, an OOH provider or an Independent Provider;”;
- (d) omit the definitions of “safeguarded percentage” and “safeguarded rights”;
- (e) at the appropriate place in the alphabetical order insert—
  - ““NHS standard sub-contract” means a sub-contract that complies with the Department of Health guidance “NHS Standard Sub-Contract for the Provision of Clinical Services 2015/16”(10);
  - “shared parental leave” has the meaning given in regulation 3(1) of the Shared Parental Leave Regulations 2014(11);”.

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

- 40.**—(1) Regulation 3.A.4 (pensionable service: breaks in service) is amended as follows.
- (2) In sub-paragraph (e) of paragraph (1), after “leave” insert “or shared parental leave”.
  - (3) In sub-paragraph (e) of paragraph (7), after “leave” insert “or shared parental leave”.

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

- 41.**—(1) Regulation 3.A.7 (meaning of “pensionable earnings”) is amended as follows.
- (2) In sub-paragraph (g) of paragraph (2), after “NHS standard contract” insert “or an NHS standard sub-contract where the party to the NHS standard contract in question is an employing authority”.
  - (3) In sub-paragraph (b) of paragraph (4), after “parental leave” insert “, shared parental leave”.
  - (4) In sub-paragraph (b) of paragraph (5), after “parental leave” insert “, shared parental leave”.

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

- 42.** In sub-paragraph (e) of paragraph (1) of regulation 3.A.8 (pensionable earnings: breaks in service) after “leave” insert “or shared parental leave.”.

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

- 43.**—(1) Regulation 3.A.13 (meaning of pensionable earnings in relation to other practitioners) is amended as follows.
- (2) In sub-paragraph (e) of paragraph (1), after “NHS standard contract” insert “or NHS standard sub-contract where the party to the NHS standard contract in question is an employing authority”.
  - (3) In paragraph (4), after “pharmaceutical services” insert “, services provided by a practitioner pursuant to an NHS standard contract or an NHS standard sub-contract where the party to the NHS Standard contract in question is an employing authority”.

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

- 44.** In paragraph (1) of regulation 3.B.2 (restrictions on eligibility: general)—
- (a) omit the “or” at the end of sub-paragraph (b); and
  - (b) omit sub-paragraph (c).

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(10) Electronic copies of the guidance can be obtained from [www.gov.uk/dh](http://www.gov.uk/dh). Hard copies may be obtained from Department of Health, Quarry House, Quarry Hill, Leeds LS2 7UE.

(11) [S.I. 2014/3050](http://www.legislation.gov.uk/si/2014/3050).

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

45. In sub-paragraph (a) of paragraph (19A) of regulation 3.C.5 (payment of contributions), for “2.J.14” substitute “3.J.14”.

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

46. In sub-paragraph (e) of paragraph (1) of regulation 3.C.7 (effect of member being absent or leaving and rejoining this section of the scheme during the contribution option period) after “leave” insert “or shared parental leave”.

#### **Amendment of regulation 3.C.16**

47.—(1) Regulation 3.C.16 (repayment of contributions) is amended as follows.

(2) In sub-paragraph (b) of paragraph (1), for “Chapter 5 of Part 4” substitute “Chapter 2 of Part 4ZA”.

(3) In paragraph (3), for “Chapter 5 of Part 4” substitute “Chapter 2 of Part 4ZA”.

(4) In paragraph (8), for “Chapter 5 of Part 4” substitute “Chapter 2 of Part 4ZA”.

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

48. In sub-paragraph (c) of paragraph (9) of regulation 3.D.18 (guaranteed minimum pensions etc), for “regulation 60 of the Occupational Pension Schemes (Contracting-out) Regulations 1996” substitute “regulation 25 of the Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015”(12).

#### **Amendment of regulation 3.E.23**

49. In sub-paragraph (d) of paragraph (1) of regulation 3.E.23 (death during period of absence), for “or parental leave” substitute “, parental leave or shared parental leave”.

#### **Amendment of regulation 3.E.26**

50. For paragraph (3) of regulation 3.E.26 (guaranteed minimum pensions for surviving spouses and civil partners), substitute—

“(3) Paragraph (2) does not apply to a pension that is forfeited following a conviction for any of the following—

(a) treason;

(b) an offence under the Official Secrets Acts 1911 to 1989 referred to in regulation 3.J.7(2)(b);

(c) murder or manslaughter or any other offence of unlawful killing referred to in regulation 3.J.7(4).”.

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

51.—(1) Regulation 3.F.1 (introduction: rights to transfer value payment) is amended as follows.

(2) In paragraph (1), for “Chapter 4 of Part 4 of the 1993 Act (transfer values)” substitute “Chapter 1 of Part 4ZA of the 1993 Act (transfer rights: general)”.

(3) In paragraph (2), for “Chapter 5” substitute “Chapter 2”.

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(12) [S.I. 2015/1677](#). Regulation 25 is concerned with the payment of a lump sum instead of a pension.



- (4) In paragraph (3)—
- (a) in sub-paragraph (a)(13), for “Chapter 4” substitute “Chapter 1”;
  - (b) in sub-paragraph (b), for “Chapter 5” substitute “Chapter 2”.

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

**52.**—(1) Regulation 3.F.5 (ways in which transfer value payments may be applied) is amended as follows.

(2) In paragraph (1)(14), for “If Chapter 4 of Part 4 of the 1993 Act applies to a member, that member” substitute “A deferred member”.

(3) After paragraph (5), add—

“(6) Paragraph (1) applies whether or not the deferred member is entitled to a guaranteed cash equivalent transfer value payment under Chapter 1 of Part 4ZA of the 1993 Act.”.

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

**53.** For paragraph (ii) of sub-paragraph (c) of paragraph (1) of regulation 3.F.9 (procedure for applications under regulation 3.F.8), substitute—

“(ii) where the applicant is not eligible to be an active member of this Section of the Scheme and the application is made in respect of a transfer from a corresponding 2008 Scheme, during the period of one year beginning with the day on which the applicant becomes eligible to be an active member of the 2015 Scheme if either—

(aa) paragraph 2 of Schedule 7 to the 2013 Act, or

(bb) paragraph 2 of Schedule 7 to the Public Service Pensions Act (Northern Ireland) 2014(15),

applies to the period of service in respect of which that transfer value payment is made.”.

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

**54.** Omit sub-paragraph (a) of paragraph (2) of regulation 3.J.5 (commutation of small pensions).

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

**55.** For sub-paragraph (a) of paragraph (2) of regulation 3.J.6 (reduction in benefits in cases where loss caused by member’s crime, negligence or fraud), substitute—

“(a) is a guaranteed minimum pension, or”.

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

**56.** For paragraph (6) of regulation 3.J.7 (forfeiture of rights to benefits), substitute—

“(6) A guaranteed minimum pension may be forfeited only if paragraph (1) applies in the case of an offence within paragraph (2)(b) or to which paragraph (4) applies.”.

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

**57.**—(1) Regulation 3.J.14 (employing authority and certain member record keeping and contribution estimates) is amended as follows.

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(13) Sub-paragraph (a) was last amended by regulations 17 and 43 of S.I. 2015/96.

(14) Paragraph (1) was last amended by regulations 17 and 45 of S.I. 2015/96.

(15) 2014 c. 2.

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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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(2) In sub-paragraph (c) of paragraph (4), after “parental leave payments” insert “, shared parental leave payments”.

(3) In sub-paragraph (e) of paragraph (5), after “parental leave payments” insert “, shared parental leave payments”.