

**2016 No. 245**

**NATIONAL HEALTH SERVICE, ENGLAND AND  
WALES**

**PUBLIC SERVICE PENSIONS, ENGLAND AND WALES**

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

*Made* - - - - - *24th February 2016*

*Laid before Parliament* *3rd March 2016*

*Coming into force in accordance with regulation 1*

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) and 24 of, and Schedule 3 to, the Superannuation Act 1972<sup>(a)</sup> and sections 1(1) and (2)(e), 2, and 3 of, and paragraph 5(a) of Schedule 2 and Schedule 3 to, the Public Service Pensions Act 2013<sup>(b)</sup>.

In accordance with section 10(4) of the Superannuation Act 1972 and section 21 of the Public Service Pensions Act 2013, the Secretary of State has consulted the representatives of such persons as appear to the Secretary of State likely to be affected by these Regulations.

In accordance with section 10(1)(c) of the Superannuation Act 1972 and section 3(5) of the Public Service Pensions Act 2013, these Regulations are made with the consent of the Treasury.

**PART 1**

**Introductory**

**Citation, commencement, effect and extent**

**1.—(1)** These Regulations may be cited as the National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions (Amendment) Regulations 2016.

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(a) 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).  
(b) 2013 c.25.  
(c) The functions of the Minister for the Civil Service under section 10 were transferred to the Treasury by article 2 of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I. 1981/1670).

(2) Unless otherwise specified in paragraphs (3) to (8), these Regulations come into force on 1st April 2016 and have effect from that date.

(3) Regulations 7, 8, 9, 12, 15, 16, 28, 30, 34, 36, 48, 50, 54, 56, 68, 69, 70(3) and 84(3) come into force on 6th April 2016 and have effect from that date.

(4) Regulation 13 has effect from 1st April 2008.

(5) Regulation 99(2) and (3) has effect from 1st April 2009.

(6) Regulations 25 and 45 have effect from 1st April 2013.

(7) Regulations 3(d) insofar as it inserts a definition of “shared parental leave”, 11, 18(3)(b) and (5), 21(e) insofar as it inserts a definition of “shared parental leave”, 22, 23, 26, 29, 39(e) insofar as it inserts a definition of “shared parental leave”, 40, 41(3) and (4), 42, 46, 49, 57, 59, 60, 65, 87(4)(a) and (b), 88 and 89(c) insofar as it inserts a definition of “shared parental leave” have effect from 31st December 2014.

(8) Regulations 4, 5, 6, 14, 24, 33, 44, 53, 64, 66, 67, 70(2), 71, 72, 73, 80, 81(2), 84(2), 85, 86, 91 to 96 and 98 have effect from 1st April 2015.

(9) These Regulations extend to England and Wales.

## Part 2

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

#### General

2. The National Health Service Pension Scheme Regulations 1995(a) are amended as follows.

#### Amendment of regulation A2

3. In regulation A2 (interpretation)—

(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(b) 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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(a) S.I. 1995/300.

(b) 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) at the appropriate place in the alphabetical order, insert—
  - ““contracted-out employment” has the meaning given in section 8 of the 1993 Act;
  - “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”(a);
  - “shared parental leave” has the meaning given in regulation 3(1) of the Shared Parental Leave Regulations 2014(b);”;
- (e) omit the definitions of “safeguarded percentage” and “safeguarded rights”.

#### **Amendment of regulation B1**

4. In sub-paragraph (b) of paragraph (3B) of regulation B1 (membership of this Section of the scheme), for “(8V)” substitute “(8U)”.

#### **Amendment of regulation B3**

5.—(1) Regulation B3 (restriction on further participation in this Section of the scheme) is amended as follows.

- (2) For sub-paragraphs (a) and (b) of paragraph (8H), substitute—
  - “(a) is in pensionable employment on 31st March 2015,
  - (b) returns to pensionable employment on or after 1st April 2015 in circumstances where the provisions of regulation B2 do not apply, or
  - (c) is permitted to join this Section of the scheme by virtue of regulation B2(3).”.
- (3) For paragraph (8L), substitute—
  - “(8L) A person who, on 1st April 2012, has attained the age of 46 years and 7 months but has not attained the age of 50, may not contribute to or accrue further pensionable service under this Section of the scheme unless one of paragraphs (8J), (8M) or (8N) applies to that person and that person—
    - (a) is in pensionable employment on 31st March 2015,
    - (b) returns to pensionable employment on or after 1st April 2015 in circumstances where the provisions of regulation B2 do not apply, or
    - (c) is permitted to join this Section of the scheme by virtue of regulation B2(3).”.

#### **Amendment of regulation D2**

6. In paragraph (8) of regulation D2 (contributions by employing authorities), for “purposes of paragraph (3)” substitute “purposes of paragraph (3) or (3A)”.

#### **Amendment of regulation K1**

7. For sub-paragraph (c) of paragraph (2) of regulation K1 (contracting-out conditions to be overriding), substitute—

- “(c) if a pension is forfeited for the reasons specified in paragraph (1)(b) or (c) or paragraph (1A) of regulation T6.”.

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(a) 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.  
(b) S.I. 2014/3050.

#### **Amendment of regulation K4**

**8.**—(1) Regulation K4 (early leavers) is amended as follows.

(2) For paragraph (1), substitute—

“(1) This paragraph applies if a member who is under guaranteed minimum pension age either—

- (a) leaves contracted-out employment under this Section of the scheme before 6th April 2016, or
- (b) was in contracted-out employment under this Section of the scheme on 5th April 2016 but leaves pensionable employment on, or after, 6th April 2016.

This is subject to paragraph (2).

(1A) Where paragraph (1) applies the member’s guaranteed minimum pension at the date of leaving will be increased, when the member reaches guaranteed minimum pension age or dies (if earlier), by the appropriate percentage specified in relation to each relevant year in the last order under section 148 of the Social Security Administration Act 1992 (revaluation of earnings factors) to come into force before the tax year in which the member reaches guaranteed minimum pension age or dies (if earlier).”

(3) In paragraph (3), for “If a member returns to contracted-out employment under this Section of the scheme within 6 months after leaving, the two periods of contracted-out” substitute “If a member to whom paragraph (1) applies returns to pensionable employment under this Section of the scheme within 6 months after leaving, the two periods of”.

#### **Amendment of regulation K5**

**9.**—(1) For paragraph (1) of regulation K5 (guaranteed minimum pensions transferred to this Section of the scheme), substitute—

“(1) This paragraph applies where a guaranteed minimum pension has been transferred to this Section of the scheme and the member—

- (a) subsequently leaves contracted-out employment under this Section of the scheme before 6 April 2016, or
- (b) was in contracted-out employment under this Section of the scheme on 5th April 2016 but leaves pensionable employment on, or after, 6th April 2016.

(1A) Where paragraph (1) applies, the guaranteed minimum pension transferred to this Section of the scheme will be increased for each complete tax year after the date of leaving under this Section of the scheme in which the transferred guaranteed minimum pension accrued, until the member reaches guaranteed minimum pension age or dies (if earlier).”

#### **Amendment of regulation M1**

**10.**—(1) Regulation M1 (member’s right to transfer or buy out) is amended as follows.

(2) For sub-paragraphs (a) and (b) of paragraph (2)(a), substitute—

- “(a) to purchase one or more buy-out policies from one or more insurance companies chosen by the member that satisfies the requirements set out in regulation 12(2) of the Occupational Pension Schemes (Transfer Values) Regulations 1996;
- (b) to acquire rights under a personal pension scheme or another occupational pension scheme;”.

(3) After paragraph (2), insert—

“(2A) Any use of the cash equivalent of a member’s rights under paragraph (2) must satisfy the requirements of Chapter 1 of Part 4ZA of the 1993 Act.”.

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(a) Paragraph (2) was last amended by regulations 2 and 10 of S.I. 2009/2446.

### **Amendment of regulation P1**

**11.** In paragraphs (1) and (4)(b) of regulation P1 (absence because of illness or injury or certain types of leave)(a), for “or parental leave” substitute “, parental leave or shared parental leave”.

### **Amendment of regulation Q1**

**12.** For paragraph (9) of regulation Q1 (right to buy additional service), substitute—

“(9) Where a member, following a break in pensionable employment in respect of which he received a refund of contributions which has not been repaid, rejoins this Section of the scheme, he may buy all or any part of the previous pensionable service up to, and including, 5th April 2016 provided that the employment giving rise to that service was not contracted-out employment.”.

### **Amendment of regulation Q9**

**13.** In sub-paragraph (a) of paragraph (1) of regulation Q9 (effect of member being absent or leaving and rejoining this Section of the scheme during the contribution option period), for “regulation P1(2)” substitute “regulation P1(1)”.

### **Amendment of regulation R8**

**14.** For sub-paragraph (b) of paragraph (8) of regulation R8 (former members of health service schemes), substitute—

“(b) on the day the member becomes an active member of the 2015 Scheme either—

- (i) paragraph 2 of Schedule 7 to the 2013 Act, or
- (ii) paragraph 2 of Schedule 7 to the Public Service Pensions Act (Northern Ireland) 2014(b),

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

### **Amendment to regulation T6**

**15.** For paragraph (2) of regulation T6 (loss of rights to benefits), substitute—

“(2) A guaranteed minimum pension may be forfeited only if paragraph (1)(b) or (c) or paragraph (1A) applies.”.

### **Amendment of regulation T7**

**16.** For sub-paragraph (a) of paragraph (3) of regulation T7 (commutation of trivial pensions), substitute—

“(a) the preservation requirements; and”.

### **Amendment of regulation U3**

**17.** In sub-paragraphs (c) and (d) of paragraph (3) of regulation U3 (accounts and actuarial reports), for “D2(1)” substitute “D2”.

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(a) Paragraphs (1) and (4) were last amended by regulation 2 of S.I. 2007/3280.

(b) 2014 c. 2.

## Amendment of Schedule 2

**18.**—(1) Schedule 2 (medical and dental practitioners) is amended as follows.

(2) In the definition of “locum practitioner” in paragraph 1 (additional definitions used in this Schedule), after “provision of” insert “services pursuant to an NHS standard contract or an NHS standard sub-contract,”.

(3) In paragraph 3 (meaning of “pensionable earnings”)—

(a) in paragraph (a)(i) of sub-paragraph (2), after “NHS standard contract” insert “, an NHS standard sub-contract where the party to the NHS standard contract in question is an employing authority”;

(b) in sub-paragraphs (2B)(a)(ii) and (2C)(b)(a), after “parental leave” insert “, shared parental leave”.

(4) In paragraph 6 (meaning of “pensionable earnings” in relation to other practitioners)—

(a) in paragraph (a) of sub-paragraph (1) after “an NHS standard contract” insert “, an NHS standard sub-contract where the party to the NHS standard contract in question is an employing authority”;

(b) in sub-paragraph (4)—

(i) in paragraph (g), after “an NHS standard contract” insert “, an NHS standard sub-contract where the party to the NHS standard contract in question is an employing authority”;

(ii) omit paragraph (h).

(5) In paragraph (c) of sub-paragraph (5) and paragraph (e) of sub-paragraph (6) of paragraph 23 (accounts and actuarial reports)(b), after “parental leave payments” insert “, shared parental leave payments”.

## Amendment of Schedule 2B

**19.**—(1) Schedule 2B (independent providers) is amended as follows.

(2) For paragraphs 16 to 18, substitute—

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

**17.** Where paragraph 16 applies and—

(a) the Secretary of State is satisfied that the Independent Provider will satisfy the conditions in paragraph 15 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.

**17A.** Where paragraph 16 applies and—

(a) the Secretary of State is satisfied that the Independent Provider did satisfy the conditions in paragraph 15 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

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(a) Sub-paragraph (2B) was last amended by regulation 6 of S.I. 2014/570 and sub-paragraph (2C) was last amended by regulation 2 of S.I. 2013/413.

(b) Sub-paragraphs (5) and (6) were last amended by regulation 2 of S.I. 2013/413.

(d) the Secretary of State has received the contributions referred to in paragraphs (iv) and (v) of sub-paragraph (h) of paragraph 15,  
approval takes effect from the nominated date.

**18.** 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.”.

(3) After sub-paragraph (a) of paragraph 52, insert—

“(ab) a complete list of such of the contracts referred to in 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;”.

## Part 3

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

#### General

**20.** The National Health Service Pension Scheme Regulations 2008(a) 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(b) 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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(a) S.I. 2008/653.

(b) 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”(a);

“shared parental leave” has the meaning given in regulation 3(1) of the Shared Parental Leave Regulations 2014(b);”.

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

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(a) 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.

(b) S.I. 2014/3050.



- (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”(a).

### **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)(b), 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)(c), 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 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—

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- (a) S.I. 2015/1677. Regulation 25 is concerned with the payment of a lump sum instead of a pension.
  - (b) Sub-paragraph (a) was last amended by regulations 17 and 31 of S.I. 2015/96.
  - (c) Paragraph (1) was last amended by regulations 17 and 31 of S.I. 2015/96.

“(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(a),

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.

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(a) 2014 c. 2.

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

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(a) 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.

(b) 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.

(c) S.I. 2014/3050.

#### **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).

#### **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”(a).

#### **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”.

(4) In paragraph (3)—

- (a) in sub-paragraph (a)(b), 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)(c), 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.”.

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

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

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

### **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(a),

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.

(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”.

## **Part 4**

### **Amendment of the National Health Service Pension Scheme Regulations 2015**

#### **General**

**58.** The National Health Service Pension Scheme Regulations 2015(b) are amended as follows.

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(a) 2014 c. 2.

(b) S.I. 2015/94.

### **Amendment of regulation 21**

**59.** In sub-paragraph (e) of paragraph (1) of regulation 21 (absence from work), after “leave” insert “or shared parental leave”.

### **Amendment of regulation 28**

**60.** In sub-paragraph (e) of paragraph (2) of regulation 28 (pensionable earnings: break in service), after “leave” insert “or shared parental leave”.

### **Amendment of regulation 37**

**61.** In sub-paragraphs (c) and (d) of paragraph (1) of regulation 37 (members’ contributions: records and estimates), after “regulation 33” insert “, 34 or 35”.

### **Amendment of regulation 40**

**62.** In sub-paragraph (a) of paragraph (2) of regulation 40 (eligibility for refund), for “Chapter 5 of Part 4” substitute “Chapter 2 of Part 4ZA”.

### **Amendment of regulation 41**

**63.**—(1) Regulation 41 (amount of refund) is amended as follows.

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

(3) In sub-paragraph (b) of paragraph (6), for “Chapter 5 of Part 4” substitute “Chapter 2 of Part 4ZA”.

### **Amendment of regulation 63**

**64.** For paragraph (2) of regulation 63 (repayment of lump sum contribution), substitute—

“(2) If M dies before the end of the refund period—

- (a) the amount of the lump sum paid by M must be repaid to M’s representatives;
- (b) the amount of the lump sum paid by M’s employing authority pursuant to regulation 57 must be repaid to the authority; and
- (c) the pension account must be closed.

(3) If an ill-health pension becomes payable to M before the end of the refund period—

- (a) the amount of the lump sum paid by M must be repaid to M;
- (b) the amount of the lump sum paid by M’s employing authority pursuant to regulation 57 must be repaid to the authority; and
- (c) the pension account must be closed.”.

### **Amendment of regulation 68**

**65.** In sub-paragraph (e) of paragraph (1) of regulation 68 (effect of being absent or leaving and rejoining scheme during contributions payment period), after “leave” insert “or shared parental leave”.

### **Amendment of regulation 92**

**66.** In the definition of “E” in paragraph (3) of regulation 92 (annual rate of ill-health pension), for “M’s” substitute “the day before M reaches”.



#### **Amendment of regulation 94**

**67.** In sub-paragraph (c)(i) of paragraph (2) of regulation 94 (early retirement on ill-health (deferred members)), for “paragraph (1)(b)” substitute “paragraph (1)”.

#### **Amendment of regulation 110**

**68.** In sub-paragraph (c) of paragraph (10) of regulation 110 (guaranteed minimum pension 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”(a).

#### **Amendment of regulation 115**

**69.** For sub-paragraph (b) of paragraph (8) of regulation 115 (amount of pension: survivor of active member), substitute—

“(b) sub-paragraph (a) does not apply if—

- (i) the Secretary of State’s liability to provide a guaranteed minimum pension in respect of the surviving adult dependent is discharged by the payment of a contributions equivalent premium under section 55(2) of the 1993 Act, or
- (ii) a surviving widow, widower or surviving civil partner has been convicted of an offence specified in paragraph 12 of Schedule 3(b) and the Secretary of State directed, as a consequence of that conviction, that the person’s rights to a payment in respect of the member’s death is forfeit.”.

#### **Amendment of regulation 118**

**70.**—(1) Regulation 118 (recent leavers) is amended as follows.

(2) In paragraph (2), for “recent leaver’s” substitute “surviving spouse’s or surviving civil partner’s”.

(3) For paragraph (3), substitute—

“(3) Paragraph (2) does not apply if—

- (a) the Secretary of State’s liability to provide a guaranteed minimum pension in respect of the surviving spouse or civil partner is discharged by the payment of a contributions equivalent premium under section 55(2) of the 1993 Act, or
- (b) a surviving widow, widower or surviving civil partner has been convicted of an offence specified in paragraph 12 of Schedule 3(c) and the Secretary of State directed, as a consequence of that conviction, that the person’s rights to a payment in respect of the member’s death is forfeit.”.

#### **Amendment of regulation 123**

**71.** In paragraph (i) of the definition of “B” in paragraph (3) of regulation 123 (amount of child pension: deceased active member), after “day” insert “before”.

#### **Amendment of regulation 124**

**72.** In sub-paragraph (b) of paragraph (3) of regulation 124 (amount of child pension: deceased pensioner member), for “A is the deceased’s annual pension;” substitute “A is the deceased’s annual pension not including any Tier 2 addition determined in accordance with regulation 92(3);”.

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(a) S.I. 2015/1677. Regulation 25 deals with the payment of a lump sum instead of a pension.

(b) Paragraph 12 of Schedule 3 is concerned with the forfeiture of rights to benefits.

(c) Paragraph 12 of Schedule 3 is concerned with the forfeiture of rights to benefits.

### **Amendment of regulation 125**

**73.** In sub-paragraph (b) of paragraph (1) of regulation 125 (amount of child pension: deceased deferred member), omit “an active member or”.

### **Amendment of regulation 131**

**74.** In paragraph (1) of regulation 131 (application of Part)—

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

### **Amendment of regulation 132**

**75.** In regulation 132 (interpretation of Part), for paragraph (b) of the definition of “transfer value payment” substitute—

“(b) the payment of a transfer value under Chapter 1 of Part 4ZA of the 1993 Act.”.

### **Amendment of regulation 134**

**76.—**(1) Regulation 134 (right to transfer value payment) is amended as follows.

- (2) In paragraph (2), for “Chapter 4 of Part 4” substitute “Chapter 1 of Part 4ZA”.
- (3) In paragraph (3), for “Chapter 5” substitute “Chapter 2”.

### **Amendment of regulation 138**

**77.—**(1) Regulation 138 (how transfer value payments may be applied) is amended as follows.

(2) For paragraph (1), substitute—

“(1) A deferred member (DM) may require the scheme manager to apply the guaranteed cash equivalent transfer value payment only in one of the ways permitted under section 95 of the 1993 Act.”.

- (3) In paragraph (2), for “M” substitute “a member”.
- (4) In paragraph (4), for “M’s” (twice) substitute “DM’s”.
- (5) After paragraph (5), add—

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

### **Amendment of regulation 141**

**78.** In paragraph (5) of regulation 141 (right to apply for acceptance of transfer value payment), for “(extinguishment of liability of scheme for pensions secured by insurance policies or annuity contracts)” substitute “(discharge of liability where guaranteed minimum pensions secured by insurance policies or annuity contracts)”.

### **Amendment of regulation 150**

**79.** In paragraph (8) of regulation 150 (interpretation), omit the definition of “NHS standard contract”.

### **Amendment of regulation 151**

**80.** In sub-paragraph (g) of paragraph (3) of regulation 151 (application for employing authority status), for “employment” substitute “employing”.

### **Amendment of regulation 152**

**81.**—(1) Regulation 152 (grant of employing authority status) is amended as follows.

(2) In paragraph (1), for “employment” substitute “employing”.

(3) For paragraph (2), substitute—

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

(3) Where paragraph (2) applies and—

- (a) the Secretary of State is satisfied that the Independent Provider will satisfy the conditions in paragraph (3) of regulation 151 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.

(4) Where paragraph (2) applies and—

- (a) the Secretary of State is satisfied that the Independent Provider did satisfy the conditions in paragraph (3) of regulation 151 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) of regulation 151,

approval takes effect from the nominated date.

(5) 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 154**

**82.** Paragraph (3) of regulation 154 (IP guarantees) is amended as follows—

- (a) in sub-paragraph (a), for “an independent provider” substitute “that independent provider”;
- (b) in sub-paragraph (b), after “this Part,” insert “that independent provider”.

### **Amendment of regulation 157**

**83.** After sub-paragraph (a) of paragraph (4) of regulation 157 (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 Schedule 3**

**84.**—(1) Schedule 3 (administrative matters) is amended as follows.

(2) In paragraph (a) of sub-paragraph (2) of paragraph 6, after “requirements” insert “mentioned in section 9(2) of the 1993 Act”.

(3) In sub-paragraph (6) of paragraph 12, after “sub-paragraph (2)(b)” insert “or if paragraph (4) applies”.

#### **Amendment of Schedule 4**

**85.** For sub-paragraph (6) of paragraph 1 of Schedule 4 (opting out and re-joining), substitute—

“(6) If the person gives a notice mentioned in sub-paragraph (1), the notice must relate to all of the employments or engagements to which group D applies.

(7) Sub-paragraph (8) applies if a person—

(a) belongs, or would belong, to groups A, B or C in regulation 27(1); and

(b) has more than one employment to which those groups apply.

(8) Subject to regulation 29, the person may give a notice as mentioned in sub-paragraph (1) in respect of any, or all, of the employments to which groups A, B or C apply.”.

#### **Amendment of Schedule 9**

**86.** In paragraph 15(a) of Schedule 9 (pension accounts), for “(see regulation 45(6))” substitute “(see regulation 45(4) and (5))”.

#### **Amendment of Schedule 10**

**87.**—(1) Schedule 10 (practitioner income) is amended as follows.

(2) Omit the definition of “NHS standard contract” in paragraph 1 (interpretation).

(3) In paragraph (k) of sub-paragraph (2) of paragraph 2 (medical practitioner), after “NHS standard contract” insert “or NHS standard sub-contract where the party to the NHS standard contract in question is an employing authority”.

(4) In sub-paragraph (2) of paragraph 3 (dental practitioner),—

(a) in paragraph (ii) of the definition of “BP” after “parental leave” insert “, shared parental leave”;

(b) in paragraph (ii) of the definition of “NRBP” after “parental leave” insert “, shared parental leave”.

(5) In sub-paragraph (3) of paragraph 7 (locum practitioner)—

(a) in paragraph (h), after “NHS standard contract” insert “, NHS standard sub-contract where the party to the NHS standard contract in question is an employing authority”;

(b) omit paragraph (i).

#### **Amendment of Schedule 12**

**88.** In sub-paragraph (4)(c) and sub-paragraph (5)(e) of paragraph 3 (dentists) of Schedule 12 (practitioner contribution payments), after “parental leave payments” insert “, shared parental leave payments”.

#### **Amendment of Schedule 15**

**89.** In the table in Schedule 15 (definitions)—

(a) in column 2 of the entry for “locum practitioner”—

(i) at the end of paragraph (2)(g), omit “or”;

(ii) after paragraph (2)(h), add—

“; or

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(a) Paragraph 15 is concerned with actuarial reduction of a buy-out.

- (i) services pursuant to an NHS standard contract or an NHS standard sub-contract.”;
- (b) in column 2 of the entry for “practice staff”, substitute—
  - “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;”;
- (c) at the appropriate place in the alphabetical order insert—

““NHS standard contract”	means the terms and conditions from time to time drafted by the National Health Service Commissioning Board pursuant to regulation 17 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standard Rules) Regulations 2012(a)
“NHS standard sub-contract”	means the terms and conditions from time to time drafted by the National Health Service Commissioning Board pursuant to regulation 17 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standard Rules) Regulations 2012(b)
“shared parental leave”	the meaning given in regulation 3(1) of the Shared Parental Leave Regulations 2014”

## Part 5

### Amendment of the National Health Service Pension Scheme (Transitional and Consequential Provisions) Regulations 2015

#### General

**90.** The National Health Service Pension Scheme (Transitional and Consequential Provisions) Regulations(c) are amended as follows.

#### Amendment of regulation 5

**91.** In regulation 5 (nominations, notices and declarations)—

- (a) in paragraph (1)—
  - (i) in sub-paragraph (b), for “2015 Scheme” substitute “new scheme”;
  - (ii) in the heading to column 2 of the table, for “2015 Scheme” substitute “new scheme”;

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(a) S.I. 2012/2996.  
 (b) S.I. 2012/2996.  
 (c) S.I. 2015/95.

- (b) in paragraph (2), for “2015 Scheme” substitute “new scheme”.

**New regulation 10A**

**92.** After regulation 10 (disqualifying breaks in service), insert—

**“Effect of recommencing service after break**

**10A.**—(1) Paragraph (2) applies where—

- (a) on the date a person becomes eligible to join the new scheme that person is absent from work because of illness or injury and that person’s earnings have ceased either—
  - (i) in the circumstances described in regulation P1 of the 1995 Regulations, or
  - (ii) in the circumstances described in regulations 2.A.9(7), or 3.A.8(4) of the 2008 Regulations, and
- (b) on the date the person’s employment is terminated or the person dies (“the relevant date”)—
  - (i) that person’s earnings have not recommenced, and
  - (ii) for the purposes of the new scheme, that person’s pensionable earnings are zero.

(2) Where paragraph (1) is satisfied, if the earnings of a person referred to in that paragraph had recommenced at the relevant date the scheme manager may determine that the person would have become entitled to either—

- (a) the benefit set out at paragraph (4)(b) of regulation 28 (ill health benefits: members below normal pension age) where that person’s employment is terminated, or
- (b) one or more of the benefits set out at regulation 40 (death in service) where that person dies.

(3) Where the scheme manager does so determine, for the purposes of calculating the benefits referred to in paragraph (2)—

- (a) the person is treated as if they were in pensionable service on their last day of NHS employment, and
- (b) contributions in respect of that day are deemed to have been paid.”.

**Amendment of regulation 13**

**93.** In sub-paragraphs (a)(ii) and (b)(ii) of paragraph (1) of regulation 13 (taper protection for contribution tiering), for “2015 Scheme” substitute “new scheme”.

**Amendment of regulation 27**

**94.** In sub-paragraph (a)(i)(bb) of paragraph (1) of regulation 27 (ill-health benefits: continuity of existing applications), for “(8V)” substitute “(8U)”.

**Amendment of regulation 31**

**95.** Paragraph (3) of regulation 31 (partial retirement) is amended as follows.

(1) In sub-paragraph (a), after “the option day;” omit “and”.

(2) After sub-paragraph (b), add—

“; and

- (c) taken together with any increase to which the member has become entitled as a result of the option or election, the aggregate of the member’s pension under the

2008 Regulations and the 2015 Regulations is not less than 0.05% of the member's lifetime allowance on the option day.”.

#### **Amendment of regulation 40**

**96.**—(1) The table in paragraph (1) of regulation 40 (death in service) is amended as follows.

(2) In column 2, for “2015 Scheme” (eight times) substitute “new scheme”.

(3) In Part 2(a) of that table, adjacent to the entry in column 1 referring to an original entitlement to a pension under regulation 2.E.12(3)(a), in column 2 for “37.5% of the pension” substitute “the appropriate proportion”.

## **PART 6**

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

#### **Part 6: General**

**97.** The National Health Service (Injury Benefits) Regulations 1995(b) are amended in accordance with this Part.

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

**98.** In paragraph (5) of regulation 2C (meaning of “average remuneration”), after “who is” insert “not”.

#### **Amendment of regulation 4**

**99.**—(1) Regulation 4 (scale of benefits) is amended as follows.

(2) In paragraph (vi) of sub-paragraph (b) of paragraph (6), after “ended” insert “: this is subject to paragraph (6A);”.

(3) After paragraph (6), insert—

“(6A) Paragraph (6B) applies where, immediately prior to receiving employment and support allowance referred to in paragraph (vi) of sub-paragraph (b) of paragraph (6) of this regulation (the “replacement benefit”), a person was in receipt of a benefit referred to in paragraph (ii) or (iii) of that sub-paragraph (the “superseded benefit”).

(6B) In the circumstances referred to in paragraph (6A), the rate of replacement benefit taken into account for the purpose of calculating a benefit in accordance with this regulation shall be the rate of the superseded benefit that was taken into account for that purpose immediately before that person received the replacement benefit.

This is subject to paragraph (6C).

(6C) Paragraph (6B) only applies where the rate of the replacement benefit is greater than the rate of the superseded benefit.”.

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(a) Part 2 of the table is concerned with entitlement derived from the 2008 Section as set out in S.I. 2008/653.

(b) S.I. 1995/866.

## PART 7

### Amendment of the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000

#### General

**100.** The National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000(a) are amended in accordance with this Part.

#### Amendment of regulation 3

**101.** For sub-paragraph (a) of paragraph (5) of regulation 3 (making and acceptance of elections), substitute—

“(a) where any limit imposed by regulation 4(4) would be exceeded; or”.

#### Amendment of regulation 11

**102.** In regulation 11 (retirement and dependants benefits)—

(a) in paragraph (1), after sub-paragraph (d) add—

“(e) a lifetime allowance excess lump sum referred to in section 166(1)(g) of the 2004 Act(b).”;

(b) in paragraph (11), omit “, subject to any limit imposed by regulation 13,”.

#### Omission of regulation 13

**103.** Omit regulation 13 (benefit limits).

#### Amendment of regulation 15

**104.** In paragraph (3) of regulation 15 (payments by the Secretary of State), for “11(7)(f) and (10)” substitute “11(8)(f) and (11)”.

## PART 8

### Miscellaneous

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

**105.**—(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—

(a) served in an employment or office which qualified the person to participate in the benefits provided under the regulations amended by these Regulations, and

(b) ceased to serve in that employment or office 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).

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(a) S.I. 2000/619.

(b) Section 166(1) of the Finance Act 2004 (c. 12) provides for the “lump sum rule”. Under that rule, no lump sum may be paid by a registered pension scheme to a member unless it is a lump sum specified in paragraphs (a) to (h) of section 166(1).



(3) A notice given pursuant to paragraph (2) shall be in writing and shall be delivered to the Secretary of State within six 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.

23rd February 2016

*Prior*  
Parliamentary Under-Secretary of State,  
Department of Health

We Consent  
24th February 2016

*Mel Stride*  
*Charlie Elphicke*  
Two of the Lords Commissioners of Her Majesty's Treasury

#### **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”), the National Health Service Pension Scheme Regulations 2015 (S.I. 2015/94) (“the 2015 Regulations”), the National Health Service Pension Scheme (Transitional and Consequential Provisions) Regulations 2015 (S.I. 2015/95) (“the Transitional and Consequential Regulations”), the National Health Service (Injury Benefits) Regulations 1995 (S.I. 1995/866) (“the IB Regulations”) and the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000 (S.I. 2000/619) (“the AVC Regulations”).

Part 1 of these Regulations deals with introductory matters. Regulation 1 provides for citation, commencement and effect, including that certain provisions of this instrument are to take effect from a date before the date of commencement. Section 12(1) of the Superannuation Act 1972 (c.11) and section 3 of the Public Service Pensions Act 2013 (c. 25) provide authority for the regulations specified in regulation 1(4) to (8) to take effect as from a date earlier than the making of these Regulations.

Parts 2 to 4 make similar amendments in respect of the instruments dealing with the National Health Service Pension Scheme – namely, the 1995 Regulations, the 2008 Regulations and the 2015 Regulations. They also introduce amendments specific to each of those instruments.

The changes dealing with similar issues in Part 2 (covering the 1995 Regulations), Part 3 (covering the 2008 Regulations) and Part 4 (covering the 2015 Regulations) cover—

General Medical Practitioners, by extending the definition of pensionable earnings to allow income or earnings from an NHS standard sub-contract to be pensioned where the holder of the principal NHS Standard contract is an employing authority for the purposes of the 1995, 2008 or 2015 Regulations (regulations 18(2) to (4), 41(2), 43, 87(5), 89(a))

Consequential amendments are also made (i) defining an NHS standard sub-contract (regulations 3(d), 21(e), 39(e), 79, 87(2) and (3), 89(c)) and (ii) requiring Independent Providers to include details of NHS standard sub-contracts in the annual return they are required to make (regulations 19(3), 38, 83)

practice staff by amending the definition of practice staff to enable such staff to pension earnings derived from NHS standard contracts and NHS standard sub-contracts (regulations 3(c), 21(c), 39(c), 89(b))

Independent Providers by enabling the grant of employing authority status to take effect (subject to certain pre-conditions) from a retrospective date (regulations 19(2), 37, 81(3))

the abolition of contracting-out, by making consequential amendments to the 1995 Regulations, the 2008 Regulations and the 2015 Regulations dealing with increases to a guaranteed minimum pension and enabling the forfeiture of a spouse's or surviving civil partner's guaranteed minimum pension where the beneficiary is convicted of the murder or manslaughter of the scheme member (regulations 7, 8, 9, 12, 15, 28, 30, 36, 48, 50, 56, 68, 69, 70(3), 84(3))

conversion of pension into a lump sum where the sums involved are trivial (regulations 16, 34, 54, 84(2))

the replacement of paternity leave and paternity pay with shared parental leave and shared parental pay by amending references to paternity leave accordingly (regulations 3(d), 11, 18(3)(b), 18(5), 21(e), 22, 23, 26, 29, 39(e), 40, 41(3) and (4), 42, 46, 49, 57, 59, 60, 65, 87(4), 88, 89(c))

the ban on the transfer of deferred benefits from unfunded public service pension schemes to schemes offering flexible benefits by closing an existing lacuna in the provisions of the 1995 Regulations, 2008 Regulations and 2015 Regulations (regulations 32, 52, 77)

miscellaneous technical amendments (i) updating references to the Pension Schemes Act 1993 (regulations 3(b), 10(3), 21(b), 27, 31, 39(b), 47, 51, 62, 63, 74, 75, 76) (ii) removing obsolete references to "safeguarded rights" and "safeguarded percentage" (regulations 3(e), 21(d), 35, 39(d), 55) (iii) updating the definition of a buy-out policy (regulations 3(a), 21(a), 39(a), 78) (iv) inserting a cross reference to the Public Service Pensions Act (Northern Ireland) 2014 in relation to the provisions of the 1995 Regulations, 2008 Regulations and 2015 Regulations dealing with transfers and the final salary link (regulations 14, 33, 53).

#### Amendments specific to the 1995 Regulations—

make amendments to the provisions concerning eligibility for membership to enable certain members who are compulsorily transferred into the NHS after 1 April 2015 to join the NHS Pension Scheme (regulation 5)

make amendments to regulation M2 (transfers) to make clear that any buy-out policy purchased must satisfy the requirements of regulation 12(2) of the Occupational Pension Schemes (Transfer Values) Regulations 1996 (regulation 10(2))

make amendments to the provisions governing transfers of pensions to prevent a deferred member transferring benefits to a Qualified Recognised Overseas Pension Scheme in certain cases (regulation 10(3))

make minor technical amendments correcting or inserting cross-references (regulation 4, 6, 13, 17).

#### Amendments specific to the 2008 Regulations—

make amendments to the provisions concerning eligibility for membership to enable certain members who are compulsorily transferred into the NHS after 1 April 2015 to join the NHS Pension Scheme (regulations 24, 44)

amend the provisions relating to repayment of a lump sum contribution (regulation 64)

amend the provisions relating to pensions for a surviving spouse or surviving civil partner (regulation 70)

amend the provisions relating to the amount of child pension so as to exclude from its calculation any tier 2 ill-health pension (regulation 72)

amend the provisions relating to opting-out and re-joining the scheme so as to enable a person with two employments to opt out of one but continue as an active member of the scheme in respect of the other (regulation 85)

make minor technical amendments correcting or inserting cross-references and omitting obsolete provisions (regulation 25, 45, 73).

Amendments specific to the 2015 Regulations make minor technical amendments correcting or inserting cross-references (regulation 61, 67, 80, 81(2), 82, 86).

Part 5 makes amendments to the Transitional and Consequential Regulations by—

inserting a new regulation 10A to deal with the effect of recommencing pensionable service following a break in employment and its effect on the calculation of, where appropriate, an ill-health pension or a death in service benefit (regulation 92)

amending incorrect references to the “new scheme” to read the “2015 scheme” (regulation 91, 93, 96(2))

correcting an erroneous cross reference in respect of ill-health benefits (regulation 94)

making a technical amendment to the lifetime allowance condition in regulation 31 so that it mirrors the provisions of the 2008 and 2015 Regulations (regulation 95)

amending the table in regulation 40 to ensure that the correct proportion of a child’s pension is payable in the event of the death of a transitional member within 12 months of deferment of his pension (regulation 96(3)).

Part 6 makes amendments to the IB Regulations to ensure that a person in receipt of permanent injury benefit under the IB Regulations who was in receipt of certain social security benefits which were replaced by the social security benefit known as “employment support allowance”, is not detrimentally affected by that replacement where the amount of employment and support allowance is greater than the amount of replaced social security benefits he was receiving (regulation 99). A minor technical amendment is made to the meaning of average remuneration to properly reflect the policy intention (regulation 98).

Part 7 makes amendments to the AVC Regulations to enable a member’s money purchase additional voluntary contribution pension pot to be taken as a lifetime allowance excess lump sum (regulation 102). A consequential amendment is made by regulation 103. Minor technical amendments are also made by regulations 101 and 104.

Part 8 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 105).

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