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STATUTORY INSTRUMENTS

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**2023 No. 952**

**The National Health Service Pension Schemes (Partial Retirement etc.) (Amendment) Regulations 2023**

**PART 2**

**Amendments to the National Health Service Pension Scheme Regulations 1995**

**General**

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

**Amendment of regulation A2**

3. In regulation A2 (interpretation), at the appropriate place in alphabetical order insert—  
““active member” means a person who is in pensionable service under the scheme;”.

**Amendment of regulation C1**

4.—(1) Regulation C1 (meaning of “pensionable pay” and “final year’s pensionable pay”)<sup>(2)</sup> is amended as follows.

(2) In paragraph (6), for “paragraph (6A)”, substitute “paragraphs (6A) and (6B)”.

(3) After paragraph (6A), insert—

“(6B) If a member becomes entitled to a pension under regulation E5A (partial retirement pension), “final year’s pensionable pay” means pensionable pay in respect of the year immediately preceding the day on which the reduction in the member’s pensionable pay takes effect by virtue of which the member becomes entitled to the partial retirement pension.”.

**Amendment of regulation C2**

5.—(1) Regulation C2 (meaning of “pensionable service”)<sup>(3)</sup> is amended as follows.

(2) In paragraph (2), for sub-paragraph (b) substitute—

“(b) in the case of a member who has become entitled to a pension (including a preserved pension) any period taken into account—

(i) in determining the member’s entitlement to the pension in payment or, as the case may be, the preserved pension, or

(ii) in calculating the amount of that pension,

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(1) [S.I. 1995/300](#).

(2) Relevant amending instrument is [S.I. 2008/654](#).

(3) Relevant amending instruments are [S.I. 2008/654](#) and [2009/2446](#).

but, in the case of a member entitled to a pension under regulation E5A (partial retirement pension), subject to paragraph (7);”.

(3) After paragraph (6), insert—

“(7) In the case of a member entitled to a pension under regulation E5A (partial retirement pension), paragraph (2)(b) only applies to so much of the member’s pensionable service as is mentioned in regulation E5A(11)(a) (the pension to which the member is immediately entitled as a result of exercising the option and the specified percentage of the pensionable service that pension represents).”.

### **New regulations E5A, E5B and E5C**

6. After regulation E5 (early retirement pension (with actuarial reduction)), insert—

#### **“Partial retirement pension**

**E5A.**—(1) A member who is in pensionable employment may exercise an option under this regulation if—

- (a) the member—
  - (i) has reached normal minimum pension age or, where relevant, protected pension age;
  - (ii) has at least two years’ qualifying service; and
  - (iii) continues to be in pensionable employment or, where the member is in more than one pensionable employment, the member continues to be in at least one of those pensionable employments;
- (b) the terms on which the member holds the pensionable employment or employments referred to in sub-paragraph (a)(iii) change; and
- (c) as a result, the annual rate of the member’s pensionable pay is reduced to 90% or less of the amount of the member’s pensionable pay during the period of 12 months ending with the option day.

(2) If the member was not in pensionable employment during the whole of the period of 12 months referred to in paragraph 1(c), that paragraph applies as if the member’s pensionable pay during that period were—

$$PP \times (365 / N)$$

where—

PP is the member’s pensionable pay for the part of that period during which the member was in pensionable employment, and

N is the number of days in that period on which the member was in pensionable employment.

(3) The option may only be exercised by notice in writing in such form as the Secretary of State requires and must be accompanied by a statement in writing by the member’s employing authority, or employing authorities, that the conditions in paragraph (1)(b) and (c) are met.

(4) The option must specify—

- (a) the percentage of the member’s pension (excluding any additional pension) in respect of which the member claims immediate payment (“the specified percentage”);

- (b) whether the pensionable service used to calculate the pension referred to at sub-paragraph (a) is to include additional service (if any) that the member has purchased under regulation Q1 (right to buy additional service); and
  - (c) whether the member claims immediate payment of additional pension (if any).
- (5) A member who duly exercises the option under this regulation is entitled—
- (a) in the case of a member who has reached the age of 60, to immediate payment of the specified percentage of the pension to which the member would be entitled under regulation E1 (normal retirement pension) if the member had retired from pensionable employment on the option day (including any additional service specified under paragraph (4)(b) but disregarding any additional pension);
  - (b) in the case of a member who has not reached the age of 60, to immediate payment of the specified percentage of the pension to which the member would be entitled under regulation E5 (early retirement pension with actuarial reduction) if the member had retired from pensionable employment on the option day (including any additional service specified under paragraph (4)(b) but disregarding any additional pension);
  - (c) in the case of a special class officer who meets the retirement condition in paragraph (12) of this regulation and has reached the age of 55, to immediate payment of the specified percentage of the pension to which the member would be entitled under regulation E1 (normal retirement pension) if the member had retired from pensionable employment on the option day (including any additional service specified under paragraph (4)(b) but disregarding any additional pension); and
  - (d) where the option specifies that the member claims immediate payment of additional pension—
    - (i) if the option day falls after the member’s chosen birthday, to the immediate payment of the additional pension; and
    - (ii) if the option day falls before the member’s chosen birthday, to the immediate payment of the additional pension reduced in accordance with paragraphs (5) and (6) of regulation Q15 (effect of death or early payment of pension after option exercised under regulation Q8, Q10 or Q11).
- (6) If—
- (a) the option specifies that the pensionable service used to calculate the pension referred to at paragraph (5)(a), (b) or (c) is to include additional service that the member has purchased under regulation Q1;
  - (b) the member’s method of payment for the additional service is regular additional contributions; and
  - (c) the option day falls before the member’s chosen date,
- then the proportion of additional service to be included in the pensionable service used to calculate that pension will be reduced in accordance with paragraph (6) of regulation Q7 (part payment for additional service or unreduced retirement sum).
- (7) Subject to paragraph (8), the specified percentage must be such that the pension to which the member becomes entitled as a result of the option (before the exercise of the option under regulation E7 (general option to exchange part of pension for lump sum) and disregarding any additional benefits)—
- (a) is not less than the amount of the pension payable by reference to 20% of the member’s pensionable service at the end of the option day (disregarding any additional benefits); and

(b) is not less than 0.05% of the member's lifetime allowance on the option day.

(8) Where a member has reached protected pension age but not yet reached normal minimum pension age, the specified percentage must be 100% of the member's pensionable service at the end of the option day (disregarding any additional benefits).

(9) Where a pension is payable under paragraph (5)(b), the lump sum payable under regulation E6 (lump sum on retirement) will be reduced in accordance with paragraph (7) of regulation E6.

(10) The option under this regulation may only be exercised on no more than two occasions and the Secretary of State shall take advice from the Scheme Actuary regarding—

- (a) any benefits to be paid after the exercise of the first option (but before the exercise of the second option);
- (b) any benefits to be paid after the exercise of the second option; and
- (c) the final payment.

(11) For the purposes of these Regulations, a member who has exercised the option under this regulation—

- (a) is a member to whom a pension has become payable in respect of the pension to which the member is immediately entitled as a result of exercising the option and the specified percentage of the pensionable service that that pension represents;
- (b) if the member continues as an active member of the 2015 Scheme after the option day, is treated as a member who is in pensionable employment in respect of so much of the member's pensionable service in this Section of the scheme that does not fall within sub-paragraph (a) ("the unspecified service"); and
- (c) if the member does not continue as an active member of the 2015 Scheme after the option day, is a member with a preserved pension in respect of the unspecified service.

(12) In this regulation—

"additional benefits" means any additional service specified under paragraph (4)(b) and any additional pension specified under paragraph (4)(c);

"chosen birthday" has the meaning given in paragraph (9) of regulation Q8 (option to pay additional periodical contributions to purchase additional pension);

"chosen date" has the meaning given in paragraph (3) of regulation Q6 (paying for additional service or unreduced retirement lump sum by regular additional contributions);

"the option day" means the day before the reduction in pensionable pay by virtue of which the option is exercisable takes effect;

"the retirement condition" is met if the Secretary of State determines that regulation R2(3)(a) or regulation R3(5) (whichever applies) would have applied to the special class officer if the officer's pensionable employment had terminated on the option day.

### **Increase in pensionable pay following exercise of option under regulation E5A**

**E5B.**—(1) This regulation applies if, in a case where a member has exercised the option under regulation E5A—

- (a) during the period of 12 months beginning with the day after the option day the terms on which the member holds the employment or employments referred to in regulation E5A(1)(a)(iii) change again; and

- (b) as a result, the member's pensionable pay in that employment or those employments is increased to more than 90% of the member's pensionable pay during the period of 12 months ending with the option day; or
  - (c) following an increase referred to in sub-paragraph (b), the member's pensionable pay in that employment or those employments is reduced to less than 90% of the member's pensionable pay during the period of 12 months ending with the option day.
- (2) In the circumstances referred to in—
- (a) paragraph (1)(b), the amount of the member's pension mentioned in sub-paragraphs (a), (b) and (c) of regulation E5A(5) (excluding any additional benefits) shall be abated to zero from the first pension day immediately following the day on which the level of the member's pensionable pay increased;
  - (b) paragraph (1)(c), subject to any adjustments in accordance with sub-paragraph (c), the member shall again be entitled to receive payment of the full amount of the pension mentioned in sub-paragraphs (a), (b) and (c) of regulation E5A(5) as from the first pension day immediately following the day on which the level of the member's pensionable pay reduced;
  - (c) where sub-paragraph (b) applies, before restoring the payment of a pension the Secretary of State shall have regard to the advice of the Scheme Actuary as to whether the amount of the pension should be adjusted in view of the length of time during which it was abated to zero in accordance with sub-paragraph (a).
- (3) If the member was not in pensionable employment during the whole of the period of 12 months mentioned in paragraph 1(b), that paragraph applies as if the member's pensionable pay during that period were—
- PP x (365/N)
- where—
- PP is the member's pensionable pay for the part of that period during which the member was in pensionable employment; and
  - N is the number of days in that period on which the member was in pensionable employment.
- (4) If, in the opinion of the Secretary of State, had the terms and conditions of the member's employment remained the same after the option day (apart from pensionable pay), the annual rate of pensionable pay for the employment as at the time of the change mentioned in paragraph (1)(a) would have exceeded the annual rate referred to in paragraph (1)(b)—
- (a) paragraph (2)(a) does not apply; and
  - (b) this regulation applies as if paragraph (1)(b) referred to that annual rate instead of the actual annual rate.
- (5) For the purposes of this regulation, if during the period of 12 months beginning with the day after the option day the member enters a further pensionable employment or employments—
- (a) that event is treated as if the terms on which the member holds the employment in respect of which the option was exercised ("the option employment") had changed again; and
  - (b) the member's pensionable pay in the further employment is treated as an increase in the member's pay in the option employment.
- (6) In this regulation "the option day" and "additional benefits" have the same meaning as in regulation E5A(12).

### **Application of regulations E5A and E5B with modifications where concurrent part-time employments held**

**E5C.**—(1) This regulation provides for the application of regulations E5A and E5B with modifications if a member is in pensionable employment in two or more part-time employments held concurrently on the option day.

(2) Those regulations apply in relation to each of the employments as if it were the only employment held by the member on that day, but with the modifications set out in paragraphs (3) to (8).

(3) In regulation E5A(1), for sub-paragraph (c) substitute—

“(c) as a result of that change, the sum of the annual rate of the member’s pensionable pay in that employment and every other employment held by the member on the option day is reduced to 90% or less of the sum of—

- (i) the member’s pensionable pay in the employment during the period of 12 months ending with the option day; and
- (ii) the member’s pensionable pay during that period in every other employment held by the member on the option day.”.

(4) In regulation E5A(2)—

- (a) after “paragraph 1(c)”, insert “in the employment or any other employment referred to in that paragraph”; and
- (b) after “that period”, insert “in that employment”.

(5) In regulation E5B(1), for sub-paragraph (b) substitute—

“(b) as a result the annual rate of the member’s pensionable pay in that employment is increased to more than 90% of the sum of—

- (i) the member’s pensionable pay in the employment during the period of 12 months ending with the option day; and
- (ii) the member’s pensionable pay during that period in every other employment held by the member on the option day.”.

(6) In regulation E5B(3)—

- (a) after “paragraph (1)(b)”, insert “in the employment or any other employment referred to in that paragraph”; and
- (b) after “that period”, insert “in that employment”.

(7) For regulation E5B(4), after “referred to in paragraph (1)(b)”, insert “for that employment”.

(8) Where—

- (a) a member’s pension is abated in accordance with regulation E5B(2)(a), in the circumstances described in regulation E5B(1)(b); and
- (b) the member’s pensionable pay does not reduce in the manner described in regulation E5B(1)(c),

the pension will (in any event) be payable by the Secretary of State when the member retires, or partially retires again, from pensionable employment or attains the age of 75 and in doing so the Secretary of State shall—

- (i) have regard to any pensions already paid, including any lump sum paid as a result of the member exercising an option under regulation E7 (general option to exchange part of pension for lump sum); and
- (ii) take advice of the Scheme Actuary.

(9) In this regulation “the option day” has the same meaning as in regulation E5A(12).”.

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

- 7.—(1) Regulation E6 (lump sum on retirement)(4) is amended as follows.
- (2) In paragraph (1), for “E5”, substitute “E5A”.
- (3) In paragraph (7)—
- (a) for “E5 applies (early retirement pension with actuarial reduction)”, substitute “E5 (early retirement pension with actuarial reduction) or regulation E5A (partial retirement pension) applies”; and
- (b) in sub-paragraph (a), after “regulation E5(2)”, insert “or regulation E5A(5)(b);”.

#### **Amendment of regulation F2**

- 8.—(1) Regulation F2 (member dies after pension becomes payable) is amended as follows.
- (2) At the end of the regulation’s heading, add “(other than a pension under regulation E5A)”.
- (3) For paragraph (1) substitute—
- “(1) Subject to paragraph (7), if a member dies after the member’s pension under any of regulations E1 to E5 becomes payable, a lump sum on death shall be payable in accordance with regulation F5.”.

#### **New regulation F2A**

9. After regulation F2 (member dies after pension becomes payable) insert—

##### **“Member dies after a pension under regulation E5A becomes payable**

**F2A.**—(1) If a member dies after one or more pensions under regulation E5A become payable to the member, a lump sum on death shall be payable in accordance with regulation F5.

(2) The lump sum on death will be equal to 5 times the yearly rate of each of the member’s pensions (less the amount of pension already paid) provided that the maximum payment under this paragraph shall not exceed the aggregate lump sum cap.

(3) The aggregate lump sum cap is equal to twice the appropriate fraction of the member’s final year’s pensionable pay by reference to which the pension to which the member became entitled on last exercising the option under regulation E5A was calculated, less an amount equal to the aggregate of—

- (a) the member’s retirement lump sum under regulation E6, and
- (b) any lump sum paid to the member under regulation E7.

(4) In this regulation—

“the appropriate fraction” means—

$$\frac{\text{DPS}}{\text{TDPS}}$$

where

DPS is, where the member continues in pensionable service as an active member of the 2015 Scheme on the option day (or the last such option day if the option has been exercised more than once), the total number of days of pensionable

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(4) Relevant amending instruments are [S.I. 2006/600](#), [2007/3280](#) and [2010/492](#).

service in that Scheme and this Section of the scheme which do not relate to the specified percentage of pension on the option day;

TDPS is the aggregate of DPS and the total number of days of pensionable service (at the option day or the last such option day if the option has been exercised more than once) which relate to the specified percentage of pension payable;

“the option day” has the meaning given in paragraph (12) of regulation E5A; and

“specified percentage” has the meaning given in paragraph (4)(a) of regulation E5A.”.

### **Amendment of regulation G3**

**10.** In regulation G3 (member dies after pension becomes payable), in paragraph (5) after “(early retirement pension with actuarial reduction)” insert “or regulation E5A (partial retirement pension)”.

### **Amendment of regulation H4**

**11.** In regulation H4 (member dies after pension becomes payable), in paragraph (9)(5) after “(further employment after a benefit is paid under regulation E2A)” insert “or regulation E5A (partial retirement pension)”.

### **Amendment of regulation H5**

**12.** In regulation H5 (member dies with preserved pension), for paragraph (3)(6) substitute—

“(3) Subject to paragraph (3A), if the member dies 12 months or more after leaving pensionable employment, the allowance will be calculated as described in whichever of paragraphs (4) or (5) apply, as a proportion of the amount of the member’s preserved pension if paragraph (11)(c) of regulation E5A applies to the member, otherwise the greater of—

- (a) the member’s preserved pension; and
- (b) the amount that the preserved pension would have been if it had been based on 10 years’ pensionable service.”.

### **Amendment of regulation J1**

**13.** In regulation J1 (allocation of pension)(7), in paragraph (4)(a), after “put into payment” insert “other than a pension payable under regulation E5A (partial retirement pension)”.

### **Amendment of regulation L1**

**14.** In regulation L1 (preserved pension)(8), in paragraph (14), for the definition of “NHS employment”, substitute—

““NHS employment” does not include employment with an employing authority in respect of which—

- (a) a member is eligible to join the 2008 Section; or
- (b) a member, other than a member who is no longer required to pay contributions pursuant to regulation D1(3) or (4) (contributions by members), is eligible to join the 2015 Scheme and that member’s service in this Section does not qualify as, or has

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(5) Paragraphs (9) and (10) were inserted by [S.I. 2008/654](#).

(6) Paragraphs (3) and (3A) were substituted by [S.I. 2008/654](#).

(7) Relevant amending instruments are [S.I. 2007/3280](#), [2008/654](#) and [2009/2446](#).

(8) Relevant amending instruments are [S.I. 2008/654](#) and [2015/95](#).



ceased to be, pensionable service to which paragraphs 1(2)(i) and (ii) or paragraphs 2(2)(i) and (2)(ii) of Schedule 7 (final salary link) to the 2013 Act applies.”.

### **Amendment of regulation Q1**

**15.** In regulation Q1 (right to buy additional service)(9), in paragraph (4), after sub-paragraph (b), insert—

- “(c) for the purpose of calculating any pension the member becomes entitled to under paragraph (5)(a), (b) or (c) of regulation E5A (partial retirement pension), unless the member specifies that any additional service is to be included in the calculation of that pension in accordance with paragraph (4)(b) of that regulation.”.

### **Amendment of regulation Q15**

**16.** In regulation Q15 (effect of death or early payment of pension after option exercised under regulation Q8, Q10 or Q11), in paragraph (5), at the end of sub-paragraph (c), insert “; or” and then add—

- “(d) becomes entitled to a pension under regulation E5A before the member’s chosen birthday,”.

### **Amendment of Schedule 2**

**17.** In Schedule 2 (medical and dental practitioners), after paragraph 12, insert—

#### **“Partial retirement pension**

**12A.—**(1) In the case of members who are or have been practitioners, regulations E5A (partial retirement pension) and E5B (increase in pensionable pay following exercise of option under regulation E5A) are modified as follows.

(2) Regulation E5A is modified so that—

- (a) the reference to holding pensionable employment in paragraph (1)(b) is treated as a reference to engaging in pensionable employment;
- (b) the condition in paragraph (1)(c), for the reduction of the member’s pensionable pay to 90% or less of the member’s pensionable pay during the period of 12 months ending with the option day, is treated as a condition for the reduction of the member’s engagement in such employment to 90% or less of its pre-change level;
- (c) paragraph (2) is omitted;
- (d) the requirement in paragraph (3), for a statement in writing by the member’s employing authority that the conditions in paragraph 1(b) and (c) are met, is treated as a requirement for appropriate supporting evidence and a statement in writing approved by the host Board that the conditions in paragraph 1(b) and (c) are met;
- (e) the requirement in paragraph (7)(a), for the pension to which the member becomes entitled to not be less than the amount of the pension payable by reference to 20% of the member’s pensionable service at the end of the option day (disregarding any additional benefits), is treated as a requirement for the pension to which the member becomes entitled to not be less than 20% of the pension that would have been payable if the member had ceased to be employed in all of his employments at the end of the option day (disregarding any additional benefits);

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(9) Relevant amending instruments are [S.I. 2008/654](#) and [2009/2446](#).

- (f) for the purposes of regulation E5A—
  - (i) “pre-change level” means the level of the member’s engagement in the employment referred to in regulation E5A(1)(a)(iii) during the period of 12 months ending with the option day; and
  - (ii) “pension” means the pension that a member would have been entitled to on the option day if the member had ceased to be employed in all of his employments and, in the case of practitioner services, the pensionable earnings taken into account when working out the pension will be drawn from the latest certificate referred to in paragraph 23 of this Schedule (accounts and actuarial reports), or the latest scheme year’s final pensionable earnings referred to in paragraph 10 of this Schedule (contributions to this Section of the scheme), and agreed with each relevant host Board.
- (3) Regulation E5B is modified so that—
  - (a) the condition in paragraph (1)(b), for the member’s pensionable pay to increase to more than 90% of the member’s pensionable pay during the period of 12 months ending with the option day, is treated as a condition for the level of the member’s engagement in the employment or employments referred to in regulation E5A(1)(a)(iii) to increase to more than 90% of the member’s pre-change level;
  - (b) for the purposes of regulation E5B—
    - (i) “pre-change level” has the meaning given in paragraph (2)(f)(i);
    - (ii) a member’s “employment” means practitioner service together with any concurrent NHS employment.”.