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STATUTORY INSTRUMENTS

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**2008 No. 655**

**NATIONAL HEALTH SERVICE,  
ENGLAND AND WALES**

The National Health Service Pension Scheme  
(Additional Voluntary Contributions) and National  
Health Service (Injury Benefits and Compensation for  
Premature Retirement) Amendment Regulations 2008

*Made* - - - - *11th March 2008*  
*Laid before Parliament* *11th March 2008*  
*Coming into force* - - *1st April 2008*

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 10(1) and (2), 12(1) and (2) and 24(1), (3) and (4) of, and Schedule 3 to, the Superannuation Act 1972(1) with the consent of the Treasury(2).

In accordance with section 10(4) of that Act, the Secretary of State has consulted such representatives of persons likely to be affected by these Regulations as appear to the Secretary of State to be appropriate(3):

**Citation and commencement**

1.—(1) These Regulations may be cited as the National Health Service Pension Scheme (Additional Voluntary Contributions) and National Health Service (Injury Benefits and Compensation for Premature Retirement) Amendment Regulations 2008.

(2) These Regulations shall come into force on 1st April 2008.

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(1) 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 by section 4(2) of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7). Section 12(2) was amended by section 10(1) of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7).  
(2) See section 10(1) of the Superannuation Act 1972 and article 2 of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I. 1981/1670).  
(3) See section 10(4) of the Superannuation Act 1972.

## **Amendments to National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000**

2.—(1) The National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000<sup>(4)</sup> are amended as follows.

(2) In regulation 2(1) (interpretation)—

omit the definitions of “the Pension Scheme Regulations”, “child”, “date of retirement”, “dependant”, “NHS Pension Scheme”, “normal benefit age”, “pensionable service” and “retirement”;

(a) insert the following definitions at the appropriate place in alphabetical order—

““the 1995 Regulations” means the National Health Service Pension Scheme Regulations 1995<sup>(5)</sup>”;

““the 2008 Regulations” means the National Health Service Pension Scheme Regulations 2008<sup>(6)</sup>”;

““child” means a person who qualifies for—

- (a) a child’s allowance under regulation H2 of the 1995 Regulations; or
- (b) a child’s pension under regulation 2.E.8 or 3.E.8 of the 2008 Regulations;”;

““date of retirement” means the date on which benefits become payable to the participator under—

- (a) regulation E1 to E5 or L1 of the 1995 Regulations; or
- (b) regulation 2.D.1, 2.D.4, 2.D.5, 2.D.8, 2.D.10, 2.D.11, 3.D.1, 3.D.4, 3.D.5, 3.D.7 or 3.D.9 of the 2008 Regulations;”;

““dependant” means—

- (a) a surviving spouse of a participator (providing the marriage was not, prior to 6th March 1995, subject to an order of judicial separation);
- (b) any surviving child of a participator; or
- (c) any person in whose favour a participator has made an election under—
  - (i) regulation J1 of the 1995 Regulations; or
  - (ii) regulation 2.D.18 or 3.D.14 of the 2008 Regulations;
- (d) a surviving civil partner or surviving nominated partner;”;

““NHS Pension Scheme” means the National Health Service Pension Scheme for England and Wales, the rules of which are set out in the 1995 Regulations and the 2008 Regulations, as the case may be;”;

““normal benefit age”, in relation to the AVC scheme, means—

- (a) in the case of a person whose pension arrangements are governed by the 1995 Regulations, the age of 60;
- (b) in any other case, the age of 65;”;

““pensionable service” is to be construed in accordance with whichever of the following is applicable—

- (a) regulation C2 of the 1995 Regulations;

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(4) S.I. 2000/619, amended by S.I. 2001/1428 and 3649, 2002/610, 2005/3074, 2006/600 and 2007/3280.

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

(6) S.I. 2008/653.

- (b) regulation 2.A.2 or 3.A.3 of the 2008 Regulations;”;
- ““retirement” is to be construed in accordance with whichever of the following is applicable—
- (a) the 1995 Regulations;
- (b) the 2008 Regulations;”;
- (b) for the definition of “authorised fund” substitute—
- ““authorised fund” means a fund managed by—
- (a) an authorised provider selected by the Secretary of State for the purposes of these Regulations; or
- (b) any successor, transmittee or assignee of any person in paragraph (a) who is—
- (i) an authorised provider; and
- (ii) approved by the Secretary of State;”.
- (3) In regulation 2(2), for “the Pension Scheme Regulations” substitute “the 1995 Regulations or the 2008 Regulations, as the case may be”.
- (4) In regulation 3 (making and accepting of elections)—
- (a) in paragraph (3)(b), for “of the Pension Scheme Regulations (contributions by members)” substitute “of the 1995 Regulations (contributions by members) or regulation 2.C.1 or 3.C.1 of the 2008 Regulations (contributions by members) as the case may be”;
- (b) in paragraph (5)(a) omit “or (5),”;
- (c) in paragraph (6), for “Subject to” substitute “In the case of a person whose membership of the NHS Pension Scheme is governed by the 1995 Regulations, subject to”;
- (d) after paragraph (6) insert—
- “(6A) In the case of a person whose membership of the NHS Pension Scheme is governed by the 2008 Regulations, subject to paragraph (5)(b) and regulation 4(4)—
- (a) if contributions are paid for the purposes of paragraph (1)(b)—
- (i) until the contributor reaches their 65th birthday; and
- (ii) on reaching their 65th birthday they continue to be in pensionable employment,
- the contributor may elect for further contributions to be paid until they reach their 66th birthday; and
- (b) a person to whom paragraph (a) applies may continue to elect annually for further contributions to be paid provided they continue to be in pensionable employment.”
- (5) In regulation 4 (payment and amount of additional voluntary contributions)—
- (a) in paragraph (4)(b), for “Pension Scheme Regulations” substitute “1995 Regulations or the 2008 Regulations (as the case may be)”;
- (b) after paragraph (4) insert—
- “(4A) In this regulation—
- “employer” has the same meaning as “employing authority” in the 1995 Regulations or the 2008 Regulations (as the case may be) and, where the context requires, includes a host Trust or Board (as defined in the relevant Regulations); and
- “salary” includes pensionable pay and pensionable earnings (within the meaning of the 1995 Regulations or the 2008 Regulations (as the case may be)).”.

- (6) In regulation 5(2)(a) (variation and cancellation of elections) omit “and (5)”.
- (7) In regulation 6 (circumstances in which elections cease to have effect)—
- (a) in paragraph (1)(a), for “Pension Scheme Regulations” substitute “1995 Regulations”;
  - (b) after paragraph (1)(a) insert—
    - “(aa) receives payment of benefits under regulations 2.D.1, 2.D.4, 2.D.5, 2.D.7, 2.D.9, 2.D.11, 3.D.1, 3.D.4, 3.D.5, 3.D.8 or 3.D.10 of the 2008 Regulations;”;
  - (c) in paragraph (1)(c), for “of the Pension Scheme Regulations (opting-out of the scheme)” substitute “of the 1995 Regulations (opting-out of the scheme) or regulations 2.B.5 or 3.B.5 of the 2008 Regulations (opting-out of the scheme) as the case may be”;
  - (d) in paragraph (1)(d), for “of the Pension Scheme Regulations (contributions by members)” substitute “of the 1995 Regulations (contributions by members) or regulation 2.C.1 or 3.C.1 of the 2008 Regulations (contributions by members) as the case may be”;
  - (e) in paragraph (2), after “(1)(a)” insert “, (aa)”.
- (8) In regulation 9 (inward transfers: mis-sold pensions)—
- (a) in paragraphs (1), (2) and (3)(b), for “Pension Scheme Regulations” substitute “1995 Regulations”;
  - (b) in paragraph (6), for “Pension Scheme Regulations” (where twice occurring) substitute “1995 Regulations”.
- (9) In regulation 10 (outward transfers)—
- (a) for paragraph (4) substitute—
 

“(4) If the Secretary of State is required under paragraph (1) to make a transfer payment in circumstances where a transfer payment in respect of an eligible person is also provided and used in accordance with—

    - (a) regulation M1 of the 1995 Regulations (member’s right to transfer or buy-out); or
    - (b) regulation 2.F.1 or 3.F.1 of the 2008 Regulations (rights to transfer value payment),

the Secretary of State must do so in accordance with the time limits specified in whichever of the following is applicable—

    - (i) regulation M5 of the 1995 Regulations;
    - (ii) regulation 2.F.4 or 3.F.4 of the 2008 Regulations,

as if any reference in the regulations specified in (i) or (ii) to an application were a reference to the notice referred to in paragraph (1).”;
  - (b) in paragraph (6), for “persons’s” substitute “person’s”;
  - (c) for paragraph (8)(b)(ii) substitute—
 

“(ii) to whom regulation M6 of the 1995 Regulations or regulation 2.F.14 or 3.F.14 of the 2008 Regulations applies.”.
- (10) In regulation 11 (retirement and dependants’ pensions)—
- (a) for paragraph (2)(b) substitute—
 

“(b) any dependant’s pension which is payable under it is payable only on the death of the participator after his retirement and is payable to the dependant for life, except that—

- (i) in the case of a dependant who is a child to whom Part H of the 1995 Regulations (child allowance) applies, it shall cease to be payable when that person ceases to be a dependent child within the meaning of those Regulations; or
    - (ii) in the case of a dependant who is a child to whom regulation 2.E.9 or 3.E.9 of the 2008 Regulations (meaning of dependent child) applies, it shall cease to be payable when that person ceases to be a dependent child within the meaning of those Regulations; and”;
  - (b) in paragraph (6), for “of the Pension Scheme Regulations (benefits for members or a preserved pension)” substitute “of the 1995 Regulations (benefits for members or a preserved pension) or regulation 2.D.1, 2.D.4, 2.D.5, 2.D.8, 2.D.10, 2.D.11, 3.D.1, 3.D.4, 3.D.5, 3.D.7 or 3.D.9 of the 2008 Regulations (normal retirement pensions, actuarially reduced pensions, ill health and early retirement pensions)”;
  - (c) in paragraph (8), for “Pension Scheme Regulations” substitute “1995 Regulations or the 2008 Regulations (as the case may be)”.
- (11) In regulation 14 (repayment of investments in certain cases), for paragraph (1)(b) substitute—
- “(b) has applied for a refund of contributions under—
    - (i) regulation L2 of the 1995 Regulations (refund of contributions); or
    - (ii) regulation 2.C.18 or 3.C.16 of the 2008 Regulations (repayment of contributions),”.
- (12) In regulation 15 (payments by the Secretary of State)—
- (a) in paragraph (3)(a) and (b)(i), after “spouse” insert “, nominated partner”;
  - (b) for paragraph (b)(ii) substitute—
    - “(ii) a notice has been given in accordance with—
      - (aa) regulation F5 of the 1995 Regulations (payment of lump sum); or
      - (bb) regulation 2.E.21 or 3.E.21 of the 2008 Regulations (payment of lump sum on death); or
      - (cc) paragraph 11 of Schedule 2,that the spouse is not to receive the payment.”;
  - (c) in paragraph (10), for “of the Pension Scheme Regulations applies (benefits for members, or preserved pension)” substitute “of the 1995 Regulations (benefits for members, or preserved pension) or regulation 2.D.1, 2.D.4, 2.D.5, 2.D.8, 2.D.10, 2.D.11, 3.D.1, 3.D.4, 3.D.5, 3.D.7 or 3.D.9 of the 2008 Regulations (normal retirement pensions, actuarially reduced pensions, ill health and early retirement pensions) applies”;
  - (d) for paragraph (11) substitute—
    - “(11) In the case of a participator to whom any of the following provisions apply—
      - (a) regulation E2(7), E2A(7) or L1(5) of the 1995 Regulations (ill health pensions and preserved pension);
      - (b) regulation 2.D.15 or 3.D.11 of the 2008 Regulations (option for members in serious ill health to exchange whole pension for lump sum),the Secretary of State may realise the investments made under these Regulations without purchasing an annuity and, in that event, the proceeds shall be payable to the participator as a lump sum.”.
- (13) In paragraph (a) of regulation 19 (offset for crime, negligence or fraud), for “of the Pension Scheme Regulations (offset for crime, negligence or fraud)” substitute “of the 1995 Regulations

(offset for crime, negligence or fraud) or regulation 2.J.6 or 3.J.6 of the 2008 Regulations (reduction in benefits in cases where loss caused by member’s crime, negligence or fraud)”.

(14) In paragraph (a) of regulation 20 (loss of rights to benefits), for “Pension Scheme Regulations (loss of rights to benefits)” substitute “of the 1995 Regulations (loss of rights to benefits) or regulation 2.J.7 or 3.J.7 of the 2008 Regulations (forfeiture of rights to benefits)”.

(15) In regulation 22 (tax)—

- (a) before “Benefits” insert “(1)”;
- (b) after paragraph (1) insert—

“(2) For the purposes of the 2004 Act, the administrator of the AVC scheme shall be the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG).”.

(16) In Schedule 2 (pension sharing on divorce or nullity of marriage or dissolution or nullity of civil partnership)—

- (a) in paragraph 1(5)(b), for “of the Pension Scheme Regulations (child allowance)” substitute “of the 1995 Regulations (child allowance) or regulation 2.E.9 or 3.E.9 of the 2008 Regulations (meaning of dependent child)”;
- (b) in paragraph 4(8), for “of the Pension Scheme Regulations (benefits for members or preserved pension)” substitute “of the 1995 Regulations (benefits for members or preserved pension) or regulation 2.D.1, 2.D.4, 2.D.5, 2.D.8, 2.D.10, 2.D.11, 3.D.1, 3.D.4, 3.D.5, 3.D.7 or 3.D.9 of the 2008 Regulations (normal retirement pensions, actuarially reduced pensions, ill health and early retirement pensions)”;
- (c) for paragraph 7(2)(b) substitute—
  - “(b) the total benefits payable would be treated as a trivial amount under paragraph 5(1)(b) of Schedule 2A to the 1995 Regulations or regulation 2.J.5 or 3.J.5 of the 2008 Regulations.”;
- (d) in paragraph 11(2), after “widower” (where three times occurring) insert “, nominated partner”;
- (e) after paragraph 11(4)(c) insert—
  - “(d) shall nominate the whole of the lump sum to a nominee and, in the case of a notice that specifies more than one person, shall also specify the percentage of the lump sum to be paid to each such person,”;
- (f) for paragraph 11(5) substitute—
  - “(5) A notice given under subparagraph (3) must specify one or more persons who may be—
    - (a) an individual;
    - (b) a body corporate;
    - (c) an unincorporated body;
    - (d) the member’s personal representatives,
 but must not specify one or more persons referred to in paragraph (a) together with a body referred to in either of paragraphs (b) or (c).”;
- (g) in paragraph 13(1)(a), for “of the Pension Scheme Regulations (offset for crime, negligence or fraud)” substitute “of the 1995 Regulations (offset for crime, negligence or fraud) or regulation 2.J.6 or 3.J.6 of the 2008 Regulations (reduction in benefits in cases where loss caused by member’s crime, negligence or fraud and forfeiture of right to benefits)”;

- (h) in paragraph 14(1)(a), for “of the Pension Scheme Regulations (loss of rights to benefits)” substitute “of the 1995 Regulations (loss of rights to benefits) or regulation 2.J.7 or 3.J.7 of the 2008 Regulations (forfeiture of rights to benefits).”.

### **Amendments to National Health Service (Injury Benefits) Regulations 1995**

**3.—(1)** The National Health Service (Injury Benefits) Regulations 1995(7) are amended as follows.

(2) In regulation 2(1) (interpretation)—

- (a) omit the definitions of “the pension scheme regulations”, “APMS contract”, “APMS contractor”, “average remuneration”, “GMS contract”, “GMS practice”, “medical performers list”, “non-GP provider”, “practitioner”, “registered dentist” and “the Scheme”;

(b) insert the following definitions at the appropriate places in alphabetical order—

““the 1993 Act” means the Pension Schemes Act 1993(8);”;

““the 1995 Regulations” means the National Health Service Pension Scheme Regulations 1995(9);”;

““the 2008 Regulations” means the National Health Service Pension Scheme Regulations 2008(10);”;

““APMS contract” means arrangements under section 80(2)(b) of the 2006 Act or section 41(2)(b) of the 2006 (Wales) Act (primary medical services) between a Primary Care Trust or Local Health Board and an APMS contractor;”;

““APMS contractor” means a person—

- (a) with whom a Primary Care Trust or Local Health Board has made arrangements under section 80(2)(b) of the 2006 Act or section 41(2)(b) of the 2006 (Wales) Act, and
- (b) who has entered into, or would be eligible to enter into, a GMS contract or a PMS agreement for the provision of primary medical services;”;

““average remuneration” means—

- (a) in relation to a practitioner, the yearly average of such amount as would be or would have been his uprated earnings within the meaning of whichever of the following is applicable—
- (i) paragraph 11(2) of Schedule 2 to the 1995 Regulations, as a practitioner to whom those Regulations apply;
- (ii) regulation 3.D.1(4)(b) of the 2008 Regulations, as a practitioner to whom those Regulations apply;
- (b) in relation to a person other than a practitioner, such amount as would be or would have been—
- (i) his final year’s pensionable pay under regulation C1(6) of the 1995 Regulations, as an officer to whom those Regulations apply (assuming, in the case of a person to whom regulation 3(1)(c) applies, that he was in receipt of the pensionable pay which would, in the opinion of the

(7) S.I. 1995/866 as amended by amended by S.I. 1997/646, 1998/667 and 2217, 2000/606, 2002/2469, 2003/631, 2004/865, 696 and 1016, 2005/661 and 3074, 2006/600 and 2007/3280, and modified by S.I. 1996/971.

(8) 1993 c. 48.

(9) S.I. 1995/300.

(10) S.I. 2008/653.

Secretary of State, have been payable if he were employed whole-time by an employing authority on similar duties); or

- (ii) his reckonable pay under regulation 2.A.10 of the 2008 Regulations, as the case may be, calculated as if he had retired—
- (c) in the case of a person eligible for an allowance under regulation 4(3), on the date on which he ceased to be employed as a person to whom regulation 3(1) applies;
- (d) in the case of a person eligible for an allowance under regulation 4(4) or (5), on the date on which his emoluments were reduced;
- (e) in the case of any other person, on the date on which by reason of the injury or disease his employment ceased:

Provided that in respect of a person to whom regulation 3(1)(a) applies who, immediately before he ceased to be employed by reason of the injury or disease or as a person to whom regulation 3(1) applies, or immediately before the date on which his emoluments were reduced, as the case may be, was employed as a senior registrar, registrar, specialist registrar, senior house officer or house officer, average remuneration shall be increased to the amount which in the opinion of the Secretary of State represents the average remuneration of a general medical practitioner, or a general dental practitioner, as the case may be, of comparable age;”;

““dentist performer” has the same meaning as it has in Part 3 of the 2008 Regulations;”;

““GMS contract” means—

- (a) in relation to England, a contract under section 84 of the 2006 Act or under article 13 of the General Medical Services Transitional and Consequential Provisions Order 2004(11) (entitlement to a contract under section 176(3) of the 2003 Act);
- (b) in relation to Wales, a contract under section 42 of the 2006 (Wales) Act or under article 13 of the General Medical Services Transitional and Consequential Provisions (Wales) Order 2004(12));”;

““GMS practice” means—

- (a) a registered medical practitioner; or
- (b) two or more individuals practising in partnership; or
- (c) a company limited by shares,

with whom a Primary Care Trust or Local Health Board has entered into a GMS contract;”;

““medical performers list” means a list of registered medical practitioners prepared and published—

- (a) by a Primary Care Trust pursuant to regulation 3(1) of the National Health Service (Performers Lists) Regulations 2004(13) (performers lists), or
- (b) by a Local Health Board pursuant to regulation 3(1) of the National Health Service (Performers Lists) (Wales) Regulations 2004(14) (performers lists);”;

““non-GP provider” means—

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(11) S.I. 2004/433.  
 (12) S.I. 2004/477.  
 (13) S.I. 2004/585.  
 (14) S.I. 2004/1020.



- (a) a partner in a partnership that is a GMS practice who is not a GP provider and who demonstrates to the satisfaction of the Secretary of State that the non-GP provider assists in the provision of NHS services provided by that practice;
- (b) a partner in a partnership—
  - (i) all of whose members have entered into a PMS agreement for the provision of primary medical services; and
  - (ii) who demonstrates to the satisfaction of the Secretary of State that the non-GP provider assists in the provision of NHS services provided by that partnership;
- (c) a partner in a partnership that is an APMS contractor that has entered into an APMS contract for the provision of primary medical services—
  - (i) but who is not a GP provider; and
  - (ii) who demonstrates to the satisfaction of the Secretary of State that the non-GP provider assists in the provision of NHS services provided by that partnership;
- (d) a shareholder in a company limited by shares that is—
  - (i) a GMS practice; or
  - (ii) a PMS practice or APMS contractor that has entered into a PMS agreement or APMS contract for the provision of primary medical services,  
but who is not a GP provider and who demonstrates to the satisfaction of the Secretary of State that he assists in the provision of NHS services provided by that company;
- (e) an individual who is a PMS practice or an APMS contractor but who is not a GP provider and who demonstrates to the satisfaction of the Secretary of State that he participates in the provision of NHS services;”;

““PMS practice” means—

- (a) an individual;
- (b) two or more individuals practising in partnership, or
- (c) a company limited by shares,

with whom, or with whose members, a Primary Care Trust or Local Health Board has entered into a PMS agreement under which primary medical services are provided (otherwise than by the Primary Care Trust or Local Health Board);”;

““surviving partner” means a widow, widower, surviving civil partner or surviving nominated partner;”;

““the Scheme” means the National Health Service Pension Scheme for England and Wales, the rules of which are set out in the 1995 Regulations and the 2008 Regulations, as the case may be;”;

- (c) in the definition of “OOH provider”, for “A3 of the pension scheme regulations” substitute “3.A.16 of the 2008 Regulations”.
- (3) In regulation 2(2), after “child’s allowance” insert “or child’s pension”.
- (4) After regulation 2 insert—

### “Meaning of “practitioner”

**2A.—(1)** In these Regulations “practitioner” means, in relation to a person who is or is eligible to be a member of the scheme set out in the 1995 Regulations, a person, other than a locum practitioner—

- (a) to whom regulation R1(1) or (2) of the 1995 Regulations applies (or would apply if he had been a member of the Scheme at the date he sustains an injury, or contracts a disease, to which these Regulations apply); and
- (b) who is performing services—
  - (i) in the case of a registered medical practitioner, under a GMS contract, a PMS agreement, an APMS contract or arrangements to provide services under—
    - (aa) in the case of England, section 83(2)(a) of the 2006 Act; or
    - (bb) in the case of Wales, section 41(2)(a) of the 2006 (Wales) Act, or
  - (ii) in the case of a dentist performer, under a GDS contract, a PDS agreement or arrangements to provide services under—
    - (aa) in the case of England, section 99(2) of the 2006 Act; or
    - (bb) in the case of Wales, section 56(2) of the 2006 (Wales) Act.

(2) In these Regulations “practitioner” means, in relation to a person who is or is eligible to be a member of the scheme set out in the 2008 Regulations, a person, other than a locum practitioner, who is (or was if he had been a member of that Scheme at the date he sustains an injury, or contracts a disease, to which these Regulations apply)—

- (a) a registered medical practitioner and—
  - (i) a GP provider; or
  - (ii) a GP performer, or
- (b) a dentist performer,

who is performing services—

- (i) in the case of a registered medical practitioner, under a GMS contract, a PMS agreement, an APMS contract or arrangements to provide services under—
  - (aa) in the case of England, section 83(2)(a) of the 2006 Act; or
  - (bb) in the case of Wales, section 41(2)(a) of the 2006 (Wales) Act, or
- (ii) in the case of a dentist performer, under a GDS contract, a PDS agreement or arrangements to provide services under—
  - (aa) in the case of England, section 99(2) of the 2006 Act; or
  - (bb) in the case of Wales, section 56(2) of the 2006 (Wales) Act.”.

(5) In regulation 4 (scale of benefits)—

- (a) in paragraph (3), for “age 60” (where twice occurring) substitute “normal benefit age”;
- (b) in paragraph (6)(a), for “pension scheme regulations” substitute “1995 Regulations (offset for crime, negligence or fraud and loss of rights to benefits) or regulation 2.J.6, 3.J.6, 2.J.7 or 3.J.7 (reduction in benefits in cases where loss caused by member’s crime, negligence or fraud and forfeiture of right to benefits) of the 2008 Regulations;

(c) after paragraph (9) insert—

“(10) In this regulation, “normal benefit age” means—

- (a) in respect of a person who is or is eligible to be a member of the scheme set out in the 1995 Regulations, 60;

- (b) in respect of a person who is or is eligible to be a member of the scheme set out in the 2008 Regulations, 65.”
- (6) In regulation 7 (widow’s, widower’s or surviving civil partner’s allowance)—
- (a) for the heading to that regulation substitute “Surviving partner allowances”;
  - (b) in paragraph (1), for “widow, widower or surviving civil” (where twice occurring) substitute “surviving”;
  - (c) in paragraph (2), for “widow, widower or surviving civil” substitute “surviving”;
  - (d) for paragraph (3) substitute—

“(3) Except if paragraph (3A) applies, a surviving partner is not entitled to receive an allowance—

    - (a) if the marriage took place, the civil partnership was formed or the nomination was made after—
      - (i) the deceased last ceased to be employed as a person to whom these Regulations apply; or
      - (ii) the date on which his or her earning ability was permanently reduced as a result of the injury or disease,whichever is the later;
    - (b) if at the date of the deceased’s death such surviving partner and a man or, as the case may be, a woman to whom she or he is—
      - (i) not married; or
      - (ii) with whom she or he is not in a civil partnership; or
      - (iii) are living together as husband and wife or as civil partners; or
    - (c) in respect of any period after such surviving partner—
      - (i) remarries or forms a civil partnership; or
      - (ii) during which she or he lives together with another person as if she or he were married to or in a civil partnership with that other person,but, where such marriage or civil partnership has terminated, the Secretary of State may restore an allowance to a surviving partner if the Secretary of State is satisfied that such surviving partner is suffering hardship.”
- (7) In regulation 8 (child’s allowance)—
- (a) in paragraph (2)(c), for “or civil partner” substitute “, civil partner or nominated partner”;
  - (b) for paragraph (6), substitute—

“(6) In this regulation, the “allowable maximum” means the amount to which a pension under the 1995 Regulations or the 2008 Regulations (as the case may be) of £2404 a year beginning on 9th April 2007 would have been increased under Part I of the Pensions (Increase) Act 1971 at the date in question, plus the yearly amount of any expenses necessarily incurred for the purposes of the education or training.”
- (8) In regulation 9 (dependent relative’s allowance)—
- (a) in paragraph (1)(a), for “or civil partner’s” substitute “, civil partner’s or nominated partner’s”;
  - (b) in paragraph (2)—
    - (i) for “widow, widower or surviving civil” substitute “surviving”;
    - (ii) omit “spouse or civil” (where twice occurring).

- (9) In regulation 11(1) (lump sum payment on death)—
- (a) in subparagraph (a), for “widow, widower or surviving civil” substitute “surviving”;
  - (b) in subparagraph (b), for “or civil partner” substitute “, civil partner or nominated partner”.
- (10) In regulation 12(3) (incidental provisions), for “widow’s, the widower’s or the surviving civil” substitute “surviving”.

**Amendments to National Health Service (Compensation for Premature Retirement) Regulations 2002**

4. For regulation 4(2) of the National Health Service (Compensation for Premature Retirement) Regulations 2002(15) (payment of compensation), substitute—

“(2) The compensation payable in accordance with this paragraph shall consist of an annual allowance at a rate equal to the rate by which that pension would be increased in accordance with the Pension Scheme Regulations, if—

- (a) a period equal to the period with which he is credited under regulation 5 of these Regulations were added to the pensionable service in respect of which that pension is payable; and
- (b) for the purposes of regulation C1 of the Pension Scheme Regulations, the whole period is treated as if it was added to the entitled officer’s pensionable service in respect of pensionable employment before 1st April 2008.”.

Signed by the authority of the Secretary of State for Health.

11th March 2008

*Ann Keen*  
Parliamentary Under Secretary of State,  
Department of Health

We consent

11th March 2008

*Alan Campbell*  
*Frank Roy*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations further amend the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000 ([S.I. 2000/619](#)) (“the AVC Regulations”), the National Health Service (Injury Benefits) Regulations 1995 ([S.I.1995/866](#)) (“the Injury Benefits Regulations”) and the National Health Service (Compensation for Premature Retirement) Regulations 2002 ([S.I. 2002/1311](#)) (“the Compensation Regulations”).

Regulation 2 amends the AVC Regulations by inserting new definitions consequential upon changes to the National Health Service Pension Scheme Regulations 1995 ([S.I.1995/300](#)) and as a result of the National Health Service Pension Scheme Regulations 2008. The amendments to the AVC Regulations indicate which of the National Health Service Pension Scheme Regulations (1995 or 2008) apply in any given case. In addition to the above, the NHS Business Services Authority is designated as the administrator of the AVC Scheme for the purposes of the Finance Act 2004 (see regulation 2(15)(b)).

Regulation 3 amends the Injury Benefits Regulations in the same way and for the same purpose as regulation 2 amends the AVC Regulations. In particular regulation 3(4) inserts a new regulation (regulation 2A) into the Injury Benefits Regulations so as to define what is meant by a “practitioner”.

Regulation 4 amends the Compensation for Premature Retirement Regulations so as to specify the amount of compensation payable by way of an annual allowance under those Regulations.

A full impact assessment has not been produced for this Instrument as it has no impact on the costs of business, charities or the voluntary sector.