

**EXPLANATORY MEMORANDUM TO**  
**THE NATIONAL HEALTH SERVICE PENSION SCHEME AND INJURY BENEFITS**  
**(AMENDMENT) REGULATIONS 2009**

**2009 No. 381**

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

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

2. **Purpose of the instrument**

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

- 2.2 The key changes made by the instrument are:

- revised assessment of contributions to the scheme by members from 1 April 2009
- revised certificates of earnings and contributions for practitioner (GP) and non-GP scheme members
- access to early retirement and pension commutation facilities for Pension Credit Members from 6 April 2009, and
- clarifying the benefits payable following the re-employment of ill health retirement pensioners.

- 2.3 The instrument also makes various miscellaneous amendments to clarify the working of certain regulations.

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

- 3.1 Regulations 14, 23, 32(a), 33(c), 34, 49, 51, 56, 62(a), 63(c), 64, 80 and 82 make amendments that will come into effect from 6 April 2009.
- 3.2 Regulations 16, 38, 40(c), 43, 46(b), 53(a), 66(b), 68, 71(c), 74, 77(b) and 78(b) make amendments with retrospective effect from 1 April 2008.
- 3.3 Regulations 85 and 86 make amendments with retrospective effect from 1 April 2004.
- 3.4 Regulation 13(3) makes amendments with retrospective effect from 6 March 1995.

#### **4. Legislative Context**

4.1 **Part 2** of the SI amends the National Health Service Pension Scheme Regulations 1995 (S.I.1995/300) (**the 1995 scheme**) which were made under sections 10 and 12 of, and Schedule 3 to, the Superannuation Act 1972

4.2 **Part 3** of the SI amends the National Health Service Pension Scheme Regulations 2008 (SI 2008/653) (**the 2008 scheme**) which were made under sections 10 and 12 of, and Schedule 3 to, the Superannuation Act 1972

4.3 **Part 4** of the SI amends the National Health Service (Injury Benefits) Regulations 1995 (S.I. 1995/866) which were made under section 10 of, and Schedule 3 to, the Superannuation Act 1972.

4.4 **Part 5** of the SI provides an option to persons detrimentally affected by these Regulations to elect for those provisions not to apply in certain circumstances.

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

5.1 The instrument applies to England and Wales.

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

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

## **7. Policy Background**

7.1 Following a review of the NHS Pension Scheme<sup>1</sup> led by the NHS Employers organisation<sup>2</sup> in partnership with NHS trade unions (the NHS Review Partners), a new pension scheme with a normal retirement age of 65 was introduced from 1 April 2008 for new entrant NHS staff (See SI 2008 No 654 and associated Explanatory Memorandum). At the same time significant changes were also made to the existing normal retirement age 60 scheme for staff already in post at that time (See SIs 2008 No. 653 and 1995 No. 300 and associated Explanatory Memorandums).

### **Tiered member contribution rates**

7.2 One of the key features of the new scheme (also implemented in the existing scheme) was the introduction of a tiered method for assessing the contributions due from members. The rates range from 5% to 8.5% depending on the amount of pensionable pay or earnings being received.

However, the arrangements introduced from 1 April 2008 covered the transitional scheme year 1 April 2008 to 31 March 2009 only. This amending SI implements the permanent arrangements for assessing a tiered contribution rate for all scheme years from 1 April 2009 onwards following final agreement with

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<sup>1</sup> The NHS Scheme (both existing and new) provides benefits on a career average earnings basis for members who are General Medical and Dental Practitioners and benefits on a final salary basis for all other members.

<sup>2</sup> Initially led by the NHS Confederation which transferred responsibility for the Review to NHS Employers a part of the Confederation which represents NHS Trusts in England and Wales

the NHS Review Partners. The changes are explained in detail at paragraphs 7.7 to 7.8.

### **Arrangements for the certification of contributions and earnings for General Practitioners**

- 7.3 The Review Partners also agreed that the formal certification of contributions and pensionable earnings will be extended from Type 1<sup>1</sup> to Type 2 general practitioners, to improve the accuracy of contributions collection and tier setting. These changes are explained in detail at paragraph 7.9.

### **Benefits for Ex Spouses and Civil Partners following a Pension Sharing Order (Pension ‘Credit’ members)**

- 7.4 As a consequence of DWP Pension Sharing (Pension Credit Benefit) (Amendment) Regulations 2009 that will come into effect from 6 April 2009 and other amendments that abolish ‘Safeguarded Rights’<sup>2</sup> contained in the Pensions Act 2008, changes are also made to bring the benefits payable to Pension Credit members broadly into line with the benefits available to other deferred NHS pension scheme members. These changes are explained in detail at paragraph 7.10.

### **Benefits for pensioners who are re-employed following the payment of ill health retirement benefits**

- 7.5 Amendments are also made to clarify the benefits payable in respect of further scheme membership that accrues after the award of a lower (unenhanced) tier 1 ill health pension where that earlier pension is subsequently converted into a higher (enhanced) tier 2 pension following a review by the Secretary of State. These changes are explained in detail at paragraph 7.11.

### **Consequential and technical changes**

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<sup>1</sup> ‘Type 1’ practitioners (previously known as ‘principal’ practitioners) are general medical or dental practitioners holding a contract to provide primary medical or dental services with a NHS Primary Care Trust (Local Health Board in Wales). ‘Type 2’ practitioners (previously known as assistant practitioners) do not hold a contract with a NHS Primary Care Trust (Local Health Board in Wales) to provide primary care services but are employed by and assist such contractors in the discharge of such primary medical or dental services.

<sup>2</sup> The proportion of a Pension Credit member’s benefits that are derived from the member’s guaranteed minimum pension, currently subject to some restrictions as to when and in what form that portion may be paid or claimed.

7.6 In addition, this amending SI also makes further technical and consequential changes to the 1995 and 2008 Pension Scheme Regulations and the National Health Service (Injury Benefits) Regulations, as explained in more detail at paragraphs 7.12 to 7.16.

7.7 **Amendments relating to the 1995 scheme and to Part 2 ‘officer members’ only, of the 2008 scheme – Tiered Member contribution rates**

**Changes to the way tiered contribution rates for ‘officer’ members (other than non-GP providers) will be assessed from the Scheme year 2009/10 and beyond**

<b>Amending Regulations</b>	1995 Scheme regulation amended	<b>Amending Regulations</b>	2008 Scheme “Officer” regulation amended
<b>4</b>	D1 (Contributions by members)	<b>20, 21</b>	2.C.2 and 2.C.3 (Employees)

**General approach**

(1) Members are assessed for an appropriate contribution rate at the beginning of each scheme year (1 April). For members who are in pensionable employment on 31 March and 1 April of each year, the contribution rate is generally set for the forthcoming scheme year based on pensionable pay received in the previous year (scaled up to a full year for members who started part-way through the previous year).

**1995 Scheme - regulation D1, new paragraphs (2C), (2D), (2E), (2F), (2G) and paragraphs (2K), (2L) and (2M)**

**2008 Scheme - regulation 2.C.3, new paragraphs (2), (3), (4), (5) and (10), (11) and (12)**

(2) For members who start a pensionable employment during the current scheme year, the contribution rate is set according to estimated pensionable pay for that

employment to the end of the current scheme year (scaled up to a full year). In all cases pay is scaled up to the equivalent full time rate if the member is part-time.

**1995 Scheme - regulation D1, paragraph (2Q)**

**2008 Scheme – regulation 2.C.3, paragraph (16)**

**General changes made are:**

(3) The regulations now apply to all scheme years from the scheme year commencing on 1 April 2009, see:

**1995 Scheme - regulation D1, paragraph (1A)**

**2008 Scheme - regulation 2.C.2, paragraph (2)**

(4) The table has been updated with the current bandings, see:

**1995 Scheme - regulation D1, paragraph (1A)**

**2008 Scheme - regulation 2.C.2, paragraph (2)**

(5) ) During the ‘transitional’ 2008/9 year a member’s contribution rate would not normally change once it had been assessed but from 1 April 2009, a member’s contribution tier may be re-assessed ‘in year’ if:

- the member starts a new employment in year with the same or a new employer, see:

**1995 Scheme - regulation D1, paragraph (2Q)**

**2008 Scheme - regulation 2.C.3, paragraph (16)**

There is also more detail at 7.7 paragraph (2) above.

- the member’s pensionable pay changes in year for an existing employment, see:

**1995 Scheme - regulation D1, paragraph (2R)**

**2008 Scheme - regulation 2.C.3, paragraph (17)**

This excludes changes to pensionable allowances which are due to changes in duties which are not planned or are unlikely to persist for at least 12 months, **see:**

**1995 Scheme - regulation D1, paragraph (2S)**

**2008 Scheme - regulation 2.C.3, paragraph (18)**

- In the case of a part time member, the change to pay or allowances will be ignored if the member's whole time equivalent pay does not change, **see:**

**1995 Scheme - regulation D1, paragraph (2T)**

**2008 Scheme - regulation 2.C.3, paragraph (19)**

- If a member's contribution rate changed in the previous scheme year (because of the circumstances explained at the above bullet point), when the contribution rate is set for the next year, this will be based on the pensionable pay received in the previous year from the date of the contribution change to the end of the year (uprated to 365 days), **see:**

**1995 Scheme - regulation D1, paragraphs (2H), (2I), (2J), (2N), (2O) and (2P)**

**2008 Scheme - regulation 2.C.3, paragraphs (7), (8), (9), (13), (14) and (15)**

### **Provisions that have been removed**

(6) The provisions that allowed some manual workers (**in the 1995 Scheme only**) to pay contributions at a rate of 5%, regardless of earnings, have been removed<sup>1</sup>. This means that from 1 April 2009, all members will pay the tiered contribution rate appropriate to their pensionable pay.

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<sup>1</sup> See regulation 7 of The National Health Service (Amendment) Regulations 2008, No 654.

(7) The provisions that allowed a rate applicable to one employment to be carried forward into another have been removed. From 1 April 2009 the appropriate tiered rate will now apply to each employment separately according to the member's pensionable pay for that employment, **see:**

**1995 Scheme - regulation D1, paragraph (2B) (b)**

**2008 Scheme - regulation 2.C.3, paragraph 1 (b)**

### **New Provisions about the contribution rate to be deducted from payments made to members in arrears**

#### **Small Payments**

(8) The amendments provide for a current contribution rate to be deducted from 'payments in certain circumstances' where these are made in arrears (rather than the rate that would have applied when the member did the work that earned the payment), **see:**

**1995 Scheme - regulation D1, new paragraphs (2W) and (2X)**

**2008 Scheme - regulation 2.C.3, new paragraphs (22) and (23)**

(9) 'Payments in certain circumstances' are payments of £150 or less that relate to a previous scheme year or a period in the current scheme year before the members contribution rate changed (or a combination of both those circumstances).

(10) Where the member is employed by the employer making the payment, the contribution rate that applies to the member on the day the payment is made will be applied, **see:**

**1995 Scheme - regulation D1, new paragraph (2W)**

**2008 Scheme - regulation 2.C.3, new paragraph (22)**

(11) Where the member is not currently employed by the employer making the payment, the contribution rate that last applied to the member when they left that employer will be applied, **see:**



**1995 Scheme - regulation D1, new paragraph (2X)**

**2008 Scheme - regulation 2.C.3, new paragraph (23)**

**Unsocial Hours payments**

(12) Where a payment is made for work done during unsocial hours where the work was undertaken by the member within the two calendar months preceding the month in which the payment is made, the contribution rate that applies to the member on the day the payment is made will be applied if they are employed by the employer making the payment, see:

**1995 Scheme - regulation D1, new paragraph (2Y)**

**2008 Scheme - regulation 2.C.3, new paragraph (24)**

(13) If the member is not employed by the employer making the payment in the circumstances described above, the contribution rate that will apply is the rate that applied on the last day of employment, see:

**1995 Scheme, regulation D1, new paragraph (2Z)**

**2008 Scheme, regulation 2.C.3, new paragraph (25)**

**7.8 Amendments relating to the 1995 scheme and to Part 3 ‘practitioner’ and ‘non-GP provider’ members’ only, of the 2008 scheme – Tiered Member contribution rates**

<b>Amending Regulations</b>	<b>1995 Scheme regulation amended</b>	<b>Amending Regulations</b>	<b>2008 Scheme “Officer” regulation amended</b>	<b>Amending Regulations</b>	<b>2008 Scheme “Practitioner” regulation amended</b>
<b>13</b>	Schedule 2, paragraph (10) (Contributions to the Scheme)	<b>20, 22</b>	2.C.4 (Non-GP Providers)	<b>55</b>	3.C.2 (Member’s contribution rate)

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(1) These amendments provide for changes to the way in which tiered contribution rates for ‘practitioner’ and ‘non-GP provider’ (NGPP) members will operate from the Scheme Years 2009/10 onwards. It should be noted that the amending regulations remove the NGPP provisions formerly in regulation 2.C.3 of the 2008 Scheme (see amending regulation 21 at paragraph 7.7 of this

memorandum) and rely on provisions elsewhere in the 2008 regulations for the part-time member differences previously repeated in regulation 2.C.4. Regulation 2.C.4 now specifies only how the changes to tiered contributions under this Part will operate differently for NGPPs.

## **General approach**

### **Principles which are unchanged:**

(2) Medical practitioner and non-GP provider (NGPP) service is considered separately from dental practitioner service, for tiering purposes. In all cases any service as an Officer is considered separately for a contribution rate.

**1995 Scheme - Schedule 2, paragraph 10 (2D), (2E)**

**2008 Scheme - Part 1, regulation 2.C.4 (Non-GP Providers) paragraph (5), and Part 2, regulation 3.C.2 (Member's contribution rate), paragraphs (12) and (13)**

(3) All a member's NHS medical practitioner service, NGPP service or dental practitioner service will be taken into account when the tiered rate for the relevant service is set, **see:**

**1995 Scheme - Schedule 2, paragraph 10 (2F)**

**2008 Scheme - Part 1, regulation 2.C.4 (Non-GP Providers), paragraph (1) and Part 2, regulation 3.C.2 (Member's contribution rate), paragraph (14)**

(4) Part-time practitioner and NGPP service under the career average system will not be scaled to a full-year equivalent for tiering purposes.

(5) Dental practitioner, but not medical practitioner or NGPP, service for a part year will be scaled to a full-year equivalent for tiering purposes, **see:**

**1995 Scheme - Schedule 2, paragraph 10 (2K)**

**2008 Scheme - Part 2, regulation 3.C.2 (Member's contribution rate), paragraph (8)**

**Provisions that have been removed:**

(6) The arrangements that based the tiered rate for 2008/9 on an earlier year's certified earnings, and retained that tier regardless of actual 2008/9 earnings, are removed.

(7) The provisions that allowed a rate applicable to one period of practitioner or NGPP period of service or an officer employment to be carried forward into another have also been removed.

**General changes made are:**

(8) The regulations now apply to all scheme years from the scheme year commencing on 1 April 2009 and the pensionable earnings bandings have been updated, see:

**1995 Scheme - Schedule 2, paragraph (10), (2) (2A) to (2N)**

**2008 Scheme - Part 2, regulation 2.C.2 (Member's contribution rate), paragraph (2) and Part 3, regulation 3.C.2 (Member's contribution rate), paragraph (2)**

(9) With the objective of minimising year-end adjustments, from 1 April 2009 a provisional in-year tiered rate and monthly contributions deduction will be based on:

- a rate agreed between the Primary Care Trust/Local Health Board (PCT/LHB) and the Practitioner or Non GP Provider; or
- the last available set of finalised earnings; or

- the estimated level of earnings for the current year, see:

**1995 Scheme - Schedule 2, paragraphs (10) (2I) and (2L)**

**2008 Scheme - Part 2, regulation 2.C.4 (Non-GP Providers), paragraph (2) and Part 3, regulation 3.C.2 (Member's contribution rate), paragraphs (6) and (9)**

(10) The Host PCT/LHB may adjust the tiering and deduction rate, during the year, either:

- in agreement with the GP or NGPP; or
- if it becomes apparent that income will exceed that used to base the deduction tier on
- any adjustments will be backdated to the start of the Scheme year, see:

**1995 Scheme, schedule 2, paragraph (10) (2N)**

**2008 Scheme, Part 2, regulation 2.C.4 (Non-GP Providers), paragraph (4) and Part 3, regulation 3.C.2 (Member's contribution rate), paragraph (11)**

(11) Employers of practitioners and Non-GP Providers, who are not the host PCT/LHB will be required to approach the host PCT/LHB for the correct tiered rate to use for deductions, see:

**1995 Scheme - Schedule 2, paragraph (10) (2G)**

**2008 Scheme - Part 2, regulation 2.C.4 (Non-GP Providers), paragraph (7) and Part 3, regulation 3.C.2 (Member's contribution rate), paragraph (15)**

(12) Following the close of each scheme year (around 6 months afterwards for dental practitioners, and after completion of their tax returns, for medical practitioners and NGPPs) the PCT/LHB will compare the member's actual

earnings for the year with the provisional in-year deductions, and make final adjustments to contributions, and if necessary the tiered rate, see:

**1995 Scheme - schedule 2, paragraph (10), (2H) and (2K)**

**2008 Scheme - Part 2, regulation 2.C.4 (Non-GP Providers), paragraph (1) and Part 3, regulation 3.C.2 (Member’s contribution rate), paragraphs (5) and (8)**

**7.9 Amendments relating to the 1995 scheme and to Part 2 ‘non-GP provider members’ and to Part 3 ‘practitioner’ members’, of the 2008 scheme – New type 2 GP end of year certificates of pensionable earnings and GP Practice start and end of year statements of earnings and contributions**

<b>Amending Regulations</b>	1995 Scheme regulation amended	<b>Amending Regulations</b>	2008 Scheme “Officer” regulations amended	<b>Amending Regulations</b>	2008 Scheme “Practitioner” regulations amended
<b>13(4)</b>	Schedule 2, paragraph (23) (Accounts and actuarial reports)	<b>52</b>	2.J.14 (Employing authority and certain member record keeping contribution estimates)	<b>83</b>	3.J.14 (Employing authority and certain member record keeping contribution estimates)

(1) The above amendments introduce a new end-of-year certificate of NHS Scheme pensionable earnings and contributions, for type 2 medical practitioner completion, and bring existing type 1 medical practitioner certificates and other returns of pensionable earnings and contributions under a single provision. The amendments also introduce GP Practice start-of-year statements of estimated practitioner and NGPP earnings and contributions, and end-of-year statements for type 2 medical practitioners. The latter changes will regularise existing informal employer arrangements, to improve the accuracy of in-year and end-of-year tiered contribution rate setting and collection, see:

**1995 Scheme - schedule 2, paragraph 23, sub-paragraphs (3), (4), (5), (6) and (7)**

**2008 Scheme - Part 1, substitute regulation 2.J.14 (Employing authority and certain member record keeping and contribution estimates) and Part 2,**

**substitute regulation 3.J.14 (Employing authority and certain member record keeping and contribution estimates)**

**7.10 Amendments relating to the 1995 scheme and to Part 2 ‘officer’ and ‘non-GP provider’ members’ and to Part 3 ‘practitioner’ members’, of the 2008 scheme – Pension sharing on divorce or nullity of marriage or, on the dissolution or nullity of a civil partnership**

<b>Amending Regulations</b>	<b>1995 Scheme regulation amended</b>	<b>Amending Regulations</b>	<b>2008 Scheme “Officer” regulations amended</b>	<b>Amending Regulations</b>	<b>2008 Scheme “Practitioner” regulations amended</b>
<b>14</b>	Schedule 2A (Pension sharing on divorce or nullity of marriage or, on the dissolution or nullity of a civil partnership)	<b>23, 32, 33, 34, 49, 51</b>	2.D.2 new paragraph (5) 2.D.14, 15 and 17 and 2.J.5 and 11	<b>56, 62, 63, 64, 80, 82</b>	3.D.2, 10, 11, and 13, 3.J.5 and 11

**Key changes**

(1) These amendments will be made from 6 April 2009, when the DWP Pension Sharing (Pension Credit Benefit) (Amendment) Regulations 2009 come into effect and will:

- Allow early payment of a pension credit with an actuarial reduction from normal minimum pension age, **see:**

**1995 Scheme - Schedule 2A, new Paragraph 3A - Pension credit benefit before attaining normal benefit age (with actuarial reduction)**

**2008 Scheme - regulations 2.D.2 and 3.D.2, new paragraph (5)**

- Allow the pension credit to be paid early on health grounds as long as the pension credit member meets the ill health condition in the Finance Act 2004 and is permanently incapable of regular employment because of ill health, **see:**

**1995 Scheme - Schedule 2A, new Paragraph 3B - Pension credit benefit before attaining normal benefit age (on grounds of ill health)**

**2008 Scheme - regulations 2.D.2 and 3.D.2, new paragraph (8)**

- Allow pension credit members the same access to pension commencement lump sums as those enjoyed by other deferred scheme members (as long as the sharing order is pre-retirement). This means that pension credit members will have the same rights as other scheme members to exchange some of their pension credit for lump sum, up to the limits provided for in the Finance Act 2004 and subject to the minimum fixed lump sum payable in the 1995 scheme see:

**1995 Scheme - Schedule 2A, new sub paragraphs (7) to (12) of paragraph 3 (Pension Credit benefit on attaining normal benefit age)**

**2008 Scheme - regulation 2.D.14, replacement paragraph (1) (General option to exchange part of pension for lump sum), and regulation 3.D.10, revisions to paragraph (1) (General option to exchange part of pension for lump sum)**

#### **Further and consequential changes**

(2) As a consequence of the above key changes the regulations make some further changes:

- Firstly, (in line with other members) a pension credit member who is terminally ill may commute the maximum amount of pension credit into lump sum before the pension is commuted, see:

**1995 Scheme - Schedule 2A, new sub paragraph (2) of 4 (Commutation of the whole of the pension credit benefit before normal benefit age) and new sub paragraph (2) of 5 (Commutation of the whole of the pension credit at normal benefit age)**

**2008 Scheme - regulation 2.D.15, replacement paragraph (5) (Option for members in serious ill health to exchange whole pension for lump sum) and**

**regulation 3.D.11, replacement paragraph (5) (Option for members in serious ill health to exchange whole pension for lump sum)**

- Secondly, in the 1995 scheme only, the paragraphs dealing with the death benefit lump sum payable when a pension credit member who is receiving their benefit dies are revised, so that the maximum amount of any lump sum that may be paid will take account of the amount of pension that was commuted to lump sum, see:

**1995 Scheme - Schedule 2A, new sub-paragraph (3) of 7 (Pension credit member dies after pension credit benefit becomes payable)**

**(3) Technical Changes made are**

- References to ‘safeguarded rights’ are removed, see:

**1995 Scheme - Schedule 2A, revised paragraph (12) (Offset for crime, negligence or fraud) and (13) (Loss of rights to benefits)**

**2008 Scheme - deleted regulations 2.D.17 and 3.D.13 (Pension credit member’s rights)**

- References to the Pension Sharing (Pension Credit Benefit) Regulations 2000 are replaced with appropriate references to the Finance Act 2004, see:

**1995 Scheme - Schedule 2A, amendment to Paragraph 4 (Commutation of the whole of pension credit benefit before normal benefit age)**

**2008 Scheme - revised regulations 2.J.5 and 3.J.5 (Commutation of small pensions)**



- Provision is made for the Scheme’s Medical Advisors to make decisions on ill health applications and applications from a Pension Credit member to commute benefits because of terminal illness, see:

**1995 Scheme - Schedule 2A, new paragraph 16 (Medical determinations)**

**2008 Scheme - new paragraph (za) in regulations 2.J.11 and 3.J.11**

**(Determinations by medical practitioners)**

**7.11 Regulations that amend the 1995 scheme and Part 2, ‘officer members’ and Part 3, ‘practitioner’ members of the 2008 scheme - benefits payable following the re-employment of ill-health retirement pensioners**

**(1) Restricting accrual of further service in re-employment where a tier 1 ill health pension for earlier service is converted to tier 2**

<b>Amending Regulations</b>	1995 Scheme regulation amended	<b>Amending Regulations</b>	2008 Scheme “Officer” regulation amended	<b>Amending Regulations</b>	2008 Scheme “Practitioner” regulation amended
<b>3</b>	B3 (Restriction on further participation in the scheme)	<b>19</b>	2.B.2 (Restrictions on eligibility: general)	<b>54</b>	3.B.2 (restrictions on eligibility: general)

The above amendments are made so that a re-employed pensioner must stop accruing any further service in their re-employment if the tier 1 ill health pension in payment for their earlier service is converted to a tier 2 ill health pension. Provision is also made so that members may restart contributions again if they are in NHS employment (and under age 50 in the 1995 scheme) one year after their tier 1 pension is replaced by a tier 2 pension. At this point their replacement tier 2 pension will have reverted to a tier 1 pension. The amendments ensure that a tier 2 pensioner may not accrue further service that runs concurrently with the enhancement of 2/3rds prospective service to the relevant scheme’s normal pension age included in a tier 2 pension.

**(2) Preventing the award of 2 separate tier 2 ill health pensions**

<b>Amending Regulations</b>	1995 Scheme regulation amended	<b>Amending Regulations</b>	2008 Scheme “Officer” regulation amended	<b>Amending Regulations</b>	2008 Scheme “Practitioner” regulation amended
<b>5</b>	E2B (Re-assessment of ill health condition determined under regulation E2A)	<b>29</b>	2.D.9 (Reassessment of entitlement to an ill health pension determined under regulation 2.D.8)	<b>61</b>	3.D.8 (Reassessment of entitlement to an ill health pension determined under regulation 3.D.7)

The above amendments ensure that if a re-employed ill health pensioner becomes entitled to a tier 2 pension in respect of their *new* service, they will not be able to apply for any tier 1 pension in payment for their earlier service to also be converted to a tier 2 pension under a Secretary of State’s review. This prevents a member from becoming entitled to two separate tier 2 pensions both of which would attract enhancements of 2/3rds prospective service to the relevant scheme’s normal retirement age.

**(3) Limit on additional lump sum where a tier 1 ill health pension is converted to tier 2**

<b>Amending Regulations</b>	1995 Scheme regulation amended	<b>Amending Regulations</b>	2008 Scheme “Officer” regulation amended	<b>Amending Regulations</b>	2008 Scheme “Practitioner” regulation amended
<b>6 and 7</b>	E6 (lump sum on retirement) E7 (general option to exchange part of pension for lump sum)	<b>32</b>	2.D.14 (General option to exchange part of pension for lump sum) new paragraph (9)	<b>62</b>	3.D.10 (General option to exchange part of pension for lump sum) new paragraph (9)

The above amendments clarify that where a tier 1 ill health pension is converted to a tier 2 pension following a review by the Secretary of State, the member may exchange part of the additional pension (difference between the tier 1 and the tier 2 ill health pension) for lump sum. In addition, amending regulation 6

clarifies that in the 1995 Scheme the fixed lump sum (equal to three times the pension) is only due for the difference between the tier 1 and the tier 2 ill health pension.

**(4) Restriction to tier 1 ill health pensions for later (re employment) service where a tier 1 pension for earlier service is converted to tier 2**

<b>Amending Regulations</b>	1995 Scheme regulation amended	<b>Amending Regulations</b>	2008 Scheme “Officer” regulation amended	<b>Amending Regulations</b>	2008 Scheme “Practitioner” regulation amended
<b>10</b>	S3A (Benefits in respect of pensionable employment after pension becomes payable under regulation E2A)	<b>48</b>	2.G.5 (Re-employed tier 1 ill health pensioners)	<b>79</b>	3.G.5 (Re-employed tier 1 ill health pensioners)

The above amendments ensure that where a member whose tier 1 ill- health pension (in payment) is converted to a tier 2 pension, they may only become entitled to a tier 1 pension for their re-employed service (regardless of whether they meet the tier 1 or the tier 2 condition in respect of that service).

**(5) Provision to pay interest if the difference in payments between a tier 1 and a tier 2 ill health pension is delayed**

<b>Amending Regulations</b>	1995 Scheme regulation amended	<b>Amending Regulations</b>	2008 Scheme “Officer” regulation amended	<b>Amending Regulations</b>	2008 Scheme “Practitioner” regulation amended
<b>11</b>	T8 (Interest on late payment of benefits)	<b>50</b>	2.J.9 (Interest on late payment of benefits and refunds of contributions) paragraph 7 (c)	<b>81</b>	3.J.9 (Interest on late payment of benefits and refunds of contributions) paragraph 7 (c)

The above amendments provide for interest to be due from the scheme if the difference between a tier 1 ill health pension and a tier 2 ill health pension is not

paid within one month of the date the Secretary of State is in possession of all the information needed to calculate the additional amounts due.

**7.12 Regulations that amend the 1995 Scheme and Part 3, ‘practitioner’ members only of the 2008 scheme**

**(1) Lump sum on member’s death after pension becomes payable**

<b>Amending Regulations</b>	1995 Scheme regulation amended	<b>Amending Regulations</b>	2008 “Practitioner” Scheme regulation amended
<b>13(3)</b>	Schedule 2, paragraph (14) (Lump sum on member’s death in pensionable employment or after pension becomes payable)	<b>78(b)</b>	3.E.19 (Amount of lump sum: dual capacity members: members with pensions under regulation 3.D.5

The above amendments clarify the uprating period for the pensionable earnings of practitioner members who have ceased to accrue pensionable service during continuing membership or whose dependants qualify for benefit following their death on pension. These amendments are made retrospectively from 6 March 1995, in the case of the 1995 Scheme and from 1 April 2008, in the case of the 2008 Scheme.

**7.13 Regulations that amend the 1995 Scheme only**

**(1) Regulation 8 amends regulation H4 (Member dies after pension becomes payable)** to include references to ‘nominated partners’ and ‘surviving nominated partners’.

**(2) Regulation 9 makes a technical change to regulation L1 (Preserved pension)** to ensure that L1 is consistent with other regulations providing for commutation of benefits on terminal illness by including a reference to the requirements of the ‘lump sum rule’ in the Finance Act 2004.

**(3) Regulation 12 amends regulation U1A (Determinations by medical practitioners)** so that the Scheme’s Medical Advisers are able to make a decision on behalf of the Secretary of State as to whether a deferred member is entitled to commutation of their benefits because of terminal illness.

#### 7.14 **Regulations that amend the 2008 Scheme only**

**(1) Regulations 16 and 53(b) and (c) respectively, amend regulations 2.A.1 and 3.A.1 (Interpretation: general)** by inserting a new definition of “non-contributing member” and revising the existing definition of “member” to include “non-contributing members”. The changes ensure that the correct ‘pay’ (in the case of a member, other than a ‘non-GP provider’, under Part 2 of the 2008 regulations) or ‘earnings’ (in the case of a ‘non-GP provider’ or any member under Part 3 of the 2008 regulations) will be used when calculating benefits for non-contributing members where they:

- have reached the 45 year pensionable service limit
- remain in NHS employment
- have ceased payment of contributions (and have not applied to continue payment)
- remain entitled to pension benefits but are currently under age 75

Regulation 53(a) corrects a cross-reference, from regulation 3.D.5(9) to 3.D.5(8), and is made retrospectively from 1 April 2008.

**(2) Regulation 17 amends regulation 2.A.9 (Pensionable pay: breaks in service)** to correct the reference to ‘pensionable pay’ to ‘pensionable earnings’.

**(3) Regulation 18 amends regulation 2.A.10 (Meaning of reckonable pay: general)** to cater for the introduction of ‘non-contributing members’ as described in the explanation of amending regulation 16, at paragraph (1) above.

Members, who reach the scheme's 45-year service limit, cease to pay contributions and accrue pensionable service, making the 'relevant day' at 2.A.10(5) the member's last day of pensionable service.

**(4) Regulations 24 to 28, and 30, 31, 35, 36, 41 and 42 respectively, amend regulations:**

- **2.D.4 (Early payment of pensions with actuarial reduction)**
- **2.D.5 (Partial retirement (members aged at last 55))**
- **2.D.6 (Increase in pensionable pay following exercise of option under regulation 2.D.5)**
- **2.D.7 (Application of regulations 2.D.5 and 2.D.6 where concurrent part-time employments held)**
- **2.D.8 (Early retirement on ill health (active members))**
- **2.D.11 (Early retirement on termination of employment by employing authority)**
- **2.D.13 (Exceptions to requirement that NHS employment must have ceased)**
- **2.D.21 (Dual capacity membership)**
- **2.E.1 (Surviving adult dependants' pensions)**
- **2.E.11 (Amount of children's pensions under regulation 2.E.8: deceased pensioner members), and**
- **2.E.12 (Amount of children's pensions under regulation 2.E.8: deceased deferred members)**

to cater for the introduction of 'non-contributing members' as described in the explanation of amending regulation 16, at paragraph (1) above. The changes ensure that the correct pensionable pay will be used to calculate personal or dependants benefits when members have ceased to pay contributions and accrue pensionable service but continue in NHS employment.

**(5) Regulation 37 amends regulation 2.E.3 (Amount of pensions under regulation 2.E.1: active members)** to cater for the introduction of ‘non-contributing members’ as described in the explanation of amending regulation 16, at paragraph (1) above. The amendment also corrects paragraph (1) of regulation 2.E.3 so that the initial pension for a deceased non-contributing member will be based on the member’s reckonable pay on their last day of pensionable service .

**(6) Regulation 38 amends regulation 2.E.4 (Amount of pensions under regulation 2.E.1: pensioner members)** so that abatement under Chapter ‘H’ of Part 2 of the 2008 regulations is ‘ignored’ for both the initial and continuing pensions. This amendment is made retrospectively from 1 April 2008.

**(7) Regulation 39 amends regulation 2.E.7 (Re-employed pensioners: adult survivor pensions in initial period)** to ensure that the initial pension for a re-employed member’s later service will be based on their reckonable pay at their last day of pensionable service.

**(8) Regulation 40(a), (b), (d) and (e) amend regulation 2.E.10 (Amount of children’s pensions under regulation 2.E.8: deceased active members)** to cater for the introduction of ‘non-contributing members’ as described in the explanation of amending regulation 16, at paragraph (1) above and revises paragraphs (6) and (7), so that the initial pension for a ‘non-contributing member’ will be based on the member’s reckonable pay on their last day of pensionable service. Regulation 40(c) corrects the regulation at paragraph (4) to ensure that a minimum of 10 years pensionable service will be taken into account when calculating a child pension for deceased active members. This amendment is made retrospectively from 1 April 2008.

**(9) Regulation 43 amends regulation 2.E.13 (Amount of children’s pensions under regulation 2.E.8: recent leavers)** to correct the ‘basic death pension’ on which a child pension is based (in the case of a ‘recent leaver’) to a tier 2 ill

health pension under regulation 2.D.8(5) (Early retirement on ill-health: active members ). This amendment is made retrospectively from 1 April 2008.

(10) **Regulation 44 amends regulation 2.E.15 (Amount of children’s pensions under regulation 2.E.8: re-employed pensioners)** to cater for the introduction of ‘non-contributing members’ as described in the explanation of amending regulation 16, at paragraph (1) above, and revises paragraph (2)(a) of regulation 2.E.15 so that the initial pension for a deceased non-contributing member will be based on the members reckonable pay on their last day of pensionable service.

(11) **Regulation 45 amends regulation 2.E.17 (Amount of lump sum: single capacity members and recent leavers (disregarding regulation 2.D.5 employments))** to cater for the introduction of ‘non-contributing members’ as described in the explanation of amending regulation 16, at paragraph (1) above, and adds cross-references to regulations 2.E.20A and 2.E.21.

(12) **Regulation 46 amends regulation 2.E.18 (Amount of lump sum: dual capacity members (disregarding regulation 2.D.5 employments))** to cater for the introduction of ‘non-contributing members’ as described in the explanation of amending regulation 16, at paragraph (1) above and, in the case of a deceased non-contributing member, the amendment also ensures that the service taken into account is adjusted to the date of the member’s last day of pensionable service. Regulation 46(b) corrects paragraph (2)(a), so that the lump sum for the deceased member’s later service will be based on a tier 2 ill health pension under regulation 2.D.8(5) (Early retirement on ill-health: active members). This amendment is made retrospectively from 1 April 2008.

(13) **Regulation 47 amends regulation 2.E.19 (Amount of lump sum: dual capacity members: members with pensions under regulation 2.D.5)** to cater for the introduction of ‘non-contributing members’ as described in the



explanation of amending regulation 16, at paragraph (1) above, and corrects the reference in paragraph (2)(a) of regulation 2.E.19 from ‘final pensionable pay’ to ‘reckonable pay’.

**(14) Regulations 57 to 60 and 65, 66(a), 72 and 73 respectively, amend regulations:**

- **3.D.4 (Early payment of pensions with actuarial reduction)**
- **3.D.5 (Partial retirement (members aged at least 55))**
- **3.D.6 (Increase in level of engagement following exercise of option under regulation 3.D.5)**
- **3.D.7 (Early retirement on ill-health (active members))**
- **3.D.17 (Dual capacity membership)**
- **3.E.1 (Surviving adult dependants’ pensions)**
- **3.E.11 (Amount of children’s pension under regulation 3.E.8: deceased pensioner members)**
- **3.E.12 (Amount of children’s pension under regulation 3.E.8: deceased deferred members)**

to cater for the introduction of ‘non-contributing members’ as described in the explanation of amending regulation 53, at paragraph (1) above. The changes ensure that, for a member under Part 3 of the 2008 regulations the correct pensionable earnings will be used to calculate personal or dependant’s benefits when members have ceased to pay contributions and accrue pensionable service but continue in NHS employment.

Regulation 66(b) corrects 2 cross-references, from regulation 3.C.14(4) and 3.C.16(3), to 3.C.12(4) and 3.C.14(3), and is made retrospectively from 1 April 2008.

**(15) Regulation 67 amends regulation 3.E.3 (Amount of pensions under regulation 3.E.1: active members) to cater for the introduction of ‘non-**

contributing members' as described in the explanation of amending regulation 53, at paragraph (1) above, and replaces paragraph (1) of regulation 3.E.3 so that the initial pension for a deceased non-contributing member will be based on the monthly average of their uprated earnings on their last day of pensionable service.

**(16) Regulation 68 amends regulation 3.E.4 (Amount of pensions under regulation 3.E.1: pensioner members)** so that abatement under Chapter 'H' of Part 2 of the 2008 regulations is 'ignored' for both the initial and continuing pensions. This amendment is made retrospectively from 1 April 2008.

**(17) Regulation 69 amends regulation 3.E.7 (Re-employed pensioners: adult survivor pensions in initial period)** so that for re-employed non-contributing members, the initial pension for the member's later period of service will be based on the monthly average of the deceased's uprated earnings on their last day of pensionable service.

**(18) Regulation 70 amends regulation 3.E.8 (Surviving children's pensions)** to correct the cross-references in paragraph (10).

**(19) Regulation 71(a), (b), (d) and (e) amends regulation 3.E.10 (Amount of children's pension under regulation 3.E.8: deceased active members)** to cater for the introduction of 'non-contributing members' as described in the explanation of amending regulation 53, at paragraph (1) above and ensures that the initial pensions for a non-contributing member will be based on the rate of the monthly average of the deceased's uprated earnings on the member's last day of pensionable service. Regulation 71(c) revises paragraph (3) of regulation 3.E.10 so that a minimum of 10 years pensionable service is taken into account when calculating a child pension for deceased 'active' members. Regulation 71(c) is made retrospectively from 1 April 2008.

**(20) Regulation 74 amends regulation 3.E.13 (Amount of children’s pension under regulation 3.E.8: recent leavers)** to correct the ‘basic death pension’ at paragraph (3) on which the child pension is based (in the case of a ‘recent leaver’) to a tier 2 ill-health pension under regulation 3.D.7(5) (Early retirement on ill-health (active members)). This amendment is made retrospectively from 1 April 2008.

**(21) Regulation 75 amends regulation 3.E.15 (Amount of children’s pension under regulation 3.E.8: re-employed pensioners)** to cater for the introduction of ‘non-contributing members’ as described in the explanation of amending regulation 53, at paragraph (1) above. The amendment also replaces subparagraphs (a) and (b) of paragraph (2) of regulation 3.E.15, so that the initial pension for a deceased non-contributing member will be based on the rate of the monthly average of the deceased’s uprated earnings on their last day of pensionable service.

**(22) Regulation 76 amends regulation 3.E.17 (Amount of lump sum: single capacity members and recent leavers (disregarding regulation 3.D.5 employments))** to cater for the introduction of ‘non-contributing members’ as described in the explanation of amending regulation 53, at paragraph (1) above. The amendment also replaces paragraph (1) of regulation 3.E.17 to ensure that the lump sum for a deceased non-contributing member is based on the twice the annual average of the members’ uprated earnings on their last day of pensionable service, and clarifies, in paragraph (2), that the regulation is subject to regulations 3.E.20A and 3.E.21.

**(23) Regulation 77(a) amends regulation 3.E.18 (Amount of lump sum: dual capacity members (disregarding regulation 3.D.5 employments))** to cater for the introduction of ‘non-contributing members’ as described in the explanation of amending regulation 53, at paragraph (1) above. Regulation 77(b) corrects paragraph (2)(a) of regulation 3.E.18, so that the lump sum for a deceased non-

contributing member's later service will be based on a tier 2 ill health pension under regulation 3.D.7(5) (Early retirement on ill-health (active members)), adjusted to the date of the member's last day of pensionable service. Regulation 77(b) is made retrospectively from 1 April 2008.

**(24) Regulation 78(a) and (c) amend regulation 3.E.19 (Amount of lump sum: dual capacity members (members with pensions under regulation 3.D.5))** to cater for the introduction of 'non-contributing members' as described in the explanation of amending regulation 53, at paragraph (1) above. See also regulation 78(b), at paragraph 7.12 above.

#### 7.15 **Amendments to the Injury Benefit Scheme**

**(1) Regulation 84** clarifies that an alphanumerical reference in Part 3 of the SI is a reference to the National Health Service (Injury Benefits) Regulations 1995.

**(2) Regulation 85 amends regulation 2(1) (Interpretation)** by inserting a new definition of "ophthalmic provider" which will operate in conjunction with the revised definition of "practitioner" (made by amending regulation 86 below), to clarify that the Injury Benefit regulations continue to apply to ophthalmic providers. This amendment is made retrospectively from 1 April 2004.

**(3) Regulation 86 amends regulation 2A (meaning of practitioner)** by adding "ophthalmic provider" to the definition of 'practitioners' to whom the Injury Benefit Regulations apply. This amendment is made retrospectively from 1 April 2004.

**(4) Regulation 87 amends regulation 4 (Scale of benefits)** by adding Employment and Support Allowance (ESA) (payable under section 1(2)(a) of the Welfare and Reform Act 2007) to the benefits listed at regulation 4(6)(b) of the Injury Benefit Regulations, and taken into account when calculating the

amount of an Injury Benefit. ESA replaces Incapacity Benefit and Income Support for new claimants with effect from 27 October 2008, and will be taken into account for Injury Benefit purposes at the rate payable during the ‘assessment phase’ and at any rate payable after that phase has ended.

**(5) Regulation 88 amends regulation 13 (Review and adjustment of allowance)** to ensure that Injury Benefit awards in payment at 1 April 2009 (the effective date for the amendment) can be reviewed to take account of ESA (at either rate) awarded between 27 October 2008 (when ESA was introduced) and 1 April 2009. However any adjustment in the rate of Injury Benefit payable will be made only with effect from 1 April 2009.

#### 7.16 **Option to persons detrimentally affected by these amending regulations**

**(1) Regulation 89 (Option to persons detrimentally affected by these regulations)** provides for a deferred member, or a member in receipt of a relevant benefit, whose position under these regulations would be worsened by any retrospective provision, to elect that that provision will not apply to them.

### **Consolidation**

7.17 Resource permitting, this exercise is still on track to start during 2009. An informal consolidated text of both 1995 and 2008 Regulations incorporating changes up to 1 April 2009 has been made available to NHS Trade Unions and other stakeholders during the consultation period.

### **Consultation on the draft regulations**

7.18 A formal consultation exercise on the amending regulations began on the 19 November 2008 and ended on 11 February 2009.

7.19 Amongst those consulted were: NHS Staff Side representatives, NHS Employers; NHS Pensions<sup>1</sup>; other public service pension schemes; Government Actuary's Department; the National Audit Office; the devolved administrations; and HM Treasury. In addition, workshops were provided to allow stakeholders the opportunity to ask any questions and to make comments on the Draft SI. These were attended by NHS Staff Side representatives, representatives of the devolved administrations and NHS Pensions (the Scheme Administrators) and the Government Actuary's Department.

## **8. Consultation outcome**

8.1 The Scottish Public Pensions Agency helpfully identified the inadvertent omission of 'HM Treasury consent', in line one of substituted paragraph 2A in amendment regulation 13(2). In addition, a number of useful technical comments were received from Scheme stakeholders, both in the regulation workshops and in subsequent correspondence from the Scheme's Administrators (NHS Pensions).

## **9. Guidance (for NHS Staff and NHS employers)**

9.1 NHS Pensions wrote to all employers in October 2008 to notify them of the changes to the tiered contribution arrangements. The link to the specific document is as follows:

[www.nhsbsa.nhs.uk/Pensions/Documents/Pensions/TN26-2008.pdf](http://www.nhsbsa.nhs.uk/Pensions/Documents/Pensions/TN26-2008.pdf)

## **10. Impact**

10.1 The impact on business, charities and voluntary bodies is very small.

10.2 The impact on the public sector in terms of costs is significantly below £5 million pounds and is unlikely to attract high levels of political or media interest.

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<sup>1</sup> The NHS Pensions Division of the NHS Business Services Authority

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation applies to a number of small businesses, who are classed as NHS Pension Scheme Employing Authorities, and required or able to offer the pension scheme to their staff, e.g. GP Practices, Out Of Hours and Direction Bodies. However the impact of the changes to the pension scheme are generally beneficial, with any 'negative' effects confined to minor changes in administrative procedures.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to ensure good consultative links with representatives of small businesses who are NHS Pension Scheme employers and easy access to guidance, publicity materials and helpline points for all NHS Scheme employers and members, as exemplified in paragraph 9 above.

11.3 The basis for the final decision on what action to take to assist small business administering the NHS Pension Scheme is agreed in partnership with NHS Staff Side and Employer representatives.

## **12. Monitoring & review**

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

### **13. Contact**

Mrs Angie Walsh at the Department of Health Pensions Policy Team, Tel: 01253 774510 or e-mail [Angie.Walsh@dh.gsi.gov.uk](mailto:Angie.Walsh@dh.gsi.gov.uk) can answer any queries regarding the instrument.