
STATUTORY INSTRUMENTS

2015 No. 94

The National Health Service Pension Scheme Regulations 2015

PART 1

Preliminary

Citation, extent and commencement

1. These Regulations—
 - (a) may be cited as the National Health Service Pension Scheme Regulations 2015;
 - (b) come into force on 1st April 2015; and
 - (c) extend to England and Wales.

Establishment of the NHS Pension Scheme 2015

- 2.—(1) A scheme is established for the payment of pensions and other benefits to or in respect of—
 - (a) health service workers mentioned in regulation 18(1); and
 - (b) such other persons mentioned in regulation 18(2).
- (2) This scheme is to be known as the NHS Pension Scheme 2015.

PART 2

Governance

CHAPTER 1

Management

Scheme manager

- 3.—(1) The Secretary of State is the scheme manager and is responsible for managing or administering—
 - (a) this scheme; and
 - (b) any statutory pension scheme that is connected with it.
- (2) The Secretary of State may make arrangements for any or all of the functions and responsibilities as scheme manager under these Regulations to be performed on the Secretary of State's behalf by—
 - (a) the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG)^{M1}; or
 - (b) one or more persons or bodies corporate or unincorporate (and where more than one, may include that Authority),

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but any such arrangements do not affect the Secretary of State's liability for those functions and responsibilities.

Marginal Citations

M1 The Authority was established by [S.I. 2005/2414](#).

Pension Board

4. There is to be a Pension Board constituted in accordance with Schedule 1 which has responsibility for assisting the scheme manager in relation to—

- (a) securing compliance with these Regulations and other legislation relating to the governance and administration of—
 - (i) this scheme; and
 - (ii) any statutory pension scheme that is connected with it;
- (b) securing compliance with any requirements imposed by the Pensions Regulator in relation to—
 - (i) this scheme; and
 - (ii) any statutory pension scheme that is connected with it.

Scheme Advisory Board

5. There is to be a Scheme Advisory Board constituted in accordance with Schedule 2 which has responsibility for providing advice where requested to the Secretary of State on the desirability of changes to—

- (a) this scheme; and
- (b) any statutory pension scheme that is connected with it.

CHAPTER 2

Actuary and valuation

Appointment of scheme actuary

6.—(1) The Secretary of State must appoint a person (the scheme actuary) for the purposes of carrying out—

- (a) actuarial valuations of this scheme and connected schemes required by Treasury directions given under section 11 of the 2013 Act; and
- (b) such other actuarial functions as may be required in relation to this scheme or a connected scheme.

(2) Before making an appointment under paragraph (1), the Secretary of State must be satisfied that the person to be appointed is appropriately qualified.

Actuarial valuations

7.—(1) The scheme actuary must carry out an actuarial valuation of this scheme and connected schemes as at the effective date.

(2) The scheme actuary must provide a valuation report to the scheme manager not later than such date as may be agreed by the Secretary of State.

- (3) The effective date is—
- (a) in respect of the first valuation under paragraph (1), 31st March 2016;
 - (b) in respect of subsequent valuations, such dates as enable the scheme to comply with Treasury directions as to valuations.

Employer cost cap

8.—(1) The employer cost cap for this scheme is 11.6% of the pensionable earnings of members of the scheme.

- (2) “Employer cost cap” has the same meaning as in section 12 of the 2013 Act.

Cost of scheme exceeds margins

9. The scheme actuary must give notice to the Secretary of State if the actuarial valuation shows that the cost of this scheme would be outside the margins specified in Treasury regulations pursuant to section 12(5) of the 2013 Act.

Procedure for agreeing steps to achieve target cost

10.—(1) This regulation applies if notice is given under regulation 9.

- (2) The Secretary of State must make a request to the Scheme Advisory Board—

- (a) to consider the matter; and
- (b) give advice to the Secretary of State as to the means by which the target cost is to be achieved.

(3) The Secretary of State must consider the advice and seek to reach agreement with the Scheme Advisory Board as to the means by which the target cost is to be achieved.

(4) In acting under paragraphs (2) and (3), the Secretary of State must specify the date before which—

- (a) the advice must be provided; and
- (b) agreement must be reached.

No agreement reached

11.—(1) This regulation applies if no agreement is reached as mentioned in regulation 10.

(2) If the costs of the scheme are outside the margins as mentioned in regulation 9, the Secretary of State must adjust the fraction specified in paragraph 13(3) of Schedule 9 so as to achieve the target cost.

Approval mechanism

12. An agreement under regulation 10 or an adjustment under regulation 11 must not be implemented unless—

- (a) the scheme actuary certifies that the agreement or adjustment (as the case may be) will have the effect of enabling the scheme to meet the target cost; and
- (b) the Treasury approves the agreement or adjustment.

Target cost

13. In regulations 10 to 12, “target cost” must be construed in accordance with section 12(5)(b) of the 2013 Act.

CHAPTER 3

General

Administrative matters

14. Schedule 3 makes provision in relation to—

- (a) scheme accounts and information;
- (b) claims for, and payments of, benefits;
- (c) interest on late payments;
- (d) assignment, offset and forfeiture;
- (e) insolvency of persons entitled to benefits;
- (f) determination of questions;
- (g) taxation.

PART 3

Scheme membership

CHAPTER 1

Joining and leaving

Joining and leaving the scheme

15.—(1) Each person who is eligible to join this scheme pursuant to regulation 18 is included in the scheme—

- (a) automatically on commencing NHS employment;
- (b) subject to regulation 16, where the person has previously opted out of this scheme, on the date determined under paragraph 2 of Schedule 4, where that paragraph applies;
- (c) subject to regulation 16, where the person has previously opted out of this scheme and is a person to whom section 3 or 5 of the 2008 Act ^{M2} applies—
 - (i) on that person's automatic enrolment date; or
 - (ii) on that person's automatic re-enrolment date, except where the notice referred to in paragraph 1 of Schedule 4 was given within the 12 months immediately preceding that date.

(2) A person who is included in this scheme may opt out at any time in accordance with paragraph 1 of Schedule 4.

(3) In this Chapter—

- (a) “the 2008 Act” means the Pensions Act 2008;
- (b) “the 2010 Regulations” means the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 ^{M3}.

(4) Paragraph (1) does not apply to a locum practitioner.

(5) A locum practitioner who wishes to join this scheme must make an application to the scheme manager in such form as the scheme manager requires.

(6) The application must not relate to a period of engagement which ended more than 10 weeks before the date of the application.

(7) If the scheme manager accepts an application under paragraph (5) the locum practitioner's membership of this scheme takes effect on the date specified by the scheme manager.

Marginal Citations

- M2** 2008 c.30. Section 3 was amended by sections 5 and 6 of the [Pensions Act 2011 \(c.19\)](#) and [S.I. 2014/623](#). Section 5 was amended by sections 4, 5 and 6 of the Pensions Act 2011 and [S.I. 2014/623](#), and prospectively amended by sections 37 and 38 of the [Pensions Act 2014 \(c.19\)](#).
- M3** [S.I. 2010/772](#), as amended by [S.I. 2012/215](#), 1257, 1477 and 2691, 2013/2328, 2556 and 3115, and 2014/715.

Re-joining the scheme

16.—(1) Subject to paragraph (2), a person who has opted out of this scheme in accordance with paragraph 1 of Schedule 4 may re-join this scheme pursuant to paragraph 2 of that Schedule.

(2) A person may not re-join this scheme during any period of absence from work for any reason.

Automatic enrolment legislation

17.—(1) Regulations 15 and 16 do not apply to a person to whom sections 3, 5 or 8 of the 2008 Act and regulations 9 or 15 of the 2010 Regulations ^{M4} applies (that is, a person who is subject to automatic enrolment or re-enrolment in this scheme as a qualifying scheme who does not wish to participate in it).

(2) Paragraph (1) does not affect the rights of such a person who subsequently joins or re-joins this scheme in circumstances where those provisions of the 2008 Act and 2010 Regulations do not apply.

Marginal Citations

- M4** [Regulation 9](#) was amended by regulation 5(1) and (6) of [S.I. 2013/2556](#).

CHAPTER 2

Membership

Membership

18.—(1) Subject to regulation 19, a person is eligible to join this scheme if the person is a health service worker and is—

- (a) employed by an NHS organisation listed in Part 1 of Schedule 5;
- [^{F1}(b) an individual who is a medical contractor, or who is employed by a medical contractor or dental contractor, listed in Part 2 of that Schedule;]
- (c) an individual who is employed by an independent provider in circumstances described in paragraph (4);
- (d) an individual who is a medical practitioner or dental practitioner listed in Part 3 of that Schedule; or

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- (e) who is employed by a determination employer: see Part 4 of that Schedule.
- (2) Subject to regulation 19, a person is eligible to join this scheme if the person is—
 - (a) an individual of a category or description listed in Schedule 6; and
 - (b) a person in respect of whom the Secretary of State has made a determination under section 25(5) of the 2013 Act.
- (3) Where such a determination is made, these Regulations apply to the person subject to any modification made by the Secretary of State by direction under section 25(8) of the 2013 Act.
- (4) The circumstances are that the person—
 - (a) performs services pursuant to an approved qualifying contract (see regulation 150(3)); and
 - (b) satisfies the wholly or mainly condition (see regulation 150(4)).
- (5) In paragraph (1), the reference to a person being employed does not include a reference to a person engaged under a contract for services.
- (6) Where, in relation to a single employment or engagement for provision of services, a person is eligible to join this scheme by virtue of more than one of the sub-paragraphs of paragraphs (1) or (2), the scheme manager must determine which one sub-paragraph is to be used as the basis for membership.

Textual Amendments

F1 Reg. 18(1)(b) substituted (1.4.2015) by [The National Health Service Pension Scheme \(Amendment\) Regulations 2015 \(S.I. 2015/581\)](#), regs. 1(b), **2(2)**

Restrictions on membership

- 19.—**(1) A person is not eligible to be a member of this scheme if the person—
- (a) is under the age of 16 or over the age of 75;
 - (b) is eligible to be an active member of—
 - (i) a superannuation scheme established under section 1 or 9 of the Superannuation Act 1972 ^{M5}; or
 - (ii) a public service pension scheme established under section 1(2)(a) or 1(2)(d) of the 2013 Act,
 in respect of service in such a scheme and is such a member;
 - ^{F2}(c)
 - (d) is a pensioner member of the 1995 Section or the 2008 Section except so far as otherwise provided pursuant to the National Health Service Pension Scheme (Transitional and Consequential Provisions) Regulations 2015;
 - (e) holds an honorary appointment and is not at the same time otherwise entitled to join this scheme;
 - (f) is employed by a dental contractor but is not a dental practitioner;
 - (g) is employed by—
 - (i) a GMS practice;
 - (ii) a PMS practice; or
 - (iii) an APMS contractor,
 - ^{F3}(iv) a primary care network management company]

but does not assist the employer in the provision of services for the purposes of the GMS contract, PMS agreement or APMS contract [^{F4}or primary care network standard sub-contract] (as the case may be);

- (h) is a person—
 - (i) who—
 - (aa) becomes entitled to a Tier 2 IHP (see regulation 90); and
 - (bb) opts to exchange the Tier 2 IHP for a lump sum pursuant to regulation 109;
or
 - (ii) to whom regulation 96(5)(b) applies.

(2) Schedules 7 and 8 make provision in relation to other persons who are not eligible to become members of this scheme except as permitted by the Secretary of State.

Textual Amendments

- F2** Reg. 19(1)(c) omitted (1.10.2023) by virtue of [The National Health Service Pension Schemes \(Partial Retirement etc.\) \(Amendment\) Regulations 2023 \(S.I. 2023/952\)](#), regs. 1(2), **23**
- F3** Reg. 19(1)(g)(iv) inserted (1.4.2023) by [The National Health Service Pension Schemes \(Amendment\) Regulations 2023 \(S.I. 2023/301\)](#), regs. 1(2), **8**
- F4** Words in reg. 19(1)(g) inserted (1.4.2023) by [The National Health Service Pension Schemes \(Amendment\) Regulations 2023 \(S.I. 2023/301\)](#), regs. 1(2), **8**

Marginal Citations

- M5** 1972 c.11. Section 1 deals with pension schemes for civil servants and section 9 deals with pension schemes for teachers.

CHAPTER 3

Pensionable service

Pensionable service

- 20.**—(1) Pensionable service is the aggregate of the following periods—
- (a) a period of service in which a member (M) contributes to this scheme under regulation 30 or 31;
 - (b) a period of absence from service which counts as pensionable service under regulation 21; and
 - (c) a period of service credited to M as pensionable service under Part 7 (transfers).
- (2) M's pensionable service does not include—
- (a) a period of service in respect of which an employing authority or the Secretary of State has paid contributions to another occupational pension scheme in respect of M;
 - (b) where M is a pensioner member or a deferred member, a period taken into account—
 - (i) in determining M's entitlement to the pension in payment or, as the case may be, the deferred pension; or
 - (ii) in calculating the amount of the pension;
 - (c) a period of service in which the Secretary of State's liability to provide benefits is discharged—

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- (i) by the payment of a contributions equivalent premium under section 55(2) of the 1993 Act ^{M6}[^{F5}or article 3 of the 2016 Order];
 - (ii) under regulation 42 (effect of refund); or
 - (iii) by the payment of a transfer value payment on transfer out under Part 7 (transfers).
- (3) Paragraph (4) applies if—
- (a) the employment in which M is an active member ceases; and
 - (b) a payment is made in respect of untaken leave.
- (4) If this paragraph applies—
- (a) M's pensionable service is treated as continuing for a period equal to the period of leave in respect of which payment is made; and
 - (b) the payment is treated as M's pensionable earnings for the period.
- (5) If M—
- (a) is a pensioner member; and
 - (b) is entitled to a pension under regulation 85 (partial retirement),
- paragraph (2)(b) applies only to so much of M's pensionable service as is mentioned in regulation 85(3)(a) (the specified percentage of the pensionable service in respect of which M is an active member on the election day).
- (6) For the purposes of calculating the length of a period of pensionable service—
- (a) a year is a period of 365 days;
 - (b) 29th February in any year is ignored;
 - (c) part of a day is treated as a whole day.

Textual Amendments

- F5** Words in [reg. 20\(2\)\(c\)\(i\)](#) inserted (6.4.2019) by [The National Health Service Pension Schemes, Additional Voluntary Contributions and Injury Benefits \(Amendment\) Regulations 2019 \(S.I. 2019/418\)](#), regs. 1(3), 77

Marginal Citations

- M6** [1993 c.48](#). Section 55(2) was substituted by section 141(1) of the [Pensions Act 1995 \(c.26\)](#) and amended by section 18 of, and paragraph 7 of Schedule 2 to, the [Welfare Reform and Pensions Act 1999 \(c.30\)](#) and sections 15 and 27 of, and paragraphs 1 and 26 of Schedule 4 and Part 6 of Schedule 7 to, the [Pensions Act 2007 \(c.22\)](#).

Absence from work

- 21.**—(1) Paragraph (2) applies if a member (M) is absent from work because of—
- (a) illness or injury;
 - (b) maternity leave;
 - (c) adoption leave;
 - (d) paternity leave; or
 - (e) parental leave [^{F6}shared parental leave or parental bereavement leave].
- (2) The period of absence counts as pensionable service if M contributes to this scheme under regulation 30 or 31 in respect of the period of absence.

- (3) Paragraph (4) applies if M—
- (a) is on leave of absence;
 - (b) is not within paragraph (1); and
 - (c) contributes to this scheme by contributions made at the same intervals as those made by M before the absence.
- (4) The maximum period of leave that can be counted as pensionable service is—
- (a) if M contributes for a continuous period of 6 months starting with the first day of M's leave of absence, 6 months;
 - (b) if M contributes for a continuous period of less than 6 months starting with that day, the period in respect of which M pays the contributions.
- (5) Paragraph (6) applies if M—
- (a) has paid contributions for the period mentioned in paragraph (4)(a);
 - (b) remains on leave of absence that is not within paragraph (1); and
 - (c) at the same intervals as contributions made by M before the absence, contributes both member contributions under regulation 30 or 31 and employing authority contributions under regulation 33.
- (6) The maximum period of leave that can be counted as pensionable service is—
- (a) if M contributes for a continuous period of 18 months starting immediately after the end of the period mentioned in paragraph (4)(a), 18 months; and
 - (b) if M contributes for a continuous period of less than 18 months starting immediately after the end of that period, the period in respect of which M pays the contributions.

Textual Amendments

- F6** Words in [reg. 21\(1\)\(e\)](#) substituted (6.4.2020) by [The Parental Bereavement Leave and Pay \(Consequential Amendments to Subordinate Legislation\) Regulations 2020 \(S.I. 2020/354\)](#), regs. 1, [37\(2\)](#)
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Modifications etc. (not altering text)

- C1** Reg. 21 applied (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) Regulations 2015 \(S.I. 2015/95\)](#), regs. 1(b), [8](#)

Qualifying service

- 22.**—(1) The qualifying service of a member (M) is the aggregate of the following periods—
- (a) M's pensionable service, except service mentioned in regulation 20(1)(c);
 - (b) a transfer in period;
 - (c) a transferred undertaking period;
 - (d) a period treated as qualifying service by virtue of paragraph (6);
 - (e) a period of relevant qualifying service in a connected scheme; and
 - (f) a period of service in respect of which M is a pensioner member in this scheme.
- (2) In determining a period of pensionable service for the purposes of paragraph (1)(a), paragraph (b) of regulation 20(2) must be ignored.

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(3) A transfer in period is the period equal to M's period as an active member in another occupational pension scheme (including a connected scheme) in relation to which a transfer value in respect of M's rights under the scheme has been accepted under Part 7.

(4) A transferred undertaking period is the period of employment that qualified M for rights under another occupational pension scheme where—

- (a) M became an active member of this scheme on the transfer of M's employment to a new employer as the result of a transfer of undertaking to that employer; and
- (b) no transfer payment in respect of those rights has been accepted under Part 7.

(5) Paragraph (6) applies if M is employed on a casual basis or is a locum practitioner and, for a period not exceeding 3 months—

- (a) M ceases to pay contributions because of a break not exceeding that period in the employment in which M is an active member, but before the end of the period M re-enters the employment on the same basis as before the break; or
- (b) M is not engaged as such a practitioner and so is not treated as being in pensionable service, but before the end of the period M is re-engaged as such a practitioner.

(6) The period mentioned in paragraph (5) is treated as a period when M continues to be in qualifying service and—

- (a) M is not required to re-join the scheme on re-entering the employment or on being re-engaged; and
- (b) if M is engaged as a locum practitioner, the period does not count as pensionable service as a practitioner.

(7) Relevant qualifying service in a connected scheme is service that counts for the purposes of—

- (a) regulation C3 of the 1995 Regulations; or
- (b) regulations 2.A.5 or 3.A.5 of the 2008 Regulations.

Modifications etc. (not altering text)

C2 Reg. 22(5)(6) applied (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) Regulations 2015 \(S.I. 2015/95\)](#), regs. 1(b), **9**

Effect of break in pensionable service

23.—(1) In the following table a break in a period of pensionable service of a member (M) in circumstances set out in column 1 has the effect described in column 2.

Table

<i>Column 1</i>	<i>Column 2</i>
Part 1	
M leaves active membership, is neither qualified for a retirement pension pursuant to regulation 72 nor is a pensioner member because of rights resulting from that membership, then returns to active service	
(1) (1) The break— (a) does not exceed one month; or	The period of pensionable service before the break is treated as continuous with the period after the break.

(b) is due to a trade dispute (within the meaning of section 35(1) of the Jobseekers Act 1995 ^{M7}).

- (2) No transfer payment is made to another scheme in respect of pensionable service before the break.
- (3) It is immaterial if a refund of contributions is paid to M in respect of the period before the break.

- (1) (1) The break does not exceed 5 years. The period of pensionable service before the break is treated as continuous with the period after the break.
- (2) No transfer payment is made to another scheme in respect of M's pensionable service before the break.
- (3) If a refund of contributions in respect of the period before the break is paid to M, it is repaid before the end of the period of 6 months starting on the first day of pensionable service after the break.

- (1) (1) The break exceeds 5 years. The period of pensionable service before the break is not treated as continuous with the period after the break and does not count towards qualifying service.
- (2) M may claim a refund of contributions in respect of pensionable service before the break.

Part 2

M leaves active membership, is qualified for a retirement pension pursuant to regulation 72 but is not a pensioner member because of rights resulting from that membership, then returns to active service

- (1) (1) The break does not exceed 5 years. The period of pensionable service before the break is treated as continuous with the period after the break.
- (2) No transfer payment is made to another scheme in respect of M's pensionable service before the break.
- (1) (1) The break exceeds 5 years. The period of pensionable service before the break is not treated as continuous with the period after the break, but does count as qualifying service.
- (2) No transfer payment is made to another scheme in respect of M's pensionable service before the break.

(2) In paragraph (1) a reference to the repayment of a refund of contributions includes the repayment of any interest on the contributions.

Marginal Citations

M7 1995 c.18.

CHAPTER 4

Pension accounts

Establishment of pension accounts

24.—(1) The scheme manager must establish and maintain one or more of the following pension accounts for each member of this scheme in accordance with Schedule 9—

- (a) active member's account;
- (b) deferred member's account;
- (c) pensioner member's account;
- (d) additional pension account;
- (e) pension credit member's account.

(2) A pension account—

- (a) may be kept in any form the scheme manager considers appropriate; and
- (b) must specify the details required by these Regulations.

(3) References in these Regulations to any amount specified in a pension account are references to the amount that is required by these Regulations to be so specified and not, if different, the amount actually so specified.

Closure of pension accounts on transfer out or repayment of balance of contributions

25.—(1) All pension accounts relating to a member (other than a pension credit member's account) must be closed if—

- (a) a transfer payment is made in respect of the member's accrued rights under this scheme; or
- (b) the member is repaid the balance of contributions under regulation 41.

(2) Paragraph (1) does not require the scheme manager to close an account that includes amounts to which the transfer payment or the refund does not relate or is not attributable.

(3) An account that is not closed because of paragraph (2) must be adjusted as the scheme manager considers appropriate to reflect the extinguishment of rights under this scheme.

Calculation of amount of accrued pension

26.—(1) For the purpose of a full retirement pension, the amount of accrued pension is calculated in accordance with paragraph 28 of Schedule 9.

(2) For the purpose of a partial retirement pension, the amount of accrued pension is calculated in accordance with paragraph 29 of Schedule 9.

(3) For the purpose of a deferred member's account, the amount of accrued earned pension is calculated in accordance with paragraph 30 of Schedule 9.

PART 4

Contributions

CHAPTER 1

Determination and payment

Pensionable earnings

27.—(1) The pensionable earnings of a member (M) are defined by the appropriate entry in the Table where—

- (a) column 1 applies an identifying letter to the group to which M belongs;
- (b) column 2 describes M's employment in or engagement with a health service activity; and
- (c) column 3 specifies the nature of the income derived by M from the employment or engagement.

Table

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
Group	Employment/Engagement	Income
A	M is employed by an NHS organisation.	Salary, wages, fees and other regular payments made to M in respect of M's employment but not including—
B	M is employed by a medical contractor, a non-GP provider or a dental contractor.	(a) bonuses;
C	M is employed by— (a) a determination employer; or (b) an independent provider.	(b) payments made to cover expenses; (c) payments for overtime; or (d) pay awards or increases which are expressed by the Secretary of State to be non-consolidated.
D	M is— (a) a medical practitioner; (b) a dental practitioner; or (c) a non-GP provider.	Practitioner income: see Schedule 10.

(2) M's pensionable earnings may be attributable to M belonging concurrently to more than one group in the Table.

(3) If M is a non-GP provider—

- (a) paragraph (2) does not apply;
- (b) if M derives income from more than one entity as a non-GP provider, M's practitioner income in respect of only one of those may be taken into account for the purpose of establishing M's pensionable earnings.

(4) If, in addition to an employment mentioned in paragraph (1), M holds an honorary office or appointment, a distinction award payable to M as a consequence of holding the office or appointment is treated—

- (a) where M is in one employment, as pensionable earnings of that employment;
- (b) where M is in two or more employments, as pensionable earnings of such of the employments as the scheme manager thinks appropriate.

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- (5) In paragraph (1), a practitioner is a person who is—
- (a) a fully registered person (within the meaning of section 55 of the Medical Act 1983 ^{M8}) who is not a GP registrar and is—
 - (i) a medical practitioner;
 - (ii) an ophthalmic practitioner; or
 - (iii) a locum practitioner; or
 - (b) a dental practitioner.

Marginal Citations

M8 1983 c.54. The definition of “fully registered person” has been amended by S.I. 2000/3041, 2006/1914, 2007/3101 and 2008/1774.

Pensionable earnings: break in service

- 28.**—(1) Paragraph (3) applies to a member (M) if—
- (a) the absence condition is satisfied; and
 - (b) the earnings used to calculate M's pensionable earnings under regulation 27 are reduced or cease.
- (2) The absence condition is that M is absent from work because of—
- (a) illness or injury;
 - (b) maternity leave;
 - (c) adoption leave;
 - (d) paternity leave; or
 - (e) parental leave [^{F7}shared parental leave or parental bereavement leave].
- (3) Amounts equal to the pensionable earnings that M would have received but for the absence are treated as having been paid to M.
- (4) Paragraph (3) does not apply to M as respects any period after the earnings used to calculate M's pensionable earnings under regulation 27 have ceased to be paid to M if—
- (a) M is neither a practitioner nor a non-GP provider; and
 - (b) M is within paragraph (2)(a).
- (5) For the purposes of regulations 27 to 31, amounts equal to reduced earnings to which paragraph (6) applies are treated as pensionable earnings.
- (6) The reduced earnings are the amount to which the earnings used to calculate M's pensionable earnings under regulation 27 are reduced—
- (a) for any period while M is within paragraph (2);
 - (b) for any period (period A) while M is within paragraph (2)(b) to (e) and during a period following that period (period B) whilst M continues to be within that paragraph and M's earnings are reduced to zero.
- (7) For the purposes of paragraph (6)(b)—
- (a) pay received by a woman on maternity leave in respect of days during which she returns to work for the purpose of keeping in touch with the workplace must be ignored;
 - (b) earnings reduced to zero in period B are treated as if they were reduced to the amount applicable to period A.

(8) During any period of absence which counts as pensionable service under regulation 21(4) or (6) (up to 24 months leave of absence with full contributions), amounts equal to the rate of M's pensionable earnings immediately before the absence are treated as pensionable earnings.

(9) This paragraph applies if M belongs to group D in regulation 27(1) and M's earnings have been reduced or ceased—

- (a) if M is one of a number of practitioners or non-GP providers who have elected under paragraph 4(4) of Schedule 10, each practitioner's or non-GP provider's pensionable earnings are calculated as if the partnership's aggregate pensionable earnings were equal to the amount of the partnership's aggregate pensionable earnings for the period of 12 months ending immediately before M's earnings were reduced or ceased;
- (b) in any other case, M is treated as having continued to receive the same average rate of pensionable earnings as during that period.

(10) If the earnings used to calculate M's pensionable earnings cease during a period of absence specified in paragraph (2)—

- (a) a practitioner or non-GP provider within paragraph (2)(a) is treated as having continued in pensionable employment for a period of 12 months starting on the date on which M's earnings ceased and M is not treated as having left pensionable employment until the end of that period;
- (b) a practitioner or non-GP provider falling within paragraph (2)(b) to (e) who paid contributions on the basis of reduced earnings in accordance with paragraphs (5) and (6) must continue to pay contributions at that rate, but no refund of contributions or other benefit is payable until M actually leaves pensionable employment;
- (c) a member other than a practitioner or non-GP provider is treated (subject to paragraph (7)) as having left pensionable employment, but no refund of contributions or other benefit is payable until M actually leaves pensionable employment.

(11) For the purposes of paragraph (10)(a)—

- (a) during the 12 month period, the practitioner's or non-GP provider's pensionable earnings are to be calculated in accordance with paragraph (9)(a) or (b);
- (b) at the end of the 12 month period, when M is regarded as having left pensionable employment, no refund of contributions or other benefit is payable until M leaves pensionable employment.

(12) For the purposes of paragraph (10)(b), the rate of contributions payable is the rate that would have been payable on the basis of reduced earnings in accordance with paragraph (5) and (6)(a) if the practitioner's or non-GP provider's reduced earnings had excluded earnings for a day during which the practitioner or non-GP provider, whilst on maternity leave, returned to work for the purpose of keeping in touch with the workplace.

(13) If M fails to pay contributions which are required to be paid in respect of a period of absence to which this regulation applies—

- (a) M is treated as having left pensionable employment; but
- (b) no refund of contributions or other benefit is payable until M actually leaves pensionable employment.

(14) Benefits payable on the death of a member whose earnings ceased during a period of absence to which paragraph (2) applies are calculated as if the member had died in pensionable employment the day before the earnings ceased.

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Textual Amendments

- F7** Words in [reg. 28\(2\)\(e\)](#) substituted (6.4.2020) by [The Parental Bereavement Leave and Pay \(Consequential Amendments to Subordinate Legislation\) Regulations 2020 \(S.I. 2020/354\)](#), regs. 1, [37\(3\)](#)

Pensionable earnings: more than one employment

29.—(1) This regulation applies if, at any time, a member (M) is in receipt of pensionable earnings in respect of two or more employments each of which is attributable to M belonging to any of groups A to C in the table in regulation 27.

(2) If it appears to the scheme manager that the total pensionable earnings for the employments exceeds the comparable amount, the excess is ignored for the purposes of this Part.

(3) The comparable amount is the amount that would be the pensionable earnings for a single comparable whole-time employment, not held concurrently with any other employment, under which services of the kinds performed in the two or more employments are performed.

(4) Each employing authority of M's must provide the scheme manager with such information relating to M's employment as the scheme manager requires for the purpose of enabling the scheme manager to determine what is a single comparable whole-time employment.

(5) In determining what is a single comparable whole-time employment, the scheme manager must have regard to guidance issued by the scheme actuary for the purpose.

(6) It is immaterial whether one or more of the employments mentioned in paragraph (1)—

- (a) is with the same employing authority; or
- (b) is treated as a part-time employment.

(7) An employment includes a contract to perform services.

Members' contributions: employees

30.—(1) This regulation applies in relation to an active member (M) who belongs to group A, B or C in regulation 27(1).

(2) M must make contributions to this scheme (“members' contributions”)—

- (a) in respect of M's pensionable earnings;
- (b) at M's contribution rate for the scheme year in question.

(3) Where paragraph 2 of Schedule 11 (determination of pensionable earnings for the purposes of setting a contribution rate for members) applies, M's contribution rate for [^{F8}the scheme year [^{F9}2023/24]] is the percentage specified in column 2 of the following table in respect of the corresponding pensionable earnings band specified in column 1 into which M's pensionable earnings fall.

[^{F10}Table Scheme Year [^{F9}2023/24]]

[^{F11} Column 1]	Column 2
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
Up to £13,246	5.1%
£13,247 to £17,673	5.7%

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^{F11}Column 1	Column 2
£17,674 to £24,022	6.1%
£24,023 to £25,146	6.8%
£25,147 to £29,635	7.7%
£29,636 to £30,638	8.8%
£30,639 to £45,996	9.8%
£45,997 to £51,708	10.0%
£51,709 to £58,972	11.6%
£58,973 to £75,632	12.5%
£75,633 and above	13.5%]

^{F12}(3A) Where paragraph 2A or 3 of Schedule 11 applies, M's contribution rate for the scheme year ^{F13}2023/24] is the percentage specified in column 2 of the following table in respect of the corresponding pensionable earnings band specified in column 1 into which M's pensionable earnings fall.

Table Scheme Year ^{F13}2023/24]

^{F14}Column 1	Column 2
Pensionable earnings band	Contribution percentage rate
Up to £13,246	5.1%
£13,247 to £17,673	5.7%
£17,674 to £24,022	6.1%
£24,023 to £25,146	6.8%
£25,147 to £29,635	7.7%
£29,636 to £30,638	8.8%
£30,639 to £45,996	9.8%
£45,997 to £51,708	10.0%
£51,709 to £58,972	11.6%
£58,973 to £75,632	12.5%
£75,633 and above	13.5%]

(4) The Secretary of State must—

- (a) with the consent of the Treasury; and
- (b) having considered the advice of the scheme actuary,

determine the pensionable earnings bands and contribution percentage rates in the ^{F15}tables] set out in this regulation in respect of each subsequent scheme year.

(5) M's employing authority must deduct member contributions from M's pensionable earnings and pay them to the scheme manager not later than the 19th day of the month following that in which the earnings were paid to M.

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(6) If M's employing authority has failed to deduct contributions pursuant to paragraph (5), the scheme manager may recover the amount of unpaid contributions by deduction from benefits payable to, or in respect of, M if the scheme manager has notified M of an intention to do so.]]

Textual Amendments

- F8** Words in reg. 30(3) substituted (1.10.2022) by The National Health Service Pension Schemes (Member Contributions etc.) (Amendment) Regulations 2022 (S.I. 2022/273), regs. 1(3), **3(2)(a)**
- F9** Word in reg. 30(3) substituted (1.4.2023) by The National Health Service Pension Schemes (Amendment) Regulations 2023 (S.I. 2023/301), regs. 1(2), **9(2)**
- F10** Reg. 30(3) Table substituted (1.10.2022) by The National Health Service Pension Schemes (Member Contributions etc.) (Amendment) Regulations 2022 (S.I. 2022/273), regs. 1(3), **3(2)(b)** (as amended by S.I. 2022/991, regs. 1(2), **2(2)(a)**)
- F11** Reg. 30(3) Table substituted (with effect from 1.4.2023) by The National Health Service Pension Scheme (Member Contributions) (Amendment) Regulations 2023 (S.I. 2023/576), regs. 1(2)(3), **2(2)(a)**
- F12** Reg. 30(3A) inserted (1.10.2022) by The National Health Service Pension Schemes (Member Contributions etc.) (Amendment) Regulations 2022 (S.I. 2022/273), regs. 1(3), **3(3)** (as amended by S.I. 2022/991, regs. 1(2), **2(2)(b)**)
- F13** Word in reg. 30(3A) substituted (1.4.2023) by The National Health Service Pension Schemes (Amendment) Regulations 2023 (S.I. 2023/301), regs. 1(2), **9(3)**
- F14** Reg. 30(3A) Table substituted (with effect from 1.4.2023) by The National Health Service Pension Scheme (Member Contributions) (Amendment) Regulations 2023 (S.I. 2023/576), regs. 1(2)(3), **2(2)(b)**
- F15** Word in reg. 30(4) substituted (1.10.2022) by The National Health Service Pension Schemes (Member Contributions etc.) (Amendment) Regulations 2022 (S.I. 2022/273), regs. 1(3), **3(4)**

Members' contributions: practitioners and non-GP providers

31.—(1) This regulation applies to an active member (M) who belongs to group D in regulation 27(1).

(2) M must make contributions to this scheme (“members' contributions”)—

- (a) in respect of M's pensionable earnings;
- (b) at M's contribution rate for the scheme year in question.

(3) M's contribution rate for [^{F16}the scheme year in question] is the percentage specified in column 2 of the [^{F17}relevant] table in paragraph (9) ^{F18}...in respect of the corresponding pensionable earnings band specified in column 1 of the [^{F19}relevant table in paragraph (9)] into which M's pensionable earnings fall.

(4) The Secretary of State must—

- (a) with the consent of the Treasury; and
- (b) having considered the advice of the scheme actuary,

determine the pensionable earnings bands and contribution percentage rates specified in [^{F20}paragraph (9)] in respect of each subsequent scheme year.

(5) In determining members' contributions payable in accordance with this regulation, a host Board must take account of pensionable earnings from all practitioner service, including such pensionable earnings determined by another host Board.

(6) An employing authority that is not a host Board must, in respect of pensionable earnings it pays to M, take advice from a relevant host Board in determining the contributions payable in accordance with this regulation.

(7) If M is engaged under a contract of service or for services by an employing authority or is a partner or shareholder in an employing authority that is not an OOH provider, the authority must—

- (a) deduct contributions due under this regulation from any pensionable earnings it pays to M; and
- (b) if it is not also the host Board, pay the contributions to the host Board not later than the 7th day of the month following the month in which the earnings were paid.

(8) In any other case, M must pay members' contributions to the host board not later than the 7th day of the month following the month in which the earnings were paid.

[^{F21}(9) For the purposes of this regulation, the “relevant table” means—

- (a) in respect of [^{F22}the scheme year 2022/23, Table 1A and Table 1B as applicable];
- (b) in respect of the scheme year [^{F23}2023/24], Table 2.

[^{F24}Table 1A Scheme Year 2022/23 from 1st April 2022 to 30th September 2022]

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
Up to £15,431	5.0%
£15,432 to £21,477	5.6%
£21,478 to £26,823	7.1%
£26,824 to £47,845	9.3%
£47,846 to £70,630	12.5%
£70,631 to £111,376	13.5%
£111,377 to any higher amount	14.5%

[^{F25}Table 1B Scheme Year 2022/23 from 1st October 2022 to 31st March 2023]

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
Up to £13,246	5.1%
£13,247 to £16,831	5.7%
£16,832 to £22,878	6.1%
£22,879 to £23,948	6.8%
£23,949 to £28,223	7.7%
£28,224 to £29,179	8.8%
£29,180 to £43,805	9.8%
£43,806 to £49,245	10.0%
£49,246 to £56,163	11.6%

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<i>Column 1</i>	<i>Column 2</i>
£56,164 to £72,030	12.5%
£72,031 and above	13.5%]

Table 2 Scheme Year [^{F26}2023/24]

^{F27} <i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
Up to £13,246	5.1%
£13,247 to £17,673	5.7%
£17,674 to £24,022	6.1%
£24,023 to £25,146	6.8%
£25,147 to £29,635	7.7%
£29,636 to £30,638	8.8%
£30,639 to £45,996	9.8%
£45,997 to £51,708	10.0%
£51,709 to £58,972	11.6%
£58,973 to £75,632	12.5%
£75,633 and above	13.5%]

(10) Regulations 38 and 39 and Schedule 12 make provision supplementary to this regulation and references in those regulations to [^{F28}the relevant table] must be construed in accordance with paragraph (3).]

Textual Amendments

- F16** Words in reg. 31(3) substituted (1.10.2022) by The National Health Service Pension Schemes (Member Contributions etc.) (Amendment) Regulations 2022 (S.I. 2022/273), regs. 1(3), **4(2)(a)**
- F17** Word in reg. 31(3) inserted (1.10.2022) by The National Health Service Pension Schemes (Member Contributions etc.) (Amendment) Regulations 2022 (S.I. 2022/273), regs. 1(3), **4(2)(b)**
- F18** Words in reg. 31(3) omitted (1.10.2022) by virtue of The National Health Service Pension Schemes (Member Contributions etc.) (Amendment) Regulations 2022 (S.I. 2022/273), regs. 1(3), **4(2)(c)**
- F19** Words in reg. 31(3) substituted (1.10.2022) by The National Health Service Pension Schemes (Member Contributions etc.) (Amendment) Regulations 2022 (S.I. 2022/273), regs. 1(3), **4(2)(d)**
- F20** Words in reg. 31(4) substituted (1.10.2022) by The National Health Service Pension Schemes (Member Contributions etc.) (Amendment) Regulations 2022 (S.I. 2022/273), regs. 1(3), **4(3)**
- F21** Reg. 31(9) substituted (1.10.2022) by The National Health Service Pension Schemes (Member Contributions etc.) (Amendment) Regulations 2022 (S.I. 2022/273), regs. 1(3), **4(4)** (as amended by S.I. 2022/991, regs. 1(3), **2(3)**)
- F22** Words in reg. 31(9)(a) substituted (1.4.2023) by The National Health Service Pension Schemes (Amendment) Regulations 2023 (S.I. 2023/301), regs. 1(2), **10(2)(a)**
- F23** Word in reg. 31(9)(b) substituted (1.4.2023) by The National Health Service Pension Schemes (Amendment) Regulations 2023 (S.I. 2023/301), regs. 1(2), **10(2)(b)**
- F24** Words in reg. 31(9) substituted (1.4.2023) by The National Health Service Pension Schemes (Amendment) Regulations 2023 (S.I. 2023/301), regs. 1(2), **10(2)(c)**

- F25** Reg. 31(9) Table 1B inserted (1.4.2023) by The National Health Service Pension Schemes (Amendment) Regulations 2023 (S.I. 2023/301), regs. 1(2), **10(2)(d)**
- F26** Words in reg. 31(9) substituted (1.4.2023) by The National Health Service Pension Schemes (Amendment) Regulations 2023 (S.I. 2023/301), regs. 1(2), **10(2)(e)**
- F27** Reg. 31(9) Table 2 substituted (with effect from 1.4.2023) by The National Health Service Pension Scheme (Member Contributions) (Amendment) Regulations 2023 (S.I. 2023/576), regs. 1(2)(3), **2(3)**
- F28** Words in reg. 31(10) substituted (1.10.2022) by The National Health Service Pension Schemes (Member Contributions etc.) (Amendment) Regulations 2022 (S.I. 2022/273), regs. 1(3), **4(5)**

Modifications etc. (not altering text)

- C3** Reg. 31 modified (temp.) (1.4.2023) by The National Health Service Pension Schemes (Amendment) Regulations 2023 (S.I. 2023/301), regs. 1(2), **25** (with reg. 24)

Members' contributions: redundancy

32.—(1) This regulation applies if—

- (a) a member's (M) employment is terminated by reason of redundancy;
- (b) M will become entitled to payment of a pension under regulation 82 on the entitlement day for a premature retirement pension;
- (c) the additional contribution option applies to M; and
- (d) unless M pays an additional contribution as mentioned in paragraph (2), the amount of M's pension would be reduced pursuant to paragraph 7(5) of Schedule 13.

(2) M may pay such additional contribution as the scheme manager (having regard to the advice of the scheme actuary) determines will be sufficient to meet the cost of the pension insofar as that is not met by the contribution paid by M's employing authority under regulation 35.

(3) For the purposes of paragraph (2), the scheme manager must provide M's employing authority with such information as will enable the employing authority to notify M as to the effect that paying contributions of any particular amount would have on the amount of the pension payable to M.

(4) The amount of the additional contribution payable pursuant to paragraph (2) must be—

- (a) not less than £500 (or such other figure as the scheme manager thinks appropriate);
- (b) a whole number of pounds divisible by £10.

(5) For the purposes of paragraph (4)—

- (a) if the insufficiency mentioned in paragraph 7(4) of Schedule 13 is less than £500, sub-paragraph (a) is ignored;
- (b) if it is necessary to do so to comply with sub-paragraph (b), the figure must be rounded down to the nearest whole number of pounds divisible by £10.

(6) If M decides to pay an additional contribution, the amount of the contribution must be paid to M's employing authority in sufficient time to enable the authority to remit the payment to the scheme manager at the same time as the authority pays the contribution it is required to pay pursuant to regulation 35.

(7) The additional contribution option applies if the terms and conditions of M's employment entitle M optionally to make an additional contribution towards the cost of paying the pension if the lump sum payment is insufficient to meet that cost in full.

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Contributions by employing authorities

33.—(1) The employing authority of an active member of this scheme must contribute to the scheme in respect of the pensionable earnings of the member at the employing authority's standard rate: [^{F29}20.6%].

(2) Paragraph (3) applies if—

- (a) during the same period a person who belongs to any of groups A to C in the table in regulation 27(1) holds more than one employment (whether under a contract of service or for services) with an employing authority; and
- (b) is an active member of this scheme in respect of each employment.

(3) This regulation and regulations 34 and 35 apply in respect of each employment as if it were the only employment held by the person.

(4) The Secretary of State may direct that for the purposes of this Part, “employing authority” includes one or more of the following—

- (a) the transferee under a transfer of staff order pursuant to—
 - (i) in the case of England, section 28(4)(b) of, or paragraph 29(3) of Schedule 4 to, the 2006 Act ^{M9};
 - (ii) in the case of Wales, section 22(4)(b) of, or paragraph 8 of Schedule 3 to, the 2006 (Wales) Act ^{M10};
- (b) a successor, transmittee or assignee of all or part of an employing authority's business or functions;
- (c) the last employing authority of a person to whom these Regulations apply.

(5) The employing authority's standard rate contribution must be paid to the scheme manager not later than the 19th day of the month following that in which the member is paid the pensionable earnings to which the contribution relates.

(6) A member's employing authority is determined in accordance with the following table where column 1 describes the nature of the member's engagement in the provision of health services and column 2 identifies the employing authority relating to that engagement.

Table

<i>Column 1</i> <i>Nature of engagement</i>	<i>Column 2</i> <i>Employing authority</i>
Employment by an NHS organisation	The NHS organisation
Employment by a GMS practice, a PMS practice or an APMS contractor or OOH provider [^{F30} or a primary care network management company]	The GMS practice, PMS practice or APMS contractor or OOH provider [^{F30} or a primary care network management company] in question
Employment by a determination employer	The determination employer
Employment by an independent provider	The independent provider
Medical practitioner employed by a medical contractor or non-GP provider [^{F30} or a primary care network management company]	The host Board
Medical contractor or non-GP provider [^{F30} or a primary care network management company]	The host Board

(including an ophthalmic medical practitioner with a GOS contract)

Dental practitioner or foundation trainee providing services to a dental contractor	The host Board
Dental contractor	The host Board

(7) Despite paragraph (1), employing authority contributions for—

- (a) a medical practitioner employed by a medical contractor or non-GP provider must be paid by the medical contractor or non-GP provider (as the case may be);
- (b) a medical contractor (including an ophthalmic medical practitioner with a GOS contract) or a non-GP provider must be paid by the medical contractor or non-GP provider (as the case may be).

(8) Contributions payable by an employing authority under regulation 48(3) or 57 for a medical practitioner employed by a medical contractor or non-GP provider must be paid by the medical contractor or non-GP provider (as the case may be) rather than the host Board.

Textual Amendments

- F29** Word in reg. 33(1) substituted (1.4.2019) by [The National Health Service Pension Schemes, Additional Voluntary Contributions and Injury Benefits \(Amendment\) Regulations 2019 \(S.I. 2019/418\)](#), regs. 1(2), **80**
- F30** Words in reg. 33(6) table inserted (1.4.2023) by [The National Health Service Pension Schemes \(Amendment\) Regulations 2023 \(S.I. 2023/301\)](#), regs. 1(2), **11**

Marginal Citations

- M9** [2006 c.41](#). Paragraph 29(3) of Schedule 4 was amended by section 55(1) of, and paragraphs 22(1) and (9) of Schedule 4 to, the [Health and Social Care Act 2012 \(c.7\)](#).
- M10** [2006 c.42](#). Paragraph 8 of Schedule 3 was amended by section 297 of, and paragraphs 12 and 40(1) and (5) of Schedule 21 to, the [Health and Social Care Act 2012](#).

Employing authority contributions: interests of efficiency

34.—(1) This regulation applies if—

- (a) a member's (M) employment is terminated by M's employing authority in the interests of the efficient discharge of the employing authority's functions; and
- (b) M will become entitled to payment of a pension under regulation 81 on the entitlement day for a premature retirement pension.

(2) The employing authority must make a contribution to the scheme manager in respect of the amount the scheme manager determines is required to meet the cost of paying the premature retirement pension under regulation 81.

(3) Paragraph (4) applies if—

- (a) a pension becomes payable to M under regulation 81 in respect of the termination of M's employment with an employing authority (the “ first authority ”); and
- (b) M elects that at the same time a pension also becomes payable to M in respect of pensionable service with one or more other employing authorities.

(4) The first authority must also make any additional contribution for which the other employing authority or authorities would be liable in accordance with paragraph (2) if the other authority or authorities had terminated M's employment as mentioned in paragraph (1)(a).

(5) An employing authority is not responsible for meeting any costs in respect of the early payment of benefits to the extent that the benefits are attributable to contributions made under Chapter 5 of Part 4 (additional pension).

(6) An employing authority must pay contributions under this regulation by a single payment made within one month of the date on which the pension under regulation 81 becomes payable.

(7) The scheme manager, on the advice of the scheme actuary, must determine—

- (a) the costs mentioned in paragraph (2);
- (b) the amount of the payment mentioned in paragraph (4).

Employing authority contributions: redundancy

35.—(1) This regulation applies if—

- (a) a member's (M) employment is terminated by reason of redundancy; and
- (b) M will become entitled to payment of a pension under regulation 82 on the entitlement day for a premature retirement pension.

(2) M's employing authority must make a single lump sum contribution to the scheme manager of the relevant amount.

(3) The contribution must be paid—

- (a) if the additional contribution option applies, not less than one month before the entitlement day (see regulation 83);
- (b) in any other case, within one month of the date on which the pension under regulation 82 became payable.

(4) The relevant amount is—

- (a) if the additional contribution option applies, whichever is the lesser of—
 - (i) the amount the scheme manager determines is required to meet the cost of paying the premature retirement pension under regulation 82; and
 - (ii) the amount the employing authority would otherwise be required to pay to M in consequence of M's redundancy;
- (b) in any other case, the amount determined under sub-paragraph (a)(i).

(5) The reference to the additional contribution option must be construed in accordance with regulation 32(7).

(6) Paragraph (7) applies if—

- (a) a pension becomes payable to M under regulation 82 in respect of the termination of M's employment with an employing authority (the “ first authority ”); and
- (b) M elects that at the same time a pension also becomes payable to M in respect of pensionable service with one or more employing authorities.

(7) The first authority must also make any additional contribution for which the other employing authority or authorities would be liable in accordance with paragraph (2) if the other authority or authorities had terminated M's employment as mentioned in paragraph (1)(a).

(8) In making a determination for the purposes of paragraph (4)(a)(i), the scheme manager must have regard to the advice of the scheme actuary.

Interest and administration charges: late paid contributions

- 36.—(1) There is a chargeable event if an employing authority fails to pay—
- (a) the contributions [^{F31}and the scheme administration charge] it is required to pay under regulation 30, 31, 33, 34, 35, [^{F32}36A,] 48 or 57;
 - (b) on or before the date specified in the regulation concerned.
- (2) Where there is a chargeable event, the scheme manager may determine what amount of contributions [^{F33}or, as the case may be, the scheme administration charge] are unpaid having regard to—
- (a) the amount of contributions [^{F33}or, as the case may be, the scheme administration charge] historically paid at a chargeable event by that employing authority;
 - (b) any reasons or explanation provided by the employing authority for the change in the amount of contributions [^{F33}or, as the case may be, the scheme administration charge] (if any) it has paid at such an event;
 - (c) any other factors that the scheme manager considers relevant.
- [^{F34}(3) Where there is a chargeable event, the employing authority is liable to pay—
- (a) standard rate interest on the amount of unpaid contributions constituting that event or the amount of unpaid scheme administration charge constituting that event; or
 - (b) both interest and the charge referred to in (a); and
 - (c) a supplementary charge in respect of each such event.]
- (4) Where the scheme manager becomes aware of a chargeable event, the scheme manager must give the employing authority a written notice specifying—
- (a) the date of the chargeable event;
 - (b) the amount of unpaid contributions [^{F35}or, as the case may be, the scheme administration charge] determined under paragraph (2);
 - (c) the amount of interest at the standard rate payable in respect that event;
 - (d) the amount of [^{F36}supplementary charge] payable in respect of it; and
 - (e) that payment of the amounts referred to in paragraphs (c) and (d) is to be made before the end of the period of 1 month starting with the date of the notice and that failure to do so incurs further interest and [^{F37}supplementary charges].
- (5) An amount payable by way of interest or payable by way of an [^{F38}supplementary charge] is to be paid as a single lump sum unless the scheme manager—
- (a) considers the case to be exceptional; and
 - (b) considers it appropriate for all, or part, of the amount to be paid over a period and by a number of instalments determined by the scheme manager.
- (6) Where the scheme manager considers the case to be exceptional, nothing in the preceding paragraphs prevents the scheme manager from waiving all or any part of the amount of interest, or all or any [^{F39}supplementary charges], payable.
- (7) The standard rate of interest in respect of arrears for the scheme year 2015/2016 and subsequent years is the rate of the consumer prices index for the month of February immediately preceding the scheme year in which the chargeable event arose plus 3% compounded at annual intervals.
- (8) The [^{F40}supplementary charge] in respect of arrears for the scheme year 2015/2016 and subsequent years is £75.

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(9) In any particular case the Secretary of State may direct that, for the purposes of this regulation, “employing authority” includes one or more of—

- (a) the transferee under a transfer of staff order pursuant to—
 - (i) in the case of England, section 28(4)(b) of, or paragraph 29(3) of Schedule 4 to, the 2006 Act ^{M11};
 - (ii) in the case of Wales, section 22(4)(b) of, or paragraph 8 of Schedule 3 to, the 2006 (Wales) Act ^{M12};
- (b) a successor, transmittee or assignee of all or part of an employing authority's business or functions.

(10) In paragraph (7), “consumer prices index” means the all item consumer prices index published by the UK Statistics Authority.

Textual Amendments

- F31** Words in [reg. 36\(1\)\(a\)](#) inserted (1.4.2017) by [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), regs. 2(c), **30(2)(a)**
- F32** Word in [reg. 36\(1\)\(a\)](#) inserted (1.4.2017) by [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), regs. 2(c), **30(2)(b)**
- F33** Words in [reg. 36\(2\)](#) inserted (1.4.2017) by [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), regs. 2(c), **30(3)**
- F34** [Reg. 36\(3\)](#) substituted (1.4.2017) by [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), regs. 2(c), **30(4)**
- F35** Words in [reg. 36\(4\)\(b\)](#) inserted (1.4.2017) by [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), regs. 2(c), **30(5)(a)**
- F36** Words in [reg. 36\(4\)\(d\)](#) substituted (1.4.2017) by [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), regs. 2(c), **30(5)(b)**
- F37** Words in [reg. 36\(4\)\(e\)](#) substituted (1.4.2017) by [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), regs. 2(c), **30(5)(c)**
- F38** Words in [reg. 36\(5\)](#) substituted (1.4.2017) by [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), regs. 2(c), **30(6)**
- F39** Words in [reg. 36\(6\)](#) substituted (1.4.2017) by [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), regs. 2(c), **30(7)**
- F40** Words in [reg. 36\(8\)](#) substituted (1.4.2017) by [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), regs. 2(c), **30(8)**

Marginal Citations

- M11** [2006 c.41](#). Paragraph 29(3) of Schedule 4 was amended by section 55(1) of, and paragraphs 22(1) and (9) of Schedule 4 to, the [Health and Social Care Act 2012 \(c.7\)](#).
- M12** [2006 c.42](#). Paragraph 8 of Schedule 3 was amended by section 297 of, and paragraphs 12 and 40(1) and (5) of Schedule 21 to, the [Health and Social Care Act 2012](#).

[^{F41}Scheme Administration Charge

36A.—(1) Each employing authority must, in respect of each member who is liable to contribute to this scheme, pay a scheme administration charge in accordance with this regulation.

(2) The scheme administration charge is to be paid to the scheme manager on the same day, and in respect of the same period, as the employer's standard rate contributions under regulation 33 are to be paid by that employing authority in respect of the member referred to in paragraph (1).

(3) The scheme administration charge is to be calculated as a percentage of that member's pensionable earnings, for period mentioned in paragraph (2).

(4) The percentage mentioned in paragraph (3) is to be determined by the scheme manager taking into account the administrative costs of running the scheme and notified to each employing authority.]

Textual Amendments

F41 Reg. 36A inserted (1.4.2017) by [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), regs. 2(c), **31**

Members' contributions: records and estimates

37.—(1) An employing authority must, in respect of a person, keep a record of—

- (a) contributions paid under regulation 30, 48, 62 or 64;
- (b) contributions due under regulation 30, 48, 62 or 64, but unpaid;
- (c) contributions paid under regulation 33 [^{F42}, 34 or 35];
- (d) contributions due under regulation 33 [^{F42}, 34 or 35], but unpaid;
- (e) hours or sessions of service if the employment is not whole-time employment;
- (f) pensionable earnings;
- (g) absences from work referred to in regulation 21;
- (h) starting and termination of pensionable employment;
- (i) reasons for termination of pensionable employment.

(2) The record must be in a manner approved by the scheme manager.

(3) Unless the scheme manager waives the requirement, an employing authority must provide a composite statement in respect of the matters referred to in paragraph (1) in respect of all scheme members to the scheme manager before the end of the period of 2 months starting with the end of each scheme year.

(4) Where—

- (a) an employing authority has provided information in accordance with paragraph (3); and
- (b) there is a change to the information,

the authority must, before the end of the period of one month after the change, provide the scheme manager with the revised information.

(5) An employing authority must provide to the scheme manager in respect of each scheme year details of the total contributions paid for all scheme members under regulations 30, 33, 62 and 64 and the details must be provided—

- (a) before the end of the period of 2 months after a request for the information is made;
- (b) in a manner required by the scheme manager.

(6) Where—

- (a) an employing authority has provided the information requested in paragraph (5); and
- (b) there is a revision to the total contributions made,

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the authority must, before the end of the period of one month after the revision, provide the scheme manager with the revised total.

(7) ^{F43}If the scheme manager so requests,] an employing authority must, in respect of each scheme year, provide to the scheme manager a statement of estimated total contributions under regulations 30, 33, 48, 62 and 64—

- (a) not later than one month before the start of the scheme year;
- (b) in a manner required by the scheme manager.

Textual Amendments

- F42** Words in reg. 37(1)(c)(d) inserted (1.4.2016) by [The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions \(Amendment\) Regulations 2016 \(S.I. 2016/245\)](#), regs. 1(2), **61** (with reg. 105)
- F43** Words in reg. 37(7) inserted (1.4.2019) by [The National Health Service Pension Schemes, Additional Voluntary Contributions and Injury Benefits \(Amendment\) Regulations 2019 \(S.I. 2019/418\)](#), regs. 1(2), **81**

Members' contributions: supplementary: medical practitioners and non-GP providers

38.—(1) This regulation applies to a member (M) who belongs to group D in regulation 27(1) by virtue of being—

- (a) a medical practitioner; or
- (b) a non-GP provider.

(2) Paragraph (3) applies if, in respect of a scheme year, M—

- (a) has certified M's pensionable earnings in accordance ^{F44}with] Part 1 of Schedule 12 and forwarded a record of the earnings to the host Board; or
- (b) was not required to certify M's earnings in accordance with Part 1 of Schedule 12 but the host Board has the figure that represents M's pensionable earnings for that year.

(3) M's contributions payable for the scheme year in question are those specified in column 2 of ^{F45}the relevant table] in respect of the amount of pensionable earnings referred to in column 1 of ^{F46}that table] which corresponds to the aggregate of—

- (a) certified or final pensionable earnings from all group D sources uprated according to the formula:

$$\frac{PE}{NDPS} \times 365$$

where—

PE is the certified or final amount of M's pensionable earnings from all group D sources for the year;

^{F47}NDPS is the number of days of M's group D service in the scheme year]; and

- (b) any additional pensionable earnings M is treated as having received during an absence from work in accordance with regulation 28.

(4) If paragraph (3) does not apply to M in respect of a scheme year, M must pay contributions at the rate in column 2 of the ^{F48}relevant table] on the basis of whichever of the following the host Board considers the most appropriate in the circumstances—

- (a) an amount of M's earnings that has been agreed between M and the host Board;
 - (b) an amount of M's earnings that corresponds to M's most recent certified or final pensionable earnings referred to in paragraph (2); or
 - (c) an amount of M's earnings that corresponds to the host Board's estimate of M's pensionable earnings from all group D sources for that year.
- (5) If paragraph (4) applies to M in respect of a scheme year and paragraph (2)(a) or (b) is subsequently satisfied in respect of that year, M must pay contributions at the rate determined in accordance with paragraph (3).
- (6) A host Board may adjust M's contribution rates for a scheme year determined in accordance with paragraph (4)—
- (a) by agreement between M and the host Board; or
 - (b) without such agreement, if the host Board is satisfied that M's pensionable earnings will exceed the amount used to so determine the contribution rate.
- (7) If M concurrently belongs both to group D and to any of groups A to C in regulation 27(1)—
- (a) contributions payable in respect of M's service for the purposes of group D must be determined under this regulation; and
 - (b) contributions payable in respect of M's service for the purposes of any of groups A to C must be determined under regulation 30.
- (8) In the application of this regulation to a non-GP provider who derives income from more than one group D source, a reference to all group D sources must be construed as a reference to such one of those sources as the non-GP provider specifies for the purposes of this regulation.

Textual Amendments

- F44** Word in [reg. 38\(2\)\(a\)](#) inserted (1.4.2023) by [The National Health Service Pension Schemes \(Amendment\) Regulations 2023 \(S.I. 2023/301\)](#), regs. 1(2), **12**
- F45** Words in [reg. 38\(3\)](#) substituted (1.10.2022) by [The National Health Service Pension Schemes \(Member Contributions etc.\) \(Amendment\) Regulations 2022 \(S.I. 2022/273\)](#), regs. 1(3), **5(2)(a)**
- F46** Words in [reg. 38\(3\)](#) substituted (1.10.2022) by [The National Health Service Pension Schemes \(Member Contributions etc.\) \(Amendment\) Regulations 2022 \(S.I. 2022/273\)](#), regs. 1(3), **5(2)(b)**
- F47** Words in [reg. 38\(3\)\(a\)](#) substituted (with effect from 1.4.2015, in accordance with [reg. 1\(5\)](#) of the amending S.I.) by [The National Health Service Pension Schemes, Additional Voluntary Contributions and Injury Benefits \(Amendment\) Regulations 2019 \(S.I. 2019/418\)](#), [reg. 1\(2\)\(5\)](#), **82**
- F48** Words in [reg. 38\(4\)](#) substituted (1.10.2022) by [The National Health Service Pension Schemes \(Member Contributions etc.\) \(Amendment\) Regulations 2022 \(S.I. 2022/273\)](#), regs. 1(3), **5(3)**

Modifications etc. (not altering text)

- C4** [Reg. 38](#) modified (temp.) (1.4.2023) by [The National Health Service Pension Schemes \(Amendment\) Regulations 2023 \(S.I. 2023/301\)](#), regs. 1(2), **26** (with [reg. 24](#))
- C5** [Reg. 38\(4\)\(b\)](#) modified (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) Regulations 2015 \(S.I. 2015/95\)](#), regs. 1(b), **12(2)**

Members' contributions: supplementary: dental practitioners

39.—(1) This regulation applies to a member (M) who belongs to group D in regulation 27(1) by virtue of being a dental practitioner.

(2) Paragraph (3) applies if, in respect of a scheme year, M—

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- (a) has reconciled or certified M's pensionable earnings in accordance with Part 1 of Schedule 12 and forwarded a record of those earnings to the host Board; or
- (b) was not required to reconcile or certify M's earnings in accordance with Part 1 of Schedule 12, but the host Board has the figure that represents M's pensionable earnings for the scheme year.
- (3) M's contributions payable for the scheme year in question are those specified in column 2 of [^{F49}the relevant table] in respect of the amount of pensionable earnings referred to in column 1 of [^{F50}that table] which corresponds to the aggregate of—

- (a) reconciled, certified or final pensionable earnings from all group D sources uprated according to the formula:

$$\frac{PE}{NDPS} \times 365$$

where—

PE is the reconciled, certified or final amount of the dental practitioner's pensionable earnings from all group D sources for the year;

[^{F51}NDPS is the number of days of dental practitioner service in the scheme year]; and

- (b) any additional pensionable earnings M is treated as having received during an absence from work in accordance with regulation 28.

(4) If paragraph (3) does not apply to M in respect of a scheme year, M must pay contributions at the rate in column 2 of the [^{F52}relevant table] on the basis of whichever the host Board considers the most appropriate in the circumstances—

- (a) the amount of M's earnings that has been agreed between the host Board and M;
- (b) the amount of M's earnings that correspond to M's most recent certified or final pensionable earnings referred to in paragraph (2); or
- (c) the amount of M's earnings that corresponds to the host Board's estimate of M's pensionable earnings from all group D sources for the year uprated in accordance with the formula in paragraph (3)(a).

(5) If paragraph (4) applies to M in respect of a scheme year, and paragraph (2)(a) or (b) is subsequently satisfied in respect of that year, M must pay contributions at the rate determined in accordance with paragraph (3).

(6) A host Board may adjust M's contribution rates for a scheme year determined in accordance with paragraph (4)—

- (a) by agreement between M and the host Board; or
- (b) without such agreement, if the host Board is satisfied that M's pensionable earnings will exceed the amount used to so determine the contribution rate.

Textual Amendments

- F49** Words in reg. 39(3) substituted (1.10.2022) by The National Health Service Pension Schemes (Member Contributions etc.) (Amendment) Regulations 2022 (S.I. 2022/273), regs. 1(3), 5(2)(a)
- F50** Words in reg. 39(3) substituted (1.10.2022) by The National Health Service Pension Schemes (Member Contributions etc.) (Amendment) Regulations 2022 (S.I. 2022/273), regs. 1(3), 5(2)(b)
- F51** Words in reg. 39(3)(a) substituted (with effect from 1.4.2015, in accordance with reg. 1(5) of the amending S.I.) by The National Health Service Pension Schemes, Additional Voluntary Contributions and Injury Benefits (Amendment) Regulations 2019 (S.I. 2019/418), reg. 1(2)(5), 83

F52 Words in reg. 39(4) substituted (1.10.2022) by [The National Health Service Pension Schemes \(Member Contributions etc.\) \(Amendment\) Regulations 2022 \(S.I. 2022/273\)](#), regs. 1(3), **5(3)**

Modifications etc. (not altering text)

- C6** [Reg. 39](#) modified (temp.) (1.4.2023) by [The National Health Service Pension Schemes \(Amendment\) Regulations 2023 \(S.I. 2023/301\)](#), regs. 1(2), **27** (with reg. 24)
- C7** [Reg. 39\(4\)\(b\)](#) modified (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) Regulations 2015 \(S.I. 2015/95\)](#), regs. 1(b), **12(2)**

CHAPTER 2

Refund: short service

Eligibility for refund

- 40.**—(1) Contributions made by a member (M) must be repaid to M if—
- (a) the 1993 Act condition applies; or
 - (b) the short service condition applies.
- (2) The “1993 Act condition” is that—
- (a) [^{F53}Chapter 2 of Part 4ZA] of the 1993 Act ^{M13} applies to M; and
 - (b) the repayment is made in accordance with that Chapter.
- (3) The short service condition applies if—
- (a) M does not qualify for benefits under regulation 72;
 - (b) M is not a pensioner member;
 - (c) M ceases to be an active member;
 - (d) the 1993 Act condition does not apply to M; and
 - (e) M makes a claim in writing to the scheme manager for the repayment.

Textual Amendments

F53 Words in [reg. 40\(2\)\(a\)](#) substituted (1.4.2016) by [The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions \(Amendment\) Regulations 2016 \(S.I. 2016/245\)](#), regs. 1(2), **62** (with [reg. 105](#))

Marginal Citations

M13 Chapter 5 of Part 4 deals with early leavers: cash transfer sums and contribution refunds.

Amount of refund

- 41.**—(1) The amount of a repayment to a member (M) pursuant to regulation 40 is—
- (a) if the 1993 Act condition applies, the amount to which M is entitled to be paid pursuant to [^{F54}Chapter 2 of Part 4ZA] of that Act, less the appropriate deductions;
 - (b) if the short service condition applies, an amount equal to the sum of the contributions paid by M, less the appropriate deductions.
- (2) The appropriate deductions are—
- (a) so much of the contributions equivalent premium paid in respect of M [^{F55}under section 55] of the 1993 Act ^{M14}[^{F56}or article 3 of the 2016 Order]; and

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- (b) an amount equal to the income tax payable under section 205 of the 2004 Act ^{M15} (short service lump sum charge) as a result of the repayment.
- (3) M is entitled to interest on the amount of the repayment unless M's pensionable service ceases because M's employment is terminated—
- pursuant to M's contract of employment;
 - at M's request; or
 - by reason of misconduct or inefficiency.
- (4) The rate of interest is 2.5% per year calculated on a compound basis with yearly rests.
- (5) Interest is payable in respect of the period starting on 1st April following the day when M started to pay contributions and ending on the day M leaves pensionable service.
- (6) Paragraphs (4) and (5) do not apply if—
- regulation 40(1)(a) applies; and
 - M is entitled to a greater amount of interest under [^{F57}Chapter 2 of Part 4ZA] of the 1993 Act.
- (7) So far as contributions paid by M were paid under another scheme and were included in a transfer payment to this scheme—
- interest for the period before the transfer period was made is calculated in accordance with the other scheme (subject to any enactment applicable to the transfer); and
 - paragraphs (4) and (5) do not apply as respects that period.

Textual Amendments

- F54** Words in reg. 41(1)(a) substituted (1.4.2016) by [The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions \(Amendment\) Regulations 2016 \(S.I. 2016/245\)](#), regs. 1(2), **63(2)** (with reg. 105)
- F55** Words in reg. 41(2)(a) substituted (6.4.2019) by [The National Health Service Pension Schemes, Additional Voluntary Contributions and Injury Benefits \(Amendment\) Regulations 2019 \(S.I. 2019/418\)](#), regs. 1(3), **84(a)**
- F56** Words in reg. 41(2)(a) inserted (6.4.2019) by [The National Health Service Pension Schemes, Additional Voluntary Contributions and Injury Benefits \(Amendment\) Regulations 2019 \(S.I. 2019/418\)](#), regs. 1(3), **84(b)**
- F57** Words in reg. 41(6)(b) substituted (1.4.2016) by [The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions \(Amendment\) Regulations 2016 \(S.I. 2016/245\)](#), regs. 1(2), **63(3)** (with reg. 105)

Marginal Citations

- M14** Section 61 has been amended by section 151 of, and paragraph 55 of Schedule 5 to, the [Pensions Act 1995 \(c.20\)](#), [section 56](#) of, and paragraph 5(2) of Schedule 5 to, the [Child Support, Pensions and Social Security Act 2000 \(c.19\)](#) and section 319(1) of, and paragraphs 9 and 12 of Schedule 12 to, the [Pensions Act 2004 \(c.35\)](#).
- M15** Section 205 has been amended by section 219(1) of, and paragraphs 119 and 121 of Schedule 46 to, the [Finance Act 2013 \(c.29\)](#) and by article 3 of [S.I. 2010/536](#).

Effect of refund

42.—(1) If a repayment of contributions is made pursuant to regulation 40, the rights of the member (M) under this scheme are extinguished unless—

- (a) M or M's spouse or civil partner is entitled to a guaranteed minimum pension under the scheme; and
 - (b) no contributions equivalent premium has been paid.
- (2) Paragraph (1) does not apply if—
- (a) M again becomes a member of this scheme; and
 - (b) before the end of the period of 6 months starting on the date M again becomes a member, M repays to the scheme manager the contributions together with any interest paid in respect of them.

CHAPTER 3

Buy-out: actuarial reduction

Eligibility to make buy-out election

43.—(1) A member (M) who has a prospective normal pension age over 65 may elect to pay contributions to buy out the actuarial reduction (“buy-out election”) in accordance with this Chapter.

- (2) A buy-out election ceases to have effect when the earliest of the following occurs—
- (a) M reaches normal pension age;
 - (b) a retirement pension other than a partial retirement pension becomes payable to M;
 - (c) M revokes the election or is taken to revoke the election.
- (3) A buy-out election may only be made before the end of the period of 3 months after—
- (a) M enters pensionable service under this scheme [^{F58}in accordance with paragraph (3A)]; or
 - (b) the beginning of a subsequent scheme year.

[^{F59}(3A) For the purposes of paragraph (3)(a), M is treated as entering pensionable service on each occasion that an active member’s account is established in respect of that service in accordance with regulation 24(1)(a).]

- (4) When making a buy-out election, M must—
- (a) be in pensionable service; and
 - (b) not have reached normal pension age.

[^{F60}(5) M may make an election under this regulation on one occasion only during each period of pensionable service in respect of which an active member’s account is established in accordance with regulation 24(1)(a).]

Textual Amendments

- F58** Words in reg. 43(3)(a) inserted (1.4.2017) by The National Health Service Pension Scheme and Additional Voluntary Contributions (Amendment) Regulations 2017 (S.I. 2017/275), regs. 2(c), **32(2)**
- F59** Reg. 43(3A) inserted (1.4.2017) by The National Health Service Pension Scheme and Additional Voluntary Contributions (Amendment) Regulations 2017 (S.I. 2017/275), regs. 2(c), **32(3)**
- F60** Reg. 43(5) substituted (1.4.2017) by The National Health Service Pension Scheme and Additional Voluntary Contributions (Amendment) Regulations 2017 (S.I. 2017/275), regs. 2(c), **32(4)**

Making and varying a buy-out election

44.—(1) A buy-out election made by a member (M) must state the number of years in respect of which the actuarial reduction is to be bought out.

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- (2) The number of years—
- (a) must not exceed 3 or (if less) the number of years from the date of M's 65th birthday until M's prospective normal pension age; and
 - (b) must be a whole number of years unless—
 - (i) M's prospective normal pension age is expressed otherwise than as a whole number of years; or
 - (ii) the scheme manager (having considered the advice of the scheme actuary) considers in M's circumstances it is unreasonable to restrict the period to whole years.
- (3) A buy-out election must be made by written notice to the scheme manager.
- (4) The notice of election must—
- (a) if M is a member of this scheme by virtue of more than one employment, specify the names of each of the employing authorities; and
 - (b) be in such form and provide such other information as the scheme manager requires.
- (5) The scheme manager may ask M to provide further information.
- (6) M may by written notice to the scheme manager vary a buy-out election to increase the period for which the actuarial reduction is bought out at any time before a retirement pension becomes payable to M.
- (7) Paragraph (6) is subject to paragraph (2) and regulations 43(3) and (4).
- (8) Regulation 46 applies to a notice under paragraph (6) as it applies to an election under regulation 43(1) and, for the purposes of this paragraph, the amount found under regulation 46(2) includes the value of any increase mentioned in paragraph (6).

Accepting a buy-out election

- 45.**—(1) The scheme manager may accept a buy-out election by giving written notice to the person who made the election (M).
- (2) The notice must state—
- (a) the rate of the monthly payments determined under regulation 47; and
 - (b) the date on which M reaches prospective normal pension age.
- (3) A buy-out election takes effect when M receives notice that the scheme manager has accepted the election.
- (4) The buy-out period is the number of scheme years starting with (and including) the scheme year in which the buy-out election takes effect and ending with (and including) the scheme year in which the earliest of the following occurs—
- (a) M revokes or is taken to have revoked the election;
 - (b) M ceases to be a member of the scheme;
 - (c) M reaches normal pension age.
- (5) The buy-out period does not include a scheme year in which payment of buy-out contributions is suspended by virtue of regulation 49.

Overall limit on extra pension

- 46.**—(1) The scheme manager must not accept an election under regulation 43(1) from a member if—
- (a) the member has made an election under regulation 55; and

(b) paragraph (2) applies.

(2) This paragraph applies if the value of the actuarial reduction bought out exceeds the greater of the first and second amounts in paragraph (3).

(3) In this paragraph—

- (a) the first amount is $B - A$;
- (b) the second amount is $L - A$,
where—

B is the maximum potential value (determined having regard to the advice of the scheme actuary and the limits in regulation 44(2)) at the date of the election under regulation 43 (in terms of annual pension) of the reduction for the period for which the buy-out has effect;

L is the overall limit for the purposes of regulation 61; and

A is the value (in terms of annual pension) of any additional pension purchased or being purchased by the member under this scheme.

(4) A reference to the value of an additional pension is, in the case of a member who has made more than one election under regulation 55, a reference to the aggregate value of all the additional pensions in respect of which the member has made an election.

Determination of contributions payable

47.—(1) The scheme manager must, after consultation with the scheme actuary, determine the rate of the monthly payments to be paid in respect of a buy-out election.

(2) The scheme manager—

- (a) may determine the rate of the monthly payments by reference to the length of the period between the date of the buy-out election and the date when the member will reach prospective normal pension age; and
- (b) may exercise the functions under this paragraph so as to re-determine the rate of the monthly payments during that period.

(3) Unless the scheme manager re-determines the rate, monthly payments following a gap in service not exceeding 5 years are the same as before the gap.

Payment of buy-out contributions

48.—(1) A member (M) must—

- (a) make the first monthly payment within 2 months after the end of the month in which a buy-out election is accepted; and
- (b) continue to make the monthly payments until the end of the period mentioned in regulation 47(2)(a).

(2) If the scheme manager re-determines the amount of the monthly payment during the period mentioned in regulation 47(2)(a), M must pay the re-determined amount from—

- (a) the start of the next scheme year; or
- (b) such later date as the scheme manager specifies.

(3) If the member's employing authority agrees to pay any or part of the contributions, the amount payable by the employing authority must be paid at the time the member would otherwise have been required to pay them.

(4) For the purpose of determining the amount of contributions payable during any period in which M's pensionable earnings are reduced as mentioned in regulation 28, the reduction in pensionable earnings must be disregarded.

(5) In this regulation, "the first monthly payment" includes any monthly payment due in arrears for the period between the start of the scheme year in which the buy-out election is accepted and the date of that first payment.

Suspension of buy-out: hardship

49.—(1) The scheme manager may, at the request of the member (M), agree to the suspension of the payment of contributions due under regulation 48 if the scheme manager is satisfied that M's circumstances are such that M will suffer hardship if the payments are not suspended.

(2) A period of suspension is permitted only if—

- (a) there has been no previous suspension; or
- (b) if there has been an earlier suspension, contributions have been paid for not less than a full scheme year since the earlier suspension ended.

(3) If the scheme manager agrees to the suspension, paragraph (4) applies unless—

- (a) not later than one year after the request under paragraph (1) is made M applies to resume making contributions; and
- (b) M resumes making the contributions at the start of the following scheme year.

(4) If this paragraph applies—

- (a) M is taken to have revoked the buy-out election; and
- (b) M is not entitled to make any other buy-out election under the scheme.

(5) Paragraph (6) applies if—

- (a) the scheme manager agrees to the suspension of payment of contributions by M; and
- (b) M's employing authority has agreed to pay contributions as mentioned in regulation 48(3).

(6) Payment of contributions by M's employing authority is suspended for the same period as the payment of contributions by M is suspended.

Revoking a buy-out election

50.—(1) A member (M) may revoke a buy-out election at any time before the end of the period mentioned in regulation 47(2)(a).

(2) The scheme manager may revoke M's buy-out election if M does not pay contributions for a period of 12 months.

(3) If a buy-out election is or is taken to have been revoked, M's monthly payments cease to be payable on the date of revocation.

(4) If, at the revocation date, the buy-out period during which the contributions were paid was less than 12 months—

- (a) the contributions must be re-paid to M; and
- (b) the buy-out election ceases to have effect.

(5) If, at the revocation date, the buy-out period during which the contributions were paid is 12 months or more—

- (a) contributions paid during the scheme year in which the election is revoked must be repaid to M; and
- (b) the buy-out period ends at the end of the previous scheme year.

- (6) The revocation date is the date the buy-out election is, or is taken to have been, revoked.

CHAPTER 4

Allocation

Election to allocate pension

51.—(1) A member (M) may elect to allocate a part of the annual amount of M's pension for the provision of a pension after M's death for not more than one individual who is—

- (a) M's spouse or civil partner; or
- (b) a dependant of M (within the meaning of paragraph 15(2) or (3) of Schedule 28 to the 2004 Act ^{M16}).

(2) An election under this regulation may be made only—

- (a) at the time M claims the pension under paragraph 4 of Schedule 3; and
- (b) if M is not already entitled to payment of such a pension.

(3) Paragraph (2)(b) does not apply in the case of a pension payable under regulation 84.

(4) A pension provided as a result of the election must be calculated in accordance with tables prepared by the scheme actuary.

Marginal Citations

M16 [Paragraph 15\(3\)](#) of Schedule 28 has been amended by regulations 175 and 180(c) of [S.I. 2005/3229](#).

Amount of allocation

52.—(1) An election under regulation 51 may not allocate more than one-third of the member's (M) relevant annual pension.

(2) An election may not allocate an amount that would result in—

- (a) the allocated annual pension exceeding M's unallocated relevant annual pension;
- (b) the allocated annual pension exceeding such amount as the scheme manager determines for the purposes of this paragraph—
 - (i) after consultation with the scheme actuary; and
 - (ii) having regard to any restrictions imposed under Part 4 of the 2004 Act ^{M17}; or
- (c) the value of the allocated annual pension being such that a lump sum could be paid under paragraph 6 of Schedule 3 by way of commutation of a pension of that amount if the person entitled to the pension is not entitled to any other benefits under the scheme.

(3) The annual pension allocated must be an exact number of pounds.

(4) A pension provided pursuant to the election must be calculated in accordance with tables prepared by the scheme actuary.

Marginal Citations

M17 [Part 4](#) deals with tax provision for pension schemes.

Procedure for election under regulation 51

53.—(1) An election under regulation 51 in respect of a member's (M) pension must be made by notice in writing given to the scheme manager.

(2) The notice must be in such form and contain such information as the scheme manager requires.

(3) Subject to paragraphs (6) and (7), the election takes effect when it is accepted by the scheme manager.

(4) The election may not be withdrawn, amended or revoked after it has taken effect.

(5) The election does not take effect if—

(a) M or the person in whose favour the election is made (the beneficiary) dies on or before the day on which the scheme manager accepts it; or

(b) the scheme manager is not satisfied that, at the time the election is made, M is in good health.

(6) The election is treated as not having taken effect if the beneficiary dies before M is notified in writing that the scheme manager has accepted the election.

Effect of allocation

54.—(1) If an election by a member (M) under regulation 51 has taken effect—

(a) M's pension is reduced accordingly (even if the beneficiary predeceases M); and

(b) if the beneficiary survives M, on M's death the beneficiary becomes entitled to the payment of a pension for life of such amount as is determined in accordance with regulation 52.

(2) An allocation is disregarded if it would result in a pension being paid to a beneficiary who is neither—

(a) M's spouse or civil partner on the date when M becomes entitled to the pension or dies; nor

(b) at the time of M's death, a dependant of M (within the meaning of paragraph 15(2) or (3) of Schedule 28 to the 2004 Act ^{M18}).

(3) References in these Regulations to pensions under Part 5 do not include pensions under this regulation, except where context otherwise requires.

(4) A pension under this regulation is payable to the beneficiary in addition to a pension payable in respect of M's death under Part 6.

Marginal Citations

M18 Paragraph 15(3) of Schedule 28 has been amended by regulations 175 and 180(c) of [S.I. 2005/3229](#).

CHAPTER 5

Additional pension

Election to pay contributions for additional pension

55.—(1) This paragraph applies in relation to a member of the scheme (M) who—

(a) is in pensionable service under the scheme; and

(b) has not reached normal pension age.

(2) M or, with M's consent, M's employing authority may elect to pay contributions for an additional pension in respect of M (“additional pension election”).

(3) An additional pension election may be made in respect of—

- (a) an additional (self only) pension; or
 - (b) an additional (self only) pension and an additional (survivor's) pension.
- (4) M may make an election under this regulation more than once.
- (5) In this Chapter, the refund period is the period ending one year after the date on which an election under this regulation is accepted.

Annual rate of additional (self only) pension

56. The annual rate of additional (self only) pension specified in an additional pension election must be a whole number multiple of—

- (a) £250; or
- (b) such other amount as is determined by the scheme manager.

Lump sum or periodic payments

- 57.**—(1) An employing authority's additional pension contributions must be made by lump sum.
- (2) A member's additional pension contributions may be paid either by lump sum or by periodic payments.

Making an additional pension election

58.—(1) An additional pension election by a member (M) must be made by written notice to the scheme manager stating whether additional pension contributions are to be paid—

- (a) as a lump sum; or
- (b) by periodic payments.

(2) An additional pension election by M's employing authority must be made by written notice to the scheme manager.

(3) A notice under this regulation must be accompanied by a declaration by M that M is in good health.

(4) An additional pension election must not be made at any time when M is absent from work for any reason.

[^{F61}(5) For the purposes of this Chapter—

- (a) a member is treated as having made an additional pension election on the date on which the employing authority receives the member's notice under paragraph (1); and
- (b) an employing authority is treated as having made an additional pension election on the date on which the scheme manager receives the authority's notice under paragraph (2).]

Textual Amendments

F61 Reg. 58(5) inserted (with effect in accordance with reg. 1(2)(a) of the amending S.I.) by [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), regs. 2(c), **33**

Accepting an additional pension election

59.—(1) The scheme manager may accept an additional pension election by giving written notice to—

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- (a) the member (M); and
 - (b) M's employing authority.
- (2) The scheme manager may refuse to accept an election if there are reasonable grounds to believe—
- (a) that M is not in good health at the time the election is made; or
 - (b) in the case of an election where the contributions are to be made by periodic payments, that M's health is likely to prevent the payment of contributions for the whole of the contributions payment period.
- (3) For the purposes of these Regulations, an additional pension election is accepted when M receives notice from the scheme manager.

Determination of contribution payable

- 60.**—(1) The scheme manager must determine the amount to be paid as a lump sum or as a periodic payment.
- (2) The amount of the lump sum or periodic payment must be—
- (a) not less than the minimum amount; or
 - (b) an amount which is a multiple of the minimum amount.
- (3) In paragraph (2), the minimum amount is the amount that would, in accordance with tables prepared by the scheme actuary for the scheme year in which the contributions are paid, be the amount of contribution required to secure the additional pension specified under regulation 56.
- (4) The tables mentioned in paragraph (3)—
- (a) may specify different amounts for different descriptions of members; and
 - (b) may be amended during a scheme year.
- (5) An amendment under paragraph (4)(b) has effect—
- (a) at the start of the next scheme year; or
 - (b) such later date as the scheme manager specifies.

Overall limit on extra pension

- 61.**—(1) The scheme manager must not accept an election under regulation 55 from a member (M) in so far as the effect of accepting the election would be to provide M with one or more additional pensions which exceeds or in aggregate exceed the overall limit.
- (2) The overall limit is—
- (a) £6,500 for a scheme year ending before 1st April 2016;
 - (b) for a scheme year beginning on or after that date—
 - (i) the overall limit of extra pension determined by the Treasury in respect of that Scheme year as published before the start of that scheme year; or
 - (ii) if no such determination is made, the amount calculated under paragraph (3).
- (3) The amount is the amount to which the annual rate of a pension of an amount equal to the overall limit of extra pension for the previous scheme year would have been increased under the Pensions (Increase) Act 1971 if—
- (a) that pension were eligible to be so increased; and
 - (b) the beginning date for that pension were the first day of the previous scheme year.

(4) In determining the value of an extra pension for the purposes of paragraph (1) the scheme manager must include the value by reference to an annual pension of any actuarial reduction buy-out election having effect in relation to M.

(5) A valuation for the purposes of paragraph (4) must have regard to the advice of the scheme actuary.

Lump sum contributions: payment of contributions and credit of additional pension

62.—(1) This paragraph applies to a member (M)—

- (a) in respect of whom an additional pension election is accepted; and
- (b) whose notice of election states that contributions are to be paid by lump sum.

(2) M's additional pension account is to be credited with an amount equal to the annual rate of additional (self only) pension stated in the notice of election (“the amount of additional pension”) if the lump sum contribution is paid within one month after the additional pension election is accepted.

(3) If the lump sum contribution is not paid within that time an election under regulation 55 is taken not to have been made.

Repayment of lump sum contribution

63.—(1) This regulation applies if a member (M) has paid a lump sum contribution for additional pension.

[^{F62}(2) If M dies before the end of the refund period—

- (a) the amount of the lump sum paid by M must be repaid to M's [^{F63}personal] representatives;
- (b) the amount of the lump sum paid by M's employing authority pursuant to regulation 57 must be repaid to the authority; and
- (c) the [^{F64}additional] pension account must be closed.

(3) If an ill-health pension becomes payable to M [^{F65}in consequence of a claim made] before the end of the refund period—

- (a) the amount of the lump sum paid by M must be repaid to M;
- (b) the amount of the lump sum paid by M's employing authority pursuant to regulation 57 must be repaid to the authority; and
- (c) the [^{F66}additional] pension account must be closed.]

Textual Amendments

F62 Reg. 63(2)(3) substituted for reg. 63(2) (1.4.2015) by [The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions \(Amendment\) Regulations 2016 \(S.I. 2016/245\)](#), regs. 1(8), **64** (with reg. 105)

F63 Word in reg. 63(2)(a) inserted (1.4.2017) by [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), regs. 2(c), **34(2)**

F64 Word in reg. 63(2)(c) inserted (1.4.2017) by [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), regs. 2(c), **34(3)**

F65 Words in reg. 63(3) inserted (1.4.2017) by [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), regs. 2(c), **34(4)**

F66 Word in reg. 63(3)(c) inserted (1.4.2017) by [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), regs. 2(c), **34(3)**

Periodic contributions

- 64.**—(1) This regulation and regulations 65, 66 and 68 to 71 apply in relation to a member (M)—
- (a) in respect of whom an additional pension election is accepted; and
 - (b) whose notice of election states that contributions are to be paid by periodic payments during the contributions payment period.
- (2) M's employing authority must—
- (a) deduct the contributions from M's pensionable earnings; and
 - (b) pay them to the scheme manager not later than the 19th day of the month following that in which the earnings were paid to M.
- (3) The contributions payment period must—
- (a) be a whole number of years;
 - (b) begin with the pay period in respect of which the first contribution is paid;
 - (c) be not less than one year nor more than 20 years; and
 - (d) end before M reaches normal pension age.
- (4) If the scheme manager re-determines the amount of the periodic payment during the contributions payment period, the re-determined amount must be paid from—
- (a) the beginning of the next scheme year; or
 - (b) such later date as the scheme manager determines.

Retirement pension (other than ill-health pension) becomes payable before the end of the contributions payment period

- 65.**—(1) This regulation applies if any of the following retirement pensions become payable to M before the end of the contributions payment period—
- (a) a partial retirement pension (if M has elected to receive additional pension with it);
 - (b) a premature retirement pension;
 - (c) an early retirement pension.
- (2) If this regulation applies—
- (a) periodic payments for additional pension cease to be payable on the entitlement day for that pension; and
 - (b) the amount of accrued additional pension as at the day M leaves the pensionable service concerned is an amount determined by the scheme manager, having regard to—
 - (i) the period over which the contributions were paid; and
 - (ii) the length of the contribution payment period.

Revoking an additional pension election (periodic payments)

- 66.**—(1) A member (M) may revoke an additional pension election at any time before the end of the contributions payment period.
- (2) A revocation must be by notice in writing to—
- (a) the scheme manager; and
 - (b) M's employing authority.
- (3) A revocation has effect from the start of M's next pay period (“date of revocation”).
- (4) On the date of revocation under paragraph (1)—

- (a) periodic payments for additional pension under the election cease to be payable; and
 - (b) the amount of accrued additional pension as at that date is an amount determined by the scheme manager.
- (5) The scheme manager may revoke the election if there are reasonable grounds for believing—
- (a) that M's health will prevent M from paying contributions for the whole of the contributions payment period;
 - (b) that M was aware of the state of M's health at the time of making the declaration under regulation 58(3); and
 - (c) that M failed to disclose the state of M's health in the declaration.
- (6) A revocation under paragraph (5) must be given to M by notice in writing.
- (7) If the scheme manager revokes an election under paragraph (5)—
- (a) periodic payments for additional pension under the election cease to be payable; and
 - (b) payments made by M before the date of revocation must be returned to M or, if M is deceased, M's [^{F67}personal] representatives.

Textual Amendments

F67 Word in reg. 66(7)(b) inserted (1.4.2017) by [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), regs. 2(c), **35**

Revocation of election by scheme manager (lump sum)

67.—(1) The scheme manager may revoke an additional pension election made by a member (M) where the contribution was paid by lump sum if the scheme manager has reasonable grounds for believing that—

- (a) at the time the declaration under regulation 58(3) was made M was aware that the state of M's health was such that not less than 12 months after the election [^{F68}was made] it was reasonable to assume that M would become entitled to an ill health pension or M's survivors would become entitled to a pension under Part 6; and
 - (b) M failed to disclose the state of M's health at the time of making the declaration.
- (2) If the scheme manager revokes an election under paragraph (1), the scheme manager must repay the lump sum—
- (a) if the lump sum was paid by M, to M, or if M is deceased, to M's [^{F69}personal] representatives;
 - (b) if the lump sum was paid by M's employing authority, to the employing authority.

Textual Amendments

F68 Words in reg. 67(1)(a) inserted (with effect in accordance with reg. 1(2)(a) of the amending S.I.) by [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), regs. 2(c), **36(2)**

F69 Word in reg. 67(2)(a) inserted (1.4.2017) by [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), regs. 2(c), **36(3)**

Effect of being absent or leaving and rejoining scheme during contributions payment period

68.—(1) This paragraph applies if, during the contributions payment period, a member (M) who has made an election under regulation 55—

- (a) is absent from work because of illness or injury;
- (b) is on maternity leave;
- (c) is on adoption leave;
- (d) is on paternity leave;
- (e) is on parental leave [^{F70}shared parental leave or parental bereavement leave]; or
- (f) is within regulation 21(4) or (6).

(2) If paragraph (1) applies—

- (a) the contributions payable under regulation 64 continue to be payable unless M ceases paying basic contributions;
- (b) M may resume paying contributions under regulation 64 only if—
 - (i) M ceases to pay basic contributions; but
 - (ii) resumes paying basic contributions before the end of the period of 12 months beginning with the day on which M first ceased to pay basic contributions.

(3) This paragraph applies if—

- (a) a member (M) has made an election under regulation 55;
- (b) M ceases to be an active member during the contributions payment period; and
- (c) before the end of the period of 12 months beginning with the day on which M ceased to be an active member, M becomes an active member again.

(4) If paragraph (3) applies, M may continue to make contributions in accordance with the election unless a repayment of contributions has been made to M under regulation 40.

(5) For the purposes of paragraph (4), it is immaterial whether M has paid any repaid contributions back to the scheme manager.

(6) In this regulation, “basic contributions” means contributions payable under regulation 30 or 31.

Textual Amendments

F70 Words in reg. 68(1)(e) substituted (6.4.2020) by [The Parental Bereavement Leave and Pay \(Consequential Amendments to Subordinate Legislation\) Regulations 2020 \(S.I. 2020/354\)](#), regs. 1, 37(4)

Death in service before end of contributions payment period

69.—(1) This regulation applies on the death of a member (D)—

[^{F71}(a) whose additional pension election is for—

- (i) an additional (self only) pension; or
- (ii) an additional (self only) pension and an additional (survivor’s) pension; and]

(b) who dies while an active member before the end of the contributions payment period for that election.

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

- (a) the amount of the contributions paid by D must be repaid to D's [^{F72}personal] representatives; [^{F73}and]
- ^{F74}(b)
- (c) the additional pension account must be closed.
- (3) If D dies after the end of the refund period—
 - (a) the periodic payments cease to be payable as at the date of D's death; and
 - (b) paragraph (4) applies.
- (4) For the purpose of calculating a survivor's pension—
 - (a) if the scheme manager believes that the declaration that accompanied the additional pension election was made in good faith—
 - (i) the periodic payments under the additional pension election are treated as being paid until the end of the contributions payment period for the election; and
 - (ii) the amount of accrued additional pension calculated is under paragraph 28 of Schedule 9 as at the date of D's death;
 - (b) if the scheme manager has reasonable grounds to believe that declaration was not made in good faith, paragraph (2)(a) to (c) applies.

Textual Amendments

- F71** Reg. 69(1)(a) substituted (with effect in accordance with reg. 1(2)(a) of the amending S.I.) by [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), regs. 2(c), **37(2)**
- F72** Word in reg. 69(2)(a) inserted (1.4.2017) by [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), regs. 2(c), **37(3)(a)(i)**
- F73** Word in reg. 69(2)(a) inserted (1.4.2017) by [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), regs. 2(c), **37(3)(a)(ii)**
- F74** Reg. 69(2)(b) omitted (1.4.2017) by virtue of [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), regs. 2(c), **37(3)(b)**

Ill-health pension becomes payable before end of contributions payment period

70.—(1) This regulation applies if an ill-health pension becomes payable to a member (M) before the end of the contributions payment period for an additional pension election.

(2) If an ill-health pension becomes payable to M in consequence of a claim made before the end of the refund period—

- (a) any periodic payments that have been made under the election must be repaid to M; [^{F75}and]
- ^{F76}(b)
- (c) the amount of accrued additional pension attributable to the election as at the last day of pensionable service must be disregarded.

[^{F77}(3) If an ill-health pension becomes payable to M in consequence of a claim made after the end of the refund period—

- (a) the periodic payments under the additional pension election are treated as being paid until the end of the contributions payment period for the election; and

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- (b) paragraph (4) applies.
- (4) For the purpose of calculating the annual rate of ill-health pension—
 - (a) if the scheme manager believes that the declaration that accompanied the additional pension election was made in good faith, the amount of accrued additional pension is calculated under paragraph 28 of Schedule 9 as at the last day of pensionable service;
 - (b) if the scheme manager believes that the declaration was not made in good faith, paragraph (2)(a) and (c) applies.]

Textual Amendments

- F75** Word in [reg. 70\(2\)\(a\)](#) inserted (with effect in accordance with [reg. 1\(2\)\(a\)](#) of the amending S.I.) by [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), [regs. 2\(c\)](#), **38(2)(a)**
- F76** [Reg. 70\(2\)\(b\)](#) omitted (with effect in accordance with [reg. 1\(2\)\(a\)](#) of the amending S.I.) by virtue of [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), [regs. 2\(c\)](#), **38(2)(b)**
- F77** [Reg. 70\(3\)\(4\)](#) substituted for [reg. 70\(3\)](#) (with effect in accordance with [reg. 1\(2\)\(a\)](#) of the amending S.I.) by [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), [regs. 2\(c\)](#), **38(3)**

Effect of part payment of contributions

- 71.**—(1) This regulation applies if—
- (a) the full amount of contributions payable by a member (M) under an additional pension election is not paid; and
 - (b) neither regulation 69(2) nor 70(2) applies.
- (2) The amount of accrued additional pension under paragraph 28(3) of Schedule 9 is the appropriate portion of the amount of accrued additional pension if the full amount of contributions had been paid.
- (3) In the case of an election under regulation 55(3)(b), the amount of accrued additional pension under Part 6 in respect of M is the appropriate proportion of the amount had the full amount of contributions been paid.
- (4) For the purposes of paragraphs (2) and (3), the appropriate proportion is calculated in accordance with such method as the scheme actuary determines and specifies in guidance given to the scheme manager.
- (5) In making a determination under paragraph (4), the scheme actuary must have regard to—
- (a) the proportion that the total contributions paid bears to the full amount of contributions due to be paid under the election for the full contributions payment period; and
 - (b) the requirements of Chapter 1 of Part 4 of the 1993 Act relating to the preservation of benefits under occupational pension schemes.

PART 5

Members' benefits

CHAPTER 1

Qualification

Qualifying for retirement benefits

72. A member is qualified for retirement benefits under this scheme if—
- (a) the member has at least 2 years' qualifying service; or
 - (b) a transfer payment otherwise than from another occupational pension scheme has been accepted in relation to the member.

CHAPTER 2

Age retirement

Entitlement to age retirement pension

73.—(1) A member is entitled to payment of an age retirement pension from the entitlement day if the member—

- (a) has reached normal pension age;
- (b) is qualified for retirement benefits or the member ceases pensionable service after reaching normal pension age;
- (c) has left all NHS employment or reached age 75; and
- (d) has applied under paragraph 4 of Schedule 3 for the payment of an age retirement pension.

(2) An age retirement pension is payable for life.

(3) This regulation does not apply to a pension derived from pension credit rights (see section 101B of the 1993 Act^{M19}).

Marginal Citations

M19 Section 101B was inserted by section 37 of the [Welfare Reform and Pensions Act 1999 \(c.30\)](#).

Annual rate of age retirement pension

74. The annual rate of age retirement pension payable to an active member or a deferred member who becomes entitled to payment of an age retirement pension is calculated in accordance with paragraph 1 of Schedule 13.

Late payment of pension with actuarial increase

75.—(1) Paragraph (2) applies where a member becomes entitled to the immediate payment of an age retirement pension on ceasing pensionable employment after reaching normal pension age.

(2) An increase amount (“the late payment actuarial increase”) must be calculated in accordance with paragraph 2 of Schedule 13.

Pension credit member

76.—(1) A pension credit member is entitled to a pension derived from the member's pension credit rights (see section 101B of the 1993 Act) if—

- (a) the relevant event occurs; and
- (b) the member claims payment of the pension.

(2) The relevant event is whichever is the later of the following—

- (a) the pension credit member reaches whichever is the later of the age of 65 or state pension age; and
- (b) the date on which the pension sharing order or provision under which the member is entitled to the pension credit takes effect.

(3) The pension becomes payable on the occurrence of the relevant event.

(4) The amount of the pension is equal to the member's pension credit calculated in accordance with regulations under paragraph 5(b) of Schedule 5 to the 1999 Act.

(5) A pension credit member who does not fall within paragraph (2)(a) is entitled to immediate payment of a reduced pension if the member—

- (a) has reached normal minimum pension age; and
- (b) claims payment of the pension.

(6) The amount of the pension under paragraph (5) is—

- (a) the amount calculated pursuant to paragraph (4), less
- (b) such amount as the scheme manager determines to be appropriate in consequence of payment of the pension before the pension credit member is within paragraph (2)(a).

(7) For the purposes of making a determination under paragraph (6)(b), the scheme manager must consult the scheme actuary.

(8) A claim under paragraph (1) or (5)—

- (a) must be made in writing in such form as the scheme manager requires;
- (b) takes effect from the date specified in the claim as the date on which the pension is to become payable.

(9) A pension credit member in relation to whom the relevant event has not occurred is entitled to immediate payment of a pension if, in the opinion of the scheme manager, the pension credit member—

- (a) meets the ill-health condition in paragraph 1 of Schedule 28 to the 2004 Act;
- (b) had previously been engaged in regular employment but is now permanently incapable of engaging in regular employment due to mental or physical infirmity; and
- (c) claims payment of the pension.

(10) The amount of the pension under paragraph (9) is calculated as mentioned in paragraph (4).

(11) For the purposes of paragraph (9), the scheme manager may require whatever medical evidence the scheme manager thinks necessary.

(12) A pension sharing order or provision is an order or provision mentioned in section 28(1) of the 1999 Act ^{M20}.

Marginal Citations

M20 Section 28(1) has been amended by section 261(1) of, and paragraph 159(1) to (7) of Schedule 27 to, the [Civil Partnership Act 2004 \(c.33\)](#).

Conversion of part of pension into lump sum

77.—(1) Subject to paragraph (2) and Part 2 of Schedule 13, the following members may apply to the scheme manager to receive a lump sum in place of part of a pension—

- (a) a member who is entitled to payment of a retirement pension;
- (b) a pension credit member who is entitled to payment of a pension credit retirement pension.

(2) Paragraph (1)(b) only applies if—

- (a) the member's pension credit is derived from rights attributable to the pensionable service of a pension debit member; and
- (b) a retirement pension does not become payable to the pension debit member before the day on which a pension sharing order takes effect in respect of that pensionable service.

(3) Subject to paragraph (4), where an application is made pursuant to paragraph (1), the amount of pension converted into a lump sum is £1 for every £12 paid as a lump sum to the member.

(4) Paragraph (5) applies if a retirement pension converted under this regulation—

- (a) is adjusted by virtue of regulation 93, or
- (b) is abated to zero by virtue of regulation 86(3) and regulation 87 applies.

(5) The amount of pension converted into a lump sum for any retirement pension that subsequently becomes payable to the member is an amount determined by the scheme manager after consulting the scheme actuary.

(6) If the pension is an ill-health pension under regulation 90, the option under this regulation may only be exercised by giving notice to the scheme manager—

- (a) at the time of claiming the pension; or
- (b) before such later time as the scheme manager specifies in writing.

(7) If the pension is a Tier 2 IHP under regulation 93 in substitution for a Tier 1 IHP under regulation 90, the option under this regulation may only be exercised—

- (a) in relation to the difference between the Tier 1 IHP that ceases to be payable pursuant to sub-paragraph (a) of regulation 93(5) and the Tier 2 IHP to which the member becomes entitled under sub-paragraph (b) of that regulation; and
- (b) by giving notice to the scheme manager—
 - (i) at the time of the award of the Tier 2 IHP, or
 - (ii) before such later time as the scheme manager specifies in writing.

(8) Notice under paragraph (6) or (7) must be—

- (a) given in writing;
- (b) in such form as the scheme manager requires.

(9) In paragraph (7) the references to a Tier 1 IHP and a Tier 2 IHP must be construed in accordance with regulation 90.

(10) This regulation does not apply to a pension credit member whose rights under this scheme are attributable to a disqualifying pension credit for the purposes of paragraph 2 of Schedule 29 to the 2004 Act ^{M21}.

Marginal Citations

M21 Paragraph 2 of Schedule 29 has been amended by section 161(1) of, and paragraphs 1 and 23 of Schedule 23 to, the Finance Act 2006 (c.25), section 70 of, and paragraphs 1 and 11(1) and (4) of Schedule 20 to, the Finance Act 2007 (c.11), section 65 of, and paragraphs 23 and 25 of Schedule 16 to, the Finance Act 2011 (c.11) and section 48(5) of, and paragraphs 5 and 8(1) and (2) of Schedule 22 to, the Finance Act 2013 (c.29).

Entitlement day

78.—(1) The entitlement day for the purposes of an age retirement pension is—

- (a) if the member (M) is in NHS employment on the day on which M reaches normal pension age—
 - (i) the day after M ceases to be in NHS employment; or
 - (ii) the day on which M reaches the age of 75;
- (b) if M is not in NHS employment on the day on which M reaches normal pension age, that day.

(2) If regulation 98 applies to M, for the purposes of M's entitlement to a pension in respect of old employment (within the meaning of regulation 101(3)) a reference in this regulation to M ceasing to be in NHS employment must be treated as a reference to M ceasing to be in the old employment.

CHAPTER 3

Early and premature retirement

Early retirement

79.—(1) A member (M) is entitled to payment of a reduced pension (an early retirement pension) from the entitlement day if M—

- (a) has reached normal minimum pension age but has not reached normal pension age;
- (b) is qualified for retirement benefits;
- (c) has ceased all NHS employment; and
- (d) has applied under paragraph 4 of Schedule 3 for payment of an early retirement pension.

(2) M is not entitled to payment of an early retirement pension if the scheme manager, after consultation with the scheme actuary, decides that the amount of the pension would be less than the amount of the guaranteed minimum pension (if any) to which M is entitled.

(3) An early retirement pension is payable for life.

(4) Part 3 of Schedule 13 has effect in respect of the calculation of the amount of an early retirement pension.

Entitlement day

80.—(1) The entitlement day for the purposes of an early retirement pension is—

- (a) in the case of a deferred member, the date specified in the claim as the date on which the pension is to become payable;
- (b) in the case of an active member, the day immediately following the day on which M ceased to be employed in NHS employment.

(2) If regulation 98 applies to M, for the purposes of M's entitlement to a pension in respect of old employment (within the meaning of regulation 101(3)) a reference in this regulation to M ceasing to be in NHS employment must be treated as a reference to M ceasing to be in the old employment.

Premature retirement in the interests of efficiency

81.—(1) A relevant member (M) is entitled to payment of a premature retirement pension from the entitlement day if—

- (a) M has reached normal minimum pension age but has not reached normal pension age;
- (b) M is qualified for retirement benefits;
- (c) M's pensionable employment has been terminated by M's employing authority in the interests of the efficient discharge of the functions of M's employing authority;
- (d) M's employing authority gives written notice to the scheme manager pursuant to paragraph (2);
- (e) the scheme manager certifies that M's employment is terminated in the interests of the efficient discharge of the employing authority's functions;
- (f) M has ceased to be employed in NHS employment; and
- (g) not later than 6 months after M's employment is terminated, M applies under paragraph 4 of Schedule 3 for payment of a premature retirement pension.

(2) The notice must state that—

- (a) M's pensionable employment was terminated in the interests of the efficient discharge of the employing authority's functions;
- (b) M has at least 2 years' continuous employment determined in accordance with any terms and conditions applying to the employment;
- (c) the employing authority agrees that a premature retirement pension should become payable to M; and
- (d) M has not unreasonably refused—
 - (i) to seek suitable alternative employment; or
 - (ii) to accept an offer of such employment.

(3) A certificate under paragraph (1)(e) may be given only with the agreement of M's employing authority.

(4) A premature retirement pension is payable for life.

(5) A relevant member is a member who is not—

- (a) a practitioner;
- (b) a non-GP provider; or
- (c) practice staff.

(6) Part 4 of Schedule 13 has effect in respect of the calculation of the amount of a premature retirement pension.

Premature retirement on grounds of redundancy

82.—(1) A relevant member (M) is entitled to payment of a premature retirement pension from the entitlement day if—

- (a) M has reached normal minimum pension age but has not reached normal pension age;
- (b) M is qualified for retirement benefits;

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- (c) M's pensionable employment has been terminated by M's employing authority by reason of M's redundancy;
 - (d) M's employing authority gives written notice to the scheme manager pursuant to paragraph (2);
 - (e) the scheme manager certifies that M's employment is terminated by reason of redundancy;
 - (f) M has ceased to be employed in NHS employment; and
 - (g) not later than 6 months after M's employment is terminated, M applies under paragraph 4 of Schedule 3 for payment of a premature retirement pension.
- (2) The notice must state—
- (a) that M's pensionable employment was terminated by reason of M's redundancy;
 - (b) that M has at least 2 years' continuous employment determined in accordance with any terms and conditions applying to the employment;
 - (c) that the employing authority agrees that a premature retirement pension should become payable to M;
 - (d) that M has not unreasonably refused—
 - (i) to seek suitable alternative employment; or
 - (ii) to accept an offer of such employment;
 - (e) that M is entitled to claim a pension under this regulation as an alternative to receiving (in whole or in part) the lump sum payment otherwise payable to M in accordance with those terms and conditions; and
 - (f) whether the additional contribution option applies to M.
- (3) A certificate under paragraph (1)(e) may be given only with the agreement of M's employing authority.
- (4) A premature retirement pension is payable for life.
- (5) M is not entitled to payment of a premature retirement pension if the scheme manager, after consultation with the scheme actuary, decides that the amount of the pension would be less than the amount of the guaranteed minimum pension to which M is entitled.
- (6) If the additional contribution option applies, the payment of M's pension does not start until M's employing authority has at the same time—
- (a) remitted to the scheme manager M's contribution paid to the employing authority pursuant to regulation 32(6); and
 - (b) paid the contribution required under regulation 35(2).
- (7) Sub-paragraph (a) of paragraph (6) does not apply if—
- (a) M has chosen not to pay a contribution as mentioned in regulation 32(2); and
 - (b) the employing authority gives confirmation of that in writing to the scheme manager.
- (8) A relevant member is a member who is not—
- (a) a practitioner;
 - (b) a non-GP provider; or
 - (c) practice staff.
- (9) The additional contribution option applies if the terms and conditions of M's employment entitle M optionally to make an additional contribution towards the cost of paying the pension if the lump sum payment is insufficient to meet that cost in full.

(10) Part 4 of Schedule 13 has effect in respect of the calculation of the amount of a premature retirement pension.

Premature retirement entitlement day

83. The entitlement day for a premature retirement pension is the day immediately following the day on which M ceased to be employed in NHS employment.

CHAPTER 4

Partial retirement

Election for partial retirement (members over normal minimum pension age)

84.—(1) This regulation applies to a member (M) if—

- (a) M has reached normal minimum pension age;
- (b) M continues to be employed in an employment in which M is an active member;
- (c) M is qualified for retirement benefits;
- (d) the terms on which M holds or engages in the employment mentioned in sub-paragraph (b) change; and
- (e) as a result of the change, M is subject to a relevant reduction.

(2) In paragraph (1), M is subject to a relevant reduction if—

- (a) where M is neither a practitioner nor a non-GP provider, M's pensionable earnings in the employment mentioned in paragraph (1)(b) are reduced to 90% or less of the amount of M's pensionable earnings during the period of 12 months ending with the election day;
- (b) where M is a practitioner or a non-GP provider, M's engagement in the employment is reduced to 90% or less of its level during that period.

(3) If this regulation applies M may elect to claim immediate payment of pension as specified in the election pursuant to paragraphs (a) and (b)—

- (a) M must specify the percentage of pension M claims (the specified percentage);
- (b) M must specify whether M claims any additional pension to which M is entitled.

(4) The election must be exercised by notice in writing to the scheme manager in such form as the scheme manager determines and must be accompanied by—

- (a) where M is neither a practitioner nor a non-GP provider, a statement in writing by the employing authority that the conditions in paragraph (1)(d) and (e) are met;
- (b) where M is a practitioner or a non-GP provider—
 - (i) appropriate supporting evidence; and
 - (ii) a statement in writing by the host Board that the conditions in paragraph (1)(d) and (e) are met.

(5) The specified percentage must be such that—

- (a) the amount of the pension to which M becomes entitled as a result of the election—
 - (i) is not less than 20% of the pension that would have been payable if M had ceased to be employed in all of M's employments at the end of the election day; and
 - (ii) taken together with any increase to which M is entitled in consequence of the election, is not less than 0.05% of M's lifetime allowance on the election day;

^{F78}(b)

(6) In applying paragraph (5)—

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- (a) any additional pension to which M is entitled must be ignored; and
 - (b) the amount in sub-paragraph (a) is the amount of the pension disregarding the effect of an application under regulation 77.
- (7) An election under this regulation may be made on not more than two occasions and the scheme manager must take advice from the scheme actuary regarding—
- (a) any benefits to be paid after the first election (but before the second election);
 - (b) any benefits to be paid after a second election; and
 - (c) the final payment.
- (8) If M was not an active member during the whole of the period of 12 months mentioned in paragraph (2)(a), that paragraph applies as if M's pensionable earnings during that period were—

$$PE \times \frac{365}{N}$$

where—

PE is M's pensionable earnings for the part of that period during which M was an active member; and

N is the number of days in that period on which M was an active member.

(9) In this regulation and regulations 85 to 89, the election day is the day before the relevant reduction takes effect.

Textual Amendments

F78 Reg. 84(5)(b) omitted (1.10.2023) by virtue of [The National Health Service Pension Schemes \(Partial Retirement etc.\) \(Amendment\) Regulations 2023 \(S.I. 2023/952\)](#), regs. 1(2), **24**

Modifications etc. (not altering text)

C8 Reg. 84(5) modified (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) Regulations 2015 \(S.I. 2015/95\)](#), regs. 1(b), **31(3)**

C9 Reg. 84(5) modified (1.10.2023) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) Regulations 2015 \(S.I. 2015/95\)](#), **reg. 31(3)** (as substituted by S.I. 2023/952, regs. 1(2), **32(4)**)

Effect of election

85.—(1) This regulation applies if a member (M) makes an election under regulation 84.

(2) M is entitled—

- (a) if M has reached normal pension age, to immediate payment of the specified percentage of the pension to which M would be entitled by virtue of regulation 73(1) if M had ceased to be employed in one or more employments on election day;
- (b) if M has not reached normal pension age, to immediate payment of the specified percentage of the pension to which M would be entitled by virtue of regulation 79 if M had ceased to be employed in one or more employments on election day; and
- (c) if the election specifies that M claims immediate payment of additional pension, to the additional pension subject—

- (i) where sub-paragraph (a) applies, to an increase of the same amount as would be made in that pension pursuant to paragraph 2 of Schedule 13 if M had ceased to be employed on the election day; and
 - (ii) where sub-paragraph (b) applies, to a reduction of the same amount as would have been made in that pension pursuant to regulation 79 if M had so ceased to be employed.
- (3) For the purposes of this Part—
 - (a) M is a pensioner member as respects—
 - (i) the pension to which M is immediately entitled as a result of making the election; and
 - (ii) the specified percentage of the pensionable service that pension represents, in respect of which M is an active member on the election day;
 - (b) if M continues in pensionable service after the election day, M is an active member as respects—
 - (i) the pensionable service after that day in which M continues; and
 - (ii) so much of the pensionable service in respect of which M is an active member as is not within sub-paragraph (a) (the unspecified service); and
 - (c) if M does not continue in pensionable service after the election day, M is a deferred member as respects the unspecified service.

Terms of employment improve after election

- 86.**—(1) This regulation applies if—
- (a) a member (M) has made an election under regulation 84(3);
 - (b) during the period of 12 months beginning with the day following election day the terms on which M holds the employment (or employments) mentioned in regulation 84(1)(b) change again; and
 - (c) as a result M is subject to a relevant increase.
- (2) In paragraph (1) M is subject to a relevant increase if—
- (a) where M is neither a practitioner nor a non-GP provider, M's pensionable earnings in the employment (or employments) is increased to more than 90% of M's pensionable earnings during the period of 12 months ending with the election day;
 - (b) where M is a practitioner or a non-GP provider, the level of M's engagement in the employment is increased to more than 90% of M's pre-change level.
- (3) The amount of M's pension mentioned in regulation 85(2) [^{F79}(a) and (b)] is abated to zero from the first pension day following the day on which the relevant increase occurred.
- (4) If, during the period of 12 months beginning with the day following election day, M enters further employment in which M is an active member—
- (a) the terms on which M holds the employment in respect of which the election was made (the election employment) are treated as having changed again; and
 - (b) for the purpose of determining whether M is subject to a relevant increase—
 - (i) where M is a practitioner or a non-GP provider, M's level of engagement in the further employment is treated as engagement in the election employment; and
 - (ii) where M is neither a practitioner nor a non-GP provider, M's pensionable earnings in the further employment are treated as pensionable earnings from the election employment.

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- (5) Paragraph (3) does not apply if—
- (a) the only change to M's terms as mentioned in paragraph (1)(b) is to M's pensionable earnings;
 - (b) the scheme manager considers that the annual rate of M's pensionable earnings at the time of the change would have exceeded the annual rate mentioned in paragraph (2)(a).
- (6) If M was not an active member during the whole of the period of 12 months mentioned in paragraph (1)(b), that paragraph applies as if M's pensionable earnings during that period were—

$$PE \times \frac{365}{N}$$

where—

PE is M's pensionable earnings for the part of the period during which M was an active member; and

N is the number of days in the period on which M was an active member.

- (7) In paragraph (2)(b), the pre-change level is the level of M's engagement in the employment during the period of 12 months ending on the election day.

Textual Amendments

F79 Words in [reg. 86\(3\)](#) inserted (1.4.2023) by [The National Health Service Pension Schemes \(Amendment\) Regulations 2023 \(S.I. 2023/301\)](#), regs. 1(2), **13**

Member becomes subject to reduction following abatement

87.—(1) This regulation applies if—

- (a) regulation 86 applies to a member (M) such that M's pension is abated to zero pursuant to paragraph (3) of that regulation; and
- (b) M again becomes subject to a relevant reduction (within the meaning of regulation 84(2)).

(2) The scheme manager must restore the payment of M's pension with effect from the first pension day immediately following the day on which M became subject to the relevant reduction as mentioned in paragraph (1)(b).

(3) The scheme manager must not act under paragraph (2) unless the scheme manager obtains and has regard to 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.

Payment of pension after abatement

88.—(1) This regulation applies if—

- (a) a member's (M) pension is abated pursuant to regulation 86(3); and
- (b) M's pensionable earnings are not reduced in consequence of M again becoming subject to a relevant reduction as mentioned in regulation 87(2).

(2) M's pension is payable by the scheme manager—

- (a) when M partially retires or retires again from pensionable employment; or
- (b) M attains the age of 75.

(3) For the purposes of paragraph (2), the scheme manager must—

- (a) have regard to any pension already paid, including any lump sum paid as a result of M making an application under regulation 77 (conversion of part of pension into lump sum); and
- (b) obtain advice from the scheme actuary.

Application of regulations 84 to 88: concurrent employments

89.—(1) This regulation applies if a person (M) is an active member in two or more employments held concurrently on the election day.

(2) Regulations 84 to 88 apply in relation to each of the employments as if it were the only employment held by M on that day, subject to the following modifications.

(3) In regulation 84—

(a) for paragraph (2)(a) substitute—

“(a) where M is neither a practitioner nor a non-GP provider, if the sum of the annual rate of M's pensionable earnings in that employment and every other employment held by M on the election day is reduced to 90% or less of the sum of—

- (i) M's pensionable earnings in the employment during the period of 12 months ending with the election day; and
- (ii) M's pensionable earnings during that period in every other employment held by M on that day.”; and

(b) in paragraph (8), after “paragraph (2)(a)” insert “ in respect of any of the employments held by M ”.

(4) In regulation 86, for paragraph (2)(a) substitute—

“(a) where M is neither a practitioner nor a non-GP provider, the annual rate of M's pensionable earnings in the employment is increased to more than 90% of the sum of—

- (i) M's pensionable earnings in the employment during the period of 12 months ending with the election day; and
- (ii) M's pensionable earnings during that period in every other employment held by M on that day.”.

(5) In the case of a practitioner or a non-GP provider, a reference to M's employment is a reference to M's pensionable service as a practitioner together with any concurrent NHS employment, and “terms of employment” must be construed accordingly.

CHAPTER 5

Ill-health pension

Entitlement to ill-health pension

90.—(1) An active member (M) is entitled to immediate payment of—

- (a) an ill-health pension at Tier 1 (a Tier 1 IHP) if the Tier 1 conditions are satisfied in relation to M;
- (b) an ill-health pension at Tier 2 (a Tier 2 IHP) if the Tier 2 conditions are satisfied in relation to M.

(2) The Tier 1 conditions are that—

- (a) M ^[F80]is qualified for retirement benefits and] has not attained normal pension age;
- (b) M has ceased to be employed in NHS employment;

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- (c) the scheme manager is satisfied that M suffers from a physical or mental infirmity as a result of which M is permanently incapable of efficiently discharging the duties of M's employment;
 - (d) M's employment is terminated because of the physical or mental infirmity; and
 - (e) M ^{F81}...claims payment of the pension.
- (3) The Tier 2 conditions are that—
- (a) the Tier 1 conditions are satisfied in relation to M; and
 - (b) the scheme manager is also satisfied that M suffers from a physical or mental infirmity as a result of which M is permanently incapable of engaging in regular employment of like duration.
- (4) M is not entitled to payment of a pension under this regulation if M's NHS employment is terminated because—
- (a) M is dismissed (unless the scheme manager is satisfied that the dismissal was because of M's infirmity);
 - (b) M retires or resigns at a time when—
 - (i) M is subject to disciplinary proceedings; or
 - (ii) had been notified that such proceedings were being contemplated; or
 - (c) M otherwise retires or resigns, unless—
 - (i) at the time of doing so M's employing authority has notified the scheme manager in writing that M's physical or mental infirmity is the reason for the termination; and
 - (ii) the scheme manager is satisfied that is the case.
- (5) In paragraph (3)(b), “regular employment of like duration” means—
- (a) in the case of a practitioner or a non-GP provider, such employment as the scheme manager thinks would involve a similar level of engagement to M's current pensionable service as a practitioner or non-GP provider;
 - (b) in any other case, where prior to ceasing NHS employment, M was employed—
 - (i) on a whole-time basis, regular employment on a whole-time basis;
 - (ii) on a part-time basis, regular employment on a part-time basis, regard being had to the number of hours, half days and sessions M worked in the employment.
- (6) A pension under this regulation is payable for life: but see regulations 95 and 96.

Textual Amendments

- F80** Words in [reg. 90\(2\)\(a\)](#) inserted (1.4.2017) by [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), regs. 2(c), **39(2)(a)**
- F81** Word in [reg. 90\(2\)\(e\)](#) omitted (1.4.2017) by virtue of [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), regs. 2(c), **39(2)(b)**

Member's incapacity

91.—(1) For the purpose of determining whether a member (M) is permanently incapable of discharging the duties of M's employment efficiently, the scheme manager must—

- (a) have regard to the factors in paragraph (2), no one of which is to be decisive; and

(b) disregard M's personal preference for or against engaging in the employment.

(2) The factors mentioned in paragraph (1)(a) are—

- (a) whether M has received appropriate medical treatment in respect of the infirmity;
- (b) M's mental capacity;
- (c) M's physical capacity;
- (d) the type and period of rehabilitation it would be reasonable for M to undergo in respect of the infirmity, regardless of whether M has undergone the rehabilitation; and
- (e) any other matter the scheme manager thinks appropriate.

(3) For the purpose of determining whether M is permanently incapable of engaging in regular employment of like duration as mentioned in paragraph (3)(b) of regulation 90, the scheme manager must—

- (a) have regard to the factors in paragraph (4), no one of which is to be decisive; and
- (b) disregard the factors in paragraph (5).

(4) The factors mentioned in paragraph (3)(a) are—

- (a) whether M has received appropriate medical treatment in respect of the infirmity;
- (b) such reasonable employment as M would be capable of engaging in if due regard is given to—
 - (i) M's mental capacity;
 - (ii) M's physical capacity;
 - (iii) M's previous training; and
 - (iv) M's previous practical, professional and vocational experience, irrespective of whether or not such employment is available to M.
- (c) the type and period of rehabilitation it would be reasonable for M to undergo in respect of the infirmity, regardless of whether M has undergone the rehabilitation, having regard to—
 - (i) M's mental capacity; and
 - (ii) M's physical capacity;
- (d) the type and period of training it would be reasonable for M to undergo in respect of the infirmity, regardless of whether M has undergone the training, having regard to—
 - (i) M's mental capacity;
 - (ii) M's physical capacity;
 - (iii) M's previous training; and
 - (iv) M's previous practical, professional and vocational experience; and
- (e) any other matter the scheme manager thinks appropriate.

(5) The factors mentioned in paragraph (3)(b) are—

- (a) M's personal preference for or against engaging in any particular employment; and
- (b) the geographical location of M.

(6) In this regulation—

“appropriate medical treatment” means such medical treatment as it would be normal to receive in respect of the infirmity, but does not include any treatment that the scheme manager considers—

- (a) that it would be reasonable for M to refuse;
- (b) would provide no benefit to restoring M's capacity for—

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- (i) discharging the duties of M's employment efficiently for the purposes of paragraph (2)(c) of regulation 90 [^{F82}before M reaches prospective normal pension age]; or
- (ii) engaging in regular employment of like duration for the purposes of paragraph (3) (b) of that regulation [^{F83}before M reaches prospective normal pension age; or]
- (c) that, through no fault on the part of M, it is not possible for M to receive before M reaches [^{F84}prospective] normal pension age.

“permanently” means until M attains M's prospective normal pension age; and

“regular employment of like duration” has the same meaning as in regulation 90.

Textual Amendments

- F82** Words in reg. 91 inserted (1.4.2017) by The National Health Service Pension Scheme and Additional Voluntary Contributions (Amendment) Regulations 2017 (S.I. 2017/275), regs. 2(c), **40(2)(a)**
- F83** Words in reg. 91 inserted (1.4.2017) by The National Health Service Pension Scheme and Additional Voluntary Contributions (Amendment) Regulations 2017 (S.I. 2017/275), regs. 2(c), **40(2)(b)**
- F84** Word in reg. 91 inserted (1.4.2017) by The National Health Service Pension Scheme and Additional Voluntary Contributions (Amendment) Regulations 2017 (S.I. 2017/275), regs. 2(c), **40(2)(c)**

Annual rate of ill-health pension

- 92.**—(1) The annual rate of Tier 1 IHP payable to a member (M) is found by—
- (a) taking the amount of full retirement earned pension specified in M's pensioner member's account;
 - (b) subtracting the conversion amount (if any) specified in that account in relation to that amount; and
 - (c) adding the amount of accrued additional pension (if any) calculated in accordance with regulation 70(3)(b) less the conversion amount (if any) specified in the account in relation to the additional pension.
- (2) The annual rate of Tier 2 IHP payable to M is the sum of—
- (a) the annual rate of Tier 1 IHP; and
 - (b) the Tier 2 addition.
- (3) The Tier 2 addition is found by applying the following formula:

$$\frac{A \times (C + E)}{C} - A$$

where—

A is the aggregate of the amounts of all of M's pensions from pensionable service on the day after M's last day of pensionable service (L+1)—

- (i) disregarding any additional pension; and
 - (ii) including any increases applied by virtue of the Pensions (Increase) Act 1971 ^{M22};
- C is the total period of pensionable service counted in days over which the pensions aggregated to find A were accrued; and

E is the period counted in days equal to 50% of the length of the period starting on L+1 and ending on [F85 the day before M reaches] prospective normal pension age, and any part of a day must be taken to be a whole day.

Textual Amendments

F85 Words in reg. 92(3) substituted (1.4.2015) by [The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions \(Amendment\) Regulations 2016 \(S.I. 2016/245\)](#), regs. 1(8), 66 (with reg. 105)

Marginal Citations

M22 1971 c.56.

Re-assessment of entitlement

93.—(1) This regulation applies if—

- (a) in respect of a member (M) the scheme manager is satisfied as mentioned in regulation 90(2)(c); and
- (b) at the time M is awarded a pension the scheme manager gives M notice in writing as mentioned in paragraph (2).

(2) The notice is that M's case may be considered once within a period of three years beginning with the date of the award to determine whether, at the date of the consideration, M meets the condition in regulation 90(3)(b).

(3) M may apply to the scheme manager for a review of whether M subsequently meets the condition in regulation 90(3)(b) if—

- (a) M makes the application in writing no later than the relevant date;
- (b) the application is accompanied by further written medical evidence—
 - (i) relating to whether, at the date of the scheme manager's review, M has the physical or mental infirmity mentioned in regulation 90(3)(b); and
 - (ii) that relates to the same physical or mental infirmity as a result of which M met the condition in regulation 90(2)(c);
- (c) no previous application for a review has been made under this paragraph; and
- (d) M has not become entitled to a Tier 2 IHP in respect of any later service under regulation 97.

(4) The relevant date in paragraph (3)(a) is—

- (a) the last day of the period of three years after the giving of notice under paragraph (1)(b); or
- (b) if M engages in further NHS employment during that period, the first anniversary of the day on which the employment commences or, if sooner, the last day of that period.

(5) If, after considering the further medical evidence the scheme manager determines that M has the physical or mental infirmity for the purposes of regulation 90(3)(b), with effect from the date the determination is made, M—

- (a) ceases to be entitled to a Tier 1 IHP; and
- (b) becomes entitled to a Tier 2 IHP.

(6) If a determination is made under paragraph (5), in calculating the Tier 2 addition pursuant to regulation 92(3), in the explanation of factor E for “period starting on L+1” substitute “ period starting on day of the determination under regulation 93(5) ”.

Early retirement on ill-health (deferred members)

- 94.**—(1) A deferred member (DM) is entitled to immediate payment of a pension if—
- (a) DM is not in NHS employment;
 - (b) DM has not attained normal pension age;
 - (c) the scheme manager is satisfied that DM suffers from physical or mental infirmity as a result of which DM is permanently incapable of engaging in regular employment of like duration; and
 - (d) DM claims payment of the pension.
- (2) DM is entitled to immediate payment of a pension if—
- (a) DM is in NHS employment;
 - (b) DM has not attained normal pension age;
 - (c) the scheme manager is satisfied that DM—
 - (i) is not within [F86 paragraph (1)]; but
 - (ii) suffers from a physical or mental infirmity as a result of which DM is permanently incapable of discharging the duties of DM's employment efficiently; and
 - (d) DM leaves the employment and claims payment of the pension.
- (3) The amount of a pension payable under this regulation is found by applying regulation 92(1) as if—
- (a) a reference to M is a reference to DM; and
 - (b) the pension under this regulation is a Tier 1 IHP.
- (4) Regulation 91 applies for the purposes of this regulation as if—
- (a) a reference to M is a reference to DM; and
 - (b) a reference to regular employment of like duration is a reference to such employment for the purposes of paragraph (1)(c).

Textual Amendments

F86 Words in reg. 94(2)(c)(i) substituted (1.4.2015) by [The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions \(Amendment\) Regulations 2016 \(S.I. 2016/245\)](#), regs. 1(8), 67 (with reg. 105)

Effect of re-employment on Tier 2 IHP

- 95.**—(1) This regulation applies if a member (M)—
- (a) is entitled to a Tier 2 IHP under regulation 90 in respect of earlier service;
 - (b) did not opt to exchange the pension for a lump sum in accordance with regulation 109; and
 - (c) has re-entered employment (M's further employment).
- (2) M continues to be entitled to a Tier 2 IHP if M's further employment—
- (a) is not NHS employment; and
 - (b) is an excluded employment.
- (3) M continues to be entitled to a Tier 2 IHP during the initial period if M's further employment—
- (a) is NHS employment; and
 - (b) is an excluded employment.

- (4) M ceases to be entitled to a Tier 2 IHP and is treated as being entitled to a Tier 1 IHP if—
- (a) M's employment—
 - (i) is not NHS employment; and
 - (ii) is not an excluded employment; or
 - (b) during the initial period, M's employment—
 - (i) is NHS employment; and
 - (ii) is not an excluded employment; or
 - (c) after the initial period, M's employment is NHS employment.
- (5) As regards further employment in NHS employment—
- (a) paragraph (4)(c) applies from the first day on which payment of a Tier 1 IHP falls after the first anniversary of M's re-entry into NHS employment, whether or not that day is part of a continuous period of further NHS employment beginning with entry into that employment;
 - (b) M may not re-join the scheme in respect of that employment or any other NHS employment until after the first anniversary of M's re-entry into NHS employment, whether or not that or any other NHS employment is an excluded employment.
- (6) For the purposes of this regulation—
- (a) an employment is an excluded employment at any time in a tax year, in relation to M, if M's earnings from the employment and any other employments are such that the lower earnings limit for that year is not exceeded;
 - (b) for the purposes of paragraph (4) an employment that has been an excluded employment in a tax year is not treated as ceasing to be such an employment until the first day following the end of the pension pay period for the Tier 2 IHP in which the limit described in subparagraph (a) is first exceeded; and
 - (c) “the initial period” means the period of 12 months beginning with the day on which M first enters an employment which results in this regulation applying.
- (7) M must—
- (a) notify the scheme manager if M is in NHS employment at the end of the initial period;
 - (b) notify the scheme manager if M's aggregate earnings for the purposes of national insurance from employments held in a tax year are such that the lower earnings limit for that year is exceeded; and
 - (c) provide the scheme manager or any other person specified by the scheme manager with such further information as the scheme manager specifies concerning any further employment.
- (8) In this regulation—
- (a) the lower earnings limit must be read in accordance with section 5 of the Social Security Contributions and Benefits Act 1992 ^{M23};
 - (b) “tax year” means a year of assessment for income tax purposes.

Marginal Citations

M23 Section 5 was substituted by section 73 of, and paragraph 1 of Schedule 9 to, the [Welfare Reform and Pensions Act 1999 \(c.30\)](#) and amended by sections 7(1) and (3) and 27(2) of, and Part 4 of Schedule 7 to, the [Pensions Act 2007 \(c.22\)](#) and sections 1(1) and 4(2) of, and Schedule 2 to, the [National Insurance Contributions Act 2008 \(c.16\)](#).

Renewed entitlement to Tier 2 IHP

- 96.**—(1) This regulation applies to a member (M) who—
- (a) has not attained normal pension age; and
 - (b) has ceased to be entitled to a Tier 2 IHP by virtue of regulation 95(4).
- (2) M may apply to the scheme manager under this regulation to become entitled to a Tier 2 IHP if—
- (a) M is in further NHS employment and ceases to be employed at all during the initial period; or
 - (b) M is in further employment that is not NHS employment and ceases to be employed in that further employment within a period of one year beginning with the day on which the further employment ceased to be an excluded employment.
- (3) An application to which paragraph (2)(a) applies must—
- (a) state that M has ceased to be employed at all;
 - (b) be made within the initial period;
 - (c) be in writing and be accompanied by evidence from a registered medical practitioner that M has the physical or mental infirmity mentioned in regulation 90(3)(b).
- (4) An application to which paragraph (2)(b) applies must—
- (a) state that M has ceased to be employed at all;
 - (b) be made within the period of one year beginning with the day on which the employment ceased to be an excluded employment;
 - (c) be in writing and be accompanied by evidence from a registered medical practitioner that M has the physical or mental infirmity mentioned in regulation 90(3)(b).
- (5) If the scheme manager is satisfied that M has the physical or mental infirmity mentioned in regulation 90(3)(b), from the day following that on which M's last employment ceased—
- (a) M ceases to be treated as entitled to the Tier 1 IHP; and
 - (b) M becomes entitled to a Tier 2 IHP in respect of the earlier service.
- (6) Expressions used in this regulation and in regulation 95 have the same meaning as in that regulation.

Re-employed Tier 1 IHP members

- 97.**—(1) This regulation applies to a member (M) if M is entitled to a Tier 1 IHP in respect of M's earlier service.
- (2) M is entitled to the benefits in paragraph (3) if—
- (a) M became entitled to a Tier 1 IHP for the earlier service; and
 - (b) on the termination of the later service, M becomes entitled to a Tier 1 IHP or a Tier 2 IHP.
- (3) The benefits are—
- (a) M's original Tier 1 IHP in respect of M's earlier service; and
 - (b) a Tier 1 IHP or a Tier 2 IHP (as the case may be) in respect of M's later service.
- (4) M is entitled to the benefits in paragraph (5) if—
- (a) M ceases to be entitled to a Tier 1 IHP in respect of the earlier service;
 - (b) M becomes entitled to a Tier 2 IHP in respect of the earlier service in accordance with regulation 93(5); and

- (c) on the termination of the later service, M becomes entitled to a Tier 1 IHP or a Tier 2 IHP (as the case may be) in respect of the later service.
- (5) The benefits are—
 - (a) a Tier 2 IHP paid in accordance with regulation 93 in respect of M's earlier service; and
 - (b) a Tier 1 IHP in respect of M's later service.

CHAPTER 6

Dual capacity and multiple employment

Dual capacity membership: pension benefits

- 98.**—(1) This paragraph applies if a member is—
- (a) a member of this scheme in two or more of the kinds specified in paragraph (2);
 - (b) a pensioner member in respect of two or more pensions; or
 - (c) a deferred member in respect of two or more pensions.
- (2) The kinds of member are—
- (a) an active member;
 - (b) a deferred member;
 - (c) a pensioner member;
 - (d) a pension credit member.
- (3) If paragraph (1) applies—
- (a) pension benefits are payable to the member (or to a person to whom the member has elected to allocate a pension under regulation 51) as if the member were two or more members of the kind in question (so that two or more pensions or lump sums are payable in respect of one member); and
 - (b) the amounts payable are determined accordingly.
- (4) If a person who is a pension credit member is entitled to two or more pension credits—
- (a) benefits are payable to the member under this scheme as if the member were two or more persons, each being entitled to one of the pension credits (so that two or more pensions or lump sums are payable in respect of one pension credit member); and
 - (b) the amounts payable are determined accordingly.

Deferred pension becomes payable during NHS re-employment following transfer of undertaking

- 99.**—(1) A member is not prevented from becoming entitled to a relevant pension because of continuing NHS employment if—
- (a) the member is an active member in the NHS employment which is employment into which the member has been transferred as a result of a transfer of an undertaking to the employing authority; and
 - (b) the member is a deferred member in respect of pensionable service that ceased before the member commenced the employment mentioned in sub-paragraph (a).
- (2) Benefits payable in respect of new employment (within the meaning of regulation 101(3)) are calculated without regard to pensionable service in respect of the old employment (within the meaning of that regulation).

(3) A relevant pension is a pension in respect of the pensionable service referred to in paragraph (1)(b).

Retirement benefits for members with more than one employment

100.—(1) This regulation applies to a member (M) who is in receipt of pensionable earnings in respect of two or more employments each of which is attributable to M belonging to any of groups A to C in the table in regulation 27(1).

(2) Subject to paragraphs (4) and (5), M does not become entitled to a pension under any of the regulations specified in paragraph (3) until—

(a) the termination of all of M's NHS employments (including employment as a practitioner),
or

(b) M reaches the age of 75.

(3) The regulations are—

(a) regulation 73;

(b) regulation 79;

(c) regulation 81;

(d) regulation 82;

(e) regulations 90 to 97.

(4) Paragraph (5) applies if M—

(a) leaves employment (“past employment”) with one employing authority; and

(b) in relation to the past employment, becomes entitled to a pension under regulation 81 or 82.

(5) M may elect—

(a) to take benefits only in respect of the past employment; and

(b) to continue to accrue rights in respect of any other continuing pensionable employment.

(6) If M elects as mentioned in paragraph (5), paragraph (2) applies in relation to an employment in respect of which M continues to accrue rights to benefits.

(7) Chapter 7 of Part 5 applies if M becomes entitled to a pension under paragraph (5) while continuing in other NHS employment.

(8) Paragraphs (9) and (10) apply if—

(a) M becomes entitled to a pension under regulation 81 or 82; and

(b) terminated concurrent employment as a practitioner not more than 12 months before becoming entitled to the pension.

(9) M is not entitled to receive a pension under regulation 81 or 82 in respect of any employment as practitioner, but is entitled only to receive a pension in respect of that employment pursuant to regulation 73 or 79.

(10) M may exercise a right to transfer out under Section 2 of Chapter 2 of Part 7 only if M leaves all pensionable service—

(a) before reaching normal pension age; and

(b) before becoming entitled to a pension under this scheme.

CHAPTER 7

Abatement on re-employment

Application of Chapter

101.—(1) This Chapter applies if—

- (a) a person who is a pensioner member of this scheme is employed in NHS employment;
- (b) the pensioner member's employment is not employment to which the pensioner member was transferred as a result of a transfer of an undertaking to the pensioner member's employer;
- (c) the pensioner member's pension is a pension under—
 - (i) regulation 90;
 - (ii) regulation 94; or
 - (iii) regulation 81; and
- (d) the pensioner member has not reached normal pension age.

(2) In this Part “NHS employment” includes—

- (a) employment in which a person of a category or description listed in Schedule 6 is engaged if the scheme manager has made a determination under section 25(5) of the 2013 Act in respect of the person; and
- (b) employment to which a corresponding health service scheme applies.

(3) In this Chapter—

- (a) a person to whom this Chapter applies is referred to as an “employed pensioner”;
- (b) the pension to which the employed pensioner is entitled is referred to as the “old service pension”;
- (c) the employment in respect of which the pension is payable is referred to as the “old employment”;
- (d) the employment in which the employed pensioner is employed is referred to as the “new employment”.

(4) For the purposes of this Chapter it is immaterial whether or not the employed pensioner is an active member of this scheme in the new employment.

(5) This Chapter does not apply to a person who is a pensioner member of this scheme if—

- (a) the person is employed by an independent provider—
 - (i) on the day the provider's status as an employing authority takes effect in accordance with regulation 152 (the effective date); and
 - (ii) on the day immediately before the effective date; and
- (b) any of paragraphs (6) to (8) apply to the person.

(6) This paragraph applies to a person who is not eligible to be an active member of this scheme on the effective date and remains ineligible to be such a member.

(7) This paragraph applies to a person who exercises an option not to re-join this scheme which takes effect from the effective date and has not been cancelled.

(8) This paragraph applies to a person who—

- (a) is not eligible to re-join this scheme on the effective date;
- (b) becomes eligible to do so on the day immediately after the first anniversary of the person entering NHS employment in accordance with regulation 95(5)(b) (the eligibility day); and

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- (c) exercises an option not to re-join this scheme that takes effect from the eligibility day which has not been cancelled.

Modifications etc. (not altering text)

C10 Reg. 101(1) modified (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) Regulations 2015 \(S.I. 2015/95\)](#), regs. 1(b), **39**

Information

- 102.**—(1) A person who becomes an employed pensioner must—
- (a) inform the employed pensioner's employer in the new employment and any other specified person that the old service pension is payable; and
 - (b) where requested, provide specified information about the employed pensioner's relevant income in the new employment to the scheme manager or a specified person.
- (2) A person who ceases to be an employed pensioner in one new employment and becomes an employed pensioner in another new employment must—
- (a) inform the person's employer in the other new employment, and any specified person that the old service pension is payable;
 - (b) where requested, provide specified information about the employed pensioner's relevant income in the other new employment to the scheme manager or a specified person.
- (3) In this regulation, “specified” means specified by the scheme manager.
- (4) Relevant income must be construed in accordance with regulation 104.

Reduction of pension

- 103.**—(1) If the condition in paragraph (2) is met, the amount of the old service pension for a scheme year is reduced.
- (2) The condition is that the employed pensioner's relevant income for the scheme year exceeds the employed person's previous earnings.
- (3) The amount of the reduction under paragraph (1)—
- (a) is equal to the excess; but
 - (b) must not exceed the enhancement amount.
- (4) Relevant income and the enhancement amount must be construed in accordance with regulation 104.
- (5) Previous earnings must be construed in accordance with regulations 105 and 106.
- (6) For the purpose of calculating the reduction to be made under paragraph (1) in respect of any part of a scheme year, the amount of the employed pensioner's previous earnings must be reduced proportionately.
- (7) If the employed pensioner has a guaranteed minimum under section 14 of the 1993 Act ^{M24} in relation to the old service pension, nothing in this regulation requires the reduction of that pension below the amount of the guaranteed minimum.

Marginal Citations

M24 [Section 14](#) has been amended by sections 151 and 177 of, and paragraphs 27(a) and (b) of Schedule 5 and Part 3 of Schedule 7 to, the [Pensions Act 1995 \(c.26\)](#), [section 1\(1\)](#) of, and paragraph 38(a) to

(c) of Schedule 1 to, the [Social Security Contributions \(Transfer of Functions, etc\) Act 1999 \(c.2\)](#), [section 456](#) of, and paragraphs 1 and 22(1) and (3) of Schedule 11 to, the [Proceeds of Crime Act 2002 \(c.29\)](#), and is prospectively amended by section 24(1) of, and paragraphs 1 and 15(1) to (3) of Schedule 13 to, the [Pensions Act 2014 \(c.19\)](#).

Relevant income and enhancement amount

- 104.**—(1) An employed pensioner's relevant income for a scheme year is the aggregate of—
- (a) the amount of earnings received by the employed person during the year from the new employment; and
 - (b) the enhancement amount.
- (2) The enhancement amount is the difference between—
- (a) the amount of the old service pension for that scheme year; and
 - (b) the amount the pension would have been had it been payable under regulation 79 (early retirement).
- (3) If the old service pension is payable under regulation 90 or 94 (ill-health pensions) to an employed pensioner who had not attained normal minimum pension age at the time when entitlement to the pension arose, for the purposes of paragraph (2)(b)—
- (a) the fact that entitlement to a pension under regulation 79 depends on reaching that age is ignored; but
 - (b) the employed pensioner's actual age at the relevant time is taken into account in determining the reduction to be made under Part 3 of Schedule 13.
- (4) If the old service pension is an ill-health pension at Tier 2, for the purposes of paragraph (2)(b), only the employed pensioner's actual pensionable service at the time when entitlement to the pension arose is taken into account in determining the amount that would have been payable under regulation 79.
- (5) If the employed pensioner exercised the option under regulation 77 (conversion of part of pension into lump sum) in relation to the old service pension, the resulting reduction in the pension is ignored for the purposes of this regulation.
- (6) If the employed pensioner exercised the option under regulation 51 (election to allocate pension) in relation to the old service pension, the resulting reduction is taken into account for the purpose of this regulation.
- (7) References to the amount of a pension for a scheme year are to its amount for that year after any increases payable in respect of the pension under the Pensions (Increase) Act 1971 ^{M25}, including increases that would have been payable in respect of an amount not paid because of a reduction ignored under paragraph (5).
- (8) For the purposes of paragraph (1)(a), the employed pensioner is assumed to be an active member of this scheme in the new employment.

Marginal Citations

M25 1971 c.56.

Previous earnings: general

- 105.**—(1) For the purposes of this Chapter, an employed pensioner's previous earnings is construed in accordance with this regulation.

(2) If the employed pensioner's old employment was neither as a practitioner nor as a non-GP provider, the previous earnings is the greater of—

- (a) the optimum re-valued pensionable earnings in the old employment; and
- (b) the annual rate of pay for the old employment at the time it ceased.

(3) If the employed pensioner's old employment was as a practitioner or non-GP provider the previous earnings is the average of the annual amounts of the person's re-valued pensionable earnings in respect of practitioner service.

(4) The optimum re-valued pensionable earnings is the re-valued pensionable earnings for the scheme year in the earnings reference period for which the employed pensioner has the greatest amount of re-valued pensionable earnings.

(5) The annual rate of pay is the sum of—

- (a) the annual rate of so much of the employed pensioner's pensionable earnings immediately before the old service pension became payable as consisted of salary, wages, or other regular payments of a fixed nature; and
- (b) so much of any fees and other regular payments not of a fixed nature as—
 - (i) was payable to the employed pensioner during the period of 12 months ending with the day the old employment ceased, and
 - (ii) formed part of the employed pensioner's pensionable earnings.

(6) The amount to be taken as the employed pensioner's previous earnings must be adjusted in each scheme year by increasing it by the same amount as that by which an annual pension equal to that amount would have been increased under the Pensions (Increase) Act 1971 at 6th April in that scheme year if—

- (a) the pension was eligible to be so increased; and
- (b) the beginning date for the pension were the same as the beginning date for the old service pension.

(7) In this regulation and regulation 106—

“re-valued pensionable earnings” means, in relation to each scheme year in the earnings reference period, the pensionable earnings for that year increased up to the beginning date for the old service pension by the rate of change in prices specified by the Treasury by order ^{F87}(in respect of the NHS Pension Scheme 2015)] under section 9 of the 2013 Act; and

“the earnings reference period” is the period ending on the last day of the scheme year immediately preceding the scheme year in which the employed pensioner left the old employment and starting on the later of—

- (a) the first day of the scheme year in which the employed pensioner first joined this scheme; and
- (b) the first day of the tenth scheme year preceding the scheme year in which the employed pensioner left the old employment.

(8) In paragraph (6) the beginning date, in relation to a pension, is the date on which it is deemed to begin for the purposes of the Pensions (Increase) Act 1971 (see section 8(2) of that Act ^{M26}).

Textual Amendments

F87 Words in reg. 105(7) inserted (1.4.2023) by [The National Health Service Pension Schemes \(Amendment\) Regulations 2023 \(S.I. 2023/301\)](#), regs. 1(2), 14

Marginal Citations

M26 1971 c.56. Section 8(2) has been amended by section 1(5) of the [Pensions \(Miscellaneous Provisions\) Act 1990 \(c.7\)](#) and section 39(1) and (4) of the [Welfare Reform and Pensions Act 1999 \(c.30\)](#).

Previous earnings: continuing and concurrent employments

106.—(1) This regulation applies if an employed pensioner has held one or more other NHS employments at the same time as the old employment.

(2) If the employed pensioner's old employment was neither as a practitioner nor as a non-GP provider, the previous earnings is the amount determined under regulation 105 increased as follows—

- (a) if the person holds a continuing non-practitioner employment on becoming entitled to the old service pension, the increase is the annual rate of earnings in respect of the continuing employment;
- (b) if the person holds a continuing practitioner employment on becoming entitled to the old service pension, the increase is the average of the annual amounts of the person's re-valued pensionable earnings in respect of practitioner employment.

(3) If the employed pensioner's old employment was as a practitioner, the previous earnings is the amount determined under regulation 105 increased as follows—

- (a) if the person becomes entitled to receive simultaneously a pension in respect of rights accrued from non-practitioner employment, the increase is the amount of previous earnings in respect of the non-practitioner employment;
- (b) if the person holds a continuing non-practitioner employment on becoming entitled to the old service pension, the increase is the annual rate of earnings of the continuing employment.

(4) Paragraph (5) applies if—

- (a) the employed pensioner held a part-time pensionable employment immediately before the old service pension becomes payable;
- (b) in the 12 months preceding the date on which the old service pension becomes payable the person held concurrent part-time pensionable employment; and
- (c) the employment mentioned in paragraph (b) terminated before the old service pension becomes payable.

(5) The employed pensioner's previous earnings are increased by—

- (a) the annual rate of earnings in respect of the concurrent part-time pensionable employment; or
- (b) if higher, that part of the pensionable earnings for the employment which is attributable to any part of the period of 12 months mentioned in paragraph (4)(b).

(6) Paragraph (7) applies if—

- (a) in the period of 12 months before the date on which the old service pension becomes payable the employed pensioner was in pensionable employment as a practitioner; and
- (b) the pensionable employment terminated before the old service pension became payable.

(7) The previous earnings are increased by the average of the annual amounts of the person's re-valued pensionable earnings in respect of the employment mentioned in paragraph (6).

(8) Paragraph (9) applies if—

- (a) a practitioner becomes entitled to payment of a pension under this scheme;

- (b) in the 12 months before the entitlement arises the practitioner held concurrent pensionable non-practitioner employment; and
 - (c) the employment is terminated before the pension becomes payable.
- (9) The previous earnings are increased by—
- (a) the annual rate of earnings in respect of the employment mentioned in paragraph (8); or
 - (b) if higher, that part of the pensionable earnings for the employment which is attributable to any part of the period of 12 months mentioned in paragraph (8)(b).
- (10) Non-practitioner employment is employment which is neither as a practitioner nor as a non-GP provider, and references to practitioner employment must be construed accordingly.
- (11) Continuing employment is pensionable employment—
- (a) which a person held immediately before becoming entitled to payment of a pension under this scheme; and
 - (b) which the person continues to hold whether it is pensionable or not.

Multiple pensions

107.—(1) This regulation applies if an employed pensioner is entitled to more than one old service pension within regulation 101(1)(c) in a scheme year.

(2) In regulation 103, for paragraphs (1) and (2) substitute—

“(1) If the condition in paragraph (2) is met, the amount of the old service pensions for a scheme year are reduced.

(2) The condition is that the employed pensioner's relevant income for the scheme year exceeds the employed person's previous earnings for all old employments.

(2A) The amount of the reduction under paragraph (1) in the case of each of the pensions is equal to the same proportion of the excess as the amount of the pension for the scheme year before the reduction bears to the sum of the pensions for that year before the reduction.”.

(3) In regulation 104—

(a) for paragraph (2) substitute—

“(2) The enhancement amount is the difference between—

- (a) the aggregate amount of all old service pensions for that scheme year, and
- (b) the aggregate amount all of those pensions would have been if they had each been payable under regulation 79 (early payment of pension with actuarial reduction).”;

(b) subsequent references to the old service pension must be taken as references to every old service pension to which the substituted paragraph (2) applies.

(4) Regulation 108 applies as if references to an old service pension were references to every such pension.

Adjustment of reductions

108.—(1) If the old service pension for a scheme year is being reduced under this Chapter, the scheme manager must review the amount of the reduction—

- (a) at the end of the scheme year; and
- (b) at any time during the scheme year if it appears to the scheme manager that—
 - (i) the amount of the reduction made for the year is, or may become, incorrect; or

(ii) no reduction should be made.

(2) If at any time during the scheme year it appears to the scheme manager as mentioned in paragraph (1)(b), the scheme manager must make such adjustments as appear to be required, whether by—

- (a) altering the amount of the reduction; or
- (b) repaying to the employed pensioner any amount that should not have been deducted from the pension.

(3) If at the end of the scheme year it is apparent that—

- (a) the reduction in the old service pension for the year was excessive; or
- (b) no such reduction should have been made,

the scheme manager must repay the amount due to the employed pensioner.

(4) If at the end of the scheme year it is apparent that the old service pension paid for the year exceeded the amount due because the reduction in the old service pension required under regulation 103 was not made, the employed pensioner must repay the excess to the scheme manager.

(5) Paragraph (4) does not affect the right of the scheme manager to recover a payment or overpayment which is due.

CHAPTER 8

Serious ill health option

Option for members in serious ill health to exchange pension for lump sum

109.—(1) An active member, a deferred member or a pension credit member may opt to exchange a relevant pension for a lump sum if the scheme manager is satisfied that the conditions for the lump sum to be a serious ill-health lump sum for the purposes of the 2004 Act will be met (see paragraph 4 of Schedule 29 to that Act ^{M27}).

(2) For the purposes of paragraph (1), a “relevant pension” is a pension payable to that member under regulation 73, 76, 90 or 94.

(3) The option may only be exercised—

- (a) in the case of a pension payable under regulation 73 or 76, before or at the time when the pension becomes payable;
- (b) in the case of a pension payable under regulation 90 or 94, before the pension becomes payable to the member.

(4) An active member who has reached normal pension age who exercises the option is to be paid, as soon as is reasonably practicable, an amount equal to the sum of—

- (a) the maximum lump sum to which the member could have become entitled on exercising the option under regulation 77 if at the appropriate time the member had become entitled to a pension under regulation 73; and
- (b) the annual rate of the pension to which the member would have been entitled under regulation 73 after exercising that option, multiplied by 5.

(5) An active member entitled to a pension under regulation 90 who exercises the option is to be paid, as soon as is reasonably practicable, an amount equal to the sum of—

- (a) the maximum lump sum to which the member could have become entitled on exercising the option under regulation 77 at the appropriate time; and
- (b) the annual rate of the pension to which the member is entitled under regulation 90 after exercising that option, multiplied by 5.

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- (6) A pension credit member entitled to a pension under regulation 76 who exercises the option is to be paid as soon as reasonably practicable, amount equal to the sum of—
- (a) the maximum lump sum (if any) to which the pension credit member could have become entitled on exercising the option under regulation 77 at the appropriate time; and
 - (b) the total annual amount of the pension to which the pension credit member is entitled under regulation 76 after exercising the option multiplied by 5.
- (7) A deferred member entitled to a pension under regulation 94 who exercises the option is to be paid, as soon as is reasonably practicable, an amount equal to the sum of—
- (a) the maximum lump sum to which the member could have become entitled on exercising the option under regulation 77 at the appropriate time; and
 - (b) the annual rate of the pension to which the member is entitled under regulation 94 after exercising that option, multiplied by 5.
- (8) “The appropriate time” means—
- (a) for the purposes of paragraphs (4) and (6), the time when the option under this regulation is exercised; and
 - (b) for the purposes of paragraphs (5) and (7), the time payment of the pension under regulation 90 or, as the case may be, 94 would otherwise first be due.
- (9) References to the annual rate of a pension are to the amount of the annual pension to which the member would be entitled, together with any increases payable under the Pensions (Increase) Act 1971 ^{M28}, calculated as at the appropriate time.
- (10) The option under this regulation may only be exercised by notice in writing to the scheme manager in such form as the scheme manager requires.

Marginal Citations

M27 Paragraph 4 of Schedule 29 has been amended by section 65 of, and paragraphs 23 and 28 of Schedule 16 to, the [Finance Act 2011 \(c.11\)](#).

M28 1971 c.56.

CHAPTER 9

Contracting out obligations

Guaranteed minimum pension etc.

- 110.**—(1) If a member (M) has a guaranteed minimum under section 14 of the 1993 Act ^{M29} in relation to benefits under this scheme, nothing in these Regulations—
- (a) permits or requires anything that would cause requirements made by or under that Act in relation to M and M's rights under this scheme not to be met in the case of M; or
 - (b) prevents anything from being done which is necessary or expedient for the purposes of meeting such requirements in the case of M.
- (2) Paragraph (3) applies if apart from this regulation—
- (a) no pension would be payable to M under this scheme; or
 - (b) the weekly rate of the pensions payable would be less than the guaranteed minimum.
- (3) Where this paragraph applies, as the case may be—
- (a) a pension at a weekly rate equal to the guaranteed minimum is payable to M for life from the date on which M reaches State pension age; or

(b) pensions, the aggregate weekly rate of which is equal to the guaranteed minimum, are so payable.

(4) If—

(a) on reaching State pension age M is still in employment (whether or not it is scheme employment); and

(b) if it is not scheme employment, M consents to a postponement of M's entitlement under paragraph (3),

paragraph (3) does not apply until M leaves employment.

(5) If M continues in employment for a further 5 years after reaching State pension age and does not then leave employment, M is entitled from the end of that period to so much of the member's pension under this Part as equals M's guaranteed minimum (or, as the case may be, to so much of M's pensions under this Part as together have a weekly rate equal to M's guaranteed minimum), unless M consents to a further postponement of that entitlement.

(6) If paragraph (4) or (5) applies, the amount of the guaranteed minimum to which M is entitled under this regulation is increased in accordance with section 15 of the 1993 Act.

(7) If—

(a) before State pension age M becomes entitled to the immediate payment of a pension; and

(b) M has a guaranteed minimum under section 14 of the 1993 Act in relation to the whole or part of the pension,

the weekly rate of the pension, so far as attributable to that service, must not be less than that guaranteed minimum, multiplied by such factor as is indicated in tables provided by the scheme actuary for a person of M's age and sex at the date on which the pension becomes payable.

(8) This paragraph applies if a person has ceased to be in employment that is contracted-out by reference to this scheme, and either—

(a) all the person's rights to benefits under this scheme, except the person's rights in respect of the person's guaranteed minimum or [^{F88}the person's section 9(2B) rights] (“the person's contracting-out rights”), have been transferred under Part 7 (transfers); or

(b) the person has no rights to benefits under this scheme apart from the person's contracting-out rights.

(9) If paragraph (8) applies—

(a) from the date on which the person reaches State pension age the person is entitled to a pension payable for life at a weekly rate equal to his guaranteed minimum, if any; and

(b) from the date on which the person reaches pension age the person is entitled to a pension in respect of [^{F89}the person's section 9(2B) rights],

but a person falling within paragraph (8) is not to be regarded as a pensioner for the purposes of Part 6 (survivor benefits).

(10) Paragraphs (2) to (9) do not apply to—

(a) a pension that is forfeited—

(i) as a result of a conviction for treason; or

(ii) in a case where an offence within paragraph 12(2)(b) of Schedule 3 ^{F90}... is committed;

(b) a pension that is commuted under regulation 109 (option for members in serious ill- health to exchange whole pension for lump sum); or

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(c) a pension that is commuted under paragraph 6 of Schedule 3 (commutation of small pensions) where the conditions in [F91regulation 25 of the Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015] are met, but if any other provision of this scheme is inconsistent with this regulation, this regulation prevails.

(11) In this regulation—

- (a) “scheme employment”, in relation to a member, means employment in the employment by virtue of which the member is eligible for membership of this scheme; and
- (b) references to the amount of a pension are to its amount—
 - (i) disregarding any additional pension;
 - (ii) after the subtraction of any amount exchanged under regulation 77 (option to exchange part of pension for lump sum); and
 - (iii) before the subtraction of any amount allocated under regulation 51 (election to allocate pension).

Textual Amendments

- F88** Words in reg. 110(8)(a) substituted (6.4.2019) by [The National Health Service Pension Schemes, Additional Voluntary Contributions and Injury Benefits \(Amendment\) Regulations 2019](#) (S.I. 2019/418), regs. 1(3), **85(2)**
- F89** Words in reg. 110(9)(b) substituted (6.4.2019) by [The National Health Service Pension Schemes, Additional Voluntary Contributions and Injury Benefits \(Amendment\) Regulations 2019](#) (S.I. 2019/418), regs. 1(3), **85(3)**
- F90** Words in reg. 110(10)(a)(ii) omitted (20.12.2023) by virtue of [The National Security Act 2023 \(Consequential Amendments of Subordinate Legislation\) Regulations 2023](#) (S.I. 2023/1267), reg. 1(2), **Sch. para. 47(3)**
- F91** Words in reg. 110(10)(c) substituted (6.4.2016) by [The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions \(Amendment\) Regulations 2016](#) (S.I. 2016/245), regs. 1(3), **68** (with reg. 105)

Marginal Citations

- M29** Section 14 has been amended by sections 151 and 177 of, and paragraphs 27(a) and (b) of Schedule 5 and Part 3 of Schedule 7 to, the [Pensions Act 1995](#) (c.26), **section 1(1)** of, and paragraph 38(a) to (c) of Schedule 1 to, the [Social Security Contributions \(Transfer of Functions, etc\) Act 1999](#) (c.2), **section 456** of, and paragraphs 1 and 22(1) and (3) of Schedule 11 to, the [Proceeds of Crime Act 2002](#) (c.29), and is prospectively amended by section 24(1) of, and paragraphs 1 and 15(1) to (3) of Schedule 13 to, the [Pensions Act 2014](#) (c.19).

CHAPTER 10

Pension debit members

Reduction in pension debit member's benefits

111. The benefits to which a pension debit member is entitled under this Part are subject to reduction pursuant to section 31 of the 1999 Act.

PART 6

Survivor benefits

CHAPTER 1

Adult survivor

Lump sum on death

112. A lump sum is payable in accordance with Schedule 14 in respect of the death of—

- (a) an active member;
- (b) a deferred member;
- (c) a pensioner member;
- (d) a recent leaver (within the meaning of that Schedule);
- (e) a re-employed pensioner (within the meaning of that Schedule);
- (f) a partial retirement pensioner (within the meaning of that Schedule); or
- (g) a pension credit member.

Surviving adult dependant pension

113.—(1) If an active member, a deferred member or a pensioner member dies leaving a surviving adult dependant, the surviving adult dependant is entitled to a pension payable for life.

(2) In this Part, “surviving adult dependant” means, in relation to a deceased member or former member—

- (a) the surviving spouse;
- (b) the surviving civil partner; or
- ^[F92](c) a surviving scheme partner.]

(3) For the rate at which the pension is payable, see regulations 115 to 119.

Textual Amendments

F92 Reg. 113(2)(c) substituted (with effect from 1.4.2015, in accordance with reg. 1(5) of the amending S.I.) by [The National Health Service Pension Schemes, Additional Voluntary Contributions and Injury Benefits \(Amendment\) Regulations 2019 \(S.I. 2019/418\)](#), reg. 1(2)(5), **86**

^[F93]Surviving scheme partner

114.—(1) A person (P) is the scheme partner of a member if –

- (a) the member and P are living together as if they are husband and wife or civil partners,
- (b) the member and P are not prevented from marrying or entering a civil partnership,
- (c) the member and P are financially interdependent or P is financially dependent on the member, and
- (d) neither the member or P is living with a third person as if they are husband and wife or civil partners.

(2) A person is a surviving scheme partner of a member if the Secretary of State is satisfied that for a continuous period of at least two years, ending with the member's death, the person was the scheme partner of that member.]

Textual Amendments

F93 Reg. 114 substituted (with effect from 1.4.2015 of the amending S.I.) by [The National Health Service Pension Schemes, Additional Voluntary Contributions and Injury Benefits \(Amendment\) Regulations 2019 \(S.I. 2019/418\)](#), reg. 1(2)(5), **87**

Amount of pension: survivor of active member

115.—(1) This regulation applies in relation to the surviving adult dependant of an active member.

(2) Paragraph (4) applies in respect of a pension payable during the initial period if the amount found under that paragraph is greater than the amount payable if this paragraph did not apply.

(3) In any other case, the rate of pension is determined by whichever paragraphs (5), (6) and (8) applies to the member.

(4) The rate of pension payable under regulation 113 is equal to—

- (a) if the member was in non-practitioner employment, the rate of the member's pensionable earnings at the time of death;
- (b) if the member was a practitioner or non-GP provider, the rate of the member's pensionable earnings during the last complete quarter before the member's death,

plus, in either case, if the member had made an additional pension election under regulation 55(3) (b) (self and survivor), 37.5% of the amount of the additional pension to which the member was entitled at the date of death.

(5) If the member dies with not less than 2 years of qualifying service, the annual amount of pension payable under regulation 113 is equal to—

- (a) if the member has not reached the prospective normal pension age, 33.75% of the notional Tier 2 IHP;
- (b) if the member has reached the prospective normal pension age, 33.75% of the notional age retirement pension.

(6) If the member dies with less than 2 years of qualifying service having reached the prospective normal pension age, the annual amount of pension payable under regulation 113 is equal to 33.75% of the notional age retirement pension.

(7) This paragraph applies if—

- (a) the member dies with less than 2 years' qualifying service before reaching the prospective normal pension age; and
- (b) the surviving adult dependant has a guaranteed minimum pension under section 17 of the 1993 Act in relation to benefits in respect of the deceased member under this scheme.

(8) If paragraph (7) applies—

- (a) the annual amount of the pension payable under regulation 113 is equal to the guaranteed minimum pension; but

[^{F94}(b) sub-paragraph (a) does not apply if—

- (i) the Secretary of State's liability to provide a guaranteed minimum pension in respect of the surviving adult dependent is discharged by the payment of a contributions

equivalent premium under section [F9555] of the 1993 Act [F96] or article 3 of the 2016 Order], or

- (ii) a surviving widow, widower or surviving civil partner has been convicted of an offence specified in paragraph 12 of Schedule 3 and the Secretary of State directed, as a consequence of that conviction, that the person's rights to a payment in respect of the member's death is forfeit.]

(9) In this regulation—

“the initial period” is the period of six months starting on the day after the member's death;

“the notional Tier 2 IHP” is the amount of pension the member would have received if, at the date of death, the member had become entitled to a pension under regulation 90(1)(b)—

- (a) disregarding the amount of any additional pension taken into account for the purposes of regulation 92(1)(c); and
- (b) if the member had made an additional pension election under regulation 55(3)(b) (self and survivor), adding 37.5% of that amount;

“the notional age retirement pension” is the amount of pension the member would have received if, at the date of death, the member had become entitled to a pension under regulation 73 (ignoring any increase under regulation 75)—

- (a) disregarding the amount of any additional pension taken into account for the purposes of paragraph 1(d) of Schedule 13; and
- (b) if the member had made an additional pension election under regulation 55(3)(b) (self and survivor), adding 37.5% of that amount;

“non-practitioner employment” is employment other than as a practitioner or a non-GP provider.

Textual Amendments

- F94** Reg. 115(8)(b) substituted (6.4.2016) by [The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions \(Amendment\) Regulations 2016 \(S.I. 2016/245\)](#), regs. 1(3), **69** (with reg. 105)
- F95** Word in reg. 115(8)(b)(i) substituted (6.4.2019) by [The National Health Service Pension Schemes, Additional Voluntary Contributions and Injury Benefits \(Amendment\) Regulations 2019 \(S.I. 2019/418\)](#), regs. 1(3), **88(a)**
- F96** Words in reg. 115(8)(b)(i) inserted (6.4.2019) by [The National Health Service Pension Schemes, Additional Voluntary Contributions and Injury Benefits \(Amendment\) Regulations 2019 \(S.I. 2019/418\)](#), regs. 1(3), **88(b)**

Amount of pension: survivor of pensioner member

116.—(1) This regulation applies in relation to the surviving adult dependant of a pensioner member.

(2) Paragraph (3) applies in respect of a pension payable during the initial period if the amount found under that paragraph is greater than the sum of—

- (a) the amount payable if this paragraph did not apply; and
- (b) the amount of the pensions otherwise payable under Chapter 2.

(3) The rate of pension payable under regulation 113 is equal to the rate of the member's pension in payment at the time of death.

(4) If paragraph (3) does not apply, the rate of pension payable under regulation 113 is equal to the sum of—

- (a) 33.75% of the pension to which the member was entitled at the date of death (disregarding any additional pension); and
- (b) if the member had made an additional pension election under regulation 55(3)(b) (self and survivor), 37.5% of the amount of the additional pension to which the member was entitled at the date of death.

(5) In calculating the amount of a pension pursuant to paragraph (3) the following must be ignored—

- (a) the conversion amount (see paragraph 10 of Schedule 9);
- (b) any reduction in the rate of the member's pension under regulation 103.

(6) In calculating the amount of a pension pursuant to paragraph (4) the following must be ignored—

- (a) the conversion amount (see paragraph 10 of Schedule 9);
- (b) any actuarial adjustment.

(7) The initial period is—

- (a) if the member leaves one or more eligible children who are dependent on the surviving adult dependant, the period of six months starting with the day after the member's death;
- (b) in any other case, the period of three months starting with that day.

(8) For the purposes of paragraph (7), a child born after the member's death is treated as having been born before it.

(9) Paragraph (10) applies if, pursuant to regulation 95(4), a member who was entitled to an ill health pension at Tier 2 ceases to be entitled to that pension and becomes entitled to an ill-health pension at Tier 1 and the member—

- (a) is in further NHS employment and dies before the end of the initial period for the purposes of regulation 95; or
- (b) is in further employment that is not NHS employment and dies before the end of a period of one year starting with the day on which the further employment ceased to be an excluded employment for the purposes of that regulation.

(10) The member's pension referred to in paragraph (3) is the original ill-health pension at Tier 2.

Amount of pension: deferred members

117.—(1) Paragraph (2) applies in the case of a deferred member—

- (a) who left pensionable service less than 12 months before the date of death; and
- (b) whose surviving adult dependant would have been the member's surviving adult dependant if the member had died on the member's last day of pensionable service.

(2) The rate of the pension payable to the surviving adult dependant is equal to 33.75% of the member's notional Tier 2 IHP.

(3) In the case of any other deferred member, the rate of pension payable is 33.75% of the amount of pension the member would have received if, at the date of death, the member had become entitled to a pension under regulation 73—

- (a) disregarding the amount of any additional pension taken into account for the purposes of paragraph 1(d) of Schedule 13; and
- (b) if the member had made an additional pension election under regulation 55(3)(b) (self and survivor), adding 37.5% of that amount.

(4) In paragraph (2), the notional Tier 2 IHP is the amount of pension the member would have received if, on the date the member's pensionable service ceased, the member had become entitled to a pension under regulation 90(1)(b)—

- (a) disregarding the amount of any additional pension taken into account for the purposes regulation 92(1)(c); and
 - (b) if the member had made an additional pension election under regulation 55(3)(b) (self and survivor), adding 37.5% of that amount.
- (5) In this regulation, “the notional Tier 2 IHP” has the same meaning as in regulation 115(9).

Recent leavers

118.—(1) This regulation applies if—

- (a) a recent leaver dies leaving a surviving spouse or civil partner who has a guaranteed minimum under section 17 of the 1993 Act ^{M30} in relation to benefits in respect of the recent leaver under this scheme; and
- (b) the leaver has died before reaching the normal pension age.

(2) The surviving spouse or civil partner is entitled to a pension payable for life of an amount equal to the [^{F97}surviving spouse's or surviving civil partner's] guaranteed minimum pension (disregarding any additional pension).

[^{F98}(3) Paragraph (2) does not apply if—

- (a) the Secretary of State's liability to provide a guaranteed minimum pension in respect of the surviving spouse or civil partner is discharged by the payment of a contributions equivalent premium under section [^{F99}55] of the 1993 Act [^{F100}or article 3 of the 2016 Order], or
- (b) a surviving widow, widower or surviving civil partner has been convicted of an offence specified in paragraph 12 of Schedule 3 and the Secretary of State directed, as a consequence of that conviction, that the person's rights to a payment in respect of the member's death is forfeit.]

(4) In this Part, “recent leaver” means a person—

- (a) who left pensionable service less than 12 months before the date of death;
- (b) who is neither qualified for a retirement pension pursuant to regulation 72 nor is a pensioner member because of rights resulting from that employment; and
- (c) in respect of whom no transfer value or refund of contributions has been paid in respect of that employment.

Textual Amendments

F97 Words in reg. 118(2) substituted (1.4.2015) by [The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions \(Amendment\) Regulations 2016 \(S.I. 2016/245\)](#), regs. 1(8), **70(2)** (with reg. 105)

F98 Reg. 118(3) substituted (6.4.2016) by [The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions \(Amendment\) Regulations 2016 \(S.I. 2016/245\)](#), regs. 1(3), **70(3)** (with reg. 105)

F99 Word in reg. 118(3)(a) substituted (6.4.2019) by [The National Health Service Pension Schemes, Additional Voluntary Contributions and Injury Benefits \(Amendment\) Regulations 2019 \(S.I. 2019/418\)](#), regs. 1(3), **89(a)**

F100 Words in reg. 118(3)(a) inserted (6.4.2019) by [The National Health Service Pension Schemes, Additional Voluntary Contributions and Injury Benefits \(Amendment\) Regulations 2019 \(S.I. 2019/418\)](#), regs. 1(3), **89(b)**

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Marginal Citations

M30 Section 17 has been amended by section 1(1) of, and paragraph 39 of Schedule 1 to, the [Social Security Contributions \(Transfer of Functions, etc\) Act 1999 \(c.2\)](#), [sections 56](#) and 85 of, and paragraph 1 of Schedule 5 and 3(4) of Schedule 9 to, the [Child Support, Pensions and Social Security Act 2000 \(c.19\)](#), [section 284\(2\)](#) of the [Pensions Act 2004 \(c.35\)](#), [section 14\(2\)](#) of the [Pensions Act 2007 \(c.22\)](#), [section 11\(4\)](#) of, and paragraphs 18 and 20(1), (2)(b), (3), (5) and (6) of Schedule 4 to, the [Marriage \(Same Sex Couples\) Act 2013 \(c.30\)](#) and [S.I. 2005/2050](#) and 2014/560, and is prospectively amended by section 24(1) of, and paragraphs 1 and 17 of Schedule 13 to, the [Pensions Act 2014 \(c.19\)](#).

Re-employed pensioners: adult survivor pensions in initial period

119.—(1) This regulation applies if, apart from this regulation, both regulations 115(4) and 116(3) apply on the death of a member.

(2) If this regulation applies, the rate of pension payable by virtue of these regulations during the initial period (as defined in the respective regulations) is the rate provided in paragraph (3).

(3) For the relevant initial period, the rate of pension payable is equal to the sum of amounts A and B.

(4) Amount A is, in the case of a deceased active member, the rate of the deceased's pensionable earnings at the time of death.

(5) Amount B is the rate of the deceased member's pension payable at the time of death after taking account of—

- (a) the conversion amount (see paragraph 10 of Schedule 9);
- (b) any reduction in the rate of the member's pension under regulation 103.

(6) Paragraph (4) does not apply if—

- (a) the rate of the pension payable to the surviving adult in respect of later service; and
- (b) any children's pension that would otherwise be payable in respect of later service under Chapter 2,

would be greater.

Polygamous marriage

120.—(1) This regulation applies if—

- (a) a member dies without leaving a surviving adult dependant;
- (b) at the date of death, the member was married to one or more persons under a law which permits polygamy; and
- (c) had the member left a surviving adult dependant any benefit would have been payable to that dependant as such.

(2) The benefit mentioned in paragraph (1)(c) is payable—

- (a) if there is only one such person mentioned in paragraph (1)(b), to that person;
- (b) if there are two or more such persons, to those persons in equal shares.

(3) Such a person's share of a pension does not increase on the death of any other such person.

CHAPTER 2

Child survivor

Surviving child's pension

121.—(1) This regulation applies if—

- (a) a member or recent leaver dies leaving an eligible child; or
- (b) an eligible child of the member or recent leaver is born after the date of death.

(2) A pension is payable in respect of an eligible child.

(3) A pension ceases to be payable if the child ceases to be an eligible child.

(4) If there are two or more eligible children, the share of the pension to which each of them is entitled is determined in accordance with guidance published by the scheme manager for the purposes of this paragraph.

(5) An amount payable to an eligible child is payable—

- (a) to the eligible child; or
- (b) if the scheme manager so decides, to another person for the eligible child.

(6) Paragraph (7) applies to an eligible child if—

- (a) at the date of death, the child is dependent on an adult; and
- (b) the adult is entitled to a pension under regulation 113.

(7) For any period in which the surviving adult's pension is payable at the rate specified in regulation 116(3) or 119(5), the eligible child is entitled to payment only of so much of the pension as is attributable to an additional pension.

(8) Paragraph (9) applies if an eligible child—

- (a) is incapable for any period of earning a living because of a physical or mental infirmity; and
- (b) for a period exceeding one month, is maintained out of money provided by Parliament in a hospital or other institution.

(9) No pension is payable in respect of the child for any part of the period after the first month.

(10) If, apart from this paragraph, multiple pensions would be payable in respect of a person as an eligible child of three or more persons each of whom was a deceased member or recent leaver—

- (a) the entitlements to the pensions are treated as entitlement on the death of only two of those persons; and
- (b) the amount payable is equal to the sum of the two pensions which are the highest.

Eligible child

122.—(1) A person is an eligible child in relation to a deceased member or recent leaver (DMR) if the child—

- (a) meets the relationship condition;
- (b) meets the age or health dependency condition; and
- (c) meets the birth and dependency condition.

(2) A person meets the relationship condition if the person is any of the following—

- (a) a natural child or grandchild of the DMR;
- (b) an adopted child of the DMR who was adopted while the DMR was an active member;

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- (c) a step-child of the DMR whose natural or adoptive parent is the DMR's surviving spouse or civil partner from a marriage entered into or a civil partnership formed, while the DMR was an active member;
 - (d) a person whose natural or adoptive parent is the DMR's surviving [^{F101}scheme partner] if, at the time the DMR ceased to be an active member, the DMR was living with the partner as mentioned in [^{F102}regulation 114(1)(a) and (d)];
 - (e) a brother or sister, or child of a brother or sister, of—
 - (i) the DMR; or
 - (ii) the DMR's spouse, civil partner or [^{F103}surviving scheme partner];
 - (f) a half-brother or half-sister, or child of a half-brother or half-sister of—
 - (i) the DMR member; or
 - (ii) the DMR member's spouse, civil partner or [^{F104}surviving scheme partner];
 - (g) a person who the scheme manager believes the DMR intended, at the time the DMR ceased to be an active member, to adopt;
 - (h) a person who at the time the DMR ceased to be an active member had been dependent on the DMR for—
 - (i) two years; or
 - (ii) if less, half the person's life.
- (3) A person meets the age or health dependency condition if—
- (a) the person has not attained the age of 23; or
 - (b) the scheme manager believes—
 - (i) that the person was financially dependent on the DMR at the date of death because of the person was incapable of earning a living in consequence of physical or mental impairment; and
 - (ii) that the person continues to be incapable of earning a living in consequence of the impairment.
- (4) A person meets the birth and dependency condition if—
- (a) the person was born before the DMR ceased to be an active member and—
 - (i) was dependent on the DMR at the date of death; and
 - (ii) if the date of death was after the DMR ceased to be an active member, was dependent on the DMR at the time the DMR ceased to be an active member; or
 - (b) the person was born not more than one year after the DMR ceased to be an active member and—
 - (i) was dependent on the DMR both at birth and at the date of death; or
 - (ii) if the person was born after the DMR's death, would have been dependent on the DMR had the DMR not died before the person's birth.

Textual Amendments

F101 Words in [reg. 122\(2\)\(d\)](#) substituted (with effect from 1.4.2015, in accordance with [reg. 1\(5\)](#) of the amending S.I.) by [The National Health Service Pension Schemes, Additional Voluntary Contributions and Injury Benefits \(Amendment\) Regulations 2019 \(S.I. 2019/418\)](#), [reg. 1\(2\)\(5\)](#), **90(2)(a)**

- F102** Words in reg. 122(2)(d) substituted (with effect from 1.4.2015, in accordance with reg. 1(5) of the amending S.I.) by The National Health Service Pension Schemes, Additional Voluntary Contributions and Injury Benefits (Amendment) Regulations 2019 (S.I. 2019/418), reg. 1(2)(5), **90(2)(b)**
- F103** Words in reg. 122(2)(e)(ii) substituted (with effect from 1.4.2015, in accordance with reg. 1(5) of the amending S.I.) by The National Health Service Pension Schemes, Additional Voluntary Contributions and Injury Benefits (Amendment) Regulations 2019 (S.I. 2019/418), reg. 1(2)(5), **90(3)**
- F104** Words in reg. 122(2)(f)(ii) substituted (with effect from 1.4.2015, in accordance with reg. 1(5) of the amending S.I.) by The National Health Service Pension Schemes, Additional Voluntary Contributions and Injury Benefits (Amendment) Regulations 2019 (S.I. 2019/418), reg. 1(2)(5), **90(4)**

Amount of child pension: deceased active member

123.—(1) This regulation determines the annual amount of pension payable under regulation 121 if, at the date of death, the deceased was—

- (a) an active member of this scheme; and
 - (b) not also a pensioner member of this scheme.
- (2) The amount, unless paragraph (6) or (7) applies, is the appropriate fraction of—
- (a) the basic death pension; plus
 - (b) if the member had made an additional pension election under regulation 55(3)(b) (self and survivor), 75% of the amount of the additional pension.
- (3) The basic death pension is found by applying the following formula:

$$\left(FP + \frac{A \times B}{C} - A \right) \times 67.5\%$$

where—

FP is the amount of full retirement earned pension which, if at the date of death the deceased had become entitled to an ill-health pension, would be specified in the pensioner member's account; A is the aggregate of the amounts of all of the member's pensions from pensionable service on the day after the member's last day of pensionable service (L+1)—

- (i) disregarding any additional pension; and
 - (ii) including any increases applied by virtue of the Pensions (Increase) Act 1971 ^{M31}[^{F105}on L+1];
- B is the period counted in days which is the greater of—
- (i) the aggregate of the total period of pensionable service counted in days over which the pensions referred to in A were accrued and 50% of the length of the period starting on L+1 and ending on the day [^{F106}before] the deceased would have reached prospective normal pension age; and
 - (ii) 10 years;

C is the total period of pensionable service counted in days over which the pensions aggregated to find A were accrued,

and for the purposes of B and C, any part of a day is taken to be a whole day.

(4) The appropriate fraction is shown in column 3 of the following table against the description of circumstances in columns 1 and 2 to which it relates.

Table

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
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Surviving adult: pension entitlement and relationship to eligible child	Number of eligible children	Appropriate fraction
A. There is a surviving parent or a surviving spouse or civil partner of a parent and a surviving adult's pension is payable under regulation 113	One eligible child	$\frac{1}{4}$
	Two or more eligible children	$\frac{1}{2}$
B. There is a surviving parent or a surviving spouse or civil partner of a parent but no pension is payable under regulation 113	One eligible child	$\frac{1}{3}$
	Two or more eligible children	$\frac{2}{3}$
C. There is no surviving parent or spouse or civil partner of parent.	One eligible child	$\frac{1}{3}$
	Two or more eligible children	$\frac{2}{3}$

(5) Paragraph (6) applies if—

- (a) a surviving adult dependent's pension is payable under regulation 113; and
- (b) there is an eligible child who is not dependent on the person entitled to the pension.

(6) The rate of pension payable in respect of the child for the first three months after the deceased's death is equal to—

- (a) if the deceased member was in non-practitioner employment, the rate of the member's pensionable earnings at the time of death;
- (b) if the deceased member was a practitioner or non-GP provider, the average rate of the member's pensionable earnings during the last complete quarter before the member's death.

(7) Where entry B or C of column 1 of the table in paragraph (4) applies, the rate of the pension in respect of an eligible child for the period of six months starting with the deceased's death is equal to—

- (a) if the deceased member was in non-practitioner employment, the rate of the member's pensionable earnings at the time of death;
- (b) if the deceased member was a practitioner or non-GP provider, the average rate of the member's pensionable earnings during the last complete quarter before the member's death.

(8) Non-practitioner employment is employment other than as a practitioner or non-GP provider.

Textual Amendments

F105 Words in [reg. 123\(3\)](#) inserted (1.4.2017) by [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), [regs. 2\(c\)](#), [41](#)

F106 Word in [reg. 123\(3\)](#) inserted (1.4.2015) by [The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions \(Amendment\) Regulations 2016 \(S.I. 2016/245\)](#), [regs. 1\(8\)](#), [71](#) (with [reg. 105](#))

Marginal Citations

M31 [1971 c.56](#).

Amount of child pension: deceased pensioner member

124.—(1) This regulation determines the annual amount of pension payable under regulation 121 if, at the date of death, the deceased—

- (a) was a pensioner member of this scheme; and
 - (b) was not also an active member.
- (2) The amount is the appropriate fraction of—
- (a) the basic death pension; plus
 - (b) if the member had made an additional pension election under regulation 55(3)(b) (self and survivor), 75% of the amount of the additional pension.
- (3) The basic death pension is the greater of—
- (a) 67.5% of the deceased's annual pension (disregarding any additional pension); and
 - (b) the amount found by applying the following formula:

$$\left(\frac{A}{C} \times 3650 \right) \times 67.5\%$$

where—

[^{F107}A is the deceased's annual pension not including any Tier 2 addition determined in accordance with regulation 92(3);]

C is the total period of pensionable service counted in days over which the pensions aggregated to find A were accrued,

and for the purposes of C, any part of a day is taken to be a whole day.

- (4) The appropriate fraction is as determined by regulation 123(4).
- (5) Paragraph (6) applies if—
- (a) a surviving adult dependent's pension is payable under regulation 113; and
 - (b) there is an eligible child who is not dependent on the person entitled to the pension.
- (6) The rate of pension payable in respect of the child for the first three months after the deceased's death is equal to the rate of the member's pension at the date of death.
- (7) Where entry B or C of column 1 of the table in paragraph (4) of regulation 123 applies, the rate of the pension in respect of an eligible child for the period of six months starting with the deceased's death is equal to the greater of—
- (a) the rate of the member's pension at the date of death disregarding any reduction under Chapter 7 of Part 5 (abatement); and
 - (b) the amount of child pension that would otherwise be payable under these Regulations.
- (8) A reference to the deceased's pension for the purposes of paragraph (3)(a) and (b) is a reference to the amount the deceased's pension would have been if it was calculated—
- (a) without subtracting the conversion amount (see paragraph 10 of Schedule 9); and
 - (b) in the case of a pension which was payable to the deceased pursuant to regulation 79, 82 or 84, without the reduction under paragraph 6(1)(b) or 7(1)(b) of Schedule 13.

Textual Amendments

F107 Words in reg. 124(3)(b) substituted (1.4.2015) by The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions (Amendment) Regulations 2016 (S.I. 2016/245), regs. 1(8), 72 (with reg. 105)

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Amount of child pension: deceased deferred member

125.—(1) This regulation determines the annual amount of pension payable under regulation 121 if, at the date of death, the deceased—

- (a) was a deferred member of this scheme; and
- (b) was not also^{F108} ... a pensioner member.

(2) The amount is the appropriate fraction of—

- (a) the basic death pension; plus
- (b) if the member had made an additional pension election under regulation 55(3)(b) (self and survivor), 75% of the amount of the additional pension.

(3) The basic death pension is—

- (a) if the date of death is before the end of the period 12 months starting on the day after the deceased ceased to be an active member, the amount found by applying the formula in regulation 123(3);
- (b) in any other case, the greater of—
 - (i) 67.5% of the pension which would have been payable if, at the date of death, the deceased had become entitled to a pension under regulation 73, but in calculating that pension under paragraph 1 of Schedule 13 sub-paragraph (d) must be ignored; and
 - (ii) the amount found by applying the formula in regulation 124(3).

(4) The appropriate fraction is shown in column 3 of the following table against the description of circumstances in columns 1 and 2 to which it relates.

Table

<i>Column 1</i> <i>Surviving adult: pension entitlement and relationship to eligible child</i>	<i>Column 2</i> <i>Number of eligible children</i>	<i>Column 3</i> <i>Appropriate fraction</i>
A. There is a surviving parent or a surviving spouse or civil partner of a parent and a surviving adult's pension is payable under regulation 113	One dependent child	¼
	Two or more eligible children	½
B. In any other case	One eligible child	⅓
	Two or more eligible children	⅔

Textual Amendments

F108 Words in [reg. 125\(1\)\(b\)](#) omitted (1.4.2015) by virtue of [The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions \(Amendment\) Regulations 2016 \(S.I. 2016/245\)](#), [regs. 1\(8\)](#), [73](#) (with [reg. 105](#))

Amount of child pension: recent leavers

126.—(1) This regulation applies to determine the annual amount of pension payable under regulation 121 if, at the date of death, the deceased was a recent leaver (within the meaning of regulation 118(4)).

(2) The amount is the appropriate fraction of the basic death pension.

- (3) The basic death pension is the amount found by applying the formula in regulation 123(3).
- (4) The appropriate fraction is as determined by regulation 125(4).

Power to increase pension for children not maintained by surviving parent etc.

127.—(1) This regulation applies if—

- (a) a member dies leaving an eligible child;
- (b) there is a surviving parent of the eligible child or a surviving spouse or civil partner of a parent of the eligible child; and
- (c) the eligible child is not maintained by the surviving parent, spouse or partner.

(2) The scheme manager may increase the amount of the pension that would otherwise be payable under this Chapter.

(3) The increased amount must not exceed the amount that would have been payable under this Chapter if there had been no such surviving parent or spouse or partner of a parent.

Amount of child pension: re-employed pensioners

128.—(1) This regulation applies to determine the annual amount of pension payable under regulation 121 if, at the date of death, the deceased was—

- (a) an active member of this scheme; and
- (b) a pensioner member of this scheme.

(2) If there is no surviving adult, in relation to the period of 6 months starting on the day after the date of death, the rate of pension is equal to the sum of—

- (a) the rate of the deceased's pensionable earnings at the date of death; and
- (b) the rate of the pension being received by the deceased at the date of death.

(3) In paragraph (2), rate of pensionable earnings for a member who was a practitioner or non-GP provider is the rate during the last complete quarter before the member's death.

(4) Apart from paragraph (2), the amount is the appropriate fraction of—

- (a) if, at the date of death, the deceased has not reached normal pension age, the amount found by applying the formula in regulation 123(3);
- (b) in any other case, 67.5% of the pension to which the deceased would have been entitled in accordance with regulation 74 (see paragraph 1 of Schedule 13).

(5) The appropriate fraction is as determined by regulation 123(4).

(6) Paragraph (7) applies if an eligible child was dependent both—

- (a) at the time when the pensionable service in respect of which the pension is payable ceased; and
- (b) at the date of death.

(7) The amount is the sum of—

- (a) the amount payable under regulation 123 in respect of the deceased's new employment—
 - (i) if paragraph (1)(b) of that regulation did not apply; and
 - (ii) ignoring paragraph (b) of element B in the formula in paragraph (3) of that regulation; and
- (b) the amount found under regulation 124(3)(a) in respect of the deceased's old employment if paragraph (1)(b) of that regulation did not apply.

(8) For the purposes of paragraph (7)—

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- (a) if the aggregate of the periods of pensionable service taken into account in determining the amounts under sub-paragraphs (a) and (b) is less than 10 years, the period to be taken into account for the purposes of paragraph (a) must be increased by a period equal to the length of the difference;
- (b) “new employment” and “old employment” must be construed in accordance with Chapter 7 of Part 5.

Provisional awards of eligible child's pensions: later adjustments

129.—(1) This regulation applies where—

- (a) an active member, deferred member, recent leaver or pensioner member of this scheme has died;
- (b) a pension is paid in respect of one or more persons under this Chapter on the basis that they were eligible children as at the date of the member's death and that there were then no other eligible children; and
- (c) it later appears that—
 - (i) a person in respect of whom such a pension has been paid was not an eligible child on the date of death;
 - (ii) on that date a further person was an eligible child; or
 - (iii) a child who was born after the member's death is an eligible child.

(2) The scheme manager may adjust the amount of pension payable in respect of each eligible child to take account of the matters referred to in paragraph (1)(c), as applicable.

(3) Paragraph (2) does not affect any right the scheme manager has to recover a payment or an overpayment.

CHAPTER 3

General

Suspension and recovery of pensions paid under this Part

130.—(1) This regulation applies if—

- (a) on a member's death a pension has been awarded and paid under this Part; and
- (b) it later appears to the scheme manager that the member or the person to whom the pension has been paid knowingly made a false declaration or deliberately suppressed a material fact in connection with the award.

(2) The scheme manager may—

- (a) cease paying the pension; and
- (b) recover any payment made under the award.

(3) Paragraph (2) does not affect any right the scheme manager has to recover a payment or an overpayment.

PART 7

Transfers

CHAPTER 1

Preliminary

Application of Part

131.—(1) This Part—

- (a) supplements the rights conferred by or under [^{F109}Chapter 1 of Part 4ZA of the 1993 Act (transfer rights: general)]; and
- (b) is without prejudice to that Chapter or [^{F110}Chapter 2] of that Part (early leavers: cash transfer sums and contribution refunds).

(2) This Part applies in the case of a transfer to which the club transfer arrangements apply as it applies in other cases, except to the extent that—

- (a) a provision of this Part otherwise requires, or
- (b) the arrangements themselves make different provision.

Textual Amendments

F109 Words in reg. 131(1)(a) substituted (1.4.2016) by [The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions \(Amendment\) Regulations 2016 \(S.I. 2016/245\)](#), regs. 1(2), **74(a)** (with reg. 105)

F110 Words in reg. 131(1)(b) substituted (1.4.2016) by [The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions \(Amendment\) Regulations 2016 \(S.I. 2016/245\)](#), regs. 1(2), **74(b)** (with reg. 105)

Interpretation of Part

132. In this Part—

“cash equivalent” means an amount calculated in accordance with regulations made under section 97 of the 1993 Act ^{M32};

“club scheme” means a registered occupational pension scheme (other than a connected scheme) that has agreed to make and receive transfer value payments under the club transfer arrangements;

“club transfer” means a transfer value payment made pursuant to club transfer arrangements: and “non-club transfer” must be construed accordingly;

“club transfer arrangements” means arrangements approved by the scheme manager as providing reciprocal arrangements between this scheme and other registered occupational pension schemes for making and receiving transfer value payments;

“club transfer earned pension” means the pension attributable to the receipt of a club transfer value;

“club transfer value”, in relation to an amount of accrued earned pension under this scheme or under another club scheme, means an amount calculated by the scheme manager—

- (a) in accordance with the club transfer arrangements; and

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(b) by reference to the guidance and tables provided by the Government Actuary for this purpose and that are in use on the date used for the calculation;

“guarantee date” has the meaning given by regulation 135(3);

“guaranteed cash equivalent”, in relation to accrued rights to benefits under this scheme, means the cash equivalent of those accrued rights as at the guarantee date, as specified in a statement of entitlement;

“personal pension scheme” means a personal pension scheme which—

(a) in the case of such a scheme established on, or after, 6th April 2006 is a registered pension scheme for the purposes of the 2004 Act and which the scheme manager agrees to recognise as a transferring scheme for the purposes of Part 7;

(b) in the case of a scheme established before that date, was—

(i) approved by the Commissioners for Her Majesty's Revenue and Customs for the purposes of Chapter 4 of Part 14 of the Income and Corporation Taxes Act 1988 (personal pension schemes)^{M33}; and

(ii) on the 6th April 2006 became a registered pension scheme for the purposes of the 2004 Act;

“registered occupational pension scheme” means registered under Chapter 2 of Part 4 of the 2004 Act^{M34};

“statement of entitlement”, in relation to a member's accrued rights to benefits under this scheme, means a statement by the scheme manager of the amount of the cash equivalent or club transfer value of those rights as at the guarantee date;

“transfer value”, in relation to accrued rights other than accrued earned pension which is the subject of a club transfer means—

(a) for accrued rights to benefits under this scheme, an amount equal to the guaranteed cash equivalent of those accrued rights; and

(b) for accrued rights under another pension scheme, an amount—

(i) determined by the scheme actuary of that scheme; and

(ii) specified in a statement of accrued rights provided by the scheme manager of that scheme;

“transfer value payment” means—

(a) the payment of a transfer value or club transfer value under this Part; or

(b) [F111the payment of a transfer value under Chapter 1 of Part 4ZA of the 1993 Act.]

Textual Amendments

F111 Words in [reg. 132](#) substituted (1.4.2016) by [The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions \(Amendment\) Regulations 2016 \(S.I. 2016/245\)](#), [regs. 1\(2\)](#), [75](#) (with [reg. 105](#))

Marginal Citations

M32 Section 97 has been amended by section 173 of, and paragraph 4 of Schedule 6 to, the [Pensions Act 1995 \(c.26\)](#) and section 56 of, and paragraph 8(1) of Schedule 5 to, the [Child Support, Pensions and Social Security Act 2000 \(c.19\)](#).

M33 [1988 c.1](#). Chapter 4 was repealed by sections 1322 and 1326 of, and paragraphs 1 and 25 of Schedule 1 and Part 1 of Schedule 3 to, the [Corporation Tax Act 2009 \(c.4\)](#). For transitional provisions and savings see [section 1325\(1\)](#) of and Parts 1 and 2 of Schedule 2 to, that Act.

M34 Chapter 2 of Part 4 deals with registration of pension schemes for tax purposes.

CHAPTER 2

Transfers values

SECTION 1

Application of Chapter

Application of Chapter

133. This Chapter applies to the payment and receipt of transfer values.

SECTION 2

Transfers out

Right to transfer value payment

134.—(1) This Section applies to a member (M) unless M is—

- (a) an active member;
- (b) a pensioner member in respect of the pension to which M has become entitled; or
- (c) a pension credit member in respect of rights that are directly attributable to a pension credit.

(2) If [^{F112}Chapter 1 of Part 4ZA] of the 1993 Act (transfer values) applies to M (see section 93(1)(a) of the Act ^{M35}), M is entitled to require the payment of a transfer value in respect of the rights to benefit that have accrued to or in respect of M under this scheme.

(3) If [^{F113}Chapter 2] of that Part applies to M (see section 101AA of that Act ^{M36}), M is entitled to a cash transfer sum or a contribution refund in accordance with that Chapter.

(4) In any other case, M is entitled to require payment as mentioned in paragraph (2) as if the rights had accrued to or in respect of M by reference to the pensionable service M is entitled to count under this scheme (and references to M's accrued rights or benefits are to be read accordingly).

Textual Amendments

F112 Words in reg. 134(2) substituted (1.4.2016) by [The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions \(Amendment\) Regulations 2016 \(S.I. 2016/245\)](#), regs. 1(2), **76(2)** (with reg. 105)

F113 Words in reg. 134(3) substituted (1.4.2016) by [The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions \(Amendment\) Regulations 2016 \(S.I. 2016/245\)](#), regs. 1(2), **76(3)** (with reg. 105)

Marginal Citations

M35 Section 93(1)(a) was substituted by section 152(2) of the [Pensions Act 1995 \(c.26\)](#).

M36 Section 101AA was inserted by section 264 of the [Pensions Act 2004 \(c.35\)](#) and is prospectively amended by section 36(4) of the [Pensions Act 2014 \(c.19\)](#).

Application for statement of entitlement

135.—(1) A member (M) who requires a transfer value payment to be made must apply in writing to the scheme manager for a statement of entitlement.

(2) M may withdraw the application by notice in writing at any time before the statement of entitlement is provided.

(3) The guarantee date is a date that—

- (a) is within the required period;
- (b) is chosen by the scheme manager;
- (c) is specified in the statement of entitlement; and

[^{F114}(d) is within the period of 10 days ending with the date on which the member is provided with the statement of entitlement.]

(4) In paragraph (3), the required period is—

- (a) the period of 3 months beginning with the date of M's application for a statement of entitlement; or
- (b) such longer period (not exceeding 6 months) beginning with that date as may reasonably be required if, for reasons beyond the control of the scheme manager, the information required to calculate the cash equivalent or club transfer value cannot be obtained.

(5) For the purposes of paragraph (3)(d), Saturdays, Sundays, Christmas Day, New Year's Day and Good Friday must be ignored.

Textual Amendments

F114 Reg. 135(3)(d) substituted (with effect from 1.4.2015) by [The National Health Service Pension Schemes and Injury Benefits \(Amendment\) Regulations 2021 \(S.I. 2021/631\)](#), regs. 1(2)(10), **25** (with reg. 34)

Application for transfer value payment

136.—(1) A member (M) who has applied for and received a statement of entitlement may apply in writing to the scheme manager for a transfer value payment to be made.

(2) The application must be made before the end of the period of 3 months starting with the guarantee date.

(3) On making the application M becomes entitled to payment of an amount equal, or amounts equal in aggregate, to—

- (a) the amount specified in the statement of entitlement; or
- (b) that amount subject to any increase specified in regulation 137(2).

(4) In this Part a payment under paragraph (3) is referred to as “the guaranteed cash equivalent transfer value payment”.

(5) The application—

- (a) must specify the pension scheme or other arrangement to which the payment should be applied; and
- (b) must meet such other conditions as are required by the scheme manager.

(6) The application may be withdrawn by notice in writing to the scheme manager unless, before the notice is given, an agreement for the application of the whole or part of the guaranteed cash equivalent transfer value payment has been entered into with a third party.

Transfer value payments: time limits

- 137.**—(1) The guaranteed cash equivalent transfer value payment must be made not later than—
- (a) the end of the period of 6 months after the guarantee date; or
 - (b) if earlier, the date on which the member attains normal pension age.
- (2) If the payment is made after the time specified in paragraph (1)(a), the amount of the payment must be increased by the relevant amount.
- (3) The relevant amount is—
- (a) if the amount specified in the statement of entitlement (SEA) is less than the amount it would have been if the guarantee date had been the date on which the payment is made, the amount of the difference;
 - (b) if—
 - (i) the SEA is greater than the amount it would have been if the guarantee date had been the date on which the payment is made; and
 - (ii) there was no reasonable excuse for the delay in payment,interest on the SEA calculated on a daily basis starting on the guarantee date and ending on the date the payment is made at an annual rate of 1% above the base rate.
- (4) Paragraph (5) applies if—
- (a) disciplinary or court proceedings against M are started before the end of the period of 12 months starting with the date on which M leaves the employment which qualified M for being a member of this scheme; and
 - (b) it appears to the scheme manager that the proceedings may result in all or part of M's benefits being forfeited under paragraph 12 of Schedule 3.
- (5) The scheme manager may defer making a payment under this Section until the end of the period of 3 months starting on the day the proceedings (including any proceedings on appeal) are finally determined.
- (6) If a direction is given under paragraph 12 of Schedule 3 for the forfeiture of M's benefits, this regulation applies as if the SEA were reduced by an amount equal to the value of the benefits forfeited, as determined by the scheme actuary.
- (7) Paragraph (8) or (9) applies if M is not qualified for retirement benefits by virtue of regulation 72.
- (8) If M's application specifies that the guaranteed cash equivalent transfer value payment is made to a registered occupational pension scheme or a registered personal pension scheme, the application may be made only if—
- (a) M became a member of the other scheme before the end of the period of 12 months starting on the day after the leaving date; and
 - (b) the application is made not later than—
 - (i) the end of the period of 12 months starting on the day M became a member of the other scheme; or
 - (ii) if M became a member of the other scheme on or before the leaving date, the end of the period of 12 months starting on the day after the leaving date.
- (9) If paragraph (8) does not apply, M's application may only be made before the end of the period of 12 months starting on the day after the leaving date.
- (10) In paragraphs (8) and (9), the leaving date is the day on which M ceased to be in the pensionable service in which the rights accrued.

(11) M may require the scheme manager to make a club transfer value payment only during the period of 12 months starting with the day on which M becomes eligible to be an active member of the scheme to which the payment is to be made.

How transfer value payments may be applied

138.—^{F115}(1) A deferred member (DM) may require the scheme manager to apply the guaranteed cash equivalent transfer value payment only in one of the ways permitted under section 95 of the 1993 Act.]

(2) In any other case, ^{F116}a member] may require the scheme manager to apply the guaranteed cash equivalent transfer value payment only in one of the ways permitted under section 101AE of the 1993 Act ^{M37}.

(3) The whole of the guaranteed cash equivalent transfer value payment must be applied, unless paragraph (4) applies.

(4) Benefits attributable to—

- (a) ^{F117}DM's] accrued rights to a guaranteed minimum pension; or
- (b) ^{F117}DM's] accrued rights attributable to service in a contracted-out employment (within the meaning of section 8 of the 1993 Act ^{M38}) on or after 6th April 1997,

may be excluded from the guaranteed cash equivalent payment if section 96(2) of the 1993 Act ^{M39} applies (trustees or managers of certain receiving schemes or arrangements able and willing to accept a transfer payment only in respect of the members other rights).

(5) A transfer payment may be made only to—

- (a) a pension scheme (other than a connected scheme) that is registered under Chapter 2 of Part 4 of the 2004 Act; or
- (b) an arrangement that is a qualifying recognised overseas pension scheme for the purposes of that Part (see section 169(2) of that Act ^{M40}).

^{F118}(6) Paragraph (1) applies whether or not DM is entitled to a guaranteed cash equivalent transfer value payment under Chapter 1 of Part 4ZA of the 1993 Act.]

Textual Amendments

F115 Reg. 138(1) substituted (1.4.2016) by [The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions \(Amendment\) Regulations 2016 \(S.I. 2016/245\)](#), regs. 1(2), [77\(2\)](#) (with reg. 105)

F116 Words in reg. 138(2) substituted (1.4.2016) by [The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions \(Amendment\) Regulations 2016 \(S.I. 2016/245\)](#), regs. 1(2), [77\(3\)](#) (with reg. 105)

F117 Word in reg. 138(4) substituted (1.4.2016) by [The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions \(Amendment\) Regulations 2016 \(S.I. 2016/245\)](#), regs. 1(2), [77\(4\)](#) (with reg. 105)

F118 Reg. 138(6) added (1.4.2016) by [The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions \(Amendment\) Regulations 2016 \(S.I. 2016/245\)](#), regs. 1(2), [77\(5\)](#) (with reg. 105)

Marginal Citations

M37 Section 101AE was inserted by section 264 of the [Pensions Act 2004 \(c.35\)](#).

M38 Section 8 has been amended by sections 151 and 177 of, and paragraph 23(a) and (b) of Schedule 5 and Part 3 of Schedule 7 to, the Pensions Act 1995, section 1(1) of, and paragraph 34(a) and (b)

of Schedule 1 to, the [Social Security Contributions \(Transfer of Functions, etc\) Act 1999 \(c.2\)](#), [section 15\(3\)\(a\)](#) of, and paragraphs 1 and 3(1) to (4) of Schedule 4 to, the [Pensions Act 2007 \(c.22\)](#), [section 4\(1\)](#) of, and paragraphs 7 and 8(1) to (3) of Schedule 1 to, the [National Insurance Contributions Act 2008 \(c.16\)](#), [section 11\(4\)](#) of, and paragraphs 18 and 19 of Schedule 4 to, the [Marriage \(Same Sex Couples\) Act 2013 \(c.30\)](#) and article 2(1) of, and paragraph 1 of Schedule 1 to, [S.I. 2005/2050](#), and is prospectively amended by section 15(3)(a) and section 27(2) of, and paragraphs 46 and 47 of Schedule 4 and Part 7 of Schedule 7 to the [Pensions Act 2007](#) and section 24(1) of, and paragraphs 1, 2 and 7(1) to (5) of Schedule 13 to, the [Pensions Act 2014 \(c.19\)](#).

M39 Section 96(2) has been amended by section 151 of, and paragraph 63(a) of Schedule 5 to, the [Pensions Act 1995](#), sections 18 and 88 of, and paragraph 3(2)(b) of Schedule 2 and Part 1 of Schedule 13 to, the [Welfare Reform and Pensions Act 1999 \(c.48\)](#), [sections 15\(3\)\(a\)](#) and 27(2) of, and paragraphs 1 and 29 of Schedule 4 and Part 6 of Schedule 7 to, the [Pensions Act 2007](#) and article 5(1) and (14)(a) (ii) of [S.I. 2011/1730](#), and is prospectively amended by section 24(1) of, and paragraphs 1 and 39 of Schedule 13 to, the [Pensions Act 2014](#).

M40 Section 169(2) has been amended by section 53(2) and (3) of the [Finance Act 2013 \(c.29\)](#).

Calculating amounts of transfer value or club transfer value

139.—(1) The amount of the guaranteed cash equivalent transfer value payment is to be calculated and verified by the scheme manager in accordance with the Occupational Pension Schemes (Transfer Values) Regulations 1996^{M41}.

(2) In determining the factors to be used in the calculation of the member's (M's) guaranteed cash equivalent, the scheme manager must take account of—

- (a) M's prospective normal pension age;
- (b) advice from the scheme actuary.

(3) If the amount calculated in accordance with paragraph (1) or (5) is less than M's minimum transfer value (if any), the amount of the transfer value payment is to be equal to that value.

(4) In paragraph (3) “minimum transfer value” means the sum of—

- (a) any transfer value payments that have been made to this scheme in respect of M as a result of which M is entitled to count any pensionable service under this scheme by reference to which the accrued rights subject to the transfer are calculated; and
- (b) any contributions paid by M under Part 4 as a result of which M is entitled to count such service.

(5) If the transfer is a club transfer, the amount of the transfer value payment is calculated in accordance with the club transfer arrangements rather than paragraph (1).

(6) If a club transfer value is paid later than 6 months after the guarantee date, the amount of the club transfer value as specified in the statement of entitlement must be increased if necessary so that it is equal to the amount it would have been if the guarantee date had been the date on which the payment is made.

Marginal Citations

M41 [S.I. 1996/1847](#), as amended by [S.I. 1997/786](#) and 1613, 2003/1727, 2005/72, 686, 706 and 3377, 2006/744, 2007/60, 2008/1050 and 2450, 2009/615, 2011/1246, 2012/692 and 2013/459 and 2734.

Effect of transfer-out

140. If a transfer value payment is made under this Section in respect of a person's rights under the scheme, those rights are extinguished.

SECTION 3

Transfers in

Right to apply for acceptance of transfer value payment

- 141.**—(1) An active member (M) may apply for a transfer value payment to be accepted from—
- (a) an appropriate registered occupational pension;
 - (b) a registered personal pension scheme;
 - (c) a registered buy-out policy;
 - (d) a corresponding scheme.
- (2) Paragraph (1) does not apply to M's rights—
- (a) under a free-standing AVC scheme to which paragraph (3) applies; or
 - (b) that are directly attributable to a pension credit.
- (3) This paragraph applies to—
- (a) a scheme which—
 - (i) immediately before 6th April 2006 was approved by the Commissioners for Her Majesty's Revenue and Customs by virtue of section 591(2)(h) of the Income and Corporation Taxes Act 1988 ^{M42} (free-standing AVC schemes); and
 - (ii) became a registered scheme for the purposes of the 2004 Act by virtue of Schedule 36 to that Act; or
 - (b) a scheme established on or after that date as a registered free-standing AVC scheme.
- (4) An appropriate registered occupational pension scheme is a registered occupational pension scheme which is not—
- (a) a connected scheme;
 - (b) a corresponding 1995 scheme; or
 - (c) a corresponding 2008 scheme.
- (5) In paragraph (1), “buy-out policy” means a policy of insurance or annuity contract that is appropriate for the purposes of section 19 of the 1993 Act ^{M43} [F119 (discharge of liability where guaranteed minimum pensions secured by insurance policies or annuity contracts)].
- (6) In paragraph (4)—
- “a corresponding 1995 scheme” is a superannuation scheme provided under section 10 of the Superannuation Act 1972 ^{M44} and having effect in Scotland or a superannuation scheme provided under Article 12 of the Superannuation (Northern Ireland) Order 1972 ^{M45}, the provisions of which the Secretary of State has determined correspond to the provisions of the 1995 Regulations; and
- “a corresponding 2008 scheme” is a superannuation scheme provided under section 10 of the Superannuation Act 1972 and having effect in Scotland or a superannuation scheme provided under Article 12 of the Superannuation (Northern Ireland) Order 1972, the provisions of which the Secretary of State has determined correspond to the provisions of the 2008 Regulations.

Textual Amendments

- F119** Words in [reg. 141\(5\)](#) substituted (1.4.2016) by [The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions \(Amendment\) Regulations 2016 \(S.I. 2016/245\)](#), [regs. 1\(2\)](#), [78](#) (with [reg. 105](#))

Marginal Citations

- M42** Section 591 was repealed by section 326 of, and Part 3 of Schedule 42 to, the [Finance Act 2004 \(c.12\)](#) on 6th April 2006.
- M43** Section 19 has been amended by [S.I. 2001/3649](#), 2005/2050 and 2007/3014.
- M44** [1972 c.11](#). Section 10 has been amended by sections 4(2) and 8(5) and (6) of the [Pensions \(Miscellaneous Provisions\) Act 1990 \(c.7\)](#), [section 190](#) of, and paragraph 7 of Schedule 8 to, the [Pension Schemes Act 1993 \(c.48\)](#), [section 27](#) of, and paragraphs 6 and 10 of Schedule 8 to, the [Public Service Pensions Act 2013 \(c.25\)](#) and article 108 of [S.I. 2001/3649](#). Functions under section 10 in relation to Scotland were transferred to the Scottish Ministers by article 2 and Schedule 1 of [S.I. 1999/1750](#).
- M45** [S.I. 1972/1073 \(N.I. 10\)](#).

Application procedure

- 142.**—(1) An application under regulation 141—
- (a) must be in writing;
 - (b) must specify the scheme or arrangement from which the transfer value payment is to be made and the anticipated amount of the payment;
 - (c) must be made before—
 - (i) the end of the period of one year starting on the day the member (M) becomes eligible to be an active member of this scheme; and
 - (ii) M attains normal pension age;
 - (d) if the scheme manager so requires, may be made only if M has requested a statement of entitlement; and
 - (e) must meet such other conditions as the scheme manager requires.
- (2) If the transfer is not a club transfer, a statement of entitlement—
- (a) is a statement of the increase to pensionable earnings and the service M will be entitled to count as a result of the transfer if the payment is accepted;
 - (b) must specify—
 - (i) the period within which the payment is to be accepted by scheme manager; and
 - (ii) the amount of increase to pensionable earnings calculated in accordance with guidance and tables provided by the scheme actuary for the purpose.
- (3) If the transfer is a club transfer, a statement of entitlement—
- (a) is a statement of the club transfer earned pension; and
 - (b) must specify—
 - (i) the period within which the transfer is to be accepted by the scheme manager; and
 - (ii) the basis on which the club transfer earned pension will be revalued while M is in pensionable service under this scheme.

Acceptance of transfer value payment

- 143.**—(1) The scheme manager may accept an application under regulation 141 from a member (M) unless—
- (a) such conditions as the scheme manager requires are not met; or
 - (b) paragraph (5) applies.

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- (2) If the transfer is a non-club transfer and the scheme manager accepts the payment, M is entitled—
- (a) for the purposes of calculating benefits payable to, or in respect of, M under this scheme, to an increase in M's pensionable earnings calculated in accordance with regulation 144; and
 - (b) to be credited with the relevant period of pensionable service in this scheme.
- (3) If the transfer is a club transfer, M is entitled—
- (a) to the amount of club transfer earned pension specified in the statement of entitlement; and
 - (b) to be credited with the relevant period of pensionable service in this scheme.
- (4) The relevant period is equal to the period of employment that qualified M for the rights in respect of which the transfer is being made.
- (5) This paragraph applies to a non-club transfer if—
- (a) it would be applied in whole or in part in respect of M's or M's spouse's entitlement to a guaranteed minimum pension; and
 - (b) it is less than the amount required for that purpose, as calculated in accordance with guidance and tables prepared by the scheme actuary for the purposes of this paragraph.

Calculation of increase to pensionable earnings

- 144.**—(1) The increase in pensionable earnings that the member (M) is entitled to count under regulation 143 as a result of the transfer is calculated—
- (a) in accordance with guidance and tables provided by the scheme actuary for the purpose; and
 - (b) by reference to any relevant factors as at the date the transfer payment is received by the scheme manager.
- (2) The benefits in respect of the transfer payment must be calculated by increasing M's pensionable earnings for—
- (a) the scheme year in which M joined this scheme; or
 - (b) if the transfer payment is received more than 12 months after the day on which M joined this scheme (the starting day), the scheme year in which the payment is received.
- (3) Paragraph (2)(b) does not apply if—
- (a) a written statement estimating the increase in pensionable earnings that M would be entitled to count as a result of the transfer was given to M by the scheme manager during the period of 3 months ending 12 months after the starting date; and
 - (b) the transfer payment is received by the scheme manager before the end of the period of 3 months after the date of the statement.
- (4) If the transfer is a club transfer, the club transfer earned pension M is entitled to count is calculated in accordance with the club transfer arrangements.
- (5) If the transfer value statement is accepted from a corresponding scheme, the increase in pensionable earnings M is entitled to count is the increase M would be entitled to count if—
- (a) M's employment to which that scheme applied were health service employment in respect of which M was a member of this scheme; and
 - (b) M's contributions to that scheme were contributions to this scheme.

Transfer from 1995 or 2008 Section

145.—(1) This regulation applies to an active member of this scheme (M) who is entitled to require a cash equivalent of M's rights to be used to acquire rights in this scheme pursuant to—

- (a) regulation M8 of the 1995 Section ^{M46}; or
- (b) regulation 2.F.18 or 3.F.18 of the 2008 Section ^{M47}.

(2) M may apply to the scheme manager to convert the cash equivalent value into rights under this scheme.

(3) An application under paragraph (2)—

- (a) must be in writing in the form provided by the scheme manager for the purpose;
- (b) must be made before the end of the period starting with the guarantee date within the meaning of whichever of regulation M8, 2.F.18 or 3.F.18 applies;
- (c) may be made only if M has first been provided with a statement of the pensionable service and increase in pensionable earnings M will be entitled to count under this scheme if the application is accepted;
- (d) must meet such other conditions as the scheme manager requires;
- (e) is irrevocable.

(4) The statement mentioned in paragraph (3)(c) must inform M of—

- (a) the amount of the increase in pensionable earnings that will count under this scheme for the purpose of calculating benefits payable to or in respect of M;
- (b) the pensionable service that will count under this scheme to determine whether M has 2 years qualifying service for the purposes of regulation 72.

(5) The amount of the increase in pensionable earnings must be calculated in accordance with guidance, tables and other relevant factors provided by the scheme actuary for the purpose.

(6) The pensionable service is equal to the period of employment that qualifies M to the entitlement mentioned in paragraph (1).

(7) If the scheme manager accepts an application under paragraph (2), for the purposes of this scheme—

- (a) the period of pensionable service mentioned in paragraph (4)(b) applies for the purpose mentioned in that paragraph;
- (b) the amount of the increase in pensionable earnings is credited to M's active member's account in the scheme year in which M's application under paragraph (2) is received.

(8) For the purposes of this regulation, in regulation 141(4), sub-paragraph (a) must be ignored.

Marginal Citations

M46 Regulation M8 is inserted by [S.I. 2015/96](#).

M47 [Regulations 2.F.18 and 3.F.18](#) are inserted by [S.I. 2015/96](#).

Transfers from corresponding 1995 and 2008 schemes

146.—(1) This regulation applies to an active member of this scheme (M) if—

- (a) M was formerly a member of a corresponding 1995 scheme or a corresponding 2008 scheme; and
- (b) the scheme manager considers that on the notional joining date M would be entitled to require a cash equivalent of M's rights in that scheme to be used to acquire rights in a

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corresponding health service scheme if M became a member of the corresponding health service scheme.

(2) M may apply to the scheme manager to convert the cash equivalent value into rights under this scheme.

(3) An application under paragraph (2) must be in such form, provide such information and be made at such time as the scheme manager requires.

(4) The notional joining date in relation to a relevant corresponding scheme is the date M became a member of this scheme.

(5) References to a corresponding 1995 scheme and a corresponding 2008 scheme must be construed in accordance with regulation 141(6).

SECTION 4

Bulk transfers

Bulk transfers out

147.—(1) This regulation applies if—

- (a) the employment of one or more active members (the transferring employees) is transferred without consent to a new employer;
- (b) on the transfer the transferring employees cease to be eligible to be members of this scheme;
- (c) after the transfer the transferring employees become active members of another occupational pension scheme (the new employer's scheme);
- (d) the Secretary of State has agreed special terms for the making of transfer value payments in respect of the transferring employees to the new employer's scheme, after consultation with the scheme actuary; and
- (e) the transferring employees have consented in writing to their rights being transferred in accordance with those terms.

(2) In the case of the transferring members or the transferred members, the transfer value payment to be paid—

- (a) is not calculated in accordance with regulation 136; but
- (b) is to be such amount as the Secretary of State, after consulting the scheme actuary, determines to be appropriate in accordance with the special terms.

(3) This Part has effect with such modifications as are necessary to give effect to those terms.

(4) If the transfer is directly or indirectly attributable to an enactment, this Part has effect with such modifications as the Secretary of State thinks necessary in consequence of the transfer.

Bulk transfers in

148.—(1) This regulation applies if—

- (a) the employment of one or more persons (the transferred employees) is transferred without their consent to a new employer;
- (b) on the transfer the transferred employees cease to be active members of an occupational pension scheme (the former employer's scheme);
- (c) after the transfer the transferred employees become active members of this scheme;

- (d) the Secretary of State, after consulting the scheme actuary, has agreed special terms for the acceptance of transfer value payments in respect of the transferred employees from the former employer's scheme; and
- (e) the transferred employees have consented in writing to their rights being transferred in accordance with those terms.

(2) This scheme has effect with such modifications as are necessary to give effect to the terms mentioned in paragraph (1)(e).

(3) If the transfer is directly or indirectly attributable to an enactment, this scheme has effect with such modifications as the Secretary of State thinks necessary in consequence of the transfer.

CHAPTER 3

Miscellaneous transfers

EU and overseas transfers

149.—(1) This regulation applies in the case of a member whose transfer is subject to transfer arrangements concluded with—

- (a) the Communities Pension Scheme of the Institutions of the European Communities; or
- (b) any other scheme for the provision of retirement benefits established outside the United Kingdom.

(2) This scheme applies in relation to the member with any modifications the scheme manager considers necessary to comply with—

- (a) the terms of those arrangements;
- (b) any applicable provision contained in or made under any enactment; and
- (c) the requirements to be met by a registered pension scheme.

PART 8

Independent providers

Interpretation

150.—(1) This regulation applies for the purposes of this Part.

(2) An independent provider is a person that employs an individual under a contract of employment and—

- (a) is not otherwise an employing authority in respect of the individual;
- (b) is a party to a qualifying contract;
- (c) has been granted employing authority status for the purposes of this scheme.

^[F120](3) A qualifying contract is a contract between a relevant commissioning party and an independent provider the primary purpose of which is the provision of clinical health care services for the NHS and which is—

- (a) an NHS standard contract;
- (b) an APMS contract;
- (c) a contract entered into by a local authority pursuant to its functions under the 2006 Act relating to the improvement and protection of public health and which the Secretary of State agrees to treat as a qualifying contract for these purposes; or

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- (d) an NHS standard sub-contract];
- [^{F121}(e) a primary care network standard sub-contract].
- (4) The wholly or mainly condition requires an employee performing services pursuant to a qualifying contract to do so for more than 50% of the employee's time in the employment.
- (5) In determining whether the wholly or mainly condition is met regard must be had to—
- (a) each scheme year; or
 - (b) if the service starts or finishes during a scheme year, so much of the year in which the services are performed.
- (6) The 75% threshold is 75% of the total gross amounts payable in a scheme year to an independent provider by the commissioning party in respect of a qualifying contract between them.
- (7) A commissioning party is a person who commissions services under a qualifying contract.
- (8) In this Part—
- “closed approval” must be construed in accordance with regulation 151(4);
- “IP guarantee” must be construed in accordance with regulation 154;
- ^{F122} ...
- “open approval” must be construed in accordance with regulation 151(5);
- “required level of cover” means a sum equal to 110% of 3/12ths of a reasonable estimate of the independent provider's total annual contribution liability arising under regulations 30, 33 to 35, 48 and 57 in respect of the qualifying contract in respect of which it was granted employing authority status.

Textual Amendments

- F120** Reg. 150(3) substituted (1.4.2017) by [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), regs. 2(c), **42(2)**
- F121** Reg. 150(3)(e) inserted (1.4.2023) by [The National Health Service Pension Schemes \(Amendment\) Regulations 2023 \(S.I. 2023/301\)](#), regs. 1(2), **15**
- F122** Words in reg. 150(8) omitted (1.4.2016) by virtue of [The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions \(Amendment\) Regulations 2016 \(S.I. 2016/245\)](#), regs. 1(2), **79** (with reg. 105)

Application for employing authority status

- 151.**—(1) This regulation applies to a person (the applicant) who—
- (a) employs an individual under a contract of employment (the employee);
 - (b) is not an employing authority in respect of the individual; and
 - (c) is a party to a qualifying contract in respect of which the employee performs services.
- (2) The applicant may apply to be granted the status of an employing authority in respect of the qualifying contract.
- (3) An application must—
- (a) be in writing;
 - (b) be in such form as the scheme manager requires;
 - (c) contain a declaration that, at the date of the application, the employee satisfies the wholly or mainly condition;

- (d) contain an undertaking that a person who on or after the relevant date is engaged to perform services pursuant to the qualifying contract will do so in a way that satisfies the wholly or mainly condition;
 - (e) contain a declaration that the applicant is not already an employing authority in respect of a person mentioned in sub-paragraph (c) or (d);
 - (f) state whether the application is made on a closed approval or open approval basis;
 - (g) provide an estimate for the scheme year in respect of which [^{F123}employing] authority status (if granted) would take account of—
 - (i) the gross sums the applicant anticipates receiving from the commissioning party in respect of the services it is to provide under each qualifying contract to which it is a party;
 - (ii) the number of employees who will be engaged in performing such services and who will satisfy the wholly or mainly condition;
 - (iii) the total pensionable earnings of those employees;
 - (iv) the total amount of members contributions payable by those employees pursuant to regulation 30 (by reference to the pensionable earnings bands into which they fall), 48 or 57;
 - (v) the total amount of employing authority contributions payable in respect of those employees pursuant to regulation 33, 34, 35, 48 or 57;
 - (vi) the total number of employees who would satisfy the wholly or mainly condition and who are engaged in performing services pursuant to each such contract but who are otherwise not eligible to be members of this scheme;
 - (vii) the total estimated earnings of the employees referred to in paragraph (vi).
- (4) A closed approval basis relates to an employee—
- (a) who is not otherwise covered by—
 - (i) a direction under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 ^{M48}; or
 - (ii) a determination under section 25(5) of the 2013 Act; and
 - (b) who was, within the 12 months preceding the start of the employment contract with the applicant, in an employment in which the employee was entitled to participate in—
 - (i) superannuation benefits provided under section 10 of the Superannuation Act 1972 ^{M49} whether or not the employee had been a member of such a scheme pursuant to that entitlement; or
 - (ii) benefits provided under sections 1(2)(e) and 3 of the 2013 Act whether or not the employee had been a member of such a scheme pursuant to that entitlement^{F124}; and
 - (c) who—
 - (i) is performing services pursuant to a qualifying contract; and
 - (ii) satisfies the wholly or mainly condition]
- (5) An open approval basis relates to an employee performing services pursuant to a qualifying contract—
- (a) who satisfies the wholly or mainly condition;
 - (b) regardless of whether the employee is within paragraph (4).

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Textual Amendments

- F123** Word in reg. 151(3)(g) substituted (1.4.2015) by [The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions \(Amendment\) Regulations 2016 \(S.I. 2016/245\)](#), regs. 1(8), **80** (with reg. 105)
- F124** Reg. 151(c) and preceding word inserted (1.4.2017) by [The National Health Service Pension Scheme and Additional Voluntary Contributions \(Amendment\) Regulations 2017 \(S.I. 2017/275\)](#), regs. 2(c), **43(2)**

Marginal Citations

- M48** Section 7 has been amended by sections 10(5) and 29(1) and (4) of, and paragraphs 66 of Schedule 6 and Schedule 8 to, the [Superannuation Act 1972 \(c.11\)](#), **section 57** of, and Schedule 5 to, the [National Health Service Reorganisation Act 1973 \(c.32\)](#), **section 109** of, and paragraph 24 of Schedule 16 to, the [National Health Service \(Scotland\) Act 1978 \(c.29\)](#) and section 2 of, and paragraphs 28 and 29 of Schedule 1 to, the [National Health Service \(Consequential Provisions\) Act 2006 \(c.43\)](#).
- M49** [1972 c.11](#). Section 10 has been amended by sections 4(2) and 8(5) and (6) of the [Pensions \(Miscellaneous Provisions\) Act 1990 \(c.7\)](#), **section 190** of, and paragraph 7 of Schedule 8 to, the [Pension Schemes Act 1993 \(c.48\)](#), **section 27** of, and paragraphs 6 and 10 of Schedule 8 to, the [Public Service Pensions Act 2013 \(c.25\)](#) and article 108 of [S.I. 2001/3649](#).

Grant of employing authority status

152.—(1) The scheme manager may grant [^{F125}employing] authority status on an application under regulation 151 if—

- (a) satisfied as to the matters in paragraph (3) of that regulation; and
- (b) where an IP guarantee is required, the guarantee has been provided to the scheme manager.

[^{F126}(2) An approval application may nominate a date (“the nominated date”) from which approval by the Secretary of State (if granted) is to have effect.

- (3) Where paragraph (2) applies and—
 - (a) the Secretary of State is satisfied that the Independent Provider will satisfy the conditions in paragraph (3) of regulation 151 at the nominated date,
 - (b) the Secretary of State accepts the nominated date for approval purposes, and
 - (c) the nominated date is later than the date on which the Secretary of State approves the application,

approval takes effect from the nominated date.

- (4) Where paragraph (2) applies and—
 - (a) the Secretary of State is satisfied that the Independent Provider did satisfy the conditions in paragraph (3) of regulation 151 at the nominated date,
 - (b) the Secretary of State accepts the nominated date for approval purposes,
 - (c) the nominated date is earlier than the date on which the Secretary of State approves the application, and
 - (d) the Secretary of State has received the contributions referred to in paragraphs (iv) and (v) of paragraph (3) of regulation 151,

approval takes effect from the nominated date.

- (5) Where an approval application—
 - (a) does not include a nominated date, or

(b) does include such a date, but which the Secretary of State does not accept for approval purposes,
approval takes effect from the date that it is granted by the Secretary of State.]

Textual Amendments

F125 Word in reg. 152(1) substituted (1.4.2015) by [The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions \(Amendment\) Regulations 2016 \(S.I. 2016/245\)](#), regs. 1(8), **81(2)** (with reg. 105)

F126 Reg. 152(2)-(5) substituted for reg. 152(2) (1.4.2016) by [The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions \(Amendment\) Regulations 2016 \(S.I. 2016/245\)](#), regs. 1(2), **81(3)** (with reg. 105)

Extension of employing authority status

153.—(1) Paragraph (2) applies if an independent provider is or subsequently becomes a party to a qualifying contract which is not the qualifying contract in respect of which employing authority status was granted (a further contract).

(2) The independent provider's employing authority status extends to the further contract with effect from—

- (a) if the independent provider was a party to the further contract at the date employing authority status was granted, that date;
- (b) in any other case, the date on which the further contract is entered into.

(3) Paragraph (4) applies if an independent provider is associated with another employer (the associated employer) who is a party to a qualifying contract.

(4) The independent provider's status as an employing authority extends to a qualifying contract to which the associated employer is a party.

(5) The extension of employing authority status by virtue of paragraph (4) takes effect—

- (a) if the associated employer is a party to the qualifying contract mentioned in paragraph (4) at the date the independent provider is granted employing authority status, on that date;
- (b) in any other case, on the date the associated employer enters into the qualifying contract.

(6) For the purposes of paragraph (3) an independent provider is associated with another employer if the independent provider—

- (a) exercises direct control over the other employer's affairs; or
- (b) is entitled to acquire direct or indirect control over those affairs.

(7) Paragraph (8) applies if, in consequence of paragraph (2) or (4) the independent provider's estimated contribution liability under regulations 30, 33 to 35, 48 and 57 increases by 10% or more on the date specified in paragraph (2) or (5), as the case may be.

(8) The scheme manager may require the independent provider to take any of the following steps—

- (a) increase the sum already guaranteed by an IP guarantee;
- (b) provide such further IP guarantees in respect of the amount of the increase in the estimated contribution liability as the scheme manager thinks appropriate;
- (c) if the independent provider has not already provided an IP guarantee, provide an IP guarantee for the total amount of estimated contribution liability in relation to all

qualifying contracts in respect of which the independent provider has employing authority status.

IP guarantees

154.—(1) An IP guarantee is a guarantee by an independent provider which—

- (a) is in such form as the scheme manager approves;
- (b) guarantees payment to the scheme manager of the required level of cover;
- (c) is underwritten by one or more bodies approved of by the scheme manager;
- (d) takes effect on the date the independent provider is granted employing authority status for the purposes of this Part.

(2) The scheme manager may, as a condition of granting employing authority status to an independent provider, require the independent provider to provide an IP guarantee.

(3) The scheme manager may at any other time require an independent provider to provide an IP guarantee and may do so in particular—

- (a) if [^{F127}that independent provider] fails to meet any of its liabilities under these Regulations as an employing authority;
- (b) if, before it was granted employing authority status under this Part, [^{F128}that independent provider] failed in any other capacity to meet such liabilities;
- (c) if the scheme manager has reasonable grounds to believe that the independent provider is unable, or is likely to become unable, to meet such liabilities.

(4) The scheme manager may in exceptional cases specify additional requirements for an IP guarantee.

(5) An independent provider must review each IP guarantee currently having effect—

- (a) not later than one month before the start of a scheme year;
- (b) not later than one month after the date on which employing authority status was granted;
- (c) not later than one month before the date on which the guarantee is expressed to cease to have effect (if that is not the start of a scheme year);
- (d) if it becomes a party to another qualifying contract;
- (e) immediately it reasonably believes that its estimated contribution liability under regulation 30, 33, 34, 35, 48 or 57 has increased or may increase by more than 10%;
- (f) on being notified in writing by the scheme manager that the scheme manager considers that the sum guaranteed by the guarantee does not equal or exceed the required level of cover.

(6) Paragraph (7) applies if—

- (a) paragraph (5)(e) applies; and
- (b) the independent provider determines that the amount of cover provided by the IP guarantee or IP guarantees currently having effect is less than the total required level of cover in respect of all of its qualifying contracts.

(7) The independent provider must before the end of the period of 14 days starting with the determination—

- (a) increase the amount of cover its IP guarantee or guarantees so as to at least equal the total required level of cover; or
- (b) take out an additional IP guarantee or guarantees for such amount or amounts as will secure that the total required level of cover is effected.

(8) The independent provider must before the end of the period mentioned in paragraph (7) notify the scheme manager of the action taken under that paragraph.

(9) Paragraph (10) applies if—

- (a) paragraph (5)(f) applies; and
- (b) the independent provider determines that the amount of cover provided by the IP guarantee or IP guarantees currently having effect is not less than the total required level of cover in respect of all of its qualifying contracts.

(10) The independent provider must—

- (a) before the end of the period of 14 days after the determination notify the scheme manager of the determination; and
- (b) provide the scheme manager with such information as the scheme manager may from time to time require in relation to the extent to which its IP guarantee or guarantees are sufficient to meet the required level of cover.

Textual Amendments

F127 Words in [reg. 154\(3\)\(a\)](#) substituted (1.4.2016) by [The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions \(Amendment\) Regulations 2016 \(S.I. 2016/245\)](#), [regs. 1\(2\)](#), **82(a)** (with [reg. 105](#))

F128 Words in [reg. 154\(3\)\(b\)](#) inserted (1.4.2016) by [The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions \(Amendment\) Regulations 2016 \(S.I. 2016/245\)](#), [regs. 1\(2\)](#), **82(b)** (with [reg. 105](#))

75% threshold and contribution surcharge

155.—(1) An independent provider must not in any scheme year exceed the 75% threshold for the aggregate amount of pensionable earnings paid to members of this scheme in respect of the performance of services under all qualifying contracts in relation to which the independent provider is an employing authority.

(2) If an independent provider fails to comply with paragraph (1), the independent provider must pay to the scheme manager a surcharge (the employer contribution surcharge) of 12% of—

- (a) the amount by which the 75% threshold is exceeded; or
- (b) if paragraph (3) applies such part of the excess as the scheme manager considers reasonable having regard to the declared NHS income, profits, losses and expenses for the scheme year in question.

(3) This paragraph applies if the scheme manager is satisfied that there is a reasonable explanation for the threshold having been exceeded.

(4) Where paragraph (3) applies, the scheme manager may, at any time—

- (a) reduce the amount of the excess in respect of which the employer contribution surcharge is to be paid; or
- (b) determine that no surcharge is to be paid.

(5) An employer contribution surcharge must be paid to the scheme manager before the end of the period of one month (or in exceptional circumstances such other period as the scheme manager decides) starting with the date on which the scheme manager gives notice to an independent provider that the surcharge is payable.

(6) If an independent provider fails to pay an employer contribution surcharge on or before the time required by paragraph (5)—

- (a) there is a chargeable event for the purposes of regulation 36;
 - (b) paragraphs (2) to (8) of that regulation apply as if the surcharge were contributions payable by an employing authority.
- (7) The failure of an independent provider to comply with paragraph (1) does not affect—
- (a) the amount of pensionable earnings a person who is member of this scheme by virtue of regulation 18(1)(c) is entitled to count for the purposes of these Regulations; or
 - (b) entitlement to or the amount of benefits payable under this scheme.

Default notice

156.—(1) This regulation applies if the scheme manager gives an independent provider a notice under regulation 36(4) (non-payment of contributions) in respect of contributions payable in connection with a qualifying contract.

- (2) The scheme manager must—
- (a) also give a copy of the notice to the commissioning party to the qualifying contract;
 - (b) at the same time as the notice under regulation 36(4), give the independent provider notice that continued non-payment of the contributions will result in termination of employing authority status with effect from the day following the end of the second month after the month for which the contributions are due.
- (3) If, one month after the issue of a notice under paragraph (1), some or all of the contributions referred to in that paragraph remain unpaid, the scheme manager must—
- (a) notify the commissioning party of the non-payment specifying—
 - (i) the period or periods for which contributions are outstanding; and
 - (ii) the amount or amounts outstanding; and
 - (b) request the commissioning party—
 - (i) to consider withholding from any payments it is due to make to the independent provider in relation to any qualifying contract, an amount equal to the amount of unpaid contributions; and
 - (ii) to pay that amount to the scheme manager.
- (4) If the scheme manager receives an amount pursuant to paragraph (3)(b)(ii), the scheme manager must—
- (a) give the commissioning party a written receipt for the payment;
 - (b) notify the independent provider in writing that a sum equal to the amount of the unpaid contributions has been—
 - (i) withheld pursuant to paragraph (3)(b)(i); and
 - (ii) paid to the scheme manager by the commissioning party pursuant to paragraph (3)(b)(ii).

Pension returns

157.—(1) An independent provider must provide the scheme manager with the information specified in paragraph (4) in respect of the relevant period.

- (2) The information must be provided—
- (a) in writing and in such form as the scheme manager from time to time requires;
 - (b) not more than two months after the end of a scheme year; and

- (c) not more than two months after the date when the independent provider ceases to be an employing authority for the purposes of this scheme if that does not occur at the end of a scheme year.
- (3) The relevant period is—
 - (a) for the purposes of paragraph (2)(b), the complete scheme year in respect of which the information is provided;
 - (b) for the purposes of paragraph (2)(c), the period beginning with the start of the scheme year in which the cessation occurs and ending with the date of the cessation.
- (4) The information is—
 - (a) a complete list of all qualifying contracts to which the independent provider is a party at any time during the relevant period;
 - [^{F129}(ab) a complete list of such of the contracts referred to in sub-paragraph (a) which the Independent Provider has sub-contracted by way of NHS standard sub-contract to a third party: that list must identify the third party and also specify the total gross amounts expressed to be payable under such sub-contracts to that third party;]
 - (b) the total gross amounts—
 - (i) estimated in accordance with regulation 151(3) to be payable during the relevant period under those contracts to the independent provider by the commissioning party;
 - (ii) actually received by the independent provider from the commissioning party during the relevant period;
 - (c) whether the independent provider's status as an employing authority was granted on an open or closed approval basis;
 - (d) whether the approval status has changed and, if so, when;
 - (e) where the scheme manager has required an IP guarantee, the amount guaranteed;
 - (f) the number of employees who were engaged in performing services pursuant to a qualifying contract who satisfy the wholly or mainly condition;
 - (g) the total pensionable earnings of those employees;
 - (h) the total employee contributions payable by those employees pursuant to regulations 30 (by reference to the pensionable earnings bands into which they fall), 48 and 57;
 - (i) the total amount of employing authority contributions payable in respect of those employees pursuant to regulation 33, 34, 35, 48 or 57;
 - (j) confirmation that those of its employees who were or became members of this scheme during the relevant period satisfied the wholly or mainly condition throughout the period;
 - (k) the total number of employees who—
 - (i) satisfied the wholly or mainly condition and were engaged in performing services pursuant to a qualifying contract; but
 - (ii) were otherwise not eligible to be members of this scheme.
 - (l) the total amount of pensionable earnings of employees who satisfied the wholly or mainly condition expressed as a percentage of the total gross amounts payable to the independent provider by a commissioning party in respect of all of its qualifying contracts;
 - (m) where the percentage referred to in sub-paragraph (l) exceeds 75%, an explanation for that percentage having been exceeded;
 - (n) whether the independent provider has ceased to be a party to a qualifying contract;

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- (o) whether the independent provider no longer has any employees who satisfy the wholly or mainly condition.
- (5) Paragraph (6) applies if an employee of an independent provider—
 - (a) is a member of this scheme by virtue of regulation 18(1)(c); and
 - (b) ceases to satisfy the wholly or mainly condition or any other condition of membership of this scheme.
- (6) The independent provider must—
 - (a) inform the employee that the employee's membership of this scheme is terminated on the date the employee ceased to satisfy the condition;
 - (b) notify that fact to the scheme manager by notice in writing.

Textual Amendments

F129 Reg. 157(4)(ab) inserted (1.4.2016) by [The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions \(Amendment\) Regulations 2016 \(S.I. 2016/245\)](#), regs. 1(2), **83** (with reg. 105)

Provision of information

158.—(1) This regulation applies for the purposes of enabling the scheme manager to assess whether the grant of employing authority status to an independent provider should continue to have effect.

(2) The scheme manager may at any time require the independent provider to provide information which the scheme manager thinks relevant relating to—

- (a) those employed by the independent provider who have become members of this scheme by virtue of regulation 18(1)(c);
- (b) the qualifying contracts in respect of which employing authority status was granted or extended;
- (c) the numbers of persons engaged in performing services pursuant to the contracts and the proportion of their time spent doing so.

(3) The information must be provided not later than 14 days after the date it is requested.

(4) The scheme manager may by notice in writing require the independent provider to provide such other information as the scheme manager thinks necessary to determine whether there has been compliance with these Regulations.

(5) Information required under paragraph (4) must be provided within the time specified in the notice.

Termination of employing authority status

159.—(1) The scheme manager must terminate an independent provider's status as an employing authority in respect of a qualifying contract if the independent provider ceases to be a party to the contract.

(2) The scheme manager may terminate an independent provider's status as an employing authority in respect of a qualifying contract in any of the following circumstances—

- (a) if the independent provider subsequently acquires the status of an employing authority by virtue of being listed in Schedule 5 (ignoring paragraph 5 of that Schedule);

- (b) if all of the employees of the independent provider who acquired membership of the scheme by virtue of regulation 18(1)(c) cease to satisfy the wholly or mainly condition;
 - (c) if the independent provider—
 - (i) fails to review, in accordance with regulation 154(5), the amount of cover guaranteed by its IP guarantee; or
 - (ii) having carried out the review fails to increase the amount of cover provided by the IP guarantee where such an increase is required;
 - (d) if, following the issue of a notice under regulation 156, the independent provider fails to pay to the scheme manager the amount specified in paragraph (1) of that regulation in the time so specified;
 - (e) if paragraph (7) of regulation 154 applies and the independent provider fails to act as required by that paragraph;
 - (f) if the independent provider fails to provide information required by regulation 158(2) or (4);
 - (g) if the scheme manager is not satisfied that the information provided by the independent provider pursuant to regulation 158(2) supports the continuation of its status as an employing authority;
 - (h) if the independent provider fails to notify the scheme manager that a guarantor of any of its IP guarantees has withdrawn or revoked its guarantee;
 - (i) if the independent provider has in any three years in a five year period exceeded the 75% threshold or has a pattern of doing so.
- (3) If the scheme manager decides that the independent provider's status as an employing authority in respect of a qualifying contract is to be terminated, the scheme manager must, as soon as reasonable practicable, give the independent provider notice of—
- (a) the termination; and
 - (b) the date on which it takes effect.
- (4) If an independent provider's status as an employing authority is terminated, its employees who are or were eligible to be members of this scheme cease to be members or be eligible to be members on the date of termination.

Withdrawal from employing authority status in this scheme

160.—(1) An independent provider may withdraw from employing authority status in this scheme in accordance with this regulation.

(2) The independent provider must give notice to the scheme manager (a withdrawal notice) that it intends to cease to be an independent provider for the purposes of these Regulations with effect from the date specified in the notice (the withdrawal date).

(3) A withdrawal notice that affects a person who has become a member of this scheme by virtue of regulation 18(1)(c) must not be given unless the person gives consent in writing to the independent provider.

(4) The withdrawal date must not be earlier than the end of the period of six months starting with the date of the withdrawal notice (the withdrawal period).

(5) A withdrawal notice must—

- (a) be in writing; and
- (b) be accompanied by evidence of the consent required under paragraph (3).

(6) A withdrawal notice has effect in respect of every qualifying contract to which the independent provider is a party.

(7) With effect from the withdrawal date, a person who is a member of this scheme by virtue of regulation 18(1)(c) ceases to be such a member.

Change from open approval to closed approval basis

161.—(1) If the employing authority status of an independent provider was granted on an open approval basis, the independent provider may give the scheme manager a modification notice stating that it wishes its status as an employing authority to cease to be on that basis but to continue instead on a closed approval basis.

(2) A modification notice given in respect of one or more qualifying contracts is effective in respect of all qualifying contracts.

(3) A modification notice must—

- (a) be in writing;
- (b) specify a date on which the modification is to take effect (“the operative modification date”): that date cannot fall within the period of 6 months commencing with the date of the modification notice (“the modification period”);
- (c) be accompanied by the written consent of any affected person who has consented to the giving of that notice: for these purposes an “affected person” is any person who became a member of this scheme by virtue of regulation 18(1)(c).

(4) On the operative modification date—

- (a) the basis of the independent provider's approval changes from an open to a closed approval basis;
- (b) any affected person who gave consent to the giving of the modification notice ceases to be a member of this scheme;
- (c) any affected person who did not give such consent remains a member of this scheme.

(5) A person who is, but for a modification notice, otherwise entitled to participate in this scheme during the modification period by virtue of the independent provider having been granted approval on an open approval basis, continues to be so entitled but only for the duration of that period.

(6) Nothing in paragraph (5) prevents a person referred to in that paragraph from becoming a member of this scheme by virtue of their employment with some other employing authority.

(7) During the modification period, a person who was eligible to become a member of this scheme in accordance with regulation 18(1)(c) but who did not do so by virtue of opting out in accordance with paragraph 1 of Schedule 4, may, in accordance with paragraph 2 of that Schedule, join or re-join this scheme.

Change from closed approval basis to open approval basis

162.—(1) An independent provider granted employing authority status on a closed approval basis when it first applied for approval may give the scheme manager a modification notice stating that it wishes its status as an employing authority to cease to be on that basis but to continue instead on an open approval basis.

(2) An independent provider that has previously modified its participation in this scheme may give the scheme a further modification notice stating that it wishes its status as an employing authority to cease to be on a closed approval basis but to continue instead on an open approval basis.

(3) An application referred to in paragraphs (1) and (2) must specify—

- (a) the date (“the modification date”) from which the change to open approval is sought: the modification date must not be less than 3 months from the date the application is received by the scheme manager;
 - (b) that approval on an open approval basis is sought in respect of all employees of the independent provider engaged to perform services pursuant to a qualifying contract at the modification date provided always that such persons satisfy the wholly or mainly condition and regardless of whether they were so engaged at the date of any earlier approval.
- (4) Where the scheme manager is satisfied that the independent provider will, at the modification date, satisfy the matters set out in regulation 151, the change to open approval basis is to take effect from that date.

PART 9

General

Definitions

163. The expressions listed in column 1 of the Table in Schedule 15 have the meaning given by the corresponding entry in column 2.

OOH provider

- 164.**—(1) A reference to an OOH provider is a reference to a body within paragraph (2) or (3).
- (2) A body is within this paragraph if it is a company limited by guarantee (which is not otherwise an employing authority)—
- (a) in which all the members of the company are medical practitioners, APMS contractors, GMS practices or PMS practices, and the majority of those members are—
 - (i) APMS contractors, GMS practices or PMS practices whose APMS contracts, GMS contracts or PMS agreements require them to provide OOH services; or
 - (ii) medical practitioners who are partners or shareholders in an APMS contractor, a GMS practice or a PMS practice which is a partnership or a company limited by shares and which is required to provide OOH services under its GMS contract, PMS agreement or APMS contract;
 - (b) which has a contract with [^{F130}an integrated care board], [^{F131}NHS England], a Local Health Board, an APMS contractor, a GMS practice or a PMS practice for the provision of OOH services; and
 - (c) in respect of which [^{F132}an integrated care board], [^{F133}NHS England] or Local Health Board appointed by the Secretary of State or the National Assembly of Wales to act on his or its behalf—
 - (i) is satisfied that the provision of OOH services by the company is wholly or mainly a mutual trading activity;
 - (ii) is satisfied that the company has met all the conditions for being an OOH provider in this regulation; and
 - (iii) has, pursuant to a written application made by the company to it for that purpose, approved the company as an employing authority.
- (3) A body is within this paragraph if it is a body corporate, other than a company limited by guarantee (which is not otherwise an employing authority) which—

- (a) operates in the interests of those who are the recipients of the primary medical services it provides or of the general public;
 - (b) operates on a not-for-profit basis;
 - (c) is not an associated company in relation to another person;
 - (d) has memorandum or articles or rules that—
 - (i) prohibit the payment of dividends to its members; and
 - (ii) require its profits (if any) or other income to be applied to promoting its objects, and
 - (iii) require all the assets which would otherwise be available to its members generally to be transferred on its winding up either to another body which operates on a not-for-profit basis and whose purpose is to provide health or social care for the benefit of the community or to another body the objects of which are the promotion of charity and anything incidental or conducive thereto;
 - (e) has at least one member who is—
 - (i) an APMS contractor, a GMS practice or a PMS practice; or
 - (ii) a partner in a partnership that is an APMS contractor, a GMS practice or a PMS practice; or
 - (iii) a shareholder in a company limited by shares that is an APMS contractor, a GMS practice or a PMS practice;
 - (f) has a contract with ^{F134}[an integrated care board], ^{F135}[NHS England] or Local Health Board, an APMS contractor, a GMS practice or a PMS practice, for the provision of OOH services, and
 - (g) is approved as an employing authority by Clinical Commissioning ^{F136}[integrated care board], ^{F137}[NHS England] or Local Health Board appointed by the Secretary of State to act on the Secretary of State's behalf—
 - (i) pursuant to a written application made by the body to it for that purpose; and
 - (ii) that ^{F136}[integrated care board] or Board being satisfied that the body has met all the conditions for being an OOH provider in this regulation.
- (4) For the purposes of paragraph (3)(c)—
- (a) a body corporate is another person's associated company if the person—
 - (i) has control of it; and
 - (ii) is not an employing authority;
 - (b) a person is taken to have control of a body corporate if the person—
 - (i) exercises, or is able to exercise direct or indirect control over its affairs; or
 - (ii) is entitled to acquire such control.
- (5) A company limited by guarantee or other body corporate which provides or is to provide OOH services and which wishes to be approved as an employing authority must make a written application to ^{F138}[an integrated care board], ^{F139}[NHS England] or Local Health Board appointed by the Secretary of State to act on the Secretary of State's behalf ^{F140}(“the appointed NHS body”).
- (6) An application referred to in paragraph (5) may specify the date from which approval by ^{F141}[the appointed NHS body] (if given) is to have effect (“the nominated date”).
- (7) If a company limited by guarantee or other body corporate makes an application and—

- (a) [^{F142}the appointed NHS body] is satisfied that the company or other body corporate is within paragraph (2) or (3), as the case may be or will be at a nominated date which is later than the approval date; and
 - (b) it approves that application, the approval takes effect on the later of the nominated date and the approval date.
- (8) If paragraph (7) applies, NHS employment is treated as commencing on the later of the nominated date (if any) and the approval date.
- (9) [^{F143}The appointed NHS body] may give an OOH provider a notice in writing terminating its participation in this scheme if the provider—
- (a) does not have in force a guarantee, indemnity or bond as required by the scheme manager in accordance with regulation 165;
 - (b) has ceased to be within paragraph (2) or (3);
 - (c) has notified [^{F144}the appointed NHS body] that any one of the following events has occurred in respect of it—
 - (i) a proposal for a voluntary arrangement has been made or approved under Part I of the Insolvency Act 1986 ^{M50} (“the 1986 Act”);
 - (ii) an administration application has been made, or a notice of intention to appoint an administrator has been filed with the court, or an administrator has been appointed under Schedule B1 to the 1986 Act ^{M51};
 - (iii) a receiver, manager, or administrative receiver has been appointed under Part III of the 1986 Act;
 - (iv) a winding-up petition has been presented, a winding-up order has been made or a resolution for voluntary winding-up has been passed under Part IV or Part V of the 1986 Act or pursuant to section 123 of the Co-operative and Community Benefit Societies Act 2014 ^{M52} or an instrument of dissolution has been drawn up in accordance with section 119 of the Co-operative and Community Benefit Societies Act 2014;
 - (v) notice has been received by it that it may be struck off the register of companies, or an application to strike it off has been made, under Part 31 of the Companies Act 2006 ^{M53}.
- (10) An OOH provider—
- (a) must give [^{F145}the appointed NHS body] notice in writing upon the occurrence of any of the events referred to in paragraph (9)(c) and must give the notice on the same day as the event;
 - (b) that wishes to cease to participate in this scheme must give both the appointed Group or Board and its employees not less than 3 months' notice in writing (to commence with the date of the notice) of that fact.
- (11) An OOH provider must cease to participate in this scheme on—
- (a) the date specified by [^{F146}the appointed NHS body] in a notice under paragraph (9);
 - (b) the day upon which the period referred to in paragraph (10)(b) expires if a notice under that provision has been given.

Textual Amendments

F130 Words in reg. 164(2)(b) substituted (1.7.2022) by [The Health and Care Act 2022 \(Consequential and Related Amendments and Transitional Provisions\) Regulations 2022 \(S.I. 2022/634\)](#), regs. 1(2), Sch. para. 1(1), [Sch. para. 1\(3\)](#)

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- F131** Words in reg. 164(2)(b) substituted (6.11.2023) by The Health and Care Act 2022 (Further Consequential Amendments) (No. 2) Regulations 2023 (S.I. 2023/1071), regs. 1(1), **77(2)(a)(i)**
- F132** Words in reg. 164(2)(c) substituted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), Sch. para. 1(1), **Sch. para. 1(3)**
- F133** Words in reg. 164(2)(c) substituted (6.11.2023) by The Health and Care Act 2022 (Further Consequential Amendments) (No. 2) Regulations 2023 (S.I. 2023/1071), regs. 1(1), **77(2)(a)(ii)**
- F134** Words in reg. 164(3)(f) substituted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), Sch. para. 1(1), **Sch. para. 1(3)**
- F135** Words in reg. 164(3)(f) substituted (6.11.2023) by The Health and Care Act 2022 (Further Consequential Amendments) (No. 2) Regulations 2023 (S.I. 2023/1071), regs. 1(1), **77(2)(b)(i)**
- F136** Words in reg. 164(3)(g)(ii) substituted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **77(2)(a)**
- F137** Words in reg. 164(3)(g) substituted (6.11.2023) by The Health and Care Act 2022 (Further Consequential Amendments) (No. 2) Regulations 2023 (S.I. 2023/1071), regs. 1(1), **77(2)(b)(ii)**
- F138** Words in reg. 164(5) substituted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), Sch. para. 1(1), **Sch. para. 1(3)**
- F139** Words in reg. 164(5) substituted (6.11.2023) by The Health and Care Act 2022 (Further Consequential Amendments) (No. 2) Regulations 2023 (S.I. 2023/1071), regs. 1(1), **77(2)(c)**
- F140** Words in reg. 164(5) substituted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **77(2)(b)**
- F141** Words in reg. 164(6) substituted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **77(2)(c)**
- F142** Words in reg. 164(7)(a) substituted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **77(2)(d)**
- F143** Words in reg. 164(9) substituted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **77(2)(e)(i)**
- F144** Words in reg. 164(9)(c) substituted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **77(2)(e)(ii)**
- F145** Words in reg. 164(10) substituted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **77(2)(f)**
- F146** Words in reg. 164(11)(a) substituted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **77(2)(g)**

Marginal Citations

- M50** 1986 c.46.
- M51** Schedule B1 was inserted by section 248(2) of, and Schedule 16 to, the Enterprise Act 2002 (c.40).
- M52** 2014 c.14.
- M53** 2006 c.46.

Guarantees, bonds and indemnities

165.—(1) This regulation applies if—

- (a) an employing authority fails or has at any time in the past failed, to pay or to remit contributions in accordance with regulation 30 to 35, 48, 57 or 62; and
- (b) the authority is—
 - (i) a GMS practice;
 - (ii) a PMS practice;
 - (iii) an APMS contractor; or
 - (iv) an OOH provider.

(2) The scheme manager may require the authority to have in force a guarantee, indemnity or bond which provides for payment to the scheme manager, if the authority fails to meet them, of all future liabilities under—

- (a) this scheme; or
- (b) the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000 ^{M54}.

(3) The guarantee, indemnity or bond must be in such form, in respect of such amount and provided by such person as the Secretary of State approves for the purpose.

Marginal Citations

M54 [S.I. 2000/619](#) as amended by [S.I. 2001/1428](#) and 3649, 2002/610, 2005/3074, 2006/600, 2007/3280, 2008/655, 2009/2446, 2010/492, 2011/2586, 2013/413, 2014/78 and 2015/96.

Medical practitioner

166.—(1) References to a medical practitioner must be construed in accordance with this regulation.

(2) A medical practitioner is a fully registered person—

- (a) whose name is included in a medical performers list; and
- (b) to whom any of paragraphs (3) to (7) apply.

(3) This paragraph applies to—

- (a) a GMS practice,
- (b) a PMS practice,
- (c) an APMS contractor, or
- (d) an OOH provider.

(4) This paragraph applies to a partner in a partnership that is—

- (a) a GMS practice,
- (b) a PMS practice, or
- (c) an APMS contractor,

[^{F147}(d) a primary care network management company.]

(5) This paragraph applies to a shareholder in a company limited by shares that is—

- (a) a GMS practice,
- (b) a PMS practice, or

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- (c) an APMS contractor,
- [^{F148}(d) a primary care network management company.]
- (6) This paragraph applies to an ophthalmic provider.
- (7) This paragraph applies to a person—
 - (a) who is employed by a GMS practice, a PMS practice, an APMS contractor, an OOH provider or a Local Health Board [^{F149}or a primary care network management company] wholly or mainly to assist the employer in the discharge of the employer's duties as a GMS practice, a PMS practice, an APMS contractor, an OOH provider or a Local Health Board [^{F149}or as a party to a primary care network standard sub-contract] (as the case may be), or
 - (b) who participates in a doctors' retainer scheme,
 if the person performs essential services, additional services, enhanced services, dispensing services, collaborative services, commissioned services, OOH services, certification services, Board and advisory work, health-related functions exercised under section 75 of the 2006 Act, NHS 111 services, pharmaceutical services, general ophthalmic services, primary dental services, services under an NHS standard contract [^{F150}, an NHS standard sub-contract] or a contract entered into by a local authority pursuant to its functions under the 2006 Act relating to the improvement and protection of public health and services, practice based services education or training, or organising the education or training of medical students or practitioners (or a combination of those services) as or on behalf of that practice, contractor or provider.
- (8) A person who is a GP registrar is not a medical practitioner.
- (9) A reference to a fully registered person must be construed in accordance with section 55 of the Medical Act 1983 ^{M55}.
- (10) An ophthalmic provider is a fully registered person who—
 - (a) as regards England—
 - (i) is included in an ophthalmic performers list prepared and published by [^{F151}NHS England] pursuant to regulation 3(1) of the National Health Service (Performers Lists) (England) Regulations 2013 ^{M56}; and
 - (ii) holds a GOS contract;
 - [^{F152}(b) in Wales, is included in an ophthalmic list (as defined in regulation 10(2) of the National Health Service (Ophthalmic Services) (Wales) Regulations 2023) prepared and published by a Local Health Board in accordance with Chapter 2 of Part 4 of those Regulations.]

Textual Amendments

- F147** Reg. 166(4)(d) inserted (1.4.2023) by The National Health Service Pension Schemes (Amendment) Regulations 2023 (S.I. 2023/301), regs. 1(2), **16(2)**
- F148** Reg. 166(5)(d) inserted (1.4.2023) by The National Health Service Pension Schemes (Amendment) Regulations 2023 (S.I. 2023/301), regs. 1(2), **16(2)**
- F149** Words in reg. 166(7) inserted (1.4.2023) by The National Health Service Pension Schemes (Amendment) Regulations 2023 (S.I. 2023/301), regs. 1(2), **16(3)**
- F150** Words in reg. 166 inserted (1.4.2017) by The National Health Service Pension Scheme and Additional Voluntary Contributions (Amendment) Regulations 2017 (S.I. 2017/275), regs. 2(c), **44**
- F151** Words in reg. 166(10)(a)(i) substituted (6.11.2023) by The Health and Care Act 2022 (Further Consequential Amendments) (No. 2) Regulations 2023 (S.I. 2023/1071), regs. 1(1), **77(3)**
- F152** Reg. 166(10)(b) substituted (20.10.2023) by The National Health Service (Ophthalmic Services) (Wales) Regulations 2023 (S.I. 2023/1053), reg. 1(2), **Sch. 6 para. 7(2)**

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Marginal Citations

M55 1983 c.54. The definition of “fully registered person” has been amended by [S.I. 2000/3041](#), 2006/1914, 2007/3101 and 2008/1774.

M56 [S.I. 2013/335](#).

Signed by authority of the Secretary of State for Health.

Department of Health

Daniel Poulter
Parliamentary Under-Secretary of State,

We consent

David Evennett
Harriett Baldwin
Two of the Lords Commissioners of Her
Majesty's Treasury

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Changes and effects yet to be applied to :

- Sch. 10 para. 3(2) words inserted by [S.I. 2024/281 reg. 28](#)
- Sch. 12 para. 3(4)(c) words inserted by [S.I. 2024/281 reg. 29](#)
- Sch. 12 para. 3(5)(e) words inserted by [S.I. 2024/281 reg. 29](#)
- Sch. 15 words inserted by [S.I. 2024/281 reg. 30\(3\)\(a\)](#)
- Sch. 15 words inserted by [S.I. 2024/281 reg. 30\(3\)\(b\)](#)
- Sch. 15 words inserted by [S.I. 2024/281 reg. 30\(3\)\(c\)](#)
- Sch. 15 words inserted by [S.I. 2024/281 reg. 30\(3\)\(d\)](#)
- Sch. 15 words inserted by [S.I. 2024/281 reg. 30\(3\)\(e\)](#)
- Sch. 15 words inserted by [S.I. 2024/281 reg. 30\(3\)\(f\)](#)
- Sch. 15 words inserted by [S.I. 2024/281 reg. 30\(3\)\(g\)](#)
- Sch. 15 words substituted by [S.I. 2024/281 reg. 30\(2\)](#)
- reg. 21(2) word omitted by [S.I. 2024/281 reg. 19\(2\)](#)
- reg. 28(2) word omitted by [S.I. 2024/281 reg. 20\(2\)](#)
- reg. 28(6)(b) word substituted by [S.I. 2024/281 reg. 20\(4\)](#)
- reg. 28(10)(b) word substituted by [S.I. 2024/281 reg. 20\(5\)](#)
- reg. 30(3) Table substituted by [S.I. 2024/281 reg. 21\(2\)\(b\)](#)
- reg. 30(3) words substituted by [S.I. 2024/281 reg. 21\(2\)\(a\)](#)
- reg. 30(3A) Table substituted by [S.I. 2024/281 reg. 21\(3\)\(b\)](#)
- reg. 30(3A) words substituted by [S.I. 2024/281 reg. 21\(3\)\(a\)](#)
- reg. 31 amendment to earlier affecting provision [S.I. 2023/301](#), reg. 24 by [S.I. 2024/281 reg. 36](#)
- reg. 31(9) Table 3 inserted by [S.I. 2024/281 reg. 22\(2\)\(b\)](#)
- reg. 33(1) word substituted by [S.I. 2024/281 reg. 23](#)
- reg. 38 amendment to earlier affecting provision [S.I. 2023/301](#), reg. 24 by [S.I. 2024/281 reg. 36](#)
- reg. 39 amendment to earlier affecting provision [S.I. 2023/301](#), reg. 24 by [S.I. 2024/281 reg. 36](#)
- reg. 68(1) word omitted by [S.I. 2024/281 reg. 24\(2\)](#)
- reg. 84(2)(a) words inserted by [S.I. 2024/281 reg. 25\(2\)](#)
- reg. 84(5)(a)(ii) words substituted by [S.I. 2024/281 reg. 25\(3\)](#)
- reg. 86(2)(a) words inserted by [S.I. 2024/281 reg. 26](#)
- reg. 89(3) words inserted by [S.I. 2024/281 reg. 27\(2\)](#)
- reg. 89(4) words inserted by [S.I. 2024/281 reg. 27\(3\)](#)

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 21(2)(f) and word inserted by [S.I. 2024/281 reg. 19\(3\)](#)
- reg. 28(2)(f) and word inserted by [S.I. 2024/281 reg. 20\(3\)](#)
- reg. 30(7)(8) inserted by [S.I. 2024/281 reg. 21\(4\)](#)
- reg. 31(9)(c) inserted by [S.I. 2024/281 reg. 22\(2\)\(a\)](#)
- reg. 31(11)(12) inserted by [S.I. 2024/281 reg. 22\(3\)](#)
- reg. 68(1)(ea) inserted by [S.I. 2024/281 reg. 24\(3\)](#)