STATUTORY INSTRUMENTS

2015 No. 95

The National Health Service Pension Scheme (Transitional and Consequential Provisions) Regulations 2015

PART 2

Transitional provisions

CHAPTER 4

Contributions and final pay

Contribution rate setting : Groups A to C

11.—(1) This regulation applies to a transition member who belongs to Group A, B or C in regulation 27(1) of the 2015 Regulations and who on 31st March 2015 was—

(a) a member in pensionable employment in the 1995 Section; or

(b) an active member of the 2008 Section.

(2) Where this regulation applies, for the purposes of setting a contribution rate for the scheme year commencing on 1st April 2015—

(a) paragraph 2 of Schedule 11 to the 2015 Regulations applies as though the member was in pensionable employment with the same employing authority on both—

(i) the last day of the previous scheme year, and

(ii) the first day of the current scheme year;

(b) in determining which of the cases the member falls into pursuant to sub-paragraph (2) of that paragraph, the member is to be assessed as if during the scheme year 1st April 2014 to 31st March 2015—

(i) that member's pensionable employment (within the meaning of the 1995 Section) or active service (within the meaning of the 2008 Section) was actually pensionable employment under the 2015 Regulations; and

(ii) the percentage rate of contributions paid by the member during that year in the relevant Section was actually the percentage rate of contributions paid during the previous scheme year under the 2015 Regulations.

Contribution rate setting : Group D

12.—(1) This regulation applies to a transition member who belongs to Group D in regulation 27(1) of the 2015 Regulations and who on 31st March 2015 was—

(a) a member in pensionable employment in the 1995 Section; or

(b) an active member of the 2008 Section.

(2) Where this regulation applies, for the purposes of setting a contribution rate for the scheme year commencing on 1st April 2015, in regulations 38(4)(b) and 39(4)(b) of the 2015 Regulations,

the member's most recent certified or final pensionable earnings are to be the member's certified earnings or final pensionable earnings derived from the member's—

(a) pensionable employment in the 1995 Section, in accordance with paragraph 23 to Schedule 2 of the 1995 Regulations; or

(b) active service in the 2008 Section, in accordance with regulation 3.J.14 of the 2008 Regulations.

Taper protection for contribution tiering

13.—(1) This regulation applies to—

(a) a member who—

(i) is in pensionable employment in the 1995 Section on the day before they reach their eligibility cessation date (determined in accordance with regulation B3(8R) or (8S) of the 1995 Regulations(**1**)); and

(ii) becomes an active member of the 2015 Scheme on that eligibility cessation date; and

(b) a member who—

(i) is an active member of the 2008 Section on the day before they reach their eligibility cessation date (determined in accordance with regulations 2.B.2(1F) or 3.B.2(1F) of the 2008 Regulations(**2**)); and

(ii) becomes an active member of the 2015 Scheme on that eligibility cessation date.

(2) Where this regulation applies—

(a) the member must pay contributions during the scheme year within which their eligibility cessation date falls at the percentage rate that applied to them on the day before their eligibility cessation date is reached under—

(i) regulation D1 of, or paragraph 10 of Schedule 2 to, the 1995 Regulations; or

(ii) regulation 2.C.2 or 3.C.2 of the 2008 Regulations;

(b) in the case of a member who belongs to Group A, B or C in regulation 27(1) of the 2015 Regulations, the member must pay that rate for the remainder of the scheme year unless there is a change to the member's employment or rate of pensionable earnings during that scheme year pursuant to paragraph 3 of Schedule 11 to the 2015 Regulations (in which case the rate of the member's percentage contribution rate for the remainder of the scheme year must be re-assessed in accordance with that paragraph);

(c) in the case of a member who belongs to Group D in regulation 27(1) of the 2015 Regulations, the member must pay that rate for the remainder of the scheme year unless—

(i) a host Board adjusts the member's contribution rate pursuant to paragraph (6) of whichever of regulations 38 or 39 of the 2015 Regulations applies to the member; or

(ii) paragraph (2)(a) or (b) of whichever of regulations 38 or 39 of the 2015 Regulations applies to the member is subsequently satisfied in respect of the member (in which case the member must pay the rate determined in accordance with paragraph (3) of whichever of those regulations applies to the member).

Determination of pensionable pay, final pensionable pay and reckonable pay

14.—(1) For any purpose of the old scheme including the calculation of benefits payable under that scheme to or in respect of a 1995 officer transition member, the member's pensionable pay

(**1**) Paragraphs (8R) and (8S) are inserted by paragraph 4 of Schedule 2.
(**2**) Paragraph (1F) was inserted in each regulation by paragraphs 11 and 17 of Schedule 2 respectively.

and final year's pensionable pay are to be determined by reference to the 1995 Regulations (see in particular Part C of those Regulations).

(2) For any purpose of the old scheme including the calculation of benefits payable under that scheme to or in respect of a 2008 officer transition member, the member's pensionable pay and reckonable pay are to be determined by reference to the 2008 Regulations (see in particular Chapter 2.A of Part 2 of those Regulations).

No refund of contributions in cases of inordinate pay

15. Where the Secretary of State determines the amount of a 1995 officer transition member's final year's pensionable pay pursuant to paragraph (10) of regulation C1 of the 1995 Regulations, no refund of contributions is payable under paragraphs (12)(b) and (c) of that regulation.

Cessation of final salary link on payment of benefits

16. Where an officer transition member's benefits under the old scheme calculated by reference to Schedule 7 of the 2013 Act have been put into payment, those benefits cannot be recalculated by reference to that Schedule where there is a subsequent period of pensionable public service within the meaning of paragraph 3 of that Schedule.

Final salary link : Mental Health Officers

17.—(1) This regulation applies to a 1995 officer transition member—

(a) to whom regulation R3(1) of the 1995 Regulations applied on the member's last day of pensionable service in the 1995 Section;

(b) to whom regulation R3(10) or (11) of the 1995 Regulations applied on the member's last day of pensionable service in the 1995 Section; and

(c) who has at least one day of pensionable service in the new scheme ("notional mental health officer service") which, had it been served in the 1995 Section, would have—

(i) satisfied the definition of "mental health officer" in regulation R3(14) of the 1995 Regulations, and

(ii) been service to which regulation R3(1) would have applied.

(2) Where this regulation applies, the final year's pensionable pay to be used in the calculation of the member's benefits under regulation R3(10) or (11) of the 1995 Regulations will be that derived from the member's notional mental health officer service.

Uprating of old scheme practitioner earnings

18. In relation to a practitioner transition member, as regards the period after 31st March 2015—

(a) paragraph 11(2)(b) of Schedule 2 to the 1995 Regulations; and

(b) regulation 3.D.1(4) of the 2008 Regulations,

apply as though the words "the annual increase due under the provisions of the Pensions (Increase) Act 1971 and section 59 of the Social Security Pensions Act 1975, plus" were omitted.

Flexibility earnings credit : calculation

19.—(1) This regulation and regulations 20 and 21 apply to a transition member who—

(a) has pensionable service as a practitioner in either the old scheme or the new scheme; and

(b) has pensionable service in the old scheme as an officer.

(2) Where this regulation applies, the member is entitled to a flexibility earnings credit equal to—

$$\frac{(F-P)}{A}$$

where—

F is the total amount of the member's pension in the old scheme as at the last day of pensionable service in that scheme;

P is the amount of the member's pension in the old scheme arising solely from service as a practitioner as at the last day of pensionable service in that scheme;

A is—

(i) 1.4% if the 1995 Section applies to the member;

(ii) 1.87% if the 2008 Section applies to the member,

and the amounts of pension for the purposes of this calculation are amounts before any actuarial reduction is applied by reason of payment before normal pension age for the relevant Section.

Flexibility earnings credit : uprating

20.—(1) The amount of a flexibility earnings credit calculated under regulation 19(2) is to be increased at the rate specified in paragraph (2) for each year or part year from the day after the last day of pensionable service in the old scheme until the earlier of—

(a) the claiming of pension benefits under the old scheme;

(b) the member's last day of pensionable employment under the 2015 Regulations; or

(c) where the member has one or more breaks of service under the 2015 Regulations that exceeds five years, the last day of pensionable service following which the earliest such break commenced,

in order to generate an uprated flexibility earnings credit.

(2) The annual rate of increase of a flexibility earnings credit is the rate set for that year by the Secretary of State after having taken the advice of the scheme actuary for the purpose.

Flexibility earnings credit : adjustment of pension payable

21.—(1) Where pension benefits are payable under the old scheme, the amount payable is adjusted as follows.

(2) As regards the element of pension payable under the old scheme in respect of service as an officer, the member is entitled only to the higher of—

(a) the amount of pension actually payable under the old scheme in respect of service as an officer;

(b) the amount of pension payable under the old scheme—

(i) as if the member's period of pensionable service as an officer were treated as pensionable service as a practitioner, and

(ii) as though the uprated flexibility earnings credit were treated as pensionable earnings as a practitioner for that period,

and the provisions of paragraphs 9 and 11A of Schedule 2 to the 1995 Regulations(**3**) and Part 4 of the 2008 Section do not apply.

(**3**) Paragraph 11A was inserted by S.I. 2330/2322 and amended by S.I. 2009/2446.