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STATUTORY INSTRUMENTS

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**2021 No. 631**

**The National Health Service Pension Schemes and  
Injury Benefits (Amendment) Regulations 2021**

**PART 2**

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

**General**

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

**Amendment of regulation A2**

**3.—**(1) Regulation A2 (interpretation) is amended as follows.

(2) In the definition of ““marriage” and “married””<sup>(2)</sup>, omit “, and are to be construed in accordance with regulation A4”.

(3) For the definition of “NHS standard sub-contract”<sup>(3)</sup> substitute—

““NHS standard sub-contract” means a sub-contract that complies with the National Health Service Commissioning Board’s guidance “NHS Template Sub-Contract for the Provision of Clinical Services for use with the NHS Standard Contract 2021/22 (Full Length and Shorter Form versions) Guidance”<sup>(4)</sup>”.

**Amendment of regulation A4**

**4.—**(1) Regulation A4 (treatment of same sex marriages and opposite sex civil partnerships)<sup>(5)</sup> is amended as follows.

(2) For the heading<sup>(6)</sup> substitute “Civil partnerships and marriage of same sex couples”.

(3) Omit paragraph (5A)<sup>(7)</sup>.

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- (1) [S.I. 1995/300](#). Relevant amending instruments are [S.I. 2005/661](#), [2006/600](#), [2008/654](#), [2013/413](#), [2014/78](#), [2014/570](#), [2014/1607](#), [2016/245](#), [2017/275](#), [2019/418](#) and [2019/1458](#).
- (2) The definition of “marriage” and “married” was inserted by regulation 3(2) of [S.I. 2014/78](#) and amended by regulation 41(c) and paragraph 107(1) and (2) of Part 3 of Schedule 3 to [S.I. 2019/1458](#).
- (3) This definition was substituted by regulation 3(5) of [S.I. 2019/418](#).
- (4) Electronic copies of the guidance referred to in that definition can be found at [www.england.nhs.uk](http://www.england.nhs.uk). E-mail: [England.contactus@nhs.net](mailto:England.contactus@nhs.net). Hard copies may be obtained from NHS England at: Customer Contact Centre, NHS England, PO Box 16738, Redditch, B97 9PT. Telephone: 0300 311 2233.
- (5) Regulation A4 was inserted by regulation 4 of [S.I. 2014/78](#) and amended by paragraph 107(3) of Schedule 3 to [S.I. 2019/1458](#). There are other amendments that are not relevant to this instrument.
- (6) The heading to regulation A4 was substituted by paragraph 107(3)(a) of Schedule 3 to [S.I. 2019/1458](#).
- (7) Paragraph (5A) was inserted by paragraph 107(3)(b) of Schedule 3 to [S.I. 2019/1458](#).

### Amendment of regulation D3

5.—(1) Regulation D3 (further contributions by employing authorities in respect of excessive pay increases)(8) is amended as follows.

(2) In paragraphs (3)(b)(i)(9), (4)(b)(i)(10) and (5)(b)(11), for “4.5%” substitute “7%”.

(3) Omit paragraphs (7) to (11).

(4) After paragraph (12) insert—

“(12A) Paragraphs (12B) to (12G) apply in circumstances where a payer has been notified of a liability to pay an excess employer contribution on or after 1st April 2018.

(12B) Where a payer—

(a) has paid all of the excess employer contribution; and

(b) applies for a determination under this paragraph which is received by the Secretary of State within a period of six months from the commencement of this regulation,

the Secretary of State must determine the excess employer contribution in accordance with this regulation as in force on 1st July 2021.

(12C) Where the amount of any excess employer contribution payable following a determination under paragraph (12B) is less than the amount of any excess employer contribution together with any interest already paid, the Secretary of State must pay to the payer a sum equal to the difference between those amounts.

(12D) Where a payer—

(a) has failed to pay all, or any part, of the excess employer contribution; and

(b) applies for a determination under this paragraph which is received by the Secretary of State within a period of six months from the commencement of this regulation,

the Secretary of State must determine the excess employer contribution in accordance with this regulation as in force on 1st July 2021.

(12E) Subject to paragraph (12F), the amount of any excess employer contribution payable following a determination under paragraph (12D) must be paid to the Secretary of State within 1 month of the Secretary of State notifying the payer of its liability for that amount.

(12F) Where the amount of any excess employer contribution payable following a determination under paragraph (12D) is less than any excess employer contribution together with any interest already paid by the payer, the Secretary of State must pay to the payer a sum equal to the difference between those amounts.

(12G) Where the Secretary of State makes a determination under paragraph (12B) or (12D), any previous determination of an excess employer contribution payable in respect of the same member has no effect.”.

(5) In paragraph (17)(b), omit the words after “1st April 2014” to the end.

(6) After paragraph (19B)(12) insert—

“(19C) Where—

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(8) Regulation D3 was inserted by regulation 8 of S.I. 2014/570. Relevant amending instruments are S.I. 2014/1607, 2017/275, 2019/418.

(9) Paragraph (3)(b)(i) was substituted by regulation 5(2)(i) of S.I. 2014/1607.

(10) Paragraph (4)(b)(i) was substituted by regulation 5(3)(i) of S.I. 2014/1607.

(11) Paragraph (5)(b) was substituted by regulation 5(4) of S.I. 2014/1607.

(12) Paragraph 19B was inserted by regulation 6 of S.I. 2019/418.

- (a) the Secretary of State has approved terms and conditions relating to NHS employment; and
- (b) a member's pensionable pay has increased pursuant to those terms and conditions, the increase in the member's pensionable pay is to be disregarded for the purposes of this regulation.

(19D) An increase in a member's pensionable pay by reason of an amount in respect of a national award recommended by the Advisory Committee on Clinical Excellence Awards is to be ignored for the purposes of this regulation.

(19E) An increase in a member's pensionable pay due to promotion on the basis of fair and open competition is to be ignored for the purposes of this regulation.

(19F) An increase in the pensionable pay of a non-GP provider due to an increase in partnership profits within the three year period immediately prior to the date on which the non-GP provider ceased to be in pensionable employment is to be ignored for the purposes of this regulation if the non-GP provider's percentage share in the partnership profits:

- (a) has not increased during the same three year period;
- (b) has increased during the same three year period, but only as the result of another partner leaving the practice; or
- (c) has increased during the same three year period, but only as the result of another partner reducing their sessional commitment.

(19G) An increase in a member's pensionable pay solely due to the ending of a salary sacrifice arrangement is to be ignored for the purposes of this regulation."

(7) In paragraph (21)—

- (a) omit sub-paragraph (h);
- (b) after sub-paragraph (i), insert—

“(j) “salary sacrifice arrangement” means an arrangement under which the member gives up the right to receive an amount of pensionable pay in return for the provision of a benefit in kind including, but not limited to, a benefit consisting of a motor car or other vehicle, meals, care or vouchers.”.

#### **Amendment of regulation G7**

6.—(1) Regulation G7 (widower's pension)(13) is amended as follows.

(2) In paragraph (2), for “(3)” substitute “(2A)”.

(3) After paragraph (2), insert—

“(2A) Paragraph (3) applies if a female member died on or before 4th December 2005 in the circumstances described in any of regulations G2 to G6 and left a surviving widower.”.

#### **Amendment of regulation G8**

7.—(1) Regulation G8 (dependent widower's pension)(14) is amended as follows.

(2) In paragraph (1), for “A female” substitute “Subject to paragraph (7), a female”.

(3) After paragraph (6) insert—

“(7) This regulation does not apply to a female member who dies on or after 5th December 2005.”.

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(13) Regulation G7 was amended by regulation 23 of [S.I. 2008/654](#).

(14) Regulation G8 was amended by regulation 24 of [S.I. 2008/654](#).

### Amendment of regulation G9

- 8.—(1) Regulation G9 (increased widower’s pension)(15) is amended as follows.
- (2) In paragraph (1), for “If” substitute “Subject to paragraph (6), if”.
- (3) After paragraph (5)(16) insert—
- “(6) This regulation does not apply to a female member who dies on or after 5th December 2005 and leaves a widower or a surviving civil partner.”.

### Amendment of regulation G16

9. In regulation G16 (purchase of surviving partner’s pension in respect of service before 6th April 1988)(17), for paragraph (5)(18) substitute—
- “(5) In this regulation “survivor’s pension” means a pension that becomes payable by virtue of regulation G14.”.

### Amendment of regulation G17

- 10.—(1) Regulation G17 (increased surviving partner’s pension)(19) is amended as follows.
- (2) For paragraph (1)(20) substitute—
- “(1) If a member makes a valid election pursuant to regulation G16(3)(a) to buy an increased surviving partner’s pension under regulation G16(1), any surviving scheme partner’s pension that becomes available in respect of that member by virtue of regulation G14 will be based on pensionable service after 5th April 1988 plus any period of pensionable service before that date that the member elected to buy for this purpose under regulation G16(1).”.
- (3) Omit paragraph (2)(21).

### Amendment of regulation T6

11. In regulation T6 (loss of rights to benefits)(22), in paragraph (1A), for “nominated partner” substitute “scheme partner”.

### Amendment of Schedule 2

- 12.—(1) Schedule 2 (medical and dental practitioners) is amended as follows.
- (2) In paragraph 1 (additional definitions used in this Schedule)—
- (a) in paragraph (e) of the definition of “locum practitioner”(23), after “Local Health Board” insert “or the National Health Service Commissioning Board”;

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(15) Regulation G9 was amended by regulation 25(2) and (3) of [S.I. 2008/654](#), regulation 5(2) of [S.I. 2014/78](#) and regulation 13 of [S.I. 2019/418](#).

(16) Paragraph (5) was added by regulation 25(3) of [S.I. 2008/654](#) and amended by regulation 5(2) of [S.I. 2014/78](#) and regulation 13 of [S.I. 2019/418](#).

(17) Regulation G16 was inserted by regulation 29 of [S.I. 2008/654](#) and amended by regulation 7(2) of [S.I. 2014/78](#) and regulation 20 of [S.I. 2019/418](#). There are other amendments that are not relevant to this instrument.

(18) Paragraph (5) was amended by regulation 20 of [S.I. 2019/418](#).

(19) Regulation G17 was inserted by regulation 29 of [S.I. 2008/654](#) and amended by regulation 21 of [S.I. 2019/418](#).

(20) Paragraph (1) was amended by regulation 8(2) of [S.I. 2014/78](#).

(21) Paragraph (2) was amended by regulations 21(a) – 21(c) of [S.I. 2019/418](#).

(22) Regulations 37(1) to (2) of [S.I. 2019/418](#), which sought to amend regulation T6 by substituting “scheme partner” for “nominated partner” in paragraph (1A) of regulation T6, were quashed by order of the High Court in *R. (on the application of British Medical Association) v Secretary of State for Health and Social Care* [2020] EWHC 64 (Admin).

(23) The definition of “locum practitioner” was substituted by regulation 11(2)(b) of [S.I. 2005/661](#) and amended by regulations 21(2)(a)(iv)(aa) to 21(2)(a)(iv)(cc) of [S.I. 2013/413](#), regulation 16(2) of [S.I. 2014/570](#) and regulation 18(2) of [S.I.2016/245](#).

(b) after the definition of “locum practitioner” insert—

““New to Partnership Payment Scheme” means the scheme set out in paragraphs 2.14 to 2.16 of the “Update to the GP contract agreement 2020/21 – 2023/24” dated 6th February 2020<sup>(24)</sup>”.

(3) In paragraph 3(1) (meaning of “pensionable earnings”)<sup>(25)</sup>, for paragraph (a) substitute—

“(a) in the case of a type 1 medical practitioner or a non-GP provider, practitioner income less—

- (i) any sum on account of practice expenses (for these purposes, D2(1) contributions payable under paragraph 10(6) or (7) are neither practitioner income nor practice expenses); and
- (ii) any payment or allowance made pursuant to the New to Partnership Payment Scheme; and”.

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<sup>(24)</sup> The Update to the GP contract agreement 2020/21 – 2023/24 dated 6 February 2020 can be found at <https://www.england.nhs.uk/wp-content/uploads/2020/03/update-to-the-gp-contract-agreement-v2-updated.pdf>. Hard copies can be obtained from Customer Contact Centre, NHS England, PO Box 16738, Redditch, B97 9PT.

<sup>(25)</sup> Sub-paragraph (1) was substituted by regulation 21(4)(a) of [S.I. 2006/600](#).