

This Statutory Instrument has also been printed to correct errors in S.I.s 2008/653, 2015/94 and 2019/418 and is being issued free of charge to all known recipients of those Statutory Instruments.

STATUTORY INSTRUMENTS

2021 No. 631

**NATIONAL HEALTH SERVICE, ENGLAND AND
WALES**

PUBLIC SERVICE PENSIONS, ENGLAND AND WALES

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

<i>Made</i> - - - -	<i>26th May 2021</i>
<i>Laid before Parliament</i>	<i>27th May 2021</i>
<i>Coming into force</i> - -	<i>1st July 2021</i>

The Secretary of State for Health and Social Care makes the following Regulations in exercise of the powers conferred by sections 10(1), (2) and (3), and 12(1) and (2) of, and Schedule 3 to, the Superannuation Act 1972(a) and sections 1(1) and (2)(e), 3(1), (2) and (3), and 18(5) of, and paragraph 5(a) of Schedule 2 and Schedule 3 to, the Public Service Pensions Act 2013(b).

In accordance with section 10(4) of the Superannuation Act 1972 and section 21(1) of the Public Service Pensions Act 2013, the Secretary of State has consulted the representatives of such persons as appear to the Secretary of State likely to be affected by these Regulations(c).

In accordance with section 10(1)(d) of the Superannuation Act 1972 and section 3(5) of the Public Service Pensions Act 2013, these Regulations are made with the consent of the Treasury.

-
- (a) 1972 c.11. Section 10(1) was amended by sections 57 and 58 of, and Schedule 5 to, the National Health Service Reorganisation Act 1973 (c.32) and section 4(2) of the Pensions (Miscellaneous Provisions) Act 1990 (c.7) (“the 1990 Act”). Section 10(2A) was inserted by section 8(5) of the 1990 Act. Section 12(2) was amended by section 10(1) of the 1990 Act.
- (b) 2013 c.25 (“the 2013 Act”).
- (c) The Secretary of State has published a statement pursuant to section 21(2) of the 2013 Act indicating the persons he would normally expect to consult under section 21(1) of that Act. That list can be found at www.gov.uk/government/publications/nhs-pension-scheme-consultee-list, or by writing to the Department of Health and Social Care, Quarry House, Leeds, LS2 7UE.
- (d) The functions of the Minister for the Civil Service under section 10 were transferred to the Treasury by article 2 of S.I. 1981/1670.

PART 1

Introductory

Citation, commencement and effect

1.—(1) These Regulations may be cited as the National Health Service Pension Schemes and Injury Benefits (Amendment) Regulations 2021.

(2) These Regulations come into force on 1st July 2021.

(3) Regulations 3(2), 4 and 33(3) have effect from 2nd December 2019.

(4) Regulations 3(3), 14(b), 19(c) and 30(3) have effect from 1st April 2021.

(5) Regulation 5 has effect from 1st July 2021.

(6) Regulations 6 to 10 have effect from 5th December 2005.

(7) Regulations 11, 16 to 18, 21 to 23 and 33(2) have effect from 1st April 2008.

(8) Regulations 12(2)(a) and 19(a) have effect from 1st April 2014.

(9) Regulations 12(2)(b) and (3), 14(a), 15, 19(b), 20 and 28 have effect from 1st April 2020.

(10) Regulations 25 to 27, 29 and 30(2) have effect from 1st April 2015.

(11) Regulation 32 has effect from 1st May 2012.

PART 2

Amendments to the National Health Service Pension Scheme Regulations 1995

General

2. The National Health Service Pension Scheme Regulations 1995(a) 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””(b), omit “, and are to be construed in accordance with regulation A4”.

(3) For the definition of “NHS standard sub-contract”(c) 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”(d);”.

(a) 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.

(b) 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.

(c) This definition was substituted by regulation 3(5) of S.I. 2019/418.

(d) Electronic copies of the guidance referred to in that definition can be found at www.england.nhs.uk. E-mail: 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.

Amendment of regulation A4

4.—(1) Regulation A4 (treatment of same sex marriages and opposite sex civil partnerships)(a) is amended as follows.

- (2) For the heading(b) substitute “Civil partnerships and marriage of same sex couples”.
- (3) Omit paragraph (5A)(c).

Amendment of regulation D3

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

(2) In paragraphs (3)(b)(i)(e), (4)(b)(i)(f) and (5)(b)(g), 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.”.

-
- (a) 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.
 - (b) The heading to regulation A4 was substituted by paragraph 107(3)(a) of Schedule 3 to S.I. 2019/1458.
 - (c) Paragraph (5A) was inserted by paragraph 107(3)(b) of Schedule 3 to S.I. 2019/1458.
 - (d) Regulation D3 was inserted by regulation 8 of S.I. 2014/570. Relevant amending instruments are S.I. 2014/1607, 2017/275, 2019/418.
 - (e) Paragraph (3)(b)(i) was substituted by regulation 5(2)(i) of S.I. 2014/1607.
 - (f) Paragraph (4)(b)(i) was substituted by regulation 5(3)(i) of S.I. 2014/1607.
 - (g) Paragraph (5)(b) was substituted by regulation 5(4) of S.I. 2014/1607.

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

(6) After paragraph (19B)(a) insert—

“(19C) Where—

- (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)(b) 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)(c) is amended as follows.

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

(3) After paragraph (6) insert—

(a) Paragraph 19B was inserted by regulation 6 of S.I. 2019/418.
(b) Regulation G7 was amended by regulation 23 of S.I. 2008/654.
(c) Regulation G8 was amended by regulation 24 of S.I. 2008/654.

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

Amendment of regulation G9

8.—(1) Regulation G9 (increased widower’s pension)(a) is amended as follows.

(2) In paragraph (1), for “If” substitute “Subject to paragraph (6), if”.

(3) After paragraph (5)(b) 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)(c), for paragraph (5)(d) 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)(e) is amended as follows.

(2) For paragraph (1)(f) 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)(g).

Amendment of regulation T6

11. In regulation T6 (loss of rights to benefits)(h), 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”(i), after “Local Health Board” insert “or the National Health Service Commissioning Board”;

-
- (a) 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.
 - (b) 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.
 - (c) 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.
 - (d) Paragraph (5) was amended by regulation 20 of S.I. 2019/418.
 - (e) Regulation G17 was inserted by regulation 29 of S.I. 2008/654 and amended by regulation 21 of S.I. 2019/418.
 - (f) Paragraph (1) was amended by regulation 8(2) of S.I. 2014/78.
 - (g) Paragraph (2) was amended by regulations 21(a) – 21(c) of S.I. 2019/418.
 - (h) 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).
 - (i) 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(a);”.

(3) In paragraph 3(1) (meaning of “pensionable earnings”)(b), 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”.

PART 3

Amendments to the National Health Service Pension Scheme Regulations 2008

General

13. The National Health Service Pension Scheme Regulations 2008(c) are amended in accordance with this Part.

Amendment of regulation 2.A.1

14. In regulation 2.A.1 (interpretation: general)—

(a) after the definition of “medical performers’ list” 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;”;

(b) for the definition of “NHS standard sub-contract”(d) 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”;”.

Amendment of regulation 2.A.8

15. In regulation 2.A.8 (meaning of “pensionable pay”)(e), for paragraph (5) substitute—

“(5) In the case of a non-GP provider who is not in receipt of any salary, wages, fees or any other regular payment, pensionable pay means practitioner income less—

(a) any sum on account of practice expenses (for these purposes, contributions payable under regulation 2.C.1(5) or (6) are neither practitioner income nor practice expenses); and

(a) 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.

(b) Sub-paragraph (1) was substituted by regulation 21(4)(a) of S.I. 2006/600.

(c) S.I. 2008/653. Relevant amending instruments are S.I. 2008/2263, 2009/381, 2009/2446, 2010/492, 2011/2586, 2013/413, 2014/570, 2015/96, 2016/245, 2017/275 and 2019/418.

(d) This definition was substituted by regulation 43(3)(d) of S.I. 2019/418.

(e) Relevant amending instruments are S.I. 2013/413 and 2015/96.

- (b) any payment or allowance made pursuant to the New to Partnership Payment Scheme.”.

Amendment of regulation 2.D.8

16.—(1) Regulation 2.D.8 (early retirement on ill-health (active members and non-contributing members))(a) is amended as follows.

(2) In paragraph (5)(b)—

(a) for sub-paragraph (a) substitute—

“(a) is increased by the enhancement period where the member—

- (i) has not had a break in pensionable service of 12 months or more; or
- (ii) has returned to pensionable employment 12 months or more after having a break in such service and it would be more favourable to the member to treat the member’s pensionable service before and after the break, and all such other breaks (if any), as continuous;”;

(b) in sub-paragraph (b)(c), after “(a)” insert “(ii)”.

Amendment of regulation 2.E.20

17.—(1) Regulation 2.E.20 (amount of lump sum: pension credit members) is amended as follows.

(2) Omit paragraph (3).

(3) In paragraph (4), omit the definition of “the beginning date” and the “and” which precedes it.

Amendment of regulation 2.J.7

18. In regulation 2.J.7 (forfeiture of rights to benefits), in paragraph (5)(a)(d), for “nominated partner” substitute “surviving scheme partner”.

Amendment of regulation 3.A.1

19. In regulation 3.A.1 (interpretation of Part 3: general), in paragraph (1)—

(a) in paragraph (e) of the definition of “locum practitioner”(e), after “Local Health Board” insert “or the National Health Service Commissioning Board”;

(b) after the definition of “medical performers list” 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;”;

(c) for the definition of “NHS standard sub-contract”(f) 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”;

(a) Relevant amending instruments are S.I. 2009/381, 2009/2446 and 2010/492.

(b) Paragraph (5) was amended by regulation 29(2) of S.I. 2009/2446.

(c) Sub-paragraph (b) was substituted by regulation 29(2) of S.I. 2009/2446.

(d) Regulation 50 of S.I. 2019/418, which sought to amend regulation 2.E.1 by substituting “scheme partner” for “nominated partner” in paragraph (2) of regulation 2.E.1, was 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).

(e) This definition was amended by regulation 51(3)(k) of S.I. 2013/413.

(f) This definition was substituted by regulation 59(4) of S.I. 2019/418.

Amendment of regulation 3.A.7

20. In regulation 3.A.7 (meaning of “pensionable earnings”)(a), for paragraph (1)(a) substitute—

- “(a) in the case of a type 1 medical practitioner, practitioner income less—
 - (i) any sum on account of practice expenses (for these purposes, C3 contributions payable under regulation 3.C.5(5) or (6) are neither practitioner income nor practice expenses); and
 - (ii) any payment or allowance made pursuant to the New to Partnership Payment Scheme; and”.

Amendment of regulation 3.D.7

21.—(1) Regulation 3.D.7 (early retirement on ill-health (active members and non-contributing members))(b) is amended as follows.

(2) In paragraph (5)—

(a) for sub-paragraph (a) substitute—

“(a) is increased by the enhancement period where the member—

- (i) has not had a break in pensionable service of 12 months or more; or
- (ii) has returned to pensionable employment 12 months or more after having a break in such service and it would be more favourable to the member to treat the member’s pensionable service before and after the break, and all such other breaks (if any) as continuous;”;

(b) in sub-paragraph (b)(c), after “(a)” insert “(ii)”.

(3) In paragraph (7)—

(a) for “If the member’s pensionable service includes both officer service and practitioner service—” substitute “If a member is entitled to have the member’s pensionable service increased by the enhancement period—”;

(b) in sub-paragraph (b), after “(under Part 2 of these Regulations)” insert “, if any,”.

Amendment of regulation 3.E.20

22.—(1) Regulation 3.E.20 (amount of lump sum: pension credit members) is amended as follows.

(2) Omit paragraph (3).

(3) In paragraph (4), omit the definition of “the beginning date” and the “and” which precedes it.

Amendment of regulation 3.J.7

23. In regulation 3.J.7 (forfeiture of rights to benefits), in paragraph (5)(a)(d) for “nominated partner” substitute “surviving scheme partner”.

(a) Relevant amending instruments are 2008/2263, 2009/2446, 2011/2586, 2013/413, 2014/570, 2016/245, 2019/418.

(b) Relevant amending instruments are S.I. 2009/381, 2009/2446 and 2010/492.

(c) Sub-paragraph (b) was substituted by regulation 71(2) of S.I. 2009/2446.

(d) Regulations 72(1) and (2) of S.I. 2019/418, which sought to amend regulation 3.J.7 by substituting “scheme partner” for “nominated partner” in paragraph (5) of regulation 3.J.7, was 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).

PART 4

Amendments to the National Health Service Pension Scheme Regulations 2015

General

24. The National Health Service Pension Scheme Regulations 2015(a) are amended in accordance with this Part.

Amendment of regulation 135

25. In regulation 135 (application for statement of entitlement), for paragraph (3)(d) substitute—
“(d) is within the period of 10 days ending with the date on which the member is provided with the statement of entitlement.”.

Amendment of Schedule 3

26. In Schedule 3 (administrative matters), in paragraph 12(5)(a) (forfeiture of rights to benefits), (b) for “nominated partner” substitute “surviving scheme partner”.

Amendment of Schedule 5

27. In Schedule 5 (membership gateways), in paragraph 7(a), for “practitioner” substitute “performer”.

Amendment of Schedule 10

28.—(1) Schedule 10 (practitioner income) is amended as follows.

(2) In paragraph 1 (interpretation), after the definition of “local authority” 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.”.

(3) In paragraph 2(2) (medical practitioner)(c)—

(a) in paragraph (b), omit the word “and”;

(b) at the end of paragraph (c), insert—

“and;

(d) any payment or allowance made pursuant to the New to Partnership Payment Scheme.”.

Amendment of Schedule 14

29. In Schedule 14 (lump sum on death), in paragraph 8 (death of pension credit member)—

(a) in sub-paragraph (5)(a), omit “at the date of death”;

(b) in sub-paragraph (6), omit the definitions of “annual amount of pension” and “the beginning date”.

(a) S.I. 2015/94. Relevant amending instruments are S.I. 2016/245, 2017/275 and 2019/418.
(b) Regulations 91(1) and (2) of S.I. 2019/418, which sought to amend Schedule 3 by substituting “scheme partner” for “nominated partner” in paragraph 12(5)(a) of Schedule 3, was 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).
(c) Paragraph (2) was amended by regulation 47(2) of S.I. 2017/275. There are other amendments that are not relevant to this instrument.

Amendment of Schedule 15

30.—(1) Schedule 15 (definitions) is amended as follows.

(2) After the expression “dental contractor” in Column 1 insert a new expression “dental performer” and for the corresponding entry in Column 2 insert—

“a person—

- (a) whose name is included in a dental performers list or who is a foundation trainee in the first two months of foundation training; and
- (b) who performs primary dental services under—
 - (i) a GDS contract;
 - (ii) a PDS agreement to which a PDS contractor is a party; or
 - (iii) a contract for services with a Local Health Board which relates to arrangements under which it provides primary dental services under section 56(2) of the 2006 (Wales) Act (primary dental services) or a PDS agreement to which a PDS contractor is not a party”.

(3) For the entry in Column 2 corresponding to the expression “NHS standard sub-contract”(a), substitute “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””.

PART 5

Amendments to the National Health Service (Injury Benefits) Regulations 1995

General

31. The National Health Service (Injury Benefits) Regulations 1995(b) are amended in accordance with this Part.

Amendment of regulation 4

32. In regulation 4 (scale of benefits), in paragraph (6)(b)(vi)(c), for “of the Welfare and Reform Act 2007” substitute “and section 1B of the Welfare Reform Act 2007(d)”.

Amendment of regulation 7

33.—(1) Regulation 7 (surviving partner allowances) is amended as follows.

(2) In paragraph (3)(e)—

- (a) in sub-paragraph (a)(ii), omit the word “or”;
- (b) after sub-paragraph (b) insert—

“(ba) if at the date of the deceased’s death such surviving partner is not married or in a civil partnership but is living with another person as if married or in a civil partnership; or

(a) This definition was substituted by regulation 94(b) of SI 2019/418.

(b) S.I. 1995/866. Relevant amending instruments are S.I. 2005/3074, 2008/655, 2009/381, 2015/96, 2016/245 and 2019/418.

(c) Regulation 4(6)(b)(vi) was inserted by regulation 87 of S.I.2009/381 and amended by regulation 97 and regulation 99 of S.I. 2016/245.

(d) 2007 c.5. Section 1(2)(a) was amended by Part 1, Schedule 14 to the Welfare Reform Act 2012 (c.5) Section 1B was amended by paragraph 26(b) of Schedule 3 and Part 1 of Schedule 14 to the Welfare Reform Act 2012.

(e) Regulation 7(3) was amended by regulation 3(1) and (2)(c) of S.I. 2005/3074 and regulations 99 and 102 of S.I. 2019/418.

- (bb) in respect of any period after such surviving partner—
- (i) remarries or forms a civil partnership; or
 - (ii) during which she or he lives together with another person as if married to or in a civil partnership with that other person,
- but where such relationship has terminated, the Secretary of State may restore an allowance to a surviving partner if the Secretary of State is satisfied that such surviving partner is suffering hardship.”.

(3) In paragraph (3A)(b)(a), after “civil partnership” insert “with a person of the same sex”.

PART 6

Miscellaneous

Option to persons detrimentally affected by these Regulations

34.—(1) This regulation applies in relation to any benefit which is being paid or may become payable under the regulations amended by these Regulations to or in respect of a person who—

- (a) served in an employment or office which qualified the person to participate in the benefits provided under the regulations amended by these Regulations; and
- (b) ceased to serve in that employment or office before these Regulations came into force.

(2) Where, in a case to which this regulation applies, any provision of Part 2 or Part 3 of these Regulations would operate in relation to any person so as to place that person in a worse position than that person would have been if that provision had not applied, that person may elect that the provision will not apply to them by giving notice in accordance with paragraph (3).

(3) A notice given pursuant to paragraph (2) is to be given in writing and delivered to the Secretary of State within six months of the coming into force of these Regulations or such longer period as the Secretary of State may allow.

Signed by authority of the Secretary of State for Health and Social Care.

26th May 2021

Helen Whately
Minister of State,
Department of Health and Social Care

We consent

25th May 2021

James Morris
Michael Tomlinson
Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the National Health Service Pension Scheme Regulations 1995 (S.I.1995/300) (“the 1995 Regulations”), the National Health Service Pension Scheme Regulations 2008 (S.I. 2008/653) (“the 2008 Regulations”), the National Health Service Pension Scheme Regulations 2015 (S.I. 2015/94) (“the 2015 Regulations”) and the National Health Service (Injury Benefits) Regulations 1995 (S.I. 1995/866) (“the Injury Benefits Regulations”).

(a) Regulation 7(3A) was inserted by regulation 3(1) and (2)(c) of S.I. 2005/3074.

The Regulations come into force on 1st July 2021, although regulations 1(3) to (11) provide for certain provisions to take effect from an earlier date. Section 12(1) of the Superannuation Act 1972 (c.11) and section 3(3)(b) of the Public Service Pensions Act 2013 (c. 25) provide that Scheme Regulations may make retrospective provision.

The Regulations are divided into six Parts, amending the 1995 Regulations, the 2008 Regulations, the 2015 Regulations and the Injury Benefits Regulations respectively.

The Regulations implement the following main changes.

First, the Regulations amend the 1995 Regulations in relation to survivor benefits. Regulations 6 to 10 amend regulations G7 to G9 and G16 to G17 of the 1995 Regulations to provide that female members in opposite-sex marriages or civil partnerships have the same survivor entitlements as female members in same-sex marriages or civil partnerships. The amendments are made with retrospective effect to 5th December 2005, which is the date on which same-sex civil partnerships were introduced under the Civil Partnership Act 2004 (c. 33). Survivor benefits for opposite-sex spouses and civil partners are already the same as those for same-sex spouses and civil partners in the 2008 Regulations and the 2015 Regulations and therefore no amendments are required to those regulations.

Regulations 3(2) and 4 remove amendments to the 1995 Regulations made by the Civil Partnership (Opposite-sex Couples) Regulations 2019 (S.I. 2019/1458) (“the Civil Partnership Regulations”). Those amendments equalised the survivor entitlements of opposite-sex civil partners with those of opposite-sex spouses in the 1995 Regulations. The removal of those amendments is made with retrospective effect to 2nd December 2019, which is the date on which the Civil Partnership Regulations came into force.

Second, the Regulations make changes in relation to the final pay control provisions in the 1995 Regulations. The 1995 Regulations provide for a final salary pension scheme. Provisions regarding final pay control are set out in regulation D3 of the 1995 Regulations, the aim of which is to protect the pension scheme from excessive pensionable pay increases for members nearing retirement.

The main changes in respect of final pay controls in the 1995 Regulations are as follows.

The percentage figure relevant to the calculation of the “allowable amount” in regulation D3 is increased to 7% by regulation 5(2).

Regulation 5(4) inserts paragraphs (12A) to (12G) into regulation D3 to provide a means by which an employer who has been notified of a liability to pay an excess employer contribution on or after 1st April 2018 may apply for a determination under the final pay control provisions as amended by this instrument.

Regulation 5(6) further amends regulation D3 by inserting paragraphs (19C) to (19G), which exempt particular pay increases from final pay control charges.

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 exempt under paragraph (19D). Consequently, regulations D3(7) to (11) are no longer necessary and are removed by regulation 5(3) of the Regulations.

The third main purpose of the Regulations is to make payments and allowances under the “New to Partnership Payment Scheme” non-pensionable for certain medical practitioners and non-GP providers (regulations 12(2)(b) and (3), 14(a), 15, 19(b), 20 and 28).

The fourth main purpose of the Regulations is to introduce new definitions, correct drafting and clarify the operation of particular provisions. The main changes in this respect are as follows.

Regulations 3(3), 14(b), 19(c) and 30(3) update the definition of NHS standard sub-contract and refer to up-to-date guidance.

Regulations 11, 18, 23 and 26 replace references to “nominated partner” with “scheme partner” or “surviving scheme partner” as appropriate.

Regulations 12(2)(a) and 19(a) amend the definition of “locum practitioner” in the 1995 Regulations and the 2008 Regulations to align these definitions with the definition of the same term in the 2015 Regulations.

Regulations 16 and 21 correct errors in regulations 2.D.8 and 3.D.7 of the 2008 Regulations, which deal with early retirement on ill-health grounds.

Regulations 17, 22 and 29 remove incorrect references to increases under the Pensions (Increase) Act 1971 (c.56) from provisions in the 2008 and 2015 Regulations relating to lump sums payable following the death of a pension credit member and make related amendments.

Regulation 25 corrects an error in regulation 135 of the 2015 Regulations, which makes provision for application for a statement of entitlement.

Regulation 30(2) inserts a definition of “dental performer” in the 2015 Regulations and regulation 27 makes a related amendment to the definition of “dental practitioner” in the 2015 Regulations.

Regulation 32 corrects an error and includes a new reference to section 1B of the Welfare Reform Act 2007 (c.5) in regulation 4(6)(b)(vi) of the Injury Benefits Regulations.

Regulation 33(2) inserts new provisions in regulation 7(3) of the Injury Benefits Regulations. Similar provisions were omitted from regulation 7(3) of the Injury Benefits Regulations in error by the National Health Service Pension Schemes, Additional Voluntary Contributions and Injury Benefits (Amendment) Regulations 2019 (S.I. 2019/418).

Regulation 33(3) amends regulation 7(3A)(b) of the Injury Benefits Regulations to clarify that “civil partnership” in that context is limited to same-sex civil partnerships.

Part 6 provides that deferred members or members who are in receipt of a relevant benefit who may be detrimentally affected by these Regulations may elect for the provisions not to apply to them by giving notice in writing within six months of the coming into force of these Regulations (regulation 34).

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

© Crown copyright 2021

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty’s Stationery Office and Queen’s Printer of Acts of Parliament.

£6.90

<http://www.legislation.gov.uk/id/uksi/2021/631>

ISBN 978-0-34-822413-9



9 780348 224139