

EXPLANATORY MEMORANDUM TO
THE NATIONAL HEALTH SERVICE PENSION SCHEMES (MEMBER CONTRIBUTIONS ETC.) (AMENDMENT) (NO. 3) REGULATIONS 2022

2022 No. 1028

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 This instrument amends the National Health Service Pension Schemes (Member Contributions etc.) (Amendment) Regulations 2022 (S.I. 2022/273) (the “2022 Regulations”) to extend the expiry date of temporary modifications to the National Health Service Pension Scheme Regulations 1995 (S.I. 1995/300) (the “1995 Section”), the National Health Service Pension Scheme Regulations 2008 (S.I. 2008/653) (the “2008 Section”) and the National Health Service Pension Scheme Regulations 2015 (S.I. 2015/94) (the “2015 Scheme”) to suspend restrictions which apply to members who partially retire or return to NHS employment when in receipt of NHS Pension Scheme benefits.
- 2.2 The aim of these temporary modifications is to allow retired and partially retired staff to be able to return to NHS employment during the pandemic response period and work without having the payment of their pension benefits abated or suspended.
- 2.3 The 2022 Regulations introduced these temporary easements from 25th March 2022, with an expiry date of the end of 31st October 2022. The purpose of this instrument is to extend the expiry date of these easements. The easements will be extended as follows:
- The 16-hour rule in the 1995 Section will be suspended to 31st March 2023.
 - Abatement of pension for Special Class Status officer (SCS) members in the 1995 Section will be suspended to 31st March 2025.
 - Draw down abatement in the 2008 Section and 2015 Scheme will be suspended to 31st March 2023.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The Public Service Pensions Act 2013 (the “2013 Act”) provides the power for the Secretary of State to make regulations establishing the NHS Pension Scheme. The Superannuation Act 1972 provided equivalent powers prior to 2013.
- 6.2 Part 3 of the 2022 Regulations made temporary modifications to the 1995 Section, the 2008 Section and the 2015 Scheme to suspend restrictions which apply to members who partially retire or return to NHS employment when in receipt of NHS Pension Scheme benefits.
- 6.3 The provisions in Part 3 of the 2022 Regulations reproduced temporary measures introduced by section 45 of the 2020 Act as part of the Government’s response to the Coronavirus pandemic. Part 3 of the 2022 Regulations came into force immediately after the expiry of section 45 of the 2020 Act. The expiry date of the temporary modifications in Part 3 of the 2022 Regulations is at the end of 31st October 2022.
- 6.4 This instrument amends the 2022 Regulations to extend the expiry date of these temporary modifications to the end of 31st March 2023 for the 16-hour rule and draw down abatement, and the end of 31st March 2025 for SCS abatement.

7. Policy background

What is being done and why?

Amendment to the 2022 Regulations– extension of temporary retire and return easements

- 7.1 This instrument amends the 2022 Regulations to extend the expiry date of temporary modifications to the 1995 Section, 2008 Section, and 2015 Scheme regulations. These temporary modifications operate to omit regulations that provide for pension abatement or suspension so as to enable retired and partially retired staff to return to work, or increase their working capacity if they have already returned, without having their pension benefits abated or suspended.
- 7.2 The easements initially made under section 45 of the 2020 Act were introduced to help boost NHS workforce capacity during the coronavirus pandemic response, by allowing retired and partially retired staff to return to work or increase their working commitments without affecting their NHS pension.
- 7.3 Following public consultation (see section 10 below), the Government has listened to concerns from the service that a further continuation of these easements was required to 31st October 2022, and now again for a further period. The continuation of these easements provides continuity for members and maintains NHS workforce capacity benefits. This instrument therefore amends Part 3 of the 2022 Regulations to extend the temporary modifications to the 1995 Section, 2008 Section and 2015 Scheme, to provide a continuation of the easements to 31st March 2023 for the 16-hour rule and draw down abatement, and 31st March 2025 for SCS abatement. Continuing the easements aims to assist NHS workforce capacity during the ongoing pandemic response.

- 7.4 Regulation 2 of this instrument amends regulation 9 of the 2022 Regulations (expiry of modifications of restrictions on return to work) to remove ‘31st October 2022’ and substitute ‘31st March 2023’ for the expiry of the suspension of the 16-hour rule and draw down abatement, and substitute ‘31st March 2025’ for the expiry of the suspension of SCS abatement. This has the effect of extending the end date of the temporary retire and return easements.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.5 Prior to this instrument temporary retire and return easements in the NHS Pension Scheme were set to expire at the end of 31st October 2022.

Why is it being changed?

- 7.6 This instrument extends the easements following concerns from NHS stakeholders, including trade unions, staff, and employers, that a continued extension is required. This will provide an ongoing capacity boost to the NHS workforce.

What will it now do?

- 7.7 The suspension of the 16-hour rule and draw down abatement will now be extended to 31st March 2023. The suspension of SCS abatement will now be extended to 31st March 2025.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 A separate instrument, the National Health Service Pension Schemes (Member Contributions etc.) (Amendment) (No.2) Regulations 2022 (S.I. 2022/991), made amendments to the member contribution provisions contained in Part 2 of the 2022 Regulations and came into force on 30 September 2022. The Department regrets that it was unable to combine these instruments.
- 9.2 The Department recognises that formal consolidated regulations are good practice and intends to undertake a formal consolidation once Government business allows. In the interim period, the Department has informal full consolidations of NHS Pension Schemes and Injury Benefits regulations incorporating all the changes implemented up to and including those which came into force on 1 April 2022. These are available on the scheme administrator’s website: <https://www.nhsbsa.nhs.uk/nhs-pension-scheme-regulations>

10. Consultation outcome

- 10.1 The retire and return easements proposals and draft regulations were published for consultation between 28th August and 12th September 2022. 1,249 responses were received via an online survey, 50 via email, and six were received from NHS organisations and stakeholders including NHS Employers and Trade Unions.
- 10.2 Respondents were almost universally supportive of the proposed continuation of the temporary easements for a further period. A number of respondents argued that the

suspension of SCS abatement should be extended beyond 31st March 2023 to provide certainty regarding working patterns for staff and employers and additional time for the NHS to address backlogs. The Department has listened to these concerns and has agreed to an extension of this section of the easements to 31st March 2025 in order to help the NHS through the elective recovery period. This policy intention was announced by the Secretary of State for Health and Social Care on 22nd September.

- 10.3 The consultation response document is available at:
<https://www.gov.uk/government/consultations/nhs-pension-scheme-proposed-amendments-to-continue-the-suspension-of-restrictions-on-return-to-work>

11. Guidance

- 11.1 Pension scheme guidance is provided via a range of resources including factsheets, online videos and scheme guides on the scheme administrator's website:
<https://www.nhsbsa.nhs.uk/nhs-pensions>

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 The impact on the public sector is minimal, but these changes will impact the NHS workforce and members of the NHS Pension Scheme who are able to benefit from the suspension of the retire and return provisions.
- 12.3 An Impact Assessment has not been prepared for this instrument.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 In accordance with section 7 of the 2013 Act, there is a Scheme Advisory Board comprising representatives of NHS employers, NHS trade unions and the scheme administrator. The Board discusses changes to the NHS Pension Schemes and provides advice to the Secretary of State for Health and Social Care where requested on scheme policy.
- 14.2 The instrument does not provide for a review pursuant to section 28 of the Small Business, Enterprise and Employment Act 2015 (S.I. 2015/26) (Duty to review regulatory provisions in secondary legislation).
- 14.3 The Department does not consider that the NHS Pension Schemes Regulations amended by this instrument make regulatory provision in relation to a qualifying activity or amend any regulatory provision relating to that activity for the purpose of section 28 of the Small Business, Enterprise and Employment Act 2015. They regulate only the activities of public bodies. The exempting provision of section 29(3)(b) of the same Act therefore applies.

15. Contact

- 15.1 Adam Stewart at the Department of Health and Social Care Telephone: 011325 45775 or email: adam.stewart@dhsc.gov.uk can be contacted with any queries regarding the instrument.

- 15.2 Tim Sands, Deputy Director for NHS Pensions policy at the Department of Health and Social Care, can confirm that this explanatory memorandum meets the required standard.
- 15.3 The Rt. Hon. Robert Jenrick MP, Minister of State at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard