

EXPLANATORY MEMORANDUM TO
THE NATIONAL HEALTH SERVICE PENSION SCHEMES (AMENDMENT)
REGULATIONS 2024

2024 No. 281

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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

- 2.1 The Rt Hon Andrew Stephenson CBE MP, Minister of State for Health and Secondary Care at the Department of Health and Social Care confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Victoria Dare, Deputy Director for Industrial Relations and NHS Pensions, at the Department of Health and Social Care confirms that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 Gareth Probert at the Department of Health and Social Care telephone: 0113 254 5491 or email: nhspensions@dhsc.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

- 4.1 There are two National Health Service Pension Schemes that provide pension benefits for health service workers. The legacy NHS Pension Scheme which closed to new members from 1 April 2022 is comprised of two Sections (the 1995 Section and the 2008 Section). The reformed NHS Pension Scheme (the 2015 Scheme) is open to new members and is the scheme to which all members and employers currently pay contributions.
- 4.2 This instrument amends the three statutory instruments that govern those schemes: the National Health Service Pension Scheme Regulations 1995 (SI 1995/300) (the “1995 Regulations”), the National Health Service Pension Scheme Regulations 2008 (SI 2008/654) (the “2008 Regulations”) and the National Health Service Pension Scheme Regulations 2015 (SI 2015/94) (the “2015 Regulations”).
- 4.3 This instrument also makes amendments to three further statutory instruments that relate to pension benefits for health service workers: the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000 (SI 2000/619), the National Health Service Pension Scheme (Transitional and Consequential Provisions) Regulations 2015 (SI 2015/95) (“the 2015 Transitional

Regulations”) and the National Health Service Pension Schemes (Amendment) Regulations 2023 (SI 2023/952) (“the 2023 Regulations”).

- 4.4 This instrument changes member contribution rates in the 2015 Scheme and provides a mechanism to increase annually the pay thresholds at which certain rates become payable. The rate changes implement the second and final phase in a gradual movement of members to a reformed contribution rate structure. The first phase was implemented in October 2022. Temporary modifications concerning practitioner member contributions for 2022-23 are extended for a further year to accommodate any late returns for that year. The instrument implements a new employer contribution rate in the 2015 Scheme in line with the results of the 2020 actuarial valuation of the scheme. The instrument removes the potential abatement of pension where members who draw their pension early using historic special class rights in the 1995 Section subsequently return to NHS employment.
- 4.5 The instrument extends eligibility for the partial retirement option to include scheme members who have accrued maximum pensionable service in the 1995 Section and clarifies that reducing pensionable pay or earnings by entering a salary sacrifice arrangement does not count towards the requirement for members to reduce those earnings as a condition of taking partial retirement.
- 4.6 The instrument stipulates that additional hours worked up to full-time are pensionable except where a member has taken partial retirement in the preceding 12-months. The instrument makes provision for periods of carer’s leave to be treated as an authorised absence from work, further to the Carer’s Leave Act 2023. New definitions are provided to support existing categories of authorised absences where relevant.
- 4.7 The instrument makes consequential changes connected to the abolition of the lifetime allowance as provided by the Finance Act 2024. These changes ensure existing scheme rules continue to operate as intended and accommodate new requirements arising from that legislation.

Where does the legislation extend to, and apply?

- 4.8 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.9 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

Implementing new member contribution rates

- 5.1 Since 2008, the NHS Pension Scheme has had a tiered member contribution structure in which higher earners contribute a higher percentage of their earnings towards pension membership than lower earners. This was to reflect that higher earners were likely to receive proportionately more pension benefits than lower earners over the course of their retirement, due in part to the scheme’s final salary link. However, from 1 April 2022 all scheme members moved to the 2015 Scheme for future benefit accrual, which uses a Career Average Revalued Earnings (CARE) method.
- 5.2 The Department therefore consulted with the Scheme Advisory Board to develop proposals for an updated member contribution rate structure, with a view to reaching agreement, which reflects the move to a CARE scheme. The Scheme Advisory Board

is a statutory board established in 2015 under the Public Service Pensions Act 2013 comprising of trade union and employer representatives, that advises the Secretary of State for Health and Social Care on the merits of making changes to the NHS Pension Scheme.

- 5.3 Whilst the Scheme Advisory Board could not reach a consensus view on their preferred proposal, DHSC carefully considered their views when developing the proposal to put out to public consultation in 2021. The consultation proposed a new 6-tier contribution rate structure that would be implemented in two phases to smooth the impact on members whose contribution rate is expected to change. Following that consultation, the first phase was implemented on 1 October 2022 by The National Health Service Pension Schemes (Member Contributions etc.) (Amendment) Regulations 2022 (SI 2022/273). This instrument now implements the second phase of member contribution rate changes.
- 5.4 Regulations 21 and 22 of this instrument amend regulations 30 (members' contributions: employees) and 31 (members' contributions: practitioners and non-GP providers) respectively to insert new tables containing the six earnings bandings and the tiered contribution rate appropriate to each banding. The new tables apply in respect of scheme years 2024-25 to and including scheme year 2027-28. A scheme year runs from 1 April to 31 March each year.
- 5.5 Tiered contribution rates for individual medical practitioners, dental practitioner and non-GP providers are initially based on estimated pensionable earnings and adjusted via an annual reconciliation exercise once their final earnings are confirmed. The National Health Service Pension Schemes (Amendment) Regulations 2023 (SI 2023/301) made temporary modifications to the 2015 Regulations that provide for this reconciliation exercise in respect of the scheme year 2022-23. The modifications provided additional instructions on how members are to apportion earnings for that year either side of the contribution rate and earnings threshold changes that applied mid-year from 1 October 2022. The modifications were due to expire on 31 March 2024.
- 5.6 Regulation 36 of this instrument substitutes regulation 24 (expiry of modifications in this Part) of the 2023 Regulations. The new regulation 24 extends the expiry date and application of those modifications so that they apply in respect of the reconciliation exercise for the 2022-23 scheme year until 31 March 2025. This extension will enable members who are unable to complete the exercise for the scheme year 2022-23 until after 31 March 2024 to do so by reference to the instructions for that scheme year set out in the modifications.

Introducing a mechanism to automatically increase the pay thresholds at which certain rates become payable.

- 5.7 Since the first phase was implemented in October 2022, the contribution tier thresholds have been increased in line with the annual Agenda for Change pay award in England. This is to reduce the likelihood that salary increases due solely to centrally agreed annual pay awards result in members moving up a contribution tier and see a net reduction in take-home pay. The thresholds for the first tier and entry to the second tier are not increased. This is because the first contribution tier is designed to link to the threshold for basic rate income tax. Scheme members who fall into the first tier will work less than full-time hours but are unlikely to receive tax relief on their contributions unless they have an additional income source. To give these members the benefit of tax relief at source to incentivise pension saving from this

group, the contribution rate in the first tier is discounted compared to the rate in the second tier.

- 5.8 The Department consulted on increasing member contribution thresholds in line with the Agenda for Change pay award for England in May 2023¹, with the changes having backdated effect to 1 April 2023 in line with the implementation of the pay award. As part of that consultation process the Scheme Advisory Board expressed concerns that there was a need to act quickly to ensure that the implementation of the new member contribution structure aligns with the implementation of the pay award to avoid a position where members temporarily have the value of an award eroded by increased pension contributions.
- 5.9 Under the current process, the Department must consult and lay a statutory instrument in the time between the Agenda for Change pay award being agreed by the NHS Staff Council and the award being paid to staff. In 2023, the pay award was agreed by the NHS Staff Council on 2 May and became payable in June. For staff who are paid weekly, the award became payable in early June. The Department therefore breached the convention that statutory instruments subject to the negative resolution procedure should normally be laid before Parliament at least 21 days before the instrument comes into force (“the 21-day rule”) to avoid a situation where the threshold uplifts were not implemented alongside the pay award resulting in some staff temporarily paying higher contributions.
- 5.10 Providing a method in scheme regulations for applying annual increases to contribution thresholds means that process could be completed automatically without the need to lay a statutory instrument. The Agenda for Change pay award is not always a uniform percentage salary increase for all pay bands. This means the impact on tier thresholds is unknowable in advance and therefore cannot be set in scheme regulations with the degree of precision and predictability that an automatic method requires.
- 5.11 The public service pension schemes for civil servants and teachers apply an automatic annual increase to contribution rate thresholds on 1 April in line with the percentage increase in the Consumer Prices Index (CPI) as measured in the previous September.
- 5.12 In this instrument, the Department adopts an automatic CPI indexation approach, to improve the efficiency of the process for uplifting contribution thresholds in future years and provide certainty to members regarding their payable contributions. On 1 April 2025 the tier thresholds will be increased by the percentage increase in CPI as measured in the previous September. In line with current practice and policy rationale for the first tier, the thresholds for the first tier and entry to the second tier will not be increased.
- 5.13 Regulations 21 and 22 of this instrument provide for the automatic uplifting of contribution thresholds in the tables (except for the first-tier threshold and the entry pay point for the second tier) by the percentage increase in the CPI. The uplifting will apply if there has been a “relevant increase” in CPI for the scheme year in question. There is a relevant increase if CPI for the September immediately preceding the start of a scheme year is higher than that for the previous September. If there is no relevant increase, then the thresholds are unchanged for that scheme year. Where the thresholds are uplifted, the increase is applied rounded up to the nearest £1. For this

¹ Consultation response: *NHS Pension Scheme: proposed uplift to member contribution thresholds for 2023/24*, <https://www.gov.uk/government/consultations/nhs-pension-scheme-proposed-uplift-to-member-contribution-thresholds-for-2023-to-2024>

purpose, the “consumer prices index” is defined as the general index of consumer prices (for all items) published by the Statistics Board.

- 5.14 The Department will apply a non-legislative 'better of' test once the Agenda for Change (England) pay award for the year is announced. Should the thresholds be higher if increased in line with the pay award, then the Department will consult on and lay a statutory instrument to apply the marginal increase to thresholds that year. This acts to reduce the likelihood of members permanently drifting into paying a higher contribution rate by virtue of receiving an annual pay award.

Implementing a new employer contribution rate

- 5.15 An actuarial valuation of the NHS Pension Scheme was completed on 19 October 2023 ('the 2020 valuation'). The valuation is an assessment of past and future pension benefits building up and is carried out on a 4-year cycle. The results are used to determine the employer contribution rate required to meet current and projected scheme liabilities. The employer contribution rate has been 20.6% since 1 April 2019. Results from the 2020 valuation² show an increase in benefit costs, requiring a 3.1 percentage point rise in the employer contribution rate to 23.7%.
- 5.16 In a written statement³, the Chief Secretary to the Treasury announced that new employer rates for public service pension schemes resulting from the 2020 valuations would be implemented on 1 April 2024.
- 5.17 Funding support to meet the cost of the increased employer rate will be provided for employers whose employment costs are centrally funded through departmental expenditure. This means the vast majority of organisations employing NHS Pension Scheme members will not experience any additional costs as a result of the employer rate increase. The exception is medical schools who will have a small 0.46 percentage point increase in costs to reflect the fact that a portion of their employment costs are funded through routes other than the NHS or central government.
- 5.18 Regulation 23 of this instrument amends regulation 33 (contributions by employing authorities) so that the employer contribution rate with effect from 1 April 2024 is 23.7% of members' pensionable earnings.

Removal of pension abatement for special class members in the 1995 Section

- 5.19 For most members, the NHS Pension Schemes do not place any limits on the amount of NHS work they can do after claiming their pension. However, pension abatement has in the past applied to members who retired early with an unreduced pension using historic special class rights in the 1995 Section but then return to work in the NHS between age 55 and 60. Abatement is the practice of reducing an individual's pension payments so that their annual pension plus NHS salary does not exceed their pre-retirement income. These abatement rules were suspended during the pandemic to encourage retired members with special class rights, typically nurses, to return to service or increase their working commitments without affecting their pension. This was an important means to boost workforce capacity. The suspension was extended to 31 March 2025 as a measure to support the delivery of NHS services and address care backlogs.

² NHS Pension Scheme Valuation Results Report: <https://www.nhsbsa.nhs.uk/nhs-pension-scheme-accounts-and-valuation-reports>

³ Written Statement UIN HCWS697: <https://questions-statements.parliament.uk/written-statements/detail/2023-03-30/hcws697>

- 5.20 As part of the Agenda for Change (England) pay settlement for 2023-24, the Department committed to remove permanently the abatement rules for these members. The intention is to further support staff retention and NHS service delivery, which risk being affected by the resumption of these abatement rules on 1 April 2025.
- 5.21 Abatement of pensions paid in respect of special class rights for members retiring and returning between the ages of 55 and 60 is provided for at paragraph (1A)(c) of regulation S2 (reduction of pension on return to NHS employment). That paragraph is removed by regulation 8 of this statutory instrument. A further amendment is made by regulation 8 to paragraph (1A)(b)(iii) of regulation S2. This amendment ensures that members who are entitled to claim deferred benefits early with no reduction because of special class rights will also not be subject to abatement on return to NHS work between ages 55 and 60. A consequential amendment is made to regulation 39 (abatement: special classes) of the 2015 Transitional Regulations. Regulation 39 provides for the application of abatement in circumstances where a member with special class rights is subject to abatement under both the 1995 Regulations and the 2015 Regulations. Regulations 35 of this instrument omits regulation 39 as those circumstances can no longer apply.

Extending eligibility for partial retirement and disregarding the effect of salary sacrifice arrangements on pensionable pay for partial retirement purposes.

- 5.22 A new partial retirement option was introduced on 1 October 2023 for members of the 1995 Section. This option allows members to partially retire and claim some or all of their pension, while continuing to work and accrue further pension in the 2015 Scheme. However, the 1995 Regulations do not permit members of the 1995 Section who have reached the maximum pensionable service limits in that Section (“non-pensionable 1995 Section members”) to take up the partial retirement option. At present, those members can instead claim their pension and join the 2015 Scheme to build up more pension if they later return to work. This practice is led by the employer and known as ‘retire and return’. The Department wishes to extend partial retirement eligibility to this group and ensure all members have the same set of retirement flexibilities available to them.
- 5.23 The partial retirement policy aims to support members’ work-life balance later in their careers, and a gradual transition towards full retirement. The policy anticipates that members will reduce their pensionable working commitment in return for drawing down their pension while continuing to work. Members who take partial retirement continue in pensionable work but are required to reduce their pensionable earnings by at least 10% for a minimum of 12-months.
- 5.24 Where members enter a salary sacrifice arrangement this has the effect of reducing their pensionable pay/earnings. However, the Department does not consider that salary sacrifice arrangements are an appropriate way of meeting the 10% reduction criterion as it does not require any change to a member’s pensionable working commitment as envisaged by the policy.
- 5.25 Regulation 5 of this instrument amends 1995 Regulation E5A (partial retirement pension) so that non-pensionable 1995 Section members are eligible to access partial retirement benefits if the relevant qualifying criteria are met. Those criteria are that members over minimum pension age must continue in pensionable employment for the purposes of the open 2015 Scheme but must reduce their pensionable earnings in that Scheme to 90% or less than their pensionable earnings in the previous twelve months, disregarding any reduction in pay because the member has started a salary sacrifice arrangement.

- 5.26 The term “salary sacrifice arrangement” is currently used and defined in the 1995 Regulations at regulation D3 (further contributions by employing authorities in respect of excessive pay increases). However, because that term will also be used in regulations providing for partial retirement, the definition of “salary sacrifice arrangement” is removed from regulation D3 by regulation 4 of this statutory instrument and inserted into 1995 Regulation A2 (interpretation) by regulation 3 of this statutory instrument.
- 5.27 For the purpose of partial retirement, the term “non-pensionable member” used in regulation E5A is given the same meaning as that term has in regulation 2 of the 2015 Transitional Regulations. Regulation 2 of those Regulations defines a “non-pensionable 1995 Section member” as being a member who on 31st March 2022, is no longer required to pay contributions under regulation D1(3) or (4) (contributions by members: age and pensionable service limits) of the 1995 Regulations and who is a member of the 2015 Scheme in respect of service on or after 1st October 2023.
- 5.28 Regulation E5B (increase in pensionable pay following exercise of option under regulation E5A) provides for a member’s partial retirement pension to be suspended if pensionable pay increases to more than 90% of pre-retirement earnings during the twelve-month period following partial retirement. Regulation E5B also provides for the re-instatement of a partial retirement pension when the member’s pensionable pay once again reduces below that level. Regulation 6 of this statutory instrument amends regulation E5B so that where an increase in pay is to be measured, that increase will disregard any increase caused by the member leaving a salary sacrifice arrangement. Where a pay reduction is to be measured for the purposes of re-instatement of the pension, a reduction caused by the member entering a salary sacrifice arrangement will also be disregarded.
- 5.29 Regulation E5C (application of regulations E5A and E5B with modifications where concurrent part-time employments held) provides modifications to regulations E5A and E5B where the member holds more than one part-time employment when taking partial retirement. Regulation 7 of this statutory instrument adjusts those modifications to take account of the changes made to regulations E5A and E5B in respect of non-pensionable 1995 Section members and the disregarding of pensionable pay changes resulting from the member entering into or leaving a salary sacrifice arrangement.
- 5.30 Part 2 of the 2008 Regulations generally makes provision in respect of employed members. Part 3 of those regulations makes provision in respect of self-employed general medical and dental practitioners. Members who have reached their maximum entitlement in the 2008 Section are referred to in the 2008 Regulations as “non-contributing members”. Non-contributing members currently have access to partial retirement in the 2008 Section. However, to ensure that partial retirement provisions work consistently across both NHS Pension Schemes, regulation 12 of this statutory instrument amends regulation 2.D.5 (partial retirement (members aged at least 55) and regulation 16 amends regulation 3.D.5 (partial retirement pension (members aged at least 55) so that those regulations apply where a non-contributing member continues to be an active member of the 2015 Scheme. Regulation 2.D.5 is further amended so that non-contributing members must take an appropriate reduction in 2015 pensionable earnings in order to qualify for partial retirement and that reduction must be made disregarding any reduction in earnings because the member has entered into a salary sacrifice arrangement. To support this change a definition of “salary sacrifice arrangement” is inserted into regulation 2.A.1 (interpretation: general) by regulation 11 of this statutory instrument.

- 5.31 Regulation 2.D.6 makes provision for a partial retirement pension to be suspended if pensionable earnings increase to more than 90% of pre-retirement earnings during the twelve-month period following partial retirement, and re-instated if earnings again reduce to an appropriate level. Regulation 2.D.7 provides modifications to regulations 2.D.5 and 2.D.6 where the member holds more than one part-time employment when taking partial retirement.
- 5.32 Regulations 15 to 17, and 25 to 27 of this instrument make the same amendments to 2008 Regulations 2.D.5 to 2.D.7 and 2015 Regulations 84, 86 and 89 in respect of variations to pensionable earnings caused by the member entering into or leaving a salary sacrifice arrangement as are being made to their 1995 Section counterparts by regulations 5 to 7 of this instrument.
- 5.33 Regulation 34 makes a consequential amendment to regulation 37A (variations to lump sums for 1995 and 2008 pensioners joining new scheme (pensioners who have taken a partial retirement pension)) of the 2015 Transitional Regulations.
- 5.34 Regulation 37A makes provision for the lump sum on death payable if a member has a partial retirement pension from the legacy scheme and dies whilst still an active member of the 2015 Scheme. In these circumstances the lump sum on death reflects the member's status in the NHS Pension Schemes as both a pensioner member and an active member. The lump sum calculation is relatively complex in that it is comprised of two separate elements; one relating to the partial retirement pension that the member was receiving at death, and one relating to an "appropriate fraction" of the lump sum on death due from the 2015 Scheme. The appropriate fraction is service in days across both schemes that were not included in the partial retirement pension on the option day/service in days across both schemes that were included in the partial retirement pension.
- 5.35 The tables at regulation 40(1A) of the 2015 Transitional Regulations vary the lump sum due on the death of a non-pensionable legacy scheme member so that it is the greater of the lump sum due under the 2015 Regulations and the lump sum that would have been paid under legacy scheme regulations. Where a deceased non-pensionable member takes a partial retirement pension in respect of service in the legacy scheme only, regulation 34 of this statutory instrument amends regulation 37A so that the "appropriate fraction" is applied to the greater of the lump sums on death determined by reference to the appropriate table in regulation 40(1A).
- 5.36 Where the member has taken partial retirement from both the legacy scheme and the reformed scheme or has taken partial retirement twice, the lump sum on death will be determined by the scheme manager after taking advice from the scheme actuary.

Amending the definition of overtime

- 5.37 Overtime worked by members is excluded from the definition of pensionable pay. Long-standing practice for the 1995 and 2008 Sections, and Agenda for Change employment terms, considers overtime to be hours worked in excess of whole-time, with any additional hours performed by part-time workers treated as pensionable up to the whole-time limit. The Department wishes to align the definition of overtime in the 2015 Scheme so that it reflects this long-standing practice and Agenda for Change employment terms.
- 5.38 As noted above, members who take partial retirement are required to reduce their pensionable pay by at least 10% for a minimum of 12-months. Where this requirement ceases to be met, for example through additional hours being worked, then the member's pension is suspended. The Department recognises the demands of NHS

service provision. The vast majority of the NHS workforce perform shifts or sessions, and an employer may ask willing staff to do occasional extra hours to address temporary pressures, for example, covering rota gaps where staff are unwell or have left. The Department wishes to avoid the prospect of pension suspension preventing partially retired staff from helping their employer with short-term, temporary swings in work. Accordingly, the definition of overtime is amended to provide that additional hours worked above their core contract by partial retirees are non-pensionable during the 12-month period. After the 12-month period expires, those additional hours would be pensionable in the same way as for all other members.

- 5.39 The term “overtime” is defined in Schedule 15 to the 2015 Regulations. Regulation 30 of this instrument updates the definition so that any period worked in excess of whole time, according to the terms of the member’s employment contract, is “overtime”. The definition is also amended to provide that during the period of 12 months after a member has taken partial retirement, any time worked in excess of the terms of the member’s employment contract is also “overtime”. Therefore, in both circumstances, payment for the excess time worked will not be pensionable under regulation 27 (pensionable earnings) of the 2015 Regulations.

Adding periods of carer’s leave to the categories of authorised absences from work and providing new definitions to support existing categories of absences.

- 5.40 The Carer’s Leave Act 2023 provides a new entitlement to one week of unpaid leave per employee, per year (pro-rated for those with different working patterns). The aim is to introduce a further degree of flexibility for working unpaid carers by giving employees the right to be absent from work to provide care for a dependent with a long-term care need. To ensure carers are not disadvantaged in their pension savings, members who take unpaid carer’s leave are treated as having continued in pensionable service during the time that they are absent from work. The employer will continue to pay contributions based on the member’s pensionable pay as if it had continued at that rate during the period of absence, and the member will pay any owed member contributions upon their return to work.
- 5.41 Existing provisions in the open 2015 Scheme for members who are absent from work due to a period of adoption leave, maternity leave, parental leave or paternity leave are updated so that the relevant provision is now supported by a definition of those terms. This was an omission in the drafting, hence why these amendments are made retrospectively and why the instrument is issued ‘free issue’.
- 5.42 A definition of “carer’s leave” is inserted into Schedule 15 to the 2015 Regulations by regulation 30 of this statutory instrument to provide that it is leave under section 80J of the Employment Rights Act 1996.
- 5.43 Regulation 19 of statutory instrument adds “carer’s leave” to the list of absences at regulation 21 (absence from work) so that if a member pays contributions in respect of the period of absence it will count as pensionable service. Regulation 20 of this instrument does the same in respect of regulation 28 (pensionable earnings: break in service) so that amounts equal to the pay the member would have received were it not for the absence are treated as pensionable earnings for the purpose of the benefits due to the member and the contributions due from the member’s employer. For members paying regular additional contributions to buy extra pension when taking carer’s leave, regulation 24 of this statutory instrument makes amendments to regulation 68 (effect of absence or leaving and rejoining scheme during contributions payment period) so that additional contributions remain due during the absence if the member pays normal scheme contributions for that period. Regulation 28 of this statutory

instrument amends Schedule 10 (practitioner income) to the 2015 Regulations so that any period of carer's leave is taken into account for the purpose of establishing the income of a dental practitioner. Regulation 29 of this statutory instrument amends Schedule 12 (practitioner contribution payments) to the 2015 Regulations so that an NHS host Board that is party to a contract for dental services must include payments for carer's leave in the notice of payments made to the contractor that the Board is required to provide each year.

- 5.44 Definitions of “adoption leave”, “maternity leave”, “parental leave” and “paternity leave” are inserted into Schedule 15 (definitions) to the 2015 Regulations by regulation 30 of this instrument. The definitions link into the meaning of those terms in relevant secondary legislation that sets out provisions relating to the difference types of absence.

Consequential changes connected to the abolition of the lifetime allowance as provided by the Finance Act 2024

- 5.45 The Finance Act 2024 provides for the abolition of the lifetime allowance as announced in the Spring Budget 2023. The lifetime allowance set a limit on the amount of pension savings that could be built up without incurring a tax charge. Scheme provisions relating to partial retirement are updated to reflect the removal of the lifetime allowance and replacing this with a lump sum and death benefit allowance. Members taking partial retirement are required to draw down a minimum level of pension that is worth no less than 0.05% of the lifetime allowance. This is to avoid the administrative burden of paying pensions of trivial value. The new lump sum and death benefit allowance is of equivalent value to the abolished lifetime allowance and is substituted to ensure the partial retirement provisions continue to operate as intended.
- 5.46 The Finance Act 2024 Act creates a new pension commencement excess lump sum. This is added to the list of retirement and dependent benefits that can be drawn by a member, or their beneficiary, from the supplementary NHS Additional Voluntary Contribution Scheme.
- 5.47 Regulations 3, 12, 16, 30 and 32 of this instrument insert a definition of “lump sum and death benefit allowance” into 1995 Regulation A2 (interpretation), 2008 Regulations 2.A.1 (interpretation: general) and 3.A.1 (interpretation of Part 3: general), Schedule 15 (definitions) to the 2015 Regulations, and Regulation 2 (interpretation) of the 2015 Transitional Regulations respectively. In all those definitions that term has the meaning given in section 637R of the Income Tax (Earnings and Pensions) Act 2003. The reference to the “lifetime allowance” in partial retirement regulations across the two NHS Pension Schemes (1995 Regulation E5A, 2008 Regulations 2.D.5 and 3.D.5 and 2015 Regulation 84) and in the 2015 Transitional Regulations at regulation 31 (partial retirement) is replaced by a reference to the “lump sum and death benefit allowance” by regulations 5(4),12(4), 16(3), 25(3) and 33 of this statutory instrument respectively.

What was the previous policy, how is this different?

- 5.48 Changes to the National Health Service Pension Schemes can only be implemented by secondary legislation. Past policy and the changes implemented by this statutory instrument are summarised as follows.
- 5.49 New member contribution rates and the pensionable pay thresholds at which those rates apply, replace previous rates and thresholds. Pay thresholds were previously increased in line with Agenda for Change pay awards via a retrospective statutory

instrument. Thresholds will now be increased automatically on 1 April annually in line with the percentage increase in CPI as measured at the previous September. The temporary modifications that assist the operation of tiered contribution rates in the 2022-23 scheme year will now expire on 31 March 2025 instead of 31 March 2024. The employer contribution rate was 20.6% of each member's pensionable earnings. In line with the 2020 valuation results, that rate is now 23.7%.

- 5.50 Members with historical special retirement rights in the 1995 Section (typically nurses) were subject to abatement of pension based on those rights on return to NHS employment between the ages of 55 and 60. The abatement provisions had been suspended until 31 March 2025 and are now withdrawn permanently.
- 5.51 Members who had reached their maximum entitlement in the 1995 Section were not able to access partial retirement. That flexible retirement option is now open to such members. In respect of all members accessing partial retirement, the requirement that members must reduce their pensionable earnings can no longer be met by entering into a salary sacrifice arrangement.
- 5.52 Members taking partial retirement were required to take a minimum pension worth no less than 0.05% of their lifetime allowance. Further to the abolition of that allowance, members are required to take a minimum pension worth no less than 0.05% of the new lump sum and death benefit allowance.
- 5.53 The definition of "overtime" in the 2015 Scheme is amended to clarify that any period worked in excess of whole-time hours, according to the terms of the member's employment contract, is "overtime". This reflects long-standing practice for the 1995 and 2008 Sections where additional hours worked by part-time employees are pensionable up to whole-time hours.
- 5.54 Members who worked additional pensionable hours during the 12-month period following partial retirement were at risk of having their pension suspended. Payments for additional hours worked above a member's core contract by partial retirees are non-pensionable during the 12-month period and eliminates the risk of their pension being suspended.
- 5.55 Further to the Carer's Leave Act 2023, members who take unpaid carer's leave are treated as having continued in pensionable service during the time that they are absent from work.

6. Legislative and Legal Context

How has the law changed?

- 6.1 The Public Service Pensions Act 2013 ('the 2013 Act') provides a power for the Secretary of State to make regulations establishing the 2015 Scheme. The 2015 Scheme is set out by The National Health Service Pension Scheme Regulations 2015 (SI 2015/94).
- 6.2 The Superannuation Act 1972 ('the 1972 Act') provides equivalent powers regarding the 1995 and 2008 Sections of the legacy pension scheme that is now closed to further accrual. These Sections are set out by The National Health Service Pension Scheme Regulations 1995 (SI 1995/300) and The National Health Service Pension Scheme Regulations 2008 (SI 2008/653).
- 6.3 The 2013 Act also provides powers to make transitional provisions for the appropriate treatment of scheme benefits where there is membership of both the 2015 and legacy pension schemes. These transitional provisions are set out by The National Health

Service Pension Scheme (Transitional and Consequential Provisions) Regulations 2015 (SI 2015/95).

- 6.4 The 1972 Act provides powers to make regulations that provide for the payment of additional voluntary contributions by members to secure additional benefits financed by investment of those contributions. Provisions to that effect are set out by The National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000 (SI 2000/619).
- 6.5 This instrument has seven parts and gives effect to the policy changes described in section 5. Part 1 is introductory, Part 2 amends the 1995 Section, Part 3 amends the NHS Additional Voluntary Contributions Scheme, Part 4 amends the 2008 Section, Part 5 amends the 2015 Scheme, Part 6 amends the 2015 Transitional Regulations and Part 7 amends the National Health Service Pension Schemes (Amendment) Regulations 2023.

Why was this approach taken to change the law?

- 6.6 This is the only possible approach to make the necessary changes. The NHS Pension Schemes are statutory and the provisions are set out in regulations.
- 6.7 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 the NHS Pension Schemes 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 and the Department will update these informal consolidations to reflect further amendments made since that date up to and including those made by this instrument.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 The proposed changes made by this instrument were published for consultation between 26 October and 7 January 2024. A total of 160 responses were received. Respondents included NHS organisations, trade unions, representatives of the hospice sector and individuals working in the NHS. A document summarising the consultation feedback and setting out the Department's response is available on gov.uk⁴.
- 7.2 The 6-tier member contribution rate structure and the two-phase approach to implementation was the subject of a previous consultation process and enhanced procedure for protected elements under section 22 of the 2013 Act. The consultation response⁵ and section 22 report⁶ are published on gov.uk. This consultation therefore did not seek views on the 6-tier rate structure and instead presented the 6-tier structure with the earning thresholds updated in line with subsequent Agenda for Change pay awards.
- 7.3 Respondents to this consultation considered annual uplifts of contribution tier thresholds in line with increases in CPI to be a reasonable approach with practical

⁴ Consultation response: <https://www.gov.uk/government/consultations/nhs-pension-scheme-proposed-policy-changes-for-april-2024>

⁵ Consultation response: <https://www.gov.uk/government/consultations/nhs-pension-scheme-proposed-changes-to-member-contributions>

⁶ Section 22 report: <https://www.gov.uk/government/publications/changes-to-member-contributions-in-the-nhs-pension-scheme/the-national-health-service-pension-schemes-member-contributions-etc-amendment-regulations-2022>

advantages. However, a number of respondents expressed preference for applying uplifts based on Agenda for Change pay awards, amid concerns about ‘cliff edge’ effects where the value of pay awards are undermined by staff drifting into a higher contribution rate tiers. Several respondents advocated for a ‘double lock’ solution to these concerns where thresholds for a scheme year are increased by the higher of CPI or the pay award. In response the Department agreed to adopt this proposal and followed the enhance procedure required by section 22 of the 2013 Act.

- 7.4 Respondents were unconcerned about proposals to implement a new employer rate because funding support will be provided to cover the cost of the increase for all employers except a small increase for medical schools.
- 7.5 Respondents were generally supportive of clarifying the definition of overtime so that it reflects longstanding practice and providing an exception for members who took partial retirement in the previous 12-months. Some respondents argued that the requirement to reduce pensionable pay by at least 10% should be removed altogether. The Department is unable to agree as the policy intent is for partial retirement to involve taking steps to phase towards full retirement.
- 7.6 The proposal to exclude salary sacrifice arrangements for the purposes of satisfying the partial retirement criteria had a mixed reception, with 49% signalling agreement, 13% disagreement and 38% didn’t know. Respondents who disagreed again expressed their opposition to the policy of requiring a reduction in pensionable pay of at least 10%. The proposal to remove pension abatement for special class members received broad support, as did the proposals on carer’s leave and consequential changes connected with the abolition of the lifetime allowance. Respondents were in favour of the proposal to extend eligibility for partial retirement to members who had reached maximum service in the 1995 Section.

8. Applicable Guidance

- 8.1 Guidance on the NHS Pension Scheme is provided via a range of resources including factsheets, online videos and scheme guides on the scheme administrator’s website⁷.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment has not been prepared for this instrument because no, or no significant, impact on private, voluntary or public sector is foreseen.

Impact on businesses, charities and voluntary bodies

- 9.2 There is no, or no significant, impact on business, charities or voluntary bodies who participate in the NHS Pension Scheme because funding is being provided to meet the additional cost arising from the new employer contribution rate, except for university medical schools who will pay a small portion of the rate increase (a 0.46 percentage point increase in cost for this group).
- 9.3 The legislation does not impact small or micro businesses.
- 9.4 The impact on the public sector is minimal, but these changes will impact NHS workers who are members of the NHS Pension Scheme and their employers. The changes will mean most members will see the cost of accruing pension scheme benefits change on 1 April. Approximately 47% will pay a higher contribution rate,

⁷ NHS Business Services Authority: <https://www.nhsbsa.nhs.uk/nhs-pensions>

24% will see their rate remain the same, and 29% will pay a lower contribution rate. The employer contribution rate will increase however funding is being provided to meet the additional cost.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 In accordance with section 7 of the Public Services Pensions Act 2013, the Scheme Advisory Board (see paragraph 5.2) 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.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Rt Hon Andrew Stephenson CBE MP has made the following statement:

“The NHS Pension Schemes Regulations amended by this instrument are not considered to 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.”

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 Section 22 of the Public Service Pensions Act 2013 provides the procedures to be followed when changing the protected elements of scheme regulations within the protected period. Amendments to members’ contribution rates are a protected element of scheme regulations under section 22(5) of the 2013 Act.

11.2 Accordingly, DHSC has consulted with the persons (or representatives of the persons) who appear to the Secretary of State likely to be affected by this instrument with a view to reaching agreement on the changes to member contributions contained in Part 5.

11.3 Additionally, a report setting out why the Secretary of State proposes to make these regulations has been laid before Parliament in accordance with section 22(2)(b) of the 2013 Act. The amendments relating to contributions contained in Part 5 of this instrument have effect from 1 April 2024

11.4 Regulations 30(3)(a), (d), (e) and (f) are made with retrospective effect. These amendments insert definitions which have been missing from the 2015 Regulations since the date to which they are now to be given retrospective effect. These retrospective amendments therefore correct errors and the instrument is issued free issue in consequence of this. The SI Registrar has been consulted with regards to this.

12. European Convention on Human Rights

12.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).