



Department
of Health

The draft National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions (Amendment) Regulations 2016

Consultation Document & Explanatory Notes

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Introduction

1. The Department of Health has published for consultation a draft Statutory Instrument titled: The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions (Amendment) Regulations 2016. This instrument proposes amendments to the regulations that provide the rules for the NHS Pension Schemes in England & Wales, the supplementary Additional Voluntary Contribution arrangements and the Injury Benefits scheme.
2. There are two NHS Pension Schemes: the new reformed 2015 scheme and the older, closed scheme which is divided into the 1995 and 2008 sections. Accordingly there are three sets of regulations under which entitlement to pension and other benefits are calculated:
 - The National Health Service Pension Scheme Regulations 1995 (SI 1995/300)
 - The National Health Service Pension Scheme Regulations 2008 (SI 2008/653)
 - The National Health Service Pension Scheme Regulations 2015 (SI 2015/94)
3. The National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000 (SI 2000/619) provides a facility through which members of the NHS Pension Schemes can supplement the value of their pension by making additional contributions to a third party provider. The National Health Service (Injury Benefits) Regulations 1995 (SI 1995/866) provides for certain payments to be made to NHS staff following a work-related illness or injury (“The Injury Benefits Scheme”). The Injury Benefits Scheme closed on 31 March 2013, with a “sunset clause” allowing certain claims to be made until 31 March 2038.
4. The National Health Service Pension Scheme (Transitional and Consequential Provisions) Regulations 2015 (SI 2015/95) put in place transitional arrangements for members of the new 2015 scheme who have pension rights accrued in either the 1995 or 2008 section of the old NHS pension scheme. The transitional regulations make provision for the treatment and payment of old scheme benefits during or following a period of membership of the new scheme. They also include protections permitting members close to normal pension age to remain in the old scheme.
5. In summary, the draft instrument proposes to amend the scheme regulations for the following main purposes:
 - enable GPs to pension earnings from sub-contracts where the holder of the main contract is also an NHS employer
 - adds Universal Credit to the list of relevant benefits in the NHS Injury Benefit Scheme and clarifies how claimants moving on to Employment & Support Allowance should be assessed
 - permit the money purchase AVC arrangements to pay lifetime allowance excess lump sums

- make consequential changes to scheme rules to accommodate the introduction of shared parental leave, the abolition of contracting-out and the Pension Schemes Act 2015
 - make technical corrections and refinements to improve the operation of scheme regulations
6. This document explains the purpose and effect of the provisions set out in the draft instrument. It should be read in conjunction with the draft Statutory Instrument which is available at www.gov.uk/government/collections/nhs-pensions.

How to respond

1. Comments on the proposed changes and the draft Statutory Instrument can be submitted via email to:

nhsregs16@dh.gsi.gov.uk

or by post:

NHS Pensions Policy Team
Department of Health
Room 2W09 Quarry House
Quarry Hill
Leeds LS2 7UE

2. The consultation will close on 12 February 2016.

Confidentiality of information

3. The Department will manage the information you provide in response to this consultation in accordance with the Department of Health's Information Charter¹
4. Information the Department receives, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).
5. If you want the information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act 2000, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If the Department receives a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
6. The Department will process your personal data in accordance with the Data Protection Act 1998 and in most circumstances this will mean that your personal data will not be disclosed to third parties.

¹ <https://www.gov.uk/government/organisations/department-of-health/about/personal-information-charter>

1. GP Federations

- 1.1 NHS England's 5 Year Forward View (5YFV), published in October 2014², confirmed the need for GP practices to come together to explore new, innovative ways of delivering primary care at scale. One way of doing this has been for practices to come together in local areas to form a federation. A number of federations have now been established across the country.
- 1.2 The development of new primary care organisational forms, and particularly the changes in contracting arrangements, has led to the identification of specific issues surrounding access to the NHS pension scheme. These may have a broad impact across the NHS, but specifically for GPs, seeking to pension income/earnings from federation work.

GP federations - NHS pension scheme employing authorities

- 1.3 GP federations can be formally and legally established in a number of different ways, and as a result may qualify to become an NHS pension scheme employing authority (EA) via different routes. The two main ways a GP federation would qualify to become an EA are via the "classic APMS" route or via the independent provider (IP) route.
- 1.4 The "classic APMS" route refers to the regulatory provisions relating to APMS contractors that are also eligible to hold a GMS or PMS contract. Federations holding an APMS contract or a "hybrid" NHS standard contract may therefore qualify as classic APMS EAs within the 1995, 2008 and 2015 NHS pension scheme regulations.
- 1.5 If the federation is not legally constituted in a way that would allow it to hold a GMS or PMS contract (which can only be held by medical practitioners or a practice with shareholders from the "NHS family") then the federation cannot qualify as a "classic APMS" provider, but instead must apply to become an IP. GMS contracts may be held by partnerships as long as at least one partner (who must not be a limited partner) is a general medical practitioner.
- 1.6 GMS contracts may be held by a company limited by shares as long as at least one share in the company is legally and beneficially owned by a qualifying general medical practitioner and any other share or shares in the company that are legally and beneficially owned by a medical practitioner who is employed by a Local Health Board (in England and Wales), an NHS Trust, or an NHS foundation trust.
- 1.7 PMS contracts can be held by individual medical practitioners, NHS employees and companies limited by shares owned by medical practitioners, NHS trusts, individuals providing personal medical services or NHS employees.

² <https://www.england.nhs.uk/wp-content/uploads/2014/10/5yfv-web.pdf>

- 1.8 Being a “classic APMS” EA currently allows GPs to pension earnings from federation income as practitioners, if they retain that status as protected members of the closed 1995/2008 NHS pension scheme. GPs in the 2015 NHS pension scheme accrue their pension in the same way as other members because the 2015 scheme is a Career Average Revalued Earnings (CARE) scheme.
- 1.9 However, if a federation does not hold an APMS contract – or holds an APMS (or hybrid NHS standard contract) but is not able to enter into a GMS or PMS contract – then it can only apply to become an EA via the IP route. This requires the federation to hold a qualifying contract for NHS clinical services. Assuming the federation is granted IP status, only its employees can pension income from the IP. Any GPs who remain in the 1995/2008 scheme cannot pension earnings from an IP as a practitioner; they would need to be employed by the IP and pension the income as an “officer”.
- 1.10 For clarity, a “hybrid” NHS standard contract can be legally recognised as both an APMS contract and an NHS standard contract, and it is possible that the same hybrid contract may be classified as both for different purposes. For example, it may be classed as an APMS contract to enable the federation to be recognised as a “classic” APMS EA; or as an NHS standard contract for the purposes of sub-contracting.

Sub-contracting

- 1.11 To date, the scheme regulations have not permitted income or earnings coming from a sub-contract to be pensioned by those EAs that qualify as an EA via the contracts that they hold (such as IPs and GP practices). NHS trusts, foundation Trusts and CCGs, for example, qualify as EAs because they are qualifying statutory bodies, which means that the nature of their contracting arrangements are not relevant to their status as EAs.
- 1.12 One of the main changes occurring as a result of the development of new models of care, such as GP federations, are the contracting arrangements. Moves to federations and lead provider models mean that sub-contracting is becoming far more prevalent, particularly in primary care. It is clear that GPs value their NHS pension highly, and the inability to pension earnings from sub-contracts was raised with the Department as a significant block to further reform in primary care.
- 1.13 Following discussions with NHS England, the Department agreed to consider ways to allow sub-contracted NHS earnings to be pensioned, whilst retaining appropriate checks and controls in order to limit the extension of scheme liabilities. It is important that, when extending the scope of pensionable earnings in this way, an appropriate form of sub-contract that complies with wider contracting requirements is identifiable. This will ensure that the scheme administrator can reliably validate eligible sub-contracted pensionable earnings when necessary.
- 1.14 The NHS standard contract is now increasingly used to commission primary and secondary care. There is, however, no consistent approach to sub-contracts. To ensure that only NHS work is pensioned, and scheme liabilities are appropriately controlled, the Department has decided to require the use of the NHS standard

sub-contract, jointly produced by the Department and NHS England³. This sub-contract gives providers access to a sub-contract that follows the format of the NHS standard contract for clinical services. This allows for a clear line of sight for the funding of NHS clinical services to flow through the main NHS standard contract and down to the sub-contract.

- 1.15 It is also highly relevant that there is no prescribed model for GP federations; or other new emerging models of care. It is therefore difficult to define or name a body in scheme regulations; but it is possible – and is already the case elsewhere in scheme regulations – to mandate the form or type of contract to be used to ensure consistency and legal certainty.
- 1.16 Draft regulation 18(3) provides for an amendment to Schedule 2 of the 1995 section regulations which will allow income/earnings from NHS standard sub-contracts to be pensioned, where the holder of the main NHS standard contract is also an EA. Draft regulations 41(2) and 84(3) make the same amendment to the corresponding 2008 and 2015 regulations.
- 1.17 Ensuring that the holder of the main contract is also an EA will allow checks and oversight of sub-contracting to be undertaken by the scheme administrator (NHS Business Services Authority – NHS BSA) via the annual returns that practitioners and IPs must complete and return, by law, to NHS BSA after the end of each pension scheme year.
- 1.18 Draft amending regulation 3(d) allows for the definition of “NHS standard sub-contract” to be included in the 1995 regulations; as draft amending regulations 21(e), 39(e) and 84(2)(c) do for the 2008 and 2015 scheme regulations respectively.
- 1.19 Draft amending regulation 19(3) provides for a consequential amendment to the 1995 section regulations which set out the requirements for annual returns to be provided by IPs. This is needed as a result of allowing GPs to pension earnings from NHS standard sub-contracts, and extends the requirement of the annual return to include sub-contracts issued as NHS standard sub-contracts, and to identify the sub-contractor. Draft amending regulations 38 and 80 make the same required addition to the 2008 and 2015 regulations respectively.
- 1.20 These changes will be effective from 1 April 2016; a retrospective date (1 April 2015, for example) was considered but felt to be potentially difficult to implement, mainly for annual allowance taxation reasons. It is also felt appropriate to give notice of the requirement to use the NHS standard sub-contract if eligible NHS pension scheme members wish to pension earnings from a sub-contract.

Definition of practice staff

³https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/434673/NHS_Standard_Contract_15_1_6_Guidance.pdf

- 1.21 In considering making the amendments proposed above, the existing definition of practice staff – which is the same across the three sets of regulations (1995 section, 2008 section and 2015 scheme) – was thought to be too narrow to accommodate the changes in primary care as new models of care emerge and more sub-contracts are awarded.
- 1.22 It is therefore proposed by draft amending regulations 3(c), 21(c), 39(c) and 86(a) that the definition is expanded to include reference to work done by the practice pursuant to NHS standard contracts and NHS standard sub-contracts. The draft amending regulations change the 1995 section, 2008 section, and 2015 scheme regulations respectively.

Locum GPs

- 1.22 It has been noted that a previous amendment made from 1 April 2014 to include payments made to practitioners pursuant to the NHS standard contract as pensionable earnings was not extended to locum practitioners in the 1995 or 2008 section regulations. There appears to be no clear policy rationale for this, and it is therefore right that it is corrected.
- 1.23 Draft amending regulations 18(2) and 18(4)(b)(i) add wording to the relevant provisions in Schedule 2 to the 1995 section regulations to ensure that locum practitioners can pension earnings from NHS standard contract work, plus from 1 April 2016 earnings from NHS standard sub-contract work. Draft amending regulation 43(3) makes the required amendment to the 2008 section regulations. In the 2015 scheme regulations reference to the NHS standard contract for locum practitioners is included in Schedule 10, paragraph 7(3)(h); so the only amendment required is to add the reference to the NHS standard sub-contract. Draft amending regulation 84(4)(a) does this for the 2015 scheme regulations.
- 1.24 It has also been noted that there are “qualifying” paragraphs in the regulations defining pensionable earnings for locum practitioners which essentially repeat definitions that appear elsewhere in the regulations. Draft amending regulations 18(4)(b)(ii) and 84(4)(b) omit the relevant duplicate provisions from the 1995 section and 2015 scheme regulations respectively. Due to the different nature of the drafting of the 2008 section regulations there is no need to amend this aspect of those regulations.

Allowing for retrospective granting of Independent Provider Status

- 1.25 Recognising the requirement for sub-contractors to be contracting with other EAs, and acknowledging that, on occasion, contracting formalities are not always completed in good time before the commencement of service delivery, the Department has considered whether only granting IP status prospectively remains appropriate. Draft amending regulation 19 provides for an amendment to the 1995 section regulations which would allow an application for IP status to contain a retrospective “nominated date”, which can be the “approval date” for IP status in certain limited circumstances.

- 1.26 Those circumstances are that the IP has paid employer and employee contributions due for the retrospective period, and that they have satisfied the other requirements (such as being a party to a qualifying contract, and having employees performing services pursuant to a qualifying contract for more than 50% of their time) throughout the retrospective period. Draft amending regulations 37 and 78(3) provide for the same amendments to be made to the corresponding regulations in the 2008 and 2015 regulations respectively.
- 1.27 It remains a key requirement that the IP must be a party to a qualifying contract in order to satisfy the regulations and be granted IP status. The Department has been advised that an IP becomes a party to a qualifying contract on the date the contract is signed and dated by all relevant parties. It would therefore be necessary for this to have happened by the proposed retrospective approval date. Bearing this in mind, the Department is interested in respondents' views as to whether or not it is likely in practice that this proposed amendment will assist IPs to provide membership of the NHS pension scheme for their eligible employees from the commencement of the delivery of the relevant clinical services.

2. Injury Benefits Scheme

- 2.1 The Injury Benefits Scheme provides an annual allowance for NHS staff who have suffered a permanent loss of earning ability as the result of an illness or injury that is wholly or mainly attributable to their NHS employment.
- 2.2 The Injury Benefits Scheme closed on 31 March 2013, with a “sunset clause” allowing certain claims to be made until 31 March 2038. The Department continues to monitor how the regulations work in practice and considers whether amendments are necessary to ensure the regulations work in the intended way.
- 2.3 Injury Benefits Scheme claimants often also qualify for state benefits related to their inability to work, and any income received from state benefits (that relates to the qualifying injury or disease) is offset against the Injury Benefits Scheme award. The claimant’s income is made up to the required level, prescribed in regulations, through a combination of state benefits and the Injury Benefits Scheme award.

Employment and Support Allowance

- 2.4 An issue which has arisen recently relates to the introduction of the employment and support allowance (ESA) to replace various state benefits, including incapacity benefit. The Injury Benefits Scheme regulations were amended from 1 April 2009 to include ESA in regulation 4(6)(b) so it became a relevant benefit from that date. This means that any Injury Benefit Scheme claimant moved on to ESA from that date would have their award re-assessed from the start date of ESA. The Injury Benefit Scheme regulations are made under powers contained in the Superannuation Act 1972. This means that any amending statutory instrument, such as the one that introduced ESA to the regulations, must include a “no detriment” provision. This provision allows affected Injury Benefit Scheme claimants to opt that a potentially detrimental change to regulations should not apply to them.
- 2.5 The “no detriment” provision should be invoked by scheme members within 6 months of the relevant amendment being made. In the case of ESA, it was more than 12 months after 1 April 2009 that claimants began to be moved on to that new benefit. It was therefore impossible for Injury Benefit Scheme claimants to know or anticipate whether they would be affected detrimentally by the introduction of ESA within 6 months of the regulations being amended.
- 2.6 Reviews of Injury Benefit Scheme awards can only occur at the commencement or cessation of a relevant benefit. Moving onto ESA qualifies as a “commencement” and therefore the scheme administrator must undertake a review of the claimant’s income and adjust the Injury Benefit Scheme award if necessary. Due to the way it is calculated and paid, the ESA award is usually higher than the amount taken into account when the original pre-ESA benefit was commenced. Recent experience of Injury Benefit Scheme claimants moving onto ESA has largely been that their Injury Benefit Scheme award has reduced, affecting their overall income and meaning that the regulatory amendment made in April 2009 was arguably detrimental. However, many claimants are unaware of the “no detriment” provision

or due to the passage of time, significantly beyond the 6 month period during which objections should be raised.

- 2.7 In some cases the review has revealed an historic overpayment of the Injury Benefit Scheme award, which has arisen because the level of state benefits being paid fluctuates but there is no requirement for the Injury Benefit Scheme award to be adjusted to reflect any changes. Some claimants have repaid overpayments in full and others have been doing so incrementally.
- 2.8 The Department and the scheme administrator have carefully considered these cases and decided to implement a retrospective change to the Injury Benefit Scheme regulations which should remove any detriment to claimants moving on to ESA. Draft amending regulations 96(2)(a) and 96(3) implement this amendment.
- 2.9 Making this change to the way Injury Benefit Scheme awards are calculated when ESA “commences” will be retrospective to 1 April 2009 – the date when ESA was inserted into the Injury Benefit Scheme regulations. This means that any case that has already been considered, and where there has proven to be a detriment, will be reconsidered in line with the amended regulations. Affected claimants will be contacted in due course by the scheme administrator, the NHS Business Services Authority.

Universal Credit

- 2.10 The introduction of universal credit, which will eventually replace a number of existing benefits, via the Welfare Reform Act 2012 needs to be reflected in the list of relevant benefits under the Injury Benefits Scheme. Draft amending regulation 96(2)(b) therefore inserts universal credit into regulation 4(6)(b) of the Injury Benefit Scheme regulations.

3. Additional Voluntary Contributions

- 3.1 Since the decision by the last Government to introduce pensions freedoms and flexibilities (known as “freedom and choice”), largely implemented by the Taxation of Pensions Act 2014, the Department has been considering how the resulting changes introduced to the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000 have been working in practice.
- 3.2 The amendments, made from April 2015, allowed members of the NHS money purchase additional voluntary contributions (MPAVC) scheme:
- to claim their MPAVC pension pot separately from their main NHS Pension Scheme benefits
 - to claim their MPAVC pension pot from their minimum pension age
 - removed the requirement to purchase an annuity with MPAVC pension pot
- 3.3 These amendments have been broadly welcomed and a number of MPAVC scheme members have taken advantage of them via the MPAVC scheme providers (Equitable Life, Prudential and Standard Life). It has become apparent though that the reforms to the NHS MPAVC scheme regulations could have gone further; and this draft statutory instrument proposes two further changes to the scheme rules.
- 3.4 Firstly, it is proposed that a change should be made to regulation 11, by draft amending regulation 98, to allow MPAVC pension pots to be taken as a lifetime allowance excess lump sum. Such a lump sum has been a legally permissible payment since 2006, and there is no policy reason for it not to now be allowed under the NHS MPAVC scheme rules. Members will incur a taxation charge if taking such a payment, however, MPAVC providers have informed the Department that there is a demand for such payments to be permissible under the MPAVC scheme.
- 3.5 A consequential amendment needed as a result of allowing lifetime allowance excess lump sum payments is to delete regulation 13 (benefit limits). This is achieved by draft amending regulation 99. Regulation 13 limits benefits paid from the MPAVC scheme to the member’s lifetime allowance limit. Analogous provisions were deleted from other comparable public service MPAVC scheme rules in 2006 when the lifetime allowance was introduced. There is no good policy reason for the provision to remain in the NHS MPAVC scheme regulations.
- 3.6 A couple of further amendments are also needed to the NHS Pension Scheme (Additional Voluntary Contributions) Regulations 2000. The first is a consequential change, given the proposed deletion of regulation 13, to remove reference to that regulation in regulation 3(5)(a). The second is a technical correction to a cross-reference in regulation 15(3) which wrongly refers to regulation 11(7)(f). This cross-reference should refer to regulation 11(8)(f).

4. Technical & consequential amendments

- 4.1 A number of miscellaneous amendments are proposed. These make consequential adjustments to accommodate changes in primary legislation, or other technical corrections and refinements.

Abolition of contracting-out

- 4.2 A key element of the single-tier state pension reforms is the abolition of the State Second Pension (S2P) with effect from 6 April 2016. This means that salary related pension schemes like the NHS scheme will no longer be able to contract members out of the S2P with effect from that date⁴.

Key primary and secondary legislation concerned with the end of contracting-out

- 4.3 The Pensions Act 2014 makes various amendments to the Pension Schemes Act 1993 and a new set of regulations, The Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015, provide for the end of contracting-out with effect from 6th April 2016 and the preservation of contracting-out rights earned by members up to that date.
- 4.4 However, to support the transition and many of the associated administrative processes during the three year period up to 6th April 2019, some of the existing contracting-out provisions will remain in place. This has meant that only a small number of immediate technical changes and only one consequential change to NHS scheme regulations are necessary to ensure that scheme regulations work correctly in tandem with the new and revised legislation between 6 April 2016 and 6 April 2019.

Consequential change

- 4.5 A new provision in the Occupational Pension Schemes (Schemes that were Contracted-out)(No.2) Regulations 2015⁵ enables the forfeiture of a spouse's or surviving civil partner's guaranteed minimum pension⁶ (GMP) where the beneficiary is convicted of the murder or manslaughter of the member by reference to whose contracted-out membership the GMP has accrued. Amending regulations 7, 15, 30, 36, 50, 56, 68, 69(3) and 81(3) amend 1995 regulations K1 and T6, 2008 regulations 2.E.26, 2.J.7,3.E.26, and 3.J.7 and 2015 regulations 115, 118, and paragraph 12 of schedule 3 to implement this change.

⁴ Broadly, contracting-out gives schemes the ability to forgo members' entitlement to S2P on the basis of their entitlement to occupational pension provision. Members who are contracted out in this way and their employers pay lower national insurance contributions.

⁵ Regulation 26(2)(e)

⁶ The minimum amount schemes must pay to members and their spouses or civil partners as a result of contracting such members out of the State Earnings Related Pension Scheme for service between 1978 and 1997.

Technical changes - 1995 Regulations

- 4.6 A definition of “contracted out-employment” is inserted into regulation A2 by amending regulation 3(d).
- 4.7 Regulations K4 and K5 deal with increases to GMP (earned in the NHS scheme or transferred in) in circumstances where members leave contracted-out employment before their GMP is due for payment. Amendments are made by regulations 8 and 9 to ensure that such increases also apply where members with a GMP leave pensionable employment after 6 April 2016.
- 4.8 Regulation Q1 allows members to buy added years equivalent to any years for which a refund was paid at half cost where the service in question was not contracted out service. Amending regulation 12 ensures that this facility does not apply to service on or after 6 April 2016 when contracting out is abolished.

1995, 2008 and 2015 Regulations

- 4.9 Regulations T7, 2.J.5, 3.J.5 and paragraph 6 of schedule 3 to the 2015 regulations deal with the conversion of pension into lump sum on the grounds of triviality. Amending regulations 16, 34, 54 and 81(2) adjust those regulations so that they work in conjunction with regulation 18 of the Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015 and Section 9(2) of the Pension Schemes Act 1993.

2008 and 2015 Regulations only

- 4.10 Regulations 2.D.22, 3.D.18 and regulation 110 deal with guaranteed minimum pensions. Amending regulations 28, 48 and 67 replace references in those regulations to revoked regulation 60 of the Occupational Pension Schemes (Contracting-out) Regulations 1996 with a reference to its replacement found at regulation 25 of the Occupational Pension Schemes (Schemes that were Contracted-Out) (No.2) Regulations 2015.

Shared parental leave

- 4.11 Part 7 of the Children and Families Act 2014 establishes new entitlements to shared parental leave and statutory shared parental pay. It abolishes additional paternity leave and additional statutory parental pay.
- 4.12 Accordingly, amending regulations 3(d), 11, 18(3)(b), 18(5), 21(e), 22, 23, 26, 29, 39(e), 40, 41(3), 42, 46, 49, 57, 59, 60, 65, 84(2)(a), 84(2)(b), 85 and 86(b) insert new references to shared parental leave alongside existing references to parental leave. Such references are found in scheme provisions dealing with absences from work, and the pay or earnings taken into account during such periods. These new provisions are backdated to 31 December 2014.

Pension Schemes Act 2015

- 4.13 The Pension Schemes Act 2015 amended the Pension Schemes Act 1993 to prevent the transfer of deferred benefits from unfunded public service pension schemes to other schemes offering 'flexible benefits'. The ban applies to all deferred members who are covered by the Pension Schemes Act 1993 provisions (Chapter 1 of Part 4ZA).
- 4.14 The two Pension Schemes Acts combine to apply the ban to deferred members who leave at least one year before normal pension age and also make an application for payment.
- 4.15 However the 2008 and 2015 scheme regulations contain provisions that supplement the operation of the Pension Schemes Act 1993. The effect is to permit transfers where a member leaves, makes a transfer application and applies for payment in the year before normal pension age. We expect there to be very few if any members that fit these circumstances. However to ensure the ban is fully implemented, amending regulations 32, 52 and 75 close this small lacuna.
- 4.16 In a similar vein, amending regulation 10(3) clarifies in 1995 regulation M1 that deferred members cannot transfer to Qualifying Recognised Overseas Schemes offering flexible benefits where the member leaves, makes an application and applies for payment between ages 59 and 60.
- 4.17 Finally, a number of consequential amendments are also made that:
- update cross-references to Pension Schemes Act 1993 provisions that have been re-located or re-numbered by the Pension Schemes Act 2015 (e.g. Chapter 4 of Part 4 becomes Chapter 1 of Part 4ZA). See amending regulations 3(b), 10(3), 21(b), 27, 31, 39(b), 47, 51, 62, 63, 72, 73 and 74.
 - remove obsolete references to 'safeguarded rights' and 'safeguarded percentage'. See amending regulations 3(e), 21(d), 35, 39(d) and 55. Safeguarded rights formed part of a pension from contracted out service that was shared under a Pension Sharing Order on divorce or cessation of a Civil Partnership. Certain restrictions applied as to what could and could not be done with safeguarded rights. Safeguarded rights were provided for in primary legislation by section 68A of the Pension Schemes Act 1993. That section was repealed in 2009.
 - Update the definition of "buy out policy" to reflect changes made to the title of Section 19 of the Pensions Schemes Act 1993 which contains requirements as to how liability for a guaranteed minimum pension may be discharged via a transfer to such a policy. See amending regulations 3(a), 21(a), 39(a) and 76 which amend regulations A2, 2.A.1, 3.A.1 and 141. Amending regulation 10(2) makes clear that any buy-out policy purchased must satisfy the requirements of regulation 12(2) of the Occupational Pension Schemes (Transfer Values) Regulations 1996.
- 4.18 These provisions have effect from 1 April 2016.

Bulk transfers

- 4.19 An amendment is proposed to 1995 regulation B3 to ensure that certain members who are compulsorily transferred into the NHS after 1 April 2015 because of a machinery of government transfer (or subsequent transfer where the person was originally in a public sector scheme) are able to join the 1995 Section if they meet NHS scheme criteria for protection.
- 4.20 Regulation B2(3) permits individuals to join the 1995 section where a compulsory transfer has taken place. Amending regulation 5 ensures that the provisions at regulation B3 restricting eligibility to individuals holding protection also cater for scenarios where an individual is permitted to join under B2(3). Otherwise such individuals would be ineligible to join the scheme even if the criteria for protection is otherwise met.

General refinements and corrections

- 4.21 The following amendments are retrospective to 1 April 2015 unless otherwise stated.
- 4.22 The Fourth report⁷ of the Joint Committee on Statutory Instruments indicated a need to improve the clarity of 2015 regulation 154. This is acknowledged by the Department in a memorandum to the Committee, which is published in the report. **Amending regulation 79** makes the necessary adjustments.

Amending regulations 4, 6, 13, 14, 17, 33, 45, 53, 61, 66, 77, 78(2), and 83 correct cross-references

- 4.23 **Amending regulation 4** replaces the cross reference to paragraph (8V) in 1995 regulation B1(3B)(b) (membership of this Section of the scheme) with paragraph (8U). **Amending regulation 6** inserts a missing cross-reference in 1995 regulation D2. Employing authorities are not required to meet the early payment cost of any additional service bought by the member. The amendment ensures that this applies to both new and old redundancy retirement provisions. **Amending regulation 13** corrects a cross-reference in regulation Q9(1)(a) (effect of member being absent or leaving and re-joining this section of the scheme during the contribution option period). This amendment is retrospective to 1 April 2008.
- 4.24 **Amending regulations 14, 33 and 53** correct an omission by inserting cross-references to the Public Service Pensions Act (Northern Ireland) 2014. 1995 regulation R8 and 2008 regulations 2.F.9 and 3.F.9 allow persons joining the 2015 scheme from other health service schemes to transfer in final salary benefits only into the 1995 or 2008 sections where that service has a final salary link under

⁷ Fourth report of the 2015-16 session, dated 18 September 2015.
<http://www.publications.parliament.uk/pa/jt201516/jtselect/jtstatin/35/3503.htm#a1>

paragraph 2 of Schedule 7 to the 2013 Act. This is extended to include service with a final salary link under the equivalent Northern Ireland provisions.

- 4.25 **Amending regulation 45** amends the cross-reference to 2.J.14 in 2008 regulation 3.C.5(19A) (payment of contributions). This amendment is retrospective to 1 April 2013. **Amending regulation 61** inserts a missing cross-reference to regulations 34 and 35 in regulation 37(1) (member's contributions: records and estimates). The intention is for employing authorities to keep a record of all employer contributions made, including those payable in the event that a premature retirement pension is paid on grounds of redundancy or in the interests of the efficiency of the service. In a similar way, **amending regulation 17** corrects a cross-reference that narrowed the EA obligation in 1995 regulation U3 to keep records of employer contributions paid or unpaid. The amendment extends this obligation to any employer contribution payable, including those connected with early retirement pensions.
- 4.26 **Amending regulation 66** replaces the cross-reference to paragraph (1)(b) in 2015 regulation 94 (early retirement on ill-health (deferred members) with paragraph (1). **Amending regulations 77 and 78(2)** replace incorrect references to "employment" in 2015 regulations 151 (application for employing authority status) and 152 (grant of employing authority status) with "employing". **Amending regulation 83** amends cross-references to regulation 45 (accepting a buy-out election) in paragraph 15 of schedule 9 (pension accounts).

Amending regulations 24 and 44 omit obsolete paragraphs

- 4.27 **Amending regulation 24** omits obsolete paragraph (2)(c) from 2008 regulation 2.B.2 (restrictions on eligibility: general). **Amending regulation 44** makes the equivalent amendment to 2008 regulation 3.B.2 (restrictions on eligibility: general) and omits obsolete paragraph (1)(c).

Amending regulations 25, 64, 69(2), 70, 71, 82 and 89 make a number of operational or technical corrections

- 4.28 **Amending regulation 25** amends provisions in 2008 regulation 2.C.1 (contributions by members), which incorrectly reference the 1995 regulations. This amendment is retrospective to 1 April 2013. **Amending regulation 64** replaces paragraph (2) of 2015 regulation 63 (repayment of lump sum contribution) to clarify the provision for repayment of a lump sum contribution paid by a scheme member for Additional Pension in certain circumstances.
- 4.29 **Amending regulation 69(2)** amends 2015 regulation 118 (recent leavers) to clarify the pension for a surviving spouse or surviving civil partner following the death of a recent leaver, as defined in paragraph (4) of that regulation. **Amending regulation 70** amends the formula in paragraph (3) of regulation 124 (amount of child pension: deceased pensioner member) relating to the basic death pension calculation of the child pension to clarify that 'A' in the formula does not include any tier 2 addition to an ill-health pension.

- 4.30 **Amending regulation 71** removes the reference to “an active member” from paragraph (1)(b) of regulation 125 (amount of child pension: deceased deferred member) to allow for the payment of a child pension following the death of a member who is both active and deferred. **Amending regulation 82** amends paragraph 1 of schedule 4 (opting out and re-joining) to clarify the intention of the opting-out provisions where a member has more than one employment. The amendment adds two new sub-paragraphs to paragraph (1) to clarify that an officer member who works in more than one part-time post may opt out of one employment whilst continuing as an active member in a concurrent post.
- 4.31 **Amending regulation 89** inserts a new regulation 10A to resolve an anomaly in the transitional provisions. The new regulation allows for the 2015 scheme tier 2 addition to be properly calculated in circumstances where a member becomes eligible to join the 2015 scheme but has zero pensionable earnings due to exhaustion of paid sick leave.

Amending regulations 88 and 90 to 93 amend the National Health Service Pension Scheme (Transitional and Consequential Provisions) Regulations 2015

- 4.32 **Amending regulation 88, 90 and 93(2)** correct instances where the ‘new scheme’ was incorrectly referred to as the ‘2015 scheme’.
- 4.33 **Amending regulation 91** replaces the cross reference to paragraph (8V) in regulation 27(1)(a)(i)(bb) (ill-health benefits: continuity of existing applications) with paragraph (8U). **Amending regulation 92** amends regulation 31 (partial retirement) to bring it into line with the equivalent 2008 and 2015 regulations in terms of the life-time allowance condition.
- 4.34 **Amending regulation 93(3)** makes an amendment in column 2 of regulation 40 (death in service) to ensure the correct proportion of children’s pension is payable in the event of the death of a transitional member within 12 months of deferment.

Amending regulation 95 amends the Injury Benefits Scheme Regulations

- 4.35 **Amending regulation 95** amends regulation 2C (meaning of “average remuneration”) of the National Health Service (Injury Benefits) Regulations 1995 to clarify that paragraph (5) provides for a person who is not a practitioner.