



Department  
of Health

# The draft National Health Service Pension Scheme & Additional Voluntary Contribution (Amendment) Regulations 2018

Consultation Document & Explanatory Notes

November 2017

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# Introduction

The Department of Health is consulting on a draft statutory instrument (SI) provisionally entitled: the National Health Service Pension Scheme and Additional Voluntary Contributions (Amendment) Regulations 2018. This instrument proposes amendments to the Regulations that provide the rules for the NHS Pension Schemes in England & Wales.

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)

These are referred to collectively in this document as the 'Pension Scheme Regulations'.

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 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.

In summary, the draft instrument amends the above mentioned Regulations for the following main purposes:

- Further to the recent Supreme Court judgment in the case of *Brewster, Re Application for Judicial Review (Northern Ireland) [2017] UKSC 8*, withdrawal of the requirement for an unmarried co-habiting partner to have been nominated by the member, as a condition of eligibility for receiving a survivor pension upon death of that member.
- Support the development and adoption of new care models further to the 'NHS Five Year Forward View' and the 'Next Steps' update published in March 2017, by providing appropriate access to the scheme for employers and their employees in relation to Accountable Care Organisation contracts and sub-contracts held.
- Make technical corrections and refinements to improve the operation of scheme Regulations.

This document explains the purpose and effect of the provisions set out in the draft instrument. Throughout this document 'amending regulation x' refers to a regulation in the draft SI. It should be read in conjunction with the draft Statutory Instrument which is available at [www.gov.uk/government/collections/nhs-pensions](http://www.gov.uk/government/collections/nhs-pensions).

# Consultation questions

The Department welcomes any comments or views on the proposals set out in this document and the draft Regulations. Respondents are invited to consider the following questions in reply.

1. Do you agree that the proposed amendments to the NHS Pension Scheme Regulations deliver the policy objectives as set out in the consultation document?
2. If 'No', why?
3. Are any changes needed to ensure the proposed amendments deliver the policy objectives?
4. Are there any additional comments you wish to provide with regard to the proposed amendments to the regulations?

# How to respond

Comments on the proposals and draft legislation can be submitted online at:

<https://consultations.dh.gov.uk/nhs-pensions/reg-changes-2018-response/>

or by post:

NHS Pensions Policy Team  
Department of Health  
Room 2W12 Quarry House  
Quarry Hill  
Leeds LS2 7UE

The consultation will close on 29 December 2017

## **Confidentiality of information**

The Department will manage the information you provide in response to this consultation in accordance with the Department of Health's Personal Information Charter<sup>1</sup>.

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 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, 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.

The Department will process your personal data in accordance with the DPA and in most circumstances this will mean that your personal data will not be disclosed to third parties.

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

# 1. Removal of requirement to nominate unmarried co-habitees for survivor benefits

- 1.1. The NHS Pension Scheme provides various pension entitlements upon the death of a scheme member. Survivor pensions for widowers were first introduced as a scheme benefit from 6 April 1988. Survivor pensions for civil partners were introduced from 5 December 2005 and for same-sex married couples from 13 March 2014. Survivor pensions for qualifying unmarried partners were first introduced as a scheme benefit from 1 April 2008.
- 1.2. In order to qualify for this benefit, an unmarried co-habiting partner must have been nominated to receive the pension before the member's death and to have been in a financially interdependent and co-habiting relationship for at least two years before the member's death. The validity of the nomination is tested at death.
- 1.3. On 8 February 2017, the Supreme Court handed down its decision in *Brewster, Re Application for Judicial Review (Northern Ireland)* [2017] UKSC 8<sup>2</sup>. The case concerned an unmarried co-habiting partner being refused a survivor pension under the Local Government Pension Scheme Northern Ireland on the basis that scheme Regulations required a cohabiting surviving partner to have been nominated by the member. No nomination had been made for the partner.
- 1.4. The Supreme Court found 'that the essence of entitlement to the benefit is that the couple have lived together for a sufficiently long period of time and that one is financially dependent on the others or that they are finally independent'. Further that being required to make a nomination added nothing to the objective inquiry as to whether an unmarried partner satisfied these other conditions. It also found that the requirement of a nomination resulted in less favourable treatment on the basis of the unmarried status of the co-habitees when compared with married couples and those in a civil partnership (where there was no nomination requirement). The Court dis-applied the nomination requirement, having found it to be unlawful, and held that the partner was entitled to receive a survivor's pension.
- 1.5. In response to the judgment, HM Treasury have determined that public service pension schemes remove the nomination form requirement for new claims and pay survivor pensions in qualifying cases from the date of the member's death, regardless of when the claim is made.

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<sup>2</sup> The judgment is available at: <https://www.supremecourt.uk/cases/uksc-2014-0180.html>

- 1.6. The judgment does not call into question the remaining qualifying criteria, namely that for a continuous period of at least two years ending with the member's death, the member and the partner were:
- Living together as if they were married or civil partners;
  - Not prevented from marrying or entering into a civil partnership;
  - Financially interdependent or the partner was financially dependent on the member, and;
  - Neither were living with a third person as if they were married or civil partners.
- 1.7. The scheme currently relies on section 3 of the Human Rights Act 1988 to set aside the unlawful nomination requirement when considering claims. However to provide legal certainty, the Department proposes to remove the unlawful provisions from scheme regulations.
- 1.8. The draft regulations amend scheme regulations with retrospective effect for members who have service on or after 1 April 2008 so that surviving partner pensions are paid to survivors who meet the qualifying criteria set out above but without the need for a nomination to be made.

### **Draft amending regulations**

*1995 NHS Pension Scheme Regulation G14 (surviving nominated partner's pension), 2008 NHS Pension Scheme Regulations 2.E.2 and 3.E.2 (meaning of surviving nominated partner) and 2015 Pension Scheme Regulation 114 (surviving nominated partner)*

- 1.9. The requirement that a nomination must be made in order for a survivor pension to be paid to a qualifying partner is contained in the regulations listed above. This requirement is removed in the new draft version of those regulations inserted by amending regulations 5, 22, 30 and 37.
- 1.10. New terminology is also introduced in the title and body of the new regulations. References to 'nominated partner's pensions' and 'nominated partners' are removed. In their place, the benefit is now appropriately referred to as a 'surviving scheme partner's pension' and the beneficiary is referred to as a 'surviving scheme partner'.
- 1.11. The qualifying criteria outlined at paragraph 1.6 above are reproduced in the new regulations. If those criteria are met for a continuous period of at least two years ending with the member's death, a surviving scheme partner's pension will be paid to a surviving scheme partner.
- 1.12. As a consequence, existing terminology is also replaced with the new terminology where it appears elsewhere in the Pension Scheme and associated Regulations. These consequential changes are outlined below.

### *Consequential changes to the 1995, 2008 and 2015 NHS Pension Scheme Regulations*

- 1.13. Amending regulations 3(b), 6 to 14, 32(1) and (2) and 38 provide for changes in terminology only. Various references to surviving 'nominated partners', and surviving 'nominated partner's pensions' are replaced by references to surviving 'scheme partners' and surviving 'scheme partner's pensions'.
- 1.14. In addition, amending regulation 32(3) removes provisions from the 2008 Regulations that allow a nomination for a partner pension made under the 1995 Regulations to also be effective under the 2008 Regulations.
- 1.15. Amending regulations 32(4) and (5) adjust cross references in regulation 2.E.9 and 3.E.9 to ensure those regulations continue to work correctly with the new versions of new regulations 2.E.2 and 3.E.2 (meaning of 'surviving scheme partner').

### *Consequential changes to the Additional Voluntary Contribution (AVC) Regulations 2000*

- 1.16. Contributors to the NHS AVC Scheme may, in certain circumstances, elect for their contributions to provide dependents benefits including a lump sum on death. Currently a 'nominated partner' may be the recipient of such a pension or lump sum.
- 1.17. In line with changes made to the main pension scheme regulations, amending regulation 46 removes the requirement that a nomination must be made in order for a benefit to be paid to an otherwise qualifying partner. This is achieved by amendments at regulation 46(1)(a) and (b) to the definitions of 'dependent' and 'surviving scheme partner' in regulation 2 of the AVC Regulations.
- 1.18. Further consequential changes to terminology only in regulation 15 (payments made by the Secretary of State) and Schedule 2 (Pension Sharing on Divorce) are made by amending regulation 46(2) and (3).

### *Consequential changes to the National Health Service Pension Scheme (Transitional and Consequential Provisions) Regulations 2015*

- 1.19. Amending regulation 48 removes provision contained in transitional regulation 5 (nominations, notices and declarations) which provided for a nomination for a partner pension made under the 1995 or 2008 Regulations to also be effective under the 2015 Regulations when members moved across to the 2015 Scheme from 1st April 2015 onwards.

## Other related changes

### *1995 NHS Pension Scheme Regulation G15 (dependent surviving nominated partner's pension)*

- 1.20. Under the 1995 section of the old (closed) scheme, adult survivor benefits are made up of two parts. It includes provision for a member to apply for an adult survivor to receive a dependent's pension<sup>3</sup>, if that adult survivor satisfies qualifying criteria related to dependence. This is in addition to what we are proposing to call, going forward, the surviving scheme partner's pension, if referring to unmarried co-habitees.
- 1.21. Regulation G15 makes this provision in respect of nominated partners. It currently provides that a 1995 Section member may apply for a 'nominated partner' to receive an additional 'dependent nominated partner's pension'. This pension, may be paid in addition to a 'nominated partner's pension' if certain qualifying criteria are met.
- 1.22. The qualifying criteria are that:
- the application must be made whilst the member is still in pensionable employment,
  - the partner must meet the qualifying criteria to be a nominated partner whilst the member is still in pensionable employment,
  - the nominated partner is permanently incapable of earning a living through physical or mental infirmity, and
  - is wholly or mainly dependent on the member.
- 1.23. If the application is accepted, the member's lump sum is usually reduced at the time of payment. If the member dies before their nominated partner, both a nominated partner's pension and a dependent's nominated partner pension are paid.
- 1.24. Amending regulation 15 makes changes to regulation G15 to take account of the removal of the requirement that a qualifying partner must be 'nominated' in order to receive a surviving partner pension.
- 1.25. Revised draft regulation G15 now provides for a 'dependent scheme partner's pension' in respect of service before 6th April 1988 to be paid in the same circumstances as 'dependent nominated partner's pension'. In line with the current provision, the qualifying criteria for being a 'scheme partner' must be met by the member and their partner for a continuous period of two years ending with the member's last day of pensionable employment. However, the requirement that a 'nomination' is in place is removed. In line with regulations G8 (dependent widower's pension) and G11 (dependent surviving civil

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<sup>3</sup> based on service before 6th April 1988

partner's pension), an application for a dependent surviving scheme partner's pension must be made by a member no later than on their last day of pensionable service.

## 2. Accountable Care Models

- 2.1. NHS England's Five Year Forward View and the Next Steps update document published in March 2017<sup>4</sup> described new ways of delivering integrated care, underpinned by a contracting framework that facilitates collaboration across health and care systems.
- 2.2. The development of differing forms of care delivery and the changes in contracting arrangements emerging from new models of care has led to the identification of specific issues surrounding access to the NHS Pension Scheme. In order that work currently pensionable remains so for those delivering NHS services, amendments need to be made to scheme regulations to recognise new forms of contracts which will be in use from April 2018.

### **Accountable Care contracting framework**

- 2.3. The Five Year Forward View committed to the development of new models of care that dissolve the traditional boundaries between the delivery of primary care, community services, hospital services, and in some cases, social care services.
- 2.4. These models included the multispecialty community provider (MCP) – a predominantly out of hospital based care model integrating primary medical services with other community and mental health services, and the integrated primary acute care system (PACS) – a similar model to the MCP, but also incorporating many hospital based services.
- 2.5. NHS England further articulated the development of these new care models in two frameworks published in 2016. The MCP framework, published in June, and the PACS framework, published in October, set out in more detail how these new care models would support the improvement and integration of services. The MCP and PACS models, which have also been referred to as 'Integrated Service Providers' are both types of whole population provider. Where contracted, organisations delivering both the MCP and PACS care models are a form of Accountable Care Organisation (ACO).
- 2.6. There are currently 23 'vanguards' across England piloting the MCP and PACS models as part of NHS England's 'New Care Model' programme. In each vanguard area, communities and patients are working with health and care organisations to design new models of care locally. These vanguards will act as the blueprint for other areas looking to adopt accountable care models,

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<sup>4</sup> <https://www.england.nhs.uk/five-year-forward-view>

- 2.7. In December 2016 NHS England published a draft version of the multispecialty community provider contract and a set of supporting documents for engagement. This contract was a variant of the generic NHS Standard Contract applicable for integrated service provision. While this package focussed on contracting for the MCP care model, many of the principles are transferable to the PACS care model and Accountable Care Organisations (ACOs) more broadly.
- 2.8. On 4 August 2017 NHS England published an updated draft of the NHS Standard Contract – NHS Standard Contract (Accountable Care Models) (ACO Contract) and support package.<sup>5</sup>
- 2.9. The ACO contract framework supports new models of integrated service delivery. It can be used to contract for a range of accountable care models, including MCP and PACS, and may mean some providers moving from holding contracts directly with commissioners to delivering care under sub-contract to a 'lead provider'. Integrated services may for example, be a combination of primary and secondary NHS care, or an integration of NHS and health-related local authority services. The latter is the product of collaboration between Clinical Commissioning Groups and local authorities using existing powers.
- 2.10. The NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (as amended)<sup>6</sup> were introduced to support joint or lead commissioning arrangements at local level if the arrangements are likely to lead to an improvement in the way the functions are exercised. They allow the joint exercise by an NHS body (which can include combined authorities) and a local authority (which can also include a combined authority) of NHS functions and health-related local authority functions.
- 2.11. Those regulations currently provide that a Section 75<sup>7</sup> Partnership Arrangement Agreement can include the majority of a Clinical Commissioning Group's general functions to commission health services, e.g. urgent and emergency care, hospital care, rehabilitation, mental health services, and community health. The regulations also specify the local authorities' key health-related functions that can be included in the agreement. These include public health and social care functions, specified related services such as housing, services for the disabled, and after care under mental health provisions.

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<sup>5</sup> <https://www.england.nhs.uk/publication/integrating-care-contracting-for-accountable-models-nhs-england-document-1a>

<sup>6</sup> <http://www.legislation.gov.uk/uksi/2000/617/made>. See also: <https://www.gov.uk/government/consultations/partnership-arrangements-between-nhs-bodies-and-local-authorities>

<sup>7</sup> The primary powers for such arrangements are granted by section 75 of the NHS Act 2006 (as amended).

## *Previous consultation*

- 2.12. In October 2016, the Department consulted on amendments to scheme regulations that enabled the MCP contract and sub-contracts to be pensionable. The amendments proposed inserting a definition of the MCP contract into the sections of scheme regulations that relate to members whose eligibility for the scheme arises from the work they do and the services they deliver in relation to certain contracts. These include GP practice staff, practitioners (GPs) and employees of Independent Providers.
- 2.13. However as noted in the consultation response document<sup>8</sup>, these amendments were withdrawn because of timing issues with finalisation of the MCP framework. This consultation presents those amendments again, updated to take account of the new ACO contract framework that can also be used to commission the earlier MCP and PACS models. In particular the new amendments address scheme access for employees delivering services that are a combination of NHS and health-related local authority functions; the earlier MCP amendments contemplated scheme access for delivering integrated NHS clinical services only. In doing so, the guiding principle is to ensure employers and their employees who deliver NHS services are able to participate in the scheme.

## *Integrated services*

- 2.14. As noted earlier, accountable care models provide that one body may deliver integrated services under an ACO contract and/or sub-contract elements of this for performance by other organisations. These integrated services may be a combination of primary and secondary NHS care for example, (i.e. all types of NHS clinical services), or there may be integration of NHS and social care services. In the latter case, the integrated nature of services may mean some roles could include delivering health-related local authority functions such as social care alongside traditional NHS duties.
- 2.15. The Department intends there to be continuity of scheme membership, and eligibility for new employees, for staff working under an ACO contract or sub-contract whose role is wholly or mainly delivering NHS clinical services.
- 2.16. NHS Trusts, Foundation Trusts and Special Health Authorities are able to participate in the scheme without restriction because they are statutory NHS bodies. All employees automatically join the scheme upon taking up employment; the duties performed or contract held has no bearing on eligibility for scheme membership. Existing agreements entered into under section 75 arrangements mean in some localities staff employed by an NHS Trust can already include delivery of health-related local authority functions in their role.

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<sup>8</sup> <https://www.gov.uk/government/consultations/nhs-pension-scheme-proposed-changes-to-scheme-regulations>

- 2.17. Staff employed by NHS bodies delivering integrated services commissioned under an ACO contract or sub-contract, can therefore access the scheme in respect of that work. However for Independent Providers of NHS services (IPs), access to the scheme is conditional on holding a qualifying contract (e.g. the Standard NHS contract) primarily for the purpose of providing NHS clinical services, with membership only for employees who wholly or mainly spend their time working on that contract. This allows the possibility that such employees can spend a minority of their time on non-NHS work but 'pension' their whole salary, not just the portion attributable to the NHS contract. To control the scope of non-NHS income being pensionable in the scheme, the total amount of pensionable pay permitted across all eligible employees is limited to 75% of the contract value.
- 2.18. The Department proposes to add ACO contracts and sub-contracts to the list of qualifying contracts that an IP may hold. Whilst this will enable IPs to access the scheme when providing integrated primary and secondary care services, without further amendment it would exclude IPs who hold a contract for delivering a blend of NHS clinical and health-related local authority services. This is because the contract in the latter does not fulfil the criteria of being primarily for the purpose of providing NHS clinical services.
- 2.19. The Department wishes to support the development of integrated services models. Further amendments to the IP access rules are proposed to allow membership for employees who as individuals wholly or mainly spend their time working on the ACO contract or subcontract, and whose role is wholly or mainly delivering NHS clinical services (modifying the requirement that the contract as a whole should be primarily for NHS clinical services). This enables eligible IP employees to access the scheme where both the qualifying contract and their role in relation to it is delivering a blend of NHS clinical and health-related local authority services, provided the non-NHS element of their work is a minority. The other IP controls would continue to apply, in particular, the maximum amount of pensionable pay from all eligible employees is limited to 75% of the total value of the ACO contract or sub-contract.
- 2.20. IP employees who are wholly or mainly delivering health-related local authority functions (e.g. social care) within an ACO contract or sub-contract would not be eligible for scheme membership; the Local Government Pension Scheme or an alternative pension arrangement being more appropriate. This is because the scope of the NHS Pension Scheme is limited by the legal powers under which it is established. The Public Service Pensions Act 2013 permits the Secretary of State for Health to provide a pension scheme for the benefit of 'health service workers'. The Department therefore considers it inappropriate to extend the scheme to individuals whose role does not principally relate to the provision of NHS clinical services.
- 2.21. The Department will undertake a review in April 2019 of this extension to the IP rules, to evaluate the impact on scheme liabilities and scope based on experience from the first wave of ACO contracts and sub-contracts.

## *Practitioners and Practice Staff*

- 2.22. Amendments are proposed to permit medical practitioners, locums, and practice staff to pension income from an ACO sub-contract. Dental practitioners are not anticipated to perform services under these integrated care models, therefore no amendments are required to accommodate them. However in order to be pensionable the payments must be made by a scheme Employing Authority.

### **Draft amending regulations**

- 2.23. To deliver the above proposals, the draft regulations would change scheme regulations in the following ways.
- 2.24. A definition of 'Integrated Services Provider Contract' and 'Integrated Services Provider sub-contract' is added to the regulations. This is a standardised way of referring to the ACO contract and sub-contract across relevant items of legislation, and not just for the purposes of the NHS Pension Scheme. Amending regulations 3(a), 20(a), 25(a), 39(c), 43(a), 44(a) and (b) insert this definition into the 1995, 2008 and 2015 scheme regulations.
- 2.25. Accordingly, amending regulations 4, 21, 26 and 40 introduce new regulations A5 and A6, 2.A.16, 2.A.17, 3.A.1B and 3.A.1C and 150A and 150B to the 1995, 2008 and 2015 regulations respectively. The new regulations prescribe the requirements for a contract to be an 'Integrated Services Provider Contract' or an 'Integrated Services Provider sub-contract' for the purposes of the Regulations.
- 2.26. Amending regulations 3(e), 20(d), 25(d) and 39(a) amend the definition of 'qualifying contract' to add Integrated Services Provider Contracts and Integrated Services Provider sub-Contracts so that they are qualifying contracts for IPs. These contracts do not need to be mainly for NHS clinical services, but they must have some NHS clinical services element.
- 2.27. Amending regulations 18(a), 24 and 39(b) amend the definition of the “wholly or mainly condition” at Schedule 2B, regulations 2.M.1 and 150(4) of the 1995, 2008 and 2015 scheme regulations respectively to provide that where an employee is performing services under these new contracts, only those who are working for more than 50% of their time on NHS clinical services are eligible for scheme membership. The amendments also permit employees who are working on an Integrated Services Contract that is primarily for non-NHS clinical services but who are performing more than 50% of their time on NHS clinical services, to have scheme access.
- 2.28. Amending regulations 17(a) and (b), 27, 28 and 43(b) to (d) amend Schedule 2, regulations 3.A.7 and 3.A.13, and Schedule 10 of the 1995, 2008 and 2015 scheme regulations to ensure income earned by medical practitioners is pensionable where paid

by an Employing Authority. Amending regulations 3(d), 20(c), 25(c) and 44(e) change the definition of “Practice staff” to ensure their (continued) access to the scheme if they now provide services under the new models.

- 2.29. The definition of “local authority” can be found in paragraph 1 of Schedule 10. Amending regulation 44(c) inserts a reference to that definition in Schedule 15.

## 3. Minor and miscellaneous amendments

- 3.1. A number of miscellaneous amendments are proposed. These make technical corrections and refinements.

### **Amendments to the 1995, 2008 and 2015 NHS Pension Scheme amendments**

#### *NHS standard sub-contract definition*

- 3.2. Income derived from work sub-contracted from a scheme employing authority has been pensionable since April 2016 when appropriate amendments were made to the scheme. The Department of Health routinely publishes relevant guidance on the Gov.uk website.
- 3.3. Amending regulations 3(c), 20(b), 25(b) and 44(d) update the definition of NHS standard sub-contract in regulation A2 of the 1995 Section, regulations 2.A.1 and 3.A.1 of the 2008 Section and Schedule 15 of the 2015 Scheme with reference to the latest Departmental guidance for the years 2017/18 and 2018/19.

#### *Statements of estimated contributions*

- 3.4. Amending regulations 16, 23(b), 31(a) and 34 amend regulation U3(9) of the 1995 Section, regulations 2.J.14(12) and 3.J.14(14)(a) of the 2008 Section and regulation 37(7) of the 2015 Scheme to make the mandatory provision of some statements of estimated contributions permissive. Historically this information has assisted the scheme administrator forecast financial cash flows, however improvements in administration data systems means that information for this purpose can be derived from returns made by most participating employers. Accordingly, in future, the provision of such statements will be at the request of the scheme administrator (on behalf of the Secretary of State), typically in instances where this information is not available or an employer is at risk of not adhering to contribution obligations.
- 3.5. The amendment does not affect GP surgeries who, since 2009, have been required to provide statements of estimated pensionable pay and contributions in respect of Practitioners and non-GP Providers one month prior to the start of the pension year. This is so that the Practitioners and non-GP Providers, who are in the main self-employed, pay employee contributions 'on account' at the most appropriate tiered rate based on projected earnings. If at year end, actual earnings means a different rate should have applied, this is corrected through their certification process. The amendment also does not affect Independent Providers who, since 2014, have been required to provide statements of estimated pensionable pay and contributions in respect of all their employees prior to the start of the pension year. This is so the scheme administrator can establish that estimated contributions are in line with the 'qualifying contract' values, that the estimated and actual contributions paid over are similar, and that the 75% pensionable pay threshold has not been exceeded.

- 3.6. Amending regulation 23(a) amends paragraph (2) of regulation 2.J.14 to clarify that the GMS, PMS, or APMS contractor must provide the host Board with a statement of estimated pensionable earnings for any non-GP provider.
- 3.7. Amending regulation 31(b) makes a separate correction to paragraph (15) of 2008 regulation 3.J.14 to clarify that such a statement is required 1 month before the beginning of each scheme year, and not 2 months after the end of each scheme year as currently stated.

#### *Scheme contributions*

- 3.8. Amending regulations 17(c), 29, 35 and 36 amend paragraph 10(2S) of Schedule 2 of the 1995 Section, regulation 3.C.2(16) of the 2008 Section and regulations 38 and 39 of the 2015 Scheme to correct a drafting error in the definition of NDPS in the formula for uprating the pensionable earnings of a dental performer/practitioner and in the case of the 2015 regulations a medical practitioner and non-GP provider is used to calculate the member contributions payable for a scheme year.
- 3.9. The change makes it clear, as occurs in practice, that NDPS is the 'number of days of pensionable service' in the scheme year and not the number of days from the start of the performer or practitioner's service in the scheme year. This change brings the regulations in respect of these performers and practitioners in line with Officer scheme members who are subject to the annualising rule in respect of establishing their tiered employee contribution rate.
- 3.10. No member will have been disadvantaged as the correct annualising principles have been applied in practice since inception based on guidance provided by the scheme administrator. The consultation documents issued in 2008 and 2015 outlined the correct approach to annualising.

#### *Typographical corrections*

- 3.11. The following amendments correct typographical errors in the amendments made to the relevant Schedule or regulation by the National Health Service Pension Scheme and Additional Voluntary Contributions (Amendment) Regulations 2017 (SI 2017/275).
- 3.12. Amending regulation 18(b) corrects a typographical error in paragraph 41 of Schedule 2B referring to supplementary charges.
- 3.13. Amending regulation 41 corrects a typographical error in the amendment made to regulation 151 of the 2015 Regulations and clarifies that the amendment is in respect of paragraph (4)(c) of regulation 151.

- 3.14 Amending regulation 42 corrects a typographical error in the amendment made to paragraph 3 of Schedule 9 to the 2015 Regulations, in respect of paragraphs 3(1) and (2).