

Draft Order laid before Parliament under section 24 of the Public Service Pensions Act 2013, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No. 000

PUBLIC SERVICE PENSIONS, ENGLAND AND WALES

NATIONAL HEALTH SERVICE, ENGLAND AND WALES

The National Health Service Pension Scheme (Transitional and Consequential Provisions) Regulations 2014

Made - - - - *****
Coming into force - - *in accordance with regulation 1*

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 1 and 3 of the Public Service Pensions Act 2013(a).

In accordance with section 21 of that Act, the Secretary of State has consulted the representatives of such persons as appear to the Secretary of State likely to be affected by these Regulations.

In accordance with section 3(5) of that Act, these Regulations are made with the consent of the Treasury.

PART 1

Introductory

Citation, commencement and cessation of effect

1.—(1) These Regulations may be cited as the National Health Service Pension Scheme (Transitional and Consequential Provisions) Regulations 2014.

(2) With the exception of regulation 10, these Regulations come into force on 1st April 2015.

(3) Regulation 10 comes into force on the same day as paragraph 38 of Schedule 13 to the Pensions Act 2014(b) comes into force, and on that day regulation 9 ceases to have effect.

Interpretation

2. In these Regulations—

(a) 2013 c. 25.

(b) 2014 c. 19.

“the 1993 Act” means the Pension Schemes Act 1993(a);

“the 2013 Act” means the Public Service Pensions Act 2013;

“the new scheme” means the scheme established by regulations made under section 1(1) and (2)(e) of the 2013 Act for the payment of retirement pensions to or in respect of health service workers for England and Wales; and

“the old scheme” means the National Health Service Pension Scheme, as constituted by the National Health Service Pension Scheme Regulations 1995(b) and the National Health Service Pension Scheme Regulations 2008(c).

PART 2

Modification of contracting-out provisions

Application of this Part

3. This Part applies where a person (P) becomes a member of the new scheme on or after 1st April 2015 and before 6th April 2016 (whether or not P is also a member of the old scheme).

Contracting-out regulations

4.—(1) Where the condition in paragraph (4) is met, Part 2 of the Occupational Pension Schemes (Contracting Out) Regulations 1996(d) (certification of employments) is modified as follows in its application to an election with a view to the issue of a contracting-out certificate in relation to P’s employment by reference to the new scheme.

(2) The requirements in regulation 2(1)(a) and regulations 3 to 5 do not apply.

(3) Regulation 6 (information to be included in an election) is to be read as requiring an election to include—

- (a) the name by which the new scheme is to be known;
- (b) the name by which the old scheme is known; and
- (c) any other information necessary to enable the Commissioners of Inland Revenue to identify the old scheme,

and otherwise the requirements in that regulation do not apply.

(4) The condition is that the new scheme satisfies the requirements of section 9 (requirements for certification of schemes) of the 1993 Act.

PART 3

Modification of early leaver and other provisions

Application of this Part

5.—(1) This Part applies where a person (P)—

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- (a) 1993 c. 48.
 - (b) S.I. 1995/300, as amended by S.I. 1997/80 and 1888, 1998/666 and 2216, 2000/605, 2001/1428 and 3649, 2002/561 and 2469, 2003/631 and 2322, 2004/665 and 696, 2005/661 and 3074, 2006/600 and 2919, 2007/2054 and 3280, 2008/654 and 2263, 2009/381, 1298 and 2466, 2010/492 and 1634, 2011/591 and 2586, 2012/610, 2013/413, 2014/78, 570, 1607 and [xxxx]: and as modified by S.I. 1996/971.
 - (c) S.I. 2008/653, as amended by S.I. 2008/2263, 2009/381, 1298 and 2446, 2010/492 and 1634, 2011/591 and 2586, 2012/610, 2013/413, 2014/78, 570 and 1607.
 - (d) S.I. 1996/1172. Amendments were made by the Social Security Contributions (Transfer of Functions etc.) Act 1999 (c.2), and by S.I. 1997/786, 2002/681, 2005/3377, 2011/1245, 2011/1246, and 2013/2734.

- (a) is a member of the old scheme by virtue of pensionable service for that scheme, or by virtue of deemed transfer scheme service under paragraph 2 of Schedule 7 to the 2013 Act (final salary link);
 - (b) is a member of the new scheme by virtue of pensionable service for the new scheme; and
 - (c) is—
 - (i) a person to whom paragraph 1 or 2 of Schedule 7 to the 2013 Act (final salary link) applies, and whose final salary falls to be determined by reference to that paragraph; or
 - (ii) a person to whom—
 - (aa) schedule 2 of the National Health Service Pension Scheme Regulations 1995; or
 - (bb) Part 3 of the National Health Service Pension Scheme Regulations 2008, applies and who has pensionable service for the old scheme and pensionable service for the new scheme which are continuous.
- (2) For the purposes of paragraph (1)(c)(ii)—
- (a) paragraphs 3 and 4 of Schedule 7 to the 2013 Act (continuity of employment etc.) apply as they apply for the purposes of paragraphs 1(2) and 2(2) of that Schedule; and
 - (b) P’s pensionable service for the old scheme and pensionable service for the new scheme are not continuous if scheme regulations made pursuant to section 8A(4)(b) of the Pensions (Increase) Act 1971(a) (references to “service” : relevant old scheme pension in payment) apply to P.

Certification

6.—(1) Section 15A of the 1993 Act(b) (reduction of guaranteed minimum in consequence of pension debit) is modified as follows in relation to P.

(2) In the application of that section to the old scheme, the reference in subsection (2) to pensionable service “under the scheme” includes pensionable service under the new scheme.

Preservation of benefit

7.—(1) Chapter 1 of Part 4 of the 1993 Act(c) (protection for early leavers: preservation of benefit) is modified as follows in relation to P.

(2) In the application of that Chapter to the old scheme—

- (a) in section 70 (interpretation), in the definitions of “relevant employment” and “long service benefit” a reference to the scheme includes the new scheme, and subsequent references to “long service benefit” are to be construed accordingly;
- (b) in section 71(1) (basic principle as to short service benefit)—
 - (i) the requirement for “a scheme” to make provision is to be taken as a requirement that either the old scheme or the new scheme must make that provision;
 - (ii) a reference to a transfer payment to the scheme includes a transfer payment either to the old scheme or to the new scheme;
 - (iii) a reference to termination of P’s pensionable service “under the scheme” is to be taken as a reference to termination of P’s pensionable service under the new scheme;

(a) 1971 c. 56. Section 8A was inserted by paragraph 4 of Schedule 8 to the Public Service Pensions Act 2013 (c.25).
 (b) 1993 c. 48. Section 15A was inserted by section 32 of the Welfare Reform and Pensions Act 1999 (c.30).
 (c) 1993 c. 48. Section 71 was amended by section 263 of the Pensions Act 2004 (c.35) and section 27 of, and paragraphs 18 and 19 of Schedule 8 to, the Public Service Pensions Act 2013 (c.25). It is prospectively amended by section 36 of the Pensions Act 2014 (c.19). Section 72 was amended by section 263 of the Pensions Act 2004.

- (iv) a reference to benefit which would have been payable to P “under the scheme” includes benefit which would have been payable to P under the old scheme and benefit which would have been payable to P under the new scheme, and subsequent references in the Chapter to “short service benefit” are to be construed accordingly;
 - (c) in section 71(5), a reference to termination of P’s pensionable service is to be taken as a reference to termination of P’s pensionable service under the new scheme;
 - (d) in section 71(7)(a), the reference to P’s pensionable service “under the scheme” includes a reference to P’s pensionable service under the old scheme and P’s pensionable service under the new scheme taken together; and
 - (e) in sections 72(2) (no discrimination between short service and long service beneficiaries), 74(6) and (7) (computation of short service benefit), 75(3) and (4) (credits) and 76(1) and (3) (pension increases), a reference to termination of P’s pensionable service is to be taken as a reference to termination of P’s pensionable service under the new scheme.
- (3) In the application of that Chapter to the new scheme—
- (a) in section 70 (interpretation), in the definitions of “relevant employment” and “long service benefit” a reference to the scheme includes the old scheme, and subsequent references to “long service benefit” are to be construed accordingly;
 - (b) in section 71(1)—
 - (i) the requirement for “a scheme” to make provision is to be taken as a requirement that either the old scheme or the new scheme must make that provision;
 - (ii) a reference to a transfer payment to the scheme includes a transfer payment either to the old scheme or to the new scheme;
 - (iii) a reference to benefit which would have been payable to P “under the scheme” includes benefit which would have been payable to P under the old scheme and benefit which would have been payable to P under the new scheme, and subsequent references to in the Chapter to “short service benefit” are to be construed accordingly;
 - (c) in section 71(7)(a), the reference to P’s pensionable service “under the scheme” includes P’s pensionable service under the old scheme and P’s pensionable service under the new scheme taken together; and
 - (d) in section 74(6), the reference to the beginning of pensionable service is to be taken as a reference to the beginning of pensionable service in the old scheme.

Revaluation of preserved benefit

8.—(1) Chapter 2 of Part 4 of the 1993 Act(a) (protection for early leavers: revaluation of accrued benefits) are modified as follows.

(2) In the application of Chapter 2 for the purpose of revaluing benefit payable to or in respect of P under the old scheme—

- (a) in section 83(1)(a)(ii) (scope of chapter 2), the reference to the date on which P’s pensionable service ends is to be taken as a reference to the date on which P’s pensionable service ends under the new scheme; and
- (b) subsequent references in the Chapter to “the termination date” and the “pre-pension period” are to be construed accordingly.

(a) 1993 c. 48. Section 83 was amended by section 84(1) of, and paragraphs 28 and 31 of Schedule 12 to, the Welfare Reform and Pensions Act 1999 (c.30). It was amended further in relation to the definition of “normal pension age” by section 27 of, and paragraphs 18 and 20 of Schedule 8 to, the Public Service Pensions Act 2013 (c.25).

Protection of increases in guaranteed minimum pensions

9.—(1) Chapter 3 of Part 4 of the 1993 Act(a) (protection for early leavers: protection of increases in guaranteed minimum pensions (“anti-franking”)) is modified as follows.

(2) In the application of that Chapter to the old scheme—

- (a) in section 87(1)(a)(i) (general protection principle), the reference to the time when P ceases to be in contracted-out employment by reference to the scheme is to be taken as a reference to the time when P ceases to be in employment which is contracted-out by reference to the new scheme; and
- (b) subsequent references to “the cessation date” are to be construed accordingly.

Protection of increases in guaranteed minimum pensions after abolition of contracting-out

10.—(1) Chapter 3 of Part 4 of the 1993 Act (protection for early leavers: protection of increases in guaranteed minimum pensions (“anti-franking”)) is modified as follows.

(2) In the application of that Chapter to the old scheme—

- (a) in section 87(1)(a)(i) (general protection principle), the reference to the time when P ceases to be in pensionable service under a scheme that was, before the second abolition date, a salary-related contracted-out scheme is to be taken as a reference to the time when P ceases to be in pensionable service under the new scheme; and
- (b) subsequent references to “the cessation date” are to be construed accordingly.

Transfer values

11.—(1) Chapter 4 of Part 4 of the 1993 Act(b) (protection for early leavers: transfer values) is modified as follows.

(2) In the application of that Chapter to P as a member of the old scheme, in—

- (a) section 93(1)(a) (scope of chapter 4),
- (b) section 97(3)(a) (calculation of cash equivalents), and
- (c) section 98(1A) and (3) (variation and loss of rights under section 94),

a reference to termination of P’s pensionable service is to be taken as a reference to termination of P’s pensionable service under the new scheme.

Transfer values regulations

12.—(1) The Occupational Pension Schemes (Transfer Values) Regulations 1996(c) are modified as follows.

(2) In the application of regulation 3 of those Regulations (rules on continuation in employment after termination of pensionable service) to P as a member of the old scheme—

- (a) in paragraph (1), a reference to employment to which a scheme applies is to be taken as a reference to employment to which the new scheme applies;
- (b) in paragraph (1)(a), a reference to P’s pensionable service terminating at P’s request is to be taken as a reference to P’s pensionable service in the new scheme so terminating; and
- (c) in paragraph (1)(b)(i), a reference to P’s pensionable service continuing until the guarantee date is to be taken as a reference to P’s pensionable service in the new scheme so continuing.

(a) 1993 c. 48. Section 87 was amended by section 15(3)(a) of, and paragraphs 1 and 28 of Schedule 4 to, the Pensions Act 2007 (c.22). It is prospectively amended by section 24 of, and paragraph 38 of Schedule 13 to, the Pensions Act 2014 (c.19).

(b) 1993 c. 48. Section 93(1)(a) was substituted by section 152(2) of the Pensions Act 1995 (c.26). Section 98(1A) was inserted by, and section 98(3) amended by, section 173 of, and paragraph 5 of Schedule 6 to, that Act.

(c) S.I. 1996/1847.

(3) In the application of regulation 4 of those Regulations (right to further cash equivalent on termination of employment to which the scheme applies) to P as a member of the old scheme, in paragraphs (1), (2), (3)(a) and (4), a reference to termination of P's employment is to be taken as a reference to termination of P's employment to which the new scheme applies.

Cash transfers and contribution refunds

13.—(1) Chapter 5 of Part 4 of the 1993 Act(a) (protection for early leavers: cash transfers and contribution refunds) is modified as follows.

(2) In the application of that Chapter to P as a member of the old scheme—

- (a) in section 101AA(1)(a) and (b), a reference to termination of P's pensionable service is to be taken as a reference to termination of P's pensionable service under the new scheme;
- (b) in section 101AA(2), the reference in the opening words to P's pensionable service "under the scheme" includes P's pensionable service under the old scheme and P's pensionable service under the new scheme taken together; and
- (c) in section 101AB(1) and (3), 101AC(1) and (2)(a) and 101AI(7), a reference to termination of P's pensionable service is to be taken as a reference to termination of P's pensionable service under the new scheme.

(3) In the application of that Chapter to P as a member of the new scheme, in section 101AA(2)—

- (a) in the opening words the reference to P's pensionable service "under the scheme" includes P's pensionable service under the new scheme and P's pensionable service under the old scheme taken together; and
- (b) in paragraph (a), the reference to "the scheme" includes either the old scheme or the new scheme.

PART 4

Modification of tax regime

Lifetime allowance charge: modification of provisions

14.—(1) This regulation applies to a person (P), who—

- (a) is a member of the old scheme by virtue of pensionable service for that scheme;
- (b) is a member of the new scheme by virtue of pensionable service for the new scheme;
- (c) is being paid an ill-health pension at Tier 1 or Tier 2 under the new scheme; and
- (d) has their ill-health pension paid from the new scheme reduced, as a consequence of becoming entitled to payment of a scheme pension under the old scheme.

(2) Section 216 of the Finance Act 2004(b) is modified in its application to P as specified in paragraph (3).

(3) The payment of any scheme pension from the old scheme to P is treated as if it was not a benefit crystallisation event within the meaning of section 216 of the Finance Act 2004.

Annual allowance charge: modification of provisions

15.—(1) This regulation applies to a person (P), who—

(a) Chapter 5 was inserted by section 264 of the Pensions Act 2004 (c.35).
(b) 2004 c. 12. Section 216 was amended by section 101 of, and paragraphs 1 and 31 of Schedule 10 to, the Finance Act 2005 (c.7); section 161 of, and paragraphs 1 and 30 of Schedule 23 to, the Finance Act 2006 (c.25); by section 92 of, and paragraphs 4 and 5 of Schedule 29 to, the Finance Act 2008 (c.9); and by section 65 of, and paragraphs 62 and 73 of Schedule 16 to, the Finance Act 2011 (c.11).

- (a) is a member of the old scheme by virtue of pensionable service for that scheme;
- (b) is a member of the new scheme by virtue of pensionable service for the new scheme; and
- (c) becomes entitled to payment of an ill-health pension at Tier 1 or Tier 2 under the new scheme.

(2) Section 234 of the Finance Act 2004(a) is modified in its application to P as specified in paragraph (3).

(3) When calculating the closing value of P's rights under the new scheme for the pension input period during which P becomes entitled to payment of the ill-health pension, the element of the ill-health pension at Tier 1 that represents pensionable service in the old scheme is not to be counted as being part of the closing value.

Signed by authority of the Secretary of State for Health.

Name
Parliamentary Under Secretary of State
Department of Health

Date

We consent

Name
Name

Date Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make transitional and consequential provision in relation to public service pensions for health service workers in England and Wales.

Under the Public Service Pensions Act 2013 (c.25) ("the 2013 Act"), certain current members of public service pension schemes are to join new pension schemes ("new schemes") as active members, whilst retaining certain benefits in their existing pension schemes ("old schemes").

Part 1 of these Regulations provides for their citation, commencement and interpretation.

Part 2 modifies the effect of provisions relating to contracting-out of the additional state pension under the Pension Schemes Act 1993 (c.48) ("the 1993 Act") for members joining or transferring to a new scheme during the period from 1st April 2015 to 5th April 2016 inclusive. Certain procedural requirements in the Occupational Pension Schemes (Contracting Out) Regulations 1996 (SI 1996/1172) are disapplied to an election to contract-out the new scheme.

Part 3 modifies the effect of other provisions of the 1993 Act, in their application to certain persons who join the new scheme whilst still being non-accruing members of the old scheme. Those members are to be treated as if they are in ongoing pensionable service under one scheme, not two. Part III of the 1993 Act concerns contracting-out. Part IV of the 1993 Act concerns members of occupational pension schemes who leave before retirement age. The non-accruing members of the old scheme are to be treated as if their old scheme service does not terminate, nor their contracted-out employment cease, when they join the new scheme; only when they leave the new scheme. The modifications apply for the purposes of preserved benefit (Chapter 1 of Part IV); revaluing benefits (Chapter 2); protecting increases in guaranteed minimum pensions (Chapter 3); and cash equivalent values and contribution refunds (Chapters 4 and 5). Specified provisions in

(a) 2004 c. 12. Section 234 was amended by section 66 of, and paragraphs 1, 10 and 27 of Schedule 17 to, the Finance Act 2011 (c.11).

the Occupational Pension Schemes (Transfer Values) Regulations 1996 (S.I. 1996/1847), which were made under Chapter 4 of Part IV of the 1993 Act, are also modified.

Part 4 modifies the effect of the pensions tax regime contained in the Finance Act 2004 (c.12) upon the ill-health pension provision in the new scheme. It provides that any element of an ill-health pension at Tier 1 relating to pensionable service in the old scheme will not fall to be calculated against the member's annual tax allowance, and that any pension in the old scheme that subsequently falls to be paid to a member who has taken ill-health retirement will not fall to be calculated against the member's lifetime tax allowance. A member who takes ill-health retirement is therefore protected against any tax charge arising from the way that the Government has chosen to set up ill-health pensions in the new scheme.

These Regulations will have no effect on the costs of business or the voluntary sector. For that reason no impact assessment has been produced for them.