



Department  
of Health

# The draft National Health Service Pension Scheme Regulations 2015

Consultation Document & Explanatory Notes

October 2014

<b>Title:</b> The draft National Health Service Pension Scheme Regulations 2015
<b>Author:</b> Strategy & External Relations Directorate, Pay Pensions & Employment Services Branch
<b>Document Purpose:</b> Consultation
<b>Publication date:</b> October 2014
<b>Target audience:</b> NHS staff, employers and providers of NHS clinical services
<b>Contact details:</b> NHS Pensions Policy Team Department of Health Room 2W09, Quarry House Quarry Hill Leeds, LS2 7UE  <a href="mailto:nhsregs15@dh.gsi.gov.uk">nhsregs15@dh.gsi.gov.uk</a>

You may re-use the text of this document (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit [www.nationalarchives.gov.uk/doc/open-government-licence/](http://www.nationalarchives.gov.uk/doc/open-government-licence/)

© Crown copyright

Published to gov.uk in PDF format only.

[www.gov.uk/dh](http://www.gov.uk/dh)

# Contents

Contents.....	3
Introduction .....	4
How to respond.....	5
Structure of this document .....	6
Part 1: Preliminary .....	7
Part 2: Governance .....	8
Part 3: Scheme Membership.....	19
Part 4: Contributions .....	32
Part 5: Members' Benefits.....	53
Part 6: Survivor benefits.....	74
Part 7: Transfers .....	83
Part 8: Independent Providers .....	87
Part 9: General.....	92

# Introduction

1. The Government's programme of long-term reforms to public service pension schemes began in March 2011 following acceptance of recommendations from the Independent Public Service Pensions Commission, chaired by Lord Hutton. The Commission's report identified the need for comprehensive reform – "reforms that can balance the legitimate concerns of taxpayers about the present and future cost of pension commitments in the public sector as well as the wider need to ensure decent levels of retirement income for millions of people who have devoted their working lives in the service of the public"<sup>1</sup>.
2. In March 2012 the Department published a Proposed Final Agreement, '*Reforming the NHS Pension Scheme for England & Wales*', which set out the high-level design for a reformed NHS Pension Scheme for implementation from 1 April 2015. The key provisions of the reformed scheme include: a pension based on career average earnings; an accrual rate of 1/54th; and a Normal Pension Age equal to the member's State Pension Age, but with options for retirement earlier or later than this age.
3. Since then the detailed scheme rules have been developed which underpin the new scheme design and transitional arrangements. This has been done through discussion with trade union and employer representatives.
4. The Public Service Pensions Act 2013 provides the wider legal framework for reforms to the NHS pension scheme. The Secretary of State for Health has powers under this Act to make regulations that provide a new pension scheme ("the 2015 scheme") for health service workers.
5. In this context, the Department has published for consultation a draft Statutory Instrument titled: The National Health Service Pension Scheme Regulations 2015. This instrument provides the legal basis for the 2015 scheme and implements the detailed scheme rules developed with trade unions and employers. The regulations would have effect from 1 April 2015.
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](http://www.gov.uk/government/collections/nhs-pensions).
7. Transitional measures for members of the 1995 and 2008 sections who join the 2015 scheme and other consequential changes will be set out in further Statutory Instruments to amend the regulations that underpin that scheme. These will be published for consultation in early November.

---

<sup>1</sup> *Independent Public Service Pensions Commission: Final Report*, March 2011, p. 3

# How to respond

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

[nhsregs15@dh.gsi.gov.uk](mailto:nhsregs15@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 5 December 2014.

## 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 Charter<sup>2</sup>
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 (FOIA), the Data Protection Act 1998 (DPA) 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 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.
6. 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.

---

<sup>2</sup> <http://transparency.dh.gov.uk/dataprotection/information-charter/>

## Structure of this document

3.1 The document follows the structure of the instrument, describing the contents and effect of the regulations as they occur in order. The instrument is divided into a number of parts. The table below outlines the topics covered in each part.

Part 1: Preliminary	Scheme establishment and commencement
Part 2: Governance	Connected schemes Pension Board Scheme Advisory Board Valuation & Employer cost cap mechanism Benefit Information Statements Administrative
Part 3: Scheme membership	Joining and leaving the scheme Access routes & Determinations
Part 4: Contributions	Pensionable earnings Pensionable & qualifying service Pension accounts & revaluation Member contributions Employer contributions Contribution refunds Purchase of Early Retirement Reduction Buyout Allocation Purchase of Additional Pension
Part 5: Members' benefits	Age retirement pension Voluntary early retirement pension Premature retirement: Interest of efficiency of the service or redundancy Partial retirement Ill-health retirement Membership capacities Abatement
Part 6: Survivor benefits	Lump sum on death Adult survivor pension Child pension
Part 7: Transfers	Cash equivalent transfers in & out Bulk transfers
Part 8: Independent Providers	Independent Providers
Part 9: General	General definitions Out of Hours Providers

# Part 1: Preliminary

- 1.1 Regulation 1 confirms that the scheme applies to England and Wales and is open from 1 April 2015.
- 1.2 The purpose of the scheme is described at regulation 2 which also confirms the title as being 'the NHS Pension Scheme 2015'.

# Part 2: Governance

## *Connected schemes*

- 2.1 The Public Service Pensions Act 2013 at section 5(6) provides for the new NHS Pension Scheme for England and Wales 2015 to be 'connected' to the existing NHS Pension Scheme (1995 & 2008 Sections), as they are open to 'persons of the same description'.
- 2.2 Section 5(7) of the PSPA allows scheme regulations to make exceptions, and to declare that certain schemes are not connected. The definition of 'connected scheme' in schedule 15 declares that the scheme established by the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000 is not a connected scheme for the purposes of the Public Service Pensions Act. To do otherwise would bring external AVC funds within scope of Pension Board oversight and scheme valuation requirements.

## **Chapter 1: Management**

### Regulations 3 – 5 & Schedules 1 & 2

#### *Scheme manager*

- 2.3 Regulation 3 establishes that the Secretary of State for Health is the scheme manager for this scheme and any other statutory scheme connected to it. The Secretary of State may make arrangements so that any or all scheme manager functions are performed by the NHS Business Services Authority or any other body on behalf of the Secretary of State.

#### *Pension Board*

- 2.4 Section 5 of the Public Service Pensions Act 2013 requires each public service pension scheme to establish a Pension Board to assist the scheme manager (the Secretary of State for Health) in securing the effective and efficient administration of the pension scheme. The Act also provides for the Secretary of State to set out in regulations the scope, roles and responsibilities of the board and other matters such as the process for board appointments, tenure etc, although the Secretary of State will remain responsible for the overall scheme management. Regulation 4 establishes the Pension Board.
- 2.5 The Board will have equal numbers of employer and member representatives, as provided by paragraph 1 of schedule 1. A shadow NHS Pension Board has been



established with an independent chair appointed via the Government's public appointments process. Six member representatives and six employer representatives have been appointed to the shadow NHS Pension Board. The shadow Board will run until the end of March 2015, in anticipation of the formal Board being established in law on 1<sup>st</sup> April 2015 via these regulations, and provides a useful period of learning for both the Department and the Board.

- 2.6 A Departmental official will attend Board meetings as an observer, as will a representative of the Welsh Government. The Board will be able to call upon expert advice from the scheme actuary and lawyers when necessary.
- 2.7 It is expected that the Board, supported by sub-committees as necessary, meets quarterly. The quorum is set by paragraph 5 of schedule 1 at two-thirds of the voting members of the Board, plus the chair. With a voting membership of 12 members, this requires a minimum of 8 members, plus the chair, in attendance for a meeting to be quorate. Quorum is not dependent on equal numbers of member and employer representatives attending, due to the logistical difficulty this could impose. The aim will always be for all members to attend all meetings; but where this may not be possible the Department considers that requiring equal attendance is not necessary. Secretariat for the Board will be provided by the Department.
- 2.8 The initial appointment of Board members will be for a three to five-year term with no person holding office for more than an aggregate of nine years during any continuous period of twelve years. The purpose of flexing tenure at the outset is to avoid the need to appoint a full "new" Board at the end of the first three-year period. This approach also allows incremental change over time and preserves continuity of service for Board activities.

#### *Scheme Advisory Board*

- 2.9 In addition to his recommendations on scheme administration, Lord Hutton recommended that each public service pension scheme should have a "pension policy group at national level for considering major changes to scheme rules". Regulation 5 establishes the Scheme Advisory Board (SAB).
- 2.10 Further detail is provided in schedule 2. The Board comprises nominated representatives of scheme employers and members who are formally appointed by the scheme manager. The SAB quorum is a minimum of six members, which must be made up of not less than three staff representatives and three employer representatives. This is to ensure that any policy recommendations being put to the Secretary of State by the SAB are reached with input from representatives of scheme members and employers.

- 2.11 Paragraph 3 of schedule 1, and paragraph 2 of schedule 2 require individuals who are members of either Board to essentially be of good character. Members being appointed to either Board will be required to sign a declaration to the effect that none of the circumstance set out in paragraph 3 apply to them.
- 2.12 As with the Pension Board above, the Department's proposals for the Scheme Advisory Board reflect the statutory requirements set out in the Public Services Pensions Act 2013 with the exception of the good character test referred to in paragraph 2.11 above which goes beyond the statutory requirements.

## **Chapter 2: Actuary & valuation**

### Regulations 6 – 14 & Schedule 3

- 2.13 Scheme valuation is the process whereby the scheme actuary assesses the financial position of the scheme. The process compares the scheme's assets to its liabilities (i.e. the notional investment fund against the money expected to be needed to pay benefits both now and in the future). Its purpose is to ascertain whether the scheme is in surplus or deficit at a particular point in time - using a set of financial and demographic assumptions - and to set an appropriate contribution rate for the next four years.
- 2.14 Lord Hutton set out how the valuation process could be improved to aid clarity and comparability across schemes. He also recommended that there should be an employer cost cap mechanism whereby employer (and thus taxpayer) costs would be capped at a level, set by the findings of the 2012 scheme valuation, and there would be a mechanism for bringing them back to that level if the cap was breached.
- 2.15 Following a series of consultations on 13 March 2014, the Chief Secretary to the Treasury published the Government's final policy on valuations and the employer cost cap; details of these can be accessed on GOV.UK.<sup>3</sup>
- 2.16 HM Treasury directions ('the directions') and regulations set out the legal framework for undertaking and operating valuations and the employer cost cap. The framework covers the technical details of the processes involved and also sets out what the Department is required to provide for in scheme regulations in order to comply with the requirements involved.

---

<sup>3</sup> <https://www.gov.uk/government/publications/public-service-pensions-actuarial-valuations-and-the-employer-cost-cap-mechanism>

- 2.17 Chapter 2 of Part 2 reflects the statutory requirements in both the Public Service Pensions Act 2013 and the directions. In practice, this means an initial valuation as at 31 March 2012; with further valuations to be undertaken by the appointed scheme actuary every four years thereafter. The next scheme valuation will be as at March 2016. The valuation report is to be provided to the scheme manager either 12 months after the valuation date (the “effective” date in regulation 7 or at a later date if agreed).
- 2.18 On 6 June 2014 the Department, jointly with the Government Actuary’s Department, published the results of the 2012 NHS Pension Scheme valuation. This indicated that the employer contribution rate from 1 April 2015 would be 14.3%.
- 2.19 As part of the 2012 valuation report, and in line with Treasury directions, the rate has been set for the employer cost cap in the new scheme. The valuation report confirms this rate to be 11.6%. The employer cost cap is determined by subtracting the normal member contributions expected to be payable over the implementation period (9.8%) from the contribution rate, payable from 1 April 2015, required to cover the expected cost of benefits accruing by members over the implementation period (21.4%). Regulation 8 sets the employer cost cap in scheme regulations. The employer cost cap may also be referred to as the ‘target cost’ for the scheme.

#### *Employer cost cap mechanism*

- 2.20 In the event that the valuation report shows that relevant costs have risen or fallen by more than the allowable margins (currently more than 2% above or below the target cost) set out in Treasury regulations the scheme actuary is required by regulation 9 to notify the Secretary of State. This triggers the ‘employer cost cap mechanism’ process, set out in regulation 10.
- 2.21 In line with the directions, and HM Treasury guidance, the Department proposes a process whereby following notification from the scheme actuary, the Secretary of State will commission the Scheme Advisory Board to make, within a set period of time, a recommendation on how scheme costs can be brought back to the level of the employer cost cap. Regulation 10 requires the Secretary of State to consider the Scheme Advisory Board’s advice. The Secretary of State can either implement the solution recommended by the Scheme Advisory Board, or seek to reach agreement on an alternative.
- 2.22 Regulation 11 sets out the process to be followed in the event that the Secretary of State and Scheme Advisory Board are unable to reach agreement on a proposed solution. This is the point at which the default option is implemented.

The Proposed Final Agreement identified the default as an adjustment to the accrual rate. This would be increased or decreased by a level certified by the scheme actuary and approved by HM Treasury as sufficient to bring costs back to the target cost.

- 2.23 Any solution is determined and introduced at the same time as the valuation result would normally be implemented (i.e. within 3 years and 1 day of the effective date for commencing the valuation, in accordance with the directions). The implementation period for a solution would, as per the Directions, be the 4 years following the implementation date.

#### *Benefit Information Statements*

- 2.24 Paragraph 3 of schedule 3 implements the requirements of section 14 of the Public Service Pensions Act 2013. Section 14 requires the scheme manager to provide an annual pension benefit information statement to each active scheme member. HM Treasury Directions set out the detailed requirements of what the annual statement should include and how it may be provided.
- 2.25 The Department intends to provide all active members with an annual Total Reward Statement which will meet the requirements of section 14. The Total Reward Statement will put pension benefits in the context of the total reward package received by staff who are also NHS Pension Scheme members. The intention of providing such statements is to raise members' awareness of the value of their employment package, and their pension in particular, to help members make informed decisions about their retirement planning.

#### *Administrative matters*

- 2.26 Regulation 14 establishes that schedule 3 makes further provision on a number of administrative and general functions.

#### *Claims for benefits & payments*

- 2.27 A person claiming entitlement to any benefit under the scheme must make a claim to that effect in writing to the scheme manager. Paragraph 4 of schedule 3 provides a generic claims process, with entitlement to a particular benefit established under the relevant regulations elsewhere.
- 2.28 Claimants are required to supply evidence of entitlement and information (and authority or permission to obtain information from third parties) as the scheme manager might require in dealing with the claim. The person making the claim

does not need to be the member in all cases. For instance it can be a dependent or spouse claiming a survivor pension, or a beneficiary's representative.

- 2.29 Paragraph 5 of schedule 3 provides a procedure to cover circumstances where a beneficiary or pensioner fails to respond to correspondence. In these circumstances the scheme manager may specify a date in correspondence by which the beneficiary or pensioner is required to provide information such as evidence of identity, contact details and/or proof of entitlement. Where the person fails to provide that information by the date specified, the scheme manager may withhold all or any part of the benefits payable.

#### *Commutation of small pensions*

- 2.30 Where a member claims their pension benefits but the amounts involved are very low, paragraph 6 of schedule 3 permits the scheme manager to optionally pay a single lump sum in discharge of those benefits rather than an annual pension. The cost of administering nominal pensions equating to a few pounds a month tends to outweigh the amount paid to the member. This facility allows the scheme manager to effectively 'buy-out' the pension rights by way of a single lump sum payment.
- 2.31 A key feature of this provision is that it is exercised at the scheme manager's discretion. Pension administration has over time become increasingly automated and the cost associated with paying pensions has decreased. Accordingly the level at which a pension becomes uneconomic in administration terms has shifted over the years.
- 2.32 In deciding whether to convert a pension into a lump sum on grounds of trivial value, the scheme manager must ensure that the payment complies with other requirements as set out in paragraph 6 of schedule 3. Advice from the scheme actuary must be sought by the scheme manager when calculating the lump sum payable. Payment of a trivial pension lump sum has the effect of discharging all liabilities in respect of any benefits that might have become payable to the member.

#### *Beneficiaries who are incapable*

- 2.33 The provision in paragraph 7 of schedule 3 has historically been widely drawn and is intended to assist in situations where the scheme manager is asked by representatives of the beneficiary holding power of attorney or guardianship to pay benefits to another person to use for the beneficiary's benefit. Before exercising this power, the scheme manager must be satisfied that the beneficiary is incapable of managing their own affairs. Typically such incapacity might stem from critical illness, mental health or minority.

*Interest on late payment of benefits and contribution refunds*

- 2.34 Paragraph 9 of schedule 3 provides that the scheme manager must pay interest on any pension, lump sum, contribution refund or interim or substitute award if payment is not made to the member or other person within one month of that payment being due ('the due date'). The intention is to compensate for ineffective administration, and is a natural counterpart to the ability of the scheme manager to charge interest on late contribution payments.
- 2.35 Interest is not however chargeable where the scheme manager is satisfied that the reason the amount was not paid on the due date was because of some act or omission on the part of the member or other person to whom the amount should have been paid. This might be for instance where a member provides incorrect bank details or fails to respond to correspondence.
- 2.36 Once the month grace period has elapsed, interest is charged on the unpaid amount from the due date to the date of payment. Interest is calculated at the Bank of England base rate on a daily basis and compounded with three-monthly rests.
- 2.37 Provided that the scheme manager has all the necessary information to calculate the amount payable, the due date for given scenarios is as follows:

Scenario	Due date
Pension (and where commuted, a lump sum) in respect of a retirement pension, including those paid early on grounds of ill-health or redundancy	The day immediately following the member's retirement from pensionable employment.
Pension payable on a member's death (other than where the member dies on or after reaching age 75)	The day after the date of death.
Pension payable on a member's death on or after reaching age 75	If paid to member's personal representatives, then the date on which probate or letters of administration are produced to the scheme manager. If paid to any person or body to whom the pension has been assigned by the member's personal representatives, the date on which notice is given to the scheme manager as to the beneficiaries. If paid to any other person or body than

	those above, the date immediately following the day of the member's death.
Lump sum payable on a member's death	The earlier of the date on which probate or letters of administration are produced to the scheme manager and the date which the scheme manager is satisfied that the lump sum may be paid.
Refund of contributions	The day after the date on which the scheme manager received from Her Majesty's Commissioners of Revenue and Customs the information required to calculate the amounts to be deducted in respect of income tax and national insurance contributions.

2.38 Where the scheme manager does not have all the information necessary to make the calculation or the calculation is in respect of an interim or substitute award then the due date is to be the first day on which the scheme manager has possession of all the information necessary to make such a calculation.

2.39 Occasionally it may be appropriate for an interim or substitute award to be calculated and paid to a member or other beneficiary. This could be where a backdated pay award increases the value of pension benefits previously calculated, or waiting for a complex calculation to be completed might lead to hardship for a member. The definition of 'interim or substitute award' captures such scenarios (see paragraph 9(7) of schedule 3).

#### *Prohibition on assignment or charging of benefits*

2.40 Paragraph 10 of schedule 3 prevents the re-assignment by a member to another party of any pension benefit right (either accrued or in payment), or the use of such rights as collateral or security. The intention is that the benefits accrued are payable only to the person specified under the regulations.

#### *Bankruptcy of person entitled to benefits*

2.41 Paragraph 13 of schedule 3 provides that no part of any benefit under the scheme may be paid to the person's trustee in bankruptcy or other person acting on behalf of the creditors, except where an income payment order is made under s310 of the Insolvency Act 1986.

### *Offset for loss to public funds due to crime, negligence or fraud*

- 2.42 The powers in paragraphs 11 and 12 of schedule 3 permit the Secretary of State in certain circumstances to reduce in value or withhold completely benefits payable to a member.
- 2.43 The purpose of the offset provision at paragraph 11 of schedule 3 is to recoup from a member's pension benefits the loss to public funds by caused by that member's criminal, negligent or fraudulent act or omission.
- 2.44 The amount of reduction must be equal to or less than the value of the loss. Where the loss is equal to or greater than the value of the member's benefits, those benefits can be reduced to zero. However the amount to be reduced cannot include pension or other benefits that relate to a guaranteed minimum pension or arise out of a transfer payment.
- 2.45 If intending to use this power, the Secretary of State must first give a certificate to the member specifying the amount of loss and intended reduction. Where this is disputed then no reduction is to be made until the member's obligation to make good the loss has become enforceable by a court order or by an award of an arbitrator (or, in Scotland, arbiter appointed by the sheriff).

### *Forfeiture of rights to benefits*

- 2.46 Forfeiture is a discretionary power that the Secretary of State exercises in cases where a member has been convicted of a serious criminal offence in connection with performance of their duties or employment. Paragraph 12 of schedule 3 permits the Secretary of State to direct that all or any part of any rights to a benefit or other amounts payable to or in respect of that member be forfeited if the member is convicted of a prescribed offence committed before the benefit or amount becomes payable (i.e. before retirement or death in the case of a lump sum).
- 2.47 The offences are set out in paragraph 12(2) of schedule 3. In relation to an 'offence in connection with employment', the Secretary of State is required to issue a 'forfeiture certificate' confirming that the Secretary of State is satisfied that the offence has either been gravely injurious to the State or is liable to lead to serious loss of confidence in the public service.
- 2.48 Paragraph 12(5) of schedule 3 extends forfeiture to instances where a beneficiary is convicted of the murder or manslaughter of the member, or any other offence in which the unlawful killing of that member is an element. The Secretary of State



can direct the forfeiture of rights to benefits that would otherwise have been payable to that person following the death of the member.

#### *Determination of questions*

- 2.49 Paragraph 14 of schedule 3 confirms that the scheme manager determines any questions arising under the scheme. Disagreements that are within the scope of section 50 of the Pensions Act 1995 must be resolved by the scheme manager in accordance with arrangements applicable under that section.
- 2.50 Paragraph 15 of schedule 3 provides that the scheme manager may arrange for functions in relation to certain decisions to be undertaken by a registered medical practitioner or a body that employs such practitioners. The decisions are listed at sub-paragraph 2 and typically involve an assessment of health or employment capabilities.
- 2.51 In relation to those decisions, the scheme manager may require any person entitled or claiming to be entitled to a benefit to submit to a medical examination by a registered medical practitioner selected by the scheme manager. The member has the option of submitting a report from an examination by their own medical practitioner, and that report will be taken into consideration by the scheme manager together with the report made by the scheme manager's medical practitioner.

#### *Taxation*

- 2.52 Paragraph 16 of schedule 3 requires the scheme manager to deduct from any payment under the scheme any tax that is required to be paid in respect of it. This general requirement is supplemented with bespoke provision dealing with the administration of specific tax charges implemented by the Finance Act 2004. The intention is to make clear the duties of the scheme administrator and the member.
- 2.53 Of particular note are paragraphs 16(10) and (11) of schedule 3 which provide that where the member intends to rely on a protection facility granted in relation to their Lifetime Allowance Limit, the member must give the relevant reference number and such information as the scheme administrator requires within a specified time limit. Failure to do so means that the scheme administrator may treat the whole benefit as chargeable and pay a tax charge on that basis.
- 2.54 Unlike the Lifetime Allowance charge, it is the responsibility of the member rather than the scheme administrator to determine whether an Annual Allowance charge is to apply and make the relevant payment to HM Revenue & Customs.

- 2.55 To assist members work out if they have to pay an annual allowance charge, pension schemes are required to give a Pension Savings Statement to those members whose pension savings have grown by more than the annual allowance. Section 15A of the Registered Pension Schemes (Provision of Information) Regulations 2006 permits scheme administrators to request information from employers where this is necessary for producing the pension savings statement. Given their self-employment, paragraph 16(12) of schedule 3 clarifies that section 15A information is to be supplied by practitioners and non-GP providers.
- 2.56 Beyond production of Pension Savings Statements, the scheme only has one other function relating to annual allowance charges – that of providing a ‘scheme pays’ facility. A member who has incurred an annual allowance charge of more than £2,000 can elect that the scheme administrator pays this. The scheme will recover the amount paid plus interest by reducing the value of the member’s benefits by an equivalent sum upon retirement. It is effectively a loan to settle a current tax bill but repayable at retirement.
- 2.57 The basis and terms for this facility are set out in section 237B of the Finance Act 2004. Paragraphs 16(13) to (15) supplement the Finance Act 2004 provisions in making clear the responsibilities and effects that flow from operating the ‘scheme pays’ facility within the scheme.

# Part 3: Scheme Membership

## **Chapter 1: Joining and leaving**

Regulations 15 - 17

- 3.1 The rules and process for joining and leaving the 2015 scheme remain the same as that for the 2008 section.

### *Enrolment*

- 3.2 Where a person meets scheme eligibility criteria that person is automatically enrolled into scheme membership upon commencing NHS employment (regulation 15). This is a long-standing policy which is replicated for the 2015 scheme.
- 3.3 There are two scenarios where a person would not be automatically enrolled on commencing NHS employment. Firstly, a person who has opted-out may not join or re-join the scheme during a period of absence from work for any reason (regulation 16). This is to prevent 'selection against the scheme' where a person is on sick leave or another period of absence which might precede sick leave, and so joins the scheme with the intention of immediately accessing ill-health benefits. The employer must still enrol the ineligible persons in an alternative pension scheme in order to satisfy the auto-enrolment duties.
- 3.4 Secondly, as with the 2008 scheme, GP locum practitioners must apply for membership in respect of each period of NHS employment. This provision is made in regulation 15(4), which disapplies the normal rules requiring scheme employing authorities to join eligible persons *automatically*.
- 3.5 The exception above recognised the contractual arrangements agreed for locum practitioners, many of whom had pre-existing pension cover for what can be largely supplemental, short-term work. A locum who wishes to pension all of their NHS work is nevertheless able to do so through the arrangements described above and will then secure benefits calculated in the same way as other practitioner scheme members.
- 3.6 To assist scheme administration, locum practitioners will continue to have up to ten weeks following a period of NHS employment to make their application.
- 3.7 Section 3 of the Pensions Act 2008 also requires employers to automatically enrol employees into a qualifying scheme where age and earnings criteria are met. This is satisfied by the scheme's automatic enrolment upon entering NHS employment rule. Section 5 of that Act requires employers to automatically re-enrol jobholders

into a qualifying scheme on a date specified by regulation 12 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 – ‘the automatic re-enrolment date’.

- 3.8 Scheme regulations facilitate this recurring duty on employers to automatically re-enrol employees who have opted-out of membership. This includes those who had opted-out within the first pay period and were treated as never having joined. The exception, as provided for by regulation 14 of the above 2010 auto-enrolment regulations, is where an opt-out notice has been given within the 12 months immediately prior to the re-enrolment date.
- 3.9 The effect is that a person is re-enrolled into the NHS Pension Scheme where that person meets the scheme eligibility criteria.
- 3.10 Before the advent of the Pensions Act 2008 requirements, an opt-out notice would remain in effect until the person took up a different period of NHS employment with a different employing authority (e.g. moved jobs). The Pensions Act 2008 requires opted-out persons to be re-enrolled every three years from the anniversary of the employer's auto-enrolment 'staging date', subject to the 'notice given in the last 12 months' exception. To comply with this, an opt-out notice that hasn't been given in the last 12 months will expire on the eve of a person's enrolment or re-enrolment date so that the person can then be enrolled on the prescribed day (paragraph 1(4) of schedule 5).
- 3.11 The general principle in relation to auto enrolment is that scheme rules apply except where it is necessary for these to be overridden by the Pensions Act 2008 (regulation 17).

#### *Leaving the scheme*

- 3.12 A person will cease to be an active member of the scheme where one of the following circumstances apply:
- (a) the person no longer satisfies the eligibility criteria (e.g. resigns from pensionable employment, contract for services ends or a GP no longer features on a medical performers list);
  - (b) the person gives written notice to opt-out from scheme membership;
- 3.13 A person who does not wish to, or no longer wishes to, participate in the scheme is to be permitted to opt-out of membership at any time. This is to be done by giving notice in writing to the employing authority (paragraph 1 of schedule 4).
- 3.14 If notice is given within one month after the date that the person has automatically become a member by virtue of commencing NHS employment, then the person is

to be treated as if they had not become an active member. Where this is the case, any contributions made by, or on behalf of, that person for this period must be refunded.

- 3.15 The notice must be given in a format prescribed by the Scheme Manager. However this is subject to Regulation 9(6) of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 which requires that opt-out notices in relation to Pensions Act 2008 enrolments or re-enrolments conform to a particular format.

### *Re-joining the scheme*

- 3.16 A person may if eligible re-join the scheme by giving notice in writing to their employing authority (paragraph 2 of schedule 4).
- 3.17 This provides that the person begins or ceases membership on the date that the notice takes effect. The notice takes effect from either:
- (a) the beginning of the first pay period after the notice is received by the employing authority or host board (e.g. notice on 15 June = effective from 1 July), or
  - (b) if a later date is specified on the notice, then the beginning of the first pay period after the pay period in which the specified date falls.

## **Chapter 2: Membership**

### Regulations 18 & 19

- 3.18 Section 1 of the Public Service Pensions Act 2013 allows new pension schemes to be established for persons in public service including health service workers in England and Wales. The Act defines 'health service workers' as being persons engaged in health services and specified in scheme regulations.
- 3.19 Regulations 18 & 19 describe those persons who are eligible to participate in the scheme. The general principle is that the same categories of persons who are eligible for 2008 section membership will be eligible for the 2015 scheme. Eligibility continues to be determined by reference to an individual's employment or employer. In summary, the categories of persons eligible are:
- **NHS employees** - those employed by 'statutory' NHS organisations (see regulation 18(1)(a))
  - Those associated with general medical practices - **Medical Practitioners and non-GP Providers** (who are themselves the holders of certain types of contracts and/or party to agreements or arrangements to provide medical services including ophthalmic services), any **trainee**

**practitioners**<sup>4</sup> for which they have responsibility, the staff they employ to assist in the provision of those services (including any other medical practitioners they employ), and the **Locums** they contract with to assist temporarily in the provision of certain types of primary medical services.

- **Medical practitioners engaged by certain approved companies** or other bodies corporate who are providers of Out of Hours (OOH) services and the **staff employed by those companies** or bodies to assist in the provision of those OOH services.
- Those associated with general dental practices - **Dental Practitioners** (who are themselves the holders of certain types of contracts to provide NHS dental services), the associate dentists they employ to perform those services and any **trainee dental practitioners** for which they have responsibility<sup>5</sup>.
- Those associated with **eligible Independent Providers** of health services.
- Those associated with certain other organisations – persons included by virtue of a determination under Section 25 of the Public Service Pensions Act 2013.

3.20 Regulation 19 provides general restrictions on participation that apply across the member categories. These are the same in scope as the restrictions found in the 2008 scheme.

### **Access routes & Determinations**

Regulations 18, 27, 150 - 162, 164 and schedules 5 to 8

3.21 The same types of organisations that are currently able to join their staff into the NHS Pension Scheme 1995 & 2008 scheme (for example, as set out in the definition of “employing authority” in regulations 2.A.1 or 3.A.1 of the 2008 section regulations), will continue to be able to do so almost unchanged in the 2015 scheme. Briefly, these are:

- A Special Health Authority under s28 of the 2006 Act in England or s22 of the 2006 Act in Wales
- A local health board under s11 of the 2006 (Wales) Act
- A NHS Trust
- A NHS Foundation Trust
- The NHS Commissioning Board
- A Clinical Commissioning Group
- A GMS or PMS practice
- An APMS contractor

---

<sup>4</sup> Known as “specialist trainees in general practice”

<sup>5</sup> Known as “foundation trainees”

- An Out Of Hours provider
- Any other body constituted under a health services act that the Secretary of State agrees to treat as an employing authority
- Any employer and certain of its employees performing health services related work, subject to a “Direction” by the Secretary of State under section 7 of the Superannuation (Miscellaneous) Provisions Act 1967. But see paragraphs 3.26 & 3.27)
- An Independent Provider holding a “qualifying contract” to provide NHS clinical health care services

3.22 The first six bodies described above are statutory NHS organisations and as such are automatically scheme “employing authorities”. Provision for these is made under ‘Scheme Gateways’ at Part 1 of Schedule 5.

3.23 The GMS, PMS and APMS organisations also described above are contractor-run non-NHS organisations, operating under a health service Act and again automatically become existing scheme employing authorities. This provision will continue unchanged in the 2015 scheme regulations, at Part 2 of Schedule 5.

3.24 Provision for the out of hours providers (OOHP) described above will also continue unchanged in the 2015 scheme regulations, as detailed in regulation 164. OOHP are not set up under a specific health service Act and so admission to scheme employing authority status is not automatic. However, OOHP can apply to the scheme manager to become a scheme employer, and if successful must join all their eligible staff in the scheme.

3.25 Paragraphs (1) and (2) of schedule 6 will also make unchanged provision for the Secretary of State to continue the existing arrangements to treat certain other bodies constituted under health service related Acts as ‘NHS organisations’. The types of organisation and circumstances covered will continue unchanged under the 2015 scheme regulations and, once so treated, those organisations will continue to automatically become scheme employing authorities and required to join their eligible staff in the scheme.

3.26 The Secretary of State has the power in relation to the existing 1995 & 2008 scheme to make ‘Directions’ extending the NHS Scheme to health services related organisations not covered by one of the other access routes. For example, a Direction can be made to ensure that scheme membership remains available to employees compulsorily transferred to a private sector organisation procured to carry out clinical health care services under NHS contracts.

3.27 Existing directions are most commonly made to comply with the Government’s ‘Fair Deal’ guidance, and confer scheme employing authority status on the

organisation in respect of the employees named. The 2015 Scheme regulations will continue these arrangements under paragraphs (3) and (4) of schedule 6, with schedule 7 providing very similar “Determinations” pursuant to s25(5) of the Public Service Pensions Act 2013. A s25(5) Determination will make the approved organisation subject to the 2015 scheme regulations, modified where appropriate by any special provisions set out in Schedule 7 and /or the body of the Determination.

- 3.28 Finally, regulations 150 to 162 will continue the existing provisions for an independent provider of NHS clinical health services under certain NHS contracts to apply for scheme employing authority status on a ‘closed’ or ‘open’ status. Provisions relating to independent providers are set out in more detail in Part 8 of this document.

### **Chapter 3: Pensionable service**

#### Regulations 20 - 23

- 3.29 Pensionable service is a period of time in which the member has paid contributions. Unlike in the 1995 or 2008 final salary sections, benefits are not calculated by reference to the length of pensionable service. The 2015 scheme uses a Career Average Revalued Earnings (CARE) method where pensions are calculated based on a fraction of earnings in each scheme year, revalued and aggregated cumulatively.
- 3.30 The purpose of pensionable service in the 2015 scheme is to establish periods of active membership during which the member paid contributions, or in the case of credited pensionable service resulting from transfer payment from another occupational scheme is treated as having paid contributions. As a result pension rights are established in relation to, and by virtue of, a period of pensionable service.
- 3.31 Regulation 20 identifies the sources of pensionable service. These are periods in which contributions are paid to the scheme (i.e. active membership), periods of absence from employment where contributions are deemed to have been paid, and periods of service credited as a result of transferring in rights from another pension scheme under which contributions had been paid.
- 3.32 Where a member leaves active membership and a payment in respect of untaken leave is made then regulations 20(3) & (4) provide that pensionable service is treated as continuing for a period equivalent to the leave and that the amount of the payment is treated as pensionable earnings for that period.
- 3.33 Regulation 21 deals with absences from employment. Where the member is absent for reason of illness, injury, maternity, adoption, paternity or parental leave



then the period of absence counts as pensionable service provided contributions are made for that period.

- 3.34 For absences other than those reasons, then the member may count a continuous period of up to six months as pensionable service provided member contributions continue to be made during that period (regulation 21(3) & (4)). If the member remains absent after this period, again for reasons other than those mentioned in paragraph 2.5 above, then the member may count a further continuous period of up to 18 months provided the member contributes both the member and employer contributions payable for that period (regulation 21(5) & (6)).
- 3.35 Pensionable service does not include periods in relation to which the Secretary of State has discharged the liability to pay pension benefits by either paying those pension benefits (regulation 20(2)(b)), or having made a transfer payment to another scheme or short service contribution refund (regulation 20(2)(c)). Furthermore, to avoid double counting it does not include service for which the Secretary of State has paid contributions to another pension scheme (regulation 20(2)(a)).
- 3.36 Regulation 20(5) provides that where a member elects to partially retire and so claim a proportion of accrued pension benefits, then the member retains the proportion of pensionable service that relates to the remaining unclaimed pension rights.
- 3.37 A period of pensionable service is measured on a calendar length basis. A day of pensionable service equates to a day of active membership (and so contributions paid). There is no scaling down to a fraction of a day in respect of part-time employment. So even if one hour or none was worked on a day, provided the member is in active membership on that day then it equals a day of pensionable service (regulation 20(6)).

#### *Qualifying service*

- 3.38 In order to become entitled to pension benefits under the scheme a member must, amongst other criteria, satisfy the qualifying test. Regulation 72 provides that a member is qualified upon building up at least two years' qualifying service or having had a transfer payment accepted from a pension arrangement other than another occupational pension scheme.
- 3.39 Pension credit benefit members do not need to satisfy any qualification criteria in respect of their entitlement.

- 3.40 Regulation 22 sets out what the member can count as qualifying service. Generally periods of pensionable service associated with active membership of the scheme are counted as qualifying service (regulation 22(1)(a)). Equally service that qualified for benefits under another occupational scheme and that has been transferred into the scheme also counts. This would include CETV transfers of 1995 or 2008 scheme benefits where there has been a break of over five years before joining the 2015 scheme.
- 3.41 Importantly, service under a connected scheme counts as qualifying service for 2015 scheme benefits. Both the 1995 and 2008 sections are part of a scheme that is connected to this one. This will be covered by separate regulations covering transitional measures. However for completeness, service in a connected scheme will count provided a disqualifying break of 12 months or more has not occurred between leaving the 1995/2008 scheme and joining the 2015 scheme.
- 3.42 A member needs to accrue two years of qualifying service which once complete does not need re-completing irrespective of the length of any future breaks in pensionable service – the entitlement has been established. This is unless a transfer payment is made to another scheme in respect of the member's pensionable service. In that case the member would need to start qualifying afresh upon re-joining the scheme.
- 3.43 Special provision is made at regulations 22(5) & (6) for members who are employed on a casual basis or as a locum practitioner. The 2008 scheme contains an equivalent rule, and caters for the unpredictable nature of those employments. For breaks of less than three months, whilst the period of the break is not pensionable service it is counted as qualifying service. This is subject to the member returning to employment (or engagement for a locum practitioner) within three months and on the same basis – i.e. casual or locum.

#### *Effect of a five year break in pensionable service*

- 3.44 A major concept within the 2015 scheme, and across public service pension schemes generally, is the five year break rule. Five years is considered a suitably long period of time from leaving active membership to indicate that the member does not intend to return to pensionable service. Accordingly, a period of pensionable service before a break that exceeds five years ("the earlier service") is treated differently to later periods of service. A break of this duration is known as a disqualifying break.
- 3.45 Unless a contribution refund or transfer is made in respect of the earlier service, then service after a break of five years or less links to the later period for revaluation purposes (in accordance with Section 9(6) of the Public Service

Pensions Act 2013) and counts as qualifying service. The earlier period(s) link together as continuous. A member can therefore complete two years qualifying service whilst having numerous breaks providing that no single break is greater than five years. So for example a member might have one year of service, then a four year break, six months service, two year break and finally six months service. This produces two years qualifying service completed across an eight year time period.

- 3.46 If the member leaves pensionable service without qualifying for benefits and has a break that exceeds five years then the earlier service cannot be counted as qualifying service towards the later period. Qualifying must restart and the member is entitled only to a refund of contributions in respect of the earlier service.
- 3.47 If the member has qualified for benefits before having a break in excess of five years, then benefits in respect of the later period are qualified by virtue of the earlier qualified service. However the earlier service will not attract the in-service revaluation rate.
- 3.48 Regulation 23 determines the effect of a break in pensionable service depending on the circumstances. Part 1 of the table concerns members who leave active membership without having qualified for retirement benefits. Conversely, Part 2 relates to members who have met the qualifying criteria and so become a member with deferred pension benefits upon leaving active membership.
- 3.49 Of particular note is the first line in Part 1. Where a break not exceeding one month (or a trade dispute) occurs and a contribution refund has been taken in relation to the earlier period, then that earlier period still counts as qualifying service towards benefits accrued during the later period. The earlier period of pensionable service is extinguished by virtue of the refund but it still has application as qualifying service. The intention is to prevent members from repeatedly taking short breaks in service in order to withdraw contributions before benefits have vested.
- 3.50 Regulation 42 allows members who have claimed a refund of contributions for a period of pensionable service to repay that refund within six months of returning to active membership. The effect is to reinstate that earlier period of pensionable service so that it is treated as being continuous with the later period if the break was five years or less. This means that the reinstated earlier period counts as qualifying service and pension accrued in that period is revalued as active service.
- 3.51 In summary, the effect of a break in pensionable service is as follows:

If the member leaves active membership without becoming a deferred member (i.e. does not qualify for a normal retirement pension) and returns to active membership:

- If the break is one month or less or due to a trade dispute but not because of locum or casual employment, then the earlier period of pensionable service is treated as continuous with the later for qualifying service even if a refund is paid in respect of that earlier period, but not if a transfer out payment has been made.
- If the break is three months or less and the result of locum or casual employment, then the earlier period of pensionable service is treated as continuous with the later for qualifying service and in-service revaluation, with the interval also counting as qualifying service. This is unless a refund or transfer has been paid in respect of the earlier period. The earlier period is reinstated if the refund is repaid within six months of resuming active membership.
- If the break is five years or less then the earlier period of pensionable service is treated as continuous with the later period for the purpose of qualifying service and in-service revaluation unless a refund or transfer has been paid in respect of the earlier period. The earlier period is reinstated if the refund is repaid within six months of resuming active membership.
- If the break is over five years then the earlier period of pensionable service cannot be treated as continuous with the later period for qualifying service purposes or in-service revaluation. The member can only claim a refund in respect of the earlier period, which causes it to extinguish upon payment.

If the member leaves active membership becomes a deferred member (i.e. having qualified for pension benefits) and returns to active membership:

- If the break is three months or less and the result of locum or casual employment, then the earlier period of pensionable service is treated as continuous with the later for qualifying service and in-service revaluation, with the interval also counting as qualifying service. This is unless a transfer has been paid in respect of the earlier period. No refund is permitted as benefits have qualified.
- If the break is five years or less then the earlier period of pensionable service is treated as continuous with the later for the purposes of qualifying service and in-service revaluation unless a transfer out has been paid in respect of the earlier period (in which case qualifying restarts). No refund is permitted as benefits have qualified.
- If the break is over five years then the earlier period of pensionable service cannot be treated as continuous with the later for the purposes of qualifying service and in-service revaluation. Accrual in the earlier period is indexed in line with the Pensions (Increase) Act 1971 only. No refund is permitted as benefits have qualified.

## **Chapter 4: Pension accounts**

### Regulations 24 – 26 & schedule 9

3.52 Section 8(4) of the Public Service Pensions Act 2013 defines what is meant by a Career Average Revalued Earnings (CARE) scheme. A member's pension is to be determined by reference to pensionable earnings in each scheme year. Those earnings, or proportion of those earnings, accrued as a pension are revalued each year until the person leaves pensionable service.

### *Pension accounts & revaluation*

3.53 Paragraph 13 of schedule 9 provides that each member who is active in the scheme will accrue a pension at the rate of  $1/54^{\text{th}}$  (an 'accrual rate') of pensionable earnings in each scheme year during which they are in active service (an 'accrual amount').

3.54 The concept of an 'account' is used to record and administer benefits that are accrued and paid. Regulation 24 requires the scheme manager to open and maintain such accounts. Benefits in respect of pension credit are not dealt with as active membership and so are contained within a separate account. A member can have more than one type of account at any given time, further to the multiple capacity membership described at paragraph 5.86.

3.55 Each member must be credited with an accrual amount for each scheme year that they are in active service. The accrual amount for each scheme year is deposited into the member's active account. The account balance will then be revalued after the end of each scheme year in line with the percentage change in prices provided for by an HMT order under section 9(2) of the Public Service Pensions Act 2013 plus 1.5%.

3.56 Where the member ceases active membership, the active account is closed and a new deferred or pensioner account is opened into which the account balance is transferred depending on the status of those benefits. The account balance in deferred or pensioner accounts is indexed in line with the Pensions (Increase) Act 1971 – this is currently the Consumer Price Index (CPI). Paragraphs 28 to 30 of Schedule 9 provide the steps to calculate the amount of accrued pension for the purpose of full retirement, partial retirement or deferment.

3.57 Regulation 25 requires the scheme manager to close all pension accounts, with the exception of any pension credit accounts, where a contribution refund or a transfer payment is made in respect of the member's pension rights. Closure extinguishes those rights.

- 3.58 Schedule 9 provides for the various elements that combine to form a scheme member's accrued pension. This includes the value of pension earned each year, the value of any additional pension and the revaluation that applies to those amounts.
- 3.59 Where a member leaves service during a scheme year, a proportional amount of revaluation must apply to what would have been the member's opening balance for the next scheme year. This is referred to as the 'leaver index adjustment'.
- 3.60 Part 2 of schedule 9 establishes an account for each active member. It confirms the elements that must be included in the active account for each scheme year. This includes the standard earned pension which accrues at 1/54th of pensionable earnings and the amount of any club transfer earned pension. The amount of club transfer earned pension is the amount of pension is a separate pension that sits within an active member's account. It is the amount of pension transferred in from a previous scheme that participates in the Public Sector Transfer Club in respect of the CARE benefits it provides.
- 3.61 The opening balance for each year of active service is also set out here. This includes the addition of the index adjustment to be added the opening balance of standard earned pension as explained at paragraph 3.55 above. In the case of an amount of club transfer earned pension , this separate pension is increased by the previous scheme's annual revaluation rate whilst the member remains in active service
- 3.62 Part 3 establishes a deferred member's account when an active member's account is closed, together with the ongoing administration of the account.

#### *Breaks in pensionable service*

- 3.63 Paragraphs 18 and 19 of schedule 9 provide that if a member returns to pensionable service after a break of not more than five years then the member's benefits return to a re-established active account and are revalued in line with the annual HM Treasury order plus 1.5%. This includes any relevant revaluation for the period whilst the scheme member was on the break.
- 3.64 Where the break in service is more than five years, the previous account (i.e. pension earned) remains deferred and an active account is opened in respect of the further service. Accounts that remain deferred are indexed annually in line with the Pensions (Increase) Act 1971.

### *Pensioner accounts*

- 3.65 Part 4 provides for the establishment of a pensioner member's account where benefits become payable, including for partial retirement members. Where a member draws benefits in full, then any active and deferred account is closed together with any additional pension account and a pensioner account is opened. Adjustments are made to the account in relation to actuarial reductions or increases applicable and whether any pension commencement lump sum is claimed. Where a member draws part of their benefits (partial retirement) the relevant amount of benefits is transferred from their active and (if any) deferred account(s) to the pension account, with the active and deferred account adjusted accordingly.
- 3.66 Part 5 refers to the establishment and administration of an additional pension account. This account will be used for all additional pension elections made. The amount placed in the account when an election is made will be the additional amount of pension the member has decided to purchase (e.g. £250, £500, etc). Indexation will be added each year thereafter, in line with the Pensions (Increase) Act 1971.
- 3.67 Part 6 provides for the establishment of an account or accounts for a pension credit member. It provides that a pension credit member will have a separate account in respect of each pension debit member.

# Part 4: Contributions

## **Chapter 1: Determination & payment**

Regulations 27 – 31, 36 - 38 & schedules 10 - 12

### *Pensionable earnings*

- 4.1 Pensionable earnings is the amount of income received in a scheme year by an active member in connection with a pensionable employment and that qualifies, by virtue of meeting the definition, to be taken into account for benefit accrual.
- 4.2 It has two specific purposes. First, as the amount in respect of which a percentage contribution is payable by both employer and member. Second, as the amount that is taken into account for accrual purposes – i.e. of which 1/54<sup>th</sup> is added to the active member's account to form the "standard earned pension" for any relevant scheme year.
- 4.3 The sources of income that qualify as pensionable earnings will be the same as that for the 1995 and 2008 scheme. The table at regulation 27 provides for those sources in relation to members who are engaged as either an officer, practitioner or non-GP provider. The method for identifying practitioner and non-GP provider earnings is necessarily different to that for officers by virtue of their self-employment.
- 4.4 For instance, self-employed GPs draw income from service contract profits rather than a salary, or a locum GP will have sessional fees rather than a wage. Schedule 10 defines practitioner and non-GP provider pensionable earnings and provides methodology for identifying the amount of earnings that the member may count as pensionable where a partnership is in operation, for example.
- 4.5 The amount of earnings that may be regarded as pensionable for an employed scheme member in groups A-D of the table in regulation 27(1), other than a group E practitioner member, will continue to reflect regular contractual pay and to *exclude* expenses and irregular pay, for example, bonuses or overtime payments, see regulation 27(1).
- 4.6 Similarly, part-time work and earnings will continue to be pensionable in the Scheme up to whole-time and for this purpose "overtime payments" will continue to be regarded as any amount by which a member's regular and contractual periodic earnings exceed the amount that the scheme manager determines would be pensionable work and earnings in a single comparable whole-time



employment. In determining what constitutes overtime and pensionable earnings in any particular case, the scheme manager may seek relevant information from the member's scheme employing authority, and must have regard to guidance issued by the scheme actuary for this purpose.

- 4.7 The practitioner work and earnings of a group E scheme member referred to in the table at regulation 27(1) will continue to be unaffected by the above restriction to comparable whole-time employment. However, the comparable whole-time rule *will* continue to apply to any work a practitioner member carries out in group A - D employment in that table.

#### *Pensionable earnings in a period of absence*

- 4.8 Regulation 28 deals with situations where the member is absent from pensionable employment due to illness or injury, maternity, paternity, adoption or parental leave. Where there is such an absence and as a consequence pensionable earnings have reduced or ceased, then the member is treated as having been paid the pensionable earnings that would otherwise been paid had the absence not occurred. This is often referred to as 'deemed' earnings.
- 4.9 Regulation 28(4) makes the exception such that deemed earnings do not apply in the period after the earnings have ceased whilst a member is absent due to illness or injury.
- 4.10 Deemed earnings are used for all purposes where a pensionable earnings amount is required – for example employer contributions, benefit accrual or death in service lump sum. But crucially not in relation to member contributions. Regulation 28(5) & (12) instead provides that the reduced earnings are treated as pensionable earnings rather than the deemed amount for the purposes of assessing member contribution rates.
- 4.11 The effect is to not disadvantage the member for having an absence – benefits accrue at the same rate that would be the case if no absence had occurred, whilst the member is charged a contribution rate commensurate with the reduced earnings. If earnings cease and the member is still absent for one of the specified reasons other than illness or injury, then the member is treated as continuing to be paid the reduced earnings, with any keep in touch days relating to maternity leave ignored. Conversely, where the member is absent through illness or injury and earnings cease, then the member is not treated as being paid the reduced earnings past the point where they have in fact ceased.
- 4.12 Regulation 28(8) provides that for any other period of absence for a reason other than those specified, but counting as pensionable service (e.g. authorised unpaid

leave where the member continues paying contributions), the member is treated as being paid an amount of pensionable earnings equal to the rate of pensionable earnings immediately before the absence.

- 4.13 A member is treated as having left pensionable employment if contributions due in relation to a period of absence are not paid. This has the effect of ceasing active membership. However no contribution refund or any benefit can be paid unless the member actually leaves pensionable employment – i.e. as would be the case for any member generally, rather than simply being deemed as having left.

#### *Members with more than one employment*

- 4.14 Regulation 29 applies the exclusion of “overtime payments” referred to in regulation 27 for a group A - D member, to the pensionable earnings of a member who has *two or more* such employments. This regulation maintains the existing arrangements under which a member with two or more employments can only pension work and earnings that together total the amount that the scheme manager determines would be pensionable work and earnings in a single comparable whole-time employment. Without this provision, a group A - D member with two or more part-time employments would be able to pension more than another member with a single whole-time employment.
- 4.15 As in regulation 27, when determining what constitutes overtime and pensionable earnings in any particular case, the scheme manager may seek relevant information from the member’s scheme employing authority, and must have regard to guidance issued by the scheme actuary for this purpose.

#### *Member contributions*

- 4.16 Regulations 30 & 31 provide that an active member must make contributions to the scheme in respect of pensionable earnings at the rate applicable for that scheme year.
- 4.17 Trade unions have and employer representatives agreed that the general approach to assessing member contribution rates will remain the same as that used in the 1995 and 2008 scheme. That is employed members will have their contribution rate assessed based on their notional whole-time earnings for that employment and self-employed members on their actual earnings for that ‘employment’.
- 4.18 Notional whole-time is applied where the hours worked are less than full-time. The member is assigned a contribution rate based on the full-time earnings for the role but pays as a percentage of their actual earnings. In a final salary scheme, it

allows for equity of treatment between full and part-time members doing the same role – i.e. both pay the same rate but get pension proportionate to their length of service.

- 4.19 However the nature of transition means that the 2015 scheme is not a pure CARE environment. At least not initially. When the scheme is open on 1 April 2015, the vast majority of scheme members will have deferred final salary benefits for which they retain an active link to final salary at retirement, not date of deferment. So the cost of that final salary accrual will continue to rise over time due to pay progression, and must be paid for. It is therefore appropriate for the approach to 2015 scheme contributions to continue to take account of this ongoing member benefit.
- 4.20 The use of notional whole-time as it relates to part-time members remains appropriate because the final salary link will see that member's final salary pension benefits calculated using whole-time salary (or notional if still part-time at that point).
- 4.21 The intention is to review this approach so that it evolves in step with how the balance of scheme members with active final salary benefits is expected to shift over time. The prevalence of active final salary benefits, dominant in the early years of the 2015 scheme, will diminish as members retire or otherwise lose their final salary links. The arguments for retaining existing contribution methodologies also diminish equally and we envisage a future move to a flatter tiering and assessment based on actual earnings rather than notional whole-time. We expect the next scheme valuation in 2018-19 to be a natural review point and a source of data to inform such a move.
- 4.22 The Secretary of State determines the rates payable with the consent of HM Treasury and based on advice from the scheme actuary. These are set out in table format, with the rate payable by a member corresponding to a pensionable earnings band.
- 4.23 The rates and bands are set for the four scheme years from 1 April 2015 to 31 March 2019, and reviewed at each four-yearly scheme valuation. Schedule 11 makes further provision for determining the pensionable earnings for the purpose of assigning a contribution rate in the case of members employed as officers. Regulations 31(5) & (6), 38 & 39 do likewise for members with practitioner or non-GP provider employments.
- 4.24 An employed member within group A - D of the table at regulation 27(1) will continue to have each of two or more employments held concurrently, assessed *separately* for tiered contribution purposes. This applies irrespective of whether the

employments are with the same or different employing authorities. The effect is that such a member may pay a rate in one employment that is different to another.

- 4.25 However, a practitioner member within group E of the table in regulation 27 will continue to have their pensionable earnings from all practitioner sources *aggregated* for the purposes of assessing their tiered contribution rate. This is because the whole-time maxima applied to group A - D members pensionable earnings is not applied to practitioner members, and their earnings can come from a wide range of individual sources. Treated separately, each of these earnings sources could yield a contribution rate that bears no relationship to total practitioner earnings. Similarly, before the contribution rate is assessed, regulations 38 and 39(3) serve to increase part-year pensionable earnings for a medical or a dental practitioner to a full-year value, in the same way that applies for an employed group A - D member of the regulation 27 table.
- 4.26 Whilst it is a requirement for members to pay contributions, regulations 30(5) & 31(7) provide that it is the responsibility of the employing authority to deduct such contributions from the member's earnings. Those contributions must be paid to the scheme manager not later than the 19<sup>th</sup> day of the month following the month in which the earnings were paid to the member in respect of officer employments, or to the host board by the 7<sup>th</sup> of the month. The host board is required to pay the contributions received from employing authorities in respect of a member to the scheme manager not later than the 19<sup>th</sup> of the month.
- 4.27 The host board role referred to above is an important concept in relation to practitioner scheme members. In England the host board is the NHS Commissioning Board and its delegated Area Teams, and in Wales it is a Local Health Board.
- 4.28 The host board acts as "employing authority" for all practitioner scheme members and carries out a number of key scheme administration functions. In particular, the host board is responsible for joining into the scheme all self-employed medical and dental contractors, including locum practitioners and maintaining pension records. The board is also responsible for the timely collation and forwarding to the scheme manager of their scheme contributions, from what can be a significant range of practitioner income sources. This 'collation and oversight' role enables the host board to assess the practitioner's employee contribution rate for *total* practitioner pensionable earnings, and to advise other employers of practitioners of that combined employee contribution rate.
- 4.29 The host board is also directly responsible for the payment of standard rate employer contributions in respect of the total pensionable earnings of *dental* practitioners. However, the host board is not responsible for the payment of

employer contributions for *medical* practitioners, who are funded for this via their practice “global sum” payments, and required by regulations themselves to pay both employee and employer contributions on total pensionable earnings. There is more about standard rate employer contributions below.

- 4.30 In practise, the host board will work with contracting practitioners and deduct (top-slice) the required scheme contributions from the payments they make to contractors/practices each month. Deductions are required in regulations to be made evenly each month, at a rate that the board and the contractor must estimate and agree before each year begins. The rate agreed should approach the end-of year total expected as closely as possible and late or significantly underpaid amounts can result in the levying of interest and administration charges by the scheme manager.
- 4.31 With the above in mind, adjustments to the monthly contribution rate can and should be agreed if income levels etc. change in-year and the host board can impose a different level of deduction in the event that it believes pensionable income will exceed the forecast and a suitable change of rate cannot be agreed with the contractor.

#### *Employer standard contribution*

- 4.32 Regulation 33 provides that the employing authority with whom the member is in pensionable service must make contributions to the scheme in respect of the member’s pensionable earnings.
- 4.33 The rate payable is 14.3%. If the member holds more than one employment with an employing authority, it applies in respect of each employment separately. The contribution must be paid to the scheme manager not later than the 19<sup>th</sup> of the month following the month in which the member was paid the pensionable earnings. Failure to do so by this date or at all, may result in an administration and interest charges being levied on the outstanding amount as provided by regulation 36. This also applies to late payment by the employer of deducted member contributions and additional pension contributions made by the employer.

#### *Record keeping*

- 4.34 Employing authorities must keep a record of contributions made and other matters relating to pensionable employment (e.g. pensionable earnings, periods of absence). The scope and requirements relating to those records is the same as that found in the 1995 & 2008 scheme. Regulation 37 sets out the obligation to keep such records, and provide statements to the scheme manager in connection

with those records as well as estimates of future contributions that are expected to be remitted.

- 4.35 Schedule 12 provides additional record keeping requirements relating to the evidencing of practitioner and non-GP provider earnings (e.g. earnings certificates, end-year statements).

## **Chapter 2: Refunds for short service**

### Regulations 40 - 42

- 4.36 A member who has ceased active membership without establishing entitlement to a benefit may claim repayment of employee contributions made in respect of pensionable service. This is provided by [regulation 40], and the repayment is known as a 'short service refund lump sum'.

#### *Eligibility*

- 4.37 The general rule is that contributions are non-refundable unless the member meets either of two conditions. Condition one is if the terms of Chapter 5 of Part 4 of the Pensions Act 1993 apply and payment is made in accordance with that chapter. This provides for the rights of individuals who leave an occupational pension scheme early to request a contribution refund or a cash transfer to another arrangement.
- 4.38 Condition two is if the member meets a set of criteria specific to the scheme, and set out at regulation 40(3).

#### *Refund amount & effect*

- 4.39 Only employee contributions for the period before active membership ceases are refunded. Employer contributions are not refunded under any circumstances to either the employer or former member.
- 4.40 Regulation 41 provides that the refund amount is less than the contributions paid by the member. This is because two deductions are made; one to cover the cost of re-instatement in the State Second Pension for that period of employment, and the second in respect of income tax payable.
- 4.41 Where a refund is made the member's rights are extinguished in respect of that period of service unless there is a Guaranteed Minimum Pension entitlement for which a 'contributions equivalent premium' has not been paid.

- 4.42 Regulation 41(3) provides that interest is payable on the amount of contributions repayable if the pensionable employment ceased not at the member's request – e.g. a TUPE transfer to an ineligible employer or redundancy. This is unless the reason was misconduct or inefficiency.
- 4.43 Interest is calculated compounded with yearly rests at 2.5% per annum for the period starting the first April after the contributions were paid and ending with the date pensionable employment ceased. However the interest should instead be calculated in accordance with the Pensions 1993 Act where condition one had applied and the member would be entitled to a greater amount of interest under that Act.
- 4.44 Where the member had paid contributions under another occupational pension scheme and those contributions were included in a transfer payment accepted by this scheme, then interest is payable in respect of the period when those contributions were made in the former scheme, at the rate specified by that scheme.

*Option for the member to repay the refunded contribution*

- 4.45 The effect of a refund is to extinguish that period of pensionable service. Paragraphs 3.41 and 3.42 describe in more detail the effect of a refund on qualifying & pensionable service.
- 4.46 Regulation 42 provides that the member may optionally repay to the Secretary of State the refunded contributions and any interest paid. This has the effect of reinstating that period of pensionable service to which the refunded contributions related. The repayment must be complete no later than six months from the date of resuming active membership.
- 4.47 The option to repay is however unavailable in relation to refunded membership where the interval between ceasing and resuming membership is over five years. A disqualifying break has occurred and that earlier period of service is extinguished permanently.

**Chapter 3: Option to buy-out early retirement reduction**

Regulations 43 – 50, paragraph 16 of schedule 9 and paragraphs 1, 2 & 6 of schedule 13

- 4.48 The scheme will have a new facility for members to make additional contributions to buy-out the actuarial reduction applied to a pension claimed before the member reaches normal pension age. This facility is known as an Early Retirement Reduction Buy Out purchase ('an ERRBO').

- 4.49 In light of the later normal pension age for scheme members, trade unions and employers wanted to introduce the flexibility for members to retire before their normal pension age without a reduction to their pension (but no earlier than age 65).
- 4.50 Members or their employers can pay additional contributions to buy-out up to three years of the actuarial reduction that would be applied beyond age 65 and on taking their pension before normal pension age.
- 4.51 Regulation 43 introduces the facility and establishes the eligibility criteria. The member must be an active member, have a normal pension age of over 65 and not have reached that age. Members who meet these criteria are able to elect to pay additional contribution to buy-out up to three years of actuarial reduction.
- 4.52 The period over which additional contributions are paid is known as the 'buy-out period' and benefits accrued during the buy-out period will only be subject to an actuarial reduction after the buy-out has been applied.
- 4.53 The actuarial reduction to be applied to a pension accrued during a buy-out period is determined by the age of the member on their last day of service less their normal pension age plus the amount of the buy-out to be applied.
- 4.54 For example a member with a normal pension age of 68 takes out an agreement to purchase a buy-out of three years as soon as they join the scheme and pays additional contributions up to their 65<sup>th</sup> birthday when they retire and take their pension. The actuarial reduction that would normally be applied to the pension is three years, i.e.  $65 - 68 = -3$ . After application of the buy-out this actuarial reduction is eliminated, i.e.  $65 - 68 + 3 = 0$ .
- 4.55 If the member retired at age 55, then the actuarial reduction ordinarily applied to the pension would be 13 years, i.e.  $55 - 68 = -13$ . With the buy-out applied the actuarial reduction would be 10 years, i.e.  $55 - 68 + 3 = -10$  years.
- 4.56 The buy-out only applies to the pension accrued during the buy-out period, i.e. the period during which the additional contributions are paid. For example, if a member took out an agreement after 15 years of pensionable service and five years before retirement then the buy-out period would be the last five years of the 20-year period of pensionable service. Only the pension accrued in those last five years, the buy-out period, would attract the buy-out – the pension accrued from the first fifteen years of pensionable service would attract the full actuarial reduction as this was not in the buy-out period. See paragraph 16 of schedule 9.



### *Duration of an early retirement reduction buy-out agreement*

- 4.57 Regulation 43(4) provides that a member will have three months after joining the 2015 scheme to take out an agreement with a buy-out period beginning with the member's first day of pensionable service. Contributions will be backdated to the beginning of pensionable service.
- 4.58 Alternatively, a member will have three months after the beginning of each subsequent scheme year to take out an agreement, with the buy-out period and contributions backdated to the beginning of that scheme year.
- 4.59 For an agreement not taken out within the first three months of pensionable service or within three months of the beginning of a subsequent scheme year, the buy-out period (and so additional contributions) will not begin until the beginning of the following scheme year.
- 4.60 All agreements are prospective and the buy-out only applies to member pensions accrued from pensionable service during the buy-out period, i.e. during which additional contributions are paid.
- 4.61 Regulation 43(3) provides that the agreement will ordinarily run to the date on which the member reaches their normal pension age or leaves the scheme if that is sooner and contributions are paid up to this date.
- 4.62 It is intended that the buy-out period is 'fixed' to the whole of the pension accrued in any scheme year, i.e. the buy-out will apply to the whole of the pension for a particular scheme year and never only part of a pension accrued during a scheme year. For example where a member suspends contributions on hardship grounds (see paragraph 4.82) or terminates an agreement before the end of the scheme year in which contributions commenced (see paragraph 4.85) contributions paid for the part of the year will be repaid to the member and the buy-out period adjusted accordingly.

### *Surplus early retirement reduction buy-out*

- 4.63 If a member takes their pension later than the date when a buy-out would completely eliminate the actuarial reduction, then the pension accrued in the buy-out period is subject to an actuarial increase determined by the surplus buy-out that has been purchased – see paragraph 2 of schedule 13.
- 4.64 For example, if a member with a normal pension age of 68 purchases three years but retires at 67, the surplus buy-out is two years, i.e.  $67 - 68 + 3 = +2$  and so the

member's pension accrued in the buy-out period is subject to a two-year actuarial increase.

- 4.65 If however the same member retires at age 69, later than their normal pension age, then there will effectively be two increases applied to their pension, i) a late retirement increase from the surplus buy-out applied to the pension accrued in the buy-out period, of three years and ii) a one-year late retirement factor applied to the whole pension (including the part already increased by the surplus buy-out) as the pension is being taken after normal pension age, i.e.  $69 - 68 + 3 = +4$ .
- 4.66 In order for the pension to receive the actuarial increases described above, the additional contributions must continue to be paid until the member retires. If the member described in paragraph 4.55 above stops paying the additional contributions earlier than that, then the buy-out period ends and the pension accrued after the buy-out period would have a one-year actuarial reduction and one-year actuarial increase respectively.

#### *Cost of an early retirement reduction buy-out*

- 4.67 Regulation 45 provides that the cost of a buy-out under an agreement is established by the scheme manager after receiving advice from the scheme actuary, which is based on the age of the member when they elect to take out the agreement and the value of the buy-out (based on current annual pensionable earnings).
- 4.68 This cost is expressed as a percentage of the member's pensionable pay. This means the price paid for a buy-out is derived from the same pensionable pay used to derive the amount of member pension that will be subject to the buy-out being purchased.
- 4.69 The cost may be reviewed and changed by the scheme manager from time to time. Any change to the cost of a buy-out will be prospective, i.e. the new cost will only apply to contributions due from the date of cost change and not to the period of the buy-out before the change.
- 4.70 For example, a member commences an agreement to pay 1.3% additional contributions for a one-year buy-out. After nine years of the agreement being in effect the price is reviewed and changed to 1.4%. The price paid (at the rate of 1.3%) for the first nine years remains the same. The increase to 1.4% only applies to contributions due after the change in price has been implemented.
- 4.71 A change in price will be implemented from 1 April or no sooner than three months after the scheme manager has received revised advice from the scheme actuary

### *Changes in normal pension age*

- 4.72 If a member's state pension age and therefore their normal pension age in the 2015 scheme changes, the amount of the buy-out being purchased remains the same, but the effect will relate to the member's new normal pension age. This is both in respect of the service before the change in state pension age as well as to the service after the change.
- 4.73 For example, if a member's normal pension age was to rise from 68 to 69 and the member retired at age 65 having bought three years, the actuarial reduction to be applied to their pension would be 1 year, i.e.  $65 - 69 + 3 = -1$  year.

### *Minimum and maximum permitted early retirement reduction buy-out*

- 4.74 Regulation 43(1) provides that members may only buy-out an actuarial reduction that would apply after a member reaches age 65 and the maximum buy-out that a member can purchase is three years (such a maximum purchase would require the member to have a normal pension age of at least 68 when they take out the agreement).
- 4.75 The minimum buy-out a member may purchase is one year, with the exception of members with a normal pension age in the scheme which is less than one year after their 65<sup>th</sup> birthday<sup>6</sup> who may purchase a buy-out equal to the difference between their normal pension age and age 65.
- 4.76 Normally, agreements must also be for whole-year buy-outs, i.e. one year, two years or three years. However, where the member's normal pension age, when they opt to take out an agreement, is not a whole number of years, the member may purchase a buy-out equal to the difference between their normal pension age and 65.
- 4.77 For example a member whose normal pension age is 67 years 4 months may, subject to the value limits below, purchase a buy-out of one year, two years or the full two years and four months.

---

<sup>6</sup> This currently applies to women with dates of birth between 6 Dec 1953 and 5 Sep 1954 (see <https://www.gov.uk/calculate-state-pension/y/age>)

### *Maximum early retirement reduction buy-out value*

- 4.78 Government policy is to limit the overall amount of value a member can add to their benefits from public service schemes through additional contributions<sup>7</sup>. Regulation 46 provides that the overall limit for the scheme is the value which equates to an annual pension of £6,500 in 2015 and this includes actuarial reduction buy-out and additional pension purchases (in the 2015 scheme only). This limit will change each year by a rate equal to the change in prices (currently the consumer prices index).

### *Increasing the early retirement reduction buy-out*

- 4.79 If, when the member took out their agreement they did not set out to purchase the maximum buy-out of three years, then the member has the option under the agreement, subject to the limits above, to increase the buy-out being purchased. This will apply for the buy-out period from when any associated increase in contributions commences. Effectively the member will be purchasing a different buy-out under the agreement from that point.
- 4.80 For example, a member initially takes out an agreement to purchase a buy-out of one year. After six years of paying additional contributions under that agreement the member increases the buy-out to two years (subject to the limits above). Under the agreement the member will have two buy-outs. Pension accrued during the period of the first (one-year) buy-out will be subject to a buy-out of one year and pension accrued in the second (two-year) buy-out period will be subject to a buy-out of two years.
- 4.81 A member may only opt to increase the buy-out from the beginning of the next scheme year (1 April) and the associated increase in contributions will only be due from that date.

### *Suspending the early retirement reduction buy-out agreement (hardship)*

- 4.82 A member may not reduce a buy-out under an agreement. However regulation 49 allows a member may suspend an agreement on hardship grounds only for up to one year.
- 4.83 If the member does not opt to recommence contributions under the agreement within one year of opting to suspend contributions the agreement is terminated

---

<sup>7</sup> This does not include contributions paid to associated money purchase additional voluntary contributions schemes.

and the member may not take out a further agreement. This does not affect their right to buy any additional pension (apart from taking account of any buy-out they have already purchased when determining the maximum additional pension they may buy).

- 4.84 If a member does decide to suspend an actuarial reduction buy-out agreement then they may not continue paying contributions under that agreement until the beginning of the following scheme year. Contributions paid in the year of suspension are repaid to the member and the buy-out period adjusted accordingly.

#### *Terminating an early retirement reduction buy-out agreement*

- 4.85 Regulation 50 provides that a member may terminate an agreement at any time. The scheme manager may terminate an agreement if the member does not opt to continue to make the additional contributions for a period of 12 months.
- 4.86 If an agreement is terminated and the buy-out period during which additional contributions are paid is less than one year then those additional contributions are repaid to the member and the actuarial buy-out agreement is cancelled.
- 4.87 If an agreement is terminated and the buy-out period during which additional contributions are paid is one year or more then the agreement ends. Contributions paid in that scheme year are repaid to the member and the buy-out period is limited to the end of the previous scheme year.

#### *Contingent value of an early retirement reduction buy-out agreement*

- 4.88 Generally, there is no contingent value to an agreement. If the member dies or retires on the grounds of ill health, benefits are paid unreduced in any case.
- 4.89 However, if the member is made redundant and exercises an entitlement for the employer to pay the full cost of early pension payment in lieu of a redundancy payment, then the cost of this should be determined against the cost taking benefits from their normal pension age, less the amount of buy-out reduction purchased. The result is that less of the member's redundancy payment is needed to offset the employer's costs, and so the surplus (if any) returned to the member is greater than if no ERRBO had been purchased.

#### *Employer funding of an early retirement reduction buy-out*

- 4.90 Provision will be made for employers to have the option to pay the regular additional contributions to purchase a buy-out on behalf of a member. The same terms apply to employer contributions as if a member were paying them, with the

exception of suspension of contributions on the grounds of hardship and the limitation to only one agreement, neither of which will apply to employer funded buy-outs.

#### **Chapter 4: Allocation**

Regulations 51 - 54

4.91 Allocation is an optional facility whereby a member elects to give up a portion of their annual pension for payment to a spouse, civil partner or dependent after the member's death. The member's pension is reduced proportionately whilst the allocated pension becomes payable to the beneficiary upon the member's death.

##### *Allocation election*

4.92 Regulation 51 provides that an allocation election may only benefit a single person who is the member's spouse, civil partner or dependent. A member may only make an allocation election at the time the member claims payment of a pension other than a partial retirement pension.

##### *Amount of allocation*

4.93 Regulation 52 provides limits on the amount of pension that can be allocated. This is with reference to the member's 'relevant' annual pension, which defined as the pension that would be payable if the member had taken the maximum permissible pension commencement lump sum. The resulting allocated pension is to be calculated in accordance with tables provided by the scheme actuary and must be an exact number of pounds.

##### *Procedure for making an allocation election*

4.94 Regulation 53 provides a process for a member making an election. The election takes the form of a written notice in a format and containing such information as the scheme manager requires. The election takes effect once it has been accepted by the scheme manager. Once this happens, the election cannot be withdrawn, revoked or amended.

4.95 It does not however take effect if the scheme manager is not satisfied that the member was in good health at the time of making the election or if the beneficiary dies on or before the day the election is accepted. It is also treated as not having taken effect if the beneficiary dies before the member is notified in writing that the election has been accepted.

### *Effect of allocation*

- 4.96 Regulation 54 provides that the effect of an allocation is to reduce member's pension even if the beneficiary predeceases the member. If the beneficiary survives the member, then the beneficiary becomes entitled to payment of a pension for life calculated per regulation 52. The allocated pension is paid in addition to any death benefits in respect of the member that may also become payable to the beneficiary.
- 4.97 Regulation 54(2) discards the election where the beneficiary ceases to be the member's spouse or civil partner or a dependent in the period before the allocation pension becomes payable.

### **Chapter 5: Additional Pension**

#### Regulations 55 – 71 and Schedule 9

- 4.98 Active members have an option to purchase additional pension. This is where the member pays additional contributions (either periodically or by a lump sum payment) to provide for an increase to their pension income in retirement and (optionally) the pension income of their surviving partner and dependent children in the event of the member's death.
- 4.99 The additional pension facility is intended to provide a degree of flexibility for members' retirement and contingency planning. It is offered as an optional facility. Purchase of additional pension by lump sum payment (only) may also be made on behalf of the member by their employer.
- 4.100 The facility largely mirrors in scope and operation, the additional pension facility already included in the 1995 & 2008 scheme. The key differences for seen in the 2015 scheme are:
- the maximum amount of additional pension (£6,500 annual pension in 2015<sup>8</sup>) that may be purchased will be re-valued over time to ensure its value is maintained with changes in prices,
  - any Early Retirement Reduction Buy-Out the member or their employer has opted to purchase will count against the maximum amount of additional pension, and
  - the cost of additional pension is based on the age it is expected to be paid from, which is the member's prospective normal pension age based on Government assumptions about future state pension ages.

### *Election to pay contributions for additional pension*

- 4.101 Regulation 55 establishes that a member who is in pensionable service and not reached normal pension age, or that member's employing authority, may elect to pay contributions to purchase additional pension in respect of that member.
- 4.102 The 'additional pension election' notice must be made in writing, stating whether additional retirement pension (referred to as 'self only') and/or survivor pension is being purchased, and the annual rate of additional pension that is required. Regulation 56 requires the annual rate to be specified as a whole number multiple of £250 or such other amount as the scheme manager may decide.
- 4.103 Regulation 57 requires any employing authority additional pension contribution to be made by lump sum. The member has the option of making such contributions by either lump sum or monthly payments. Regulation 58 provides that the member must specify in the election notice which method is chosen. If monthly contributions, then the notice must also specify in whole numbers of years the period of time over which those contributions are to be made. Regulation 64 requires the period not to be less than one year nor longer than 20 years, and must end before the member reaches normal pension age.
- 4.104 An election cannot be made if the member is absent from work for any reason. The election notice must be accompanied by a declaration from the member that the member is in normal health. Regulation 59 provides that the scheme manager may refuse to accept an election if there are reason grounds to believe the member is not in normal health at the time of making the election, or if the member's health is such that the specified period of monthly contributions is unlikely to be completed. This is to mitigate selection against the scheme through the waiving of future contributions due under the option on ground of death or ill-health retirement.
- 4.105 Regulation 61 provides for the maximum increase to a member's pension that can be achieved through the election. This regulation aggregates for this purpose additional pension from any such elections together with the value of any Early Retirement Reduction Buy Out elections.
- 4.106 The maximum amount of additional pension from the aggregate of those elections may not exceed £6,500 in the scheme year ending 1 April 2016, and for later years either an amount determined by HM Treasury or in lieu of this, an amount equal to that for the previous scheme year increased by the rate specified in the Pensions Increase Act 1971 as if it were a pension beginning on the first day of the previous scheme year.



4.107 Finally, acceptance of the election is confirmed by the scheme manager in writing.

#### *Determination of contribution payable*

4.108 Regulation 60 provides the method for setting the contribution payable either as a lump sum or monthly amount. This is done by the scheme manager by reference to tables provided by the scheme actuary that set the cost of additional pension. Regulation 60(4) gives the scheme actuary flexibility to set different prices for different descriptions of members. Currently, the only difference in pricing relates to the member's age when they exercise the option.

#### *Payment of contributions*

4.109 Regulation 62 provides that where the member has elected to pay by lump sum the member must pay the lump sum to their employer either through a deduction to the member's earnings or, if not deducted from earnings, within 1 month beginning with the date the member is notified by the scheme manager their election is accepted.

4.110 As with other late payments to the scheme, interest and administration charges will apply if the employer pays over a lump sum payment late to the scheme manager. The election is considered as not exercised if the employer has not received the contribution before the earlier of the one month time limit mentioned above or the date on which the member reaches normal pension age.

4.111 Where the employer is exercising the election, the contribution must be paid by the employer to the scheme manager within one month of the date of notice to exercise the option being given by the employer to the scheme manager. The election is considered as not exercised if the scheme manager has not received the payment before the earlier of that one month time limit or the date on which the member reaches their normal pension age.

4.112 Regulation 64 provides requirements relating to payment of month contributions where the member has elected to do so. The member's employer must deduct such contributions from the member's earnings and pay them to the scheme manager not later than the 19<sup>th</sup> of the month following the month in which the earnings were paid. The election is considered revoked if a monthly payment is missed, a payment is not made within three months and the member receives a written demand from the scheme manager.

### *Revoking an election*

- 4.113 Regulation 66 provides that a member may cancel an election at any time before the end of the contributions payment period. If the member cancels the election the monthly contributions cease from the first pay period beginning after the date the employer receives notice from the member. Members must notify both their employer and the scheme manager in writing if they wish to cancel the election.
- 4.114 The scheme manager can cancel an election if there are grounds to believe that the member's ill health will prevent the member from paying the periodical contributions for the whole of the contribution option period. The scheme manager must give notice of the cancellation to the member in writing.

### *Effect of part payment of monthly contributions*

- 4.115 Regulation 71 provides that if when the member takes their additional pension any of the monthly contributions that were due have not been paid, then the amount of additional pension the member set out to buy is adjusted to reflect this shortfall in the amount paid for the purchase.
- 4.116 The adjustment is calculated in accordance with a method determined by the scheme actuary. The scheme actuary must have regard to the proportion of the total contributions that have been paid and also the preservation requirements (Chapter 1 of Part 4 of the Pensions Act 1993 relating to the preservation of benefits under occupational pension schemes).

### *Effect of being absent or leaving and re-joining the scheme during the contribution payment period*

- 4.117 Regulation 68 provides for the event of a member being absent or leaving the scheme and re-joining after having made a pay monthly election and before the contribution payment period is complete. Absences from the scheme for specific reasons and merely having left the scheme are treated as two distinct events as different effects apply.
- 4.118 The absence reasons are listed at regulation 68(1). If a member is absent from the scheme during the contribution payment period for one of those reasons listed, and the member continues to pay standard member contributions during the absence, then the contributions under the election remain payable.
- 4.119 If during such an absence, the member ceases to pay standard member contributions then the member may continue to pay the contributions due under the election, but only if and when the member recommences paying standard

member contributions within 12 months of having ceased paying those contributions.

4.120 Where a member has left the scheme (and is not merely absent for one of the listed reasons) and subsequently re-joins within 12 months of leaving, then the member may continue to pay contributions due under the election from the date of returning to pensionable employment. However, if after leaving the member's standard member contributions had been refunded to the member under regulation 40 then this is not possible, irrespective of whether that refund was repaid to the scheme manager upon return.

#### *Effect of an option to buy additional pension*

4.121 If a lump sum contribution election has been exercised or all contributions due under a pay monthly election have been paid then the member is eligible for an additional amount of pension payable under the terms of the election, i.e. the amount of additional pension they had set out to buy.

4.122 Where the member is taking their pension before or after reaching their normal pension age then any additional pension is bound up with the main pension and similarly adjusted, having considered the advice of the Scheme Actuary.

4.123 No separate application is required to be made for the payment of additional pension if the member is taking their entire main pension. Members who apply for partial retirement must indicate whether the drawn down pension is to include payment of additional pension. This is an all or nothing option.

4.124 Where the member has exercised an option that includes survivor and dependent children benefit cover then there is also a corresponding amount of additional pension payable in respect of those beneficiaries in the event of the member's death.

#### *Death or early payment of pension*

4.125 Regulations 69 & 70 provide that if a member dies or retires on the grounds of ill health following an application made within 12 months of exercising the option there will be no benefit paid in respect of the additional pension option and the contributions paid under the election must be paid:

- to the member (member election) or the member's employer (employer lump sum election) in the case of retirement on the grounds of ill-health, and

- to the member's personal representatives (member election) or the member's employer (employer election) in the case of the death of a member.

4.126 Where a member has exercised the pay monthly election and the member:

- dies more than 12 months of exercising the election and before the contribution payment period ends, or
- retires on the grounds of ill-health following an application made 12 months or more after exercising an option and before the contribution option period ends,

then the amount of additional pension that falls to be paid to the member (if the member has retired on the grounds of ill-health) or surviving partner and dependent children (if the member has died) is established assuming all contributions due in the contribution payment period following the members date of death / retirement on the grounds of ill health have been paid.

4.127 The above references to retirement on the grounds of ill health are to retirement from active service only. Where a member retires on the grounds of ill-health in deferment any additional pension is reduced after considering the advice of the Scheme Actuary on the basis the additional pension is being paid before the member has reached their normal pension age.

4.128 Further, regulation 65 provides that if the member takes premature retirement on grounds of redundancy or in the Interests of Efficiency of the Service, although their main pension might be paid unreduced, the additional pension is reduced after considering the advice of the scheme actuary on the basis the member is taking the pension before their normal pension age. This is also the case where the main pension is paid with a reduction in cases of early or partial retirement.

#### *Revaluation of additional pension*

4.129 Part 5 of Schedule 9 provides for the indexation of additional pension accrued through an election.

# Part 5: Members' Benefits

- 5.1 Part 5 of the regulations describes the different retirement pensions that a member may become entitled if certain criteria are met. The general rule is that only one pension is payable for a period, or periods, of pensionable service. For instance, a member cannot claim both an ill-health and early retirement pension for the same period of service. Once a member becomes entitled to a pension under the scheme then it is payable for life.

## **Chapter 1: Qualification**

### Regulation 72

- 5.2 As mentioned at paragraph 3.38, a member must meet a qualifying test as part of establishing entitlement to retirement benefits under the scheme. Regulation 72 provides that a member is qualified upon building up at least two years' qualifying service or having had a transfer payment accepted from a pension arrangement other than an another occupational pension scheme.
- 5.3 A member who leaves active membership having qualified for benefits becomes a deferred member. Pension credit benefit members do not need to satisfy any qualification criteria in respect of their entitlement.

## **Chapter 2: Age retirement**

### Regulations 73 – 75 & schedule 13

- 5.4 An 'age' retirement pension is what might otherwise be described as the normal retirement pension. It is payable when the member reaches normal pension age. A member's normal pension age is equal to their state pension age, as required by section 10 of the Public Service Pensions Act 2013.
- 5.5 Regulation 73 sets out the eligibility criteria for an age retirement pension. The member must claim the pension, have reached normal pension age, qualified for benefits, left all NHS employment or reached age 75.
- 5.6 The annual pension payable is the amount of pension that the member has accrued in their active member account or, in the case of a deferred member, the deferred member account. If the member is older than normal pension age when claiming the pension, then paragraph 2 of schedule 13 requires this amount to be actuarially increased, together with any additional pension where purchased.

- 5.7 For any pension payable under the scheme, the member has the option to convert some of the annual pension into a tax-free pension commencement lump sum. Paragraph 3 of schedule 13 requires that this option be exercised in writing generally at the time of claiming the pension or at a later date as specified by the scheme manager. The conversion ratio is £12 of lump sum for each £1 of annual pension. HM Revenue & Customs limit the amount of annual pension that may be converted in this way once any actuarial increases (or reductions in the case of early retirement), or pension allocation(s) have been applied.
- 5.8 The option to convert is also limited if the member has transferred in Guaranteed Minimum Pension (GMP) rights. Paragraph 5 of schedule 13 provides that the option can only be exercised in relation to annual pension that exceeds the GMP payable. This is because any amount of pension representing a member's guaranteed minimum pension from a scheme that is contracted out of the State Second Pension before 6 April 1997 cannot be converted into lump sum.
- 5.9 Paragraph 4 of schedule 13 requires the member to make a declaration before any pension commencement lump sum is paid that the amount of lump sum would not be contributed towards another pension scheme. This is further to provisions in the Finance Act 2004 that would treat a lump sum paid and used in that way (i.e. 'recycled') as being an unauthorised payment.
- 5.10 The calculation steps to find the amount of annual pension payable are set out at paragraph 1 of schedule 13. This shows how the effect of any actuarial increase, pension commencement lump sum conversion and allocation options are factored into determining the final annual pension amount.

### **Chapter 3: Early and premature retirement**

Regulations 32, 34, 35, 79 – 83 & schedule 13

#### *Early retirement*

- 5.11 A member who has reached minimum pension age may claim a pension before reaching normal pension age. In addition to this, regulation 79 applies the same entitlement criteria as for an age retirement pension. The member must claim the pension, qualified for benefits and left all NHS employment.
- 5.12 The calculation steps are set out at paragraph 6 of schedule 13. An actuarial reduction is applied to both the amount of accrued pension in the member's active (or as the case may be deferred account) and any additional pension that has been purchased. The reduction offsets the cost of early payment in that the pension is likely to be in payment for longer than if it had been claimed at normal pension age.

- 5.13 The amount of reduction that would otherwise apply is reduced if additional contributions to purchase Early Retirement Reduction Buy Out (ERRBO) have been made. The effect of an ERRBO purchase is to pay in advance the cost of early payment. The cost of early payment up to three years before normal pension age can be bought out in this way, subject to a minimum age floor of 65 below which any reduction must be applied. This is covered in more detail at paragraph 4.51.
- 5.14 Once the reduction, if any, has been applied then the member has the option of converting a proportion of the resulting annual pension to a pension commencement lump sum.

*Premature retirement in the Interest of the Efficiency of the Service*

- 5.15 The 1995 & 2008 scheme has a facility to pay a pension earlier than normal pension age where an employer terminates a member's employment 'in the Interest of the Efficiency of the Service' (IES). It is exercisable at the employer's discretion in accordance with the terms & conditions set out in section 16 of the Agenda for Change handbook<sup>9</sup>. IES is typically used where the demands or nature of the job have changed significantly and the member is unable to adapt sufficiently to the new requirements, or there is a declining ability to perform the duties but not so as to qualify for ill-health retirement. There is no sense that the member has performed poorly and the expectation is that the employer must first explore adjustment to current duties or suitable alternatives. IES departures fill the gap between poor performance and redundancy exits.
- 5.16 This facility is available in the 2015 scheme and the same terms apply. With employer agreement, eligible members may claim payment of pension accrued up to the date of IES termination without an actuarial reduction being applied. The employer pays the cost of early payment.
- 5.17 Eligibility is set out in regulation 81. The member must have reached minimum pension age but not normal pension age, qualified for retirement benefits, have had their pensionable employment terminated by the employer for reason of IES and claimed a pension within six months of that termination. The employer must give notice certifying that the termination was on the grounds of IES and the member has two years continuous employment determined in accordance with

---

<sup>9</sup><http://www.nhsemployers.org/PayAndContracts/AgendaForChange/TermsAndConditionsOfServiceHandbook/Pages/Afc-Handbookrp.aspx>

associated employment terms and conditions, and not unreasonably refused suitable alternative employment. Finally the scheme manager must also certify that the member's employment is terminated for reasons of IES. This acts as a check to ensure IES retirements are being used appropriately by employers.

- 5.18 Regulation 34 requires the employer that terminated the employment on IES grounds to pay an additional contribution to meet the cost of early payment of pension. The cost is determined by the scheme manager on the advice of the scheme actuary. This excludes the cost of early payment of any Additional Pension purchased. If the member claims payment at the same time of Additional Pension then it is paid with an actuarial reduction.
- 5.19 If an Early Retirement Reduction Buy Out (ERRBO) has been purchased then the amount of annual pension is actuarially increased in the same way as age retirement pensions claimed after normal pension age. This is to ensure that the member receives a benefit from the ERRBO purchase. The cost of early payment has been met exclusively by the employer and it would be unfair if the ERRBO served only to reduce that bill.
- 5.20 Once the effect of any ERRBO purchases has been factored into the calculation, the member has the option of converting a proportion of the resulting annual pension to a pension commencement lump sum. Paragraph 7 of schedule 13 brings these elements together in setting out the full calculation steps.

#### *Premature retirement on grounds of redundancy*

- 5.21 Upon meeting eligibility criteria, members who have reached normal minimum pension age may claim early payment of pension benefits where an employment is terminated on redundancy grounds. Eligibility for this benefit and the terms on which the early payment of benefits are financed is determined by reference to the employment terms and conditions held by the member. Scheme regulations give effect to these arrangements.
- 5.22 Current redundancy arrangements give eligible members the option to exchange their redundancy payment for immediate payment of an unreduced pension. The employer meets the full cost of paying the pension early - using in the first instance the money that would otherwise be payable to the member as a redundancy payment, and if that is insufficient then 'topping up' the shortfall. Regulations 82 & 35 provide for this option in order to support current contractual entitlement to the benefit.
- 5.23 Alongside this, an alternative entitlement is introduced at regulations 82 & 32 to support future contractual terms in which the employer 'top up' element is



removed. The intention is to provide affordable and sustainable redundancy packages that are fair to both staff and taxpayers. Members will still have the option to take their pension benefits upon redundancy in exchange for a redundancy payment. The pension is unreduced where the redundancy payment meets the costs of early pension payment in full. However where that payment is insufficient, the pension will be reduced to the extent that costs remain (in the same way that a voluntary early retirement pension is reduced). The employer is not obliged to top up any shortfall. Instead the member has a further option to make an additional contribution to 'top up' the employer payment so that the cost is fully or further met.

- 5.24 The scheme provides for both current and reformed entitlements so that relevant terms in employment contracts, existing or new, are supported by the regulations. The effect is that current redundancy arrangements will continue to apply until terms and conditions change or new contracts are adopted.

### *Eligibility*

- 5.25 The eligibility criteria for premature retirement on redundancy grounds are established by regulation 82. This is the same as the criteria applicable in the 2008 scheme.
- 5.26 A member can claim immediate payment of accrued pension benefits without actuarial reduction if the employment in respect of which s/he is an active member is terminated on the grounds of redundancy and certified as such by the employer. The exception is practitioners, non-GP providers and practice staff members who may not make a claim. Such a member must (i) have reached minimum but not normal pension age, (ii) be qualified for retirement benefits and have two years continuous employment (under terms and conditions applying to their employment), and (iii) cease all other NHS employment except where continuing employment occurs – see regulation 99. Claims must be made in writing and within six months of the employment terminating.
- 5.27 Regulation 82(2) in particular provides that the employer must also certify that (i) the member's terms and conditions allow an early pension to be claimed in the event of redundancy and as an alternative to receiving a lump sum payment in respect of the redundancy, (ii) whether or not those terms apply the additional contribution option (i.e. the reformed redundancy arrangements), and (iii) that the member has not unreasonably refused to seek or accept an offer of suitable alternative employment. The scheme manager must also certify that the employment has terminated by reason of redundancy.

### *Calculating the cost and remittance of payment*

- 5.28 Paragraph 7 of schedule 13 provides that the cost of early pension payment is determined by the scheme manager on the advice of the scheme actuary.
- 5.29 Regulation 35 requires the employer to pay a single lump sum contribution to the scheme manager in respect of those costs. Where the additional contribution option applies, the lump sum comprises (i) an amount from the employer no greater in value than the redundancy payment, and (ii) an optional additional contribution from the member if required and the member elects to do so.
- 5.30 The lump sum contribution must be received no later than one month after the date upon which the pension is payable. However if the additional contribution option applies, then the lump sum contribution is required no later than one month before that date (regulation 35(3)). This mitigates a scenario whereby the member opts to pay additional monies, the pension is put into payment but then the additional member contribution is not forthcoming to the employer for remittance to the scheme manager as part of the lump sum payment. The potential risk to scheme finances therefore necessitates payment before pension.
- 5.31 The amount of pension payable is actuarially reduced to take account of the extent to which the lump sum payment received covers the cost of early payment. No reduction applies if costs are covered in full. The calculation steps for the resulting pension payable are set out at paragraph 7 of schedule 13. As with 2008 scheme provisions, additional pension is subject to an actuarial reduction where it is claimed earlier than normal pension age. The member is unable to buy-out this reduction.

### *Additional contribution option*

- 5.32 Regulation 32 provides for the payment of an additional contribution where the member has that option and chooses to exercise it. The scheme manager must give to the employer information about the cost of early payment so that if the redundancy payment is insufficient to meet those costs in full, the employer is able to notify the member of any remaining costs net of that payment. The member can then decide whether to make an additional contribution in respect of those remaining costs.
- 5.33 For administrative efficiency, any additional contribution must be in multiples of £10 with any residual cost of less than £10 ignored. This is subject to a minimum payment of £500 or if less, the residual cost rounded down to the nearest £10.

### *Members with concurrent employments*

- 5.34 The 2015 scheme will follow the same rules as found in the 2008 scheme regarding concurrent employments where one terminates on redundancy.
- 5.35 A member who has one or more NHS employments that are concurrent with the post that is terminating on redundancy grounds may elect that those other employments also terminate at the same time on redundancy grounds. Alternatively the member can continue with those other employments as pensionable and therefore accrue further benefits.
- 5.36 If a member elects to terminate all concurrent posts on redundancy grounds, then the cost of early payment of pension benefits from all those posts are within scope of the costs referred to in paragraph 5.28 above. For this purpose, the employer is the employer that terminated the employment on redundancy grounds (regulation 34(3)).
- 5.37 Regulation 100 provides that members with concurrent practitioner and non-practitioner employments, who choose to cease all pensionable employments, will receive only their non-practitioner benefits on redundancy grounds if the practitioner employment(s) ended within 12 months of becoming entitled to a redundancy pension. Where this is the case, benefits in respect of such practitioner employment may be taken on a voluntary early retirement basis with an actuarial reduction or deferred for payment at normal pension age.
- 5.38 Benefits in respect of periods of concurrent practitioner employment that ended more than 12 months prior to the date of entitlement are payable on redundancy grounds – i.e. it is treated as past service. Where practitioner and officer employments run sequentially rather than concurrently, then the practitioner service is dealt with as past service and payable on redundancy grounds.
- 5.39 As with the 2008 scheme, abatement will not apply to retirement pensions payable on the grounds of redundancy should the member subsequently return to NHS employment.

### **Chapter 4: Partial retirement**

#### Regulations 84 – 89 & schedule 13

- 5.40 The 2008 scheme first introduced a facility intended to support a phased withdrawal from the workplace with a reduction in employment commitments supplemented by partial payment of pension. The 2015 scheme also features this facility and is offered to members as an optional flexibility.

- 5.41 The concept of partial retirement is where an active member claims a portion of accrued benefits whilst still continuing in pensionable employment. The member is required to have a change to the terms & conditions of the continuing employment and a reduction in pensionable earnings or 'engagement' in the case of practitioners and non-GP providers.
- 5.42 The fluctuating and often profit-share nature of practitioner earnings and non-GP providers necessitates the use of 'engagement' as a proxy for hours worked or duties. For employed members, pensionable earnings is relatively fixed meaning that lower pay generally equates to fewer hours worked or a reduction in duties.

### *Eligibility*

- 5.43 The member must elect to exercise the partial retirement option. Regulation 84 sets out the eligibility criteria. The member must be in active membership and have reached minimum pension age but not the upper age limit of 75 for active membership. There must be a change in the terms on which the member holds or engages in the employment in respect of which the member is exercising the option, and that change must result in the member's pensionable earnings (or engagement) reducing to 90% or less of the amount of member's pensionable earnings/engagement during the 12 month period ending with the option day.
- 5.44 If the member was not in active membership for the whole 12 month period preceding the option day, the formula at regulation 83(8) extrapolates pensionable earnings to give an annual rate against which the reduction is measured. Regulation 84(9) defines the 'option day' as the day before the reduction in pensionable earnings or engagement by virtue of which the option is exercisable takes effect.

### *Exercising the option*

- 5.45 To exercise the option, regulation 84(4) requires members to give written notice to the scheme manager. In the case of employed members, this notice must be accompanied by a written statement from their employing authority that the eligibility criteria relating to change in employment terms and reduction in pensionable earnings have been met. Practitioners are required to provide appropriate supporting evidence (e.g. documented change to partnership profit sharing) and a statement approved by the Host Board confirming the change in terms on which the member engages and a reduction in that level of engagement.
- 5.46 Regulation 84(3) requires the option notice to specify the (i) percentage of the member's pension excluding any additional pension, and (ii) whether any immediate payment of Additional Pension is also claimed.

- 5.47 The extent of the specified percentage is limited by regulation 84(5). This provides that the specified percent must yield a pension before any lump sum conversion (and excluding additional pension) that is not less than 20% of the pension that would be have been payable had the member retired on the option day.
- 5.48 The value of the drawn pension must also not be less than 0.05% of the member's lifetime allowance once any late retirement actuarial increases if applicable have been applied. This is because a pension smaller than this level is considered 'trivial' by HM Revenue & Customs standards and tiny pensions are administratively inefficient to pay.
- 5.49 The option can only be exercised twice. Regulation 84(7) provides that advice be taken from the scheme actuary as to the benefits paid as a consequence of the option being exercised – i.e. determining the value of (i) the pension based on the specified percentage and (ii) the unclaimed benefits that remain after the specified percentage has been deducted.

*Effect of exercising the option: amount of pension*

- 5.50 Once the option has been exercised, a member who has reached normal pension age becomes entitled to immediate payment of the specified percentage of the pension that would have been payable under the age retirement rules as if the member had satisfied those conditions on the option day. The pension is calculated accordingly, by reference to paragraph 1 of schedule 13 and so factoring the effect of the Leavers Index Addition, any actuarial increases or ERRBO purchases, and additional pension if taken.
- 5.51 A member who has not reached normal pension age is entitled to immediate payment of the specified percentage of pension but this is calculated in accordance with the early retirement regulation (i.e. subject to a reduction) as if the member had retired on the option day. Again the pension is calculated as if it were an early retirement, according to paragraph 6 of schedule 13 and thereby factoring the effect of the Leavers Index Addition, any actuarial reductions or ERRBO purchases and additional pension if taken.
- 5.52 Regulation 85(3) confirms that a member who exercises the option becomes both a pensioner and active member, holding both types of accounts. A pensioner account is created in respect of the payable pension. The active account remains open as the member is continuing in pensionable employment, and so can accrue further pension. However the account balance for the active account and any deferred accounts are reduced by the specified percentage. This maintains the correct proportion of revaluation status applicable to the member's accrued

benefits. The remaining active account balance would continue to attract a full year of in-service revaluation for the year in which the option(s) were made – only the partial retirement pension amount has the pro rata Leavers Index Addition revaluation amount applied.

#### *Effect of change in employment circumstances*

- 5.53 Members who exercise the partial retirement option must have reduced their employment commitments. Regulation 86 provides that the pension is abated to zero if the terms of the employment change again and as a result the member's earnings/engagement increase to more than 90% of the amount/level during the 12 month period ending with the option day. The option day acts as a baseline against which those changes are measured.
- 5.54 The abatement takes effect from the first day after the earnings/engagement increase (regulation 86(3)). If the earnings/engagement subsequently reduce again then the pension is restored with effect from the first day after the reduction. Where this is the case, before resuming payment the scheme manager will take advice from the scheme actuary as to whether the pension should be adjusted in view of the length of time it had been abated to zero (regulation 87).
- 5.55 Regulation 86(5) gives the scheme manager the option not to apply abatement where the member has exercised the option and reduced their commitments but subsequently gets a pay rise without taking on additional commitments or hours and that this rise takes them over the 90% pay level (e.g. a cost of living increase).
- 5.56 If within 12 months of the option day the member enters into further employment(s) in which there is active membership, then that event is treated as if the employment terms have changed and the earnings/engagement from the further employment are treated as being an increase compared with the 'option employment' (regulation 83(5)). Accordingly, abatement to zero may apply.
- 5.57 If the member does not reduce earnings/engagement below the required level, the abated pension will (in any event) become payable when the member retires, or partially retires again or reaches age 75 (regulation 88). Where this is the case, the scheme manager in resuming payment, will take the advice of the scheme actuary and have regard to any pensions already paid to the member, including lump sums where commuted.

#### *Concurrent employments*

- 5.58 Regulation 89 deals with instances where a member is an active member in respect of two or more part-time employments held concurrently on the option day.

The partial retirement rules apply to each concurrent employment as if it were the only employment held on that day. This allows determination of the changing 'terms of employment' eligibility criteria at regulation 84(1)(e) and any subsequent change to those terms. Total pensionable earnings from those employments are however aggregated to form a single figure, with extrapolation as necessary where an employment is held for less than 12 months. This is achieved by the modifications at regulation 89(3) which adapt the 'single employment' provisions.

- 5.59 Regulation 29 is relevant here as this provides for the treatment of pensionable earnings from concurrent employments. These are subject to a 'whole time equivalent' (WTE) cap whereby the hours or sessions worked are aggregated and the scheme manager determines a whole time level that would constitute a full time employment. The member cannot be a member in respect of any employment (or part thereof) that is in excess of this level. For the purposes of partial retirement, pensionable earnings from concurrent employments are subject to this general WTE cap, with the effect that just pensionable earnings, rather than all earnings from those employments, fall to be considered under these provisions.
- 5.60 For practitioners and non-GP providers, concurrent employments are addressed by regulation 89(5). This provides that for the purposes of partial retirement, a member's employment is taken as meaning all concurrent NHS employments, including those relating to their self-employment as well as any employed, part-time posts. 'Terms of employment' is construed accordingly, bringing concurrent employments within scope of the eligibility and change tests.

## **Chapter 5: Ill-health retirement**

### Regulations 90 – 97 & schedule 13

- 5.61 The 2015 scheme will have a facility for ill-health retirement similar to that available in the 2008 scheme. The major difference is that tier-2 ill-health pensions in the 2015 scheme will include an enhancement of half a member's prospective service to their 'prospective normal pension age' rather than the two thirds prospective service to normal pension age provided by the 2008 scheme. The career average methodology also means that a new way of calculating the enhancement is used.
- 5.62 There are three strands to the ill-health retirement provisions – (i) ill-health retirement for active members, (ii) an ill-health pension for deferred members, and (iii) conversion of pension benefits to a lump sum on serious ill-health grounds for any type of member.

### *Ill-health pension for active members*

- 5.63 For active members retiring on ill-health grounds before reaching normal pension age, regulation 90(1) enables a payment of an ill-health pension at two different tiers: tier-1 or tier-2. The pension tier awarded is determined by an assessment of employment capabilities.
- 5.64 A tier-1 pension is payable to members whom the scheme manager is satisfied are permanently incapable of discharging efficiently the duties of the employment from which they have retired, but may be capable of engaging in other descriptions of work. In other words they cannot perform efficiently the duties of their current job. The tier-1 eligibility conditions are set out at regulation 90(2).
- 5.65 A tier-2 pension is payable where the impact of the member's health condition is even more severely limiting. Tier-2 is available to members whom the scheme manager is satisfied are permanently incapable of engaging in regular employment of like duration to the employment from which they have retired. The tier-2 conditions are cumulative with tier-1 (regulation 90(3)), so the member must not be able to perform efficiently the duties of their current job (tier-1) or any job with a similar level of engagement or hours as the former employment (tier-2). Regular employment of like duration is further defined in regulation 90(5), which will be assessed for tax implications. As an example, a nurse who was working 20 hours a week must be permanently incapable of being a nurse and also permanently incapable of any other description of employment that is 20 hours or more a week.
- 5.66 Regulation 90(4) prevents payment of an ill-health pension if the employment is terminated because the member was dismissed (unless the scheme manager is satisfied that the cause was the member's infirmity), or retires/resigns with disciplinary proceedings active or pending. An ill-health pension also cannot be paid if the member resigns or retires without the employer first giving notice to the scheme manager that the member's infirmity is the reason and the scheme manager is satisfied that is the case. This is as a discouragement to members leaving employment of their own volition (as opposed to dismissal) and subsequently claiming ill-health as the reason. Such action otherwise shortcuts the ill-health and sickness management processes that employers have in place.
- 5.67 Regulation 91 sets out the factors taken into account by the scheme manager in determining whether the tier-1 or tier-2 conditions apply to a member who claims an ill-health pension.
- 5.68 Of particular note is the concept of 'permanently' at regulation 91(6). The principle is that permanent equates to the expected duration of the member's working life.



The yardstick for this should therefore be the member's normal pension age which is linked to their state pension age. However it is possible for a member's state pension age to change. For the youngest members whose state pension age 'cohort' has yet to be fixed in legislation, it is appropriate that for ill-health benefits which involve an assessment based on a date many decades into the future that Government assumptions about future state pension ages are used instead. This is referred to as 'prospective normal pension age' and is defined in schedule 15.

- 5.69 Whilst this notionally extends the member's prospective working life for younger members, for this group it also means that enhancements to tier-2 ill-health pensions are calculated against a higher normal pension age than that based on state pension age set in legislation. The result is a more valuable enhancement.

#### *Annual rate of ill-health pension*

- 5.70 Where a member has had break(s) in service of over five years, separate deferred account(s) are created so that there is no loss of deferred revaluation in relation to that earlier service. Upon retirement benefits in deferred account(s) become payable as separate pensions at the same time as benefits in other active and deferred accounts.
- 5.71 Tier-1 therefore entitles the member to unreduced pension(s) based on service up to the date of retirement. Regulation 92 provides the calculation steps, factoring the effect of any optional conversion of annual pension to lump sum and additional pension purchased.
- 5.72 Tier-2 is cumulative with Tier-1, therefore entitling the member to amount found under the tier-1 pension calculation plus an enhancement ('the tier-2 addition'). The enhancement is an amount equating to 50% of prospective service to the member's prospective normal pension age. The formula at regulation 92(3) provides that the enhancement is determined by reference to the aggregate of the individual pension(s) produced as part of the tier-1 calculation and the length of service over which they were accrued. This allows past periods of full or part-time pensionable service to be taken account of when establishing the enhancement. The overall effect is that the accrued pension is enhanced by the ratio of the total pensionable service (including the enhancement period) to the actual pensionable service alone.
- 5.73 Regulation 93 provides that a member awarded a tier-1 pension can be notified at the time of the award that their case may be reassessed on application within three years of the award being made. The member may be awarded a tier-2 pension, in substitution of the tier-1 pension, if the tier-2 condition is met at the date of reassessment.

### *Ill-health pension for deferred members*

- 5.74 Regulation 94 permits deferred members to claim a tier-1 ill-health pension if they are under normal pension age and have left pensionable service. If the member is not in NHS employment then a tier-1 pension is payable if the tier-2 conditions are met. If however the member remains in NHS employment (i.e. opted out from active membership) then only the tier-1 conditions need to be met. The resulting tier-1 pension is calculated in accordance with regulation 92.
- 5.75 A deferred member may not claim a tier-2 pension which is available to active members only. The enhancement compensates for loss of continuing future membership, which a deferred member has already chosen to forgo.

### *Option for members with serious ill-health to convert benefits into a lump sum*

- 5.76 Regulation 109 provides that a member (active, deferred or pension credit) who is suffering from serious ill health such that life expectancy is less than 12 months has the option claim all pension benefits as a single cash lump sum.
- 5.77 This option is available in respect of any pension payable on or after normal pension age, as well as an ill-health pension paid before normal pension age. The option must be exercised before the pension becomes payable, it cannot be retrospectively taken up. The scheme manager must be satisfied that the member meets the serious ill-health lump sum criteria set by the Finance Act 2004<sup>10</sup>.
- 5.78 Regulation 109 sets out the calculation of the lump sum amount. This has two parts. First, the maximum amount of lump sum permitted under the option at regulation 77 to convert annual pension to pension commencement lump sum. Second, an amount equal to five times the remaining amount of post-conversion annual pension. This provides the member with the same amount of benefit that would have been payable in respect of a member who took maximum pension commencement lump sum and died on the first day in receipt of the remaining annual pension.

### *Effect of further employment for members with a tier-2 ill-health pension*

- 5.79 As with the 2008 scheme, the continuing payment of a tier-2 pension is subject to conditions being met. Regulation 94 provides that in order to retain a tier-2 pension, a member must not earn more than the lower earnings limit (LEL) for

---

<sup>10</sup> Paragraph 4 of Schedule 29

National Insurance purposes across all employments. On failing this condition, the member's tier-2 pension is withdrawn and replaced with a tier-1 pension.

- 5.80 The intention is to permit the member to undertake very limited, therapeutic work if desired. If the member re-enters NHS employment then even if the member's earnings stay below the LEL, their tier-2 pension will be withdrawn and replaced by a tier-1 pension if the member remains in NHS employment at the end of the 12 month period starting with the day the member became employed ("the initial period").
- 5.81 The member is required to notify the scheme manager if the aggregate earnings across all employments exceed the lower earnings limit, or if the member is in NHS employment at the end of the 12 month period.
- 5.82 Regulation 96 permits members who have had their tier-2 pension replaced with a tier-1 pension, to apply for re-instatement of their tier-2 pension if certain criteria are met. The application must confirm that employment has ceased, and be made either within the initial period if an NHS employment or within a year of the LEL breach if not. It must be accompanied by evidence from a registered medical practitioner as to the infirmity that the scheme manager is asked to consider whether or not as meeting the tier-2 condition.
- 5.83 If the scheme manager is satisfied that the tier-2 conditions have been met then the tier-1 pension is withdrawn and a tier-2 pension payable from the day after the member's last employment ceased regulation 96(5).
- 5.84 The member cannot re-join the scheme in respect of any NHS employment irrespective of whether the LEL has been breached, until after the first anniversary of re-entering NHS employment. In other words, cannot re-join scheme until the tier-2 pension is lost permanently – i.e. Tier-2 pension has been replaced with a Tier-1 if earnings threshold exceeded or the member has been in NHS employment for one year, and the time limit has elapsed for applications to reinstate the Tier-2 pension.
- 5.85 There are no restrictions on further employment for members with tier-1 pensions, though abatement may apply if re-entering NHS employment.

## **Chapter 6: Dual capacity and multiple employment**

Regulations 98 - 100

- 5.86 In common with the 2008 section, a person can become a member of the scheme in more than one way, or 'capacity'. For example, a member may have a pension

from the scheme and return to pensionable employment. The member is therefore both a pensioner member and an active member.

- 5.87 Regulation 98 introduces the concept of multi-capacity members and generally allows rights relating to each capacity to operate independently, such that benefits are calculated and paid in relation to each capacity separately as if it were two or more members. The effect is that two or more pensions or lump sums are payable in respect of one member. This general rule is set aside where a specific effect on benefits is required elsewhere in these regulations for a member who has a particular combination of capacities – e.g. death benefits for re-employed or partially retired members where the member is both active and a pensioner.

*Option for deferred members re-entering NHS employment as a result of a TUPE transfer*

- 5.88 Regulation 99 provides that members with deferred benefits who have re-entered NHS employment by virtue of a TUPE transfer will have the option of disapplying the general rule requiring retirement from NHS employment as a prerequisite to claiming a pension.
- 5.89 The intention is to avoid disadvantaging a member's retirement plans where they re-enter NHS employment for reasons that are beyond their control. An example is where a member leaves NHS employment, takes up employment elsewhere only for that employment to be TUPE transferred to another employer that is a scheme employing authority and in so doing the member re-enters NHS employment.
- 5.90 This easement applies only to benefits built up before re-entry. The retirement rule would apply as normal to any subsequent accrual in connection with the NHS employment to which they have transferred.

**Chapter 7: Abatement on re-employment**

Regulations 101 - 108

- 5.91 Pensioner members may re-join the scheme upon entering into pensionable service and meeting the general eligibility criteria for active membership. The exception is members in receipt of a tier-2 ill-health pension or who have converted their pension benefits into a lump sum on grounds of serious ill-health.
- 5.92 As with members who do not have a pension in payment, an active account is opened and new benefits accrue in respect of this further period of pensionable service. Such a member is a dual capacity member in that there is both active and pensioner membership (see paragraph 5.87).

- 5.93 Abatement will apply to certain types of pensions if the member enters into NHS employment. Abatement is the term given to applying a reduction to a member's pension should the member return to NHS employment after retirement but before reaching normal pension age. NHS employment is used rather than pensionable service in order that abatement cannot be avoided by the member opting out of the scheme on return.
- 5.94 A reduction is applied when the amount by which earnings from the new employment plus the value of the pension enhancement exceeds previous earnings from the old employment. The reduction amount cannot exceed the value of the pension enhancement.
- 5.95 The policy on abatement in the 2008 scheme is adopted for this scheme. Abatement therefore applies only to pensions payable in respect of Interest of the Efficiency of the Service (IES) retirements and both tiers of ill-health retirement pensions. All other pensions are unabated.
- 5.96 The scope of abatement has further narrowed considerably over the years, with pensions payable on redundancy grounds not attracting abatement since 2008. The principle is that if the member has paid for the full cost of their pension entitlement then abatement does not apply. The scope narrows further in the case of practitioner and non-GP provider member who by virtue of their self-employment are not entitled to claim retirement on IES grounds.
- 5.97 The part of the pension applicable for abatement is the difference between the amount of pension paid and the amount that would have been paid if the member had taken voluntary early retirement (actuarially reduced) on their last day of service.
- 5.98 Abatement does not apply where members are over normal pension age when their new NHS employment begins, and ceases to apply on the member reaching normal pension age where employment began before that point.

#### *Abatement criteria*

- 5.99 Regulation 101 sets out the criteria for determining whether a member is in scope of abatement. The person must be a pensioner member who returns to NHS employment but not as a result of a TUPE transfer, is in receipt of either an ill-health or IES pension and is under normal pension age.
- 5.100 The general definition of 'NHS employment' covers employment with an employing authority. This is cast wider by regulation 101(2) to include employment with

corresponding health services. This measure prevents circumvention of abatement through cross-border re-employment.

- 5.101 Regulation 102 puts the onus on the 'employed pensioner' to notify their new employer or other such specified person of the fact that an 'old service pension' is in payment, and provide information where requested about relevant income in the new employment. This obligation continues to apply in each successive new employment, not just the first time.

#### *Reduction of pension*

- 5.102 Regulation 103 requires that the old service pension be reduced where the employed pensioner's 'relevant income' for the financial year exceeds their 'previous earnings'. These elements are further defined in regulation 104 for relevant income, and regulations 105 & 106 for previous earnings. The pension however cannot be reduced below the amount of a member's guaranteed minimum pension entitlement.

#### *Relevant income and enhancement amount*

- 5.103 Regulation 104 defines the meaning of 'relevant income'. It is the aggregate of the amount of earnings during that year from the new employment and the 'enhancement amount' in relation to the old service pension. Members who do not become an active member upon taking up employment, are treated as having done so. The effect is that the earnings taken into account are those that would count as pensionable earnings.
- 5.104 The 'enhancement amount' is the difference between the amount of annual pension for that year (disregarding any pension commencement lump sum conversion, but taking account of any allocation) and the amount that would have been payable had the member claimed an early retirement pension on their last day of service. It is sometimes described as the 'unearned portion', though this is a term not found in regulations. The pension amounts referred to include any increases due under the Pensions (Increase) Act 1971.
- 5.105 In cases where the old service pension is a tier-2 ill-health pension, regulation 104(4) requires that the enhancement in respect of tier-2 entitlement is not actuarially reduced and the early retirement pension calculation is therefore based on actual pensionable service as it stood on the member's last day of service in the old employment. Regulation 104(4) disapplies the minimum pension age that would otherwise apply when claiming an early retirement pension. Ill-health retirement pensions do not have an age threshold, so without that disapplication

the early retirement pension calculation would be frustrated in the case of younger members.

### *Previous earnings*

- 5.106 Regulations 105 & 106 define 'previous earnings'. This is the other side of the abatement equation and is the amount of earnings from all NHS employments in the 12 month period ending with the date that the old employment ceases. It therefore includes earnings from both the terminating employment(s) and any ongoing employment. All earnings from NHS employment are in scope, irrespective of active membership in respect of those employments.
- 5.107 For officer employments, regulation 105(2) provides that previous earnings is the higher of either (i) the annual rate of earnings for the old employment at the time it ceased, or (ii) the 'revalued pensionable earnings' for the scheme year in the 'earnings reference period' with the highest revalued pensionable earnings. The latter being the method used elsewhere within the scheme to identify the best annual earnings (e.g. when calculating a death in service lump sum).
- 5.108 Regulation 105(6) requires that the amount taken as previous earnings must be adjusted in each financial year for inflation.
- 5.109 For practitioner and non-GP provider employments, an average of annual earnings is taken, revalued to the date of entitlement to the pension, and then adjusted for inflation in the same way as for officer previous earnings (regulation 105(3)).
- 5.110 The difference in method accounts for the typically self-employed nature of practitioner and non-GP provider earnings. The task is to create as true a picture of typical earnings from the old employment as possible. This is straightforward for officer members who receive predictable remuneration that typically only changes in-line with a set pay framework outside of the member's control. By contrast however, self-employed members have far greater control over their earnings from year to year, which are also likely to fluctuate by virtue of fee-based work, profit share arrangements etc. An average is therefore considered the better method of producing a truer picture of typical earnings for those types of members.

### *Concurrent employments*

- 5.111 Regulation 106 provides for the factoring of earnings from employments held concurrently with the old service employment and either terminating at the same time or continuing afterwards (whether pensionable or not).

- 5.112 Where there are no concurrent or continuing employments, 'previous earnings' is the amount defined and calculated under regulation 105.
- 5.113 Continuing employment as a concept applies in the main to regulation 27 group A - D employments. There is no concept of continuing practitioner employment. This has roots in a key difference in treatment of officer and practitioner employments. Multiple part-time employments are a common feature of the careers of employed regulation 27 group A - D members. These employments normally have a separate contractual status for a range of purposes and so, for example, a member may take a pension in respect of one such employment but continue for a while in another, or the member can opt out of the scheme in one employment whilst remaining an active member in another.
- 5.114 For practitioners on the other hand, membership is frequently made up of numerous small pieces of such service (e.g. fee-based work) which would be very difficult to disaggregate and are accorded a combined status by the host board (see paragraph 4.28 above) before notification to the scheme manager for record keeping purposes. For these reasons the administrator never calculates separate pensions for each bit of practitioner service. Practitioners who join the scheme must do so for all such service, and if they opt out, they must also do so for all of their practitioner service, other than locum work. Finally, if they cease practitioner employment in order to qualify for a normal age retirement pension, it means ceasing all such employment.
- 5.115 An exception to this rule arises where there is 'mixed' regulation 27 employed group A - D *and* practitioner group E employment. In these circumstances, it would be possible for example for a practitioner member to be declared redundant from a hospital group A - D post whilst continuing their work and scheme membership as a practitioner. Similarly, a group E practitioner could cease all practitioner engagement whilst continuing in their group A - D work.
- 5.116 To complete the picture, non-GP provider members can only be an active member in respect of a single employment and therefore have no possibility of concurrent employments.

#### *Members with more than one pension*

- 5.117 It is possible for a member to have more than one pension in payment upon return to employment. Regulation 107 provides for these multiple pensions to be factored into the main abatement calculation by modifying regulations 101, 105 & 108 such that all 'old service' pensions are within scope, together with the 'previous earnings' in respect of the old employments that had ceased in order to create entitlement to those pensions. The previous earnings in respect of all such old



employments are aggregated and tested against the member's relevant income for the financial year in which re-employment occurred. Accordingly the definition of 'relevant income' is amended to include the enhancement amounts in respect of all old service pensions.

- 5.118 The effect is that a reduction is to apply if the 'relevant income' (now inclusive of the enhancement for each old service pension in payment) for the financial year exceeds the previous earnings for all the old employments added together.
- 5.119 The amount of the reduction is equal to the excess and is applied across the pensions such that each pension is reduced proportionately to the value of the pension amount as it relates to the total value of all the old service pensions for that financial year. So if Pension A was 60% of the total value of the aggregated pensions, and Pension B was 40%, then Pension A would be receive 60% of the reduction that applies across all those pensions, and Pension B 40%.

#### *Provisional reductions and later adjustments*

- 5.120 If a pension is abated, regulation 108 requires the scheme manager to review the amount of reduction at the end of the financial year, and at any time during the financial year if it appears to scheme manager that the amount of reduction is or may become incorrect for the year, or that no reduction should be made.
- 5.121 The scheme manager is required to abate a pension if of the view that the conditions for abatement will be met in any financial year. Also the scheme manager must make an adjustment if at any time during the financial year it appears necessary to do so. This may take the form of altering the amount of reduction or repaying to the pensioner any amount that should not have been deducted – either by reason of excessive reduction or that no reduction should have been made. The reverse is true too, where a reduction was not made and it should have been, then the pensioner must repay the excess pension to the scheme manager.
- 5.122 Finally, regulation 108(5) asserts the right of the scheme manager to recover any payment or overpayment where considered appropriate, and not just in cases where there had been a failure to apply the reduction.

## Part 6: Survivor benefits

- 6.1 The scheme will provide a set of benefits that are payable in the event of a member's death. Benefits include lump sums payable on death and payment of adult survivor & dependent child pensions.

### **Chapter 1: Adult survivors**

Regulations 112 – 120 & schedule 14

#### *Lump sum on death*

- 6.2 Regulation 112 provides that a lump sum is payable upon death of a member who at the date of death was either in active, deferred, pensioner or pension credit member, or was partially retired or had recently left membership without becoming a deferred member. The lump sum payable is determined according to those membership circumstances and the calculation steps are set out in schedule 14.
- 6.3 Where the person is a member in more than one 'capacity' then a lump sum becomes payable in respect of each 'capacity'. See paragraph 5.87 which describes membership capacities. Special provision is made for members who have either partially retired or retired and returned to pensionable employment.

#### *Death of an active member who is not also in receipt of a pension*

- 6.4 All active members who die before reaching age 75 qualify for a lump sum upon death. Unlike the retirement pension benefit entitlement, there is no qualification required for a lump sum on death. The member becomes eligible for this benefit upon commencing pensionable service in the scheme.
- 6.5 The lump sum amount is calculated by reference to the member's total pensionable earnings (paragraph 2 of schedule 14). The member's total pensionable earnings are equal to the higher of:
- twice the member's pensionable earnings for the period of 12 calendar months ending on the member's date of death ('relevant earnings'), or,
  - twice the 'Revalued Pensionable Earnings' for the scheme year falling in the 'Earnings Reference Period' with the highest Revalued Pensionable Earnings.
- 6.6 The amount of 'Revalued Pensionable Earnings' for any scheme year is equal to the actual pensionable earnings for that scheme year increased by the rate of

change in prices specified by Treasury orders laid under section 9 of the Public Service Pensions Act 2013 for that scheme year and each subsequent scheme year up to and including the scheme year in which the member died.

- 6.7 If the member has less than 365 days of pensionable earnings in the 12 calendar months preceding death, then the amount of 'relevant earnings' for the 12 month period is found by extrapolating pensionable earnings.
- 6.8 The 'Earnings Reference Period' is the period ending on the last day of the scheme year immediately preceding the scheme year in which the member died and beginning on the later of:
- the first day of the scheme year in which the member first joined the scheme;
  - the first day of the 10<sup>th</sup> scheme year preceding the scheme year in which the member died.
- 6.9 Pensionable earnings during any scheme year in the Earnings Reference Period that represent less than 365 days pensionable earnings are not extrapolated, they remain the actual earnings for that year revalued by the rate mentioned in paragraph 6.6 above.

#### *Death of a deferred member*

- 6.10 A lump sum is payable where a member has not become entitled to their deferred benefits and dies under the age of 75. The lump sum is an amount equal to the member's deferred annual pension multiplied by 2.025 (paragraph 3 of schedule 14). This equates to a lump sum equal to of 3/80ths of the member's average earnings when factoring the 1/54th accrual rate and so yields a lump sum on death equivalent to those in the 1995 & 2008 scheme.

#### *Death of a recent leaver*

- 6.11 A lump sum is to be payable to a member who dies within 12 months of leaving but without an entitlement to a deferred pension ('a recent leaver'). The person must have neither transferred out their accrued benefits nor claimed a refund of contributions between their last day of service and their date of death. We will finesse the definition of a recent leaver in the regulations to the extent required to match wider pensions legislation.
- 6.12 This provision is aimed at those persons who have not built up enough service to qualify for pension benefits but have left pensionable employment with a possible intention to re-join the scheme in the near future. An example might be a six-month break between jobs.

6.13 The lump sum amount is calculated in the same way as for deferred members. It is to be an amount equal to the annual pension that the person would have been entitled to had the qualifying criteria been fulfilled, multiplied by 2.025 (paragraph 5 of schedule 14).

*Death of a pensioner member (single capacity)*

6.14 A lump sum is payable in respect of a pensioner member who was not also a member in another capacity (e.g. has active benefits) and dies within five years of the pension being paid (paragraph 4 of schedule 14). The lump sum is an amount equal to the lesser of:

(a) five times the annual pension in payment (excluding any additional pension) less any pension already paid to the member.

or,

(b) the amount of lump sum that would have been payable if the member had died on the last day of pensionable service, less any pension commencement lump sum.

6.15 If the member had made an allocation election, then the amount of pension payments already made to the member referred to in (a) is the amount that would have been made apart from the election.

6.16 The calculation principle is that the aggregate amount of the lump sum on death due in respect of the pensions should not be greater than that would have been payable upon death in service, less any pension commencement lump sum already paid. The purpose is to ensure that in combination the member and member's beneficiaries get a guaranteed minimum level of value from the pension entitlement in recognition of the early death.

*Death of a re-employed pensioner member*

6.17 A lump sum is payable upon the death of a pensioner member who was also an active member in respect of a later period of service (paragraph 6 of schedule 14). In other words a member who has returned to active membership with a pension in payment (a re-employed pensioner).

6.18 The amount payable is arrived at by adding two elements together. First, in respect of the active membership, an amount equal to five times the annual rate of pension that would be payable (a) in cases where the member was under normal pension age, as a tier-2 ill-health pension, or (b) where the member was over normal pension age, as an age retirement pension. Second, in respect of the

pensioner membership, for each pension that has been in payment for less than five years then an amount equal to the lump sum on death associated with that pension.

#### *Death of a member who had exercised the partial retirement option*

- 6.19 A lump sum is payable upon the death of an active member who has made an election to receive a portion of pension benefits under the partial retirement option. Such a member has both an active and pensioner accounts by virtue of exercising the option however the calculation is different to that for a re-employed pensioner who also has an active and pensioner accounts.
- 6.20 The amount payable has two components. A lump sum on death is payable in respect of pension(s) in payment for less than five years, plus a death in service lump sum resulting from the active membership.
- 6.21 The amount of death in service lump sum is reduced proportionately based on the percentage proportion of pension entitlements already put into payment by the member as a result of exercising the partial retirement option. This is dealt with by the 'appropriate fraction' calculation at paragraph 7 of schedule 13.
- 6.22 The 'guarantee amount' for a pension is five times the annual rate of the pension, less the amount of the pension payments already made to the member in respect of that pension. Of particular note is the death in service calculation in paragraph 7(2)(a) of schedule 14 which represents the member's active service and so uses date of death, whereas the death in service 'equivalent test' in paragraph 7(2)(b)(ii) uses is the date on which the member last elected to take pension under the partial retirement option.

#### *Death of a pension credit member*

- 6.23 Pension credit members are never treated as active members. They have deferred entitlement payable at the pension credit member's normal pension age.
- 6.24 Accordingly a lump sum is payable if a pension credit member dies before the pension benefits derived from that credit have been put into payment. The lump sum is an amount equal to the annual pension to which the member would have been entitled if the member had reached their normal pension age on the date of death, multiplied by 2.025 (paragraph 8 of schedule 14).
- 6.25 A lump sum is also payable if the member dies within five years of the pension becoming payable. The lump sum amount is calculated using a variation of the death of pensioner (single capacity) lump sum method. The variation is twofold –

(i) it is the pension debit member's pensionable earnings that are used to calculate the death in service lump sum equivalent test, and (ii) the reference period for identifying the highest pensionable earnings ends on the valuation date rather than the date of the pension debit member's last day of service.

#### *Payment of lump sums on death*

6.26 Paragraph 9 of schedule 14 provides for the payment of lump sums to personal representatives or beneficiaries. This deals with (i) the making, revocation and absence of beneficiary nominations, (ii) where a payment to a nominated beneficiary cannot be practicably made (e.g. pre-deceases the member), (iii) forfeiture of a payment to a beneficiary and, (iv) disapplication of the general benefit assignment prohibition (paragraph 10 of schedule 3) to allow assignment by personal representatives of the deceased e.g. in exercise of a will.

#### *Adult survivor pension*

6.27 The scheme provides adult survivor pension benefits on the same basis as the 2008 scheme.

6.28 The Proposed Final Agreement<sup>11</sup> states that spouse and partner pensions in the 2015 scheme will continue to be based on an accrual rate of 1/160<sup>th</sup>. This is equivalent to a 50% share of a member's pension using a 1/80<sup>th</sup> accrual rate as applies in the 1995 and 2008 scheme. The 1/54<sup>th</sup> accrual rate for the scheme means that regulations express that share as 33.75%, which is the equivalent of 50% accruing at 1/80<sup>th</sup>.

6.29 For deaths in retirement, spouse and partner pensions will remain based on the amount of pension before any conversion to a pension commencement lump sum took place and before any actuarial reduction for early retirement is applied.

6.30 Survivor pensions for members who have qualified for benefits but die in service and deferred members who die within a year of leaving are based on the ill-health pension the member would have received had that member retired on health grounds.

6.31 Regulation 113 provides that the scheme will pay to the surviving adult dependant of an active, deferred or pensioner member a pension payable for life regardless of any changing circumstances. Surviving adult dependant is defined as the spouse, civil partner or nominated partner of the member. Regulation 114 sets out

---

<sup>11</sup> *Reforming the NHS Pension Scheme for England and Wales*, March 2012, paragraph 5(k)

the process for nominating a partner, the factors that successfully establish that nomination and the circumstances in which that nomination ceases to have effect.

- 6.32 Subject to the deceased member building up two years' qualifying service, the surviving adult dependent may have entitlement to an initial pension payable at a different rate for a period of 3 or 6 months following death, if the amount is higher than the continuing rate of pension. This initial pension may be followed by a continuing pension. In some circumstances the continuing pension is based on the tier 2 (or higher tier) ill-health pension calculation.

#### *Initial survivor pension*

- 6.33 An initial rate of pension may be paid to surviving adult dependents where an active or pensioner member dies. In the case of the death of an active member, the initial rate for the first six months following death is:
- the rate of the member's pensionable pay at the time of death if the member was not a practitioner or non-GP provider
  - the rate of the member's pensionable earnings during the last complete quarter before the member's death if the member was a practitioner or non-GP provider
- 6.34 In the case of the death of a pensioner member, the initial rate is paid for the first six months if there are dependent children and for the first three months if there are not. The initial rate is the rate of the pension in payment at the time of death, ignoring certain reductions and increases that may or may not have been applied to that pension.

#### *Continuing survivor pension*

- 6.35 Continuing survivor pensions are calculated by reference to a 33.75% of a member pension. The pension is described as continuing to distinguish it conceptually from initial survivor pensions.
- 6.36 If an active member or a deferred member who has recently left dies before normal pension age the continuing pension is paid at a rate equal to 33.75% of the pension the member would have received had they retired with a tier-2 ill-health pension. The amount of continuing pension paid in respect of other members is equal to 33.75% of the member's normal retirement pension. The resulting continuing survivor pension is payable for life.

## **Chapter 2: Child survivor**

### Regulations 121 – 130

- 6.37 The scheme provides child and dependent allowances on the same basis as the 2008 scheme. For deaths in retirement, child pensions will remain based on the amount of pension before any conversion to a pension commencement lump sum took place and before any actuarial reduction for early retirement is applied.
- 6.38 Child survivor pensions for members who have qualified for their benefits but die in service, and deferred members who die within a year of leaving, are based on the amount of tier 2 ill-health pension that the member would have received had that member retired on health grounds. Alternatively, if greater, it is based upon the amount of the member's pension but increased as if it had been accrued over ten years. This is referred to as the 'basic death pension' and the pensions payable are a proportion of that pension.
- 6.39 In order for the proportion of the pension paid out to remain consistent across the 1995, 2008 and 2015 schemes – which have differing accrual rates ( $1/80^{\text{th}}$ ,  $1/60^{\text{th}}$  and  $1/54^{\text{th}}$  respectively) – the relevant calculation must change to ensure the basic death pension is worked out correctly. In the 2008 regulations the basic death pension was 75% of the notional pension; this will change to 67.5% in the 2015 Scheme to reflect the better accrual rate. Regulations 123 to 126 provide for the calculation steps depending on the deceased members' circumstances.
- 6.40 Regulation 121 sets out to whom the surviving child's pension is payable, with regulation 122 defining what is meant by "an eligible child". These definitions mirror the equivalent 2008 scheme provisions.
- 6.41 Regulations 123 to 126 and 128 set out the details of how much pension is payable to an eligible child (or eligible children) dependent upon the circumstances of the member at the date of their death. These categories include at regulation 123, an active member not in receipt of a pension; at regulation 124, a pensioner member who is not also an active or deferred member; at regulation 125, a deferred member; at regulation 126, a recent leaver; and at regulation 127; a re-employed pensioner member.
- 6.42 Regulation 127 provides discretion to the scheme manager to increase the amount of surviving child pension payable where the dependent child is not maintained by the surviving parent (or their spouse or civil partner) up to the amount payable had there been no surviving parent (or their spouse or civil partner).



### *Initial survivor pension*

- 6.43 An initial rate of pension may be paid to surviving child dependents where an active or pensioner (including dual capacity) member dies. When a surviving adult dependent's pension is payable, but the dependent child is not dependent on the person entitled to that adult survivor pension, the initial rate of pension is payable for 3 months.
- 6.44 Where there is no surviving adult dependent pension payable, the initial rate of pension is payable for 6 months.
- 6.45 In the case of the death of an active member, the initial rate for the first three, or six, months following death is:
- the rate of the member's pensionable pay at the time of death if the member was not a practitioner or non-GP provider
  - the rate of the member's pensionable earnings during the last complete quarter before the member's death if the member was a practitioner or non-GP provider
- 6.46 In the case of the death of a pensioner member, the initial rate is the rate of the pension in payment at the time of death, ignoring certain reductions and increases that may or may not have been applied to that pension.
- 6.47 In the case of the death of a member who is a re-employed pensioner (i.e. dual capacity) the initial rate payable where there is no surviving adult is the rate of the pension in payment at the time of death, ignoring certain reductions and increases that may or may not have been applied to that pension, plus
- the rate of the member's pensionable pay at the time of death if the member was an not a practitioner or non-GP provider
  - the rate of the member's pensionable earnings during the last complete quarter before the member's death if the member was a practitioner or non-GP provider.

### *Shares of a continuing pension*

- 6.48 Where a continuing child survivor pension is payable a proportion (or 'appropriate fraction') of the basic death pension is payable. The proportion depends upon the number of dependent children, and whether or not a surviving adult dependent pension is payable. The tables at regulations 123 and 125 set out the relevant appropriate fractions payable in various circumstances.

- 6.49 Where a surviving adult dependent pension is payable, and there is one dependent child, the appropriate fraction payable to that child is one-quarter of the basic death pension. Where there are two or more dependent children, the appropriate fraction to be shared by those children will be one-half.
- 6.50 Where there is no surviving adult dependent pension payable, and there is one dependent child, the appropriate fraction payable to that child is one-third of the basic death pension. Where there are two or more dependent children, the appropriate fraction to be shared by those children will be two-thirds.
- 6.51 A continuing child survivor pension is payable only whilst the child meets the eligibility criteria set out in regulation 122.
- 6.52 Regulation 129 allows for adjustments to be made to child pensions in payment if information comes to light that changes the amount to be paid, or the proportion of child pension payable. This regulation is intended to cover scenarios where multiple family units may exist, but where such units are not aware of each other's existence. Such situations, although rare, do occur and having regulations in place will enable the scheme administrator, as well as the deceased member's surviving family, to be clear on what will happen.
- 6.53 The regulation also provides for cases where a child originally accepted as eligible is later shown not to have been so by information coming to light after a child pension has been awarded.
- 6.54 Regulation 130 allows the scheme manager to cease payment and reclaim payments already made where it appears that, after an award has been made, false information was provided or information suppressed in relation to the eligibility for or entitlement to survivor benefits. This regulation is intended to provide the scheme manager with enforcement powers where false statements have been made.

# Part 7: Transfers

## **Chapter 1: Preliminary**

Regulations 131 - 133

- 7.1 Part 7 deals with the making and receiving of transfer values in respect of benefits accrued in this or another pension scheme. This is further to paragraph 3(10) of schedule 3 to the Public Service Pensions Act 2013 which provides that scheme regulations may cover “the payment or receipt of transfer values or other lump sum payments for the purpose of creating or restoring rights to benefits (under the scheme or otherwise).”
- 7.2 The Pensions Schemes Act 1993 frames the rights of members to transfer value payments and provides for their administration. A transfer value is the capitalised value of some or all of a member’s unclaimed accrued pension rights. A transfer value payment may be made or accepted by the scheme at the request of the member. If accepted, the effect of the request is to use the payment to purchase pension rights equal to the value of that payment in the scheme (transfer in) or in another scheme approved by HM Revenue & Customs (transfer out).
- 7.3 Payments take the form of a Cash Equivalent Transfer Value (CETV) with special terms applying to transfers that are made under bulk, Corresponding Health Service Scheme or Public Sector Transfer Club (‘the Club’) arrangements.

## **Chapter 2: Transfers on a cash equivalent basis**

Regulations 134 - 149

### *Transfers out*

- 7.4 Regulations 134 to 140 deal with the process and effect of a transfer out. Regulation 134 provides that the member must have left the scheme before an application for a transfer payment can be made, i.e. not be active. Rights attributable to a pension in payment or a pension credit cannot be transferred. An individual’s rights regarding transfer payments are set out in the Pensions Schemes Act 1993. The transfer provisions in scheme regulations are therefore supplemental and without prejudice to those rights
- 7.5 Regulation 135 & 136 provide for an application process for members to request and agree to a transfer (out) payment being made. The process involves a member requesting a statement of entitlement confirming the cash equivalent transfer value of accrued benefits fixed for a period of time. If having received the

statement, the member wishes to proceed then an application is required for the transfer payment to be made. This includes details from the member of the scheme or arrangement that is to receive the payment.

- 7.6 Regulation 137 sets time limits that apply to stages within the application and payment processes. This includes provision for remedies where payment is made late and for the process to be delayed where court proceedings involving the member are in train and the outcome of which may result in forfeiture.
- 7.7 Regulation 138 provides that the transfer payment can only be applied in ways envisaged by section 95 of the Pensions Schemes Act 1993. The whole payment must be applied unless the receiving scheme is unable or unwilling to accept the portion of transfer payment relating to benefits that are attributable to Guaranteed Minimum Pension rights or contracted-out service. Where this is the case, those rights are excluded from the transfer payment and retained for payment as a pension in the normal way. Provision is also made as to the types of schemes or arrangements to which the payment may be made.
- 7.8 Regulation 139 sets the approach to calculating the transfer value payment amount. This is done in accordance with the Occupational Pension Schemes (Transfer Values) Regulations 1996, with the scheme manager taking advice from the scheme actuary as to the calculation factors to be used. The calculation will take account of the member's prospective normal pension age so that, as discussed at paragraph 5.68 above, the value of scheme benefits can be more accurately determined. The amount cannot be less than the value of any transfer payments that had been previously made to the scheme (the minimum transfer value).
- 7.9 Regulation 140 confirms that the act of making a transfer payment has the effect of extinguishing for the member those rights that were the subject of the payment.

#### *Transfers in*

- 7.10 Regulations 141 to 148 concern the process and effect of a transfer into the scheme. Regulation 141 establishes the right of a member to apply for a transfer payment from another pension scheme or arrangement to be accepted by the scheme. The nature of the 'sending' scheme is prescribed and limited to a (tax) registered occupational pension scheme, personal pension scheme, buy-out policy or a corresponding health service scheme that the Secretary of State determines has provisions equivalent to this scheme. Transfer payments from Free Standing Additional Voluntary Contribution (FSAVC) schemes are prohibited as are payments relating to rights that are directly attributable to a pension credit.

- 7.11 Regulation 142 provides an application process for the member to follow. The member first requests a statement estimating the amount of pensionable earnings and service that the transfer payment will entitle the member to count towards benefit accrual in the scheme if accepted by the scheme manager. A written application to accept the transfer must then be made within a year of becoming an active member and before normal pension age is reached. The application must specify the sending scheme or arrangement and the anticipated transfer payment amount.
- 7.12 Regulations 143 & 144 provide for the acceptance of the payment and calculation of an appropriate period of pensionable service and an increase to the member's pensionable earnings to be credited as the result of the transfer. Generally the scheme manager is under no obligation to accept any transfer and can require that certain conditions be met before agreeing. A payment however cannot be accepted if the amount is insufficient to cover the cost of any Guaranteed Minimum Pension entitlement of the member or spouse.
- 7.13 If the payment is accepted under the Club arrangements, then the period of pensionable service to be credited is calculated in accordance with those arrangements and by reference to guidance and tables from the scheme actuary. If the Club arrangements do not apply, then a period of service is credited that is equal in length to the period of employment that qualified the member for the rights in respect of which the transfer payment is being made.
- 7.14 The increase to pensionable earnings is calculated in accordance with guidance and factors provided by the scheme actuary. The increase is applied as an 'earnings credit' for the scheme year in which the member joined or the year in which the transfer payment was received if later than 12 months from joining - unless the member received the estimate statement within 3 months of the end of the 12 month and the payment is received less than 3 months from the statement date (i.e. the scheme manager was slow in sending the statement).
- 7.15 If the payment is accepted under Club, then an amount of pension is credited to the member ('club transfer earned pension') calculated in accordance with those arrangements instead.

#### *Corresponding Health Service Scheme transfers*

- 7.16 Special transfer arrangements currently operate between Health Service Schemes in England and Wales, Scotland and Northern Ireland. This is made possible by the almost identical nature of the scheme rules and regulations across 'corresponding' 1995 and 2008 sections. These arrangements will continue for the transfer of final salary benefits between corresponding 1995 and 2008 schemes

after 2015. The same arrangement will exist in relation to corresponding CARE schemes.

- 7.17 Regulation 144(5) provides that the effect of a transfer payment between corresponding schemes is that the member's service in the sending scheme is treated as if their pension had accrued under, and their contributions had been paid to, the receiving health service scheme.
- 7.18 These special arrangements are only available if there have not been any breaks in health service scheme membership of more than five years and the member must apply for the transfer of benefits within one year of joining a different health service scheme. Otherwise the member may only transfer benefits on a normal cash equivalent transfer value basis.

#### *Bulk transfers*

- 7.19 Regulations 147 & 148 provide for the operation of transfers on bulk terms. Bulk transfers are calculated in accordance with the general method for cash equivalent transfer values, but with an override that permit special terms/factors to be applied that enhance the value of the payment.

## Part 8: Independent Providers

- 8.1 The 2015 Scheme will maintain the arrangements introduced to the 1995 & 2008 scheme from 1 April 2014 in respect of independent providers (IPs) of NHS clinical health care services who wish to become NHS Scheme employing authorities. Part 8 makes provision for application process, conditions and membership rules for IPs.

### *Interpretation*

- 8.2 Regulation 149 requires IPs who apply to directly hold one or more NHS standard contracts or a local authority or alternative personal medical services contract (APMS) to provide NHS services primarily concerned with the provision of clinical healthcare services (a “qualifying contract”). These arrangements are not open to organisations providing part services under a sub-contract.
- 8.3 The regulation also makes clear that an ‘accepted’ IP can only join in the NHS scheme those employees who work on relevant NHS services for more than 50% of their contract time (the “wholly or mainly” condition), taken over the course of a year, or the period of employment where this is shorter.

### *Application for employing authority status*

- 8.4 Regulation 151 requires IPs wishing to become NHS Scheme employing authorities to apply in writing to the scheme manager in a prescribed form, confirming that they:
- a. hold a qualifying contract and
  - b. that the employees they wish to join in the scheme satisfy the “wholly or mainly” condition
  - c. that they are not already an employing authority in respect of those employees, and
  - d. supplying an estimate of the number of employees to be engaged on the NHS services and their expected pensionable earnings and scheme contributions for the coming scheme year
- 8.5 The IP is also required to declare whether they are applying for “closed” or “open” IP employer status. “Closed” IP employer status means entry only for those employees with previous entitlement to the NHS Scheme within 12 months of joining the IP. “Open” IP employer status, means entry for all of the IPs eligible employees.

- 8.6 The “Closed” or “Open” status selected by the IP will apply to all of their NHS qualifying contracts, to ensure equal pay and pension’s treatment and effective administration.

#### *Grant of employing authority status*

- 8.7 Regulation 152 authorises the scheme manager to approve IP applications in writing that it believes are satisfactory, and to confirm the start date, which must be a forward date.

#### *Extension of IP employing authority status*

- 8.8 Regulation 153 enables an ‘accepted’ IP employing authority to apply to the scheme manager to add further “qualifying contracts” and enrol employees in the scheme who are scheme members, subject to the further contract(s) also being held directly and the supply of details to the scheme manager. If the scheme manager has already asked the IP to provide a contributions guarantee that guarantee must be adjusted to cover any additional liabilities.

#### *IP Guarantees*

- 8.9 Most IP applications can be approved without the requirement for a specific contributions guarantee, but regulation 154 authorises the scheme manager to vet applications for financial security and if necessary require the IP to provide a guarantee, for example, because of doubts about financial security or earlier problems of that nature. The guarantee must be in a prescribed form and be regularly reviewed and adjusted to maintain scheme protection equal to 3 months estimated IP employer and employee contributions. Failure to provide or properly maintain a guarantee may be a cause for termination of the IPs employing authority status. The scheme manager will monitor IP contribution receipts against the estimated profile for any delay in payment.

#### *75% threshold and contribution surcharge*

- 8.10 To ensure that IP employers only pension in the NHS Scheme income that properly flows from relevant NHS contracts after the deduction of expenses, regulation 155 requires a normal pension contribution ceiling or “threshold” of not more than 75% of the IPs gross NHS contracts value each scheme year. The scheme manager will apply the threshold to the total value of the IPs NHS contracts if there is more than one and levy a contribution surcharge of 12% of any pensionable monies in excess of the threshold. The scheme manager can ‘ignore’ some or all of an amount in excess of the threshold subject to the provision of a



satisfactory IP explanation. Delayed payment of a surcharge will attract interest and administration charges.

#### *Default notice*

- 8.11 Regulation 156 authorises the scheme manager to issue a default notice to an IP who fails to pay scheme contributions by the due date and to copy that notice to the commissioner of the relevant NHS services. The notice will make clear that in the event that contributions remain unpaid for 3 months the scheme manager will terminate the IPs employing authority status and so the scheme membership of its employees.
- 8.12 This regulation also provides for the scheme manager to instruct the NHS services commissioner to deduct arrears of NHS Scheme pension contributions from any contract payments due to the IP and to provide written confirmation of that deduction.

#### *Pension returns*

- 8.13 Regulation 157 requires the IP to make annual returns to the scheme manager in a prescribed form detailing out turn figures for each scheme year, for example total pensionable earnings and contributions compared to those estimated at the start of the scheme year or contract. The information will be used to monitor scheme membership and payments to the scheme and review the annual 75% threshold amount.

#### *Provision of information*

- 8.14 Regulation 158 requires IPs to provide each year, other specified and relevant unspecified information about the numbers of NHS contracts held and the persons engaged in NHS services. The information helps the scheme manager to ensure compliance with regulations and failure of an IP to provide the information can lead to termination of their employing authority status.

#### *Termination of employing authority status*

- 8.15 Regulation 159 gives the scheme manager power to terminate an IPs employing authority status in the event of non-compliance with scheme regulations, in particular the proper maintenance of any IP guarantee the scheme manager has required and any repeated or unexplained excess over the 75% threshold on pensionable earnings and contributions.

*IPs who want to notify a change in their “closed” or open” employer status or to terminate that status altogether*

8.16 Regulations 160-162 provide for IPs to change the future scheme employing authority status, described in paragraph 8.5 above, from “closed” to “open” or vice versa. Although IPs joining the scheme will normally be expected to be doing so for the long term, regulations provide for any IP who needs to change their employer status to do so at any time, subject to criteria.

8.17 IPs will be able to:

- Choose “closed” status, but later give 3 months’ notice of upgrading to “open” status
- Choose “open” status, but later give 6 months’ notice of reversion to “closed” status, or
- Choose “closed” status, but later give 6 months’ notice of complete withdrawal from IP employer status, either for new employees or for all employees if they agree with the change

*Financial controls specifically for new IPs*

8.18 It is important to ensure that the taxpayer and existing NHS employers are protected in extending access to the pension scheme to new IPs. In simple terms this means that the full cost of extending the scheme to staff working in IPs on NHS work should be borne by those new employers and their staff.

8.19 IP roll-out data will be closely monitored to help achieve this aim, in addition to the following IP specific controls current in place within the 1995 & 2008 scheme and adopted in the 2015 scheme:

- **“Wholly or mainly condition”** - IP employees who will be able to join the NHSPS must be “wholly or mainly” engaged (i.e. for more than 50% of their time) in providing NHS clinical services. IP employees who work wholly or mainly on non-NHS work will be unable to join the scheme.
- **“75% pensionable pay threshold”** – new IP organisations will be allowed to pension up to, but normally no more than, 75% of their gross income from NHS clinical services contracts. IPs unable to justify their excess pensionable pay over 75% will normally be required to pay a scheme contribution surcharge on the excess, of 26%.
- **“Scheme manager spot checks”** – of individual pension scheme records relating to IPs, for example, where pensionable pay for particular IPs, or for particular individuals, appears unusually high. The regulations will authorise the

scheme manager to call for additional information from IPs and to make spot checks if necessary. Evidence of an IP's non-compliance with new access or other scheme regulations may lead to the adjustment of individual pensionable pay figures and/or the termination of the IP's scheme employing authority status

## Part 9: General

8.20 Schedule 15 provides definitions of terms found within the regulations.

8.21 A definition of an Out Of Hours Provider is given by regulation 164. This is the same as that found in the 1995/2008 scheme. An Out Of Hours Provider can apply to participate in the scheme as an employing authority. The scheme manager may require a guarantee, indemnity or bond in accordance with regulation 165 as a condition of participation.