



NHS Pension Scheme: proposed changes to scheme regulations

Consultation document and explanatory notes

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Introduction

The Department of Health and Social Care is consulting on a draft statutory instrument (SI) entitled: The National Health Service Pension Schemes, Additional Voluntary Contributions and Injury Benefits (Amendment) Regulations 2019 (the "Draft Regulations").

This instrument proposes amendments to the Regulations that provide the rules for the NHS Pension Schemes and associated schemes in England & Wales.

The legal framework for the NHS Pension Scheme

There are two NHS Pension Schemes: the new reformed 2015 scheme and the older, closed scheme which is divided into the 1995 and 2008 Sections. Accordingly, there are three sets of regulations under which entitlement to pension and other benefits are calculated:

- The National Health Service Pension Scheme Regulations 1995 (SI 1995/300);
- The National Health Service Pension Scheme Regulations 2008 (SI 2008/653); and
- The National Health Service Pension Scheme Regulations 2015 (SI 2015/94).

The National Health Service Pension Scheme (Transitional and Consequential Provisions) Regulations 2015 (S.I. 2015/95) put in place transitional arrangements for members of the new 2015 scheme who have pension rights accrued in either the 1995 or 2008 Section of the old NHS Pension Scheme. The transitional regulations make provision for the treatment and payment of old scheme benefits during or following a period of membership of the new scheme. They also include protections permitting members close to normal pension age to remain in the old scheme.

The National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000 (S.I. 2000/619) provide a facility through which members of the NHS Pension Schemes can supplement the value of their pension by making additional contributions to a third-party provider.

The National Health Service (Injury Benefits) Regulations 1995 (S.I. 1995/866) apply to certain NHS employees and general practitioners who sustained an injury, disease or other health condition which is wholly or mainly attributable to their employment or duties of employment on or before 31 March 2013. From that date, the Injury Benefits scheme arrangements were replaced by contractual payments from NHS employers. However, NHS employees who sustained an injury or contracted a disease due to NHS employment, on or before 30 March 2013 can still access the NHS Injury Benefits Scheme until 30 March 2038, where there was delayed onset of symptoms, provided they provide compelling evidence that the disease or injury occurred on or before 31 March 2013.

Proposed changes to scheme rules

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

- Implement a new contribution rate of 20.6% for employers from 1 April 2019 (see paragraph 2.4 below for further information on funding of the increase) and renew current employee contribution rates so that the same rates continue to apply beyond 31 March 2019;
- Following the Supreme Court judgment in the case of Walker v Innospec Ltd ([2017] UKSC 47), civil partners and same sex spouses will have the same survivor pension rights as widows;
- Extend existing forfeiture rules so that the Secretary of State may suspend pension benefits if a member or other beneficiary is charged or convicted with an offence that may lead to all or part of those benefits being forfeited;
- Update provisions relating to 'contracting-out' from the second state pension so that these are in line with revised HM Revenue & Customs and Department for Work & Pensions legislation.
- Exempt from controls on final pensionable pay, any pay increases which result from a nationally agreed Agenda for Change pay award;
- Make miscellaneous and consequential amendments to scheme rules, in particular relating to the provision of a statement of estimated pensionable income/contributions; and
- Make other changes that were presented in a previous consultation in November 2017:
 - Remove the nomination requirement to nominate unmarried cohabittees for survivor benefits; and
 - Miscellaneous corrections and refinements to improve the operation of scheme rules.

This document explains the purpose and effect of the provisions set out in the draft instrument. Throughout this document "amending regulation x" refers to a regulation in the draft Statutory Instrument. It should be read in conjunction with the draft [Statutory Instrument which is available on GOV.UK](#).

Consultation questions

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

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

Amendments presented for consultation between 8th November 2017 and 29th December 2017

The Department is grateful for the comments previously received in response to an earlier consultation on a number of amendments that are now included in this draft Statutory Instrument. These are set out at Part 8 of this document (pages 34 - 36) for information and completeness. These comments will carry forward into this consultation. However, the Department also welcomes any additional comments on these amendments from respondents to this consultation.

How to respond

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

<https://dhsc-mail.co.uk/form/Sx1iaZDJ/0d0a4db0ff88508c2b147dd9/>

Or by post:

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The consultation will close on 28 January 2019.

Confidentiality of information

We manage the information you provide in response to this consultation in accordance with the Department of Health and Social Care's Personal Information Charter:

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

Any information received, 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 2018 (the "DPA 2018") and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you would explain to us why you regard the information that you have provided as confidential. If we receive a request for disclosure of the information you have provided we will take full account of your explanation, but we cannot give an assurance that confidentiality will be maintained in all circumstances.

An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA 2018 and in most circumstances this will mean that your personal data will not be disclosed to third parties.

1. Member contribution rates

1.1 Each member of the scheme contributes towards the cost of their pension benefits. Scheme regulations set out the percentage rate of pensionable pay that a member is required to contribute. The rate is determined by reference to a member's pensionable pay. The current rates are set out in the table below:

Current member contribution rates

Whole time equivalent pensionable pay used to determine contribution rate	Contribution rate (before tax relief) (gross) 1 April 2015 to 31 March 2019
Up to £15,431.99	5%
£15,432.00 to £21,477.99	5.6%
£21,478.00 to £26,823.99	7.1%
£26,824.00 to £47,845.99	9.3%
£47,846.00 to £70,630.99	12.5%
£70,631.00 to £111,376.99	13.5%
£111,377.00 and over	14.5%

1.2 The current contribution rates were set for the four-year period 1 April 2015 to 31 March 2019. This means unless these rates are renewed or substituted with new rates, the NHS Pension Scheme will be unable to collect contributions from members from 1 April 2019 onwards. This is because the current rates expire on 31 March 2019.

Member contribution rates from 1 April 2019

1.3 The Department commissioned the NHS Pension Scheme's Scheme Advisory Board (the "SAB") to review the approach to member contributions. The Scheme Advisory Board is a statutory board that advises the Secretary of State on the merits of making changes to the scheme. It comprises representatives from NHS trade unions and employers. The review explored a number of design elements, including whether the rate payable should be determined using whole-time equivalent or actual earnings, the range and number of tiers, and whether tier boundaries should be indexed.

1.4 The SAB submitted their review conclusions in July 2018, and reached full agreement that:

- The principles underpinning the current contribution structure should be retained including: protection for the low paid, minimising the risk of opt-outs, and ensuring the scheme remains a sustainable and valuable part of staff reward.

- 'Cliff edges' in the contribution structure should be resolved. 'Cliff edges' are where increases in pay can result in members moving to a higher contribution rate.
- There is a pressing need to explore ways to minimise scheme opt-outs and mitigate other issues caused by the impact of pension taxation.
- A move to use actual pay, rather than whole-time equivalent pay, to determine contribution rates would be appropriate.

1.5 The SAB reached a majority recommendation that the existing member contribution structure be retained for a further two years until 31 March 2021. There was a recognition that further discussion was required on a number of areas, including the approach to avoiding 'cliff edges', and a desire by the majority of trade union representatives to seek formal mandate from their membership before recommending any move to actual pay as the basis for determining contribution rates. Further, the SAB expressed concern that if a part of the recently agreed Agenda for Change pay deal is seen to be offset by contribution rate rises, member confidence in both the pay agreement and pension scheme would be undermined.

1.6 The Department has accepted this recommendation. During this transitional period, the SAB will continue developing a recommended contribution structure based on the agreed elements outlined above. However, the SAB recommendation was made and accepted subject to the outcome of the quadrennial actuarial valuation of the scheme.

1.7 Scheme valuation is an actuarial assessment of the cost of past and future pension benefits building up within the scheme. As part of the 2015 reforms of public service pension schemes, a cost control mechanism (the "cost cap") was introduced by HM Treasury to protect taxpayers and public-sector staff from significant changes in pension costs. The cost of the reformed 2015 scheme is measured as a percentage of pensionable pay. The mechanism provides that where the costs of the scheme move by more than a 2% from a target level set when the scheme first opened, then steps must be taken to return costs back to the target level.

1.8 The draft valuation results show that costs have fallen from target by 3.2% of pensionable pay, triggering the cost cap mechanism. The value of the 2015 scheme for members must therefore be improved to restore the costs back to target. This can be done by enhancing benefits or reducing member contributions, or a combination of both. If the opposite occurred, with the scheme becoming more expensive, then members would either contribute more or accrue less valuable benefits to reduce costs back to target.

- 1.9 Scheme regulations specify a statutory process to follow when a cost cap breach occurs. The statutory process provides a formal structure through which the Department decides how the scheme is adjusted to rectify the cost cap breach. This provides that the SAB makes recommendations to the Department, who must seek to reach agreement with the SAB on scheme adjustments.
- 1.10 The cost cap rectification process is underway, with discussions ongoing between the Department and SAB. If no agreement is reached, then a default measure is applied which will improve the accrual rate to 1/48.1th from 1 April 2019. In renewing member contribution rates, the Department is seeking to mitigate the impact on scheme finances of current rates expiring without replacement. This should not be taken as indicative of the Department's approach to cost cap rectification. The Department will bring forward separate legislation to implement steps to rectify the cost cap breach in due course.

Proposed amendment

- 1.11 The Department proposes to remove the time limit on current member contribution rates so the scheme can continue to collect contributions at the current rates until such time that new rates are introduced.

Draft amending regulations

Amending regulations 4 and 40(3)(a), 45, 46 and 63(b), and 78 and 79 amend 1995 NHS Pension Scheme Regulation D1 (contribution by members) and paragraph 10 of Schedule 2, 2008 NHS Pension Scheme Regulations 2.C.2 (contribution rate for members other than non-GP providers), 2.C.4 (contribution rate and determination of pensionable earnings for non-GP providers) and 3.C.2 (members' contribution rate), and 2015 NHS Pension Scheme Regulations 30 (members' contributions: employees) and 31 (members' contributions: practitioners and non-GP providers) respectively.

- 1.12 Member contribution rates are set out in the regulations listed above. The relevant rates apply currently until 31 March 2019. The proposed amending regulations remove the existing time limit by replacing the words 'scheme years 2015/16 to 2018/19' with 'scheme years from 2015/16'. Consequently, the current tiered contribution rates will remain in force until replaced by any future amendments, following conclusion of the SAB review or in implementation of a cost cap rectification agreement.

2. Employer Contribution Rate

- 2.1 As discussed in Part 1, scheme valuation is an actuarial assessment of past and future pension benefits building up within the scheme and is carried out on a four-year cycle. The results are used to determine the employer contribution rate required to meet current and projected scheme liabilities.
- 2.2 Employers currently pay 14.3% of a member's pensionable pay into the NHS Pension Scheme (plus an administration charge of 0.08%). The employer rate came into force on 1 April 2015 and has been reviewed as part of the quadrennial valuation.

Employer contribution rates from 1 April 2019

- 2.3 Provisional valuation results indicate an increase in benefit costs, requiring a 6.3 percentage point rise in the employer contribution rate to 20.6%. This figure is expected to be confirmed by the Government Actuary's Department in their final valuation report due in December 2018. The cost increase is driven principally by two factors:
- A reduction in the discount rate used to set contribution rates for unfunded public service pension schemes (also known as the SCAPE rate). The SCAPE rate is the notional investment return on contribution income. A new SCAPE rate of 2.4% plus CPI was confirmed at Budget 2018ⁱ; and
 - Rectification of the cost cap breach, as described in Part 1.
- 2.4 Consequently, draft amendments are proposed to increase the employer contribution rate from 14.3% to 20.6% from 1 April 2019. The Government have committed to providing additional funding to meet costs arising from the current actuarial valuation of the NHS Pension Scheme alongside the long-term funding settlement for the NHSⁱⁱ.

Draft amending regulations

Amending regulations 5, 47, 64 and 80 amend 1995 Section regulation D2 (contributions by employing authorities), 2008 Section regulations 2.C.5 and 3.C.3 (contributions by employing authorities: general) and 2015 Scheme regulation 33 (contributions by employing authorities) respectively.

2.5 The employer contribution rate is set out in the regulations listed above. The draft amendments change the rate from 14.3% to 20.6%.

3. Entitlement for survivors of civil partners and same-sex spouses

- 3.1 Amendments are required to the NHS Pension Scheme to provide civil partners and same sex spouses with the same pension benefits as widows. This is due to a Supreme Court judgment in the case of Walker v. Innospec Ltd [2017] UKSC 47. The judgment is available at: <https://www.supremecourt.uk/cases/uksc-2016-0090.html>

Walker v. Innospec Ltd

- 3.2 The claim in Walker v. Innospec Ltd was brought by Mr Walker who was a pensioner member of a contracted-out private sector pension scheme (the 'scheme'). The claim was brought in the Employment Tribunal under the Equality Act 2010. Mr Walker claimed that a scheme rule that restricted payment of survivor's benefits to the survivors of opposite-sex marriages constituted direct and indirect sexual orientation discrimination. The scheme rule relied on an exemption in the Equality Act the effect of which at the time of the Employment Tribunal hearing was to permit schemes to discriminate on grounds of sexual orientation between opposite-sex married couples and same-sex civil partners in respect of benefits accrued, or payable, in respect of service prior to 5 December 2005 (the day on which section 1 of the Civil Partnership Act 2004 came into force).
- 3.3 The Employment Tribunal found in favour of Mr Walker, but the Employment Appeal Tribunal and the Court of Appeal upheld his employer's appeal. The Supreme Court allowed Mr Walker's appeal finding that the exemption (which was in paragraph 18 of Schedule 9 to the Equality Act) is not compatible with EU law insofar as it authorises a restriction on payment of benefits based on periods of service before 5 December 2005 and it should therefore be disapplied.

Changes required to public sector schemes

- 3.4 As a result, public sector schemes, including the NHS Pension Scheme, must amend their rules to provide the same survivors' benefits for same-sex couples (whether married or in civil partnerships) as those for opposite-sex married couples. The NHS Pension Scheme should also provide back-dated survivor benefits based on all relevant service to surviving same-sex spouses or civil partners where their right to claim a survivor's pension arose on or after 5 December 2005.

- 3.5 The Government is not extending the same treatment to widowers (male survivors of opposite sex marriages). The Government consulted widely on this issue in the joint HM Treasury and Department for Work and Pensions review of survivor benefits in Occupational Pension Schemes.ⁱⁱⁱ This is a complex area and it was to be expected that a thorough consideration of the issue would take time. No final decisions have been made on these issues. The Government will respond in due course.
- 3.6 In addition, the European Court of Justice judgment on Barber v Guardian Royal Exchange require schemes to provide survivor benefits for males who survive their female spouse that are equal with those provided to females who survive their male spouses in relation to service from May 1990. The NHS Pension Scheme provides such equal benefits in relation to service from 6 April 1988.
- 3.7 The Government has determined that schemes should proceed to consult on changes that provide for:
- the survivors of male same-sex partners to have their entitlements equalised with those of widows;
 - the survivors of female same-sex partners to have their entitlements equalised with those of widows; and
 - for any residual differences in entitlement between male and female same sex couples to be equalised in respect of service since 17 May 1990 only.

Proposed amendments

- 3.8 The NHS Pension Scheme has already equalised benefits between male and female same sex couples in the 2008 Section and 2015 Scheme, and in respect of service from 6 April 1988 in the 1995 Section therefore further amendments in relation to point (c) above are not required.
- 3.9 However, as a result of the Walker judgment, the Department is consulting on draft changes to the 1995 Section to provide that the benefits payable to survivors of same-sex marriages and civil partnerships are equalised with those provided for widows. The proposed changes, described in detail below, would be made with retrospective effect and apply to civil partners from 5th December 2005, (the date civil partnerships were introduced) and 13th March 2014 (the date marriage for same sex couples was introduced).

Draft amending regulations

- 3.10 Survivor benefits for civil partners and same sex spouses in the 2008 Section of the old NHS Pension Scheme and the NHS Pension Scheme 2015 are based on a percentage of the member's benefits for all their service. This is the same as the survivor benefits provided for opposite sex spouses. Therefore, we do not need to make any changes to those provisions. However, in the 1995 Section of the old NHS Pension Scheme survivor benefits for civil partners and same sex spouses are based on a percentage of the member's benefits for service from 6th April 1988 only. Changes to those provisions are needed. The following paragraphs describe those changes in detail and all references are to the NHS Pension Scheme Regulations 1995 only.
- 3.11 With effect from 13th March 2014, regulation A4 (civil partnerships and marriage of same sex couples) provides for regulations that apply to surviving civil partners to also apply to surviving same sex spouses. Therefore, any amendments made to regulations that provide for surviving civil partner pensions automatically cause those same changes to be made in respect of the survivor pensions due to same sex spouses.
- 3.12 Amending regulation 14 removes paragraphs (3) to (5) of regulations G10 (surviving civil partner's pension). Those paragraphs provide for a member's service before 6th April 1988 to be disregarded for the purpose of calculating the amount of a surviving civil partner's pension due. As a consequence, those paragraphs also describe some limited circumstances when service before 6th April 1988 is not disregarded, for example for the purposes of paying an initial short-term pension to a surviving civil partner at the same rate as the member's pension.
- 3.13 Once paragraphs (3) to (5) are removed, the remaining paragraphs of regulation G10 will provide for a surviving civil partner or a surviving same sex spouse to receive a pension calculated and paid in the same way as those provided to widows.
- 3.14 Amending regulation 15 removes in its entirety regulation G11 (dependent surviving civil partner's pension). Regulation G11 provides for a member to nominate their civil partner or same sex spouse to receive a dependent survivors pension in respect of any service the member has before 6th April 1988 ("the earlier service"). In order to qualify for a dependents pension for this earlier service, a civil partner or same sex spouse must be permanently unable to earn a living because of ill health and wholly or mainly dependent on the member. If a nomination is accepted, and the member dies before their civil partner or same sex spouse, a survivor pension for the member's earlier service is payable. At

retirement the member's lump sum is reduced unless the member has opted to pay additional voluntary contributions to purchase back a full lump sum.

- 3.15 Since the proposed amendment to regulation G10 will ensure that any service the member may have before 6th April 1988 will be routinely included in any surviving civil partner or same sex spouse pension due under that regulation, regulation G11 is unnecessary and can be removed.
- 3.16 Amending regulations 16, 17 and 40(4) remove in their entirety regulation G12 (purchase of surviving civil partner's pension in respect of service prior to 6th April 1988), regulation G13 (increased surviving civil partner's pension) and paragraph 16A (increased surviving civil partner's pension) of Schedule 2 respectively. Together these regulations provided a time limited facility allowing members to purchase a survivor pension in respect of any service the member has before 6th April 1988 by taking a reduced lump sum on retirement. They include a further facility for the member to then purchase back their full lump sum by paying additional voluntary contributions.
- 3.17 Since the proposed amendment to regulation G10 will ensure that any service the member may have before 6th April 1988 will be routinely included in any surviving civil partner or same sex spouse pension due under that regulation, regulations G12, G13 and paragraph 16A of Schedule 2 are unnecessary and can be removed.
- 3.18 Amending regulations 20 and 21(a) and (c) remove references to "regulation G10" (surviving civil partner's pension) and "civil partners" from regulations G16 (purchase of surviving partner's pension in respect of service before 6th April 1988) and G17 (increased surviving partner's pension). Regulations G16 and G17 provided a further time-limited opportunity for members with service before 6th April 1988 to purchase an additional civil partner's, same sex spouse's, nominated partner's or widower's pension in respect of that earlier service in the same way as described for regulations G12 and G13 above.
- 3.19 Since the proposed amendment to regulation G10 will ensure that any service the member may have before 6th April 1988 will be routinely included in any surviving civil partner or same sex spouse pension due under that regulation, references to "civil partners" and "regulation G10" are unnecessary and can be removed.
- 3.20 As a further consequence of the draft amendments described above, paragraph (5A) of regulation Q1 (right to buy additional service) and paragraph (2A) of regulation Q5 (paying for unreduced retirement lump sum by single payment) are removed by amending regulations 32(2) and 33(2) respectively. Regulation Q1(5A) deals with purchases of additional service taken out before 6th April 1988 in circumstances where a survivor pension becomes payable under regulation

G10. Regulation Q5(2A) deals with the time limits that apply for purchasing an unreduced lump sum by a single payment as a consequence of nominating a same sex spouse or civil partner to receive a dependent survivor pension under Regulation G11. Neither paragraphs are necessary given the other amendments described above.

- 3.21 Amending regulation 38 removes a cross reference to regulation G11(2) from regulation U1A (determinations by medical practitioners). As noted at paragraph 3.14 above regulation G11 has been removed so this reference is unnecessary.

Consequences for members who have made additional contributions to increase surviving civil partner or same sex spouse benefits

- 3.22 As a result of the amendments described above, some surviving same sex spouses and civil partners may become entitled to an increased pension. In addition, some members may have paid unnecessary additional voluntary contributions to purchase back reduced lump sums or may have received unnecessarily reduced lump sums at retirement. Once the draft amendments come into force, NHS Pensions will advise affected members of any action they need to take in order to assist NHS Pensions to rectify the position.

4. Forfeiture of pension benefits

- 4.1 Where a member of the NHS Pension Scheme or other beneficiary is convicted of certain offences, the Regulations give the Secretary of State power to direct that part or all of their pension benefits be forfeited.
- 4.2 The forfeiture provisions only apply to certain offences. In the case of Scheme members, these are offences committed in connection with their employment which are liable to lead to serious loss of confidence in the public service, or are gravely injurious to the State. The powers also apply in respect of convictions for treason or offences under the Official Secrets Acts where the member has been sentenced to at least 10 years imprisonment. In the case of Scheme beneficiaries, relevant offences are the murder or manslaughter of the member, or any other offence of which the unlawful killing of the member is an element.

Proposed amendments

- 4.3 Currently, the forfeiture powers only apply where a member or beneficiary is convicted of a relevant offence and the Secretary of State has directed forfeiture. Before this happens, the practice is for the Secretary of State to seek representations from the member or beneficiary. This takes time and means that a member may claim benefits before the outcome of court proceedings is known or before the Secretary of State directs forfeiture. As a consequence, a member or beneficiary may then receive substantial pension and lump sum payments from the public purse, notwithstanding the fact that the member has been charged with, or convicted of, serious relevant offences.
- 4.4 Scheme regulations already include provisions which allow the Secretary of State to defer making a transfer value payment in circumstances where it is the Secretary of State's opinion that disciplinary or court proceedings may lead to all or part of the member's benefits being forfeited. The proposed amendments would extend those existing provisions to enable the Secretary of State to make a decision suspending the right to, or the payment of, benefits pending a forfeiture decision, where a member has been charged with or convicted of relevant offences.
- 4.5 Where a suspension decision is invoked, the member or beneficiary will be informed and invited to make representations as to why the suspension should be lifted. All representations will be considered by the Secretary of State.
- 4.6 The Department is considering amendments to the forfeiture provisions to:

- Suspend the right to or the payment of benefits when a member or other beneficiary has been charged with or convicted of an offence, which may be an offence to which the forfeiture provisions apply; and
- If the Secretary of State does not subsequently direct forfeiture or directs forfeiture of an amount less than the amount suspended, to pay the amount suspended or the difference together with interest.

Draft amending regulations

- 4.7 Amending regulations 37(3) insert the new provisions into 1995 Regulation T6 (loss of rights to benefits), 55(3) and 72(3) into the 2008 Regulations 2.J.7 and 3.J.7 (forfeiture of rights to benefits) and 92(3) into paragraph 12 (forfeiture of rights to benefits) of Schedule 3 to the 2015 Regulations respectively.
- 4.8 The proposed new provisions will apply where a member or other beneficiary is either charged or convicted of a relevant offence on or after 1st April 2019 and, in the opinion of the Secretary of State, the charge or conviction relates to an offence that may lead to all or part of the benefits in question being forfeited. In these circumstances the Secretary of State may make a decision to suspend a member's or other beneficiary's rights to or payment of benefits (a "suspension decision"). Where a suspension decision is made, it continues to apply until the date of any direction of the Secretary of State directing forfeiture.
- 4.9 The remainder of the new amending paragraphs then describe what is proposed will happen to benefits that were already in payment or due for payment when suspended if the Secretary of State subsequently decides that:
- no benefits are to be forfeited; or
 - the amount to be forfeited is less than the amount of benefit payments that have been suspended.
- 4.10 In the event that benefits are not to be forfeited, the member or other beneficiary will be paid any back payment of benefits due with interest. In the event that a lesser amount is to be forfeited, the member or other beneficiary will be paid any back payment of the difference between the amount suspended and the amount forfeited with interest.

5. Contracting out

- 5.1 The Pensions Act 2014 made various amendments to the Pension Schemes Act 1993 and a new set of regulations, the Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015, provided for the end of contracting-out with effect from 6th April 2016 and the preservation/protection of contracting-out rights earned by members up to that date.
- 5.2 However, to support the transition and especially the associated administrative processes during the three-year period up to 6th April 2019, some of the existing contracting-out provisions remained in place pursuant to the Pensions Act 2014 (Savings) Order 2015.
- 5.3 At the time, only a small number of immediate technical changes and only one consequential change to NHS scheme regulations were necessary to ensure that scheme regulations worked correctly in tandem with the new and revised legislation between 2016 and 2019.
- 5.4 The proposed amendments are technical only and bring the statutory position up to date to ensure that the pensions regulations properly fit with the revised HM Revenue & Customs and Department of Work & Pensions legislation from 6th April 2019.

Draft amending regulations

Amending regulations 3(2) and (6), 43(3)(a), 59(3) and 96((a) and (d)) amend 1995 Regulation A2 (interpretation), 2008 Regulations 2.A.1 (interpretation: general) and 3.A.1 (interpretation of part 3: general) and Schedule 15 (definitions) to the 2015 Regulations respectively.

- 5.5 A definition of the "2016 Order" to be used as a shortened reference to the "Pensions Act 2014 (Contributions Equivalent Premium) (Consequential Provision) and (Savings) (Amendment) Order 2016" is inserted into each set of regulations. This definition supports amendments made to ensure that Scheme Regulations allowing for the payment of Contributions Equivalent Premiums are correctly aligned with the 2016 Order. See paragraph 5.7 for further explanation.
- 5.6 The definition of "section 9(2B) rights" are rights attaching to contracted out service between 6th April 1996 and 5th April 2016. The definition and related references at 2008 Regulations 2.D.22 and 3.D.18 and 2015 Regulation 110 (guaranteed minimum pensions etc) are updated in each set of regulations (by amending regulations 49, 66, and 85) so as to refer to the updated definition of

that term in the Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015.

Amending regulations 11, 28, 29, 31, 44 and 60, 48 and 65, 52 and 69, 53 and 70, and 77, 84, 88 and 89 amend 1995 Regulations G5 (member dies within 12 months after leaving pensionable employment without pension or preserved pension), K4 (early leavers), K7 (state scheme premiums) and L2 (refund of contributions), 2008 Regulations 2.A.2 and 3.A.3 (meaning of pensionable service), 2.C.18 and 3.C.16 (repayment of contributions), 2.E.3 (amount of pensions under regulation 2.E.1: active and non-contributing members), 3.E.3 (amount of pensions under regulation 3.E.1: active and non-contributing members), 2.E.6 and 3.E.6 (recent leavers), 2015 Regulations 20 (meaning of pensionable service), 41 (amount of refund), 115 (amount of pension: survivor of active member) and 118 (recent leavers) respectively.

5.7 Contribution Equivalent Premiums (CEPs) are payments made to HMRC on behalf of members to buy state scheme rights back in respect of a member who had contracted-out service in the NHS Pension Scheme but did not qualify for scheme benefits when leaving the NHS Scheme. In such circumstances a refund of scheme contributions is usually due. Where such a member's service ended before 6th April 2016 a CEP can be paid under section 55 of the Pension Schemes Act 1993. Where service ended after that date a CEP can be paid for the portion of service that was contracted out under article 3 of the 2016 Order. The references to the payment of CEPs in the regulations listed above are amended so that they refer to this current legislation.

Amending regulations 3(2), 7 to 9 and 30 amend 1995 Regulations A2 (interpretation), E1 (normal retirement pension), E2 (early retirement pension (ill-health)), E2A (ill health pension on early retirement) and L1 (preserved pension) only.

5.8 A new definition of "contracting out requirements" which links to regulations 18 and 25 of the Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015 is inserted into the 1995 Regulations. Regulation 18 provides cover for the commutation on serious ill health grounds of contracted out rights for service between 6th April 1997 and 5th April 2016. Regulation 25 provides cover for contracted-out service up to 6th April 1997. This revised definition is used in regulations that deal with commutation on grounds of serious ill health listed above (E1, E2, E2A and L1) and enables those provisions to be streamlined.

Amending regulation 27 amends 1995 Regulation K1 (contracting-out conditions to be overriding) only.

5.9 The definition of "contracting out conditions" used in regulation K1 is updated to include a reference to section 12E of the Pensions Schemes Act 1993.

Amending regulations 43(3)(c) and 59(4) amend 2008 Regulations 2.A.1 (interpretation: general) and 3.A.1 (interpretation of part 3: general)

- 5.10 The term "contracting-out requirements" is no longer used in the 2008 Regulations and therefore the definition can be deleted.

6. Exempting Agenda for Change pay increases from Final Pay Control charges

- 6.1 The Department wishes to ensure employers will not be liable for a Final Pay Control charge where members receive a pay increase further to the nationally agreed Agenda for Change pay award.

Final Pay Controls

- 6.2 Final pay controls are provided for under Regulation D3 of the 1995 Regulations to safeguard the NHS Pension Scheme against inordinate pensionable pay increases for members approaching retirement. Regulation D3 protects the scheme from the increased cost of paying pensions inflated by excessive late career pay rises and is only relevant to members with final salary pension benefits. Consequently, final pay control charges are only provided for by the 1995 Regulations.
- 6.3 If a member receives an increase to their pensionable pay that exceeds the 'allowable amount' in any of the three years prior to their last day of service, the employing authority that awarded the excess pay will be liable for a final pay control charge. The increase in pay must have occurred on or after 1 April 2014 for a final pay control charge to be triggered.
- 6.4 Regulation D3 also sets out the formula for calculating whether a final pay control charge will arise and the value of the charge. A threshold was set because the policy intent was not to impose a final pay control charge following every pay rise. Therefore, where a member has a pay rise prior to retirement that falls under the allowable amount, their employer would not be subject to a final pay control charge. After consulting in 2014 with various stakeholders, including the Government Actuary's Department, the allowable amount threshold was set at 4.5% plus the rate of the Consumer Price Index (CPI). Where CPI is nil or a negative, the allowable amount is 4.5%.
- 6.5 The value of a final pay control charge is the difference between the pension that will be payable and the pension that would have been payable if it had been based on a final salary that is the same as the allowable amount. Consequently, an employer will have to pay the difference between the two amounts because they will be charged for any increase above the allowable amount.

- 6.6 The Agenda for Change pay deal provides increases to pay of at least 6% for all NHS employees over 3 years. The initial pay increases awarded under the Agenda for Change pay deal have been backdated to 1 April 2018. NHS employees who receive a pay increase under the Agenda for Change pay deal and then retire shortly afterwards may fall within the scope of the Final Pay Control regulations and their employer would subsequently be liable for a charge under the 1995 Regulations.
- 6.7 The purpose of the Final Pay Controls policy is to claim back extra pension monies from an employer where that employer has purposefully awarded a pay increase with a view to increasing their employee's pension entitlement. It is not intended to capture mandatory pay increase such as those in relation to the Agenda for Change pay deal.

Proposed amendment

- 6.8 The Department therefore proposes that the 1995 Regulations are amended to exempt from the Final Pay Control provisions, any pay increase arising from the Agenda for Change pay award. A similar exception has been previously made for increases to the National Minimum Wage, with the following sub-paragraph inserted into the Regulation D3:

“(19A) An increase in a member's pensionable pay solely due to an increase in the national minimum wage is to be ignored for the purposes of this regulation.”

Draft amending regulation

Amending regulation 6 amends 1995 NHS Pension Scheme Regulation D3 (further contributions by employing authorities in respect of excessive pay increases) with retrospective effect from 1 April 2018.

- 6.9 The proposed amendment inserts into the list of exceptions to a final pay control charge, a new provision that exempts an increase in pensionable pay that is pursuant to the Agenda for Change framework agreement which was adopted on 27 June 2018^{iv}.

7. Amendments presented in an earlier consultation

- 7.1 The Department consulted late last year on a draft statutory instrument that was intended to come into force on 1 April 2018. The consultation document is available online at:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/657843/NHS_Pension_Scheme_and_AVC_Amendment_Regulations_2018_-_Consultation_document1.pdf
- 7.2 The consultation proposed amendments to scheme rules relating to:
- Removing the requirement to nominate unmarried cohabitants for survivor benefits;
 - Accountable Care Models; and
 - Miscellaneous technical corrections and refinements to improve the operation of scheme rules.
- 7.3 The Department deferred responding to the consultation and finalising the draft regulations, pending the outcome of further consultation by NHS England on their Integrated Care Provider (ICP) contracting framework. Should NHS England decide to introduce the contract, then the Department intends to include the proposed amendments relating to Accountable Care Models as part of a different statutory instrument encompassing numerous legislative changes to facilitate use of the ICP contract.
- 7.4 The other amendments presented in the earlier consultation are included in the Draft Regulations, as the next available opportunity to make those changes. The amendments are described below, together with a summary and response to consultation responses received.

Removal of requirement to nominate unmarried co-habitants for survivor benefits

- 7.5 The consultation proposed the removal of a scheme rule requiring an unmarried co-habiting partner to have been nominated to receive survivor pension benefits upon death of the member. The Supreme Court decided an equivalent rule in the Local Government Pension Scheme (Northern Ireland) to be unlawful.

Background and consultation proposal

- 7.6 The NHS Pension Scheme provides various pension entitlements upon the death of a scheme member. Survivor pensions for widowers were first introduced as a scheme benefit from 6 April 1988. Survivor pensions for civil partners were introduced from 5 December 2005 and for same-sex married couples from 13 March 2014. Survivor pensions for qualifying unmarried partners were first introduced as a scheme benefit from 1 April 2008.
- 7.7 In order to qualify for this benefit, an unmarried co-habiting partner must have been nominated to receive the pension before the member's death and to have been in a financially interdependent and co-habiting relationship for at least two years before the member's death. The validity of the nomination is tested at death.
- 7.8 On 8 February 2017, the Supreme Court handed down its decision in *Brewster, Re Application for Judicial Review (Northern Ireland)* [2017] UKSC 8. The judgment is available at: <https://www.supremecourt.uk/cases/uksc-2014-0180.html> The case concerned an unmarried co-habiting partner being refused a survivor pension under the Local Government Pension Scheme Northern Ireland on the basis that scheme Regulations required a cohabiting surviving partner to have been nominated by the member. No nomination had been made for the partner.
- 7.9 The Supreme Court found 'that the essence of entitlement to the benefit is that the couple have lived together for a sufficiently long period of time and that one is financially dependent on the others or that they are financially interdependent'. Further, that being required to make a nomination added nothing to the objective inquiry as to whether an unmarried partner satisfied these other conditions. It also found that the requirement of a nomination resulted in less favourable treatment on the basis of the unmarried status of the co-habitees when compared with married couples and those in a civil partnership (where there was no nomination requirement). The Court dis-applied the nomination requirement, having found it to be unlawful, and held that the partner was entitled to receive a survivor's pension.
- 7.10 In response to the judgment, HM Treasury have determined that public service pension schemes remove the nomination form requirement for new claims and pay survivor pensions in qualifying cases from the date of the member's death, regardless of when the claim is made.
- 7.11 The judgment does not call into question the remaining qualifying criteria, namely that for a continuous period of at least two years ending with the member's death, the member and the partner were:
- Living together as if they were married or civil partners;

- Not prevented from marrying or entering into a civil partnership;
- Financially interdependent or the partner was financially dependent on the member, and;
- Neither were living with a third person as if they were married or civil partners.

- 7.12 The scheme currently relies on section 3 of the Human Rights Act 1988 to set aside the unlawful nomination requirement when considering claims. However, to provide legal certainty, the Department proposed removal of the unlawful provisions from scheme regulations. Accordingly, the draft regulations proposed amending scheme regulations with retrospective effect for members who have service on or after 1 April 2008 so that surviving partner pensions are paid to survivors who meet the qualifying criteria set out above but without the need for a nomination to be made.
- 7.13 Relevant amendments are made to the 1995 Regulations by amending regulations 3(3), 10, 12, 13, 18, 19, 21(b), 22 to 26, 32(3), 33(3), 34 to 36, 37(2) and 40(5).
- 7.14 Relevant amendments are made to the 2008 Regulations by amending regulations 50, 51, 54, 55(2), 57, 58, 67, 68, 71, 72(2), 74 and 75.
- 7.15 Relevant amendments are made to the 2015 Regulations by amending regulations 86, 87, 90, and 92(2).
- 7.16 Relevant amendments are made to the AVC Regulations, and the Transitional Regulations by amending regulations 98 to 100 and 109.
- 7.17 Further consequential amendments to the Injury Benefits Regulations are also proposed. These changes have not been consulted upon previously and are explained at paragraphs 8.12 to 8.14 below.

Consultation findings

- 7.18 Most respondents welcomed the proposal. Some viewed it as a helpful simplification of the administrative burden placed on members, which could otherwise be overlooked to the disadvantage of their partner. Others suggested it supported equality and diversity in relationships, and that the circumstances of the partnership in terms of financial inter-dependency and cohabitation should be considered.
- 7.19 However, some respondents expressed reservations. In particular whether the removal of nomination requirements meant unmarried partners became entitled to

survivor benefits automatically. Some respondents indicated they have nominated their children or mother to receive benefits upon death rather than their partner, and that the nomination form is an important means of recording their choice of beneficiary.

- 7.20 The Department recognises the administrative value and peace of mind provided by the use of nomination forms. Nominations for lump sum payments are unaffected by the proposed change. Members will still be able to nominate individual(s) as the beneficiary, with payment made to the deceased member's estate should no nomination be made.
- 7.21 The proposed change to nomination requirements concern eligibility for a partner to receive a survivor pension. This is a separate entitlement to the lump sum payment. Whilst a nomination would no longer be required, the partner will still need to satisfy the remaining qualifying criteria concerning financial interdependence, co-habitation and ability to marry or form a civil partnership with each other. Accordingly, parents or children of a member are unable to receive a partner survivor pension, but can still be nominated to receive the lump sum payment.
- 7.22 One respondent was concerned about the status of nominations already made. The Department can confirm the proposal does not affect existing valid nominations for survivor pensions or lump sum payments. The change is only to remove the requirement to make a nomination as a condition of survivor pension eligibility for unmarried cohabiting couples.
- 7.23 Another respondent asked whether scheme rules need updating generally to give consideration to step and blended families. The Department can confirm that scheme regulations already make suitable provision. A scheme member can elect for more than one individual to receive a share of the 'death in service' lump sum payment, with the member specifying how it is to be apportioned. With regards to child pensions, where a deceased member has more than one family every dependent child is entitled to a child pension regardless of the number of children involved.
- 7.24 In their response, one of the Additional Voluntary Contribution ("AVC") providers raised three issues relating to the implementation of proposed changes to partner nomination requirements in the NHS Pension Scheme (Additional Voluntary Contributions) Regulations 2000 (the "AVC Regulations").
- 7.25 The first highlighted an error in the original drafting of the regulation defining a 'nominated partner' for the purposes of members who make additional contributions to the NHS AVC Scheme. The original regulation described a nominated partner in relation to a 'contributor' to the AVC Scheme. The term

'contributor' incorrectly limited the category of member who may have a nominated partner to only those members whose AVC accounts are active. This error has been corrected in the new version of the regulation that defines 'scheme partners'. In the new definition, references to 'contributor' are replaced with references to 'participators'. This term encompasses all the relevant categories of members who may have a scheme partner. For example, it correctly includes deferred members whose AVC accounts are not active at the time of their death.

- 7.26 The second issue raised by one of the AVC providers concerns the treatment of any new retrospective claims for death benefit lump sums by scheme partners where any lump sum due from the NHS AVC Scheme has already been paid to the late contributor's estate. The approach to be taken in these circumstances in respect of lump sums paid from the main NHS Pension Scheme is outlined at paragraph 7.31 below. The Department expects the number of any cases relating to the NHS AVC Scheme to be very low but will discuss with AVC providers the approach to be taken.
- 7.27 Finally, one of the AVC providers asked for confirmation of how the retrospective effective date of 1 April 2008 will apply. The Department confirms the changes apply in respect of all members who have active service in the NHS Pension Scheme on or after 1st April 2008.

Retrospective claims

- 7.28 HM Treasury has decided to remove the nomination form requirement with retrospective effect from 1 April 2008, the date upon which survivor pensions for qualifying unmarried partners were first introduced as a scheme benefit. This means individuals who may satisfy the other eligibility criteria are able to make a claim for such benefits. If the claim is accepted, benefits will be paid retrospectively from the date of the member's death.
- 7.29 A retrospective claim may create an overpayment of benefits if, at the time of a member's death, benefits paid were calculated on the assumption that no surviving partner pension was payable.
- 7.30 Pensions for dependent children are paid at a lower rate if a surviving spouse or partner pension is also payable. Where a claim for a surviving partner pension is accepted, future child pension payments will be adjusted and paid at the lower rate. In the circumstances, the Department will not seek recovery of overpaid child pensions.
- 7.31 Where a surviving partner pension becomes payable as a result of a new claim further to the judgment, the partner may also become the correct payee for any

lump sum that was paid to the member's representatives on the member's death. The original lump sum paid to the member's representatives will become an overpayment. In order to protect the public purse before paying any survivor partner pension, the scheme administrator will exercise due diligence by seeking evidence from the surviving partner and the deceased member's representatives to establish if the partner received any part of the scheme lump sum via the late member's estate. If any amounts were received these will be offset against the amount of any further lump sum payable to the partner.

Conclusion

7.32 The Department is grateful for the comments received. The proposed changes are necessary to comply with the Supreme Court judgment and most respondents were supportive. Concerns were raised in relation to nominations made for beneficiaries of lump sum payments made upon death in service or within five years of pension commencement. This is a separate benefit and unaffected by the changes, which applies only to survivor pensions for unmarried cohabiting couples.

Minor and miscellaneous amendments

7.33 The consultation presented a series of minor and miscellaneous amendments to scheme regulations. These refined the operation of scheme rules and made technical corrections. Two comments were received on these amendments, in relation to the proposals concerning statements of estimated contributions and the calculation of scheme contributions for practitioners and non-GP providers. The Department responds below in respect of the proposals where comments were received.

Statements of estimated contributions - amending regulations 39, 56(3), 73(3) and 81

7.34 The Department proposed the requirement for employers to provide certain statements of estimated contributions be in future at the discretion of the scheme administrator rather than mandatory for all employers. Historically this information has assisted the scheme administrator forecast financial cash flows, however improvements in administration data systems means that information for this purpose can be derived from returns made by most participating employers. Accordingly, the future provision of such statements will be at the request of the scheme administrator, typically in instances where this information is not available or an employer is at risk of not adhering to contribution obligations.

- 7.35 As noted in the previous consultation document^v, the proposed amendment does not affect GP surgeries who, since 2009, have been required to provide statements of estimated pensionable pay and contributions in respect of Practitioners and non-GP Providers one month prior to the start of the pension year. This is so that the Practitioners and non-GP Providers, who are in the main self-employed, pay employee contributions 'on account' at the most appropriate tiered rate based on projected earnings. If at year end, actual earnings means a different rate should have applied, this is corrected through their certification process.
- 7.36 The amendment also does not affect Independent Providers who, since 2014, have been required to provide statements of estimated pensionable pay and contributions in respect of all their employees prior to the start of the pension year. This is so the scheme administrator can establish that estimated contributions are in line with the 'qualifying contract' values, that the estimated and actual contributions paid over are similar, and that the 75% pensionable pay threshold has not been exceeded.

Consultation finding

- 7.37 The Scheme Advisory Board welcomed the proposal to make the provision of estimated contribution statements permissive, rather than mandatory.

Scheme contributions

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

7.41 The Department is aware that, in the past, some GPs have had breaks of up to three months (or, if they are a salaried GP, breaks of no more than one month) ignored when setting an annual rate of pay. From April 2019, breaks in pensionable service will be treated in line with the wording of the regulations, as amended. Consequently, a GP's annual rate of pay will be based on the number of days of pensionable service that they have undertaken during the relevant scheme year.

Consultation finding

7.42 In response, the British Dental Association noted the purpose of the amendment and asked if it should have retrospective effect. The Department agrees and the draft regulations at amending regulations 40(3)(b), 63, 82 and 83 have been updated accordingly.

NHS standard sub-contract definition

7.43 Proposed amendments updated the definition of NHS standard sub-contract in regulation A2 of the 1995 Section, regulations 2.A.1 and 3.A.1 of the 2008 Section and Schedule 15 of the 2015 Scheme with reference to the latest guidance for the years 2017-18 and 2018-19. These amendments can be found at amending regulations 3(4), 43(3)(d), 59(5), and 96(b).

Consultation finding

7.44 NHS England pointed out that the relevant guidance was issued by NHS England and not the Department, as stated in the regulation. The Department is grateful for this observation and this has been corrected in the draft regulations.

7.45 The amending regulations in respect of other draft amendments previously consulted on are: 40(2), 41, 43(3)(b), 56(2), 61, 62, 73(4), 91, 93, 94 and 96(c).

8. Miscellaneous and consequential amendments

8.1 A number of miscellaneous and consequential amendments are proposed.

Amendments to the 1995, 2008 and 2015 Regulations

Statements of estimated contributions of pensionable income

8.2 Amending regulations 40(6), 73(2) and 95(2) amend paragraph 23 of Schedule 2 of the 1995 Regulations, regulation 3.J.14 of the 2008 Regulations and paragraph 4 of Schedule 12 to the 2015 Regulations by inserting new sub-paragraph (14A), paragraph (13A) and new sub-paragraph (5) respectively.

8.3 In accordance with the regulations, all GMS/ PMS practices, APMS contractors and GDS/PDS must provide the host Board (NHS England (NHSE) or Local Health Board (LHB)) with a statement of the annual estimated pension contributions due no later than one month before the start of the Scheme year. NHSE or the LHB must be in possession of the form outlining the estimated pensionable income in respect of relevant medical and dental practitioners and non-GP Providers by 1 March of the preceding Scheme year.

8.4 If a practice or an APMS contractor fails to provide a statement of estimated contributions by the required date, the amendments allow the host Board to determine the estimated pensionable income and to deduct member contributions at the maximum contribution percentage rate (currently 14.5%) specified in the Regulations. Where it subsequently transpires that pension contributions have been deducted at a higher rate than would have been due if the statement had been provided, arrangements are in place for appropriate adjustments to be made during the Scheme year.

Amendments to the 1995 and 2008 Regulations

8.5 Amending regulations 3(5), 43(3)(e) and 59(6) amend the definition of "officer" in the 1995 and 2008 Regulations to clarify that the term "officer" does not include a GP performer, a dentist performer or a person engaged under a contract for services. The revised definition is consistent with the 2015 Scheme provisions

Amendments to the 1995 Regulations

- 8.6 Amending regulation 3(7) omits the definition of "CCT", Certificate of Completion of Training, relating to medical practitioner training. This definition previously featured in the definition of "trainee practitioner". However, the "trainee practitioner" definition was replaced with effect from 1 April 2013 by the current definition "specialist trainee in general practice", meaning the CCT definition is no longer required and can be omitted.

Amendments to the 2008 Regulations

- 8.7 Amending regulation 43(2) makes a correction to the paragraph numbering in 2008 regulation 2.A.1 (interpretation: general). A superfluous reference to paragraph (2) before the definition of "contracting-out" requirements is omitted and subsequent paragraphs are re-numbered accordingly.
- 8.8 Amending regulation 59(2) makes a similar correction in regulation 3.A.1 (interpretation of part 3: general). The paragraph reference (1) before "In this Part" is superfluous and is omitted.

Amendments to the 2015 Regulations

Recovery of arrears of scheme contributions from benefits

- 8.9 Amending regulation 95(3) brings paragraph 10(2)(b) of Schedule 12 to the 2015 Regulations into line with the 1995 and 2008 Section provisions.
- 8.10 Where a GP or non-GP Provider has failed to pay over their NHSPS contributions, paragraph 10(2)(b) of Schedule 12 allows NHSBSA to recover these arrears from their NHS pension benefit, usually at retirement.
- 8.11 The amendment streamlines the recovery of arrears by replacing the current requirement for 'member consent' to be obtained for recovery from benefits, with a simpler duty for the Scheme Administrator to "notify the member".

Amendments to the National Health Service (Injury Benefits) Regulations 1995

- 8.12 During the consultation on the draft amending regulations proposed for 1 April 2018 regarding changes to nomination requirements (these concern the eligibility for a partner to receive a survivor pension), the Department identified that consequential changes should also be made to the National Health Service (Injury Benefits) Regulations 1995.
- 8.13 In certain circumstances, these Regulations provide for an allowance or lump sum to be paid to a nominated partner or a child or other adult dependent of that partner. Amending regulations 102 to 107 remove the requirement that a nomination is required in respect of that partner in order for relevant payments to be made under regulations 7, 8, 9 or 11. This change is achieved by the insertion of a revised definition of 'surviving partner' at regulation 2 to include a reference to a 'surviving scheme partner' rather than a 'nominated partner'. The terms 'surviving scheme partner' and 'scheme partner' are then newly defined in regulation 2 and the new terminology replaces references related to 'nominated partners' in regulation 7, 8, 9 and 11.
- 8.14 The Department invites any comments or observations on these amendments.

References

ⁱ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752202/Budget_2018_red_web.pdf

ⁱⁱ <https://www.gov.uk/government/speeches/pm-speech-on-the-nhs-18-june-2018>

ⁱⁱⁱ <https://www.gov.uk/government/publications/occupational-pension-schemes-review-of-survivor-benefits>

^{iv} <http://www.nhsemployers.org/your-workforce/2018-contract-refresh/framework-agreement>

^v The consultation document is available online: <https://www.gov.uk/government/consultations/nhs-pension-scheme-proposed-changes-to-regulations-2018>

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