STATUTORY INSTRUMENTS

# 2016 No. 245

# NATIONAL HEALTH SERVICE, ENGLAND AND WALES
# PUBLIC SERVICE PENSIONS, ENGLAND AND WALES

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

*Made - - - - 24th February 2016*

*Laid before Parliament 3rd March 2016*

*Coming into force in accordance with regulation 1*

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 10(1) and (2), 12(1), (2) and (4) and 24 of, and Schedule 3 to, the Superannuation Act 1972(**1**) and sections 1(1) and (2)(e), 2, and 3 of, and paragraph 5(a) of Schedule 2 and Schedule 3 to, the Public Service Pensions Act 2013(**2**).

In accordance with section 10(4) of the Superannuation Act 1972 and section 21 of the Public Service Pensions Act 2013, the Secretary of State has consulted the representatives of such persons as appear to the Secretary of State likely to be affected by these Regulations.

In accordance with section 10(1)(**3**) of the Superannuation Act 1972 and section 3(5) of the Public Service Pensions Act 2013, these Regulations are made with the consent of the Treasury.

(**1**) 1972 c.11. Section 10(1) was amended by sections 57 and 58 of, and Schedule 5 to, the National Health Service Reorganisation Act 1973 (c.32) and section 4(2) of the Pensions (Miscellaneous Provisions) Act 1990 (c.7).
(**2**) 2013 c.25.
(**3**) The functions of the Minister for the Civil Service under section 10 were transferred to the Treasury by article 2 of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I. 1981/1670).

# PART 1

## Introductory

### Citation, commencement, effect and extent

**1.**—(1) These Regulations may be cited as the National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions (Amendment) Regulations 2016.

(2) Unless otherwise specified in paragraphs (3) to (8), these Regulations come into force on 1st April 2016 and have effect from that date.

(3) Regulations 7, 8, 9, 12, 15, 16, 28, 30, 34, 36, 48, 50, 54, 56, 68, 69, 70(3) and 84(3) come into force on 6th April 2016 and have effect from that date.

(4) Regulation 13 has effect from 1st April 2008.

(5) Regulation 99(2) and (3) has effect from 1st April 2009.

(6) Regulations 25 and 45 have effect from 1st April 2013.

(7) Regulations 3(d) insofar as it inserts a definition of "shared parental leave", 11, 18(3)(b) and (5), 21(e) insofar as it inserts a definition of "shared parental leave", 22, 23, 26, 29, 39(e) insofar as it inserts a definition of "shared parental leave", 40, 41(3) and (4), 42, 46, 49, 57, 59, 60, 65, 87(4)(a) and (b), 88 and 89(c) insofar as it inserts a definition of "shared parental leave" have effect from 31st December 2014.

(8) Regulations 4, 5, 6, 14, 24, 33, 44, 53, 64, 66, 67, 70(2), 71, 72, 73, 80, 81(2), 84(2), 85, 86, 91 to 96 and 98 have effect from 1st April 2015.

(9) These Regulations extend to England and Wales.

# Part 2

## Amendment of the National Health Service Pension Scheme Regulations 1995

### General

**2.** The National Health Service Pension Scheme Regulations 1995(**4**) are amended as follows.

### Amendment of regulation A2

**3.** In regulation A2 (interpretation)—

(a) for the definition of "buy-out policy", substitute—

> ""buy-out policy" means a policy of insurance or annuity contract that is appropriate for the purposes of section 19 of the 1993 Act(**5**) and satisfies any requirement of Her Majesty's Revenue and Customs: and "buy-out" shall be construed accordingly;";

(b) for the definition of "cash equivalent", substitute—

> ""cash equivalent" is to be construed in accordance with Chapter 1 of Part 4ZA of the 1993 Act;";

(c) for the definition of "practice staff", substitute—

(**4**) S.I. 1995/300.

(**5**) Section 19 is concerned with the discharge of liability where a guaranteed minimum pension is secured by insurance policies or annuity contract. Subsection (4) of section 19 specifies when a policy of insurance or an annuity contract is appropriate for the purposes of that section.

""practice staff" means a person who is not a registered medical practitioner, a GP registrar or a non-GP provider and who is employed by a GMS practice, a PMS practice, an APMS contractor or an OOH Provider to assist in the provision of any of the following—

(a) OOH services or services that practice or provider provides pursuant to a GMS contract, PMS agreement or an APMS contract;

(b) services pursuant to an NHS standard contract;

(c) services pursuant to an NHS standard sub-contract;

(d) clinical health care services for the NHS commissioned by an employing authority that is not a GMS practice, a PMS practice, an APMS contractor, an OOH provider or an Independent Provider;";

(d) at the appropriate place in the alphabetical order, insert—

""contracted-out employment" has the meaning given in section 8 of the 1993 Act;

"NHS standard sub-contract" means a sub-contract that complies with the Department of Health guidance "NHS Standard Sub-Contract for the Provision of Clinical Services 2015/16"(**6**);

"shared parental leave" has the meaning given in regulation 3(1) of the Shared Parental Leave Regulations 2014(**7**);";

(e) omit the definitions of "safeguarded percentage" and "safeguarded rights".

**Amendment of regulation B1**

**4.** In sub-paragraph (b) of paragraph (3B) of regulation B1 (membership of this Section of the scheme), for "(8V)" substitute "(8U)".

**Amendment of regulation B3**

**5.**—(1) Regulation B3 (restriction on further participation in this Section of the scheme) is amended as follows.

(2) For sub-paragraphs (a) and (b) of paragraph (8H), substitute—

"(a) is in pensionable employment on 31st March 2015,

(b) returns to pensionable employment on or after 1st April 2015 in circumstances where the provisions of regulation B2 do not apply, or

(c) is permitted to join this Section of the scheme by virtue of regulation B2(3).".

(3) For paragraph (8L), substitute—

"(8L) A person who, on 1st April 2012, has attained the age of 46 years and 7 months but has not attained the age of 50, may not contribute to or accrue further pensionable service under this Section of the scheme unless one of paragraphs (8J), (8M) or (8N) applies to that person and that person—

(a) is in pensionable employment on 31st March 2015,

(b) returns to pensionable employment on or after 1st April 2015 in circumstances where the provisions of regulation B2 do not apply, or

(**6**) Electronic copies of the guidance can be obtained from www.gov.uk/dh. Hard copies may be obtained from Department of Health, Quarry House, Quarry Hill, Leeds LS2 7UE.

(**7**) S.I. 2014/3050.

(c) is permitted to join this Section of the scheme by virtue of regulation B2(3).".

**Amendment of regulation D2**

**6.** In paragraph (8) of regulation D2 (contributions by employing authorities), for "purposes of paragraph (3)" substitute "purposes of paragraph (3) or (3A)".

**Amendment of regulation K1**

**7.** For sub-paragraph (c) of paragraph (2) of regulation K1 (contracting-out conditions to be overriding), substitute—

"(c) if a pension is forfeited for the reasons specified in paragraph (1)(b) or (c) or paragraph (1A) of regulation T6.".

**Amendment of regulation K4**

**8.**—(1) Regulation K4 (early leavers) is amended as follows.

(2) For paragraph (1), substitute—

"(1) This paragraph applies if a member who is under guaranteed minimum pension age either—

(a) leaves contracted-out employment under this Section of the scheme before 6th April 2016, or

(b) was in contracted-out employment under this Section of the scheme on 5th April 2016 but leaves pensionable employment on, or after, 6th April 2016.

This is subject to paragraph (2).

(1A) Where paragraph (1) applies the member's guaranteed minimum pension at the date of leaving will be increased, when the member reaches guaranteed minimum pension age or dies (if earlier), by the appropriate percentage specified in relation to each relevant year in the last order under section 148 of the Social Security Administration Act 1992 (revaluation of earnings factors) to come into force before the tax year in which the member reaches guaranteed minimum pension age or dies (if earlier).".

(3) In paragraph (3), for "If a member returns to contracted-out employment under this Section of the scheme within 6 months after leaving, the two periods of contracted-out" substitute "If a member to whom paragraph (1) applies returns to pensionable employment under this Section of the scheme within 6 months after leaving, the two periods of".

**Amendment of regulation K5**

**9.**—(1) For paragraph (1) of regulation K5 (guaranteed minimum pensions transferred to this Section of the scheme), substitute—

"(1) This paragraph applies where a guaranteed minimum pension has been transferred to this Section of the scheme and the member—

(a) subsequently leaves contracted-out employment under this Section of the scheme before 6 April 2016, or

(b) was in contracted-out employment under this Section of the scheme on 5th April 2016 but leaves pensionable employment on, or after, 6th April 2016.

(1A) Where paragraph (1) applies, the guaranteed minimum pension transferred to this Section of the scheme will be increased for each complete tax year after the date of leaving

under this Section of the scheme in which the transferred guaranteed minimum pension accrued, until the member reaches guaranteed minimum pension age or dies (if earlier).".

**Amendment of regulation M1**

**10.**—(1) Regulation M1 (member's right to transfer or buy out) is amended as follows.

(2) For sub-paragraphs (a) and (b) of paragraph (2)(**8**), substitute—

"(a) to purchase one or more buy-out policies from one or more insurance companies chosen by the member that satisfies the requirements set out in regulation 12(2) of the Occupational Pension Schemes (Transfer Values) Regulations 1996;

(b) to acquire rights under a personal pension scheme or another occupational pension scheme;".

(3) After paragraph (2), insert—

"(2A) Any use of the cash equivalent of a member's rights under paragraph (2) must satisfy the requirements of Chapter 1 of Part 4ZA of the 1993 Act.".

**Amendment of regulation P1**

**11.** In paragraphs (1) and (4)(b) of regulation P1 (absence because of illness or injury or certain types of leave)(**9**), for "or parental leave" substitute ", parental leave or shared parental leave".

**Amendment of regulation Q1**

**12.** For paragraph (9) of regulation Q1 (right to buy additional service), substitute—

"(9) Where a member, following a break in pensionable employment in respect of which he received a refund of contributions which has not been repaid, rejoins this Section of the scheme, he may buy all or any part of the previous pensionable service up to, and including, 5th April 2016 provided that the employment giving rise to that service was not contracted-out employment.".

**Amendment of regulation Q9**

**13.** In sub-paragraph (a) of paragraph (1) of regulation Q9 (effect of member being absent or leaving and rejoining this Section of the scheme during the contribution option period), for "regulation P1(2)" substitute "regulation P1(1)".

**Amendment of regulation R8**

**14.** For sub-paragraph (b) of paragraph (8) of regulation R8 (former members of health service schemes), substitute—

"(b) on the day the member becomes an active member of the 2015 Scheme either—

(i) paragraph 2 of Schedule 7 to the 2013 Act, or

(ii) paragraph 2 of Schedule 7 to the Public Service Pensions Act (Northern Ireland) 2014(**10**),

applies to the period of service in respect of which that transfer value payment is made.".

(**8**) Paragraph (2) was last amended by regulations 2 and 10 of S.I. 2009/2446.
(**9**) Paragraphs (1) and (4) were last amended by regulation 2 of S.I. 2007/3280.
(**10**) 2014 c. 2.