STATUTORY INSTRUMENTS

2015 No. 432

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

The National Health Service Pension Scheme (Consequential Provisions) Regulations 2015

Made - - - - 25th February 2015

Coming into force in accordance with regulation 1

The Secretary of State for Health makes these Regulations in exercise of the powers conferred by sections 1(1) and (2)(e), 2(1) and 3(1), (2), (3)(a) and (4) of the Public Service Pensions Act 2013(**1**).

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

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

Pursuant to section 24(1) and (3) of that Act, a draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament.

PART 1

Introductory

Citation, commencement and expiry

1.—(1) These Regulations may be cited as the National Health Service Pension Scheme (Consequential Provisions) Regulations 2015.

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

(**1**) 2013 c. 25.

(3) Regulation 10 comes into force on the same day as paragraph 38 of Schedule 13 to the Pensions Act 2014(**2**) comes into force, and on that day regulation 9 ceases to have effect.

Interpretation

2. In these Regulations—

"the 1993 Act" means the Pension Schemes Act 1993(**3**);

"the 2013 Act" means the Public Service Pensions Act 2013;

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

"the old scheme" means the National Health Service Pension Scheme, as constituted by the National Health Service Pension Scheme Regulations 1995(**4**) and the National Health Service Pension Scheme Regulations 2008(**5**).

PART 2

Modification of contracting-out provisions

Application of this Part

3. This Part applies where—

(a) an election is made under section 11 (elections as to employments covered by contracting-out certificates) of the 1993 Act(**6**) in relation to persons who become members of the new scheme on or after 1st April 2015 and before 6th April 2016 (whether or not any of those persons are members of the old scheme); and

(b) the new scheme satisfies the requirements of section 9 (requirements for certification of schemes) of the 1993 Act(**7**).

Contracting-out

4.—(1) Part 2 of the Occupational Pension Schemes (Contracting-out) Regulations 1996(**8**) (certification of employments) is modified as follows in its application to the new scheme.

(**2**) 2014 c. 19.
(**3**) 1993 c. 48.
(**4**) S.I. 1995/300, as amended by S.I. 1997/80 and 1888, 1998/666 and 2216, 2000/605, 2001/1428 and 3649, 2002/561 and 2469, 2003/631 and 2322, 2004/665 and 696, 2005/661 and 3074, 2006/600 and 2919, 2007/2054 and 3280, 2008/654 and 2263, 2009/381, 1298 and 2466, 2010/492 and 1634, 2011/591 and 2586, 2012/610, 2013/413, 2014/78, 570, 1607 and 3061 and as modified by S.I. 1996/971.
(**5**) S.I. 2008/653, as amended by S.I. 2008/2263, 2009/381, 1298 and 2446, 2010/492 and 1634, 2011/591 and 2586, 2012/610, 2013/413, 2014/78, 570 and 1607.
(**6**) Section 11 was amended by section 1(1) of, and Schedule 1 to, the Social Security Contributions (Transfer of Functions etc.) Act 1999 (c.2) and by section 1(2)(a) of the Employment Rights (Dispute Resolution) Act 1998 (c.8). It is prospectively repealed by section 24 of, and paragraph 9 of Schedule 13 to, the Pensions Act 2014 (c.19).
(**7**) Section 9 was amended by sections 136(3) and 151 of, and Schedule 5 to, the Pensions Act 1995 (c.26); by section 1(1) of, and Schedule 1 to, the Social Security Contributions (Transfer of Functions etc.) Act 1999 (c.2); by section 283 of the Pensions Act 2004 (c.35); by sections 14(4), 15(3) and 27(2) of, and Schedules 4 and 7 to, the Pensions Act 2007 (c.22); and by S.I. 2006/745. It is prospectively repealed by paragraph 9 of Schedule 13 to the Pensions Act 2014 (c.19).
(**8**) S.I. 1996/1172. Part 2 was amended by section 1(2) of, and Schedule 2 to, the Social Security Contributions (Transfer of Functions etc.) Act 1999 (c.2), by section 1(2)(a) of the Employment Rights (Dispute Resolution) Act 1998 (c.8) and by S.I. 1997/786, 2002/681, 2005/3377, 2011/1245, 2011/1246, and 2013/2734. By virtue of section 50(1) of the Commissioners for Revenue and Customs Act 2005 (c.11), references to the Commissioners of Inland Revenue are to be taken as references to the Commissioners for Her Majesty's Revenue and Customs.

(2) The requirements in regulation 2(1)(a) (making of elections for the issue of contracting-out certificates) and regulations 3 (notices by employers of intended election) to 5 (time for making an election) do not apply.

(3) In regulation 6 (information to be included in an election)—

(a) paragraph (1) is to be read as though, for sub-paragraphs (a) to (f), there were substituted—

"(a) the name by which the new scheme is to be known;

(b) the name by which the old scheme is known; and

(c) any other information necessary to enable the Commissioners for Her Majesty's Revenue and Customs to identify the old scheme."; and

(b) paragraphs (2) and (3) do not apply.

PART 3

Modification of early leaver and other provisions

Application of this Part

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

(a) is a member of the old scheme whether by virtue of pensionable service for that scheme or deemed transfer scheme service under paragraph 2 of Schedule 7 to the 2013 Act (final salary link);

(b) is a member of the new scheme by virtue of pensionable service for the new scheme; and

(c) is—

(i) a person to whom paragraph 1 or 2 of Schedule 7 to the 2013 Act applies by virtue of that person's pensionable service for the new scheme, and whose final salary falls for the purposes of the old scheme to be determined by reference to that paragraph; or

(ii) a person to whom—

(aa) Schedule 2 to the National Health Service Pension Scheme Regulations 1995; or

(bb) Part 3 of the National Health Service Pension Scheme Regulations 2008,

applies and who has pensionable service for the old scheme and pensionable service for the new scheme which are continuous.

(2) For the purposes of paragraph (1)(c)(ii)—

(a) paragraph 3 of Schedule 7 to the 2013 Act (continuity of employment) applies as it applies for the purposes of paragraphs 1(2)(a) and 2(2)(a) of that Schedule; and

(b) P's pensionable service for the old scheme and pensionable service for the new scheme are not continuous if scheme regulations made pursuant to section 8A(4)(b) of the Pensions (Increase) Act 1971(**9**) (references to "service": relevant old scheme pension in payment) apply to P.

Certification

6.—(1) Section 15A of the 1993 Act(**10**) (reduction of guaranteed minimum in consequence of pension debit) is modified as follows in relation to P.

(**9**) 1971 c. 56. Section 8A was inserted by paragraph 4 of Schedule 8 to the Public Service Pensions Act 2013 (c.25).
(**10**) Section 15A was inserted by section 32 of the Welfare Reform and Pensions Act 1999 (c.30).

(2) In the application of that section to the old scheme, the reference in subsection (2) of that section to pensionable service under the scheme is to be taken as a reference to pensionable service either for the old scheme or for the new scheme.

Preservation of benefit

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

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

(a) in section 70(**11**) (interpretation), in the definitions of "relevant employment" and "long service benefit" a reference to the scheme is to be taken as a reference to either the old scheme or the new scheme;

(b) in section 71(1) (basic principle as to short service benefit)—

(i) the requirement for a scheme to make provision is to be taken as a requirement that either the old scheme or the new scheme must make that provision;

(ii) a reference to a transfer payment to the scheme is to be taken as a reference to a transfer payment either to the old scheme or to the new scheme;

(iii) a reference to termination of P's pensionable service is to be taken as a reference to termination of P's pensionable service in relation to the new scheme;

(iv) a reference to benefit which would have been payable to P under the scheme is to be taken as a reference to benefit which would have been payable to P either under the old scheme or under the new scheme,

and subsequent references in the Chapter to "short service benefit" are to be construed accordingly;

(c) in section 71(5), a reference to termination of P's pensionable service is to be taken as a reference to termination of P's pensionable service in relation to the new scheme;

(d) in section 71(7)(a), the reference to P's pensionable service under the scheme is to be taken as a reference to P's pensionable service either for the old scheme or for the old and new schemes taken together; and

(e) in sections 72(2) (no discrimination between short service and long service beneficiaries), 74(6) and (7) (computation of short service benefit), 75(3) and (4) (credits) and 76(1) and (3) (pension increases), a reference to termination of P's pensionable service is to be taken as a reference to termination of P's pensionable service in relation to the new scheme.

(3) In the application of that Chapter to the new scheme—

(a) in section 70, in the definitions of "relevant employment" and "long service benefit" a reference to the scheme is to be taken as a reference to either the old scheme or the new scheme;

(b) in section 71(1)—

(i) the requirement for a scheme to make provision is to be taken as a requirement that either the old scheme or the new scheme must make that provision;

(ii) a reference to a transfer payment to the scheme is to be taken as a reference to a transfer payment either to the old scheme or to the new scheme;

(iii) a reference to benefit which would have been payable to P under the scheme is to be taken as a reference to benefit which would have been payable to P either under the old scheme or under the new scheme,

(**11**) Section 70 was amended by S.I. 2005/2053.