

2008 No. 654

NATIONAL HEALTH SERVICE,
ENGLAND AND WALES

The National Health Service
Pension Scheme (Amendment)
Regulations 2008

<i>Made - - - - -</i>	<i>11th March 2008</i>
<i>Laid before Parliament</i>	<i>11th March 2008</i>
<i>Coming into force</i>	<i>1st April 2008</i>



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The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 10(1) and (2) and 12(1) and (2) of, and Schedule 3 to, the Superannuation Act 1972(a) with the consent of the Treasury(b).

In accordance with section 10(4) of that Act, the Secretary of State has consulted such representatives of persons likely to be affected by these Regulations as appear to the Secretary of State to be appropriate(c).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service Pension Scheme (Amendment) Regulations 2008.

(2) These Regulations shall come into force on 1st April 2008 and shall have effect from 1st April 2008, except for regulation 62(2) and (3), which shall have effect from 1st April 2003.

(3) In these Regulations—

- (a) an alpha-numerical reference to a regulation is a reference to a provision of the National Health Service Pension Scheme Regulations 1995(d) bearing that alpha-numeric;
- (b) an alphabetical reference to a Part is a reference to a Part of those Regulations bearing that letter.

Amendment of regulation A2

2. In regulation A2 (interpretation) insert the following definitions in the appropriate place in alphabetical order—

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- (a) 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 by section 4(2) of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7). Section 12(2) was amended by section 10(1) of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7).
 - (b) See section 10(1) of the Superannuation Act 1972 and article 2 of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I. 1981/1670).
 - (c) See section 10(4) of the Superannuation Act 1972.
 - (d) S.I. 1995/300 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 and 2007/2054 and 3280, and modified by S.I. 1996/971.

““scheme year” means a period of one year beginning with 1st April and ending with 31st March;”

““section 9(2B) rights” has the same meaning as it has in the Occupational Pension Schemes (Contracting-out) Regulations 1996(a);”

““tax year” means any year beginning on 6th April and ending on 5th April the following year;”.

Amendment of regulation B2

3. For regulation B2 (restrictions on membership) substitute—

“Restrictions on membership

B2.—(1) A person may not join the scheme if—

- (a) that person is—
 - (i) under the age of 16; or
 - (ii) over the age of 75; or
 - (iii) over the age of 70 on or before 31st March 2008;
- (b) that person is a special class officer over the age of 65;
- (c) that person is eligible to be an active member of a superannuation scheme established under section 1 or 9 of the Superannuation Act 1972 in respect of service in that scheme and is such a member;
- (d) that person holds an honorary appointment and does not at the same time hold any other employment which entitles that person to join the scheme;
- (e) that person is not a practitioner and is employed by a GDS or PDS contractor;
- (f) that person, on or after 1st April 2008, enters NHS employment for the first time and has not previously been a member of the scheme;
- (g) that person, on or after 1st April 2008, returns to NHS employment and was entitled to a refund of contributions under regulation L2 when that person last left employment, unless paragraph (4), but not paragraph (5), of regulation L4 (early leavers returning to pensionable employment) applies to that person;
- (h) that person is a person who—
 - (i) leaves pensionable employment on, or after, 1st April 2008; and
 - (ii) before returning to NHS employment, exercises the member’s right to transfer out all of that person’s benefits in the scheme in accordance with regulation M1 or M2;
- (i) that person is a person who has been a member of the National Health Service Pension Scheme governed by the National Health Service Pension Regulations 2008(b).

(2) In paragraph (1)—

- (a) “NHS Pension Scheme 2008” includes a corresponding health service scheme;
- (b) “pensionable employment” includes employment that qualified the member for a benefit under a health service scheme.

(3) The Secretary of State may permit a person who would otherwise not be permitted to join the scheme in accordance with sub-paragraphs (1)(f) to (h) to do so if—

- (a) that person’s employment is transferred to an employing authority by virtue of a transfer of undertakings or by virtue of arrangements equivalent to a transfer of

(a) S.I. 1996/1172.
(b) S.I. 2008/653.

undertakings (whether or not the transferring employer is in the public sector provided that person's employment was originally transferred out of the public sector);

- (b) the employment from which the member is transferred—
 - (i) qualified the member for benefits under an occupational pension scheme, and
 - (ii) the rules of that scheme (in the opinion of the Secretary of State) entitle the member to receive benefits on retirement upon, or prior to, attaining the age of 60 years.

(4) The reference in paragraph (3)(a) to arrangements equivalent to a transfer of undertakings is to arrangements—

- (a) which the Secretary of State considers to be equivalent to the transfer of an undertaking, and
- (b) under which the parties to the arrangements have agreed that the rights of the persons whose employments are being transferred should as far as practicable be treated in the same way as they would have been under a transfer of an undertaking.

(5) For the purposes of paragraph (3)(b)(ii) a person is not to be treated as being entitled under the rules of a pension scheme to receive benefits upon, or prior to, attaining the age of 60 years, where such entitlement arises by virtue of any scheme rule making special provision—

- (a) as to early retirement on the grounds of ill health, redundancy or otherwise, or
- (b) for benefits to be reduced for early payment.

(6) Before permitting a person referred to in paragraph (3) to join the scheme the Secretary of State shall take advice from the Scheme Actuary.”.

Amendment of regulation B3

4.—(1) Regulation B3 (restriction on further participation in the scheme) is amended as follows.

- (2) In paragraph (1) for “regulations B1(1) and B(2)”, substitute “regulation B1(1)”.
- (3) In paragraph (2) after “E2(11)”, insert “or E2A(11)”.

Amendment of regulation C1

5.—(1) Regulation C1 (meaning of pensionable pay and final year's pensionable pay) is amended as follows.

- (2) After paragraph (1) insert—

“(1A) Paragraphs (2) to (4) and (5) to (7) apply in respect of pensionable employment before 1st April 2008.”.
- (3) After paragraph (4) insert—

“(4A) Paragraphs (4B) to (7) apply in respect of pensionable employment on, or after, 1st April 2008.

(4B) Subject to paragraph (4C), pensionable pay in excess of the permitted maximum will not be ignored.

(4C) Pensionable pay in excess of the permitted maximum will be ignored in respect of additional service being bought under regulation Q1 and an unreduced lump sum being brought under regulation Q2 if—

 - (a) the member elected to make such a purchase under regulation Q6(3) from a birthday falling before 1st April 2008; and
 - (b) the member's pensionable pay was restricted under paragraph (2) of this regulation before that date; or

- (c) the member's pensionable pay would have been restricted under that paragraph if it had exceeded the permitted maximum.”.
- (4) In paragraph (6) for “In these”, substitute “Subject to paragraph (6A), in these”.
- (5) After paragraph (6) insert—
- “(6A) If the pensionable pay of a member credited with a period of pensionable service under regulation N2 (transfers made under the Public Sector Transfer Arrangements) or regulation N4 (special terms for transfers in (bulk transfers etc)) has exceeded the permitted maximum and either—
- (a) paragraph 20 of Schedule 6 to the Finance Act 1989^(a) applied to the member without the modification made by regulation 5 of the Retirement Benefits Schemes (Continuation of Rights of Members of Approved Schemes) Regulations 1990^(b) in respect of benefits derived from all or part of that service under another scheme; or
- (b) any equivalent scheme provision applied to the member in respect of all or part of that service when that person was a member of the scheme from which the transfer was accepted,
- that excess shall be ignored for the purposes of calculating the final year's pensionable pay under paragraph (6) in respect of the corresponding period of pensionable service credited under regulation N2 or N4.”.
- (6) For paragraph (7) substitute—
- “(7) In this regulation, “permitted maximum” means—
- (a) in relation to any tax year before the tax year 2006-07, the figure specified for that tax year in an order made under section 590C of the Income and Corporation Taxes Act 1988; or
- (b) subject to paragraphs (8) and (9), the figure for any later year is £108,600.
- (8) If the retail prices index for the month of September preceding the tax year 2007-08 or any later tax year is higher than it was for the previous September, the figure for that year shall be an amount arrived at by—
- (a) increasing the figure for the previous tax year by the same percentage as the percentage increase in the retail prices index; and
- (b) if the result is not a multiple of £600, rounding it up to the nearest amount which is such a multiple.
- (9) If the retail prices index for the month of September preceding the tax year 2007-08 or the month of September preceding any later tax year is not higher than it was for the previous September, the figure for that year shall be the same as for the previous tax year.”.

Amendment of regulation C2

- 6.—**(1) Regulation C2 (meaning of pensionable service) is amended as follows.
- (2) After paragraph (2)(d) insert—
- “(e) in the case of a member who is not a special class officer, any period of pensionable service in excess of 40 years that relates to a period before—
- (i) the member's 60th birthday; and
- (ii) 1st April 2008.”.
- (3) For paragraph (3) substitute—
- “(3) Subject to paragraph (2), the benefits described in these regulations will be calculated by reference to a maximum of—

(a) 1989 c. 26.
 (b) S.I. 1990/2101.

- (a) 45 years pensionable service in the case of a member who is not a special class officer;
- (b) 45 years pensionable service (of which only 40 years may relate to the period before the member reaches age 55) in the case of a member who is a special class officer,

and if the member's pensionable service exceeds these limits, the amount of the excess will be ignored.”.

Amendment of regulation D1

7.—(1) Regulation D1 (contributions by members) is amended as follows.

(2) For paragraphs (1) and (2) substitute—

“(1) Each member in pensionable employment must contribute to the scheme in accordance with the following paragraphs of this regulation.

(1A) For the purposes of determining the relevant contribution rate for the 2008-2009 scheme year a member who meets one of the conditions referred to in paragraph (1B) must contribute 5 per cent of the member's pensionable pay.

(1B) The conditions referred to in paragraph (1A) are—

- (a) the member is in pensionable employment on both 31st March 2008 and 1st April 2008 with the same employer and that employment is by way of manual labour,
- (b) the member returns to pensionable employment on or after 1st April 2008 and both that employment and the period of pensionable employment immediately preceding that employment is by way of manual labour.

(1C) For the purposes of determining the relevant contribution rate for the 2008-2009 scheme year paragraph (1D) applies to a member who does not meet any of the conditions referred to in paragraph (1B).

(1D) For the 2008-2009 scheme year, a member whose pensionable pay falls into a pay band specified in column 1 of the following table must contribute the percentage of the member's pensionable pay specified in column 2 of that table in respect of that amount.

<i>Column 1</i> <i>Pay band</i>	<i>Column 2</i> <i>Contribution percentage rate</i>
Up to £19,682	5%
£19,683 to £65,002	6.5%
£65,003 to £102,499	7.5%
£102,500 to any higher amount	8.5%

(2) The Secretary of State may make a determination substituting any or all of the pay bands or contribution percentage rates specified in paragraphs (1A) and (1D) with effect from a date specified in the determination.

(2A) Before making a determination under paragraph (2), the Secretary of State must consider—

- (a) the advice of the Scheme Actuary, and
- (b) in accordance with regulation U4 (cost sharing), advice from such employee and employer representatives as the Secretary of State considers appropriate.

(2B) For the purposes of this regulation—

- (a) “primary employment” means a single pensionable employment for which an employing authority specifies the member's working hours or working patterns;
- (b) “zero hours contract” means pensionable employment in respect of a contract under which—
 - (i) an employing authority does not guarantee to provide work for the member;

- (ii) there are no specified working hours or working patterns;
- (iii) the member is paid only for work actually done under it.

(2C) For the purposes of determining the relevant contribution rate for the 2008-2009 scheme year paragraphs (2D) to (2J) apply to a member who is in pensionable employment with the same employing authority on both 31st March 2008 and 1st April 2008.

(2D) For the purposes of paragraphs (2E) to (2J)—

- (a) a member shall be regarded as being in pensionable employment throughout the 2007-2008 scheme year regardless of any period in that year during which the member continues to be employed by the same employer but does not make contributions to the scheme;
- (b) for the purposes of calculating the member's pensionable pay, contributions for any period referred to in (a) shall be deemed to have been paid;
- (c) the amount of pensionable earnings determined in accordance with those paragraphs shall be rounded down to the nearest whole pound;
- (d) if a member holds two or more pensionable employments at the same time—
 - (i) the determinations referred to in paragraphs (2E) to (2J) shall apply to each such employment separately; and
 - (ii) each such employment shall be treated separately for the purpose of paying contributions.

(2E) If a member—

- (a) was in pensionable employment with an employing authority on a whole-time basis throughout the 2007-2008 scheme year; and
- (b) is employed by that authority on 1st April 2008,

the member shall pay contributions at the rate specified in column 2 of the table in paragraph (1D) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay received during that year.

(2F) If a member—

- (a) was in pensionable employment with an employing authority on a part-time basis or under a zero hours contract throughout the 2007-2008 scheme year; and
- (b) is employed by that authority on 1st April 2008,

the amount of the member's pensionable pay shall be determined by reference to the amount the Secretary of State determines would have been paid in respect of a single comparable whole-time employment during that year.

(2G) If a member—

- (a) was in pensionable employment with an employing authority on a combination of a whole-time and part-time basis throughout the 2007-2008 scheme year; and
- (b) is employed by that authority on 1st April 2008,

the amount of the member's pensionable pay shall be the aggregate of the member's pensionable pay received during that year in respect of the member's whole-time employment and the amount the Secretary of State determines would have been paid in respect of a single comparable whole-time employment for that period in respect of the member's part-time employment.

(2H) If a member—

- (a) commences pensionable employment with an employing authority on a whole-time basis during the 2007-2008 scheme year; and
- (b) is employed by that authority on 1st April 2008,

the amount of the member's pensionable pay shall be determined by the formula—

$$\frac{RPP}{NDPE} \times 365$$

where

RPP is the pensionable pay received in respect of that employment during the 2007-2008 scheme year;

NDPE is the number of days of pensionable employment with that employer during the 2007-2008 scheme year.

(2I) If a member—

- (a) commences pensionable employment with an employing authority on a part-time basis or under a zero hours contract during the 2007-2008 scheme year; and
- (b) is employed by that authority on 1st April 2008,

the amount of the member's pensionable pay shall be determined by the formula—

$$\frac{CWTE}{NDPE} \times 365$$

where

CWTE is the amount the Secretary of State determines would have been paid for that employment during the 2007-2008 scheme year in respect of a single comparable whole-time employment

NDPE is the number of days of pensionable employment with that employer during the 2007-2008 scheme year.

(2J) If a member—

- (a) commences pensionable employment with an employing authority during the 2007-2008 scheme year and has since been employed on both a whole-time and part-time basis; and
- (b) is employed by that authority on 1st April 2008,

the amount of the member's pensionable pay shall be determined by the formula—

$$\frac{(RPP + CWTE)}{NDPE} \times 365$$

where—

RPP is the pensionable pay received for the whole-time employment with that employer during the 2007-2008 scheme year;

CWTE is the amount the Secretary of State determines would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment with that employer during the 2007-2008 scheme year;

NDPE is the number of days of pensionable employment with that employer during the 2007-2008 scheme year.

(2K) If a member commences employment under a zero hours contract during the 2008-2009 scheme year, the member shall pay contributions in respect of that employment at the rate specified in column 2 of the table in paragraph (1D) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (2Q).

(2L) Subject to paragraph (2R), if a member—

- (a) commences primary employment at any time during the 2008-2009 scheme year; and
- (b) does not have a previous primary pensionable employment during that scheme year in respect of which the member paid contributions under this regulation,

the member shall pay contributions at the rate specified in column 2 of the table in paragraph (1D) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (2Q).

(2M) If, at any time during the 2008-2009 scheme year, a member who is in a primary employment ("the earlier employment") commences a further primary employment ("the later employment") that is held concurrently with the earlier employment, the member shall pay contributions at the rate specified in column 2 of the table in paragraph (1D) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (2Q).

(2N) If a member—

- (a) ceases to be in a primary employment ("the earlier employment") that is not held concurrently with another primary employment at any time during the 2008-2009 scheme year,
- (b) after so ceasing next commences a further primary employment ("the later employment"), and
- (c) that further employment is not held concurrently with another primary employment,

the member shall continue to pay contributions in respect of the later employment at the same rate as that which applied to the earlier employment.

(2O) If a member—

- (a) at any time during the 2008-2009 scheme year ceases to be in two or more primary employments that were at one time held concurrently with each other ("the earlier employments");
- (b) those earlier employments did not all cease on the same day; and
- (c) that member next commences a further primary employment ("the later employment"),

the member shall continue to pay contributions in respect of the later employment at the same rate as that which applied to whichever of the earlier employments was the last to cease.

(2P) If a member—

- (a) at any time during the 2008-2009 scheme year ceases to be in two or more primary employments that were at one time held concurrently with each other ("the earlier employments");
- (b) the last two or more of those earlier employments ceased on the same day;
- (c) after the cessation of those earlier employments, next commences a further primary employment ("the later employment"), and
- (d) that further primary employment is not held concurrently with another primary employment,

the member shall pay contributions at the rate specified in column 2 of the table in paragraph (1D) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (2Q).

(2Q) Where paragraph (2K), (2L), (2M) or (2P) apply the Secretary of State shall determine the member's pensionable pay—

- (a) by applying the formula—

$$\frac{EPP}{NDPE} \times 365$$

where

EPP is the estimated pensionable pay that the member's employing authority estimates will be payable to the member in respect of that employment during the 2007-2008 scheme year

NDPE is the number of days of pensionable employment from the date employment commences to the end of the 2008-2009 scheme year, and

- (b) if the further employment is part-time employment, by determining how much would be paid in respect of a whole-time comparable employment,

with the amount determined under (a) being the member's pensionable pay for the purposes of this regulation if the further employment is whole-time employment and the amount determined under (b) being the member's pensionable pay for the purposes of this regulation if the further employment is part-time employment.

(2R) If a member—

- (a) at any time during the 2008-2009 scheme year is in pensionable employment in respect of which he pays contributions in accordance with paragraph (10) of Schedule 2 ("the earlier employment");
- (b) ceases all such earlier pensionable employments;
- (c) after so ceasing, next commences a primary employment which is the first primary employment held by the member during the 2008-2009 scheme year ("the later employment"),

the member shall continue to pay contributions in respect of the later employment at the same rate as that which applied to the earlier employment or, if there is more than one earlier employment, at the same rate as that which applied to whichever of those earlier employments was the last to cease.

(2S) Paragraph (2R) shall not apply if, during the 2008-2009 scheme year, the member—

- (a) has pensionable employment both as a general medical practitioner and a dentist performer; and
- (b) ceases both of those employments on the same day.

(2T) If none of paragraphs (2E) to (2R) apply—

- (a) the Secretary of State must determine the amount of the member's pensionable pay, and in doing so shall, in addition to the matters referred to in paragraph (2A), have regard to the pensionable pay attributable to pensionable employment comparable to the member's employment, prevailing pay scales and prevailing rates of pensionable allowances, and
- (b) the member shall pay contributions at the rate specified in column 2 of the table in paragraph (1D) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (a)."

(3) In paragraph (4)—

- (a) for "70", substitute "75";
- (b) omit "and reaches age 65".

Amendment of regulation D2

8.—(1) Regulation D2 (contributions by employing authorities) is amended as follows.

(2) In paragraph (3)(a)—

- (a) omit "or E4 (early retirement pension with employer's consent)";
- (b) in sub-paragraph (a) after "E3", insert "(including any amount of pension that is exchanged for a lump sum under regulation E7)";

(a) Paragraph (3) was amended by S.I. 2006/2919.

- (c) in sub-paragraph (b)(a)—
 - (i) after “pension”, insert “(including any amount of pension that is exchanged for a lump sum under regulation E7)”, and
 - (ii) omit paragraph (i).
- (3) In paragraph (7)(a) and (b), omit “or E4”.

Amendment of regulation E1

- 9.**—(1) Regulation E1 (normal retirement pension) is amended as follows.
- (2) In paragraph (3)(b) for “70”, substitute “75”.
 - (3) After paragraph (3) insert—
 - “(4) Subject to paragraph (5), where a member who leaves pensionable employment on or after 1st April 2008 becomes entitled to a pension under this regulation, the Secretary of State may discharge the Secretary of State’s liability for that pension by the payment of a lump sum of an amount consistent—
 - (a) with the contracting-out and preservation requirements of the 1993 Act;
 - (b) with the lump sum rule.
 - (5) A lump sum payment under paragraph (4) may be made only if the Secretary of State is satisfied that it is appropriate in all the circumstances having regard to the life expectancy of the member.
 - (6) For the purposes of paragraph (5), the Secretary of State may require whatever medical evidence that the Secretary of State considers necessary.
 - (7) The amount of the lump sum payable under paragraph (4)—
 - (a) will be equal to 5 times the yearly rate of the member’s pension (calculated in accordance with this regulation); and
 - (b) shall be payable in addition to the lump sum on retirement payable under regulation E6 (which shall not be subject to any reduction under regulation E6(3)) and the lump sum in place of part of a pension payable under regulation E7.
 - (8) For the purposes of calculating the amount of the lump sum payable under paragraph (7), the member will be treated as if the member had made an election under regulation E7 to receive the maximum amount of a further lump sum payable under that regulation.”.

Amendment of regulation E2

- 10.**—(1) Regulation E2 (early retirement pension (ill health)) is amended as follows.
- (2) Before paragraph (1) insert—
 - “(A1) This regulation applies to a member who—
 - (a) retires from pensionable employment on or after 1st April 2008—
 - (i) who submitted Form AW33E (or such other form as the Secretary of State accepted) together with supporting medical evidence if not included in the form, and
 - (ii) that form was received by the Secretary of State before 1st April 2008; or
 - (b) returns to employment which attracts a pension in accordance with paragraph (11).”.
 - (3) In paragraph (1) after “A member”, insert “to whom this regulation applies”.
 - (4) In paragraph (10)(b) after “reduction under regulation E6(3)”, insert “and the lump sum in place of part of pension payable under regulation E7”.

(a) Paragraph (7) was amended by S.I. 2006/2919.
(b) Paragraph (3) was amended by S.I. 2004/665 and S.I.2006/2919.

(5) After paragraph (11) insert—

“(12) For the purposes of calculating the amount of lump sum payable under paragraph (10), the member will be treated as if the member had made an election under regulation E7 to receive the maximum amount of further lump sum payable under that regulation.”.

Insertion of new regulations E2A, E2B and E2C

11. After regulation E2 insert—

“Ill health pension on early retirement

E2A.—(1) This regulation applies to a member who—

- (a) retires from pensionable employment on or after 1st April 2008;
- (b) did not submit Form AW33E (or such other form as the Secretary of State accepted) together with supporting medical evidence if not included in the form pursuant to regulation E2 which was received by the Secretary of State before 1st April 2008, and
- (c) is not in receipt of a pension under regulation E2.

(2) A member to whom this regulation applies who retires from pensionable employment before normal benefit age shall be entitled to a pension under this regulation if—

- (a) the member has at least 2 years qualifying service or qualifies for a pension under regulation E1; and
- (b) the member’s employment is terminated because of physical or mental infirmity as a result of which the member is—
 - (i) permanently incapable of efficiently discharging the duties of that employment (the “tier 1 condition”); or
 - (ii) permanently incapable of regular employment of like duration (the “tier 2 condition”) in addition to meeting the tier 1 condition.

(3) Subject to paragraph (4), the pension to which a member is entitled—

- (a) upon satisfaction of the tier 1 condition (“the tier 1 pension”), or
- (b) upon satisfaction of the tier 2 condition in addition to meeting the tier 1 condition (“the tier 2 pension”),

will be calculated as described in regulation E1.

(4) Subject to paragraphs (5) and (6), if the member meets the tier 2 condition in addition to meeting the tier 1 condition, the pensionable service on which the pension is based will be increased by two-thirds of the pensionable service the member could have completed had he stayed in pensionable employment until normal benefit age.

(5) If the member’s employment is terminated on or before 31st March 2016, the minimum amount by which the member’s pensionable service will be increased under paragraph (4) will be the lesser of—

- (a) 4 years pensionable service; and
- (b) the pensionable service the member could have completed if the member had stayed in pensionable employment until normal benefit age.

(6) To the extent that any increase under paragraph (4) or (5) would cause a member’s pensionable service to exceed the limit provided for in regulation C2(3) (meaning of pensionable service), the amount of any excess will be reduced accordingly.

(7) Subject to paragraph (8), where a member becomes entitled to a pension by virtue of meeting the tier 2 condition, the Secretary of State may discharge her liability for that pension by the payment of a lump sum of an amount consistent—

- (a) with the contracting-out and preservation requirements of the 1993 Act; and

(b) the lump sum rule.

(8) A lump sum payment under paragraph (7) may be made only if the Secretary of State is satisfied that it is appropriate in all the circumstances having regard to the life expectancy of the member.

(9) For the purpose of paragraph (8), the Secretary of State may require whatever medical evidence that the Secretary of State considers necessary.

(10) The amount of the lump sum payable under paragraph (7)—

- (a) will be equal to 5 times the yearly rate of the member's pension (calculated in accordance with this regulation); and
- (b) shall be payable in addition to the lump sum on retirement payable under regulation E6 (which shall not be subject to any reduction under regulation E6(3)) and the lump sum in place of part of the pension payable under regulation E7.

(11) The employment of a member to whom a pension is payable under this regulation may be pensionable under the scheme if he is under age 50—

- (a) on the date the member returns to NHS employment if the member became entitled to receive a pension under a tier 1 condition on the day the member retired from pensionable employment; or
- (b) on the day after the protection period in regulation E2C(6)(b) ends if—
 - (i) the member became entitled to receive a pension under a tier 2 condition on the day the member retired from pensionable employment, and
 - (ii) the Secretary of State did not discharge her liability for that pension by the payment of a lump sum in accordance with paragraph (7) of this regulation; or
- (c) on the day after the protection period in regulation E2C(6)(b) ends—
 - (i) the member became entitled to receive a pension under a tier 2 condition in place of a pension under a tier 1 condition on the date of the Secretary of State's determination under regulation E2B, and
 - (ii) the Secretary of State did not discharge her liability for that pension by the payment of a lump sum in accordance with paragraph (7) of this regulation.

(12) For the purposes of calculating the amount of the lump sum payable under paragraph (10), the member will be treated as if the member had made an election under regulation E7 to receive the maximum amount of a further lump sum payable under that regulation.

(13) For the purposes of determining whether a member is permanently incapable of efficiently discharging the duties of the member's employment under paragraph (2)(b)(i), the Secretary of State shall have regard to the factors in paragraph (15) (no one of which shall be decisive) and disregard the member's personal preferences for or against engaging in that employment.

(14) For the purposes of determining whether a member is permanently incapable of regular employment under paragraph (2)(b)(ii), the Secretary of State shall have regard to the factors in paragraph (16) (no one of which shall be decisive) and disregard the factors in paragraph (17).

(15) The factors to be taken into account for paragraph (13) are—

- (a) whether the member has received appropriate medical treatment in respect of the incapacity;
- (b) the member's—
 - (i) mental capacity; and
 - (ii) physical capacity;
- (c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of the member's incapacity, irrespective of whether such rehabilitation is undergone; and
- (d) any other matter which the Secretary of State considers appropriate.

- (16) The factors to be taken into account for paragraph (14) are—
- (a) whether the member has received appropriate medical treatment in respect of the incapacity; and
 - (b) such reasonable employment as the member would be capable of engaging in if due regard is given to the member's—
 - (i) mental capacity;
 - (ii) physical capacity;
 - (iii) previous training; and
 - (iv) previous practical, professional and vocational experience, irrespective of whether or not such employment is actually available to the member;
 - (c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of the member's incapacity (irrespective of whether such rehabilitation is undergone) having regard to the member's—
 - (i) mental capacity, and
 - (ii) physical capacity;
 - (d) such type and period of training which it would be reasonable for the member to undergo in respect of the member's incapacity (irrespective of whether such training is undergone) having regard to the member's—
 - (i) mental capacity,
 - (ii) physical capacity,
 - (iii) previous training, and
 - (iv) previous practical, professional and vocational experience, and
 - (e) any other matter which the Secretary of State considers appropriate.
- (17) The factors to be disregarded for paragraph (14) are—
- (a) the member's personal preference for or against engaging in any particular employment; and
 - (b) the geographical location of the member.
- (18) For the purpose of this regulation—
- “appropriate medical treatment” means such medical treatment as it would be normal to receive in respect of the incapacity, but does not include any treatment that the Secretary of State considers—
- (a) that it would be reasonable for the member to refuse,
 - (b) would provide no benefit to restoring the member's capacity for—
 - (i) efficiently discharging the duties of the member's employment under paragraph (2)(b)(i), or
 - (ii) regular employment of like duration under paragraph (2)(b)(ii), before the member reaches normal benefit age; and
 - (c) that, through no fault on the part of the member, it is not possible for the member to receive before the member reaches normal benefit age;
- “permanently” means the period until normal benefit age; and
- “regular employment of like duration” means—
- (a) in the case of a non-GP provider, such employment as the Secretary of State considers would involve a similar level of engagement to the member's current pensionable service as a non-GP provider; and
 - (b) in all other cases, where prior to retiring from employment that is pensionable the member was employed—

- (i) on a whole-time basis, regular employment on a whole-time basis;
 - (ii) on a part-time basis, regular employment on a part-time basis,
- regard being had to the number of hours, half-days and sessions the member worked in that employment.

Re-assessment of ill health condition determined under regulation E2A

E2B.—(1) This regulation applies to a member in receipt of a tier 1 pension under regulation E2A.

(2) A member to whom this regulation applies may ask the Secretary of State to consider whether the member subsequently meets the tier 2 condition if—

- (a) by notice in writing at the time of award of the pension, the Secretary of State informed the member that the member's case may be considered once within a period of three years commencing with the date of that award to determine whether the member satisfies the tier 2 condition at the date of such a consideration;
- (b) within that three year period the member provides further medical evidence to the Secretary of State relating to the satisfaction of the tier 2 condition at the date of the Secretary of State's consideration; and
- (c) that further medical evidence relates to the same physical or mental infirmity that qualified the member for the member's tier 1 pension.

(3) If, after considering the further medical evidence provided by a member, the Secretary of State determines that the member satisfies the tier 2 condition—

- (a) the Secretary of State shall pay from the date of that determination a tier 2 pension under regulation E2A(2) in place of the tier 1 pension being paid to that member; and
- (b) that pension shall be calculated in accordance with paragraph (4) of regulation E2A and as if that paragraph included the words “from the date of the Secretary of State's determination under regulation E2B” after “employment”.

(4) Only one consideration of a member's case may be undertaken under this regulation.

Further employment after a benefit is paid under regulation E2A

E2C.—(1) This regulation applies to a member who—

- (a) is in receipt of a tier 2 pension under regulation E2A (“the original pension”); and
- (b) enters into further employment.

(2) Such a member shall be paid a tier 1 pension (“a substitute pension”) in place of the original pension—

- (a) from the next substitute pension payment date following the day on which the member's annual earnings from further employment (whether in the NHS or otherwise) in any tax year exceed the lower earnings limit for national insurance contributions applicable to that year; or
- (b) in the case of a member who enters into further NHS employment, from the next substitute pension payment date following the first day on which the member is so employed which falls after the anniversary of the member's entry into the further NHS employment (whether or not that day is part of a continuous period of further NHS employment beginning with the member's entry into that employment),

if sooner.

(3) A member who is in receipt of a substitute pension may ask the Secretary of State to consider reinstating the original pension if—

- (a) the member is under normal benefit age;

- (b) the member makes such a request in writing and provides supporting medical evidence to the Secretary of State before the end of the protection period; and
- (c) the member's further employment is terminated before the end of the protection period.

(4) If, after considering that evidence, the Secretary of State determines that the member again satisfies a tier 2 condition in respect of the member's earlier employment, the Secretary of State shall recommence paying, from the day after the date that the further employment is terminated, the original pension in place of the substitute pension.

(5) A member to whom this regulation applies who is in receipt of a tier 2 pension must—

- (a) notify the Secretary of State immediately and in writing if either of the following apply—
 - (i) the member's annual earnings in any tax year exceed the lower earnings limit for national insurance contributions applicable to that year;
 - (ii) the member is engaged in further NHS employment after the end of the protection period in paragraph (6)(b);
- (b) provide any other information in connection with the member's earnings or further employment requested by the scheme administrator or any other person that the Secretary of State may specify.

(6) In this regulation "the protection period" means—

- (a) a period of one year beginning with the day on which the member's annual earnings from further employment that is not NHS employment first exceed the lower earnings limit for national insurance contributions applicable to that year; or
- (b) a period of one year beginning with the first day the member enters into further NHS employment."

Amendment of regulation E3

12. After paragraph (1)(a)(ii) of regulation E3 (early retirement pension (redundancy etc additional provisions)) insert—

“(iia) returns to pensionable employment on or after that date that attracts a pension in accordance with regulation E2(11) or E2A(11);”.

Omission of regulation E4

13. Regulation E4 (early retirement pension (employer's consent)) is omitted.

Insertion of new regulation E7

14. After regulation E6 (lump sum on retirement) insert—

“General option to exchange part of pension for lump sum

E7.—(1) This regulation applies to a member whose pensionable employment ceases on or after 1st April 2008.

(2) A member may opt to exchange part of a pension to which the member would otherwise be entitled for a lump sum, which must be an evenly divisible multiple of £12.

(3) If a member so opts, for every £1 by which the member's annual pension is reduced, the member is to be paid a lump sum of £12.

(4) An option under paragraph (2) must relate to an annual amount of pension that is a whole number of pounds (and accordingly the lump sum will be exactly divisible by 12).

(5) In paragraph (4) “annual amount” in relation to a pension means the amount of the annual pension to which the member would be entitled under these regulations apart from