

The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions (Amendment) Regulations 2009

Note

1 Amending regulation 3(a)

Technical change as a result of Hilary's comments

2 Re-employed 1995 Tier 1 Ill health pensioners and 'Choice'

Tier 1 ill health pensioners in the 1995 Section are eligible to re-join that section if they are under age 50 when they are re-employed. This means that on return they will be eligible to choose to move to the 2008 Section in respect of their further service.

The overriding principle of the following amendments is to ensure that a member who has a pension in one section of the scheme whilst accruing service in the other ("a 1995 pensioner/2008 active member") will not be entitled to more benefits than they would have been if they had been a re-employed pensioner with a pension and further service accrual in only one section of the scheme.

Changes to the 1995 Section

2.1 Regulation 4 amends regulation E2B (re-assessment of ill-health condition determined under regulation E2A)

This change ensures that members cannot become entitled to a 1995 tier 2 ill- health pension for 1995 service and 2008 tier 2 ill- health pension for their later service.

1995 Section regulation E2B, provides a right for members of that Section to ask the Secretary of State to consider whether they subsequently meet the tier 2 ill health condition, provided they have **not** become entitled to a tier 2 pension in respect of any later (re employed) service under regulation S3A(6). This amendment extends the latter restriction to "1995 pensioner/2008 active members" who become entitled to a tier 2 pension for their later service under regulation 2.D.8 or 3.D.7 of the 2008 Section.

2.2 Regulation 5 amends regulation G3 (member dies after pension becomes payable)

This amendment ensures that the initial rate of any partner pension paid in respect of a "1995 pensioner/2008 active member" who dies takes account of any pension abatement in force.

2.3 Regulation 8 amends regulation H4 (member dies after pension becomes payable)

Children's pensions are based on a proportion of the member's pension based on a minimum of 10 years service. In the case of re-employed pensioners the minimum only applies if both the earlier and the later service (in re-employment) combined is less than ten years. If the member's combined service is less than 10 years the later service is increased by the difference.

This amendment ensures that in the case of a "1995 pensioner/2008 active member" service is not increased to 10 years in both sections of the scheme (so that a child allowance would be based on 20 years service). The children's pension from the 1995 Section will be based on a proportion of the member's actual service in that section and where the member's combined service is less than 10 years, service in the 2008 Section will be increased by the shortfall (see new regulation 2.K.24 and 3.K.23)

Changes to the 2008 Section

2.4 Regulation 18 amends regulation 2.B.1A (eligibility: transitional) and regulation 57 amendment regulation 3.B.1A (eligibility: transitional)

Tier 2 ill-health pensioners are not entitled to accrue any further service in re-employment. This amendment prevents a "1995 pensioner/2008 active member" from accruing further service in the 2008 Section if, on review, their 1995 tier 1 ill-health pension is converted into a tier 2-ill health pension.

2.5 Regulation 49 inserts 2.K and regulation 89 inserts 3.K; these have been amended further so that the service that qualified a member for a tier 1 ill-health pension in the 1995 Section will also count as qualifying service in the 2008 Section.

2.6 Regulation 49 inserts new regulation 2.K.22 and Regulation 89 inserts new regulation 3.K.21 "2008 Section Optants who are in receipt of a tier 1 ill-health pension under Regulation E2A of the 1995 Regulations"

The amendment ensures that where a "1995 pensioner/2008 active member's" 1995 tier 1 ill-health pension converts to a tier 2 pension under regulation E2B, any further ill health pension, for service in the 2008 section, is restricted to tier 1. And, because such an Optant may be in the process of applying for a tier 2 ill health pension for their re-employment in the 1995 Section, the regulation is made subject to the transitional arrangements in regulation 2.K.14 onwards.

2.7 Regulation 49 inserts new regulation 2.K.23 and regulation 89 inserts new regulation 3.K.22 "Lump sum payable on the death of a 2008 Section Optant who

is in receipt of a tier 1 ill-health pension under regulation E2A of the 1995 Regulations”

The amendment ensures that the death benefit lump sum for a “1995 pensioner/2008 active member’s” later (2008) service is not twice their reckonable pay, but five times their tier 2 ill health pension, in common with re employed pensioners whose service is all within one Section of the Scheme.

2.8 Consequential amendments: 2.K.23 and 3.K.22 have 2 consequential amendments each.

“In the case of a 2008 Section Optant, this is subject to regulation 2.K.23 (lump sum payable on the death of a 2008 Section Optant who is in receipt of a tier 1 ill-health pension under regulation E2A of the 1995 Regulations).” is inserted by the following amending regulations

39 inserts at the end of paragraph (1) of 2.E.17 (amount of lump sum: single capacity members and recent leavers (disregarding regulation 2.D.5 employments)),

41 inserts at the end of paragraph (2) of 2.E.19 (amount of lump sum; dual capacity members; members with pensions under regulation 2.D.5)

“In the case of a 2008 Section Optant, this is subject to regulation 3.K.22 (lump sum payable on the death of a 2008 Section Optant who is in receipt of a tier 1 ill-health pension under regulation E2A of the 1995 Regulations).” Is inserted by the following amending regulations:

78(2) inserts at the end of paragraph (1) of 3.E.17 (amount of lump sum: single capacity members and recent leavers (disregarding regulation 3.D.5 employments))

80(2) inserts at the end of paragraph(2) of Regulation 3.E.19 (amount of lump sum: dual capacity members with pensions under regulation 3.D.5)

2.9 Regulation 49 inserts new regulation 2.K.24 and regulation 89 inserts new regulation 3.K.23 “Children’s pensions payable on the death of a 2008 Section Optant who is in receipt of a tier 1 ill health pension under regulation E2A of the 1995 Regulations”

As mentioned in paragraph 2.3, this regulation ensures that the 10 years service minimum for the calculation of children’s pensions takes account of service in both the 1995 and the 2008 section. Where the combined service across the two sections is less than 10 years, the later 2008 active service will be increased by the shortfall.

2.10 Consequential amendments: 2.K.24 and 3.K.23 have three consequential amendments each:

“In the case of a 2008 Section Optant, this is subject to regulation 2.K.24 (children’s pensions payable on the death of a 2008 Section Optant who is in receipt of a tier 1 ill-health pension under regulation E2A of the 1995 Regulations” is inserted by amending regulations:

36 at the end of paragraph (4) of 2.E.10 (amount of children’s pension under regulation 2.E.8: deceased active members and deceased non-contributing members)

37 at the end of paragraph (3) of 2.E.11 (amount of children’s pension under regulation 2.E.8: deceased pensioner members)

38 at the end of paragraph (3) of 2.E.12 (amount of children’s pension under regulation 2.E.8: deceased deferred members)

“In the case of a 2008 Section Optant, this is subject to regulation 3.K.23 (children’s pensions payable on the death of a 2008 Section Optant who is in receipt of a tier 1 ill-health pension under regulation E2A of the 1995 Regulations)” is inserted by amending regulations:

75 at the end of paragraph (3) of 3.E.10 (amount of children’s pension under regulation 3.E.8: deceased active members and deceased non-contributing members)

76 at the end of paragraph (3) of 3.E.11 (amount of children’s pension under regulation 3.E.8: deceased pensioner members)

77 at the end of paragraph (3) of 3.E.12 (amount of children’s pension under regulation 3.E.8: deceased deferred members)

3 Amending regulation 9(2)(e) inserts a new paragraph (5C) into regulation 9 (officer service treated as practitioner service) of Schedule 2 of the 1995 regulations and amending regulation 95 amends 4.B.8 (calculation method A) of the 2008 regulations.

These amendments clarify the way in which pensionable earnings will be determined, if a member has officer service before practitioner service that was the result of a transfer-in. If the member was an officer when that transfer-in occurred, but later became a GP and is able to treat that officer service as if it were practitioner by dynamising the pay, that pay will be determined by means of the calculation set out in Schedule 2(18)(2) (if the member is a 1995 Section member) or that set out in regulation 3.F.11(2) (if the member is a 2008 Section member).

4 Amending regulation 9(3) inserts a new paragraph (6) into regulation 11A (practitioners with benefits from both practitioner service and officer service) of Schedule 2 This amendment makes it clearer that “sandwiched service” includes one or more periods of officer service that is not concurrent with practitioner service, prior to the final period of practitioner service.

5 1995 Pension Debit members

Some members who choose to move to the 2008 Section will have a ‘pension debit’ against their benefits as the result of a Pension Sharing Order. The following new amendments are made in relation to their position after they move to the 2008 Section.

5.1 Regulations 13 and 50 include an extended definition of “pension debit member’ in 2.A.1 and 3.A.1 respectively that applies to members regardless of whether the debit occurred before or after they joined the 2008 Section.

5.2 Regulations 2.K.8 and 3.K.8 (pension debit members) have been amended so that the amount of the 1995 debit against the pension will be converted to a debit against the 2008 section pension by adjusting the 1995 amount using a factor specified by the Secretary of State. (This will be the 1995 pension debit x 4/3 and, in the case of a member who is over age 60 on 1 October 2009, this will be reduced by their conversion factor).

5.3 Regulations 2.K.12 and 3.K.11 which cover the mandatory lump sum to be taken have been amended further so that the amount that must be taken as a lump sum is reduced to take account of a pension debit. (see new paragraphs (13),(14) and definitions of “1995 Section Pension Debit” and “Increase Factor” at paragraphs (16) in 2.K.12 and (17) of 3.K.11)

The reduction is calculated by multiplying the amount of the “1995 Section Pension Debit” by 3 and then multiplying the result by the “increase factor” (i.e. pensions increases) that would have applied to the 1995 pension debit, for the purposes of the 1999 Act, on:

- the date the Optant becomes entitled to a pension under the 2008 Section, or
- the day following the last day of pensionable service before a member becomes entitled to the payment of a transfer value under the 2008 Section.

6 Amending regulation 16 amends 2.A.10 (meaning of “reckonable pay”: general). Hilary asked here is we should change the reference from ‘corresponding 2008 scheme’ to ‘corresponding 2008 Section’. We have not amended as Hilary suggested because the definition of ‘corresponding 2008 scheme’ still works correctly and we do not know when other Health Service Schemes will make corresponding changes to their own regulations (ie changing references from ‘scheme’ to ‘section’).

7 Amending regulation 17 amends 2.B.1 (eligibility: general) This amendment replaces sub-paragraph 5(e)(ii), so that this “other scheme condition” applies correctly to deferred members of the 1995 Section who have not since become pensioner members of that Section “before” (the current version of the sub-paragraph incorrectly states “between”) the date of leaving that employment and joining the 2008 Section.

8 Amending regulation 22 amends 2.C.14 (effect of payment of additional contributions under this Chapter), and amending regulation 61 amends 3.C.12 (effect of payment of additional contributions under this Chapter). Hilary commented that the instructions in both regulations should read “after” and this has been corrected.

9 Amending regulation 29 amends 2.D.9 (re-assessment of entitlement to an ill-health pension determined under regulation 2.D.8), and amending regulation 69 amends 3.D.8 (re-assessment of entitlement to an ill-health pension determined under regulation 3.D.7) These amendments are technical only and are made as a consequence of the mis-numbering of paragraphs in the 1 April 2009 SI. The effect of the regulations is unchanged.

10 Amending regulation 49 inserts new regulation 2.K.3 (service credited from the 1995 Section) and regulation 89 inserts new regulation 3.K.3 (Service and pensionable earnings credited from the 1995 Section). At GAD’s request references to advice from the Scheme Actuary has been removed from paragraphs (5) and (8) respectively so that the conversion factor to be applied is that specified by the Secretary of State. This amendment has also been made where other references to the ‘conversion factor’ are made - in paragraph (3) of 2.K.8 and 3.K.8 (pension debit members) and at paragraph (6)(b) of 2.K.5 (treatment of Additional Service) and 3.K.5 (treatment of additional Service and pensionable earnings)

11 Amending regulation 49 inserts new regulation 2.K.4 and regulation 89 inserts new regulation 3.K.4 (treatment of additional pension). The revisions corrects some inconsistencies in wording between this Part 2 regulation and its equivalent in Part 3 of the 2008 section, and makes some improvements to drafting in light of comments made by Hilary at the workshop. There are no substantive changes in the effect of the regulation.

12 Amending regulation 49 inserts new regulation 2.K.5 (treatment of additional service) and regulation 89 inserts new regulation 3.K.5 (treatment of additional service and pensionable earnings) The revisions adjusts the wording of paragraph

(3)(b) and (c) to make it absolutely clear that 1995 regulation Q7, which provides for an actuarial reduction in the case of payment prior to the chosen retirement age, does not apply to the calculation of an additional service credit made under regulation 2.K.5 or 3.K.5. An actuarial reduction (of total service after transfer of the credit to the 2008 Section) will only become appropriate if the member takes pension benefits before that section's normal retirement age of 65. Finally, the consequential effect of regulation 3.K.18 is inserted, as "full out" words, at the end of paragraph (9). There are no substantive changes in the effect of this regulation.

13 Amending regulation 49 inserts new regulation 2.K.6 and regulation 89 inserts new regulation 3.K.6 (treatment of unreduced retirement lump sum) The wording of paragraph (3)(b) is adjusted to make it clearer that any liability to pay additional contributions for unreduced lump sum, for a member who transfers to the 2008 section, will cease from and including 1 April 2008. Any over deducted contributions will be for adjustment and return by the member's employer.

14 Amending regulation 49 inserts new regulation 2.K.10 (restriction on pensionable pay used for calculating benefits in respect of capped Optant service) Hilary commented on an error made in the cross referencing in paragraph (3)(b) and this has now been corrected.

15 Amending regulation 49 inserts new regulation 2.K.12 and regulation 89 inserts 3.K.11 that deal with mandatory lumps sums. A comment was made at the workshop that the service to be taken into account for the 'mandatory lump sum' was incorrect. The service should be the 1995 service/earnings up to 31.3.08 before the conversion factor is applied. Hilary and GAD have since agreed that this change should not be made and the regulations have therefore been left as originally drafted.

16 Amending regulation 49 inserts new 2.K.18 (Transitional Provision: Treatment of additional service in respect of Optants retiring on the grounds of ill Health under regulation 2.D.8) and regulation 89 inserts 3.K.18 (transitional Provision: Treatment of additional service and pensionable earnings in respect of Optants retiring on the grounds of ill Health under regulation 3.D.7) The additional words "within a period of one year beginning with the day on which the Optant's option to join this Section is received". The insertion makes it clearer that the transitional facility to reckon all of the additional service a member was buying in the 1995 Section (if they had paid the additional contributions for at least a year) applies only to ill health pensions beginning within a year of the date of the member's Choice option.

17 Amending regulation 49 inserts new 2.K.19 (circumstances in which a 1995 Section member may defer making an option to join this Section of the Scheme under regulation 2.K.2) and regulation 89 inserts 3.K.20 (circumstances in which a

1995 Section member may defer making an option to join this Section of the Scheme under regulation 3.K.2) The qualifying criteria in paragraph (1) have been extended to cover members who are unpaid sick leave on or after 1 October 2009 and who subsequently retire on health grounds having never ‘technically’ been active members on or after that date. Such members will now be able to exercise a choice when the outcome of their ill health application is known.

In addition, the time limit in paragraph (3)(b), has been extended from 1 to 4 months, to give administrators time to issue a comparative statement that includes both 1995 and 2008 Section ill health benefits. The revision also corrects the cross-reference in the first line of paragraph (4), from “(5)” to “(3)”.

18 Amending regulation 53 amends regulation 3.A.7 (meaning of “pensionable earnings”), This amendment is made as a consequence of the transfer of pensionable earnings as a practitioner from the 1995 to the 2008 Section under Choice. The change inserts a new paragraph (10), which adds any “pensionable earnings the practitioner is entitled to count under Chapter 3.K (2008 Section Optants), to the earnings a type 1 practitioner is entitled to count under this Section for benefit purposes.

19 Amending regulation 55 amends regulation 3.A.13 (meaning of pensionable earnings in relation to other practitioners) This amendment is made as a consequence of the transfer of pensionable earnings as a practitioner from the 1995 to the 2008 Section under Choice. The change inserts a new paragraph (5), which adds any “pensionable earnings the practitioner is entitled to count under Chapter 3.K (2008 Section Optants), to the earnings a type 2 practitioner is entitled to count under this Section for benefit purposes.

20 Amending regulation 89 inserts regulation 3.K.11 (amount of pension and lump sum to be paid to a 2008 Section Optant) In the light of a question raised by Phil in TAG, and subsequent discussions with GAD, a new paragraph (16) is inserted, which will ensure that the amount of the Mandatory lump sum calculated for a practitioner who is also entitled to benefits under Part 2 of the 2008 Section, will be of a constant value, irrespective of the benefit “calculation method”, which proves best for the member, under Part 4 of the 2008 Section.

The revised provision requires that the practitioner’s MLS, under this regulation, is calculated by reference to their officer final salary benefit for service prior to 31 March 2008 and their career average benefit from pensionable earnings for practitioner service before 31 March 2008. The amounts of the MLS so calculated are then added together, and the total MLS applied to the practitioner’s pension or pensions under the 2008 section, irrespective of the Part 4 “calculation method” which proves ‘best’.

20.1 Consequential amendments – As a consequence of this further change to 3.K.11 a further amendment has been made to establish a link with regulation 2.K.12 (see new

paragraph (17) of that regulation) which deals with the calculation of the mandatory lump sum for the Part 2 officer service.

21 Amending regulation 89 inserts regulation 3.K.19 (treatment of service credited from the 1995 Section when benefits in cases of mixed service are payable) This amendment recasts the opening paragraphs to improve layout and readability, in the light of comments made by Hilary in the regulations workshop. There are no substantive changes in the effect of the regulation.

22 Amending regulation 94 inserts new regulations 4.B.7A (Cases with non-concurrent officer service between periods of practitioner service) This revision strengthens new paragraph 4.B.7A, to make it clearer that “sandwiched service”, for the purposes of “Calculation method D” in new regulation 4.B.11, includes one or more periods of officer service that are not concurrent with practitioner service, prior to the final period of practitioner service.