

## 2015 Pension Reforms

# Consultation on Draft NHS Pension Scheme (Scotland) Transitional Regulations and Miscellaneous Amendment Regulations

## Explanatory Document

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## Introduction

This document explains the purpose and effect of the provisions set out in the draft instruments. The document should be read in conjunction with the draft Statutory Instruments, and those relating to the new 2015 scheme available at [www.sppa.gov.uk](http://www.sppa.gov.uk)

## 1. Protected members and closure of the old scheme to members without protection

1.1 The [Scottish Framework Document](#) outlined a series of transitional measures that will apply to members of the 1995 & 2008 section of the existing scheme. This consultation document will generally refer to, rather than repeat, the contents of that document.

### ***Closure of the existing 1995 & 2008 scheme to members without protection***

1.2 Section 18(1) of the Public Service Pensions Act 2013 prevents accrual of benefits in the existing 1995 & 2008 scheme for service beyond 31 March 2015. Limited exceptions to this are permitted by sub-sections (5) to (7). The purpose of subsections (6) and (7) is to allow implementation of the full and tapered protection elements set out in the Framework document.

1.3 ‘Full protection’ enables members who on 1 April 2012 were within 10 years of their normal pension age to remain eligible for continuing membership of their current section until retirement or a break in service longer than five years occurs. ‘Tapered protection’ mitigates the cliff edge of the 10 year time period for full protection. This allows members who on 1 April 2012 were within 10 years and 13 years 5 months of their normal pension age to continue in their existing section for a period of time depending on their age before moving to the 2015 scheme.

1.4 The same protection principles apply to special class members of the 1995 section, but the potential to qualify for a lower normal pension age of 55 is taken into account.

1.5 In addition, an exception under section 18(1) of the Public Service Pensions Act 2013 is also made for members who would otherwise move from the existing 1995 and 2008 sections to the 2015 scheme but who have applied for ill health retirement under the existing scheme regulations. Such members may remain in the existing scheme until the outcome of their application is decided or until all appeal routes are exhausted (see paragraph 1.28 below).

### ***Closure of the 1995 section<sup>1</sup>***

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<sup>1</sup> The rules of the 1995 section of the scheme are set out in Scottish Statutory Instrument 2011/117 referred to as the “2011 Regulations”

1.6 Miscellaneous Amendments regulation 7 inserts new paragraphs (4) to (19) into the 2011 regulations B3. Paragraph (13) of that series closes the 1995 section to all members who have not reached the ages of 41 years and 7 months on the 1st April 2012. Members below this age do not qualify for any form of protection in the 1995 section with the exception those who have submitted an application for ill health retirement as explained above.

### **Protection for 1995 section members**

1.7 Paragraph (5) allows non-special class members with full protection to remain eligible for membership, and (9) does the same in respect of members holding tapered protection. (16) Provides formulae to calculate the period of membership afforded by tapered protection based on the member's proximity to age 50 on the 1st April 2012.

1.8 Similarly, (6) to (8) and (11) to (15) allow special class members with full or tapered protection to remain eligible for membership. 2011 regulations R2 and R3 deal with special class officer members (17) provides formulae to calculate the period of membership afforded by tapered protection for special class members based on such a member's proximity to age 45 on the 1st April 2012.

1.9 Special class officers have the right to claim an unreduced pension on reaching an age between 55 and 60, depending on when the further qualifying criteria are met. This right was closed to new members joining the 1995 section after 31 March 1995. However, members retained access to the right if they:

- Were a special class officer on that date; or
- Already had a right to benefits from being a special class officer on that date, and
- In either case, do not have a break in pensionable employment of five years or more.

1.10 The further qualifying criteria are that:

- For non-Mental Health Officer (MHO) special classes, the member spends the last five years of their pensionable employment as a non-MHO special class.
- For MHOs, the member has 20 years qualifying MHO employment and is in MHO employment at their retirement.

1.11 As these further qualifying conditions relate to a period ending with retirement, the special class right can only be confirmed on the last day of service before retirement under the current 1995 section regulations. In order therefore to apply the full and tapered protection to members who retain the special class officer right, an assessment needs to be made as to whether on 1 April 2012 such members are 'on track' to fulfil the conditions of that right.

1.12 A member who is a special class officer on 1 April 2012 is considered on track for an NPA lower than 60 and is therefore assessed for full or tapered protection based on this lower NPA rather than age 60 for non-special class members.

1.13 A member who is a former special class officer on 1 April 2012 is not on track for an NPA lower than 60. Such a member would be assessed for protection on the basis of an NPA of 60.

1.14 However, if such a member later became a special class officer and was so on what would otherwise be their last day in the 1995 section<sup>2</sup>, they are considered as being on track for an NPA lower than 60 and their eligibility for protection is re-assessed on the basis of that lower NPA. This is provided for by (8), (12) and (15).

1.15 At whichever date is relevant (1 April 2012 or the later date), if the member is a non-MHO special class on that date the member must have the potential to serve at least five years as a non-MHO special class before reaching age 60<sup>3</sup> for the member to be considered on track for an NPA lower than 60.

1.16 In the case of an MHO on the relevant date, the member must have the potential to serve at least 20 years as an MHO before reaching age 60 for the member to be considered on track for an NPA lower than 60.

1.17 Once a member is established as on track for an NPA lower than 60, protection determined on the basis of this lower NPA will not change, even if the member then ceases to be a special class officer and loses the right to the lower NPA for benefits from the 1995 section.

### ***Protected members joining from the 1995 section of the National Health Service Pension Scheme (NHSPS) in England and Wales or Northern Ireland***

1.18 Paragraphs (18) and (19) provide for the Scottish Ministers to allow a full or taper protected member of the 1995 section of the NHSPS in England and Wales or Northern Ireland to join the 1995 section as such a protected member in certain circumstances.

1.19 The circumstances are that, in the opinion of the Scottish Ministers, the member would have qualified for protection in their former scheme had they returned to NHS employment in either England, Wales or Northern Ireland on the day they took up NHS employment in Scotland .

### ***Former members transferred out under the old Fair Deal guidance***

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<sup>2</sup> At the latest this would either be 31 March 2015 for members with no protection or the last day tapered protection for a member qualifying for tapered protection on an NPA 60 basis

<sup>3</sup> A member who does not have the potential to achieve five years of special class employment before reaching age 60 will be assessed against an NPA of 60. However, as this group of members must be aged at least 55 on the relevant date, this will not affect their level of protection; protection would be the same using an NPA of 60 as it would be using an NPA of 55.

1.20 Miscellaneous Amendments regulation 5 inserts new paragraph (3A) into regulation B1 of the 2011 regulations. This provision allows the Scottish Ministers to admit, via a direction under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967, certain former members to whom the HMT policy “Fair Deal” applies. A former member may be admitted into the 1995 section if that person would have been able to remain in the 1995 section after 1 April 2015 had their employment not been transferred out.

#### ***Closure of the 2008 section<sup>4</sup>***

1.21 Miscellaneous Amendments regulations 28 and 42 amend 2008 regulations 2.B.1 and 3.B.1. These amendments close the 2008 section from 1 April 2015 to all members who do not qualify for full or tapered protection in that section. These are members who-

- were born on or after 1 September 1960 (members therefore aged less than 51 years and 7 months on 1 April 2012)
- are members<sup>5</sup> over that age who do not have any service in that section on or before 1 April 2012 that still counts for benefit purposes<sup>6</sup>, or
- are members over that age who have had a break in service of five years or more ending between 2 April 2012 and 1 April 2015

#### ***Protection for 2008 section members***

1.22 Miscellaneous Amendments regulations 29 and 43 insert new paragraphs (1A) to (1F) into 2008 regulations 2.B.3 and 3.B.3 to retain and admit members with full (1C) and tapered (1D) – (1F) protection. (1F) provides a formula to determine the calendar length of membership afforded by tapered protection based on the member’s proximity to age 55 on 1 April 2012.

#### ***Protected members joining from the 2008 section of the National Health Service Pension Scheme (NHSPS) in England and Wales or Northern Ireland***

1.23 Paragraphs (1H) and (1I) provide for the Scottish Ministers to allow a full or taper protected member of the 2008 section of the NHS Pension Schemes in England and Wales or Northern Ireland to join the 2008 section as such a protected member in certain circumstances.

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<sup>4</sup> The rules for the 2008 section of the Scottish NHS Pension scheme are set out in Scottish Statutory Instrument SSI 2013/174 referred to as the “2013 Regulations”

<sup>5</sup> Other than former 1995 section members who chose to move and transfer to the 2008 section during the ‘choice exercise’

<sup>6</sup> Service still counts unless contributions have been refunded or a transfer value has been paid in respect of it or the member cannot link that service to a later period for the purposes of attaining the 2 years of qualifying service necessary in order to qualify for a pension.

1.24 The circumstances are that, in the opinion of the Scottish Ministers, the member would have qualified for protection in their former scheme had they returned to NHS employment in either England and Wales or Northern Ireland on the day they took up NHS employment in Scotland.

***Protected members joining from other public service schemes***

1.25 Paragraphs (1J) to (1L) provide for the Scottish Ministers to allow a full or taper protected member of another public service scheme to join the 2008 section as a fully or paper protected member of the 2008 section in certain circumstances.

1.26 Those circumstances are that, in the opinion of the Scottish Ministers, the member would have qualified for protection in their former scheme had they returned to that scheme on the day NHS employment began. In addition, the member would have qualified for full or tapered protection in the 2008 section had the member's service in the other scheme been service in the 2008 section.

***Former members transferred out under the old Fair Deal guidance***

1.27 Miscellaneous Amendments regulation 28(3) inserts new paragraph (6) into regulation 2.B.1 of the 2008 regulations. This provision allows the Scottish Ministers to admit, via a direction under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967, certain former members to whom the HMT policy "Fair Deal" applies. A former member may be admitted into the 2008 section if that person would have been able to remain in the 2008 section after 1 April 2015 had their employment not been transferred out.

***Members who have submitted an application for ill health retirement before their transition date***

1.28 Transitional regulation 27 provides that where a 1995 or 2008 section member has applied for ill-health retirement before the date that the old scheme closes ('the transition date'), that date is delayed until their old scheme ill-health application has been decided and where it is not decided in their favour, until all appeal routes have been exhausted. This allows the ill-health application & medical evidence to be assessed and benefits paid in accordance with the scheme rules that applied to the member at the time of making the application.

1.29 Paragraph (2) permits continuing membership of whichever old scheme section that the member is a current active member, until such point that the application is withdrawn or the decision is either accepted or unable to be appealed further.

1.30 Paragraphs (4) & (5) provide safeguards where an ill-health retirement application is agreed before the member's transition date but employment is not terminated until after that date. NHS employment terms and conditions generally permit members to have six months fully paid sick leave and six months half pay sick leave before their contract of employment is terminated. This means that if a

member applies for ill-health retirement quite early they may still accrue membership for up to a year after their application is agreed. Provision is made to accommodate this.

1.31 However, the Scottish Government wishes to prevent a situation where a member submits in an ill-health application and then remains in the 1995 or 2008 section for a considerable period of time beyond this. Therefore as a safeguard and where the members outlined above are granted entitlement to an ill-health pension before their transition date, paragraph (4) provides that NHS employment must be terminated and the pension becomes payable not more than one year after that transition date has been reached. Upon expiry of that one year period paragraph (5) deems the member to have withdrawn their ill-health retirement application and the member becomes eligible to join the 2015 scheme instead.

### ***Continuity of protection for 1995 and 2008 section members returning from a break in service***

1.32 The 1995 section of the existing scheme has been closed to new members since 1 April 2008. However 'existing members' retained a right to remain in that section when returning from a break in service. These rules are retained and applied to 1995 or 2008 section members with full or unexpired tapered protection and so enable re-entry to those sections after a break in service. This is already provided by 2011 regulation B2 and Miscellaneous Amendments regulations 29 and 43 amend 2013 regulations 2.B.3 and 3.B.3 to make equivalent provision at new paragraph (1B).

1.33 In summary, protected 1995 or 2008 members who had not qualified for deferred benefits before the break are only allowed to re-join that section if they had not transferred their rights out of the scheme before they returned, or upon returning within one year and not having claimed a refund of contributions in respect of the earlier unqualified service.

1.34 Protected 1995 or 2008 members who have qualified for deferred benefits are permitted to re-join that section provided the break in pensionable employment is less than five years. For this purpose a break does not include any period during which the member was in pensionable service in another existing public service pension scheme as defined in Schedule 5 to the 2013 Act (see Miscellaneous Amendments regulation 6 which inserts new paragraph (2)(d) into the 2011 regulation B2 and Miscellaneous Amendments regulations 29 and 43 which insert new paragraph (1G) into regulations 2.B.3 and 3.B.3).

### ***Transfer of deferred 1995 and 2008 section benefits to the 2015 scheme***

1.35 Miscellaneous Amendments regulations 18,38 and 49 insert new regulations M7A, 2.F.18 and 3.F.18 dealing with the transfer of deferred benefits on a cash equivalent basis from the 1995/2008 sections to the 2015 scheme.

1.36 Members with deferred benefits in the 1995 or 2008 section can transfer the value of those benefits into the 2015 scheme if full protection and/or final salary linking has been lost. A break in service of five or more years is required before loss of such facilities occurs. The member must also not have reached normal pension age for the relevant section. 1995 and 2008 section benefits cannot be transferred to the 2015 scheme in any other circumstances.

1.37 The opportunity to transfer deferred benefits is exercisable once only on the first instance that the 2015 scheme member becomes eligible to do so. Once accepted, the resulting transfer payment is applied to the member's active account in the 2015 scheme as an earnings credit (see regulation 145 of the draft 2015 scheme regulations). It is treated in the same way as any other cash equivalent transfer payment received into the 2015 scheme.

1.38 Where members do not take up the transfer option, their deferred 1995 or 2008 section benefits may be claimed at normal pension age in those sections without the member having to leave NHS employment. This is provided for by schedule 2 to the transitional regulations which amends regulations E12 in the 1995 section and 2.D.13 in the 2008 section.

#### ***Option to forgo protection in the 2008 section***

1.39 Financial modelling demonstrated that for the majority of 2008 section members, a move to the 2015 scheme from 1 April 2015 would be more beneficial than remaining in the 2008 section as a result of qualifying for protection.

1.40 The Scottish Government and member & employer representatives agreed that members who were eligible for either full or tapered protection in the 2008 section should have the option to forgo that protection and voluntarily move to the 2015 scheme.

1.41 Such members are provided with a one-time-only, irreversible decision to opt to forgo ALL protection of future accrual in the 2008 section. The member is opting to move to the 2015 scheme for all pensionable service from 1 April 2015.

1.42 The option will be available to members from the beginning of the 2015 Scheme (1 April 2015) and each member will have three months from the date they are provided with an option form to make their decision on opting to forgo their protection.

1.43 The option to forego protection in the 2008 section is provided for at new paragraphs (1M) to (1Q) of regulations 2.B.3 and 3.B.3 inserted by Miscellaneous Amendments regulations 29 and 43.

## **2. Joining the new scheme - transitional final salary linking and practitioner arrangements**

2.1 For members who do not qualify for full protection or upon expiry of tapered protection, the government made the commitment that pension entitlements accrued in the old scheme will be calculated using earnings at retirement or leaving the 2015 scheme rather than when the old scheme closed<sup>7</sup>.

2.2 This facility is often referred to as the 'final salary link'. It is an important way in which the value of pension rights built up in the old scheme tracks and benefits from changes in the member's future career earnings. It allows those accrued rights to be honoured in full.

### Final salary link for officer members

2.3 Transitional regulation 2 contains a definition of an 'officer transition member'. This term is used to describe a member of the 2015 scheme with pensionable service in the old scheme and continuous service as defined by schedule 7 to the Public Service Pensions Act 2013 (PSPA).

2.4 Transitional regulation 14 provides that in relation to 1995 or 2008 officer transition members, the pensionable pay received in a scheme year under the 2015 scheme is to be used as the final pensionable pay in relation to 1995 or 2008 pension benefits. For the purposes of determining the person's final salary for any purpose of the old scheme, either paragraphs 1(2)(i) and (ii) or paragraphs 2(2)(i) and (ii) of Schedule 7 to the PSPA 2013 applies so that old scheme service can remain linked to ongoing final pensionable pay whilst the member remains active in the 2015 scheme.

2.5 Other associated old scheme rules will apply to the resulting pay figure, for example 1995 regulation D3 which requires further employer contributions if the final pensionable pay exceeds the allowable amount.

2.6 Transitional regulation 15 restricts the operation of 1995 regulation C1(17) to (19) in relation to the pensionable pay determined by virtue of the final salary link. C1(17) provides that the amount of a member's final year's pensionable pay can be restricted where the Scottish Ministers determines it is inordinate in the context of final salary benefits. Where it is restricted the excess contributions are refunded to the member and employer. This restriction is still to apply to the old scheme benefits, however because the unrestricted pensionable pay will also produce career average benefits in the 2015 scheme, no refund of contributions will be due even if the final salary link pensionable pay is restricted.

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<sup>7</sup> Public Service Pensions: good pensions that last, HM Treasury (Nov 2011), paragraphs 2.6 & 3.8

2.7 Transitional regulation 16 prevents old scheme pension benefits being recalculated where the member re-enters pensionable public service following the pension coming into payment. The link expires upon the first retirement and is not re-activated.

### ***Final salary link for 1995 section Mental Health Officers***

2.8 The NHS Pension Scheme Scottish Framework Document<sup>8</sup> stated that Uniform Accrual Formula (UAF) would apply to staff who move to the 2015 Scheme. UAF formula provisions are found at 1995 regulation R3(10), (11) and (12).

2.9 UAF is applied to Mental Health Officers (MHO) special class members. Where a member is eligible for MHO UAF benefits a comparison is performed in respect of the MHO service and the highest benefits are paid. This comparison is between:

- Benefits calculated using all pensionable service, treating the MHO service as standard service, i.e. with no doubling, and using the final salary when the member leaves the scheme
- Benefits that are the aggregate of:
  - (a) Benefits calculated using a proportion of the potential pensionable service the member would have if they had continued in a mental health capacity up to age 55 including any MHO doubling. The proportion used is the same as the proportion of the member's MHO service (without doubling) to the total standard service they could have accrued by age 55. The benefit is calculated using the final salary when the member ceased MHO service and the resultant pension subject to increases under the Pensions Increase Act 1971 from that date
  - (b) Benefits calculated using the member's non-MHO service (if any) and their final salary when the member leaves the scheme

2.10 Transitional regulation 17 provides a supplemental final salary link in respect of 1995 officer transition members who have MHO service in the 1995 section and whose pensionable service in the 2015 scheme would have qualified them for MHO status had it accrued in the 1995 section (i.e. a notional mental health capacity).

2.11 This provides that where the criteria below are met in relation a 1995 officer transition member, the member's final year's pay to be used in the calculation of the members benefits under regulation R3(11) and/or (12) will where relevant be those derived by the member from service in a notional mental health officer capacity in the 2015 scheme:

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<sup>8</sup> 3(a) All accrued rights are protected and those past benefits will be linked to final salary when members leave the scheme. Existing arrangements with respect to the Uniform Accrual Formula for Mental Health Officers (MHOs) will continue to apply for staff who move to the new arrangements.

- regulation R3(1) applied on the member's last day of pensionable service in the 1995 section i.e. the member previously qualified for MHO special class status and had not lost the right to resume service as an MHO before leaving the 1995 section
- regulation R3 (11) and/or (12) applied on the member's last day of pensionable service in the 1995 section, i.e. the MHO UAF regulations apply
- the member has at least one day of pensionable service in the 2015 scheme which had it been served in the 1995 section would have satisfied the definition of "mental health officer" at R3(16) of the 2011 Regulations ("notional Mental Health Officer service") and would have been service to which regulation R3 would have applied (in other words R3 would not have ceased to apply because there had been a break of five years or more – see R3(2)).

### ***Final salary link equivalent for 1995 or 2008 section practitioner members***

2.12 Transitional regulations 18 to 21 provide for members who have at any point built-up existing career average practitioner benefits in the 1995 or 2008 sections of the scheme, to have those benefits protected on final retirement using arrangements equivalent to the final salary link for other scheme members, described from paragraph 2.3 above.

2.13 Currently, NHS scheme practitioner pensions are 1.4% (in the 1995 section of the scheme) or 1.87% (in the 2008 section) of whole-career practitioner earnings, after uprating to take account of the general rise in the level of practitioner earnings. The uprating factor for practitioner earnings in both the 1995 and 2008 sections is currently equal to the amount of the increase declared under the provisions of the Pensions (Increase) Act 1971 (PI) + 1.5%, annually.

### ***Protecting current practitioner pensions***

2.14 1995 and 2008 section benefits protection equivalent to the final salary link will be provided by continuing to uprate the practitioner earnings built-up in those sections of the scheme using the same PI+1.5% factor each year. The factor will be applied between the date the member transfers to the 2015 new all-member career average arrangement, and the date they finally retire. As for other scheme members, this final salary style protection will continue to apply to pre-2015 practitioner benefits provided there is no break in service exceeding 5 years.

### ***Protection for members with both practitioner and non-practitioner 1995 or 2008 service***

2.15 Currently, 1995 and 2008 section members with both old-style career average practitioner benefits and final salary non-practitioner benefits, (i.e. 'mixed service') have those benefits considered under special 'GP flexibility' rules. The flexibility rules aim to provide total mixed service benefits that, broadly, will be at least as good as

the benefits the members could expect if they had been subject to the non-practitioner final salary arrangement throughout.

2.16 In particular, the flexibility arrangements recognise that before a practitioner can begin work in general practice, they will normally spend several years in the final salary section of the scheme, undergoing training as an employed 'hospital' doctor. This earlier hospital service normally terminates quite early in a practitioners career and, without the benefit of the flexibility rules, would be revalued by PI rather than pay factors up to the date of retirement, even though service remains unbroken.

### ***Calculating an appropriate 'flexibility earnings credit'***

2.17 Normally, the practical effect of the flexibility rules for 'mixed service' is to increase the value of the non-practitioner benefits. To reflect this increased value, in line with Public Service Pensions Act 2013 principles of protecting the future value of accrued benefits, a 'flexibility earnings credit' will be calculated for the non-practitioner service, and uprated according to the length of time to final retirement. The Scottish Ministers will take into account the advice of the Scheme Actuary, and set a cost neutral uprating factor that he believes will fairly represent the average increase in non-practitioner benefits due to existing GP flexibility rules.

2.18 The initial 'flexibility earnings credit' will be calculated by applying the current 1995 or 2008 section GP flexibility rules to the 'mixed service' up to the date of 2015 transfer. In the usual way, this process will test whether total mixed service benefits are better when:

- non-practitioner service is left unchanged, for calculation of a non-practitioner benefit or
- non-practitioner service is treated as if it were practitioner service

2.19 The practitioner element of the best combined benefits emerging from the above test will then be subtracted from total benefits, to produce a 'flexibility earnings credit' representing the non-practitioner benefits. Provided that there is no break in NHS pensionable service exceeding 5 years, this flexibility earnings credit will then be uprated between the date of transfer to the 2015 scheme and the date of final retirement, using the factor referred to in paragraph 2.17. Where there is a break in NHS pensionable service exceeding 5 years the uprating will be until the last day before the first such break.

2.20 The member will, when retirement benefits are put into payment, receive the better of:

- a total benefit including a non-practitioner element calculated using the uprated flexibility earnings credit, or

- a total benefit including a non-practitioner element calculated using the members non-practitioner service up to the date of transfer to the 2015 scheme and their final salary at the date of retirement.

### **3. Joining the new scheme - transitional membership, contribution and option arrangements**

#### ***Persons who have opted out of the 1995 or 2008 sections on the date they become eligible to join the 2015 scheme (“their transition date”)***

3.1 Transitional regulation 4 ensures that if a person who was eligible to join the 1995 or 2008 section has opted out of membership in one of those sections on their transition date, they will also be treated as having opted out of the 2015 scheme.

#### ***Members on an authorised leave of absence on their transition date***

3.2 Transitional regulation 8 covers circumstances where a member is paying contributions whilst on a leave of absence for the purpose of the 1995 or the 2008 section on their transition date. It ensures that the leave of absence may continue to be pensionable in the same way and for the same duration after the member moves to the 2015 scheme.

#### ***Members who are employed on a casual basis not working on their transition date***

3.3 Transitional regulation 9 covers circumstances where a member is employed on a casual basis or is a locum practitioner who has stopped paying contributions for a period of less than three months on their transition date. If the member begins to pay contributions again before the total break across both schemes exceeds three months, this regulation ensures that the member will be credited with qualifying service for the break in the 2015 scheme and will not be required to formally join the 2015 scheme.

#### ***Qualifying Service***

3.4 Draft regulation 22(1)(e) of the 2015 scheme provides for qualifying service in the 1995 or 2008 sections to count as qualifying service for the purposes of the new scheme. Transitional regulation 7(5) ensures that when determining whether a member qualifies for benefits in the 1995 or 2008 sections, it is the amount of qualifying service that the member is able to count in total under regulation 22 of the 2015 scheme that is used. This means that the member’s total qualifying service in both the old scheme and the new scheme is used to assess entitlement to benefits in both schemes.

### ***Disqualifying breaks in the 1995 and 2008 sections***

3.5 Where a member leaves the 1995 or 2008 sections before qualifying for retirement benefits<sup>9</sup>, and does not return to the scheme within one year, the member is required to take a refund of contributions for service before the break. This kind of break is known as a “disqualifying break”. The length of a disqualifying break for the purposes of the 2015 scheme has been extended to five years. Disqualifying breaks and the differences between such breaks in the 1995/2008 sections and the 2015 scheme is addressed by transitional regulation 10.

3.6 Where a member who has not qualified for retirement benefits in the 1995 or 2008 sections is on a break that spans their transition date that member will be required to take a refund if they do not join the 2015 scheme within a year of leaving. However, paragraphs (1) and (3) of transitional regulation 10 ensures that the member is not required to take a refund if the member joins the 2015 scheme within a year of leaving those sections. Those paragraphs also ensure that a member who has voluntarily taken a refund during the break may repay that refund if they do so within six months of joining the 2015 scheme.

3.7 Where a member leaves the 2015 scheme before the aggregate of the member’s qualifying service across both schemes is enough to qualify for retirement benefits, the member may take a refund voluntarily during any break. However if the break in 2015 scheme service is less than five years, paragraphs (2) and (4) of transitional regulation 10 prevents a refund of the members 1995 or 2008 section contributions being paid. Those paragraphs also ensure that a member who has voluntarily taken a refund for that service during the break may repay that refund if they do so within six months of re-joining the 2015 scheme.

### ***Pay used to set a contribution rate from a member’s transition date***

3.8 Currently, in some circumstances, the contribution rates for members that are set at the beginning of a scheme year are based on a member’s pensionable pay or certified earnings from previous scheme years. Transitional regulations 11, 12, and 13 provide some continuity in this respect for current members who will join the 2015 scheme from 1 April 2015 or when their tapered protection ends.

3.9 Transitional regulation 11 applies to members in groups A to D in regulation 27(1) of the 2015 scheme (members other than practitioners or non-GP providers). It ensures that for the scheme year commencing on 1 April 2015, the member’s contribution rate can be set by reference to the member’s pensionable earnings in the 1995 or the 2008 section during the scheme year 1 April 2014 to 31 March 2015 if that would have been the case had the member remained in those sections of the scheme.

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<sup>9</sup> generally where the member has less than two years qualifying service at the point of leaving

3.10 Transitional regulation 12 applies to practitioners or non-GP providers. Where such a member's contribution rate from 1 April 2015 is to be set by reference to that member's most recently certified or final pensionable earnings, this regulation ensures that those earnings can be derived from the member's service in the 1995 or the 2008 section.

3.11 Transitional regulation 13 applies to members moving to the 2015 scheme after taper protection ends. It provides for a contribution rate set in the 1995 or 2008 sections to continue to apply in the 2015 scheme. This rate will change however if (as now) the member's pay or employment changes before the end of the scheme year, or, in the case of a practitioner or non-GP provider, a host board adjusts the rate in year or the member's contribution rate for the year is finalised.

***Death benefit notices, nominations or declarations carried forward from the 1995 and 2008 sections***

3.12 Transitional regulation 5 prevents 1995 and 2008 section members from having to make new nominations/notices or declarations in respect of death benefits when they cease to be eligible for active membership in those sections and become active members of the 2015 scheme.

3.13 The regulation also prevents a member from revoking any of those notices and making new ones so that death benefits in the old and new schemes are due to be paid to different beneficiaries. Similar provisions were made for members who had chosen to voluntarily move from the 1995 to 2008 section, and those 1995 section pensioners who were eligible to join the 2008 section upon re-employment.

3.14 Paragraph (4) deals with new or changed nominations, notices and declarations. A revocation or new nomination, notice or declaration for 2015 scheme benefits also has effect in relation to 1995 or 2008 benefits, and vice versa.

***Added Years and Additional pension contracts started whilst a member of the 1995 and 2008 sections***

3.15 Members of the 1995 section who are buying added years and / or additional pension by periodical contributions will be able to continue to make those contributions, after moving to the 2015 scheme, to complete their purchases.

3.16 This applies to added years purchases for both the purposes of increasing the amount of service that counts towards a pension and also for the purchase of an unreduced lump sum retiring allowance.

3.17 Continued payment of such periodical contributions are provided for by transitional regulation 22 (for added years) and 23 (for additional pension).

3.18 The provision only applies if there is no break in service when the member moves from the existing scheme to the 2015 scheme or if there is such a break it is

not longer than 12 months or more (transitional regulations 22(1)(b) for added years and 23(1)(b) for additional pension).

3.19 In the case of added years, a member may continue to make periodical contributions if they have a break in pensionable service after moving to the 2015 scheme, but only if that break for less than 12 months (transitional regulation 22(2)(a)(ii)).

3.20 For additional pension a member may have a break of five years or less and continue paying periodical contributions for their 1995 additional pension purchase on their return (transitional regulation 23(2)(a)(ii)).

3.21 Periodic contributions for added years will continue to be payable until the chosen date of the option the member exercised, i.e. the day before their 60th or 65th birthday. Periodic contributions for additional pension will continue to be payable until the end of the contributions option period specified in the additional pension election (transitional regulations 22(2)(a)(i) and 23(2)(a)(i)).

3.22 In the case of a member who has been paying periodical contributions for added years or additional pension for at least 12 months after exercising the option, if the member dies or retires on the grounds of ill-health under the provisions of the 2015 scheme, the additional contributions that were due from the date of death or retirement will be deemed to have been paid (transitional regulation 24).

3.23 Equally, members of the 2008 section who are buying additional pension by periodical contributions are also able to continue with such periodical contributions after moving to the 2015 scheme under the same transitional regulations referenced above.

3.24 Members of the 1995 section who have purchased added years and / or additional pension (whether already purchased or continuing to purchase by periodical contributions) may elect to receive benefits payable from those purchases separately from their main 1995 section benefits without having to leave NHS service. This is provided for by transitional regulation 25.

3.25 The member may only elect to take such benefits from the chosen date of the option, i.e. their 60th or 65th birthday (25(2)(a) & (b)). The benefits payable are those due from the added years and / or additional pension purchases calculated on the assumption the member had retired from the 1995 section on the relevant date (25(2)).

3.26 The member also has the option to exchange pension from those benefits for lump sum (subject to HMRC limits) (25(3)).

3.27 The scheme manager must notify a member to whom the provision applies at least six months before the payable date of such benefits, informing them of the option and the benefits due (25(6)).

3.28 The member wishing to take added year or additional pension benefits separately must elect to do so in writing to the scheme administrator no later than one month before the payable date of the benefits (25(4)).

3.29 When a member who has elected to take benefits under this option later dies then benefits are paid from the option as determined by the 1995 section regulations on death after taking a pension in relation to the option (25(7)(a)).

3.30 Except for the treatment of benefits as described in 3.28, if a member has elected to take benefits separately under this option then the member will be treated as if such a purchase of added years or additional pension had never been made (25(7)(b)&(c)).

## **4. Joining the new scheme - final salary benefit transfer arrangements for new members and re-joiners**

### ***Transfers from the National Health Service Pension Schemes in England and Wales and Northern Ireland***

4.1 Miscellaneous Amendments regulations 19, 35 and 46 amend 1995 section regulation R7, and 2008 section regulations 2.F.9 and 3.F.9 respectively. These amendments allow former members of the 1995 and 2008 sections of the NHS Pension Schemes for England and Wales or Northern Ireland to transfer their final salary benefits into the 1995 or 2008 sections of the scheme in certain circumstances. Those circumstances are that the member applies for a transfer within a year of joining the 2015 scheme and the benefits to be transferred qualify for a final salary link under Schedule 7 to the Public Service Pension Schemes Act 2013 on the day the member joins the 2015 scheme.

### ***Transfers under the Public Sector Transfer Arrangements (“the Club”)***

4.2 Miscellaneous Amendments regulations 37 and 48 insert new regulations 2.F.13 & 3.F.13 into the 2013 regulations. These regulations allow current arrangements for the transfer of final salary benefits to the 2008 section from schemes participating in the Club to continue for members joining the 2015 scheme. In order to access these arrangements the member must have final salary benefits available for transfer under Club rules, the benefits must qualify for a final salary link under Schedule 7 to the Public Service Pensions Act 2013 and the member must apply for a transfer within one year of joining the 2015 scheme.

### ***Bulk transfers of final salary benefits***

4.3 Transitional regulation 26 provides a link to 2015 scheme regulations that deal with the acceptance of bulk transfer payments under that scheme. It allows for part of a bulk transfer payment to be accepted by the 1995 or 2008 sections if that payment relates to final salary benefits in the previous scheme and the special terms agreed for the transfer require it to be paid into the 1995 section or the 2008 section.

## **5. Treatment of benefits across both old and new schemes**

### ***Qualifying for benefits***

5.1 Transitional regulations 6 and 7 apply to members who have benefits in the 1995 or 2008 sections which retain a link to final salary (or the analogous facility for practitioners) and benefits in the 2015 scheme. Such members are known as transitional members.

5.2 Regulation 6 provides for transitional members who are active members in the 2015 scheme to be treated as active members of the 1995 or 2008 sections unless otherwise provided for.

5.3 Paragraph (1) of regulation 7 provides that a transition member's service in the 1995 or 2008 section ends when that member's service in the 2015 scheme ends for the purpose of deciding whether the member is entitled to retirement benefits from those sections. This does not include ill health pensions.

5.4 Paragraph (2) provides for a transition member to become a deferred member of the 1995 or 2008 sections only when they become a deferred member of the 2015 scheme. Likewise paragraph (3) provides that if a transition member who has qualified for retirement benefits opts out of membership in the 2015 scheme, they then become a deferred member of the 1995 or 2008 sections also.

5.5 Paragraph (4) reverses the position when a transition member re-enters service in the 2015 scheme, on re-entry such members again cease to be deferred members of the 1995 or 2008 sections.

### ***Death benefits for members who die in service or within 12 months of leaving with a deferred pension***

5.6 Transitional regulation 39 ensures that in relation to a transition member who dies in service (or within 12 months of deferment), the correct entitlement based on the 2015 scheme rules is applied and appropriate account taken of the deceased member's 1995 or 2008 service in that context. The table within that regulation sets out the old scheme entitlement and the revised entitlement that replaces it.

5.7 The lump sum payable on death in service is calculated under the 2015 scheme rules rather than in accordance with the relevant 1995 or 2008 section regulations. For adult survivor and child pensions, the initial rate is paid at the rate of pensionable earnings as defined in the 2015 scheme.

5.8 The rate of ongoing adult survivor and child pensions are calculated with reference to the amount payable as if an upper tier ill-health pension had become payable to the deceased member. The 2015 upper tier entitlement is used rather

than that found in the 1995 or 2008 scheme, and applied to the 2015 portion of service in accordance with 2015 regulation 115. In respect of the 1995 or 2008 service, an annual rate of pension is paid that is equal to the relevant proportion of the pension that would have been payable to the member if the member had retired with a normal retirement pension on the date of death.

***Ill-health retirement from the 2015 scheme with service in the 1995 or 2008 section***

5.9 Active members of the 2015 scheme with benefits in the 1995 or 2008 section who successfully apply for ill-health retirement will have their ill-health pension paid via the 2015 scheme only rather than there being a pension payable under both schemes. This is because the member is active in the 2015 scheme at the time the ill-health retirement application is made and so subject to the rules of that scheme. The pension will however be based on both their 2015 and old scheme service.

5.10 Transitional regulation 28 establishes that where an ill-health pension becomes payable under the 2015 scheme, an ill-health pension and lump sum from the old scheme does not become payable separately. Paragraphs (3) and (4) set out how the annual rate of ill-health pension payable is found. This is the aggregate of the annual rates of lower tier pension that is payable under the 2015 scheme and would have been payable under the old scheme, plus an amount of pension in respect of any mandatory pension commencement lump sum that a member would have received under the old scheme. If the pension is payable at upper tier, then the resulting annual rate of pension is increased by the upper tier addition amount as determined by 2015 scheme regulation 90.

5.11 Paragraph (7) provides that the old scheme conditions and rules relating to ill-health pensions applies to the amount of pension payable under the 2015 scheme which represents the amount that would have been payable under the old scheme. If a transfer payment is made to another scheme in respect of those old scheme benefits then paragraph (6) requires the scheme manager to reduce the ill-health pension by an amount equivalent to the value of the pension that is represented by the transfer payment. In essence the value of the old scheme benefits is withdrawn from the pension in payment.

5.12 Where a member in receipt of an ill-health pension reaches normal pension age for the old scheme benefits, regulation 29 provides that the portion of ill-health pension relating to those old scheme benefits ceases to be payable and a normal retirement pension is payable under the old scheme instead. The annual rate of that pension is reduced to account for any (i) pension commencement lump sum paid to the member when the ill-health pension became payable, (ii) pension paid

in equivalence to a mandatory lump sum, and (iii) transfer payment made to another scheme before the member reached the old scheme normal pension age. This is because the member has already received the value of those benefits.

### ***Partial retirement***

5.13 This type of retirement is only available from the 2008 section and the 2015 scheme. It is available from age 55 under both sets of regulations. It was agreed during discussions with trade union and employer representatives that transition members would be required to exhaust all their 2008 section benefits before any 2015 scheme benefits could be drawn down under the partial retirement facility. In addition transitional members should only be able to exercise the partial retirement option twice (not twice under each set of regulations).

5.14 Transitional regulation 31 provides for this. Paragraph (1) requires an election under the 2015 partial retirement regulations to be treated as having effect as an election under the equivalent 2008 provisions. Paragraph (2) provides that the member cannot become entitled to pension drawn against 2015 scheme service until all 2008 section service has been drawn.

5.15 At each election, both the 2008 & 2015 regulations require the member to take at least 20% of their pension (before commutation of any pension to lump sum) and leave behind benefits for at least 20% of their service in the Scheme when they take partial retirement benefits. Paragraph (3) accommodates this by aggregating the member's pensionable service and benefits across both schemes for this purpose.

### ***Early retirement in the Interest of the Efficiency of the Service (IES)***

5.16 Transitional regulation 36 provides that where a transition member, other than those with special class rights, is granted IES retirement under the 2015 scheme then the member's 1995 or 2008 section benefits also become payable on IES grounds. As a result the employer is required under the relevant 1995 or 2008 section regulation to pay an additional contribution to the scheme manager in respect of early payment of those benefits.

5.17 Where a 1995 section officer transition member has a protected minimum pension age of 50 and employment terminates on IES grounds between the ages of 50 and 55 (before reaching minimum pension age of 55 in the 2015 scheme), only benefits from the 1995 section will be available and if paid will prevent the member from further active membership of the 2015 scheme.

5.18 Transition members who have special class rights and meet the qualifying criteria can claim their 1995 section benefits from age 55 on age grounds. Such members will have a combination retirement of IES in respect of 2015 benefits plus special class age retirement for the 1995 section service.

### ***Special class age retirement***

5.19 Transitional regulation 30 provides for nurse special class members and mental health officer special class members to be able to claim their 1995 benefits on leaving 2015 scheme service between age 55 and 60 depending on when the relevant qualifying criteria are met.

### ***Redundancy retirement***

#### ***Benefits***

5.20 Transitional regulation 32 provides that where a transition member, other than a member with special class rights, is granted retirement on the grounds of redundancy under the 2015 scheme then the member's 1995 or 2008 section benefits also become payable on redundancy grounds. If any periods of service are excluded from 2015 redundancy benefits (for periods of ongoing concurrent employments or practitioner service) that service will also be excluded from 1995 or 2008 section benefits.

5.21 Where a 1995 section officer transition member has a protected minimum pension age of 50 and employment terminates on redundancy grounds between the ages of 50 and 55 (before reaching minimum pension age of 55 in the 2015 scheme), only benefits from the 1995 section will be available and, if paid, will prevent the member from further active membership of the 2015 scheme.<sup>10</sup>

5.22 Transitional regulation 33 provides for members who have special class rights in the 1995 section and meet the qualifying criteria to be able to claim their 1995 section benefits from age 55 on age grounds. Such members will have a combination retirement of redundancy in respect of 2015 benefits plus special class age retirement for the 1995 section service.

### ***Employer costs and actuarial reductions to redundancy benefits***

5.23 Employer costs are covered by transitional regulations 34 and 35. As a result of the payment of redundancy benefits the employer is required under the relevant 1995 or 2008 section and 2015 scheme regulations to pay an additional contribution to the scheme in respect of the costs of the early payment of those benefits.

5.24 Whether the option applies will depend on the member's terms and conditions of employment. Where the option does apply, the employer must pay the member's redundancy payment towards the cost of the redundancy benefits. Where that is insufficient to cover the costs, the remainder of the member's benefits are subject to an actuarial reduction. The member can, however, make an additional contribution to buy out some or all of that reduction.

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<sup>10</sup> A transitional member is not eligible for further membership of the 2015 Scheme once final salary linked benefits are paid from the 1995 section

5.25 Where the employer redundancy payment is insufficient to meet the costs across all benefits, it will be applied in the first instance to cover the costs of 1995 and 2008 section benefits. Where that payment is insufficient to meet those costs, all the member's benefits will be subject to an actuarial reduction.

### ***Eligibility of 1995 and 2008 section pensioners to join the 2015 scheme***

5.26 Regulation 19(1)(d) of the 2015 scheme regulations prevents all 1995 and 2008 section pensioners from being eligible to join the 2015 scheme. Transitional regulation 3 and schedule 1 to the transitional regulations provides for the exceptions to this rule by describing which pensioners can be eligible for membership of the 2015 section and when that membership may begin.

5.27 The regulations have been ordered in this way because this is quite a complex area of scheme provision. To illustrate, the provisions need to cover pensioners in the 1995 and 2008 sections some of whom have already returned to NHS employment and some who will return in the future. The provisions also need to cover the pensioners who will qualify for full or tapered protected membership in the 1995 or 2008 sections and who either come to the end of their tapered protection or have subsequent breaks long enough to end their protection. The provisions must also cover the pensioners who may not meet the requirements for protection, for example because they are younger pensioners. In addition some pensioners do not become eligible to accrue further benefits immediately on return to NHS employment, and those circumstances also need to be taken into account.

### ***The position on re-employment of 1995 section pensioners***

5.28 Generally, 1995 section pensioners are not eligible to accrue further benefits after their NHS pension is put into payment. This will also be the case for most transitional members who will not be able to pension any further service in the 2015 scheme after their 1995 benefits are put into payment.

5.29 There are exceptions to this general rule. 1995 section ill-health pensioners may be eligible to accrue further benefits immediately on return to NHS employment if they are aged under 50 and their pension is an old style ill health pension or a pension at the lower tier level. 1995 section upper tier ill-health pensioners are not eligible to accrue further benefits until their upper tier pension has permanently reduced to a lower tier pension (usually after a year of their return to the NHS) and only if they are aged under 50 years at that point.

5.30 In addition, 1995 section pensioners who retired after 1 April 2008 but before the 'choice exercise' started on 1 October 2009 can currently accrue further benefits in the 2008 section after a "waiting period" has been served. The length of a waiting period varies according to what kind of retirement was taken from the 1995 section

but is a minimum of two years. (These provisions can be found at 2008 section regulations 2.B.2, 3.B.2 and 2.L and 3.L).

5.31 The table at schedule 1 sets out the eligibility criteria that must be met before 1995 section pensioners to which the exceptions above apply become eligible to join the 2015 scheme.

### ***2008 section pensioners***

5.32 Most 2008 section pensioners are generally eligible to accrue further benefits on return to the NHS after retirement. The exception is upper tier ill-health pensioners who are not eligible to accrue further benefits until their upper tier pension has permanently reduced to a lower tier pension (usually after a year of their return to the NHS).

5.33 The 2008 section also comprises a number of 1995 section pensioners (having served the waiting period described above) and a number of 1995 section deferred members who were required to join the 2008 section on return from a break of five years or more. Such members may also be 1995 section pensioners as they are able to claim their 1995 section benefits regardless of NHS employment that qualified them for membership of the 2008 section.

5.34 The table at schedule 1 takes these issues into account in setting out the eligibility criteria that must be met before 2008 section pensioners become eligible to join the 2015 scheme.

### ***Death benefit lump sums***

5.35 Re-employed 1995 or 2008 section pensioners are entitled to an adjusted lump sum on death in service to take account of the fact that their benefits are in payment. Transitional regulation 37 provides for such a lump sum on death in service to be paid to the beneficiaries of 1995 or 2008 section pensioners (except in the case of transitional members) who die whilst active members of the 2015 scheme.

5.36 The lump sum on death is calculated on the same basis as for 2015 scheme pensioners who die whilst in service in that scheme.

### ***Abatement***

5.37 Transitional regulation 38 makes provision for pensioners who are paid a pension on the grounds of the interest of the efficiency of the service in both one of the 1995 or 2008 sections and the 2015 scheme. Such pensioners will be assessed for abatement on return to NHS employment before normal pension age. Where relevant abatement rules apply across both schemes, this regulation provides for both pensions to be taken into account for the purposes of deciding whether post

retirement income is sufficient for abatement to apply. If it is, a pro-rata reduction is applied to both pensions using the same methodology as would apply if a member was in receipt of more than one pension which fell to be abated under either 2008 or 2015 scheme regulations.

### **1995 Section “Choice”**

5.38 Following the introduction of the 2008 section, members of the 1995 section were given the option of transferring to the 2008 section and moving all their 1995 section service to the 2008 section. The intention was to give staff who expect to be working for the NHS until age 65 the opportunity to transfer to a more flexible scheme with a better accrual rate.

5.39 The Scottish Framework document recognised that the introduction of the new 2015 scheme may mean that some members who chose to remain in the 1995 section but are not eligible for full protection, may wish to change their retirement plans and retire later. The timings for the original choice exercise means that such members may not have been able to consider the impact of the 2015 scheme reforms when making that choice.

5.40 Such members will have a second opportunity to move to the 2008 section under an exercise called ‘1995 Section choice’. The terms of this second choice of moving to the 2008 section from 1 April 2008 and of transferring all service up to that date (plus any added years bought) to the 2008 section, including the service conversion rates, remain the same.

5.41 However, there is to be no choice on retirement as the rationale for second choice is the change to working later as a result of moving to the 2015 scheme with its later normal pension age. This applies to voluntary early retirement and to ill health retirement. Members who are old enough for age retirement have their future accrual in the 1995 section fully protected and so therefore will not be offered the second choice.

5.42 Transitional regulation 40 provides that only members who are not fully protected will be eligible for a second choice.

5.43 As the option to join the 2008 section is retrospective from 1 April 2008, the eligibility conditions for protection in that section are those that apply to members of the 2008 section. Where a member may have tapered protection under the 1995 section, this will not apply under the 2008 section due to its later normal pension age.

5.44 The 1995 Section Choice exercise will take place after 1 April 2015. Further details will be made available on the SPPA website at [www.sppa.gov.uk](http://www.sppa.gov.uk) and those individual members affected will be contacted at that time.

## 6. Additional Voluntary Contributions

6.1 The National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998 provide facilities for NHS Pension Scheme members in pensionable employment to supplement the value of their pension by making money purchase additional voluntary contributions (MPAVC's) to external pension providers. There are two authorised MPAVC providers for the Scottish Scheme which are the Standard Life and Equitable Life Assurance Companies. (However the Equitable Life Assurance Company is now closed to new business).

### ***Ensuring existing and new NHS Scheme members can pay MPAVCs to the 2015 scheme***

6.2 Part 5 of the Miscellaneous Amendments regulations includes amendments to ensure that the NHS MPAVC regulations recognise the introduction of the new 2015 scheme. This will make it possible for new members (and employers) of the 2015 scheme to pay MPAVC contributions to a NHS AVC provider. Existing scheme members will also be able to continue (or begin making further MPAVCs) when they move from the 1995 or 2008 sections of the scheme to the 2015 scheme, for their future service.

### ***Taking MPAVC benefits on retirement – current arrangements***

6.3 The current NHS MPAVC arrangements allow participants only two options on retirement, either:

- to take a life-time pension
- or to take a (smaller) life-time pension and a pension commencement lump sum

Pensions can be taken in either fixed amount or index-linked form, and where an MPAVC investment is small (a 'small pot') it may be possible to commute the whole of the amount to a cash payment, without converting some or all of it to pension form.

### ***Taking MPAVC benefits on retirement – planned increase in flexibility from 6 April 2015***

6.4 Part 5 of the Miscellaneous Amendments regulations also includes amendments to provide the increased 'freedom and choice in pensions' options, announced by the Government in July 2014<sup>11</sup>. The draft regulations will, subject to the Taxation of Pensions Act 2014, and associated regulations extend the new freedoms to NHS

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<sup>11</sup> Freedom and choice in pensions: government response to the consultation HM Treasury (July 2014)

MPAVC benefits only, no changes will be made in relation to benefits payable from the main NHS Scheme. The changes will give MPAVC scheme members a wider range of options when they take their MPAVC benefits on retirement.

6.5 The proposed NHS changes will not take away the existing ways in which members can take MPAVC benefits for those who would prefer these to continue. Similarly, the changes will enable NHS MPAVC providers to provide the increased range of pension options from 6 April 2015, but they will not be compulsory. If a NHS MPAVC member wants additional freedom of choice that is permitted under the 2014 Act legislation but is not available from a NHS MPAVC provider, they will be able to withdraw their AVC investment and take it to a different authorised AVC provider for the payment of benefits.

#### ***Further information about MPAVC ‘Freedom and Choice’ from 6 April 2015***

6.6 There is further information about the UK Government’s ‘freedom and choice’ announcements at [www.gov.uk/government/publications/draft-legislation-the-taxation-of-pensions-bill](http://www.gov.uk/government/publications/draft-legislation-the-taxation-of-pensions-bill)

#### ***Amendments***

6.7 Miscellaneous Amendments regulation 57 updates various definitions in AVC regulation 2 to enable members of the new 2015 scheme to make contributions to and receive benefits from NHS AVC arrangements.

6.8 Miscellaneous Amendments regulation 57 also inserts a new “2014 Act” definition, describing the instrument that is expected, from 6 April 2015, provide the pensions taxation amendments that will enable MPAVC ‘freedom and choice’ changes.

6.9 Miscellaneous Amendments regulation 59 makes similar changes to AVC regulation 3 (making and acceptance of elections) to include cover for 2015 scheme members. In particular, changes will permit scheme members who want to continue contributing for a bigger lump sum death benefit after their normal benefit age to do so, not just in the 1995 or 2008 sections, but also in the 2015 scheme, where normal benefit age will be linked to their state pension age. The changes also revise paragraph 1(a) to reflect the greater range of MPAVC benefit options that will become available under AVC regulation 11, from 6 April 2015.

6.10 Miscellaneous Amendments regulation 60 updates AVC regulations 4(4) and (4A), including in the “employer” and “salary” definitions, a reference to the 2015 scheme.

6.11 Miscellaneous Amendments regulation 61 replaces regulation 6, which describes the circumstances in which a MPAVC election may cease. The replacement maintains existing cessation circumstances and inserts references to the new 2015 scheme. The revised regulation also clarifies that receipt of main

scheme benefits that accrued whilst the member commenced a MPAVC contract will be a cause for cessation of that particular contract. However, any such member who remains in pensionable employment accruing further main scheme benefits, e.g. in the new 2015 scheme, will, in the absence of any other cause for cessation, continue to be able to take out a further contract to contribute towards further MPAVC benefits.

6.12 Miscellaneous Amendments regulation 62 makes consequential amendments to enable the outward transfers circumstances described for the 1995 and 2008 sections of the scheme, also to be catered for in the new 2015 scheme.

6.13 Miscellaneous Amendments regulation 63 replaces regulation 11 with a revised version that provides for MPAVC members on retirement, either to:

- realise MPAVC investments and take them in the same form and from the same points currently permitted in MPAVC regulations, or
- from 6 April 2015, to choose equivalent alternative personal or, as the case may be, alternative dependent's benefits, that are authorised under the 2014 Taxation of Pensions Act 2014

For example, from 6 April 2015, MPAVC members, even those with larger investments, will be able to choose an all-cash payment option, rather than the current mandatory pension and pension and lump sum options, and 25% of that payment will be tax-free. Alternatively, the member may be able to take a series of such cash payments.

6.14 In addition to the above, a NHS MPAVC member will, from 1 April 2015 be able to take their NHS MPAVC benefits, not just on or after the date of retirement from the main NHS scheme, but also separately from main NHS scheme benefits, from any point permitted under wider taxation and pensions legislation. Normally this will mean that MPAVC benefits can be taken separately on or after the member's minimum pension age, although it may be possible to access MPAVC benefits sooner, if the HMRC "serious ill-health" condition is met.

6.15 The above changes provide a significant increase in the flexibility with which NHS MPAVC benefits may be taken. However, earlier than normal benefit age payment of NHS MPAVC benefits may impact the level of benefits payable, as it would for NHS main scheme benefits. MPAVC members will need to consider the pros and cons of earlier and different forms of payment carefully and if in any doubt take financial advice. The 2014 Act will place new obligations on NHS and other authorised providers to disclose appropriate information about the new and more flexible benefits.

6.16 Miscellaneous Amendments regulation 64 corrects a typographical error.

6.17 Miscellaneous Amendments regulation 65 makes largely consequential changes to AVC regulation 15 to extend its provisions to members of the new 2015 scheme. However, an important effect of these changes will also be to make clear that any alternative MPAVC benefits taken under the “freedom and choice” 2014 Taxation of Pensions Act arrangements from 6 April 2015, will receive the same payment protection set out in regulation 15(1), for current MPAVC benefit payments.

6.18 Miscellaneous Amendments regulation 68 makes a number of consequential amendments to Schedule 2 of the NHS AVC regulations (pension sharing on divorce or nullity of marriage or dissolution or nullity of civil partnership) to extend its provisions to members of the 2015 scheme.

6.19 Miscellaneous Amendments regulation 68 also extends to pension credit members with pensions based on MPAVC investments, the additional “freedom and choice” options when members take MPAVC benefits on retirement, referred to in paragraph 6.13 above.

6.20 Miscellaneous Amendments regulations 66 and 67 make various changes to AVC regulations 19 and 20 to extend their provisions to members of the 2015 scheme.

## **7. Injury Benefit scheme**

7.1 Until 31 March 2013, the NHS Injury Benefits scheme and regulations applied to certain NHS employees and general practitioners who sustained an injury, disease or other health condition attributable to their employment. Certain pay definitions in the 1995 and 2008 sections of the NHS Pension Scheme were relevant for the calculation of certain injury benefits (IB), whether or not the claimant was also a member of that pension scheme.

7.2 The above IB regulations arrangements were replaced by contractual payments from NHS employers, from 31 March 2013. However, the IB regulations can still apply to NHS employees or practitioners for qualifying NHS injuries that occurred before 31 March 2013. The effect of this is that, if a relevant NHS injury is identified after an employee or practitioner moves to the new 2015 NHS Pension Scheme on or after 1 April 2015 for their future service, some of that scheme's provisions may also be relevant when calculating lost earnings and any IB payable.

### ***Amendments***

7.3 Amendments have been made at Part 4 of these draft regulations to ensure that the 2015 scheme can be applied for closed IB scheme purposes, where necessary. Miscellaneous Amendments regulation 52 inserts in IB regulation 2 new cross-references to the 2015 scheme regulations.

7.4 Miscellaneous Amendments regulation 53 extends IB regulation 2A (meaning of "practitioner") to accommodate the updated practitioner descriptions used in 2015 scheme regulations. The revised 2015 descriptions do not change the types of NHS employees or contractors who may be able to qualify for benefits under the former regulations.

7.5 Miscellaneous Amendments regulations 54 and 55 update IB regulation 4 (scale of benefits) and 8 (child's allowance). The changes add equivalent references in respect of the 2015 scheme, including that scheme's 'normal benefit age' and its link to state pension age.

## **8. Contribution rates**

8.1 The employee contribution rates from 1 April 2015 are currently the subject of discussion by SPG and will be advised by a separate letter to supplement this consultation. Once agreed Miscellaneous Amendments regulations 9,21,30,32 and 44 will be updated accordingly.

8.2 In considering the level of employee contributions SPG aim to ensure that they:

- achieve the Treasury required 9.8% yield.
- include protection for the low paid,
- minimise the risk of opt-outs from the existing and new scheme across the whole membership; and
- ensure that the scheme remains sustainable, a valuable part of the remuneration and reward package.

8.3 The employer contribution level will be set following the publication of the scheme valuation. This will then be included in regulations (Miscellaneous Amendments regulations 10 and 33)

8.4 The same contribution rates will also apply to the 2015 Scheme.

## **9. Marriage and Civil Partnership (Scotland) Act 2014**

9.1 The above Act received royal assent in March. The Act allows that couples of the same sex can marry in Scotland and the first such marriages are expected to take place from January 2015.

9.2 The Miscellaneous Amendments regulations make a number of changes to the 1995, 2008 sections and Injury Benefit, AVC and Compensation regulations to update references, amend definitions inserting new definitions when required.

9.3 In the case of 1995 section members there will be a window of opportunity to purchase pre 1988 service in respect of survivor pensions. The period when this will be available has not yet been decided but is likely to run from the date when the first marriages take place for 12 months. Information will be made available when this is decided and regulation G16 of the 2011 regulations updated accordingly. (see Miscellaneous Amendments regulation 15)

## **10. Miscellaneous & technical**

10.1 A number of amendments are proposed to clarify the operation of existing policies and make minor technical corrections.

### ***Definition of pensionable pay***

10.2 Miscellaneous Amendments regulations 8 and 27 insert a further category of payment for exclusion from the definition of pensionable pay in 1995 regulation C1 and 2011 regulation 2.A.9.

### ***Survivor pension on re-marriage or civil partnership for same sex couples***

10.3 Miscellaneous Amendments regulation 12 clarifies the operation of the 2011 regulation G1 to ensure that the Scottish Ministers can continue payment of an adult survivor pension in circumstances where the new relationship is/was a civil partnership or akin to a civil partnership, and therefore a same sex marriage or akin to a same sex marriage.

### ***Minor technical corrections***

10.4 Miscellaneous Amendments regulations 25 and 40 update the definition of “registered medical practitioner” in the 1995 and 2008 section regulations in line with changes to the Medical Act 1983.

10.5 Miscellaneous Amendments regulation 34 amends regulation 2.E.5 which provide for the adult survivor pension to be paid from the 2008 section on the death of a deferred member. This amendment removes an unintentional restriction which required a spouse or partner at the time of the member’s death to have been the spouse or partner of the member on their last day of service in order to qualify for a pension. This amendment has effect from 1 April 2008.

10.6 Miscellaneous Amendments regulations 29(3) and 43(3) amend 2.B.3 and 3.B.3. These regulations provide the restrictions that apply in respect of a person’s eligibility to join the 2008 section. These include a restriction that prevents most 1995 section pensioners from being eligible to join the 2008 section. However, former 1995 section members who have had a break in service of over five years become eligible to join the 2008 section on return and are able to claim their 1995 section pension at normal pension age 60 even if continuing in employment that qualifies for membership of the 2008 section. This amendment clarifies that such members continue to be eligible for membership of the 2008 section after their 1995 section pension is put into payment. These amendments have retrospective effect from 1 October 2008.