EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE PENSION SCHEME, INJURY BENEFITS AND ADDITIONAL VOLUNTARY CONTRIBUTIONS (AMENDMENT) REGULATIONS

2010 No. 492

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

The memorandum contains information for the Joint Committee on Statutory Instruments and for publication on the Office of Public Sector Information website.

2. Purpose of the instrument

2.1 The main purpose of the instrument is to allow certain pensioner members of the 1995 Section of the NHS Pension Scheme to join the 2008 Section of that Scheme if they are re-employed in the NHS following retirement.

2.2 This instrument also makes various miscellaneous amendments to four statutory instruments relating to pensions and benefits provided to National Health Service staff.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The following amendments are made with retrospective effect from 1 April 2008: Regulation 4(2)(f) in respect of the insertion of new sub-paragraphs (o) to (q) into regulation B2(1) and regulations 19 and 38 in respect of the insertion of new sub-paragraphs (i) and (j) into regulations 2.B.1(5) and 3.B.1(5).

3.2 Regulations 33, 34, 50 and 51 make amendments with retrospective effect from 1 October 2009.

4. Legislative Context

4.1 **Part 2** of the SI amends the National Health Service Pension Scheme Regulations 1995 (S.I.1995/300) **(the 1995 Section).**

4.2 **Part 3** of the SI amends the National Health Service Pension Scheme Regulations 2008 (S.I. 2008/653) **(the 2008 Section).**

4.3 **Part 4** of the SI amends the National Health Service (Injury Benefits) Regulations 1995 (S.I. 1995/866).

4.4 **Part 5** of the SI amends the National Health Service (Additional Voluntary Contributions) Regulations 2000 (S.I. 2000/619).

4.5 All the above regulations were made under sections 10 and 12 of, and Schedule 3 to, the Superannuation Act 1972.

4.6 **Part 6** of the SI provides an option to persons detrimentally affected by these Regulations to elect for those provisions not to apply in certain circumstances.

5. Territorial Extent and Application

The instrument applies to England and Wales.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

- ***What is being done and why***

Certain pensioner members of the 1995 Section of the NHS Pension Scheme to be eligible to join the 2008 Section of that Scheme if they are re-employed in the NHS following retirement

7.1 Following a review of the NHS Pension Scheme[1] led by the NHS Employers organisation[2] in partnership with NHS trade unions (the NHS Review Partners), a new 2008 Section of the NHS Pension Scheme was introduced for new entrant NHS staff with effect from 1 April 2008. There are a number of differences between the existing 1995 Section and the new 2008 Sections of the NHS Pension Scheme. These include the age at which an employee can draw their pension without it being reduced, the way in which the pension builds up and flexibility in drawing benefits and building up further NHS pension rights after retirement.

Key features of the new "2008 Section" are:

- a normal retirement age of 65,
- a pension equal to 1/60th of final pay for each year of membership or a pension based on 1.87% of career average earnings for self-employed general medical and dental practitioners
- an option to exchange pension for lump sum.

(See S.I. 2008 No 653 and associated Explanatory Memorandum).

7.2 Existing members of the NHS Pension Scheme at 1 April 2008 retain access to the "1995 Section" of the Scheme.

Key features of the 1995 Section are:

- a normal retirement age of 60,

[1] The NHS Scheme (both 1995 and 2008 Sections) provides benefits on a career average earnings basis for members who are General Medical and Dental Practitioners and benefits on a final salary basis for all other members. Final Salary benefits are provided for in Part 2 of the 2008 Regulations and career average benefits are provided for in Part 3 of the 2008 Regulations.

[2] Initially led by the NHS Confederation which transferred responsibility for the Review to NHS Employers a part of the Confederation which represents NHS Trusts in England and Wales

- a pension equal to 1/80th of final pay for each year of membership, or a pension based on 1.4% of career average earnings for self-employed general medical and dental practitioners
- a fixed (three times pension) lump sum.

7.3 The NHS Review Partners also recommended that, subject to certain transitional arrangements, members of the 1995 Section who are active on or after 1 October 2009 are offered a choice to transfer past and future service to the 2008 Section. This is a significant exercise involving some 1.3 million active scheme members who will be offered this choice in a phased approach over a three-year period. (See S.I. 2009 No 2446 and associated Explanatory Memorandum for more information on the terms and transitional arrangements in place for members who do exercise a choice to transfer to the 2008 Section).

7.4 NHS Review Partners had wanted all members who were active at 1 April 2008 to have the opportunity to transfer to the more flexible 2008 Section, including members retiring from the 1995 Section between then and 30 September 2009. However, scheme advisors warned that allowing this member group age-60 retirement benefits under the 1995 Section AND early access to the 2008 Section, would very significantly increase the risk of behavioral change and unaffordable Scheme costs. In effect, members would have been able to withdraw their benefits from the 1995 Section significantly earlier than they would normally have done, without losing any ability to earn further benefits under the 2008 Section. Review Partners concluded that the best way to control behavioural changes and costs, whilst mitigating the risk of legal challenge, would be to allow these pensioners to accrue further benefits in the 2008 Section after an agreed period of elapsed time following retirement from the 1995 Section ("a waiting period"). Such pensioners are referred to as "Waiting Period Joiners" once they have joined the 2008 Section, and the detail of the arrangements that apply to this group are covered at paragraphs 7.5 (1) to (8) below.

Amendments relating to "Waiting Periods" for 1995 Section Pensioners in detail

(Amending regulations 3(e), 5, 8, 9, 10, 11, 17(d), 20, 21, 25, 26, 27, 28, 29, 30, 31, 35, 36(e), 39, 40 , 42, 43, 44, 45, 46, 47, 48, and 52)

7.5 (1) **Regulations dealing with eligibility to join the 2008 Section after a period of elapsed time following retirement from the 1995 Section**

Amending regulation 20 amends regulation 2.B.1A (eligibility: transitional)
Amending regulation 39 amends regulation 3.B.1A (eligibility: transitional)

New paragraphs (3) to (8) provide for 1995 Section pensioners retiring between 1 April 2008 and 30 September 2009, to be eligible to join the 2008 Section on re-employment in the NHS after a period of time has passed since their retirement ("a waiting period")[3].

3 These new provisions will not apply to 1995 pensioners who are eligible to re-join the 1995 Section from the first day of their further employment (all members in receipt of an old style ill health or a new style tier 1 ill health pension who are under 50 years of age)

The length of the "waiting period" will depend on the kind of 1995 Section pension being paid to each pensioner.

If the pensioner is being paid:

- a normal (age) retirement pension,
- an actuarially reduced early retirement pension,
- a redundancy or an ill health pension that has not been increased by any extra service,

"Waiting Period A" will apply and will last for two years following the date of retirement from the 1995 Section.

If the 1995 Section pensioner is being paid a redundancy or ill health pension that has been permanently increased by any extra service, "Waiting Period B" will apply and will start at the pensioner's retirement date and continue for the longest of the following two periods:

- two years, or
- the calendar length of the extra service included in the pension.

If the pensioner is receiving a tier 2 new style ill-health pension[4] the "waiting period" will continue until the end of whichever of the following periods finishes last:

- two years following the date of retirement, or
- one year following the date the further NHS employment begins (on this date the pensioner's higher rate tier 2 pension will revert permanently to a lower rate tier 1 ill-health pension[5])

New paragraph (6) prevents a Waiting Period Joiner from accruing further service in the 2008 Section if, on review, their 1995 Section tier 1 ill-health pension is converted into a higher rate tier 2 ill-health pension.

New paragraph (8) ensures that the waiting periods also apply to other health service scheme pensioners[6] who are employed by NHS employing authorities in England and Wales if their retirement took place between 1 April 2008 and 30 September 2009.

Consequential Amendments – amendments made to regulations 2.B.1A and 3.B.1A have consequential amendments in 2 amending regulations.

Regulation 21 amends **regulation 2.B.2** (restrictions on eligibility: general) and **Regulation 40** amends **regulation 3.B.2** (restrictions on eligibility: general) so that restrictions that would prevent a Waiting Period Joiner (including those

[4] Tier 2 ill health pensions include extra service equal to 2/3rds the members prospective service to normal retirement age
[5] Tier 1 ill-health pensions do not include any extra service, they are based on the member's service at retirement
[6] NHS Schemes in Scotland, Northern Ireland and the Isle of Man

joining from other health service schemes) from becoming a member of the 2008 Section are removed

(2) **Variations to benefits and consequential amendments**

Regulation 35 inserts new Chapter 2.L "Waiting Period Joiners" and

Regulation 52 inserts new Chapter 3.L "Waiting Period Joiners"

Waiting Period Joiners have entitlement to benefits under the two discrete sections of the NHS Pension Scheme. New Chapters 2.L and 3.L contain provisions that ensure they are treated consistently with members whose service pre- and post retirement has accrued in the same section of the NHS Pension Scheme.

(3) **New Regulations 2.L.1 Application of Chapter 2.L and 3.L.1 Application of Chapter 3.L**

These regulations provide a short introduction to new Chapters 2.L and 3.L They coin the phrase "Waiting Period Joiner" and that is how 1995 pensioners who join the 2008 Section under the new provisions are referred to throughout new Chapters 2.L and 3.L.

Consequential Amendments – regulations 2.L.1 and 3.L.1 have consequential amendments in three amending regulations

Regulation 3(e) inserts **"Waiting Period Joiner"** into the definitions in 1995 Regulation A2 (interpretation),

Regulation 17(d) inserts **"Waiting Period Joiner"** into the definitions in 2008 Regulation 2.A.1 (interpretation general), and
Regulation 36(e) inserts **"Waiting Period Joiner"** into the definitions in 2008 regulation 3.A.1 (interpretation of part 3: general)

(4) **New Regulations 2.L.2 and 3.L.2 Nominations and notices accepted by the Secretary of State under the 1995 Regulations and Chapter 2.E and 3.E of these Regulations**

These regulations provide for Waiting Period Joiners who have made nominations or given notices in the 1995 Section for:

- a lump sum nomination under regulations F1 to 4 of that Section,

- a notice under regulation F5(3)(a) that the member's surviving partner is not to receive a lump sum under regulations F1 to 4, or

- a notice for the purposes of regulation G14 of that Section nominating a partner to receive a surviving nominated partner pension

to have those notices or nominations treated as if they were notices or nominations made under the 2008 Section.

These new regulations also work in tandem with the amendments made by:

- **amending regulation 8** (changes to 1995 regulation F5 (payment of lump sum)) and
- **amending regulation 10** (changes to 1995 regulation G14 (surviving nominated partner's pension))

to ensure that any new notices, nominations or declarations given by a Waiting Period Joiner in respect of potential recipients of death benefits will apply to such benefits in both the 1995 and the 2008 Sections of the Scheme.

Consequential Amendments - 2.L.2 and 3.L.2 have two consequential amendments each.

"In the case of a Waiting Period Joiner, this regulation is subject to regulation 2.L.2" is inserted by:

Regulation 26 at paragraph (4) of 2.E.2 (meaning of "surviving nominated partner"),
Regulation 31 at paragraph (14) of 2.E.21 (payment of lump sums or pensions on death)

"In the case of a Waiting Period Joiner, this regulation is subject to regulation 3.L.2" is inserted by:

Regulation 43 at paragraph (4) of 3.E.2 (meaning of "surviving nominated partner"),
Regulation 48 at paragraph (14) of 3.E.21 (payment of lump sums or pensions on death)

(5) **New Regulations 2.L.3 and 3.L.3 Waiting Period Joiners who are in receipt of a tier 1 ill-health pension under Regulation E2A of the 1995 Regulations**

These new regulations ensure that a tier 2 ill-health pension cannot be paid twice in respect of 1995 and 2008 Section service.

Where a Waiting Period Joiner's 1995 tier 1 ill-health pension converts to a higher rate tier 2 pension under 1995 Regulation E2B, any further ill health pension for service in the 2008 section is restricted to a tier 1 pension. Conversely, these regulations also work in tandem with the amendments made by **amending regulation 5** to 1995 Regulation E2B to ensure that if a Waiting Period Joiner becomes entitled to a tier 2 ill-health pension in respect of service in the 2008 Section, they cannot also be paid a tier 2 ill-health pension in respect of their service in the 1995 Section following a review of their 1995 Section tier 1 ill-health pension.

Consequential Amendments - 2.L.3 and 3.L.3 have one consequential amendment each.

"In the case of a Waiting Period Joiner, this regulation is subject to regulation 2.L.3" and "**In the case of a Waiting Period Joiner, this regulation is subject to regulation 3.L.3"** are inserted by:

Regulation 25 at paragraph (19) of regulation 2.D.8 (early retirement on ill-health (active members and non-contributing members))
Regulation 42 at paragraph (19) of regulation 3.D.7 (early retirement on ill-health (active members and non-contributing members))

(6) **New Regulations 2.L.4 and 3.L.4 Lump sum payable on the death of a Waiting Period Joiner**
These new regulations ensure that the death benefit lump sum in respect of a Waiting Period Joiner's later (2008 Section) service is not twice annual reckonable pay. Instead, if a Waiting Period Joiner dies 'in service', the death benefit lump sum will be equal to five times the tier 2 ill-health pension for service in the 2008 Section or five times the normal retirement pension if they are over age 65 or have more that 45 years service at the time of their death.

If the Waiting Period Joiner has 'drawn down' part of their 2008 Section benefits, the Secretary of State will decide the benefits to be paid following advice from the Scheme Actuary.

Consequential Amendments - 2.L.4 and 3.L.4 have one consequential amendment each.
"and in the case of a Waiting Period Joiner, this is subject to regulation 2.L.4" and **"and in the case of a Waiting Period Joiner, this is subject to regulation 3.L.4"** is inserted by:

Regulation 30 at the end of paragraph (1) of regulation 2.E.17 (amount of lump sum: single capacity members and recent leavers (disregarding regulation 2.D.5 employments)), and
Regulation 47 inserts at the end of paragraph (1) of regulation 3.E.17 (amount of lump sum: single capacity members and recent leavers (disregarding regulation 3.D.5 employments)).

(7) **New Regulations 2.L.5 and 3.L.5 Children's pensions payable on the death of a Waiting Period Joiner**

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.
These new regulations work in tandem with the amendments made by **amending regulation 11** to 1995 Section regulation H4 (member dies after pension becomes payable) to ensure that, in the case of a Waiting Period Joiner, service is not increased to 10 years in both Sections of the Scheme (so that a child allowance would be based on a minimum of 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.

Consequential Amendments - 2.L.5 and 3.L.5 have three consequential amendments each.

"and in the case of a Waiting Period Joiner , this is subject to regulation 2.L.5" is inserted by

Regulation 27 at the end of paragraph (4) of regulation 2.E.10 (amount of children's pension under regulation 2.E.8: deceased active members and deceased non-contributing members)
Regulation 28 at the end of paragraph (3) of regulation 2.E.11 (amount of children's pension under regulation 2.E.8: deceased pensioner members)
Regulation 29 at the end of paragraph (3) of regulation 2.E.12 (amount of children's pension under regulation 2.E.8: deceased deferred members),

"and in the case of a Waiting Period Joiner , this is subject to regulation 3.L.5" is inserted by

Regulation 44 at the end of paragraph (3) of regulation 3.E.10 (amount of children's pension under regulation 3.E.8: deceased active members and deceased non-contributing members)
Regulation 45 at the end of paragraph (3) of regulation 3.E.11 (amount of children's pension under regulation 3.E.8: deceased pensioner members)
Regulation 46 at the end of paragraph (3) of regulation 3.E.12 (amount of children's pension under regulation 3.E.8: deceased deferred members),

(8) The final amendment made in respect of Waiting Period Joiners is made by **amending regulation 9.** This amendment to 1995 Section regulation G3 (member dies after pension becomes payable) ensures that the initial rate of any partner pension paid in respect of 1995 Section service will take account of any abatement in force if a Waiting Period Joiner dies whilst an active member of the 2008 Section. (This ensures consistency with the treatment of re- employed pensioners whose pensionable service is all within one Section of the Scheme).

Miscellaneous changes made by this instrument to both the NHS Pension Scheme Regulations governing the 1995 Section and the 2008 Section

7.6 (1) **Clarification of the definition of "Ophthalmic Provider" - Amending regulations 3(a) to (e)** amend 1995 Regulation A2, and **Amending regulations 17 (a) to (d) and 36(a) to (e)** amend 2008 Regulations 2.A.1 and 3.A.1

These amendments further clarify the definitions of ophthalmic provider (OP) and "practitioner". The changes confirm that an OP who is:

- a "registered medical practitioner" (but not necessarily a general medical practitioner) and
- who holds a "general ophthalmic services" contract,

will be pensionable in the NHS Scheme as a "type 1 medical practitioner".

In addition, 1995 regulation A2 gains a new definition for "registered medical practitioner" and consequential amendments for the existing definitions of "GMS practice" "host trust or board" and "practitioner".

2008 regulation 2.A.1 gains new definitions for "general ophthalmic services (GOS) contract", "GP provider", "ophthalmic provider" and "registered medical practitioner" and consequential amendments for the existing definitions of "host trust or board", "practitioner" and "GMS practice". 2008 regulation 3.A.1 gains a new definition for "registered medical practitioner", and consequential amendments for the existing definitions of "GMS practice", "host trust or board", "practitioner" and "registered medical practitioner".

(2) **Future access to the 1995 Section –**

Amending regulation 4(2)(f) inserts new sub-paragraphs (l) to (q) into paragraph (1) of 1995 Regulations B2
Amending regulation 12 amends 1995 regulation M7, and
Amending regulations 19 and 38 insert new paragraphs (g), (h), (i) and (j) into paragraph (5) of 2008 regulations 2.B.1 and 3.B.1

Pensioner members of other Health Service Schemes

(**Amending regulation 4(2)(f)** inserts new sub-paragraph (l) of 1995 regulation B2)
This new sub-paragraph ensures that pensioners from other health service pension schemes are only able to join the 1995 Section after retirement if they would be able to do so had their pension been paid as a result of NHS pensionable employment in England and Wales. This ensures consistency of treatment of re-employed pensioners across all health service schemes.

Persons who have opted out of the 1995 Section

Deferred 1995 Section Members

1995 Regulations - Amending regulation 4(2)(f) inserts new sub-paragraphs (m) and (n) into regulation B2(1), **Amending regulation 12 amends** regulation M7.

2008 Regulations- Amending regulations 19 and 38 insert new sub-paragraphs (g) and (h) into regulations 2.B.1(5) and 3.B.1(5)

From 1 April 2010 if a deferred member of the 1995 Section applies to join the NHS Pension Scheme after having opted out of that Section for a period of five years or more, they will be eligible to join the 2008 Section only. They will have an opportunity to transfer any deferred 1995 Section benefits to the 2008 Section on a cash equivalent basis.

Members who opt out of the 1995 Section before securing deferred benefits

1995 Regulations - Amending regulation 4(2)(f) inserts new sub-paragraphs (o) to (q) into regulation B2(1)

2008 Regulations- Amending regulations 19 and 38 insert new sub-paragraphs (i) and (j) into regulations 2.B.1(5) and 3.B.1(5)

These amendments are made with retrospective effect from 1 April 2008.

They apply to former members who started NHS employment before 1 April 2008 but had either:

- chosen to opt out of the 1995 Section immediately on starting that employment, or
- chosen to do so shortly after starting that employment and either taken a refund or transfer of any contributions paid (or are compelled to take a refund of contributions paid because they have not been active in the 1995 Section for a period of twelve months or more),

In these circumstances, former members who have opted out of the 1995 Section and who apply to join or re-join the NHS Scheme will be treated in the same way as new staff who first work in the NHS on or after 1 April 2008. This means they will be able to join the 2008 Section but will not be able to join the 1995 Section of the Scheme.

(3) **Adjustments for the revaluation of 'Additional Pension' when inflation is negative**
Amending regulation 14 amends 1995 regulation Q17
Amending regulation 24 and 41 amend 2008 regulations 2.C.17 & 3.C.15

These amendments clarify the means by which Additional Pension (AP) is revalued to take account of inflation, and make technical adjustments in both Sections of the Scheme. The amendments will ensure that members always get at least the amount of Additional Pension they contracted to buy following a period(s) of 'negative inflation', and experience neither a "windfall gain", nor an "unexpected loss", if AP is purchased by lump sum payment close to retirement. The amendments are made to 1995 regulation Q17, and its 2008 Section equivalents at regulations 2.C.17 and 3.C.15, respectively.

New paragraph (2) of regulations 2.C.17 and 3.C.15 will ensure that AP is only revalued in line with the retail prices index (RPI) where the period between the purchase date and the payable date of the AP is greater than 2 months. New Step 4 of paragraph (5) of regulations 2.C.17 and 3.C.15 will remove any potential for 'negative' inflation during the revaluation period to cause a reduction in the basic amount of AP a member has contracted to buy.

(4) **Practice Shareholders - Amending regulation 15** amends regulation 5A of Schedule 2 to the 1995 regulations

Amending regulation 37 amends 2008 regulation 3.A.12 (distribution of pensionable earnings between type 1 dental practitioners employed or engaged by the same GDS or PDS contractor)

Amending regulations 15 and 37 make technical changes only to paragraph 5A of Schedule 2 to the 1995 regulations and regulation 3.A.12 of the 2008 Section. The changes add any practice shareholder involved to the range of interested parties declared, when returns are completed in connection with the distribution of pensionable earnings between type 1 dental practitioners.

Miscellaneous changes made only to the NHS Pension Scheme Regulations governing the 1995 Section

7.7 (1) **Former members of other health service pension schemes coming to work in England and Wales - Amending regulation (4)(2)(a) to (e)** amends sub-paragraphs (f) to (k) of 1995 regulation B2 (restrictions on membership).

Sub-paragraphs (f) to (k) of regulation B2 make provision for former members of the 1995 Section and former members of the 1995 Section of other health service pension schemes to be excluded from the England and Wales 1995 Section on their return in certain circumstances. Such members are however able to join the 2008 Section for future service. These amendments clarify that the sub-paragraphs apply also to former members of the 1995 Section of other health service pension schemes who are coming to work in the NHS in England and Wales for the first time.

(2) **Actuarially reduced pensions in the 1995 Section and "part payment for additional service or unreduced lump sum" - Amending regulations 6, 7 and 13** amend 1995 Regulations E5(2), E6(7)(b) and Q7(6)

These amendments make technical changes only to 1995 regulations E5(2), E6(7)(b) and Q7(6), in order to clarify that benefits resulting from a contract to purchase additional service are reduced as described in regulation Q7(5) and (6), and are not also subject to the actuarial reduction mentioned in regulations E5(2) and E6(7)(b) when the member is retiring before normal pension age and claiming actuarially reduced benefits under those regulations.

(3) **Contributions by host trusts or local health boards - Amending regulation 15(3)** amends regulation 10(8)(b) of Schedule 2 (Medical and Dental Practitioners) to the 1995 Regulations
This is a technical amendment only, clarifying the type of contributions to be paid by a host trust or local health board, when paragraph 10(8)(a) does not apply.

Miscellaneous changes made only to the NHS Pension Scheme Regulations governing the 2008 Section

7.8 (1) **Meaning of 'reckonable pay' - Amending regulation 18** amends 2008 regulation 2.A.10 (meaning of "reckonable pay": general)

This amendment clarifies the meaning of 'reckonable pay' by fleshing out the aim and local definitions used for the calculation "IRP x (RPa/RPi), set out in paragraph (3) of the regulation. There are no changes in the way that regulation 2.A.10 operates and no impact for the related regulations 2.A.11 to 2.A.14.

(2) **Cross reference in 2.C.5 - Amending regulation 22** amends 2008 regulation 2.C.5 (contributions by employing authorities: general)
This amendment replaces the references to regulation "C5" in paragraphs 2.C.5 (7) and (8) with "contributions under this regulation".

(3) **2008 Section Optants and redundancy benefits - Amending regulation 23** amends 2008 regulation 2.C.6 (contributions by employing authorities: members becoming entitled to pensions under regulation 2.D.11)
This amendment clarifies that if a 2008 Section Optant (a former 1995 Section member who has opted to join and transfer all membership to the 2008 Section) becomes entitled to redundancy benefits, their employing authority must pay a contribution to cover the cost of the early payment of the lump sum that Optant is required to take.

(4) **2008 Section Optants and abatement - Amending regulation 32** amends 2008 regulation 2.H.4 (meaning of "relevant income") and **amending regulation 49** amends 3.H.4 (meaning of "relevant income").
These amendments clarify that if a 2008 Section Optant is being assessed for abatement, it is the pension after it has been reduced to provide the mandatory lump sum that is taken into account. In addition a spelling mistake has been corrected in regulation 3.H.4.

(5) Eligibility of 1995 Section members to choose to move to the 2008 Section

Person who are both active and pensioner members of the 1995 Section– Amending regulation 33 amends regulation 2.K.1(application of chapter 2.K) and **amending regulation 50** amends regulation 3.K.1 (application of chapter 3.K)

These amendments clarify that 1995 Section members who are in receipt of a redundancy pension in respect of a post which ran concurrently with either another pensionable part-time NHS post or a pensionable post as a general practitioner are eligible to make an election to join and transfer to the 2008 Section. These amendments have retrospective effect to 1 October 2009.

Persons who have reached the service or age limits in the 1995 Section – Amending regulation 34 amends regulation 2.K.2 (options for 1995 Section members to join this Section of the Scheme under Chapter 2.K) and **amending regulation 51** amends regulation 3.K.2 (options for 1995 Section members to join this Section of the Scheme under Chapter 3.K)
These amendments ensure that the Secretary of State may accept an option to join and transfer to the 2008 Section given by a 1995 Section member who has reached the service or age limits in that section but who has not retired from NHS work. These amendments have retrospective effect to 1 October 2009.

7.9 **Amendments made to the Injury Benefits Regulations - Amending regulation 53**

Amendments to the NHS (Injury Benefits) Regulations 1995, update the definitions relating to NHS practitioners, in Injury Benefits regulations 2 and 2A. The changes bring these definitions into line with the similar changes made in the 1995 and 2008 Sections of the NHS Pension Scheme via amending regulations 3(a) and (e), and 17(a) and (d) and 36 (a) and (e) respectively, see Explanatory Memorandum paragraph 7.6.

7.10 **Amendments made to the Additional Voluntary Contributions Regulations - Amending regulation 54**

Amendments to the NHS (Additional Voluntary Contributions) Regulations 2000, take advantage of new HMRC easements made under "The Registered Pension Schemes (Authorised Payments) Regulations 2009" (S.I. 2009 No 1171). This Instrument "authorises" a variety of payments that currently would not be permitted under Finance Act 2004 rules, including the release of "small" or "stranded" investments in the AVC schemes of public service and other occupational pension schemes.

Paragraphs (2), (5), (6) and (7), amend regulations 3, 11,15 and paragraph (4) of Schedule 2 to the NHS AVC Regulations, so that a member with AVC proceeds totalling less than £2,000 (disregarding main scheme and other pension holdings) who is unable to secure an annuity, will be able to take the AVC payment as a stand-alone lump sum. The arrangement will have few restrictions, but HMRC rules will require members to be aged between 60 and 75 and will exclude AVC funds that have received transfers in within the previous 5 years or transfers out within the past 3 years.

Finally, paragraphs (3) and (4) make technical amendments correcting references to the main NHS Pension Scheme Regulations.

7.11 **Persons detrimentally affected by the changes - Amending regulation 55** provides for a deferred member, or a member in receipt of a relevant benefit, whose position under these regulations would be worsened by any retrospective provision, to elect that that provision will not apply to them.

- ***Consolidation***

7.12 An informal consolidated text of both 1995 and 2008 Regulations incorporating draft changes up to 1 April 2010 has been made available to NHS Trade Unions and other stakeholders during the consultation period. Informally consolidated texts of both sets of regulations incorporating all changes implemented up to and including those which came into effect on 1 October 2009 are available on the NHS Pensions website and may be viewed here http://www.nhsbsa.nhs.uk/Pensions/2963.aspx

The Department has begun the necessary scoping work to consolidate both the 1995 and 2008 Regulations. We hope that this project will begin in the summer of 2010.

Consultation on the draft regulations

7.13 A formal consultation exercise on the amending regulations began on the 20 November 2009 and ended on 5 February 2010.

7.14 Amongst those consulted were: NHS Trades Union representatives, NHS Employers; NHS Pensions (the Scheme Administrators); other public service pension Schemes; Government Actuary's Department; the National Audit Office; the devolved administrations; and HM Treasury. In addition, workshops were provided to allow stakeholders the opportunity to ask any questions and to make comments on the Draft SI. These were attended by NHS Trades Union representatives, representatives of the devolved administrations and NHS Pensions (the Scheme Administrators) and the Government Actuary's Department.

8. Consultation outcome

Following on from the regulation workshops and in subsequent correspondence, a number of helpful technical comments were received from the following Scheme Stakeholders:

- NHS Pensions,
- The Prudential plc,
- Standard Life plc,
- Equitable Life Assurance Society, and
- The devolved administrations.

9. Guidance (for NHS Staff and NHS employers)

Xafinity Paymaster who administer the NHS Scheme pensioner payroll also provide an annual newsletter for NHS Pensioners at the beginning of each financial year. This year's newsletter will include information on access to the 2008 Section for eligible 1995 Section pensioners who come back to work in the NHS. In addition, a dedicated fact sheet for such pensioners will be available on the NHS Pensions Website.
NHS Pensions will also provide relevant guidance on all the changes for NHS employers (responsible for local administration of the NHS Scheme) via the "Employer Newsletter" series of letters also published on their website.

10. Impact

The costs and benefits relating to this particular SI are subsumed in the overall costs and benefits of the root and branch review of the NHS Pension Scheme, as detailed in the impact assessment attached to SI 2009 No. 2446, please see:
http://www.opsi.gov.uk/si/si2009/em/uksiem_20092446_en.pdf
These regulations represent the fifth phase of a series of instruments, which implement staged changes following the partnership review of the Scheme.

11. Regulating small business

11.1 The legislation applies to a number of small businesses, who are classed as NHS Pension Scheme Employing Authorities, and required or able to offer the NHS Pension Scheme to their staff, e.g. GP Practices, Out Of Hours and Direction Bodies. However, the impact of the changes to the Scheme is generally beneficial, with any 'negative' effects confined to changes in administrative procedures.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to ensure good consultative links with representatives of small businesses who are NHS Pension Scheme employers and easy access to guidance, publicity materials and helpline points for all NHS Scheme employers and members, as exampled in paragraph 9 above.

11.3 The basis for the final decision on what action to take to assist small business administering the NHS Pension Scheme is agreed in partnership with NHS Trades Union and Employer representatives.

12. Monitoring & review

NHS Pension Scheme changes are developed, monitored and reviewed in partnership with the NHS Employers organisation and NHS trade unions (the NHS Review Partners), in the light of formal and informal consultation procedures. The Partners report and recommend changes to a ' Governance Group' representing employers, the Council of NHS Trades Unions and the Department of Health, which in turn makes recommendations to the Secretary of State for Health and HM Treasury.

13. Contact

Mrs Angie Walsh at the Department of Health Pensions Policy Team, Tel: 01253 774510 or e-mail Angie.Walsh@dh.gsi.gov.uk, can answer any queries regarding the instrument.