EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE PENSION SCHEMES (AMENDMENT) REGULATIONS 2025

2025 No. 316

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Karin Smyth, Minister of State for Health (Secondary Care) at the Department of Health and Social Care confirms that this Explanatory Memorandum meets the required standard.

2.2 Gavin Larner, Director for NHS Workforce at the Department of Health and Social Care confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Kate Solomon at the Department of Health and Social Care Telephone: 0113 254 6863 or email: kate.solomon@dhsc.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument amends the rules of the NHS Pension Schemes to deliver a number of policy changes.

4.2 There are two NHS Pension Schemes. The legacy NHS Pension Scheme, which closed to new members from 1 April 2022, is comprised of two Sections (the 1995 Section and the 2008 Section). The reformed NHS Pension Scheme (the 2015 Scheme) is open to new members and is the scheme to which all members and employers currently pay contributions.

4.3 This instrument amends the three statutory instruments that govern those schemes: the National Health Service Pension Scheme Regulations 1995 (SI 1995/300) ("the 1995 Regulations"); the National Health Service Pension Scheme Regulations 2008 (SI 2008/653) ("the 2008 Regulations"); and the National Health Service Pension Scheme Regulations 2015 (SI 2015/94) ("the 2015 Regulations").

4.4 In addition, this instrument also amends the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000 (SI 2000/619) ("the Additional Voluntary Contributions Regulations"), the National Health Service Pension Scheme (Transitional and Consequential Provisions) Regulations 2015 (SI 2015/95) ("the Transitional Regulations"), the National Health Service Pension Schemes (Amendment) Regulations 2023 (SI 2023/301) ("the 2023 Amendment

Regulations") and the National Health Service Pension Schemes (Remediable Service) Regulations 2023 (SI 2023/985) ("the Remediable Service Regulations").

4.5 The amendments made by this instrument principally deliver four policy changes: retrospectively amending the definition of overtime in the 2015 Scheme so that it aligns with the long-standing policy and practice for additional hours worked by part-time staff to be pensionable up to whole time equivalent; clarifying the method for calculating member contributions where pay reduces during a period of absence; providing for general practitioners (GPs) and non-GP providers to update their annual certificate of pensionable earnings where provisional figures are used for year 2024/25 onwards to the amount declared to HM Revenue and Customs (HMRC) on their revised tax return; and allowing members affected by the 'McCloud' remedy to revoke a deferred choice election or for a deferred choice election to lapse in certain circumstances.

4.6 This instrument also makes a series of other technical and miscellaneous amendments to the NHS Pension Schemes. These relate to seven discrete policy areas: neonatal care leave; the meaning of pensionable service; parental bereavement leave; implementation of revised costs for additional pension; benefits incorrectly accrued in the 2008 Section; forfeiture of lump sums; and the abolition of the lifetime allowance.

4.7 A number of the amendments correct errors or technical inconsistencies in the NHS Pension Schemes. These are described in more detail in part three of this explanatory memorandum.

Where does the legislation extend to, and apply?

4.8 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.9 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

Pensionability of additional hours for members who work part-time

5.1 In the NHS Pension Schemes, overtime is excluded from the definition of pensionable pay. Historically, overtime has been seen as hours worked in excess of whole time. This means that any additional hours worked by part-time staff are pensionable up to the whole time equivalent for their role.

5.2 In 2023, the department became aware that the 2015 Regulations were not aligned with the 1995 and 2008 Regulations. Whilst scheme literature for the 2015 Scheme stated that additional hours worked by part-time staff up to whole time were to be pensionable, and the scheme was administered in that way by many employers, the 2015 Regulations inadvertently did not allow for this. To correct this, the department amended the definition of overtime in the 2015 Regulations from 1 April 2024 onwards, via the National Health Service Pension Schemes (Amendment) Regulations 2024 (SI 2024/281), ("the 2024 Amendment Regulations"). This instrument amends the 2015 Regulations further, to underwrite how the scheme was intended to operate (and in practice did) between 1 April 2015 and 31 March 2024.

5.3 In cases where employers did follow the regulations rather than scheme literature between 1 April 2015 and 31 March 2024, additional hours worked up to whole time

will have been treated as non-pensionable. Therefore, this instrument also includes a safeguard so that these members (if any) can keep their current position by default unless they now elect for those hours to be pensionable and pay contribution arrears. This means that the instrument does not inadvertently create detriment for these members by obliging them to pay contribution arrears unexpectedly.

5.4 To achieve this, amending regulation 34 of this instrument amends the definition of overtime in Schedule 15 to the 2015 Regulations. The new definition has two limbs. The first limb applies to work undertaken between 1 April 2015 and 31 March 2024. In the revised definition, 'overtime' is time worked over whole time according to the terms of the member's employment contract. This new part of the definition will impact three groups of part-time working members.

5.5 The first group are members whose additional hours up to whole time were (contrary to the regulations, but in accordance with practice and scheme literature) treated as pensionable during that period: the new definition will accurately underwrite their position.

5.6 The second group are members whose additional hours up to whole time were treated as overtime (in accordance with the regulations) and who from 1 April 2025 choose not to make an election to pension such hours under new regulation 27A.

5.7 The third group are similar to those in the second group but compromised of those members who do choose to make an election to pension those hours under new regulation 27A.

5.8 The second limb of the revised definition preserves the definition of 'overtime' as it has been since the amendment made in 2024, that is, that overtime worked on or after 1 April 2024 is pensionable for part-time members up to the whole time equivalent for their role.

5.9 Amending regulation 23 of this instrument inserts new regulation 27A (pensionable earnings: scheme years 2015 to 2016, to 2023 to 2024) into the 2015 Regulations. This regulation applies to members who, during the relevant scheme years, worked part-time and received a 'relevant payment'. A 'relevant payment' is a payment of salary, wages, fees or other regular payment that was treated by the member's employer as a payment for non-pensionable overtime. This is limited to the payment that was made to the member for work undertaken that was over and above their part-time work but not in excess of whole time, according to their employment contract. Where this regulation applies, the member may elect for the payment to be treated as pensionable. Prior to making any election, the member's employer must send a notice to the member informing them of their right to make an election before 1 January 2026 (or in exceptional circumstances, such later time as the scheme manager decides). This notice must set out the contributions the member and their employer must pay and the amount of pensionable earnings the member will be entitled to count in the 2015 Scheme if an election is made. A member must make an election in writing, including any information required by their employer. An election will apply to all relevant payments received by the member including any received in respect of 2015 Scheme service that has rolled back into the legacy scheme as part of the McCloud remedy. The member has three months to make an election or as long a time as the member's employer considers reasonable in all the circumstances. In all cases, an election must be made before 1 July 2026.

5.10 Amending regulation 3 inserts new paragraphs (13) to (20) into 1995 Section regulation C1 (meaning of 'pensionable pay') and amending regulation 10 inserts new

paragraphs (12) to (19) into 2008 Section regulation 2.A.8 (meaning of 'pensionable pay'). These new paragraphs work in a similar way to the new 2015 Scheme regulation 27A. They provide members whose service in the 2015 Scheme between 1 April 2015 and 31 March 2022 was rolled back into the legacy scheme ('remedy members') with the same opportunity to elect (or not) to pay contributions in respect of additional hours worked up to whole time that were treated as non-pensionable. The election process works in the same way, in the same time frame and with the same time limits as for elections under the 2015 Regulations. An election made will apply in respect of all relevant payments across both the legacy and the 2015 Scheme. If a member does not wish to make an election, any relevant payments will be treated as a payment for non-pensionable overtime in the member's legacy section, thereby maintaining the current position regarding the payments.

Method for calculating member contributions if they are on reduced pay

5.11 Since 2008, member contributions in the NHS Pension Scheme have been tiered, such that higher earning members pay a higher rate of pension contributions than lower earning members. In October 2021, the department launched a consultation on changes to the member contribution structure, including changing the amount that members pay for their pension benefits. Following the consultation, reforms were implemented in two phases. The first phase was implemented on 1 October 2022 by the National Health Service Pension Schemes (Member Contributions etc.) (Amendment) Regulations 2022 (SI 2022/273) and the second phase was implemented on 1 April 2024 by the 2024 Amendment Regulations.

5.12 As a result of the reforms, since 1 October 2022 member contribution rates have been calculated based on members' actual annual pay rather than their notional whole time equivalent (WTE) pay. In line with this principle, this instrument makes amendments to the 2015 Regulations to clarify that the same applies to members receiving reduced pay (but not zero pay), for example during maternity leave or sick leave. Since 1 October 2022, practice has varied and members may have been charged differing amounts. This instrument clarifies the 2015 Regulations so that they can be applied consistently. Contribution rates for these members are calculated on their actual annual pay, rather than what they would have been earning had they continued to receive full pay (their 'deemed pay'). Members who have continued to pay contributions based on their WTE pay will receive a refund if they should have paid fewer contributions.

5.13 Amending regulation 25 of this instrument amends regulation 38 of the 2015 Regulations, to achieve this for practitioner members who are medical practitioners and non-GP providers. Amending regulation 26 of this instrument amends regulation 39 of the 2015 Regulations to give the same effect for dental practitioners. Amending regulation 31 amends Schedule 11, to give the same effect for officer members. These amending regulations have retrospective effect from 1 October 2022, in line with previous changes to use actual pay to calculate member contribution rates. The retrospective amendments will not have adverse impact on affected members. Whilst some members may be owed a refund in member contributions, no members should have to pay more because of the changes.

5.14 Amending regulation 38 amends regulation 24 of the 2023 Amendment Regulations to extend the application of the temporary modifications made to the member contribution provisions in the 2015 Regulations in respect of scheme year 2022 to 2023 for a further year. This is to allow for the required reconciliation exercises for

practitioner members who had a period of leave during scheme year 2022 to 2023 to be completed.

5.15 Amending regulation 39 amends regulation 26 (modification of regulation 38 of the 2015 Regulations) to set out how this reconciliation exercise should work for medical practitioners who received reduced pay following a period of leave: by using deemed pay between 1 April 2022 and 30 September 2022, and actual pay between 1 October 2022 and 30 September 2023. Amending regulation 40 amends regulation 27 (modification of regulation 39 of the 2015 Regulations) to provide the same amendment for dental practitioners. These regulations have retrospective effect from 1 April 2023 which is the date the temporary modifications came into force. As explained in paragraph 5.13, these retrospective amendments will not have any adverse impact on affected members.

5.16 This instrument also makes changes applicable to members on unpaid leave, or zero pay. The NHS Pension Scheme regulations provide a limited number of scenarios where members can continue to contribute and build up pension benefits, even whilst on unpaid leave. However, the regulations only provided for members to continue building up pension benefits if their unpaid leave immediately follows a period of leave with reduced pay. This may not be the case in all circumstances and the current wording excludes members who go straight from full pay to unpaid leave, in error. Therefore, in amending regulation 24 of this instrument, paragraphs (5), (7), (8)(b) and (9) amend regulation 28 of the 2015 Regulations, to allow periods of unpaid leave to be pensionable if they immediately follow a period of work or leave with full pay. This gives members the option to build up pension benefits in these circumstances. These amendments have retrospective effect to 1 April 2015 to ensure that members who have had that service treated as pensionable, can continue to do so. If members have not had that time treated as pensionable because they believed they weren't able to do so, they will have the option to be able to now have it treated as pensionable. There are no adverse effects on members because of this retrospective provision.

5.17 This instrument also amends regulation 28 of the 2015 Scheme to remove the gendered reference in regulation 28 to 'a woman on maternity leave'. This ensures that keeping in touch days are treated equally whether they are for maternity leave, adoption leave, shared parental leave or other types of leave where keeping in touch might occur. This amendment, at amending regulation 24(6) and (10), is made retrospectively from 1 April 2015 and there are no resulting adverse effects on members.

GP and non-GP provider annual certificates of pensionable profit

5.18 To calculate pension contributions and benefits for GP and non-GP provider members of the NHS Pension Scheme, GP practices are required to submit 'an annual certificate of pensionable profit'. These certificates are based on the self-assessment tax returns submitted to HMRC.

5.19 Following amendments made to the Income Tax (Trading and Other Income) Act 2005 by the Finance Act 2022, from 6 April 2024 the profits of unincorporated businesses (including GP practices) must be taxed on a 'tax year' basis, rather than on the basis of their annual accounting period if this does not align with the tax year. This means that for tax year 2024 to 2025 onwards, where a GP practice prepares their accounts for a period that does not coincide with a tax year, GP partners and non-GP providers in that practice may need to apportion the profits (or losses) of the next or previous accounting periods to determine the relevant tax year's profits. This may involve the use of a provisional figure in their tax return. As a result of the change to

HMRC regulations, this instrument amends the 2015 Regulations to clarify the pension process required from tax year 2024 to 2025 onwards. Affected members must provide a revised annual certificate of pensionable earnings to the host board where their GP practice accounting year is not aligned with the tax year, and where their certificate was based on a provisional figure submitted to HMRC in their self-assessment tax return. An updated annual certificate must be completed and sent to the host board within one month of the deadline for the member to notify HMRC of the correct figure on their amended tax return. The host board should then determine the correct amount of pension contributions and benefits.

5.20 In amending regulation 32 of this instrument, paragraph (2) amends Schedule 12 (practitioner contribution payments) to the 2015 Regulations, by inserting new paragraph (4) into paragraph 1. The new paragraph (4) provides that from 1 April 2025, when a certificate with provisional figures is included in a medical practitioner's or non-GP provider's tax return, the member must provide a revised certificate which includes the actual figures within one month of the starting date of when the revised return containing the final figures was required to be submitted to HMRC. As HMRC requires the actual figures to be provided within 12 months of the provisional figures, the member must therefore provide the amended certificate within 13 months. Paragraph (3) of amending regulation 32 also inserts new paragraph (4) to paragraph 2 of Schedule 12. This provides the same amendment for medical practitioners who are not members of a practice.

Revocation or lapsing of deferred 'McCloud remedy' choices

5.21 In 2018, the Court of Appeal found that regulations put in place in 2015 to protect older public service workers by allowing them to remain in their original pension scheme were discriminatory on the basis of age. This is known as the 'McCloud judgment'. To remedy the discrimination all members of the NHS Pension Scheme were required to join the 2015 Scheme from 1 April 2022. For members affected by the discrimination their service was rolled back into their original legacy scheme (the 1995 or 2008 Section).

5.22 These members will be given a choice at retirement of keeping their original legacy scheme benefits or electing to have 2015 Scheme equivalent benefits for their service during the seven years when the discrimination identified by the McCloud judgment had effect. This period is known as the 'remedy period' and runs from 1 April 2015 to 31 March 2022. Arrangements for eligible members to make that choice on retirement, known as a 'deferred choice', were put in place by the Remediable Service Regulations. Under those provisions, a deferred choice election is irrevocable once it has been accepted by the scheme manager. This instrument amends these regulations, such that a deferred choice election may be revoked or lapse in two specific circumstances.

5.23 The first change allows members, or their designated person (if the member is unable to look after their own affairs), to revoke a deferred choice election within a reasonable period of time before their benefits are due to be put into payment. For this purpose, the department considers a reasonable period of time to be up to two weeks before the day on which any benefits are payable after the deferred choice election period, 'the cancellation deadline'. If a member revokes a deferred choice election the consequences will be that benefits for service during the remedy period will be paid as legacy scheme benefits (unless a further deferred choice election for 2015 Scheme benefits is made before the end of the election period).

5.24 The second change causes a deferred choice election made by a member to lapse if the scheme manager is notified that the member has died more than two weeks before the day any benefits are payable after the deferred choice election period. This enables a change of the decision maker from the member to the designated person who will be able to decide whether to make a deferred choice election concerning the death benefits to be paid in respect of the late member.

5.25 Amending regulation 42 of this instrument amends regulation 12 (election for 2015 Scheme benefits: deferred choice members and deceased members) of the Remediable Service Regulations to implement these changes. The new paragraph (4A) creates provision such that a member, or their designated person, can revoke a deferred choice election up to two weeks before the day on which benefits become payable after the deferred choice election period.

5.26 The new paragraph (4B) creates provision such that a deferred choice election made by a member will lapse if the scheme manager is notified that the member has died more than two weeks before the day on which benefits become payable after the deferred choice election period.

Technical and miscellaneous amendments

Neonatal care leave

5.27 Neonatal care leave and pay is a new entitlement to leave and pay for all employees with responsibility for children receiving neonatal care. Regulations providing for the entitlement to neonatal care leave and pay are being delivered by the Department for Business and Trade and come into force on 6 April 2025. This instrument makes consequential amendments to the 2015 Regulations to insert references to neonatal care leave alongside references to other types of authorised leave under the NHS Pension Scheme. These ensure that the treatment of neonatal care leave in the 2015 Regulations is consistent with the approach to other authorised absences from work, such as maternity leave.

5.28 Amending regulation 22 of this instrument amends regulation 21 (absence from work) of the 2015 Regulations to insert 'neonatal care leave' into the list describing the different types of absence from work that count as pensionable service where the member contributes to the pension scheme under regulations 30 and 31.

5.29 Amending regulation 24 of this instrument amends regulation 28 (pensionable earnings: break in service) of the 2015 Regulations to insert 'neonatal care leave' into the list of absences. Regulation 28 of the 2015 Regulations is a deeming provision, such that where a member is absent from work due to the reasons listed, and their pay reduces or is zero and they continue to contribute to the NHS Pension Scheme, their pension benefit accrual is based on their deemed pay (amounts equal to the pay they would have received were it not for the absence).

5.30 Amending regulation 28 of this instrument amends regulation 68 (effect of being absent or leaving and re-joining scheme during contributions payment period) of the 2015 Regulations to insert 'neonatal care leave' in the list of absences. During these absences, members who have elected to pay contributions for additional pension must continue to pay these contributions unless they cease paying their basic contributions under regulations 30 and 31.

5.31 Amending regulation 30 of this instrument amends Schedule 10 (practitioner income) to the 2015 Regulations to include 'neonatal care leave' in the type of leave payments that are included when calculating practitioner income for dental practitioners.

5.32 Paragraph (4) of amending regulation 32 of this instrument amends Schedule 12 (practitioner contribution payments) to the 2015 Regulations to include payments made in relation to neonatal care leave in the figures that dental contractors and group D dentists must return as part of the annual reconciliation notice or performers' notice.

5.33 Amending regulation 34 of this instrument amends Schedule 15 (definitions) to the 2015 Regulations and defines 'neonatal care leave' by reference to section 80EF of the Employment Rights Act 1996.

Meaning of qualifying service

5.34 Previously, deferred members of the 1995 Section returning to NHS employment or scheme membership between 1 October 2008 and 31 March 2015 after a break of five years or more were eligible to join the 2008 Section on return. However, when changes to regulations were made in 2015, the provisions that allowed qualifying service in the 1995 Section to count as qualifying service in the 2008 Section were removed in error. This instrument therefore corrects that error retrospectively from 1 April 2015 to ensure that qualifying service in the 1995 Section continues to count as qualifying service in the 2008 Section for relevant 1995 Section deferred members who joined the 2008 Section between 1 October 2008 and 31 March 2015.

5.35 To achieve this, amending regulations 9 and 16 of this instrument amend regulations 2.A.5 and 3.A.5 (meaning of 'qualifying service') so that three groups of deferred 1995 Section members are able to count relevant qualifying service in the 2008 Section. The first group of members, provided for by new sub-paragraphs (i) of regulation 2.A.5(1) and (h) of regulation 3.A.5(1), are deferred 1995 Section members who left NHS employment for a period of five or more years and joined the 2008 Section on return. The second group, provided for by new sub-paragraphs (j) of regulation 2.A.5(1) and (i) of regulation 3.A.5(1), are deferred 1995 Section members who opted out of membership of the 1995 Section for a period of five or more years and joined the 2008 Section on electing to re-join the NHS Pension Scheme before 1 April 2015. The third group, provided for by new sub-paragraphs (k) of regulation 2.A.5(1) and (j) of regulation 3.A.5(1), are deferred 1995 Section members who had a break of five years or more in scheme membership comprising any period during which they left NHS employment and any period during which they opted out of scheme membership from the first day of their NHS employment. These members must have also joined the 2008 Section before 1 April 2015.

Parental bereavement leave

5.36 Provisions covering the treatment of members on parental bereavement leave were introduced through amendments made to the NHS Pension Scheme regulations by the Parental Bereavement Leave and Pay (Consequential Amendments to Subordinate Legislation) Regulations 2020 (SI 2020/354). These amendments ensured that the treatment of parental bereavement leave was consistent with maternity leave, adoption leave, paternity leave and parental and shared parental leave. However, these amendments omitted to extend cross references to the various types of leave to include parental bereavement leave in 4 places in part 2 (benefits for officers) and in 3 places in part 3 (benefits for practitioners etc.) of the 2008 Regulations. This instrument therefore corrects these omissions retrospectively from 6 April 2020. These retrospective corrections will not have any adverse effects on the benefits of any affected member.

5.37 Amending regulations 8 and 15 of this instrument amend regulations 2.A.4 (pensionable service: breaks in service) and 3.A.4 (pensionable service: breaks in

service) of the 2008 Regulations respectively to extend the references to the types of leave excluded from the effect of paragraphs (3) and (3A) of those regulations so that parental bereavement leave is also excluded. Paragraphs (3) and (3A) cover periods of authorised unpaid leave where a member may elect to pay contributions for a period of up to 18 months.

5.38 Amending regulations 11 and 17 of this instrument amend regulations 2.A.9 (pensionable pay: breaks in service) and 3.A.8 (pensionable earnings – breaks in service) of the 2008 Regulations respectively to also extend the references to the types of leave listed at paragraphs (4)(b) of those regulations to include parental bereavement leave. Those paragraphs make provision for what happens if a member's pay stops during a period of maternity leave, adoption leave, paternity leave and parental and shared parental leave.

Implementation of revised costs for additional pension

5.39 Members of the NHS Pension Scheme have the option to purchase additional pension, the cost of which is dependent on factors which change from time to time. The 1995 and 2008 Regulations provide that new factors may apply immediately to new purchases that begin after the revised factors are introduced but, for purchases already in progress, the new factors apply from the beginning of the next scheme year. However, the 2015 Regulations provide for all additional pension contributions to change from the beginning of the next scheme year following a factor change. This inconsistency with the 1995 and 2008 Regulations was unintentional. This instrument therefore amends the 2015 Regulations, with effect from 1 April 2025, to align them with the 1995 and 2008 Regulations.

5.40 Amending regulation 27 amends regulation 60 (determination of contribution payable) in the 2015 Regulations so that it works in the same way as regulation Q8 in the 1995 Regulations and regulation 2.C.8 and 3.C.6 in the 2008 Regulations. This means that new factors apply immediately to new additional pension purchases that begin after revised factors are introduced but, for purchases already in progress, the new factors apply from the beginning of the next scheme year.

Benefits incorrectly accrued in the 2008 Section

5.41 The Public Service Pensions Act 2013 ("the 2013 Act") prevented most members from accruing benefits in legacy public service pension schemes from 1 April 2015. Members who met certain criteria could continue, for example if they had service in a public service pension scheme before 1 April 2012. However, the 2008 Regulations incorrectly stated that requirement as though members must have had service in the 2008 Section on or before 1 April 2012, such that 135 members who first joined the 2008 Section on 1 April 2012 were incorrectly permitted to remain members of that section after 1 April 2015. This instrument therefore corrects this error with retrospective effect to 1 April 2015. As a result, these 135 members are entitled to 2015 Scheme benefits for their service between 1 April 2015 and 31 March 2022, when the 2008 Section closed to all members. For most members, 2015 Scheme benefits are higher. For members for whom 2008 Section benefits are higher, the instrument ensures that they are not placed in a worse position as a result of the correction.

5.42 Amending regulations 12 and 18 of this instrument correct this error by removing the words 'on or' from before '1 April 2012' in regulations 2.B.1(3)(a)(i) and 3.B.1(3)(a)(i) (eligibility: general) of the 2008 Regulations. This amendment has effect from 1 April 2015 and ensures that only members who met the age criteria and

had service in the 2008 Section before 1 April 2012 (as required by the 2013 Act) can accrue service in that section from 1 April 2015.

5.43 Amending regulation 36 of this instrument inserts new regulation 38A (entitlement to additional retirement benefits) into the Transitional Regulations. Regulation 38A applies to members who joined the 2008 Section for the first time on 1 April 2012 and were born on or before 31 August 1960. This is the latest date of birth of members who were permitted to remain in the 2008 Section from 1 April 2015. The regulation applies where, on the coming into force of amendments that correct the error in the 2008 Regulations, 2008 Section benefits for service between 1 April 2015 and 31 March 2022 that have been paid or would have become payable but for that correction, exceed the 2015 Scheme benefits now due for that period. Where that is the case, the scheme manager must pay an amount equal to the difference to the beneficiary or to the beneficiary's personal representative if the beneficiary is deceased.

Forfeiture of lump sums

5.44 In the NHS Pension Scheme, entitlements to an adult survivor pension or a lump sum on death may be forfeited if the intended beneficiary is convicted of the murder or manslaughter of that member, or of any other offence of which unlawful killing of that member is an element. Provisions in the 2008 Regulations and 2015 Regulations providing for lump sums on death clarify that these will not be payable to the convicted beneficiary by cross references to other provisions that contain the power to forfeit the beneficiary's benefits in these circumstances. However, current cross references point to offences of which the member is convicted, whereas they should point only to offences that may be committed by an intended recipient of benefits payable on the member's death. This instrument therefore corrects the relevant cross references with retrospective effect from 1 April 2008 (with regards to the 2008 Regulations) and 1 April 2015 (with regards to the 2015 Regulations).

5.45 Amending regulations 13 and 19 of this instrument amend regulations 2.E.21 (payment of lump sums or pensions on death) and 3.E.21 (payment of lump sums or pensions on death) of the 2008 Regulations respectively, such that the cross references in paragraphs (7) of those regulations to the conviction of an offence specified in paragraph (2) of regulations 2.J.7 and 3.J.7 (forfeiture of rights to benefits) are changed to cross references to an offence specified in paragraph (4) of regulations 2.J.7 and 3.J.7.

5.46 Amending regulation 33 of this instrument amends paragraph 9 of Schedule 14 (payment of lump sums on death) of the 2015 Regulations so that the cross reference in sub-paragraph (7) to the conviction of an offence specified in paragraph 12 of Schedule 3 is changed to a cross reference to an offence specified in sub-paragraph (4) of paragraph 12 of Schedule 3.

Abolition of the lifetime allowance

5.47 The lifetime allowance, introduced from 6 April 2006, restricted the amount of tax-free pension saving available to individuals from all their pension schemes when they retired and crystallised their pension benefits. The scheme regulations refer to the lifetime allowance. Following the Finance Act 2024, the lifetime allowance was abolished from 6 April 2024 and new allowances were introduced. These are the 'lump sum allowance' and the 'lump sum and death benefit allowance'. The changes in the Finance Act 2024 also clarified the tax treatment of relevant lump sums and lump sum death benefits paid from registered pension schemes and the position of

individuals with existing HM Revenue and Customs (HMRC) enhancement protections.

5.48 This instrument makes consequential amendments to the 1995 Regulations, the 2008 Regulations, and the 2015 Regulations, as well as the Additional Voluntary Contributions Regulations, to reflect the Finance Act 2024 changes that came into effect following the abolition of the lifetime allowance from 6 April 2024. This instrument amends existing provisions in the regulations relating to the lifetime allowance such that they apply only before 6 April 2024, and creates new provisions relating to the new allowances and tax treatment of relevant lump sums and lump sum death benefits, which apply from 6 April 2024 onwards.

5.49 Amending regulation 4 of this instrument amends regulation T2A of the 1995 Regulations to ensure that existing provisions that applied to the lifetime allowance are redundant from 6 April 2024. The newly inserted paragraphs introduce the allowances which came into effect from 6 April 2024. These amendments allow the scheme administrator to determine the correct amount of tax payable on lump sums taken from the 1995 Section, according to either the lifetime allowance (in force until 5 April 2024) or the lump sum allowance and the lump sum and death benefit allowance (in force from 6 April 2024 onwards).

5.50 Amending regulation 6 of this instrument amends regulation 16 of the Additional Voluntary Contributions Regulations, which applies to members who have made additional voluntary contributions. This amendment has the same effect as the changes made by amending regulation 4 for these members. These amendments ensure that provisions which reference the lifetime allowance are redundant from 6 April 2024 and the newly inserted provisions relate to the new allowances effective from 6 April 2024.

5.51 Amending regulation 14 of this instrument amends regulation 2.J.8 of the 2008 Regulations, to make changes, the same as the changes made in amending regulations 4 and 6, applicable to officer members of the 2008 Section. Amending regulation 20 gives the same effect for practitioner members of this section, by amending regulation 3.J.8 of the 2008 Regulations. These amendments ensure that provisions which reference the lifetime allowance are redundant from 6 April 2024 and the newly inserted provisions relate to the new allowances effective from 6 April 2024.

5.52 Amending regulation 29 of this instrument amends Schedule 3 of the 2015 Regulations, to make changes, the same as the changes made in amending regulations 4,6,14 and 20, applicable to 2015 Scheme members. These amendments ensure that provisions which reference the lifetime allowance are redundant from 6 April 2024 and the newly inserted provisions relate to the allowances effective from 6 April 2024.

5.53 The amendments to the lifetime allowance provisions in this instrument have retrospective effect to 6 April 2024. The retrospective provisions will not place members in a worse position than they would have been, or have significant adverse effects.

What was the previous policy, how is this different?

Pensionability of additional hours for members who work part-time

5.54 Prior to this instrument, the 2015 Regulations stated that additional hours worked by part-time staff between 1 April 2015 to 31 March 2024 up to whole time were non-pensionable overtime. These hours were only pensionable under the regulations after

1 April 2024, although the relevant scheme literature stated that these hours were to be pensionable, and the scheme was administered in that way by many employers.

5.55 Under this instrument, these hours are now pensionable between 1 April 2015 and 31 March 2024. Additional hours worked by part-time staff after 1 April 2024 up to whole time continue to be pensionable.

Method for calculating member contributions if they are on reduced pay

5.56 Historically, the 2015 Regulations stated that members in receipt of reduced pay (but not zero pay) paid contributions based on their deemed pay, rather than their actual pay. The effect of this was that these members continued to pay the same contribution rate as they did whilst in receipt of full pay.

5.57 As a result of this instrument, the 2015 Regulations now state that since 1 October 2022, members in receipt of reduced pay (but not zero pay) must pay contributions based on their actual pay.

5.58 Also, for members on zero pay (unpaid leave), the 2015 Regulations previously only provided for members to continue building up pension benefits if their unpaid leave immediately followed a period of leave with reduced pay. The regulations did not provide for unpaid leave to be pensionable if it immediately followed a period of work or leave with full pay.

5.59 This instrument amends these regulations with effect from 1 April 2015, so that unpaid leave is pensionable if it immediately follows a period of leave with full pay.

5.60 The method of calculating member contributions for members on unpaid leave, which uses the contribution rate and pensionable pay from directly before the member went on unpaid leave, remains unchanged by this instrument.

GP and non-GP provider annual certificates of pensionable profit

5.61 Previously, HMRC legislation stated that GPs and non-GP providers could be taxed on the basis of their practice's annual accounting period if this did not align with the tax year. This meant that there was no need for GPs and non-GP providers to submit provisional figures to HMRC. In line with this process, the 2015 Regulations prior to this instrument simply stated that GP and non-GP provider annual certificates of pensionable profit were based on the self-assessment tax returns members submit to HMRC.

5.62 Now, following the change in HMRC legislation, GPs and non-GP providers may be required to submit provisional figures to HMRC, if their practice's annual accounting period does not align with the tax year. Therefore, the 2015 Regulations now allow for GP and non-GP provider annual certificates of pensionable profit to be based on provisional figures. Following this instrument, the 2015 Regulations now also detail when a revised certificate of pensionable earnings, with the correct final figures, should be provided.

Revocation or lapsing of deferred 'McCloud remedy' choices

5.63 In the past, the Remediable Service Regulations did not allow for a deferred McCloud remedy choice to be revoked or to lapse under any circumstances. Under those provisions, a deferred choice election was irrevocable once it had been accepted by the scheme manager.

5.64 This instrument amends the Remediable Service Regulations to allow a deferred McCloud remedy choice to be revoked or to lapse in two specific circumstances.

Technical and miscellaneous amendments

Introduction of neonatal care leave

5.65 Prior to this instrument, no references to neonatal care leave appeared in the 2015 Regulations. This would mean that neonatal care leave would not be pensionable under the 2015 Regulations when regulations delivering the entitlement to neonatal care leave (which are being delivered by the Department for Business and Trade) come into force on 6 April 2025, and the treatment of neonatal care leave would be inconsistent with that of other authorised absences from work, such as maternity leave.

5.66 This instrument inserts references to neonatal care leave in the 2015 Regulations, such that the treatment of neonatal care leave is consistent with the approach to other authorised absences from work.

Meaning of qualifying service

5.67 Previously, an error meant that qualifying service in the 1995 Section did not count as qualifying service in the 2008 Section for relevant 1995 Section deferred members who joined the 2008 Section between 1 October 2008 and 31 March 2015. As a result, deferred 1995 Section members were incorrectly required to accrue two years' qualifying service in the 2008 Section in order to qualify for retirement benefits.

5.68 The 2008 Regulations are now amended such that qualifying service in the 1995 Section continues to count as qualifying service in the 2008 Section for relevant members.

References to parental bereavement leave

5.69 Parental bereavement leave was introduced as a type of authorised absence under NHS Pension Scheme regulations from 6 April 2020. However, certain cross references to parental bereavement leave were inadvertently omitted from the 2008 Regulations.

5.70 This instrument corrects these omissions retrospectively from 6 April 2020.

Revised costs of additional pension

5.71 In the past, the 2015 Regulations provided for all additional pension contributions to change from the beginning of the next scheme year following a factor change. This was unlike the 1995 and 2008 Regulations, which provide that new factors may apply immediately to new purchases that begin after the revised factors are introduced but for purchases already in progress, the new factors apply from the beginning of the next scheme year.

5.72 This instrument aligns the 2015 Regulations with the 1995 and 2008 Regulations in this regard.

Benefits incorrectly accrued in the 2008 Section

5.73 Prior to this instrument, the 2008 Regulations incorrectly stated that members must have had service in the 2008 Section on or before 1 April 2012, to be able to remain members of that section after 1 April 2015. The incorrect provision is not permitted by the 2013 Act and so must be corrected.

5.74 This instrument corrects this retrospectively, such that the requirement is for members to have had service in the 2008 Section before 1 April 2012.

Forfeiture of lump sums

5.75 Under NHS Pension Scheme regulations, entitlement to an adult survivor pension or a lump sum on death may be forfeited if the intended beneficiary is convicted of the murder or manslaughter of that member or of any other offence of which unlawful killing of that member is an element. Provisions in the 2008 Regulations and 2015 Regulations which provide for lump sums on death clarify that these will not be payable when these are forfeited, cross referring to provisions containing the forfeiture power. However, prior to this instrument, certain cross references were incorrect and should have cross referred only to the power to forfeit survivor benefits when the beneficiary is convicted of the offence, rather than where the member is convicted of an offence.

5.76 This instrument corrects these cross references retrospectively to 1 April 2008 (with respect to the 2008 Regulations) and 1 April 2015 (with respect to the 2015 Regulations).

Abolition of the lifetime allowance

5.77 Prior to this instrument, some consequential amendments were made by the 2024 Amendment Regulations. It was essential that these amendments were in place for the beginning of the tax year 2024 to 2025, as they were not fully provided for by primary legislation. However, further amendments were still outstanding following the abolition of the lifetime allowance in order to align the wording of the regulations with the overarching primary legislation.

5.78 This instrument aligns the wording of the regulations with the overarching primary legislation, to create provisions for the new allowances and ensure the operation of legacy lifetime allowance requirements up until the date the lifetime allowance was abolished.

6. Legislative and Legal Context

How has the law changed?

6.1 The 2013 Act provides a power for the Secretary of State to make regulations establishing the 2015 Scheme. The 2015 Scheme is set out by the National Health Service Pension Scheme Regulations 2015 (SI 2015/94).

6.2 The Superannuation Act 1972 ("the 1972 Act") provides equivalent powers regarding the 1995 and 2008 Sections of the legacy pension scheme that is now closed to further accrual. These Sections are set out by The National Health Service Pension Scheme Regulations 1995 (SI 1995/300) and The National Health Service Pension Scheme Regulations 2008 (SI 2008/653).

6.3 The 1972 Act provides power to make regulations that provide for the payment of additional voluntary contributions by members to secure additional benefits financed by investment of those contributions. Provisions to that effect are set out by The National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000 (SI 2000/619).

6.4 The 2013 Act also provides powers to make transitional provisions for the appropriate treatment of scheme benefits where there is membership of both the 2015 and legacy pension schemes. These transitional provisions are set out by The National Health Service Pension Scheme (Transitional and Consequential Provisions) Regulations 2015 (SI 2015/95).

6.5 The Public Service Pensions and Judicial Offices Act 2022 put in place the framework and requirements to enable schemes to remedy the discrimination identified in the 'McCloud' judgment. The Remediable Service Regulations implemented the retrospective part of the remedy to remove the effect of the discrimination and provide a choice to eligible members of whether to receive legacy scheme benefits or equivalent 2015 Scheme benefits for their service during the remedy period, from 1 April 2015 to 31 March 2022.

6.6 This instrument has eight parts and gives effect to the policy changes described in section 5. Part 1 is introductory, Part 2 amends the 1995 Regulations, Part 3 amends the Additional Voluntary Contributions Regulations, Part 4 amends the 2008 Regulations, Part 5 amends the 2015 Regulations, Part 6 amends the Transitional Regulations, Part 7 amends the 2023 Amendment Regulations and Part 8 amends the Remediable Service Regulations.

Why was this approach taken to change the law?

6.7 This is the only possible approach to make the necessary changes. The NHS Pension Schemes are statutory, and the scheme rules are set out in regulations.

7. Consultation

Summary of consultation outcome and methodology

7.1 A consultation on the changes made by this instrument ran from 10 December 2024 until 4 February 2025. A copy of the consultation document is available on gov.uk[1]. This included detail on all of the policies in this instrument, with the exception of the changes following the abolition of the lifetime allowance. These were consulted on as part of a separate consultation process, detailed below.

7.2 The department notified relevant stakeholders of the consultation. These stakeholders included members of the NHS Pension Scheme Advisory Board (SAB), who are trade union and employer representatives. The department also worked with SAB members on the proposals prior to launching the consultation. The department also notified members of the NHS Pension Board and NHS Staff Council, as well as NHS Employers, NHS Employers Wales, NHS England, the scheme administrator, the NHS Business Services Authority (NHSBSA), and officials working on pensions policy in Scotland, Wales and Northern Ireland, of the consultation.

7.3 A total of 22 consultation responses were received, including responses from the British Medical Association, the NHSBSA, the NHS Pension Board, the Royal College of Nursing, the SAB, and several individual employers.

7.4 The responses generally supported the proposals. The department made one change to the amendments proposed as a result of the consultation feedback. This was in relation to the revocation or lapsing of deferred choice elections, following feedback from the NHS Business Services Authority around an ambiguity regarding the cancellation deadline. The department has changed the draft regulations to remove any ambiguity over the relevant deadlines and can clarify that the relevant cancellation deadline will be two weeks before the date any benefits become payable after the end of a member's deferred choice election period. The policy approach remains unchanged.

[1] Available from: https://www.gov.uk/government/consultations/nhs-pension-scheme-proposed-amendments-for-april-2025

7.5 A copy of the department's response to the consultation, which outlines the consultation feedback in further detail, was published on gov.uk and is available at the same link as in paragraph 7.1 above.

7.6 In accordance with section 22 of the 2013 Act, the department followed the procedure for making changes to the protected elements of the NHS Pension Scheme within the protected period, including having regard to the desirability of not making a change to member contribution rates.

7.7 Amending the regulations to clarify the way member contributions are calculated when a member has received reduced pay due to a specified absence is beneficial or neutral to members because it means they will pay lower or the same contributions during this absence (see also paragraphs 5.11 to 5.17). If this instrument were not to be made, then some members may pay higher contribution rates than they should during a period of absence.

7.8 The changes following the abolition of the lifetime allowance were included in a previous consultation, which ran from 26 October 2023 to 7 January 2024. A copy of the consultation is available on gov.uk[2].

7.9 The department formally notified the SAB, which comprises trade union and employer representatives, of the consultation. The NHSBSA also drew attention to the consultation through employer bulletins and member newsletters.

7.10 A total of 160 responses were received. These came from individuals, trade unions, employers and other organisations. The changes proposed concerning the abolition of the lifetime allowance were generally well received. Trade unions representing members of the NHS Pension Scheme, including the British Medical Association (BMA), the British Dental Association (BDA), Unison, and the Royal College of Nursing, all expressed their support for these changes during the consultation process. A copy of the department's response to this consultation is available from the same link as in paragraph 7.8 above.

8. Applicable Guidance

8.1 NHS Pension Scheme guidance is provided via a range of resources including factsheets, online videos and scheme guides on the NHSBSA website[3].

8.2 The department also commissions NHS Employers to provide further guidance to employers on the NHS Pension Scheme[4].

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because no, or no significant, impact on business, charities, voluntary bodies or the public sector is foreseen.

Impact on businesses, charities and voluntary bodies

9.2 There is no significant, impact on business, charities or voluntary bodies. The only impacts to businesses, charities and voluntary bodies will be if they employ members

[2] Available from: https://www.gov.uk/government/consultations/nhs-pension-scheme-proposed-policy-changes-for-april-2024
[3] Available from: https://www.nhsbsa.nhs.uk/nhs-pensions
[4] Available from: https://www.nhsemployers.org/pensions

of the NHS Pension Scheme. The impact to them will be the same as for public sector organisations who employ members of the NHS Pension Scheme.

9.3 The legislation does not impact small or micro businesses.

9.4 The impact on the public sector is minimal, but these changes will impact NHS workers who are members of the NHS Pension Scheme and their employers.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring and reviewing this legislation is through the Scheme Advisory Board (SAB) for the NHS Pension Scheme. In accordance with section 7 of the 2013 Act, there is a SAB comprising representatives of NHS employers, NHS trade unions and the scheme administrator. The SAB discusses changes to the NHS Pension Scheme and provides advice to the Secretary of State for Health and Social Care on matters of scheme policy when requested.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Karin Smyth MP has made the following statement: "The NHS Pension Schemes Regulations amended by this instrument are not considered to make regulatory provision in relation to a qualifying activity or amend any regulatory provision relating to that activity for the purpose of section 28 of the Small Business, Enterprise and Employment Act 2015. They regulate only the activities of public bodies. The exempting provision of section 29(3)(b) of the same Act therefore applies".

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 A number of the provisions in this instrument have retrospective effect, most of which make corrections. This instrument also makes changes to protected elements of scheme regulations within the protected period, within the meaning of section 22 of the 2013 Act.

11.2 Section 12(1) of the 1972 Act confers a power to make retrospective provision and subsection (2) provides that, subject to subsection (4), regulations may apply in relation to pensions that are being paid or may become payable in respect of members who have ceased to be employed, or died, before the regulations come into operation. Subsection (4) provides that any person who is placed in a worse position than they would have been in if the provision had not applied to them in relation to any pension which is being paid or may become payable must be given the opportunity to elect that the provision shall not apply to them. Section 3(3)(b) of the 2013 Act confers a power to make retrospective provision but refers the reader to section 23. Section 23 provides the procedure for making scheme regulations containing retrospective provision which appear to the responsible authority to have significant adverse effects in relation to the pension payable to or in respect of members of the scheme or appear to have significant adverse effects in any other way in relation to members of the scheme (for example, in relation to injury or compensation benefits).

11.3 Amending regulations 3, 10, 23 and 34 of this instrument correct an error regarding the definition of overtime applicable to periods of time worked under the 2015 Scheme between 1 April 2015 and 31 March 2024. Further details can be found at paragraphs 5.1 to 5.10. Whilst regulations 3, 10, 23 and 34 have effect prospectively

from 1 April 2025, these amendments give affected members a choice to elect for certain past payments to be treated in a different manner. No person will be placed in a worse position as a result of these changes.

11.4 Amending regulations 4, 6, 14 and 20 have effect retrospectively from 6 April 2024 and are made under powers conferred by section 12 of the 1972 Act. Amending regulation 29 has effect retrospectively from 6 April 2024 and is made under powers conferred by section 3(3)(b) of the 2013 Act. The amendments are necessary to make consequential amendments following the abolition of the lifetime allowance and to implement changes to the taxation of lump sums and lump sum death benefits required as a result of the Finance Act 2024. The Secretary of State is of the view that the retrospective provision will not place any member in a worse position, or have significant adverse effects for the purposes of section 12 of the 1972 Act or section 23 of the 2013 Act. See also paragraphs 5.47 to 5.53.

11.5 Amending regulations 8, 11, 15 and 17 of this instrument correct omissions to consequential amendments to the 2008 Regulations made by the Parental Bereavement Leave and Pay (Consequential Amendments to Subordinate Legislation) Regulations 2020 (SI 2020/354) by amending certain cross references to ensure that parental bereavement leave is treated the same as other types of authorised leave in the 2008 Regulations. These amendments are made with retrospective effect from 6 April 2020 and are made using the power conferred in section 12(1) and (2) of the 1972 Act. The Secretary of State is of the view that the retrospective provision will not put any person in a worse position and that such changes can only be beneficial for members. As such, section 12(4) of the 1972 Act does not apply. Further detail can be found at paragraphs 5.36 to 5.38.

11.6 Amending regulations 9 and 16 of this instrument correct errors in the 2008 Regulations (made by the Transitional Regulations) to allow qualifying service in the 1995 Section to count as qualifying service by reinstating these provisions in the 2008 Section with retrospective effect from 1 April 2015 under powers conferred by section 12 of the 1972 Act. The Secretary of State is of the view that the retrospective provision will not put any person in a worse position. The amendment is only beneficial to relevant members because it will ensure that qualifying service in the 1995 Section continues to count as qualifying service in the 2008 Section for relevant 1995 Section deferred members - and this can only be beneficial. See also paragraphs 5.34 and 5.35.

11.7 Amending regulations 12 and 18 correct errors in the 2008 Regulations made by the Transitional Regulations which incorrectly permitted 135 members who first joined the 2008 Section on 1 April 2012 to remain members of that section after 1 April 2015, when they should have become members of the 2015 Scheme from that date. As set out in paragraphs 5.41 to 5.43, the correction is made with retrospective effect from 1 April 2015 under powers conferred by section 12(1) and (2) of the 1972 Act. These regulations make provision at amending regulation 36 to ensure that any person affected by amending regulations 12 and 18 will not be placed in a worse position than they would have been in by providing an entitlement to additional retirement benefits should the 2008 Section benefits be higher than the 2015 Scheme benefits during the period 1 April 2015 to 31 March 2022 (see paragraph 5.43 for further information).

11.8 Amending regulations 13, 19 and 33 correct cross references in provisions in the 2008 Regulations and 2015 Regulations which clarify that lump sums on death will not be payable to beneficiaries whose benefits have been forfeited as a result of their

conviction for the murder or manslaughter of the member, or of any other offence of which unlawful killing of the member is an element. Amending regulations 13 and 19 have effect retrospectively from 1 April 2008 and are made using the power conferred by section 12(1) and (2) of the 1972 Act. The Secretary of State is of the view that the retrospective provision will not put members or beneficiaries in a worse position. This is because these are clarifying provisions which cross refer to the power to forfeit beneficiary benefits in these circumstances. This power remains unaffected by these regulations. As such, section 12(4) of the 1972 Act does not apply.

11.9 Regulation 33 has effect retrospectively from 1 April 2015. The Secretary of State is of the view that the retrospective provision will not have significant adverse effect for the purposes of section 23 of the 2013 Act. This is because it is a clarifying provision which cross refers to the power to forfeit beneficiary benefits in these circumstances. This power remains unaffected by these regulations.

11.10 Amending regulation 24(5),(7),(8)(b), (9) corrects an omission in the 2015 Scheme which means that members on unpaid leave which immediately follows a period of work or leave with full pay are unable to continue build up pension benefits for this period. The correction is made with retrospective effect from 1 April 2015 under powers conferred by section 3(3)(b) of the 2013 Act. The Secretary of State is of the view that the retrospective provision will not have significant adverse effect for the purposes of section 23 of the 2013 Act. Any members who continued to contribute to their pension and accrue benefits when they went straight from full pay to unpaid leave will be able to keep their pension accrual for this period and any members who were not able to do so because of the omission in the regulations will now be able to do so with retrospective effect.

11.11 Amending regulations 25, 26, 31, 39 and 40 clarify the way member contributions must be calculated. Regulations 25, 26 and 31 have effect retrospectively from 1 October 2022 and regulations 39 and 40 have effect from 1 April 2023. The Secretary of State is of the view that the retrospective provision made under powers conferred by section 3(3)(b) of the 2013 Act will not have significant adverse effect for the purposes of section 23. As explained in paragraphs 5.11 to 5.17, the regulations relating to calculation of member contributions whilst a member is on reduced pay due to a specified absence may, in practice, have been applied in different ways since 1 October 2022 and as a result some members may have paid greater contributions than they should have done. Any member who has overpaid contributions will receive a refund.

11.12 Amending regulation 27 corrects an inconsistency in approach regarding calculating the cost of purchasing additional pension between the legacy scheme and the 2015 Scheme by amending regulation 60 of the 2015 Regulations to bring it in line with equivalent provisions in the 1995 and 2008 Regulations. See paragraphs 5.39 to 5.40 for further information.

11.13 In accordance with paragraph 4.7.6 of Statutory Instrument Practice, the department has consulted the SI Registrar, and this instrument is issued free of charge to all known recipients of the 1995 Regulations, the 2008 Regulations, the 2015 Regulations, the Transitional Regulations and the Parental Bereavement Leave and Pay (Consequential Amendments to Subordinate Legislation) Regulations 2020 (SI 2020/354) as a result of these corrections.

11.14 Section 22 of the 2013 Act provides the procedures to be followed when changing the protected elements of Scheme regulations within the protected period. Amendments to members' contribution rates are a protected element of Scheme regulations under

section 22(5) of the 2013 Act. As amending regulations 24(5), (6), (7), (8)(b), (9), 25, 26, 31, 38, 39 and 40 relate to how the contribution rate members for members on reduced pay as a result of a specified absence are calculated, the department has consulted with the persons (or representatives of the persons) who appear to the Secretary of State likely to be affected by this instrument, with a view to reaching agreement on these changes. A report setting out why the Secretary of State proposes to make these regulations has been laid before Parliament in accordance with section 22(2)(b) of that Act.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).