

## SCOTTISH STATUTORY INSTRUMENTS

**2018 No.****NATIONAL HEALTH SERVICE****The National Health Service Pension Scheme (Scotland)  
(Additional Voluntary Contributions) Regulations 2018***Made* - - - -*Laid before the Scottish Parliament**Coming into force* - -

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 10 and 12 and schedule 3 of the Superannuation Act 1972(a) and all other powers enabling them to do so.

In accordance with section 10(4) of that Act, the Scottish Ministers have consulted with such representatives of persons likely to be affected by these Regulations as appear to them to be appropriate.

In accordance with section 10(1) of that Act, these Regulations are made with the consent of the Treasury.

**Citation, commencement and effect**

1. These Regulations may be cited as the National Health Service Pension Scheme (Scotland) (Additional Voluntary Contributions) Regulations 2018 and come into force on .

**Interpretation**

2.—(1) In these Regulations, except where the context otherwise requires the meaning of the words in column 1 is given in Column 2 of the table below—

<i>Column 1</i>	<i>Column 2</i>
The 1993 Act	The Pensions Schemes Act 1993(b)
The 1999 Act	The Welfare Reform and Pensions Act 1999(c)
The 2004 Act	Finance Act 2004(d)

(a) 1972 c.11. Section 10 was amended by Part II of schedule 7 of the National Health Service (Scotland) Act 1972 (c.58), sections 4(2) and 8(5) and (6) of the Pensions (Miscellaneous Provisions) Act 1990 (c.7) (“the 1990 Act”), paragraph 7 of schedule 8 of the Pension Schemes Act 1993 (c.48), paragraph 10 of schedule 8 of the Public Service Pensions Act 2013 (c.25) and S.I. 2001/3649. Section 12 was amended by section 10 of the 1990 Act. The functions of the Secretary of State, in or as regards Scotland, were transferred to the Scottish Ministers by virtue of S.I. 1999/1750, article 2 and schedule 1.

(b) 1993 c.48.

(c) 1999 c.30.

(d) 2004 c.12.

The 2014 Act	Taxation of Pensions Act 2014(a)
The 2009 Regulations	Registered Pension Schemes (Authorised Payment) Regulations 2009(b)
The 2011 Regulations	The National Health Service Superannuation Scheme (Scotland) Regulations 2011(c)
The 2013 Regulations	The National Health Service Superannuation Scheme (2008 section) (Scotland) Regulations 2013(d)
The 2015 Regulations	The National Health Service Pension Scheme (Scotland) Regulations 2015(e)
The AVC scheme	The National Health Service Pension Scheme (Scotland) Additional Voluntary Contribution scheme, the rules of which are set out in these Regulations.
Appropriate rights	The rights which are described in paragraph 5 of Schedule 5 to the 1999 Act (pension credits: mode of discharge, appropriate rights)
Approved Scheme	Means a retirement benefit scheme approved under chapter 1 of Part XIV of the Taxes Act (retirement benefit schemes)
Authorised fund	Means a fund managed by— <ul style="list-style-type: none"> <li>(a) an authorised provider selected by the Scottish Ministers for the purposes of these Regulations; or</li> <li>(b) any successor, transmittee or assignee of any person in paragraph (a) who is— <ul style="list-style-type: none"> <li>(i) an authorised provider; and</li> <li>(ii) approved by the Scottish Ministers</li> </ul> </li> </ul>
Authorised provider	The meaning given to it by section 1 of the Superannuation Act 1972
Child	A person who qualifies for— <ul style="list-style-type: none"> <li>(a) a child's allowance under regulation H2 (payment of the dependant child's allowance) of the 2011 Regulations;</li> <li>(b) a child's pension under regulation 2.E.8 or 3.E.8 (surviving children's pension) of the 2013 Regulations as the case may be; or</li> <li>(c) a child's pension under regulation 120 of the 2015 Regulations.</li> </ul>
Civil partner and civil partnership	To be construed in accordance with regulation 3
Contributor	A person in respect of whom an election under regulation 4(1) has effect

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(a) 2014 c.30.  
(b) S.I. 2009/1171.  
(c) S.S.I. 2011/117 as amended by S.S.I. 2011/173.  
(d) S.S.I. 2013/174.  
(e) S.S.I.2015/94.

Date of retirement	<p>The date on which benefits become payable to the participator under—</p> <ul style="list-style-type: none"> <li>(a) regulations E1 (normal retirement pension) to E12 (preserved pension) of the 2011 Regulations;</li> <li>(b) regulation 2.D.1 (normal retirement pension), 2.D.4 (early payment of pension with actuarial reduction), 2.D.5 (partial retirement)(member at least 55), 2.D.8 (early retirement on ill health (active members)) 2.D.10 (early retirement on ill health (deferred members)), 2.D.11 (early retirement on termination of employment by the employing authority), regulation 3.D.1 (normal retirement pension), 3.D.4 (early payment of pension with actuarial reduction), 3.D.5 (partial retirement)(member at least 55), 3.D.7 (early retirement on ill health (active members)) 3.D.9 (early retirement on ill health (deferred members)) of the 2013 regulations;</li> <li>(c) regulations 72, 78, 80, 81, 83, 89 or 93 of the 2015 regulations;</li> <li>(d) in the case of a benefit referred to in regulation 12(1)(d), a commencement date that the participator requests that is on or after, the participator's normal minimum pension age has the meaning given in section 279(1) of the 2004 Act,</li> </ul> <p>as the case may be.</p>
Dependant	<ul style="list-style-type: none"> <li>(a) a surviving spouse of a participator (providing the marriage was not, prior to 1st April 1995, subject to an order of judicial separation);</li> <li>(b) any surviving child of a participator;</li> <li>(c) any person in whose favour a participator has made an election under— <ul style="list-style-type: none"> <li>(i) regulation J1 (allocation of pension by member for benefit of dependant) of the 2011 Regulations;</li> <li>(ii) regulation 2.D.17 or 3.D.13 (election to allocate pension) of the 2013 Regulations; or</li> <li>(iii) regulation 50 of the 2015 Regulations;</li> </ul> </li> </ul> <p>as the case may be; or</p> <ul style="list-style-type: none"> <li>(d) a surviving civil partner or surviving nominated partner of a participator;</li> </ul>
Dependant's pension	a pension which becomes payable to a dependant on the death of a participator;
Eligible member	has the meaning given by section 101P(1) of the 1993 Act
The Index	<p>at any time means the Retail Price Index or any successor agreed as appropriate by the Board of Inland Revenue, for the calendar month three months prior to that time;</p> <ul style="list-style-type: none"> <li>(a) a person who has permission under Part 4A of the Financial Services and Markets Act 2000(a) to effect or carry out contracts of long-term insurance; or</li> <li>(b) an EEA firm of the kind mentioned in paragraph 5(d) of</li> </ul>

(a) 2000 c.8.

	Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 (1) of that Schedule to effect or carry out contracts of long-term insurance;
Insurer	The definition of insurer must be read with— (a) Section 22 of the Financial Services and Markets Act 2000; (b) any relevant order under that section; (c) Schedule 2 to that Act.
Lifetime allowance	shall be construed in accordance with Part 4 of the 2004 Act (pension schemes etc)
Lump sum death benefit	a lump sum which will become payable in the event of a person's death while paying contributions to provide for it;
marriage	Marriage other than marriage of a same sex couple unless otherwise provided;
“NHS Pension Scheme”	the National Health Service Pension Scheme for Scotland, the rules of which are set out in the 2011 Regulations (the 1995 Section) the 2013 Regulations (the 2008 Section) or in the 2015 Regulations (the 2015 scheme)
Scheme Partner	A person is a scheme partner in relation to a contributor if the person and the contributor— (a) are living together in an exclusive relationship as if they were spouses or civil partners; (b) are not prevented from marrying or forming a civil partnership
Normal benefit age	(a) in the case of a person whose pension arrangements are governed by 2011 Regulations at the date on which the person's election under regulation 3 took effect, the age of 60; (b) in the case of a person whose pension arrangements are governed by the 2013 Regulations, the age of 65; (c) in the case of a person whose pension arrangements are governed by the 2015 Regulations— (i) the person's state pension age; or (ii) if higher, the age of 65
Occupational pension scheme	the meaning given by section 1 of the Pension Schemes Act 1993;
Participator	(a) a contributor who has made a benefits election under regulation 12; (b) a contributor who has died; (c) a person who has ceased to be a contributor but has not exercised any right to take a cash equivalent within the meaning of section 94 of the Pension Schemes Act 1993 or to be paid a lump sum under regulation 14; or (d) a person in respect of whom investments have been made under regulations 8(1), 9(2) or 10(4)
Pension commencement lump sum	a lump sum for the purposes of Part I of Schedule 29 to the 2004 Act not exceeding 25 per cent of the proceeds of any investment made under regulation 8(1), 9(2) or 10(4);
pension credit	a credit under section 29(1)(b) of the 1999 Act and includes a credit under corresponding Northern Ireland legislation

Pension credit benefit	the meaning given by section 101B of the 1993 Act;
Pension credit member	the meaning given by section 124(1) of the Pensions Act 1995
Pension credit rights	the meaning given by section 101B of the 1993 Act;
Pensionable employment	NHS employment in respect of which a person contributes to the NHS Pension Scheme for Scotland or such other employment as the Scottish Ministers may approve for the purposes of a direction under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967(a) or a determination under section 25(5) of the Public Service Pensions Act 2013(b)
Pensionable service	to be construed in accordance with whichever of the following is applicable— (a) regulation C2 (meaning of “pensionable service”) of the 2011 Regulations; (b) regulation 2.A.3 (meaning of “pensionable service”), 2.A.4 (meaning of “pensionable service”: part-time service) or 3.A.3 (meaning of “pensionable service”) of the 2013 Regulations; or (c) regulation 20 of the 2015 Regulations.
Registered pension scheme	the meaning given by section 150(2) of the 2004 Act;
Retirement	to be construed in accordance with whichever of the following is applicable— (a) the 2011 Regulations; (b) the 2013 Regulations ;or (c) the 2015 Regulations.
Salary	all salary, wages, fees and other payments paid or made to a person as such for his own use in respect of his employment.
Surviving scheme partner	A person is a surviving scheme partner in relation to a contributor if the person satisfies the Scottish Ministers that for a continuous period of 2 years ending with the member’s death— (a) the person and the member were living together in an exclusive relationship as if they were spouses or civil partners, (b) the person and the member were not prevented from marrying or forming a civil partnership, and (c) the person was financially dependent on the member or the person and the member were financially interdependent.
Widow and Widower	Do not include a reference to marriage of a same sex couple

(2) Subject as aforesaid and except where the context otherwise requires, other expressions in these Regulations have the same meaning as in the 2011 Regulations, 2013 Regulations or the 2015 Regulations as the case may be.

### **Civil Partnerships and marriage of same sex couples**

**3.—**(1) In these Regulations a reference to—

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(a) 1967 c.28.  
(b) 2013 c.25.

- (a) civil partnership is to be read as including a reference to marriage of a same sex couple and a reference to civil partners and to a person who is in a civil partnership is to be construed accordingly;
- (b) a person who is living with another person as if they were in a civil partnership is to be read as including a reference to a person who is living with another person of the same sex as if they were married.

(2) Where paragraph (1) requires a reference to be read in a particular way, any related reference (such as a reference to a civil partnership that has ended, a reference to a person whose civil partnership has ended, or a reference to persons formerly living together as civil partners) is to be read accordingly.

(3) For the purposes of paragraphs (1) and (2), it does not matter how a reference is expressed.

(4) In this regulation, “civil partnership” and “civil partners” have the meanings given by section 1 of the Civil Partnership Act 2004<sup>(a)</sup>.

### **Making and acceptance of elections**

**4.**—(1) Subject to paragraph (3), a person in pensionable employment may elect to pay contributions under these Regulations—

- (a) for investment under regulation 8(1) to provide for **one** or more of the benefits referred to in regulation 12)
- (b) for investment under regulation 8(2) to provide for a lump sum death benefit.

(2) An election under paragraph (1) may relate to contributions to be paid by, or on behalf of, the contributor or contributions to be paid by the contributor’s employer or both.

(3) An election under paragraph (1) shall not have effect if the person making it is on leave of absence from work due to ill-health on the date on which the notice of such an election is received by the Scottish Ministers

(4) An election under paragraph (1) shall be made by giving written notice to the Scottish Ministers specifying—

- (a) whether the election relates to paragraph (1) (a) or (b), or both;
- (b) the amount of the contributions; and
- (c) in relation to contributions for the purposes of investment under regulation 7(1), the authorised fund or funds in which the contributions are to be invested, and, subject to paragraph (5), shall be accepted by him.

(5) The Scottish Ministers shall not accept an election under paragraph (1)—

- (a) where any limit imposed by regulation 5(3) or (limits on contributions) would be exceeded; or
- (b) in the case of an election under paragraph (1) (b) to provide for a lump sum on death, unless he is satisfied that the election is made in accordance with the requirements of regulation 18(2) and that at the time of making an election the person is in good health and that there is no reason why his health should prevent him from making contributions.

(6) In the case of a person whose membership of the NHS Pension Scheme is governed by the 2011 Regulations, subject to paragraph (5)(b) above and regulation 5(3) where contributions are paid until the contributor’s 60th birthday and the contributor does not then cease to be in pensionable employment, an election may be made to pay further contributions up to the contributor’s 61st birthday to provide for a lump sum death benefit; and so long as the contributor has not ceased to be in pensionable employment, further elections may be made annually in respect of subsequent years.

(7) In the case of a person whose membership of the NHS Pension Scheme is governed by the 2013 Regulations, subject to paragraph (5) (b) and regulation 5(3)—

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(a) 2004 c.33.

- (a) if contributions are paid for the purposes of paragraph (1) (b)—
    - (i) until the contributor reaches their 65th birthday; and
    - (ii) on reaching their 65th birthday the contributor continues to be in pensionable employment,
 the contributor may elect for further contributions to be paid until he reaches his 66th birthday; and
  - (b) a person to whom paragraph (a) applies may continue to elect annually for further contributions to be paid provided he continues to be in pensionable employment.
- (8) A person whose membership of the NHS Pension Scheme Scotland is governed by the 2015 Regulations and who is in pensionable employment may, upon attaining normal benefit age—
- (a) where contributions have been paid for the purposes of paragraph (1)(b), elect for further contributions to be paid for 12 months beyond the attainment of normal benefit age birthday, and
  - (b) continue to elect annually for further contributions to be paid provided that person remains in pensionable employment.
- (9) Paragraph (8) is subject to—
- (a) an election referred to in that paragraph being permitted under the arrangement that the person has with an authorised provider;
  - (b) paragraph (5) (b);
- (10) For the purposes of paragraph (1), (6), (7) or (8), an election shall have effect from the date when the election is accepted by the Scottish Ministers.
- (11) The Scottish Ministers shall notify in writing the person who has made an election under paragraph (1) of their acceptance of that election.

**Payment and amount of additional voluntary contributions.**

5.—(1) Contributions under these Regulations may be made by way of weekly, monthly or quarterly payments or by way of a single payment

(2) The contributor’s employer may deduct any amount payable by the contributor from the contributor’s salary, and such deductions shall commence to be made from the salary in respect of the first whole pay period falling after the date the employer receives authorisation from the authorised provider to make those deductions and shall be remitted to the Scottish Ministers as soon as reasonably practicable but not later than 7 days after their deduction.

(3) In any period of 12 months beginning on 6th April in any year the total contributions payable by the contributor shall not exceed 100 per cent of the amount which represents the contributor’s salary from NHS employment less the total of any contributions paid by the contributor in respect of that year under the 2011 Regulations, the 2013 Regulations or the 2015 Regulations, as the case may be.

(4) In this regulation—

“employer” has the same meaning as “employing authority” in the 2011 Regulation , the 2013 Regulations or the 2015 Regulations (as the case may be) and, where the context requires, includes contracting health board (as defined in any of those Regulations); and

“salary” includes pensionable pay and pensionable earnings within the meaning of the 2011, Regulations the 2013 Regulations or the 2015 Regulations (as the case may be).

**Variation and cancellation of elections**

6.—(1) A contributor who has elected under regulation 3(1)(a) to pay contributions for the purpose of investment under regulation 8(1) may at any time by giving written notice to the Scottish Ministers—

- (a) subject to regulation 5(3), alter the amount of the contributions;

- (b) require the whole or part of them to be invested in future in some other authorised fund;
- (c) require the Scottish Ministers to realise the whole or part of any investments made and to reinvest the proceeds in some other authorised fund; or
- (d) cancel the election.

(2) A contributor who has elected under regulation 4(1) (b) to pay contributions to provide a lump sum death benefit under regulation 8(2) may at any time by giving written notice to the Scottish Ministers—

- (a) subject to regulation 5(3) and provided he is not absent from work or his health is such that the Scottish Ministers would not accept an election under regulation 4(1)(b), elect that a specified larger sum is to be secured and the contributions increased accordingly; or
- (b) cancel the election.

(3) The Scottish Ministers shall give effect as soon as is reasonably practicable to the terms of any notice given under this regulation.

### **Circumstances in which elections cease to have an effect**

7.—(1) Subject to paragraphs (2) and (3), an election shall cease to have effect—

- (a) where a contributor leaves pensionable employment;
- (b) where a contributor ceases to be in pensionable employment by virtue of an election under regulation B4 of the 2011 Regulations, regulation 2.B.6 or 3.B.6 of the 2013 Regulations or regulation 15(2) of the 2015 Regulations (all of which deal with opting-out of the scheme in question), as the case may be; or
- (c) in the case of a contributor who, at the time of making the election, was subject to the 2011, 2013 or (as the case may be) 2015 Regulations and who receives payment of all of their benefits under those particular Regulations.

(2) A contributor whose election ceases in accordance with paragraph (1) (c) is not prevented from making a further election that complies with regulation 4.

(3) Where a contributor gives written notice to the Scottish Ministers for the purposes specified in regulation 6(1) (c), an election—

- (a) does not cease to have effect; and
- (b) continues to be subject to the normal benefit age applicable at the time it was made.

(4) This does not apply where sub-paragraph (a) or (c) of paragraph (1) apply.

### **Investment of additional voluntary contributions**

8.—(1) Any contributions paid in respect of a contributor for investment under this paragraph shall be invested by the Scottish Ministers in accordance with any notice under regulation 4(4) or 6(1).

(2) Any contributions paid in respect of a contributor to provide for a lump sum death benefit under this paragraph shall be paid by the Scottish Ministers to an insurance company selected by them so as to secure the payment of a lump sum death benefit of the amount required by any notice under regulation 4(4) or 6(2).

### **Inward Transfers**

9.—(1) Where a person who enters pensionable employment has paid contributions to another additional voluntary contribution which is a registered pension scheme for the purposes of the 2004 Act, that person, whether or not he becomes a contributor within the meaning of these Regulations, may, within—

- (a) 12 months of entering pensionable employment; or
- (b) such longer period as the Scottish Ministers may in any particular case allow,



give written notice to the Scottish Ministers that they wish the Scottish Ministers to accept from the trustees or managers of that scheme a transfer value representing at least the value of the investments derived from his contributions.

(2) Where a transfer value is accepted by the Scottish Ministers it shall be invested by them, in accordance with the wishes of the person entering pensionable employment, in one or more of the authorised funds.

(3) Where a transfer value is invested under paragraph (2) the person may at any time, by giving written notice to the Scottish Ministers, require the Scottish Ministers to realise the whole or part of the sums so invested and to reinvest the proceeds in a different way.

### **Inward transfers: miss-sold pensions**

**10.**—(1) This regulation shall apply to a person to whom regulation B6 of the 2011 Regulations (opting into this Section of the scheme: miss-sold pensions) applies in respect of whom a transfer payment within the meaning of regulation N5 of those Regulations has been paid by a personal pension scheme to the Scottish Ministers.

(2) Subject to paragraph (3), where, at any time, a person to whom this regulation applies elects to rejoin the scheme under regulation B5 of the 2011 Regulations, that person, whether or not they become a contributor within the meaning of these Regulations, may, within 12 months of rejoining the scheme, or such longer period as the Scottish Ministers may in any particular case allow, give written notice to the Scottish Ministers that they wish them to accept, for the purposes of these Regulations, a transfer value.

(3) For the purposes of paragraph (2), the transfer value shall be of an amount representing the difference between—

- (a) the capitalised value of the accrued rights to benefits in the personal pension scheme from which the transfer value is paid which is attributable to contributions made to that scheme by the person referred to in paragraph (1) during their opted-out service; and
- (b) the amount referred to in regulation N5 of the 2011 Regulations.

(4) Where a transfer value is accepted by the Scottish Ministers it shall be invested by them in accordance with the wishes of the person referred to in paragraph (1), in one or more of the authorised funds.

(5) Where a transfer value is invested under paragraph (4) the person referred to in paragraph (1) may at any time, by giving written notice to the Scottish Ministers, require the Scottish Ministers to realise the whole or part of the sums so invested and to reinvest the proceeds in a different way.

(6) In this regulation—

“opted-out service” means the period of NHS employment in respect of which the Scottish Ministers have approved an additional period of pensionable service for the purposes of regulation N5 of the 2011 Regulations; and

“personal pension scheme” has the meaning given by regulation B6(4) of the 2011 Regulations.

### **Outward transfers**

**11.**—(1) Subject to—

- (a) paragraphs (2) to (7); and
- (b) the cancellation, pursuant to regulation 6(1) or (2), of any election made under regulation 4(1),

the Scottish Ministers must, as soon as reasonably practicable after having received a notice in writing from an eligible person requesting a transfer of the value of that person’s investments made in relation to that person under regulation 8(1), 9(2) or 10(4), pay a transfer value representing the value of all such investments at that person’s option to any other registered pension scheme in which the person may be participating.

(2) If the Scottish Ministers are required under paragraph (1) to make a transfer payment in circumstances where such a payment in respect of an eligible person is also provided and used in accordance with regulation M1 of the 2011 Regulations (member's right to transfer or buy-out), the Scottish Ministers must do so in accordance with the time limit specified in regulation M5 of those Regulations as if the reference in that regulation to an application were a reference to a notice referred to in paragraph (1).

(3) If the Scottish Ministers are required under paragraph (1) to make a transfer payment in circumstances where such a payment in respect of an eligible person is also provided and used in accordance with regulation 2.F.1 or 3.F.1 of the 2013 Regulations (rights to transfer value payments), the Scottish Ministers must do so in accordance with the time limit specified in, as the case may be, regulation 2.F. 4 or 3.F.4 of those Regulations as if the reference in regulation 2.F.4 or (as the case may be) 3.F.4 to an application were a reference to a notice referred to in paragraph (1).

(4) If the Scottish Ministers are required under paragraph (1) to make a transfer payment in circumstances where such a payment in respect of an eligible person is also provided and used in accordance with regulation 133 of the 2015 Regulations (rights to transfer value payment), the Scottish Ministers must do so in accordance with the time limit specified in regulation 136 of those Regulations as if the reference in that regulation to an application were a reference to a notice referred to in paragraph (1).

(5) In any case where the Scottish Ministers have directed under regulation 21 (loss of rights to benefit) that all or part of any of an eligible person's rights to benefits under these Regulations are to be forfeited, the cash equivalent payable in respect of that person shall be reduced by the capitalised value of the rights which are to be forfeited.

(6) If disciplinary or court proceedings are commenced against the eligible person within 12 months after he leaves pensionable employment and it appears to the Scottish Ministers that the proceedings may lead to all or part of that person's rights to benefits being forfeited in accordance with regulation 21, the Scottish Ministers may defer doing what is required of them under this regulation to carry out the requirements of that eligible person until the date 3 months after the conclusion of those proceedings (including any proceedings on appeal) where that date is later than the date which would otherwise apply by virtue of paragraph (2) above.

(7) Where the Scottish Ministers have done what is required of them to carry out the requirements of the eligible person under this regulation, the Scottish Ministers shall be discharged from any obligation under regulation 16 (payments by the Scottish Ministers) to or in respect of that person.

(8) In this regulation "eligible person" means a person—

- (a) who is a contributor; and
- (b) either—
  - (i) has not attained the age of 75 years on or before the date the notice referred to in paragraph (1) above is received by the Scottish Ministers; or
  - (ii) to whom regulation M6 of the 2011 Regulations (special terms for transfers out (bulk transfers etc.), regulation 2.F.14 or 3.F.14 of the 2013 Regulations or regulation 146 of the 2015 Regulations applies.

### **Retirement and dependant's benefits**

**12.—**(1) A participator may apply some or all of the proceeds of an investment made under regulation 8(1), 9(2) or 10(4) to arrange with an insurer—

- (a) payment of a lifetime annuity;
- (b) payment of a lifetime annuity and a pension commencement lump sum;
- (c) a lump sum commutation payment that—
  - (i) reflects the value of the benefits referred to in sub-paragraph (a) or (b), and
  - (ii) meets the requirements of regulations 11 and 12 of the 2009 Regulations;

- (d) as from 6th April 2015, any payment to the participator or a dependant of the participator that complies with the requirements of the 2014 Act; and
  - (e) a lifetime allowance excess lump sum referred to in section 166 (g) of the 2004 Act.
- (2) Paragraph (1) is subject to paragraphs (11) to (14) and regulation 15(6) to (8).
- (3) Subject to paragraphs (4) and (5), an authorised provider selected by the Scottish Ministers must provide a participator with an option to receive benefits under paragraph (1)(a) to (c)
- (4) Any annuity payable in accordance with paragraph (1)(a) or (b) must—
- (a) be incapable, in whole or in part, of surrender, assignation or commutation;
  - (b) commence not earlier than the participator's date of retirement for the purposes of, as the case may be, the 2011, 2013 or 2015 Regulations;
  - (c) be payable to the participator for life.
- (5) Any dependant's pension which is payable in respect of a participator is payable only on the death of the participator after the participator's retirement and is payable to the dependant for life: this is subject to paragraph ((6) lump sum commutation payment referred to in paragraph (1)(c) may be paid in respect of benefits payable under paragraph (1)(a), (b) or (d).
- (6) In the case of a person who is a child to whom—
- (a) Part H of the 2011 Regulations (child allowance) applies;
  - (b) regulation 2.E.9 or 3.E.9 of the 2013 Regulations (meaning of dependent child) applies; or
  - (c) regulation 121 of the 2015 Regulations (eligible child) applies,
- a pension referred to in paragraph (5) ceases to be payable when that person ceases to be a dependent child within the meaning of whichever of those Regulations applies.
- (7) An authorised provider selected by the Scottish Ministers may, in addition to providing a participator with benefits options under paragraph (2), may from 6th April 2015 provide a participator or a participator's dependant with alternative benefit options under paragraph (1)(d).
- (8) A participator must, not earlier than 3 months before the date from which the participator wishes those benefits under these Regulations to be provided, make a benefits election to the Scottish Ministers specifying—
- (a) whether and which benefits are to be provided under paragraph (3) or, alternatively, paragraph (8);
  - (b) the authorised provider who is to provide each benefit;
  - (c) for whom, if anyone, a dependant's benefit is to be provided;
  - (d) if more than one benefit is to be provided, either—
    - (i) the proportion of the amount secured by the total investments made under regulation 8(1), 9(2) or 10(4) that is to be applied to the purchase or arrangement of each of them; or
    - (ii) the dependants' benefits to be provided expressed as a percentage of the participator's benefits;
  - (e) in respect of every annuity to be provided—
    - (i) the annual rate of the annuity;
    - (ii) whether it is to be payable for life or for a fixed period;
    - (iii) whether its rate is to be fixed or vary in accordance with the Index or increase yearly by a specified percentage or (if lower) increase by the increase in the Index for the year in question;
    - (iv) as from 6th April 2015, whether the rate may reduce;
  - (f) in the case of a participator who chooses a life-time annuity referred to in paragraph (1)(a) or (b) and who dies within the period of 5 years beginning with the date on which the annuity commences, whether, if the annuity had continued at the rate in force at the

time of the participator's death, a lump sum is to be paid in accordance with regulation 16(3): the lump sum referred to in this sub-paragraph is a lump sum equal to the balance that would have been payable during the remainder of that period.

(9) More than one benefits election may be made under paragraph (9) and must—

- (a) be in writing, and
- (b) contain such information as the Scottish Ministers request.

(10) Upon receipt of a notice of election under paragraph (9), the Scottish Ministers must, as soon as reasonably practicable, realise the investments made under regulation 8(1), 9(2) or 10(4) and apply the proceeds in the manner specified in it.

(11) Where a participator dies before retirement or after retirement but before the benefits under this regulation are paid, the investments made under regulation 8(1), 9(2) or 10(4) must be realised and are, payable as a lump sum in accordance with regulation 15(3).

(12) The Scottish Ministers may realise the investments made under regulation 8(1), 9(2) or 10(4) and apply the proceeds to the purchase of benefits under these Regulations from an insurer in such form as appears to the Scottish Ministers to be suitable where the conditions in paragraph (14) are satisfied.

(13) Those conditions are—

- (a) the participator's retirement date falls on or after 1st December 1999; and
- (b) the participator has attained the age of 75 and has not given a notice of election under paragraph (9) before doing so.

(14) Paragraph (13) applies notwithstanding that benefits are payable to the participator under—

- (a) Part E of the 2011 Regulations (benefits for members);
- (b) regulation 2.D.1, 2.D.4, 2.D.5, 2.D.8, 2.D.10, 2.D.11, 3.D.1, 3.D.4, 3.D.5, 3.D.7, or 3.D.9 of the 2013 Regulations (normal retirement pensions, actuarially reduced pensions, ill health pensions and early retirement pensions); or
- (c) regulation 72, 78, 80, 81, 83, 89 or 93 of the 2015 Regulations (age retirement, early retirement, premature retirement, partial retirement and ill-health pensions).

### **Lump sum on Death**

**13.—**(1) Subject to paragraph (2), if a contributor who has elected under regulation 4(1)(b) to pay contributions to provide for a lump sum death benefit dies, the lump sum shall be payable.

(2) Any lump sum payable under paragraph (1) shall not exceed the amount permitted in accordance with Part 2 of Schedule 29 to the 2004 Act.

### **Repayment of investments in certain cases**

**14.—**(1) In the case of a person who—

- (a) ceases to be employed in pensionable employment;
- (b) has applied for a refund of contributions under—
  - (i) regulation E15 of the 2011 Regulations (early leavers' entitlement to refund of contributions);
  - (ii) regulation 2.C.18 or 3.C.16 of the 2013 Regulations (repayment of contributions) or
  - (iii) regulation 39 of the 2015 Regulations (eligibility for refund); and ] 1
- (c) has applied for and received such a refund of contributions,

the Scottish Ministers shall make arrangements for that person, subject to paragraph (2), to receive a lump sum representing the total realisable value of the investments made by the Scottish Ministers in respect of that person under regulation 8(1), 9(2) or 10(4) less the amount of tax chargeable under the 2004 Act in accordance with regulation 15(4).

(2) Where, in the circumstances mentioned in paragraph (1), contributions have been made by an employer, the Scottish Ministers shall make arrangements for that employer to receive a lump sum representing the total realisable value of the investments made by the Scottish Ministers in respect of contributions made by that employer under regulation 8(1) less the amount of tax chargeable under the 2004 Act .

### **Payments by the Scottish Ministers**

**15.**—(1) Where an authorised provider or a selected authorised provider fails to pay a benefit referred to in regulation 11(1) or a lump sum benefit referred to in regulation 13, the Scottish Ministers are liable to pay that amount.

(2) Where, on or after the date on which these Regulations come into force, a participator or a person entitled to a pension credit elects for benefits to be provided by an authorised provider than the one selected by the Scottish ministers, the Scottish Ministers shall not be liable under paragraph (1).

(3) Lumps sums payable as mentioned in regulation 12(9)(f) and (11) and regulation 13 , or paragraphs 3(2), 8 or 9 of the schedule, shall be paid—

- (a) to the deceased’s spouse or civil partner or surviving scheme partner; or
- (b) to the deceased’s personal executors if—
  - (i) there is no spouse, surviving scheme partner or civil partner; or
  - (ii) a notice has been given in accordance with any of the provisions referred to in paragraph (4) that the spouse, nominated partner or civil partner is not to receive the payment.

(4) The provisions referred to in paragraph (3)(b) are—

- (a) regulation F5 of the 2011 Regulations (payment of lump sum);
- (b) regulation 2.E.22 or 3.E.22 of the 2013 Regulations (payment of lump sum on death);
- (c) regulation 111 of the 2015 Regulations (lump sum on death);
- (d) paragraph 11 of Schedule 2.

(5) Lump sums payable under regulation 12(1)(b), (c) and (d) and regulation 14(1) must be paid to the participator.

(6) Subject to paragraph (7) below, in the case of a participator to whom any of the provisions referred to in paragraph (7) applies, the Scottish Ministers may realise such part of the investments made under these Regulations as is derived from any contributions made by the participator’s employer without purchasing an annuity and, in that event, the amount shall be payable to the participator as a lump sum.

(7) Those provisions are—

- (a) regulation E1 to E12 of the 2011 Regulations (which deal with benefits for members and preserved pensions);
- (b) regulation 2.D.1, 2.D.4, 2.D.5, 2.D.8, 2.D.10, 2.D.11, 3.D.1, 3.D.4, 3.D.5, 3.D.7, or 3.D.9 of the 2013 Regulations (normal retirement pensions, actuarially reduced pensions, ill health pensions and early retirement pensions);
- (c) regulation 72, 78, 80, 81, 83, 89 or 93 of the 2015 Regulations (age retirement, early retire-ment, partial retirement and ill-health pensions).

(8) In the case of a participator to whom any of the following provisions apply—

- (a) regulation E2(8), E3(7) or E12(7) of the 2013 Regulations (ill health pensions and preserved pension);
- (b) regulation 2.D.15 or 3.D.11 of the 2013 Regulations (option for members in serious ill health to exchange whole pension for lump sum),
- (c) regulation 108 of the 2015 Regulations (option for members in serious ill-health to exchange pension for lump sum),

the Scottish Ministers may realise the investments made under these Regulations without purchasing an annuity and, in that event, the proceeds shall be payable to the participator as a lump sum.

### **Information**

**16.**—(1) Persons making elections under these Regulations, and their employers, shall give the Scottish Ministers such information as they may reasonably require for the purposes of his functions under these Regulations.

(2) Without prejudice to the generality of paragraph (1), a person making—

- (a) an election under regulation 4(1)(b) or (6) to provide a lump sum death benefit; or
- (b) an election under regulation 6(2)(a),

shall, in particular, give the Scottish Ministers such information about their health as the Scottish Ministers may reasonably require.

(3) Where a person is entitled to a benefit under these Regulations he shall (whether or not he intends to rely on entitlement to an enhanced lifetime allowance, or to enhanced protection) give to the authorised provider such information as will enable the authorised provider to determine—

- (a) whether any lifetime allowance is payable in respect of the benefit and, if so,
- (b) the amount of that charge.

(4) If a person applying for a benefit under these Regulations intends to rely on entitlement to an enhanced lifetime allowance by virtue of any of the provisions listed in section 256(1) of the 2004 Act (enhanced lifetime allowance regulations), he shall give to the authorised provider—

- (a) the reference number issued by the Commissioners for Her Majesty's Revenue and Customs under the Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006(a) in respect of that entitlement;
- (b) the information referred to in paragraph (3).

(5) The information referred to in paragraph (3) or, as the case may be, paragraph (4) shall be given to the authorised provider—

- (a) at the time the person makes a claim for a benefit; or
- (b) where that information has not been provided at the time of making the claim, within such time as the authorised provider specifies in writing.

(6) Where the person fails to provide all, or part of, the information referred to in paragraph (3) or, as the case may be, paragraph (4) within the time limits specified by the authorised provider where relevant, the authorised provider may treat the whole of the benefit as a chargeable benefit and the charge may be paid on that basis.

### **Payments in respect of deceased persons**

**17.**—(1) This regulation applies where a person dies and the total of—

- (a) any sums that were due to him under these Regulations, and
- (b) any sums payable under these Regulations to his personal representatives,

does not exceed the amount specified in any order for the time being in force for the purposes of section 1 of the Administration of Estates (Small Payments) Act 1965(b) and applying in relation to the death.

(2) Where this regulation applies the Scottish Ministers may, without requiring the production of proof of title, pay any amount due under paragraph (1)(a) and (b)—

- (a) to the deceased's personal representatives; or

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(a) S.I. 2006/131.

(b) 1965 c.32.

(b) to the person, or to or among any one or more of any persons, appearing to them to be beneficially entitled to the estate  
and any person to whom such a payment is made, and not the Scottish Ministers, shall thereafter be liable to account for any amount so paid.

### **Pension sharing on divorce or nullity of marriage or dissolution or nullity of civil partnership**

18. The schedule shall have effect in relation to—  
(a) pension credit rights; or, as the case may be,  
(b) pension credit benefit payable,  
under the AVC scheme.

### **Benefits not assignable on bankruptcy**

19.—(1) On the bankruptcy or sequestration of a person entitled to benefit under these Regulations, no part of the benefit shall be paid to any trustee or other person acting on behalf of creditors, except as provided by paragraph (2).

(2) Where, following the bankruptcy or sequestration of any person entitled to benefit under these Regulations, a person makes or varies a debtor contribution order under section 90 or 95 respectively of the Bankruptcy (Scotland) Act 2016 or the court makes an income payments order under section 310 of the Insolvency Act 1986 that requires the Scottish Ministers to pay all or part of the benefit to the person's trustee in bankruptcy, the Scottish Ministers shall comply with that order.

### **Offset for Crime negligence or fraud**

20. Where, in the circumstances set out in regulation T6 of the 2011 Regulations regulation 2.J.7 or 3.J.7 of the 2013 Regulations reduction in benefits in cases where loss caused by member's crime, negligence or fraud) or paragraph 11 of schedule 3 of the 2015 Regulations (offset of benefits) , there has been a loss to public funds, the Scottish Ministers may, in relation to benefits which arise by virtue of the employer's contributions, reduce the amount of any benefit payable to or in respect of a person under these Regulations, to the extent set out, and subject to the conditions specified, in that regulation

### **Loss of rights to benefits**

21.—(1) Where paragraph (2) applies, the Scottish Ministers may direct that all or any part of any rights to benefit a person has under these Regulations and which arise by virtue of an employer's contributions paid on or after 13th July 1998 are to be forfeited.

(2) This paragraph applies where on or after 13th July 1998—

- (a) that person commits and is convicted of an offence referred to in—
  - (i) regulation T7 of the 2011 Regulations (loss of rights to benefits);
  - (ii) regulation 2.J.8 or 3.J.8 of the 2013 Regulations (forfeiture of rights to benefits), or
  - (iii) paragraph 12 of Schedule 3 to the 2015 Regulations (forfeiture of rights to benefits),  
and
- (b) the circumstances are such that a direction may be made by the Scottish Ministers under whichever of those provisions applies.

### **Determination of a person's rights and liabilities**

22.—(1) The Scottish Ministers shall determine any question concerning any person's rights or liabilities under these Regulations and their decision shall be final.

(2) Any dispute shall be resolved in accordance with the dispute resolution procedure issued from time to time by the Scottish Ministers in conformity with section 50 of the Pensions Act 1995.

### **Tax**

**23.**—(1) Benefits payable under these Regulations shall be paid net of any tax due under the 2004 Act.

(2) For the purposes of the 2004 Act, the administrator of the AVC scheme shall be the Scottish Ministers.

### **Option to persons detrimentally affected by these Regulations**

**24.**—(1) This regulation applies in relation to any benefit which is being paid or may become payable under the regulations amended by these Regulations to or in respect of a person who—

- (a) served in an employment or office which qualified the person to participate in the benefits provided under the regulations amended by these Regulations; and
- (b) ceased to serve in that employment or office before these Regulations came into force.

(2) Where, in a case to which this regulation applies, any provision of these Regulations would operate in relation to any person so as to place that person in a worse position than that person would have been in if that provision had not applied, that person may elect that the provision shall not apply by giving notice in accordance with paragraph

(3) A notice given pursuant to paragraph (2) is to be in writing and to be delivered to the Scottish Ministers within six months of the coming into force of these Regulations or such longer period as the Scottish Ministers may allow.

(4) An election pursuant to paragraph (2) is to have effect in relation to the benefit referred to in paragraph (1) only to the extent that such benefit has accrued by virtue of periods of service rendered prior to the cessation referred to in paragraph (1) (or, if there has been more than one such cessation, the last of them before the coming into force of these Regulations) and in determining entitlement to, and the amount of, the benefit to that extent, a person is to be treated as if that person had never recommenced service at any time after that cessation (or, as the case may be, the last such cessation).

### **Revocation**

**25.** The National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998(a) are revoked

A member of the Scottish Government

St Andrew's House,  
Edinburgh  
2017

We consent

Two of the Lords Commissioners of Her Majesty's Treasury  
2017

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(a) S.I. 1998/1451, as amended by S.S.I. 2001/465, 2004/62, 2005/544, 2006/307, 2008/92 and 2008/225.



**PENSION SHARING ON DIVORCE OR NULLITY OF MARRIAGE  
OR DISSOLUTION OR NULLITY OF CIVIL PARTNERSHIP**

**Discharge of liability in respect of a pension credit**

1.—(1) Where the Scottish Ministers discharge their liability in respect of a pension credit in accordance with sub-paragraph (2) of paragraph 1 of Schedule 5 to the 1999 Act (pension credits: mode of discharge: funded pension schemes — internal transfers) the appropriate rights shall be invested under paragraph 2 to provide for the purchase from an insurance company of an annuity which complies with the requirements of sub-paragraph (5) below.

(2) Where sub-paragraph (1) applies, the person entitled to the pension credit may elect, by giving written notice to the Scottish Ministers, the authorised fund or funds in which the appropriate rights are to be invested.

(3) The Scottish Ministers shall notify in writing the person who has made an election under sub-paragraph (2) of the Scottish Ministers acceptance of that election.

(4) Once an election has been made under sub-paragraph (2) it shall not be varied or cancelled after liability in respect of the pension credit has been discharged by the Scottish Ministers.

(5) An annuity complies with the requirements of this paragraph if—

- (a) it provides a pension which commences not earlier than normal benefit age and is payable to the pension credit member for life;
- (b) any dependant's pension which is payable under it is payable only on the death of the pension credit member after that member has reached normal benefit age and is payable to the dependant for life: this is subject to paragraph (6);
- (c) it is not capable in whole or in part of surrender, assignment or commutation.

(6) In the case of a person who is a child to whom—

- (a) Part H of the 2011 Regulations (child allowance) applies;
- (b) regulation 2.E.9 or 3.E.9 of the 2013 Regulations (meaning of dependent child) applies;  
or
- (c) regulation 121 of the 2015 Regulations (eligible child) applies,

a pension referred to in paragraph (5)(b) ceases to be payable when that person ceases to be a dependent child within the meaning of whichever of those Regulations applies.

(7) Sub-paragraph (5) does not apply where, in accordance with sub-paragraph (6) of paragraph 4, a pension credit member elects to be provided with alternative benefits referred to in sub-paragraph (7) of that paragraph.

**Investment of appropriate rights**

2. Any appropriate rights invested under this paragraph shall be invested by the Scottish Ministers as soon as is reasonably practicable in accordance with any notice given under sub-paragraph (2) of paragraph 1.

**Discharge of liability in respect of a pension credit following the death of the person entitled to the pension credit**

3.—(1) The Scottish Ministers shall following the death of the person entitled to a pension credit before liability in respect of that credit has been discharged, discharge their liability in respect of that credit by making a payment of a lump sum in accordance with paragraph (2)(a)(i) of

regulation 6 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000<sup>(a)</sup>.

(2) The lump sum payable under this paragraph shall be paid in accordance with regulation 15(3) (payments by the Scottish Ministers).

### **Pension Credit Benefit**

4.—(1) The pension credit benefit to which a pension credit member shall be entitled under the AVC scheme shall consist of a pension including, where appropriate, a pension commencement lump sum).

(2) A pension credit member shall be entitled to the payment of the pension credit benefit when he reaches normal benefit age.

(3) A pension payable in accordance with this paragraph shall be payable to the pension credit member for life.

(4) The value of the pension referred to in sub-paragraph (1) and any alternative benefit referred to in sub-paragraph (6) shall equal the value of the pension credit rights which have accrued to or in respect of the pension credit member.

(5) Not earlier than 3 months before the date he reaches normal benefit age, a pension credit member, by giving notice to the Scottish Ministers, shall make a benefits election which shall specify—

- (a) whether only a pension payable for life is to be provided;
- (b) whether a pension commencement lump sum and a pension payable for life is to be provided;
- (c) for whom, if anyone, a dependant's pension is to be provided;
- (d) if more than one pension is to be provided, either—
  - (i) the proportion of the amount secured by the total investments made under paragraph 2 that is to be applied to the purchase of each of them; or
  - (ii) the dependants' pensions to be provided expressed as a percentage of the pension for life;
- (e) in respect of every pension to be provided, whether the annual rate of the pension—
  - (i) is to be fixed;
  - (ii) is to vary in accordance with the Index; or
  - (iii) is to increase yearly by a specified percentage or, if lower than that percentage, by the increase in the Index for the year in question; and
- (f) the authorised provider who is to provide each pension.

(6) An authorised provider selected by the Scottish Ministers—

- (a) must provide a pension credit member with an option to receive the benefits referred to in sub-paragraph (5)(a), (b) and (c); and
- (b) may, as from 6th April 2015, provide such a member with an option to receive the alternative benefits referred to in sub-paragraph (7).

(7) Those alternative benefits are benefits that are equal in value to the benefits referred to in sub-paragraph (5)(a), (b) and (c) and which comply with the requirements of the 2014 Act.

(8) A member who wishes to be provided with such alternative benefits must elect to do so by giving the Scottish Ministers notice in writing not earlier than 3 months before attaining normal benefit age.

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(a) S.I. 2000/1053.

(9) For the purposes of this Schedule the authorised provider must meet the requirements referred to in regulations 12 to 14 of the Pension Sharing (Pension Credit Benefit) Regulations 2000<sup>(a)</sup>.

(10) Upon receipt of a notice of election under sub-paragraph (5) or as the case may be sub-paragraph (8), the Scottish Ministers shall, as soon as reasonably practicable, realise the investments made under paragraph 2 and—

- (a) where paragraph 5(b) does not apply, apply the proceeds to the purchase of an annuity from the authorised provider specified in the notice of election;
- (b) where paragraph 5(b) does apply—
  - (i) pay the percentage of the proceeds specified in the notice of election as a pension commencement lump sum; and
  - (ii) apply the balance of those proceeds to the purchase of an annuity from the authorised provider specified in that notice, and not otherwise
- (c) where sub-paragraph (8) applies, pay the alternative benefits the pension credit member has elected to be provided with.

(11) Where the conditions in sub-paragraph (12) are satisfied, the Scottish Ministers may realise the investments made under paragraph 2 and apply the proceeds to the purchase of benefits under these Regulations from an insurer that the Scottish Ministers consider—

- (a) suitable;
- (b) will satisfy the requirements of regulations 12 to 14 of the Pension Sharing (Pension Credit Benefit) Regulations 2000 will comply with the requirements of the 2014 Act, and
- (c) will fully discharge its liability for payment of benefits under these Regulations.

(12) Those conditions are that the pension credit member has—

- (a) attained normal benefit age on or after 1st May 2001; and
- (b) attained the age of 75 and not given notice of an election under sub-paragraph (5) before doing so.

(13) Paragraph (11) applies notwithstanding that the benefits are payable to a pension credit member by virtue of that member being a member of the NHS Pension Scheme under—

- (a) Part E of the 2011 Regulations (benefits for members and preserved pension);
- (b) regulation 2.D.1, 2.D.4, 2.D.5, 2.D.8, 2.D.10, 2.D.11, 3.D.1, 3.D.4, 3.D.5, 3.D.7, or 3.D.9 of the 2013 Regulations (normal retirement pensions, actuarially reduced pensions, ill health pensions and early retirement pensions), or
- (c) regulations 72, 78, 80, 81, 83, 89, or 93 of the 2015 regulations (age retirement, early retirement, partial retirement and ill-health pensions)

## **Outward Transfers**

**5.—**(1) The Scottish Ministers shall, upon receipt of a notice in writing under section 101F(1) of the 1993 Act (power to give transfer notice) from an eligible member, pay a transfer value in accordance with the provisions of Chapter II of Part IV A of the 1993 Act (requirements relating to pension credit benefit: transfer values) and Part III of the Pension Sharing (Pension Credit Benefit) Regulations 2000 (provision of benefits).

(2) The transfer value referred to in sub-paragraph (1) shall represent the value of the appropriate rights invested under paragraph 2 calculated in accordance with regulation 24 of the Pension Sharing (Pension Credit Benefit) Regulations 2000 (manner of calculation and verification of cash equivalents).

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(a) S.I. 2000/1054.

### **Commutation of the whole of pension credit benefit before normal benefit age**

6.—(1) A pension credit member shall be entitled to the commutation of the whole of his pension credit benefit before having reached normal benefit age in the circumstances referred to in paragraphs (b), (e) and (f) of the lump sum rule in section 166(1) of the 2004 Act .

(2) In the case where a pension credit benefit is payable in accordance with this paragraph, the Scottish Ministers may realise the investments made under paragraph 2 without purchasing an annuity and, in that event, the proceeds shall be payable to the pension credit member as a lump sum.

### **Commutation of the whole of pension credit benefit at normal benefit age**

7.—(1) A pension credit member shall be entitled to the commutation of the whole of his pension credit benefit at normal benefit age in the circumstances described in sub-paragraph (2).

(2) The circumstances described in this sub-paragraph are—

- (a) the pension credit member is suffering from serious ill-health at normal benefit age; or
- (b) the total benefits payable meet the requirements of regulation 12 of the 2009 Regulations.

(3) In the case of a pension credit member to whom this paragraph applies, the Scottish Ministers may realise the investments made under paragraph 2 without purchasing an annuity and the proceeds shall be payable to the pension credit member as a lump sum.

(4) In this paragraph “serious ill-health” means ill health which is such as to give rise to a life expectancy of less than one year from the date on which the payment of the pension credit benefit of the pension credit member is applied for.

### **Pension credit member dies before pension credit benefit becomes payable**

8. If a pension credit member dies before his pension under the AVC scheme becomes payable under paragraph 4 of the schedule, the Scottish Ministers may realise the investments made under paragraph 2 without purchasing an annuity and the proceeds shall be payable as a lump sum in accordance with regulation 15(3) of these Regulations.

### **Pension Credit member dies after pension credit benefit becomes payable**

9. If a pension credit member dies within the period of 5 years beginning with the date upon which payments of pension credit benefit under paragraph 4 of the schedule commence, the balance that would have been payable during the remainder of that period, if the payments of pension credit benefit had continued at the rate in force at the time of the pension credit member’s death, shall be payable as a lump sum in accordance with regulation 15(3) of these Regulations.

### **Excluded membership**

10. Where a pension credit member is also a member of the AVC scheme, any period of time which may count for any purpose in connection with his pension credit benefit shall not be taken into account in relation to ascertaining his entitlement to, or as the case may be, the calculation of, benefits other than pension credit benefits under the AVC scheme.

### **Payment of lump sum on death**

11.—(1) Where a lump sum is payable under any of paragraphs 3, 8 or 9 of the schedule, unless sub-paragraph (2) or (3) below applies, the lump sum shall be paid to the personal representative of the person entitled to a pension credit or, as the case may be, the pension credit member.

(2) Where the person entitled to a pension credit or, as the case may be, the pension credit member dies and leaves a widow, widower, surviving scheme partner or surviving civil partner , the lump sum may be paid to the widow, widower surviving scheme partner or surviving civil partner, unless—

(a) the person entitled to a pension credit or, as the case may be, the pension credit member has given notice to the Scottish Ministers in accordance with sub-paragraph (4) below that the widow, widower or surviving civil partner is not to receive the payment, and has not revoked that notice; or

(b) sub-paragraph (3) below applies.

(3) Where the person entitled to a pension credit or, as the case may be, the pension credit member has given notice to the Scottish Ministers in accordance with sub-paragraphs (4) and (5) below that the lump sum is to be paid to a person specified in the notice, and has not revoked that notice, the lump sum may be paid to that person unless—

(a) that person has died before the payment can be made; or

(b) payment to that person is not, in the opinion of the Scottish Ministers, reasonably practicable.

(4) Notice to the Scottish Ministers for the purpose of sub-paragraph (2) or (3) above—

(a) shall be given only by a person entitled to a pension credit or, as the case may be, a pension credit member under the AVC scheme;

(b) shall be given in writing; and

(c) may at any time be revoked in writing; and

(d) shall nominate the whole of the lump sum to a nominee and, in the case of a notice that specifies more than one person, shall also specify the percentage of the lump sum to be paid to each such person,

and a person entitled to a pension credit or, as the case may be, a pension credit member who revokes such a notice may give further notice for the purpose of the one of those sub-paragraphs.

(5) A notice given under sub-paragraph (3) must specify one or more persons who may be—

(a) an individual;

(b) a body corporate;

(c) an unincorporated body; or

(d) the member's executors,

but must not specify one or more persons referred to in sub-paragraph (a) together with a body referred to in either of sub-paragraph (b) or (c).

### **Miscellaneous provisions**

**12.** Regulations 17 (payments in respect of deceased persons), 19 (benefits not assignable on bankruptcy) and 22 (determination of questions) shall apply in respect of a person entitled to a pension credit or, as the case may be, a pension credit member.

### **Offset for crime, negligence or fraud**

**13.—**(1) This paragraph applies in relation to pension credit benefit which arises by virtue of pension credit rights which are derived from an employer's contributions paid on or after 13th July 1998 in respect of the relevant participator.

(2) Where paragraph (3) applies, the Scottish Ministers may reduce the amount of any pension credit benefit payable to or in respect of a pension credit member under this Schedule to the extent set out, and subject to the conditions specified, in whichever of the regulations referred to in that paragraph applies.

(3) This paragraph applies where on or after 13th July 1998—

(a) in respect of a relevant pension credit member, the circumstances set out in whichever of the following regulations applies have occurred—

(i) regulation T6 of the 2011 Regulations (offset for crime, negligence or fraud);

- (ii) regulation 2.J.7 or 3.J.7 of the 2013 Regulations (reduction in benefits in cases where loss caused by member's crime, negligence or fraud);
  - (iii) paragraph 11 of schedule 3 of the 2015 Regulations (offset of benefits), and
- (b) there has been a loss to public funds.

(4) In this paragraph—

“relevant pension credit member” means a pension credit member who is also a member of the NHS Pension Scheme;

“relevant participator” means the participator in relation to whose rights under the AVC scheme the pension sharing order or provision, which gave the pension credit member in question entitlement to a pension credit, was made.

### **Loss of rights to benefits**

**14.**—(1) Where paragraph (2) applies, the Scottish Ministers may direct that all or any part of any rights to pension credit benefit a pension credit member has under this Schedule and which arise by virtue of an employer's contributions paid on or after 13th July 1998 in respect of a relevant participator are to be forfeited.

(2) This paragraph applies where on or after 13th July 1998—

- (a) that pension credit member commits and is convicted of an offence referred to in—
  - (i) regulation T7 of the 2011 Regulations (loss of rights to benefits);
  - (ii) regulation 2.J.8 or 3.J.8 of the 2013 Regulations (forfeiture of rights to benefits), or
  - (iii) paragraph 12 of schedule 3 of the 2015 Regulations (forfeiture of rights to benefits), and
- (b) the circumstances are such that a direction may be made by the Scottish Ministers under whichever of those provisions applies.

(3) In this paragraph, “relevant participator” means the participator in relation to whose rights under the AVC scheme the pension sharing order or provision, which gave the pension credit member in question entitlement to a pension credit, was made.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations largely re-enact the National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998 with consolidation of amendments to that instrument.