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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No.**

**NATIONAL HEALTH SERVICE**

**The National Health Service (Superannuation Scheme), Injury Benefits and AVC (Scotland) Amendment Regulations 2016**

<i>Made</i>	- - - -	2016
<i>Laid before the Scottish Parliament</i>		2016
<i>Coming into force</i>		2016

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 10 of, and Schedule 3 to, the Superannuation Act 1972<sup>(a)</sup>.

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

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.

**Citation and commencement**

**1.**—(1) These Regulations may be cited as the National Health Service (Superannuation Scheme), Injury Benefits and AVC Scheme (Scotland) Amendment Regulations 2016

(2) These Regulations come into force on .....

PART 1

**Amendment of the National Health Service Superannuation Scheme (Scotland) Regulations 2011**

**2.** The National Health Service Superannuation Scheme (Scotland) Regulations 2011<sup>(c)</sup> are amended in accordance with regulations 3 to 15

**Amendment of regulation A2.**

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(a) 1972 c.11. Section 10 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c.7) sections 4(2), 8(5) and (6), the Pension Schemes Act 1993 (c.48), Schedule 8, paragraph 7 and the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001/3649), article 108. The functions of the Secretary of State, in or as regards Scotland, were transferred to the Scottish Ministers by virtue of article 2 of and Schedule 1 to the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750).

(b) See the Superannuation Act 1972, section 10(1). This function was transferred to the Treasury by virtue of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I. 1981/1670), article 2 and is still exercisable by virtue of S.I. 1999/1750, article 2 and Schedule 1.

(c) S.S.I. 2011/117; as amended by S.S.I. 2011/173 and 364, 2012/69, 2013/70, 109 and 168, 2014/43 and 154, 2015/95, 96 and 145 and 2016/98.

**3. In regulation A2 (interpretation)—**

(a) for the definition of “buy-out policy”, substitute—

“buy-out policy” means a policy of insurance or annuity contract that is appropriate for the purposes of section 19 of the 1993 Act<sup>(a)</sup> and satisfies any requirement of Her Majesty’s Revenue and Customs: and “buy-out” shall be construed accordingly;”;

(b) for the definition of “cash equivalent”, substitute—

“cash equivalent” is to be construed in accordance with Chapter 1 of Part 4ZA of the 1993 Act;”;

(c) at the appropriate place in the alphabetical order, insert—

““contracted-out employment” has the meaning given in section 8 of the 1993 Act;

“shared parental leave” has the meaning given in regulation 3(1) of the Shared Parental Leave Regulations 2014<sup>(b)</sup>;”;

**Amendment to Regulation B4**

**4. In regulation B4 (Opting out of this section of the Scheme) delete paragraph (7) and insert the following paragraphs:**

“(7) This paragraph applies if the person opts out of this section of the scheme in relation to NHS pensionable employment –

(a) before the end of 3 months after that person’s first day of that pensionable employment (or within any longer period the scheme manager considers appropriate); or

(b) before the end of 3 months after the automatic re-enrolment date (or within any longer period the scheme manager considers appropriate);

(7A) If paragraph (7)(a) applies the person is taken never to have been in pensionable service in this section of the scheme in relation to that service.

(7B) If paragraph (7)(b) applies the person is taken never to have been in pensionable service in this section of the scheme in relation to that service during the period referred to in paragraph 7(b).”.

**Amendment to Regulation D**

**5. In regulation D1 (contributions by members)—**

(a) in paragraph (2)—

(i) in paragraph (2)(a) for “2015-2016”, substitute “2016-2017”;

(ii) in paragraph (2)(b) for 2016-2017 substitute “2017 -2018”; and

(iii) delete Tables 1 and 2 and substitute—

**“Table 1 Scheme Year 2016 -2017**

<i>Column 1 Pensionable pay band</i>	<i>Column 2 Contribution percentage rate</i>
Up to £16,128	5.2%
£16,129 to £21,817	5.8%

(a) Section 19 is concerned with the discharge of liability where a guaranteed minimum pension is secured by insurance policies or annuity contracts.

(b) S.I. 2014/3050.

£21,818 to £27,360	7.3%
£27,361 to £50,466	9.5%
£50,467 to £72,050	12.7%
£72,051 to £112,490	13.7%
£112,491 and above	14.7%

**Table 2 Scheme Year 2017 -2018**

<i>Column 1 Pensionable pay band</i>	<i>Column 2 Contribution percentage rate</i>
Up to £16,528	5.2%
£16,529 to £22,217	5.8%
£22,218 to £27,634	7.3%
£27,635 to £50,971	9.5%
£50,972 to £72,770	12.7%
£72,771 to £113,625	13.7%
£113,626 and above	14.7%

”

**(b)** delete paragraph (2A) and substitute

“(2A) where paragraph (20), (21) or (25) applies a member’s contribution rate is the percentage specified in column 2 of Table 2 in paragraph (2) in respect of the corresponding pay band specified in column 1 of that table in which the member’s pensionable pay falls.

**Amendment to Regulation K1**

**6.** In regulation K1 (Contracting- out conditions to be overriding), for sub-paragraph (c) of paragraph (2), substitute—

“(c) if a pension is forfeited for the reasons specified in paragraph (1)(b) or (c) or paragraph (2) of regulation T7.”.

**Amendment to regulation K4**

**7.** .—(1) Regulation K4 (early leavers) is amended as follows.

(2) For paragraph (1), substitute—

“(1) This paragraph, subject to paragraph (2), applies if a member who is under guaranteed minimum pension age either—

(a) leaves contracted-out employment under this Section of the scheme before 6th April 2016, or

(b) was in contracted-out employment under this Section of the scheme on 5th April 2016 but leaves pensionable employment on, or after, 6th April 2016.

(1A) Where paragraph (1) applies the member’s guaranteed minimum pension at the date of leaving will be increased, when the member reaches guaranteed minimum pension age or dies (if earlier), by the appropriate percentage specified in relation to each relevant year

in the last order under section 148 of the Social Security Administration Act 1992 (revaluation of earnings factors) to come into force before the tax year in which the member reaches guaranteed minimum pension age or dies (if earlier).”.

(3) In paragraph (3), for “If a member returns to contracted-out employment under this Section of the scheme within 6 months after leaving, the two periods of contracted-out” substitute “If a member to whom paragraph (1) applies returns to pensionable employment under this Section of the scheme within 6 months after leaving, the two periods of”.

#### **Amendment to regulation K5**

**8.**—(1) For paragraph (1) of regulation K5 (guaranteed minimum pensions transferred to this Section of the scheme), substitute—

“(1) This paragraph applies where a guaranteed minimum pension has been transferred to this Section of the scheme and the member—

(a) subsequently leaves contracted-out employment under this Section of the scheme before 6 April 2016, or

(b) was in contracted-out employment under this Section of the scheme on 5th April 2016 but leaves pensionable employment on, or after, 6th April 2016.

(1A) Where paragraph (1) applies, the guaranteed minimum pension transferred to this Section of the scheme will be increased for each complete tax year after the date of leaving under this Section of the scheme in which the transferred guaranteed minimum pension accrued, until the member reaches guaranteed minimum pension age or dies (if earlier).”.

#### **Amendment of regulation M1**

**9.**—(1) Regulation M1 (member’s right to transfer or buy out) is amended as follows.

(2) For sub-paragraphs (a) and (b) of paragraph (2), substitute—

“(a)to purchase one or more buy-out policies from one or more insurance companies chosen by the member that satisfies the requirements set out in regulation 12(2) of the Occupational Pension Schemes (Transfer Values) Regulations 1996;

(b)to acquire rights under a personal pension scheme or another occupational pension scheme;”.

(3) After paragraph (2), insert—

“(2A) Any use of the cash equivalent of a member’s rights under paragraph (2) must satisfy the requirements of Chapter 1 of Part 4ZA of the 1993 Act.”.

#### **Amendment of regulation P1**

**10.** In paragraphs (1) and (4) of regulation P1 (absence because of illness or injury or certain types of leave), for “parental or adoption leave” substitute “, parental leave, shared parental leave or adoption leave”.

#### **Amendment of regulation Q1**

**11.** For paragraph (16) of regulation Q1 (right to buy additional service), substitute—

“(16) Where a member, following a break in pensionable employment in respect of which the member received a refund of contributions which has not been repaid, rejoins this Section of the scheme, the member may buy all or any part of the previous pensionable

service up to, and including, 5th April 2016 provided that the employment giving rise to that service was not contracted-out employment.”.

**Amendment of regulation R7**

**12.** For sub-paragraph (b) of paragraph (8) of regulation R7 (former members of health service schemes), substitute—

“(b) on the day the member becomes an active member of the 2015 Scheme either—

(i) paragraph 2 of Schedule 7 to the 2013 Act, or

(ii) paragraph 2 of Schedule 7 to the Public Service Pensions Act (Northern Ireland) 2014(a),

applies to the period of service in respect of which that transfer value payment is made.”.

**Amendment to regulation T7**

**13.** For paragraph (3) of regulation T7 (loss of rights to benefits), substitute—

“(3) A guaranteed minimum pension may be forfeited only if paragraph (1)(b) or (c) or paragraph (2) applies.”.

**Amendment of regulation T8**

**14.** For sub-paragraph (a) of paragraph (3) of regulation T8 (commutation of trivial pensions), substitute—

“(a) the preservation requirements; and”.

**Amendment to Schedule 1 (medical and dental practitioners)**

**15.** In paragraph 14(2) (contributions to this Section of the scheme) of Schedule 1 (medical and dental practitioners)—

(a) at end of sub paragraph (2)(c) insert —

“(d) in respect of the 2017-18 scheme year, table 4”;

(b) after Table 3, insert—

**“Table 4 Scheme Year 2017 -2018**

<i>Column 1 Pensionable earnings band</i>	<i>Column 2 Contribution percentage rate</i>
Up to £16,528	5.2%
£16,529 to £22,217	5.8%
£22,218 to £27,634	7.3%
£27,635 to £50,971	9.5%
£50,972 to £72,770	12.7%
£72,771 to £113,625	13.7%
£113,626 and above	14.7%

”

**PART 2**

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(a) 2014 c.2.

## **Amendment of the National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013**

**16.** The National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013<sup>(a)</sup> are amended in accordance with regulations 17 to 45.

### **Amendment of regulation 2.A.1**

**17.** In regulation 2.A.1 (interpretation: general)—

(a) for the definition of “buy-out policy”, substitute—

““buy-out policy” means a policy of insurance or annuity contract that is appropriate for the purposes of section 19 of the 1993 Act and satisfies any requirement of Her Majesty’s Revenue and Customs: and “buy-out” shall be construed accordingly;”;

(b) for the definition of “cash equivalent”, substitute—

““cash equivalent” is to be construed in accordance with Chapter 1 of Part 4ZA of the 1993 Act;”;

(d) omit the definitions of “safeguarded percentage” and “safeguarded rights”;

(e) at the appropriate place in the alphabetical order, insert—

“shared parental leave” has the meaning given in regulation 3(1) of the Shared Parental Leave Regulations 2014<sup>(b)</sup>;

### **Amendment of regulation 2.A.5**

**18.**—(1) Regulation 2.A.5 (pensionable service: breaks in service) is amended as follows.

(2) In sub-paragraph (e) of paragraph (1), after “leave” insert “or shared parental leave”.

(3) In sub-paragraph (e) of paragraph (8), after “leave” insert “or shared parental leave”.

### **Amendment of regulation 2.A.10**

**19.** In sub-paragraph (e) of paragraph (1) of regulation 2.A.10 (pensionable pay: breaks in service), after “leave” insert “or shared parental leave”.

### **Amendment of regulation 2.C.2**

**20.** For paragraph (2) of regulation 2.C.2 (Contribution rate for members other than non-GP providers) substitute the following:

“(2) Where paragraph (2) of regulation 2.C.3 applies a member’s contribution rate—

(a) for the scheme year 2016-17 is the percentage specified in column 2 of table 1 in respect of the corresponding pensionable pay band specified in column 1 of that table into which the member's pensionable pay falls;

(b) for the scheme year 2017-18 is the percentage specified in column 2 of table 2 in respect of the corresponding pensionable pay band specified in column 1 of that table into which the member's pensionable pay falls.

## **Table 1 Scheme Year 2016 -2017**

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(a) S.S.I. 2013/174.

(b) S.I. 2014/3050.

<i>Column 1 Pensionable pay band</i>	<i>Column 2 Contribution percentage rate</i>
Up to £16,128	5.2%
£16,129 to £21,817	5.8%
£21,818 to £27,360	7.3%
£27,361 to £50,466	9.5%
£50,467 to £72,050	12.7%
£72,051 to £112,490	13.7%
£112,491 and above	14.7%

**Table 2 Scheme Year 2017 -2018**

<i>Column 1 Pensionable pay band</i>	<i>Column 2 Contribution percentage rate</i>
Up to £16,528	5.2%
£16,529 to £22,217	5.8%
£22,218 to £27,634	7.3%
£27,635 to £50,971	9.5%
£50,972 to £72,770	12.7%
£72,771 to £113,625	13.7%
£113,626 and above	14.7%

(3) Where paragraph (16),(17), (19) or 20 of 2.C.3 applies then contribution rate is the percentage specified in column 2 of table 2 in respect of the corresponding pensionable pay band specified in column 1 of that table into which the member's pensionable pay falls.”.

#### **Amendment of regulation 2.C.18**

**21.**—(1) Regulation 2.C.18 (repayment of contributions) is amended as follows.

(2) In sub-paragraph (b) of paragraph (1), for “Chapter 5 of Part 4” substitute “Chapter 2 of Part 4ZA”.

(3) In paragraph (3), for “Chapter 5 of Part 4” substitute “Chapter 2 of Part 4ZA”.

(4) In paragraph (8), for “Chapter 5 of Part 4” substitute “Chapter 2 of Part 4ZA”.

#### **Amendment of regulation 2.D.21**

**22.** In sub-paragraph (c) of paragraph (9) of regulation 2.D.21 (guaranteed minimum pensions etc), for “regulation 60 of the Occupational Pension Schemes (Contracting-out) Regulations 1996” substitute “regulation 25 of the Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015”(a).

#### **Amendment of regulation 2.E.24**

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(a) S.I. 2015/1677.

**23.** For sub-paragraph (d) of paragraph (1) of regulation 2.E.24 (death during period of absence), substitute—

“(d)is on paternity leave, parental leave or shared parental leave,”.

#### **Amendment of regulation 2.E.27**

**24.** For paragraph (3) of regulation 2.E.27 (guaranteed minimum pensions for surviving spouses and civil partners), substitute—

“(3) Paragraph (2) does not apply to a pension that is forfeited following a conviction for any of the following—

(a)treason;

(b)an offence under the Official Secrets Acts 1911 to 1989 referred to in regulation 2.J.8(2)(b); or

(c)murder or manslaughter or any other offence of unlawful killing referred to in regulation 2.J.8(4).”.

#### **Amendment of regulation 2.F.1**

**25—**(1) Regulation 2.F.1 (introduction: rights to transfer value payment) is amended as follows.

(2) In paragraph (1), for “Chapter 4 of Part 4 of the 1993 Act (transfer values)” substitute “Chapter 1 of Part 4ZA of the 1993 Act (transfer rights: general)”.

(3) In paragraph (2), for “Chapter 5” substitute “Chapter 2”.

(4) In paragraph (3)—

(a)in sub-paragraph (a)(1), for “Chapter 4” substitute “Chapter 1”;

(b)in sub-paragraph (b), for “Chapter 5” substitute “Chapter 2”.

#### **Amendment of regulation 2.F.5**

**26.—**(1) Regulation 2.F.5 (ways in which transfer value payments may be applied) is amended as follows.

(2) In paragraph (1), for “If Chapter 4 of Part 4 of the 1993 Act applies to a member, that member” substitute “A deferred member”.

(3) After paragraph (5), add—

“(6) Paragraph (1) applies whether or not the deferred member is entitled to a guaranteed cash equivalent transfer value payment under Chapter 1 of Part 4ZA of the 1993 Act.”.

#### **Amendment of regulation 2.F.9**

**27..** For paragraph (ii) of sub-paragraph (c) of paragraph (1) of regulation 2.F.9 (procedure for applications under regulation 2.F.8), substitute—

“(ii)where the applicant is not eligible to be an active member of this Section of the Scheme and the application is made in respect of a transfer from a corresponding 2008 Scheme, during the period of one year beginning with the day on which the applicant becomes eligible to be an active member of the 2015 Scheme if either—

(aa) paragraph 2 of Schedule 7 to the 2013 Act, or

(bb) paragraph 2 of Schedule 7 to the Public Service Pensions Act (Northern Ireland) 2014(a),

applies to the period of service in respect of which that transfer value payment is made.”.

#### **Amendment of regulation 2.J.6**

**28.** Omit sub-paragraph (a) of paragraph (2) of regulation 2.J.6 (commutation of small pensions).

#### **Amendment of regulation 2.J.7**

**29.** For sub-paragraph (a) of paragraph (2) of regulation 2.J.7 (reduction in benefits in cases where loss caused by member’s crime, negligence or fraud), substitute—

“(a)is a guaranteed minimum pension, or”.

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(a) 2014 c. 2.



### **Amendment of regulation 2.J.8**

**30.** For paragraph (6) of regulation 2.J.8 (forfeiture of rights to benefits), substitute—  
“(6) A guaranteed minimum pension may be forfeited only if paragraph (1) applies in the case of an offence within paragraph (2)(b) or to which paragraph (4) applies.”.

### **Amendment of regulation 3.A.1**

**31.** In paragraph (1) of regulation 3.A.1 (interpretation of Part 3: general)—  
(a) for the definition of “buy-out policy”, substitute—  
““buy-out policy” means a policy of insurance or annuity contract that is appropriate for the purposes of section 19 of the 1993 Act and satisfies any requirement of Her Majesty’s Revenue and Customs: and “buy-out” shall be construed accordingly;”;  
(b) for the definition of “cash equivalent”, substitute—  
““cash equivalent” is to be construed in accordance with Chapter 1 of Part 4ZA of the 1993 Act;”;  
(d) omit the definitions of “safeguarded percentage” and “safeguarded rights”;  
(e) at the appropriate place in the alphabetical order insert—  
“shared parental leave” has the meaning given in regulation 3(1) of the Shared Parental Leave Regulations 2014<sup>(a)</sup>”.

### **Amendment of regulation 3.A.5**

**32.**—(1) Regulation 3.A.5 (pensionable service: breaks in service) is amended as follows.  
(2) In sub-paragraph (e) of paragraph (1), after “leave” insert “or shared parental leave”.  
(3) In sub-paragraph (e) of paragraph (7), after “leave” insert “or shared parental leave”.

### **Amendment of regulation 3.A.8**

**33.** In sub-paragraph (e) of paragraph (1) of regulation 3.A.8 (pensionable earnings: breaks in service) after “leave” insert “or shared parental leave.”.

### **Amendment of regulation 3.C.2**

**34.** In paragraph (13) of regulation 3.C.2 (Member’s contribution rate)

(a) after sub paragraph (b) add  
“ (c) in respect of the scheme year 2016-17, table 3.  
(d) in respect of the scheme year 2017 -2018 table 4.”.

(b) after Table 2 add the following:

**“Table 3 Scheme Year 2016 -2017**

<i>Column 1</i> <i>Pensionable earnings band</i>	<i>Column 2</i> <i>Contribution percentage rate</i>
Up to £16,128	5.2%
£16,129 to £21,817	5.8%
£21,818 to £27,360	7.3%
£27,361 to £50,466	9.5%
£50,467 to £72,050	12.7%

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(a) S.I. 2014/3050.

£72,051 to £112,490	13.7%
£112,491 and above	14.7%

**Table 4 Scheme Year 2017 -2018**

<i>Column 1 Pensionable earnings band</i>	<i>Column 2 Contribution percentage rate</i>
Up to £16,528	5.2%
£16,529 to £22,217	5.8%
£22,218 to £27,634	7.3%
£27,635 to £50,971	9.5%
£50,972 to £72,770	12.7%
£72,771 to £113,625	13.7%
£113,626 and above	14.7%

**Amendment of regulation 3.C.7**

**35.** In sub-paragraph (e) of paragraph (1) of regulation 3.C.7 (effect of member being absent or leaving and rejoining this section of the scheme during the contribution option period) after “leave” insert “or shared parental leave”.

**Amendment of regulation 3.C.16**

- 36.**—(1) Regulation 3.C.16 (repayment of contributions) is amended as follows.  
(2) In sub-paragraph (b) of paragraph (1), for “Chapter 5 of Part 4” substitute “Chapter 2 of Part 4ZA”.  
(3) In paragraph (3), for “Chapter 5 of Part 4” substitute “Chapter 2 of Part 4ZA”.  
(4) In paragraph (8), for “Chapter 5 of Part 4” substitute “Chapter 2 of Part 4ZA”.

**Amendment of regulation 3.D.17**

**37.** In sub-paragraph (c) of paragraph (9) of regulation 3.D.17 (guaranteed minimum pensions etc), for “regulation 60 of the Occupational Pension Schemes (Contracting-out) Regulations 1996” substitute “regulation 25 of the Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015”<sup>(a)</sup>.

**Amendment of regulation 3.E.24**

**38.** In sub-paragraph (d) of paragraph (1) of regulation 3.E.24 (death during period of absence), for “or parental leave” substitute “, parental leave or shared parental leave”.

**Amendment of regulation 3.E.27**

**39.** For paragraph (3) of regulation 3.E.27 (guaranteed minimum pensions for surviving spouses and civil partners), substitute—  
“(3) Paragraph (2) does not apply to a pension that is forfeited following a conviction for any of the following—

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(a) S.I. 2015/1677.

- (a) treason;
- (b) an offence under the Official Secrets Acts 1911 to 1989 referred to in regulation 3.J.8(2)(b); or
- (c) murder or manslaughter or any other offence of unlawful killing referred to in regulation 3.J.8(4).”.

#### **Amendment of regulation 3.F.1**

- 40**—(1) Regulation 3.F.1 (introduction: rights to transfer value payment) is amended as follows.
- (2) In paragraph (1), for “Chapter 4 of Part 4 of the 1993 Act (transfer values)” substitute “Chapter 1 of Part 4ZA of the 1993 Act (transfer rights: general)”.
  - (3) In paragraph (2), for “Chapter 5” substitute “Chapter 2”.
  - (4) In paragraph (3)—
    - (a) in sub-paragraph (a), for “Chapter 4” substitute “Chapter 1”;
    - (b) in sub-paragraph (b), for “Chapter 5” substitute “Chapter 2”.

#### **Amendment of regulation 3.F.5**

- 41.** (1) Regulation 3.F.5 (ways in which transfer value payments may be applied) is amended as follows.
- (2) In paragraph (1), for “If Chapter 4 of Part 4 of the 1993 Act applies to a member, that member” substitute “A deferred member”.
  - (3) After paragraph (5), add—

“(6) Paragraph (1) applies whether or not the deferred member is entitled to a guaranteed cash equivalent transfer value payment under Chapter 1 of Part 4ZA of the 1993 Act.”.

#### **Amendment of regulation 3.F.9**

- 42.** For paragraph (ii) of sub-paragraph (c) of paragraph (1) of regulation 3.F.9 (procedure for applications under regulation 3.F.8), substitute—

“(ii) where the applicant is not eligible to be an active member of this Section of the Scheme and the application is made in respect of a transfer from a corresponding 2008 Scheme, during the period of one year beginning with the day on which the applicant becomes eligible to be an active member of the 2015 Scheme if either—
  - (aa) paragraph 2 of Schedule 7 to the 2013 Act, or
  - (bb) paragraph 2 of Schedule 7 to the Public Service Pensions Act (Northern Ireland) 2014,applies to the period of service in respect of which that transfer value payment is made.”.

#### **Amendment of regulation 3.J.6**

- 43.** Omit sub-paragraph (a) of paragraph (2) of regulation 3.J.6 (commutation of small pensions).

#### **Amendment of regulation 3.J.7**

- 44.** For sub-paragraph (a) of paragraph (2) of regulation 3.J.7 (reduction in benefits in cases where loss caused by member’s crime, negligence or fraud), substitute—

“(a) is a guaranteed minimum pension, or”.

#### **Amendment of regulation 3.J.8**

- 45.** For paragraph (6) of regulation 3.J.8 (forfeiture of rights to benefits), substitute—

“(6) A guaranteed minimum pension may be forfeited only if paragraph (1) applies in the case of an offence within paragraph (2)(b) or to which paragraph (4) applies.”.

### **PART 3**

## **Amendment of the National Health Service (Scotland) (Injury Benefits) Regulations 1998**

**46.** The National Health Service (Scotland) (Injury Benefits) Regulations 1998<sup>(a)</sup> are amended in accordance with regulation 47.

### **Amendment of regulation 4**

**47** (1) Regulation 4 (scale of benefits) is amended as follows.

(2) In paragraph (vi) of sub-paragraph (b) of paragraph (6), after “ended” insert “: this is subject to paragraphs (6B) to (6D);”.

(3) After paragraph (6), insert—

“(6B) Paragraph (6C) applies where, immediately prior to receiving employment and support allowance referred to in paragraph (vi) of sub-paragraph (b) of paragraph (6) of this regulation (the “replacement benefit”), a person was in receipt of a benefit referred to in paragraph (ii) or (iii) of that sub-paragraph (the “superseded benefit”).

(6C) In the circumstances referred to in paragraph (6B), subject to paragraph (6D), the rate of replacement benefit taken into account for the purpose of calculating a benefit in accordance with this regulation shall be the rate of the superseded benefit that was taken into account for that purpose immediately before that person received the replacement benefit.

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(6D) Paragraph (6C) only applies where the rate of the replacement benefit is greater than the rate of the superseded benefit.”.

## **PART 4**

### **Amendment of the National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998**

**48.** The National Health Service Superannuation Scheme (Scotland) Additional Voluntary Contributions) Regulations 1998<sup>(b)</sup> are amended in accordance with regulations 49 to 52.

### **Amendment of Regulation 3**

**49.** For sub-paragraph (a) of paragraph (5) of regulation 3 (Making and acceptance of elections), substitute—

“(a) where any limit imposed by regulation 4(4) would be exceeded; or”.

### **Amendment of regulation 11**

**50.** In regulation 11 (retirement and dependants benefits)—

(a) in paragraph (1), after sub-paragraph (d), add—

“(e) a lifetime allowance excess lump sum referred to in section 166(1)(g) of the 2004 Act<sup>(c)</sup>.”;

and

(b) in paragraph (12), omit “, subject to any limit imposed by regulation 13.”.

### **Omission of regulation 13**

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(a) S.I. 1998/1594.

(b) S.I. 1998/1451.

(c) 2004 c.12.

51. Omit regulation 13 (benefit limits).

**Amendment of regulation 15**

52. —(1) In paragraph (3) of regulation 15 (Payments by the Secretary of State), for “11(8)(f) and (11)” substitute “11(9)(f) and (12)”.

(2) The heading of regulation 15 is amended to “**Payments by the Scottish Ministers**”.

**PART 5**  
**Miscellaneous**

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

53. (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 if that provision had not applied, that person may elect that the provision shall not apply by giving notice in accordance with paragraph (3).

(3) A notice given pursuant to paragraph (2) shall be in writing and shall 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) shall 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, such person shall 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).

A member of the Scottish Government  
St Andrew’s House,  
Edinburgh

2016

We consent

2016

Two of the Lords Commissioners of Her Majesty’s Treasury

## EXPLANATORY NOTE

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

These Regulations amend the National Health Service Superannuation Scheme (Scotland) Regulations 2011 and the National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013, The National Health Service (Scotland) Injury Benefits) Regulations 1998 and The National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998.

Regulation 1 provides for citation, commencement and effect, including that certain provisions of this instrument are to take effect from a date before the date of commencement. Section 12(1) of the Superannuation Act 1972 (c.11)

Similar amendments in respect the 1995 section and 2008 scheme are made as follows:

- the abolition of contracting-out,
- insertion of updated employee contribution bands for the scheme year 2017 -2018
- conversion of pension into a lump sum where the sums involved are trivial
- the replacement of paternity leave and paternity pay with shared parental leave and shared parental pay
- the ban on the transfer of deferred benefits from unfunded public service pension schemes to schemes offering flexible benefits by closing an existing lacuna in the provisions of the Regulations
- miscellaneous technical amendments (i) updating references to the Pension Schemes Act 1993 (ii) removing obsolete references to “safeguarded rights” and “safeguarded percentage” (iii) updating the definition of a buy-out (iv) inserting a cross reference to the Public Service Pensions Act (Northern Ireland) 2014 in relation to the provisions of the Regulations,

Amendments specific to the 1995 Section Regulations—

- make amendments to regulation M1 (transfers) to make clear that any buy-out policy purchased must satisfy the requirements of regulation 12(2) of the Occupational Pension Schemes (Transfer Values) Regulations 1996 make amendments to the provisions governing transfers of pensions to prevent a deferred member transferring benefits to a Qualified Recognised Overseas Pension Scheme in certain cases
- Amendment to regulation B4 to clarify that if a member opts out within 3 months he is treated as never having been in the scheme

Amendments specific to the 2008 Section Regulations—

- make minor technical amendments correcting or inserting cross-references Amendments specific to the 2008 section Regulations—
- obsolete provisions

Amendments to the IB Regulations to ensure that a person in receipt of permanent injury benefit under the IB Regulations who was in receipt of certain social security benefits which were replaced by the social security benefit known as “employment support allowance”, is not detrimentally affected by that replacement where the amount of employment and support allowance is greater than the amount of replaced social security benefits he was receiving

A minor technical amendment is made to the meaning of average remuneration to properly reflect the policy intention

Amendments to the AVC Regulations to enable a member’s money purchase additional voluntary contribution pension pot to be taken as a lifetime allowance excess lump sum

Regulation 53 provides that deferred members, or members in receipt of a relevant benefit, who are detrimentally affected by these Regulations may elect for the provisions not to apply to them by giving notice within six months of the coming into force of these Regulations