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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No.**

**NATIONAL HEALTH SERVICE**

**The National Health Service (Superannuation Scheme Pension Scheme and Injury Benefits) (Scotland) (No. 2) Amendment Regulations 2009**

<i>Made</i> - - - -	2009
<i>Laid before the Scottish Parliament</i>	2009
<i>Coming into force</i> - -	2009

The Scottish Ministers, with the consent of the Treasury(a), make the following regulations in exercise of the powers conferred by sections 10, 12 and 24, and Schedule 3 to, the Superannuation Act 1972(b), and of all other powers enabling them to do so. In accordance with section 10(4) of that Act, they have consulted with such representatives of persons likely to be affected by these Regulations as appear to them to be appropriate.

**Citation, commencement and effect**

1.—(1) These Regulations may be cited as the National Health Service (Superannuation Scheme, Pension Scheme and Injury Benefits) (Scotland) Amendment Regulations 2009.

(2) These Regulations come into force on ? and have effect from 1st April 2009 except for as provided in paragraphs (3) to (4)–

(3) The following regulations have effect from 1st April 2008–

- (a) regulation 39;
- (b) regulation 41( c)
- (c) regulation 44;
- (d) regulation 46;
- (e) regulation 47;
- (f) regulation 54(a);
- (g) regulation 67(a);
- (h) regulation 69;
- (i) regulation 72© ;
- (j) regulation 75;

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(a) 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.

(b) 1972 c.11; sections 10 and 12 were amended by the Pensions (Miscellaneous Provisions) Act 1990 (c.7) sections 4(2), 8(5) and 10; section 10(6) was amended by the Pension Schemes Act 1993 (c.48), Schedule 8, paragraph 7 and by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001/3649), Article 108. The functions of the Scottish Ministers were transferred to 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).

(k) regulation 78(b).

(4) Regulation 14(3) will have effect from 1st April 1995.

## PART 1

### Amendment of the National Health Service Superannuation Scheme (Scotland) Regulations 1995

#### Interpretation of Part 1

2. In this Part an alphanumerical reference to a regulation or a reference to a Schedule is a reference to a provision of the National Health Service Pension Scheme Regulations 1995(a) bearing that designation.

#### Amendment of regulation B3

3. In regulation B3 (restriction on further participation in the scheme) for paragraph (2), substitute–

“(2) Persons whose pensions under the scheme are payable may not contribute to or accrue further pensionable service under the scheme, except in the cases referred to in–

- (a) regulation E2(11);
- (b) regulation E2A(11) but subject to paragraph (3),
- (c) regulation R4(4).

(3) Persons to whom–

- (a) regulation E2B(3)(a) applies may not (except where paragraph (b) applies) contribute to or accrue further pensionable service under the scheme from the date the Scottish Ministers makes a determination under that regulation;
- (b) paragraph (a) applies may contribute to or accrue further pensionable service under the scheme from the day after the first anniversary of that person’s NHS employment following the date of the Scottish Ministers’ determination under regulation E2B if that person is under the age of 50 on that day.”.

#### Amendment of regulation D1

4. For paragraphs (1) to (2V) of regulation D1 (contributions by members), substitute–

“(1) Each member in pensionable employment must contribute to the scheme in accordance with the following paragraphs of this regulation.

(1A) For the 2009-2010 scheme year and each subsequent scheme year, a member whose pensionable pay falls into a pay band specified in column 1 of the following table must contribute the percentage of the member’s pensionable pay specified in column 2 of that table in respect of that amount.

<i>Column 1</i> <i>Pay band</i>	<i>Column 2</i> <i>Contribution percentage rate</i>
Up to £20,224	5%
£20,225 to £66,789	6.5%
£66,790 to £105,318	7.5%
£105,319 to any higher amount	8.5%

(a) S.I. 1995/300, amended by S.I. 1997/80 and 1888, 1998/666 and 2216, 2000/605, 2001/1428 and 3649, 2002/561 and 2469, 2003/631 and 2322, 2004/665 and 696, 2005/661 and 3074, 2006/600 and 2919, 2007/2054 and 3280 and 2008/654 and 2263, and modified by S.I. 1996/971.

(2) The Scottish Ministers may, with the consent of Treasury, make a determination substituting any or all of the pay bands or contribution percentage rates specified in paragraph (1A) with effect from a date specified in the determination.

(2A) Before making a determination under paragraph (2), the Scottish Ministers must consider–

- (a) the advice of the Scheme Actuary, and
- (b) in accordance with regulation U4 (cost sharing), advice from such employee and employer representatives as the Scottish Ministers consider appropriate.

(2B) For the purposes of this regulation–

- (a) “previous scheme year” means the scheme year immediately preceding the scheme year in respect of which contributions are payable in accordance with this regulation (“the current scheme year”); and
- (b) if a member holds two or more pensionable employments at the same time–
  - (i) the determinations referred to in paragraphs (2E) to (2V) shall apply to each such employment separately; and
  - (ii) each such employment shall be treated separately for the purpose of paying contributions.

(2C) Subject to paragraphs (2Q) and (2R), for the purposes of determining the relevant annual contribution rate for the current scheme year paragraphs (2D) to (2P) apply to a member who is in pensionable employment with the same employing authority on both the last day of the previous scheme year and the first day of the current scheme year.

(2D) For the purposes of paragraphs (2E) to (2P)–

- (a) a member shall be regarded as being in pensionable employment throughout the previous scheme year regardless of any period in that year during which the member continued to be employed by the same employer but did not make contributions to the scheme;
- (b) for the purposes of calculating the member’s pensionable pay–
  - (i) contributions for any period referred to in (a) shall be deemed to have been paid, and
  - (ii) any additional pensionable pay that the member is treated as having received during an absence from work in accordance with regulation P1 or P2 shall be included;
- (c) the amount of pensionable pay determined in accordance with those paragraphs shall be rounded down to the nearest whole pound.

(2E) If a member–

- (a) was in pensionable employment with an employing authority on a whole-time basis throughout the previous scheme year;
- (b) paid contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member’s pensionable pay received during the previous scheme year.

(2F) If a member–

- (a) was in pensionable employment with an employing authority on a part-time basis throughout the previous scheme year;

- (b) paid contributions in respect of that employment at the same percentage rate throughout that previous scheme year

- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by reference to the amount the Scottish Ministers determine would have been paid in respect of a single comparable whole-time employment during the previous scheme year.

(2G) If a member–

- (a) was in pensionable employment with an employing authority on a combination of a whole-time and part-time basis throughout the previous scheme year;

- (b) paid contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and

- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the aggregate of–

- (i) the member's pensionable pay received during the previous scheme year in respect of the member's whole-time employment, and

- (ii) the amount the Scottish Ministers determine would have been paid in respect of a single comparable whole-time employment for that period in respect of the member's part-time employment.

(2H) If a member–

- (a) was in pensionable employment with an employing authority on a whole-time basis throughout the previous scheme year;

- (b) did not pay contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and

- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula–

$$\frac{RPP}{NDPE} \times 365$$

where–

RPP is the pensionable pay received in respect of that employment for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

NDPE is the number of days of pensionable employment with that employer commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(2I) If a member–

- (a) was in pensionable employment with an employing authority on a part-time basis throughout the previous scheme year;

- (b) did not pay contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and

(c) is employed by that authority on the first day of the current scheme year, the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula–

$$\frac{CWTE}{NDPE} \times 365$$

where–

CWTE is the amount the Scottish Ministers determine would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year

NDPE is the number of days of pensionable employment with that employer commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(2J) If a member–

- (a) was in pensionable employment with an employing authority on a combination of a whole-time and part-time basis throughout the previous scheme year;
- (b) did not pay contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula–

$$\frac{(RPP + CWTE)}{NDPE} \times 365$$

where–

RPP is the pensionable pay received for the whole-time employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

CWTE is the amount the Scottish Ministers determines would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

NDPE is the number of days of pensionable employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(2K) If a member–

- (a) commenced pensionable employment with an employing authority on a whole-time basis during the previous scheme year;

- (b) paid contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and

- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula–

$$\frac{RPP}{NDPE} \times 365$$

where–

RPP is the pensionable pay received in respect of that employment during the previous scheme year;

NDPE is the number of days of pensionable employment with that employer during the previous scheme year.

(2L) If a member–

- (a) commenced pensionable employment with an employing authority on a part-time basis during the previous scheme year;

- (b) paid contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and

- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula–

$$\frac{CWTE}{NDPE} \times 365$$

where–

CWTE is the amount the Scottish Ministers determines would have been paid for that employment during the previous scheme year in respect of a single comparable whole-time employment

NDPE is the number of days of pensionable employment with that employer during the previous scheme year.

(2M) If a member–

- (a) commenced pensionable employment with an employing authority during the previous scheme year and has since been employed on both a whole-time and part-time basis;

- (b) paid contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and

- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay

referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula–

$$\frac{(RPP + CWTE)}{NDPE} \times 365$$

where–

RPP is the pensionable pay received for the whole-time employment with that employer during the previous scheme year;

CWTE is the amount the Scottish Ministers determines would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment with that employer during the previous scheme year;

NDPE is the number of days of pensionable employment with that employer during the previous scheme year.

(2N) If a member–

- (a) commenced pensionable employment with an employing authority on a whole-time basis during the previous scheme year;
- (b) did not pay contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year;

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula–

$$\frac{RPP}{NDPE} \times 365$$

where–

RPP is the pensionable pay received in respect of that employment for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

NDPE is the number of days of pensionable employment with that employer commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(2O) If a member–

- (a) commences pensionable employment with an employing authority on a part-time basis during the previous scheme year;
- (b) did not pay contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula–

$$\frac{CWTE}{NDPE} \times 365$$

where–

CWTE is the amount the Scottish Ministers determines would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year

NDPE is the number of days of pensionable employment with that employer commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(2P) If a member–

- (a) commenced pensionable employment with an employing authority during the previous scheme year and has since been employed on both a whole-time and part-time basis with that employing authority;
- (b) did not pay contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula–

$$\frac{(RPP + CWTE)}{NDPE} \times 365$$

where–

RPP is the pensionable pay received for the whole-time employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

CWTE is the amount the Scottish Ministers determines would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

NDPE is the number of days of pensionable employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(2Q) If, at any time during the current scheme year, a member commences a new employment, the member shall pay contributions in respect of that employment at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (2U).

(2R) Subject to paragraph (2S), if at any time during the current scheme year, a change is made to a member's annual rate of pensionable pay or pensionable allowances in respect of an existing employment the member shall pay contributions–



- (a) from the first day of the pay period in which the change is made at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (2U), and
- (b) as if the member's employment had commenced on that date.

(2S) Paragraph (2R) does not apply to a change made to a member's annual rate of pensionable allowances in respect of an existing employment that is determined by that member's employer to have been made in respect of–

- (a) unplanned changes to that member's duties, or
- (b) changes to that member's duties that are unlikely to persist for at least 12 months.

(2T) If the change to a member's pensionable pay referred to in paragraph (2R) is made in respect of an existing part-time employment, that paragraph shall not apply unless there is a corresponding change to the amount of pensionable pay that would be paid to that member in respect of a whole-time comparable employment.

(2U) Where paragraph (2Q) or (2R) apply the Scottish Ministers shall determine the member's pensionable pay–

- (a) by applying the formula–

$$\frac{EPP}{NDPE} \times 365$$

where–

EPP is the estimated pensionable pay that the member's employing authority estimates will be payable to the member in respect of that employment during the current scheme year

NDPE is the number of days of pensionable employment from the date employment commences to the end of the current scheme year, and

- (b) if the further employment is part-time employment, by determining how much would be paid in respect of a whole-time comparable employment,

with the amount determined under (a) being the member's pensionable pay for the purposes of this paragraph if the further employment is whole-time employment and the amount determined under (b) being the member's pensionable pay for the purposes of this paragraph if the further employment is part-time employment.

(2V) If none of paragraphs (2E) to (2R) apply–

- (a) the Scottish Ministers must determine the amount of the member's pensionable pay, and in doing so shall, in addition to the matters referred to in paragraph (2A), have regard to the pensionable pay attributable to pensionable employment comparable to the member's employment, prevailing pay scales and prevailing rates of pensionable allowances, and
- (b) the member shall pay contributions at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (a).”.

#### **Amendment of regulation E2B**

5. In paragraph (2) of regulation E2B (re-assessment of ill-health condition determined under regulation E2A)–

- (a) at the end of sub-paragraph (b) omit “and”;
- (b) after sub-paragraph (c), add–

“; and

- (d) the member has not become entitled to a upper tier pension in respect of any later service under regulation S3A(6).”.

#### **Amendment of regulation E6**

6. In paragraph (5) of regulation E6 (preserved pension) after “a lump sum”, add–

“of an amount consistent with–

- (a) the contracting-out and preservation requirements of the 1993 Act; and
- (b) the lump sum rule”.

#### **Amendment of regulation E7**

7. In regulation E7 (lump sum on retirement)–

(a) in paragraph (2) after “paragraphs”, insert “(2A),”;

(b) after paragraph (2), insert–

“(2A) Where regulation E2B(3) applies, the lump sum payable shall be equal to the difference between–

- (a) three times the yearly rate of pension calculated in accordance with regulation E2A(3)(a), and
- (b) three times the yearly rate of pension calculated in accordance with regulation E2B(3)(b).”.

#### **Amendment of regulation E11**

8. In regulation E11 (general option to exchange part of pension for lump sum) in–

(a) paragraph (8) for “The option” substitute, “Subject to paragraphs (9) and (10), the option”;

(b) after paragraph (8), add–

“(9) If the pension is an ill-health pension under regulation E2A, the option under this regulation may only be exercised by giving notice in writing to the scheme administrator in the form required by the Scottish Ministers–

- (a) where the member is awarded–
  - (i) a lower tier pension under paragraph (3)(a) of that regulation, at the time of claiming that lower tier pension,
  - (ii) an upper tier pension under paragraph (3)(b) of that regulation, at the time of claiming that upper tier pension; or

(b) before such later time as the scheme administrator specifies in writing.

(10) If the pension is an upper tier ill-health pension under regulation E2B to be paid in place of a lower tier ill-health pension under regulation E2A, the option under this regulation may only be exercised–

- (a) in relation to the difference between the lower tier pension that is replaced by the upper tier pension in accordance with paragraph (3) of regulation E2B and the upper tier pension to which the member becomes entitled under that paragraph, and
- (b) by giving notice in writing to the scheme administrator in the form required by the Scottish Ministers–
  - (i) at the time of award of the upper tier pension under that paragraph, or
  - (ii) before such later time as the scheme administrator specifies in writing.”.

#### **Amendment of regulation H4**

- 9.** In regulation H4 (member dies after pension becomes payable), in–
- (a) paragraph (4) after “civil partner”, insert “or nominated partner”;
  - (b) paragraph (5) after–  
“civil partner”, insert “or nominated partner”,  
“surviving civil partner’s”, insert “or surviving nominated partner’s”;
  - (c) paragraph (6) after–  
“surviving civil partner’s”, insert “or surviving nominated partner’s”,  
“surviving civil partner”, insert “or surviving nominated partner”;
  - (d) paragraph (7) after–  
“surviving civil partner’s”, insert “or surviving nominated partner’s”,  
“surviving civil partner”, insert “or surviving nominated partner”.

#### **Amendment of regulation S3A**

**10.** In regulation S3A (benefits in respect of pensionable employment after pension becomes payable under regulation E2A) after paragraph (6), add–

- “(7) A member–
  - (a) to whom an upper tier pension is payable in place of a lower tier pension in respect of the member’s previous service in accordance with regulation E2B(3), and
  - (b) who satisfies the lower tier condition or, as the case may be the upper tier condition, in respect of the member’s later service,shall be entitled to the following benefit.
- (8) That benefit is the aggregate of–
  - (a) an upper tier pension paid in accordance with regulation E2B in respect of the member’s previous service; and
  - (b) a lower tier pension in respect of the member’s later service.”.

#### **Amendment of regulation T9**

- 11.** In paragraph (4) of regulation T9 (interest on late payment of benefits)–
- (a) in the definition of “due date” after “possession of all information” insert, “(including information which the Scottish Ministers obtain as result of a determination under regulation E2B(3))”;
  - (b) in the definition of “qualifying payment” for paragraph (b), substitute–
    - “(b) any amount paid that increases the amount of an earlier payment due to–
      - (i) a backdated or later increase in pensionable pay, or
      - (ii) the payment of an upper tier pension under regulation E2A in place of a lower tier pension being paid to a member following a determination by the Scottish Ministers under regulation E2B(3),”.

#### **Amendment of regulation U2(4)(e)**

**12.** In paragraph (4)(e) of regulation U (determination of questions) for “and E2A(7)(b), substitute “, E2A(7)(b) and E(6)(5)(b).

#### **Amendment of Regulation W**

**13.** Regulation W is amended as follows:

- (a) In regulation W11 omit sub paragraph (7) and substitute–

“(7) A pension credit member is entitled to a lump sum calculated on the same basis as if the pension was a deferred pension under the Scheme. Except that the member opts to exchange part his pension under sub paragraph (8) of this regulation the lump sum shall be equal to three times the annual rate of pension except that no lump sum on retirement shall be paid to the credit member if the corresponding pension debit member has already received lump sum on retirement from the scheme before the date of the implementation of the pension sharing order.

(8) If a pension credit member opts to exchange part of a pension to which the pension credit member would otherwise be entitled for a lump sum, for every £1 by which the pension credit member’s annual pension is reduced, the pension credit member is to be paid a lump sum of £12.

(9) An option under paragraph (8) must relate to an annual amount of pension that is a whole number of pounds (and accordingly the lump sum will be exactly divisible by 12).

(10) In paragraph (9) “annual amount” in relation to a pension means the amount of the annual pension to which the pension credit member would be entitled under these regulations apart from the option, together with any increases payable under the Pensions (Increase) Act 1971, calculated as at the time the payment would be first due.

(11) A pension credit member may not exchange pension for lump sum under this paragraph to the extent that it would result in a scheme chargeable payment for the purposes of Part 4 of the 2004 Act.

(12) The option under sub paragraph (8) may only be exercised by giving notice in writing to the scheme administrator in the form required by the Scottish Ministers–

- (a) at the time of claiming the pension; or
- (b) before a later time specified in writing by the scheme administrator.”.

- (b) After regulation W11 insert–

**“11A. Pension credit benefit before attaining normal benefit age (with actuarial reduction)**

(1) Subject to sub-paragraph (2), a pension credit member shall be entitled to the payment of the pension credit benefit described in paragraph (7) of regulation W11 on or after attaining normal minimum pension age but before attaining normal benefit age.

(2) The pension and the lump sum (if any) described in that paragraph will be reduced by such amount as the Scottish Ministers, after taking the advice of the Scheme Actuary, may determine.”.

- (c) In regulation W12 (pension credit member dies after pension credit benefit becomes payable) for sub-paragraph (3), substitute–

“(3) The maximum payment under this regulation shall not exceed an amount calculated in accordance with sub paragraph (3A) less the aggregate of–

- (a) the amount of any lump sum paid to the pension credit member in accordance with regulation W11 paragraph (7); and
- (b) the amount of any lump sum paid to the pension credit member in accordance with paragraph 3(7).

(3A) An amount calculated in accordance with this sub paragraph is an amount equal to twice the amount on the valuation day of the final year’s pensionable pay from whom whose rights the pension credit is derived.”.

- (d) In paragraph 13 (loss of rights to benefits), omit sub-paragraph (b).

- (e) For regulation W16 (commutation: exceptional ill-health) substitute:

**“W16 Pension credit benefit before attaining normal benefit age (on grounds of ill-health)**

(1) A pension credit member shall be entitled to the payment of the pension credit benefit described in regulation W11 before attaining normal benefit age if the Scottish Ministers are satisfied that the pension credit member–

- (a) meets the ill-health condition specified in paragraph 1 of Schedule 28 to the 2004 Act, and
- (b) had previously been engaged in regular employment but is now permanently incapable of engaging in such employment due to mental or physical infirmity.

(2) For the purpose of sub-paragraph (1), the Scottish Ministers may require whatever medical evidence that they consider necessary.”.

**Amendment of Schedule 1**

14.—(1) Schedule 1 (medical and dental practitioners) shall be amended as follows.

(2) For sub-paragraphs (1) to (2I) of paragraph 10 of Schedule 1 (medical and dental practitioners), substitute–

“(1) In the case of members who are practitioners or non-GP providers, regulation D1 (contributions by members) and regulation D2 (contributions by employing authorities) are modified as described in the following sub-paragraphs.

(2) Subject to sub-paragraph (2A), for the 2009-2010 scheme year and each subsequent scheme year, a member’s contribution rate is the percentage specified in Column 2 of the following table in respect of the corresponding amount of pensionable earnings specified in Column 1 of the table into which the member’s earnings fall.

<i>Column 1</i>	<i>Column 2</i>
<i>Amount of pensionable earnings</i>	<i>Contribution rate</i>
Up to £20,224	5%
£20,225 to £66,789	6.5%
£66,790 to £105,318	7.5%
£105,319 to any higher amount	8.5%

(2A) The Scottish Ministers may, with the consent of the Treasury, make a determination substituting any or all of the amounts of pensionable earnings or contribution rates specified in the table in sub-paragraph (2) with effect from a date specified in the determination.

(2B) Before making a determination under sub-paragraph (2A), the Scottish Ministers must consider–

- (a) the advice of the Scheme Actuary; and
- (b) in accordance with regulation U4 (cost sharing), advice from such employee and employer representatives as the Scottish Ministers consider appropriate.

(2C) If, apart from this sub-paragraph, the earnings for a scheme year in respect of a member’s practitioner or non-GP provider service would not be a whole number of pounds, those earnings will be rounded down to the nearest whole pound.

(2D) If a member is in practitioner or non-GP provider as well as (concurrently) employment other than as a practitioner or non-GP provider in respect of which he is liable to pay contributions in accordance with regulation D1, the contributions payable in respect of the member’s–

- (a) practitioner or non-GP provider service, shall be determined in accordance with the provisions of these regulations that apply to a practitioner or non-GP provider, and
- (b) employment as an officer, shall be determined in accordance with the provisions of these regulations that apply to an officer.

(2E) In determining the contributions payable in accordance with sub-paragraph 2 of this regulation, the contracting Health Board, or someone appointed on their behalf, must take account of pensionable earnings as a practitioner or as a non-GP provider from all practitioner or non-GP provider sources.

(2F) If, in respect of a scheme year, a practitioner (other than a dentist) or a non-GP provider has–

- (a) certified their pensionable earnings in accordance with paragraph 23 of this Schedule and forwarded a record of those earnings to the Contracting Health Board, or someone appointed on their behalf, or
- (b) was not required to certify their earnings in accordance with that paragraph but the Contracting Health Board, or person acting on their behalf, has the figure that represents the practitioner’s or non-GP provider’s pensionable earnings for that scheme year,

contributions payable for that scheme year, shall be those specified in column 2 of the table in sub-paragraph (2) in respect of the amount of pensionable earnings referred to in column 1 of that table which corresponds to the aggregate of–

- (i) certified or final pensionable earnings from all practitioner or non-GP provider sources, and
- (ii) any additional pensionable earnings the practitioner or non-GP provider is treated as having received during an absence from work in accordance with regulation P1 or P2 and the modifications described in paragraph 19 of this Schedule.

(2G) Subject to sub-paragraph (2H), if sub-paragraph (2F) does not apply to a practitioner or to a non-GP provider in respect of a scheme year, that practitioner or non-GP provider shall pay contributions at the rate in column 2 of the table in sub-paragraph (2), which–

- (a) has been agreed between the Contracting Health Board, or someone appointed on their behalf, in the case of an assistant practitioner or salaried GP their employer, on the one hand and the practitioner or non-GP provider on the other hand, or
- (b) corresponds to the practitioner’s or non-GP provider’s most recent certified or final pensionable earnings referred to in sub-paragraph (2H), or
- (c) corresponds to the Contracting Health Board, or person acting on their behalf, or estimate of the practitioner’s or non-GP provider’s pensionable earnings from all practitioner or non-GP provider sources for that year.

(2H) If sub-paragraph (2G) applies to a practitioner or to a non-GP provider in respect of a scheme year and sub-paragraph (2G)(a) or (b) is subsequently satisfied in respect of that scheme year, that practitioner or non-GP provider shall pay contributions at the rate determined in accordance with sub-paragraph (2G).

(2I) A Contracting Health Board, or someone appointed on their behalf, or in the case of an assistant practitioner or salaried GP the employer, may adjust a practitioner’s or a non-GP provider’s contribution rate for any scheme year determined in accordance with sub-paragraph (2G)–

- (a) by agreement between the Contracting Health Board, or someone appointed on their behalf, or in the case of an assistant practitioner or salaried GP the employer, on the one hand and the practitioner or non-GP provider on the other hand, or
- (b) without such agreement, if the Contracting Health Board, or person acting on their behalf, or is satisfied that pensionable earnings will exceed the amount used to determine the contribution rate in accordance with those paragraphs.”.

(3) For paragraph 14 (lump sum on member’s death in pensionable employment or after pension becomes payable), substitute–

**“Lump sum on member’s death in pensionable employment or after pension becomes payable**

14.—(1) In the case of members who die in pensionable employment as practitioners, regulation F1 (lump sum payable on member’s death in pensionable employment) is modified so that, in relation to the member’s employment as a practitioner, the reference to final year’s pensionable pay in regulation F1(2) is treated as a reference to—

- (a) in the case of a member who is required to pay contributions under regulation D1(4), the yearly average of the member’s uprated earnings at the date of death; or
- (b) in the case of a member who is no longer required to pay contributions under regulation D1(4), the yearly average of the member’s uprated earnings on the member’s last day of pensionable service.

(2) In the case of members who die after a pension under the scheme in respect of practitioner service becomes payable, regulation 2 (lump sum payable on member’s death after pension becomes available) is modified so that, in relation to the member’s employment as a practitioner, the reference to final year’s pensionable pay in regulation F2(2) is treated as a reference to the yearly average of the member’s uprated earnings on the member’s last day of pensionable service.”.

(4) For paragraph 23 (accounts and actuarial reports), substitute—

**“Accounts and actuarial reports**

23.—(1) In the case of members who are practitioners or non-GP providers, regulation U3 (accounts and actuarial reports) is modified as described in this paragraph.

(2) In respect of each scheme year, a principal medical practitioner and a non-GP provider shall provide the contracting Health Board or someone appointed to act on their behalf with a certificate of their pensionable earnings based on—

- (a) the accounts drawn up in accordance with generally accepted accounting practice by the practice of which the member is a member; and
- (b) the return that member has made to Her Majesty’s Revenue & Customs in respect of their earnings for that year,

no later than 1 month after the date on which that return was required to be submitted to Her Majesty’s Revenue and Customs.

(3) In respect of each scheme year, an assistant medical practitioner or salaried GP shall provide each relevant Employer with a certificate of their pensionable earnings based on—

- (a) the payments they receive from employing authorities for practitioner services, and
- (b) the return that member has made to Her Majesty’s Revenue & Customs in respect of their earnings for that year,

no later than 1 month after the date on which that return was required to be submitted to Her Majesty’s Revenue and Customs.

(4) In respect of each scheme year, a GMS practice, section 17C agreement provider or an HBPMS contractor shall provide the Scottish Ministers with—

- (a) a statement of estimated pensionable earnings in respect of any—
  - (i) non-GP provider that is a section 17C agreement provider or an HBPMS contractor or who assists in the provision of NHS services provided by that GMS or section 17C agreement provider or an HBPMS contractor,
  - (ii) principal medical practitioners who perform medical services as, or on behalf of, the practice or contractor, and
  - (iii) assistant medical practitioners or salaried GPs employed by the practice or contractor, and
- (b) an end-of-year statement of—

- (i) pensionable earnings,
- (ii) contributions to the Scheme made under regulation D1 (contributions by members),
- (iii) contributions to the Scheme made under regulation D2 (contributions by employing authorities), and
- (iv) any pensionable earnings deemed in accordance with regulations P1 or P2 and the modifications to that regulation referred to in paragraph 18 of this Schedule,  
in respect of assistant medical practitioners or salaried GPs employed by the practice or contractor.

(5) The Scottish Ministers shall be provided with–

- (a) the statement referred to in sub-paragraph (6)(a) at least 1 month before the beginning of that scheme year;
- (b) the statement referred to in sub-paragraph (6)(b) no later than 3 months after the end of that scheme year.

(6) The contracting Health Board, or someone appointed to act on their behalf, for each scheme year and no later than 13 months after the end of each scheme year, must forward to the Scottish Ministers a copy of the records they maintain in respect of–

- (a) all contributions to the Scheme made under paragraph 10 of this Schedule in respect of type principal medical practitioners and non-GP providers, and
- (b) their pensionable earnings.

(7) Subject to paragraph (10), if, in respect of a scheme year, a member has failed to comply with the requirements of whichever of sub-paragraphs (2) to (5) applies to that member, the member's pensionable earnings for that scheme year shall be zero.

(8) If, in respect of a scheme year–

- (a) a practitioner or non-GP provider has failed to comply with the requirements of whichever of sub-paragraphs (2) to (5) applies to them,
- (b) a benefit in respect of such service is payable to, or in respect of that member, under these Regulations, and
- (c) the member's employing authority or if a contracting Health Board, someone appointed to act on their behalf is in possession of a figure representing all or part of the member's pensionable earnings for that year,

the Scottish Ministers may treat that figure as the amount of the member's pensionable earnings for that year.

(9) If, in respect of a scheme year, a practitioner or non-GP provider–

- (a) dies without complying with the requirements of whichever of sub-paragraphs (2) to (5) applies to them, or
- (b) is, in the opinion of the Scottish Ministers, unable to look after their own affairs by reason of illness or mental disorder,

the Scottish Ministers may require that practitioner or non-GP provider's personal representatives to provide the relevant certificate–

- (i) within the period referred to in whichever of sub-paragraphs (2) to (5) was or is applicable to them, or
- (ii) within such other period as the Scottish Ministers should permit.

(10) The certificates and statements referred to in this regulation–

- (a) shall be in such form as the Scottish Ministers shall from time to time require;
- (b) may be provided to the Scottish Ministers in such manner as the Scottish Ministers may from time to time permit.”.



### **Amendment of Schedule 1A**

**15.**—(1) Schedule 1A (Pension Sharing on Divorce or Nullity of Marriage or, on the Dissolution or Nullity of a Civil Partnership) shall be amended as follows.

(2) In paragraph 5 (Contracting out and guaranteed minimum pension) omit sub paragraphs (b) and (c).

(3) In paragraph 9 (offset for crime, fraud or negligence), omit sub-paragraph (b).

(4) In paragraph 10 (loss of rights to benefits) omit sub-paragraph (b).

## **PART 2**

### **Amendment of the National Health Service Pension Scheme (Scotland) Regulations 2008**

#### **Interpretation of Part 2**

**16.** In this Part an alphanumerical reference to a regulation is a reference to a provision of the National Health Service Pension Scheme (Scotland) Regulations 2008 bearing that designation.

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

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

(a) in the definition of “member” after “active member,”, insert “a non-contributing member,”;

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

““non-contributing member” means a member who—

(a) is under the age of 75 and in NHS employment,

(b) is no longer required to make contributions to the Scheme in accordance with regulation 2.C.1(1), but

(c) will be entitled to a pension under these Regulations—

(i) on ceasing to be employed in NHS employment and making a claim for the pension, or

(ii) upon reaching age 75;”

(c) in the definition of “CCT”, for “article 8 of the 2003 Order” substitute “section 18J(1) of the Medical Act 1983”;

(d) for the definition of “GP Registrar” substitute “GP Registrar means a medical practitioner who is being trained in general practice by a GP Trainer, whether as part of training leading to a CCT or otherwise”.

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

**18.** In paragraph (7)(a) of regulation 2.A.9 (pensionable pay: breaks in service) for “pay”, substitute “earnings”.

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

**19.** In regulation 2.A.10 (meaning of “reckonable pay”: general)—

(a) in paragraph (1)—

(i) at the end of sub-paragraph (a), omit “or”,

(ii) at the end of sub-paragraph (b), add—

“; or

- (c) a non-contributing member.”
- (b) in paragraph (5)–
  - (i) at the end of sub-paragraph (a)(i), omit “and”,
  - (ii) after sub-paragraph (a)(ii), add–
    - “(iii) in a case within paragraph (1)(c), the member’s last day of pensionable service.”.

**Amendment of regulation 2.B.2**

**20.** In regulation 2.B.2 (restrictions on eligibility: general) after paragraph (5), add–

“(6) A person is not eligible to be an active member of the Scheme in any future employment if the person–

- (a) ceases to be entitled to a lower tier ill-health pension under regulation 2.D.8, and
- (b) becomes entitled to an upper tier ill-health pension under that regulation on the date the Scottish Ministers make a determination under regulation 2.D.9(3).

This is subject to paragraph (7).

(7) A person to whom paragraph (6) applies is eligible to be an active member of the Scheme in any further employment after the first anniversary of that person’s first day of such employment following the date of the Scottish Ministers’ determination under regulation 2.D.9.”.

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

**21.** For paragraph (2) of regulation 2.C.2 (members’ contribution rate), substitute–

“(2) Subject to paragraph (3), for the 2009-2010 scheme year and each subsequent scheme year a member’s contribution rate for that period is the percentage specified in column 2 of the following table in respect of the corresponding pensionable pay range (where regulation 2.C.3 applies) or pensionable earnings range (where regulation 2.C.4 applies) specified in column 1 of the table into which the member’s pensionable pay, or as the case may be, pensionable earnings falls.

Table

<i>Column 1</i>	<i>Column 2</i>
<i>Amount of pensionable pay/earnings</i>	<i>Contribution rate</i>
Up to £20,224	5%
£20,225 to £66,789	6.5%
£66,790 to £105,318	7.5%
£105,319 to any higher amount	8.5%

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

**22.** For regulation 2.C.3 (employees), substitute–

**“2.C.3 Employees**

- (1) For the purposes of this regulation–
  - (a) “previous scheme year” means the scheme year immediately preceding the scheme year in respect of which contributions are payable in accordance with this part (“the current scheme year”); and
  - (b) if a member holds two or more pensionable employments at the same time–

- (i) the determinations referred to in paragraphs (4) to (21) shall apply to each such employment separately; and
- (ii) each such employment shall be treated separately for the purpose of paying contributions.

(2) For the purposes of determining the relevant annual contribution rate for the current scheme year paragraphs (3) to (15) apply to a member who is in pensionable employment with the same employing authority on both the last day of the previous scheme year and the first day of the current scheme year.

This is subject to paragraphs (16) and (17).

(3) For the purposes of paragraphs (4) to (15)–

- (a) a member shall be regarded as being in pensionable employment throughout the previous scheme year regardless of any period in that year during which the member continued to be employed by the same employer but did not make contributions to the scheme;
- (b) for the purposes of calculating the member’s pensionable pay–
  - (i) contributions for any period referred to in (a) shall be deemed to have been paid,
  - (ii) any additional pensionable pay that the member is treated as having received during an absence from work in accordance with regulation 2.A.9 shall be included;
- (c) the amount of pensionable pay determined in accordance with those paragraphs shall be rounded down to the nearest whole pound.

(4) If a member–

- (a) was in pensionable employment with an employing authority on a whole-time basis throughout the previous scheme year;
- (b) paid contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 2.C.2 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member’s pensionable pay received during the previous scheme year.

(5) If a member–

- (a) was in pensionable employment with an employing authority on a part-time basis throughout the previous scheme year;
- (b) paid contributions in respect of that employment at the same percentage rate throughout that previous scheme year;
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 2.C.2 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member’s pensionable pay determined by reference to the amount the Scottish Ministers determines would have been paid in respect of a single comparable whole-time employment during the previous scheme year.

(6) If a member–

- (a) was in pensionable employment with an employing authority on a combination of a whole-time and part-time basis throughout the previous scheme year;
- (b) paid contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and

(c) is employed by that authority on the first day of the current scheme year,  
the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 2.C.2 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the aggregate of–

- (i) the member’s pensionable pay received during the previous scheme year in respect of the member’s whole-time employment, and
- (ii) the amount the Scottish Ministers determine would have been paid in respect of a single comparable whole-time employment for that period in respect of the member’s part-time employment.

(7) If a member–

- (a) was in pensionable employment with an employing authority on a whole-time basis throughout the previous scheme year;
- (b) did not pay contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 2.C.2 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member’s pensionable pay determined by the formula–

$$\frac{RPP}{NDPE} \times 365$$

where–

RPP is the pensionable pay received in respect of that employment for the period commencing on the date the member’s contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

NDPE is the number of days of pensionable employment with that employer commencing on the date the member’s contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(8) If a member–

- (a) was in pensionable employment with an employing authority on a part-time basis throughout the previous scheme year;
- (b) did not pay contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 2.C.2 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member’s pensionable pay determined by the formula–

$$\frac{CWTE}{NDPE} \times 365$$

where–

CWTE is the amount the Scottish Ministers determine would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year

NDPE is the number of days of pensionable employment with that employer commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(9) If a member–

- (a) was in pensionable employment with an employing authority on a combination of a whole-time and part-time basis throughout the previous scheme year;
- (b) did not pay contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 2.C.2 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula–

$$\frac{(RPP + CWTE)}{NDPE} \times 365$$

where–

RPP is the pensionable pay received for the whole-time employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

CWTE is the amount the Scottish Ministers determine would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

NDPE is the number of days of pensionable employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(10) If a member–

- (a) commenced pensionable employment with an employing authority on a whole-time basis during the previous scheme year;
- (b) paid contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 2.C.2 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula–

$$\frac{RPP}{NDPE} \times 365$$

where–

RPP is the pensionable pay received in respect of that employment during the previous scheme year;

NDPE is the number of days of pensionable employment with that employer during the previous scheme year.

(11) If a member–

- (a) commenced pensionable employment with an employing authority on a part-time basis during the previous scheme year;
- (b) paid contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 2.C.2 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula–

$$\frac{CWTE}{NDPE} \times 365$$

where–

CWTE is the amount the Scottish Ministers determine would have been paid for that employment during the previous scheme year in respect of a single comparable whole-time employment

NDPE is the number of days of pensionable employment with that employer during the previous scheme year.

(12) If a member–

- (a) commenced pensionable employment with an employing authority during the previous scheme year and has since been employed on both a whole-time and part-time basis;
- (b) paid contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 2.C.2 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula–

$$\frac{(RPP + CWTE)}{NDPE} \times 365$$

where–

RPP is the pensionable pay received for the whole-time employment with that employer during the previous scheme year;

CWTE is the amount the Scottish Ministers determine would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment with that employer during the previous scheme year;

NDPE is the number of days of pensionable employment with that employer during the previous scheme year.

(13) If a member–

- (a) commenced pensionable employment with an employing authority on a whole-time basis during the previous scheme year;
- (b) did not pay contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year;

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 2.C.2 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula–

$$\frac{RPP}{NDPE} \times 365$$

where–

RPP is the pensionable pay received in respect of that employment for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

NDPE is the number of days of pensionable employment with that employer commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year

(14) If a member–

- (a) commences pensionable employment with an employing authority on a part-time basis during the previous scheme year;
- (b) did not pay contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 2.C.2 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula–

$$\frac{CWTE}{NDPE} \times 365$$

where–

CWTE is the amount the Scottish Ministers determine would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year

NDPE is the number of days of pensionable employment with that employer commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(15) If a member–

- (a) commenced pensionable employment with an employing authority during the previous scheme year and has since been employed on both a whole-time and part-time basis with that employing authority;
- (b) did not pay contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 2.C.2 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula–

$$\frac{(RPP + CWTE)}{NDPE} \times 365$$

where–

RPP is the pensionable pay received for the whole-time employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

CWTE is the amount the Scottish Ministers determine would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

NDPE is the number of days of pensionable employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(16) If, at any time during the current scheme year, a member commences a new employment, the member shall pay contributions in respect of that employment at the rate specified in column 2 of the table in paragraph (2) of regulation 2.C.2 in respect of the



amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (20).

(17) Subject to paragraph (18), if at any time during the current scheme year, a change is made to a member's annual rate of pensionable pay or pensionable allowances in respect of an existing employment the member shall pay contributions–

- (a) from the first day of the pay period in which the change is made at the rate specified in column 2 of the table in paragraph (2) of regulation 2.C.2 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (20), and
- (b) as if the member's employment had commenced on that date.

(18) Paragraph (17) does not apply to a change made to a member's annual rate of pensionable allowances in respect of an existing employment that is determined by that member's employer to have been made in respect of–

- (a) unplanned changes to that member's duties, or
- (b) changes to that member's duties that are unlikely to persist for at least 12 months.

(19) If the change to a member's pensionable pay referred to in paragraph (17) is made in respect of an existing part-time employment, that paragraph shall not apply unless there is a corresponding change to the amount of pensionable pay that would be paid to that member in respect of a whole-time comparable employment.

(20) Where paragraph (16) or (17) apply the Scottish Ministers shall determine the member's pensionable pay–

- (a) by applying the formula–

$$\frac{EPP}{NDPE} \times 365$$

where–

EPP is the estimated pensionable pay that the member's employing authority estimates will be payable to the member in respect of that employment during the current scheme year

NDPE is the number of days of pensionable employment from the date employment commences to the end of the current scheme year, and

- (b) if the further employment is part-time employment, by determining how much would be paid in respect of a whole-time comparable employment,

with the amount determined under (a) being the member's pensionable pay for the purposes of this paragraph if the further employment is whole-time employment and the amount determined under (b) being the member's pensionable pay for the purposes of this paragraph if the further employment is part-time employment.

(21) If none of paragraphs (4) to (17) apply–

- (a) the Scottish Ministers must determine the amount of the member's pensionable pay, and in doing so shall, in addition to the matters referred to in paragraph (4) of regulation 2.C.2, have regard to the pensionable pay attributable to pensionable employment comparable to the member's employment, prevailing pay scales and prevailing rates of pensionable allowances, and
- (b) the member shall pay contributions at the rate specified in column 2 of the table in paragraph (2) of regulation 2.C.2 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (a).

(22) In any case where paragraph (16) applies and it is apparent at the time when the person becomes an active member in an employment under this Part the person's pensionable pay in that employment includes any amount that is variable, that amount is to be taken as such amount as the employing authority consider appropriate for the 2008/09 scheme year and, in the case of a member who works part time, is the variable amount that would be paid in respect of a comparable whole time employment.

(23) If a transfer payment from a corresponding health service scheme is accepted in respect of a person, the person is treated for the purposes of this regulation as if–

- (a) the person was an active member of the Scheme during any period during which the person was an active member of that scheme, and
- (b) the pay by reference to which the person's benefits under that scheme were calculated was pensionable pay for the purposes of the Scheme.”.

#### **Amendment of regulation 2.C.4**

**23.** For regulation 2.C.4 (part-time employees), substitute–

##### **“2.C.4 Non-GP providers**

(1) If, in respect of a scheme year, a member who is a non-GP provider–

- (a) has certified their pensionable earnings in accordance with regulation 2.J.13 and forwarded a record of those earnings to the Contracting Health board or someone who is appointed to act on their behalf, or
- (b) was not required to certify their earnings in accordance with that regulation but the Contracting Health board or someone who is appointed to act on their behalf, has the figure that represents the non-GP provider's pensionable earnings for that scheme year,

contributions payable for that scheme year, shall be those specified in column 2 of the table in paragraph (2) of regulation 2.C.2, in respect of the amount of pensionable earnings referred to in column 1 of that table which corresponds to the certified or final pensionable earnings from all non-GP provider sources and any additional pensionable earnings the non-GP provider is treated as having received during a break in service in accordance with regulation 2.A.9.

(2) If paragraph (1) does not apply to a non-GP provider in respect of a scheme year, that non-GP provider shall pay contributions at the rate in column 2 of the table in paragraph (2) of regulation 2.C.2, which–

- (a) has been agreed between the Contracting Health board or someone who is appointed to act on their behalf on the one hand and the non-GP provider on the other hand, or
- (b) corresponds to the non-GP provider's most recent certified or final pensionable earnings referred to in paragraph (1), or
- (c) corresponds to the Contracting Health board or someone who is appointed to act on their behalf's estimate of the non-GP provider's pensionable earnings from all non-GP provider sources for that year.

This is subject to paragraph (3).

(3) If paragraph (2) applies to a non-GP provider in respect of a scheme year and paragraph (1)(a) or (b) is subsequently satisfied in respect of that scheme year, that non-GP provider shall pay contributions at the rate determined in accordance with paragraph (1).

(4) A Contracting Health board or someone who is appointed to act on their behalf, may adjust a non-GP provider's contribution rate for any scheme year determined in accordance with paragraph (2)–

- (a) by agreement between the Contracting Health board or someone who is appointed to act on their behalf on the one hand and the non-GP provider on the other hand, or
- (b) without such agreement, if the Contracting Health board or someone who is appointed to act on their behalf, is satisfied that pensionable earnings will exceed the amount used to determine the contribution rate in accordance with that paragraph.

(5) If a member is in non-GP provider service and concurrently in NHS employment in respect of which the member is liable to pay contributions in accordance with regulation 2.C.3, contributions payable in respect of the member's non-GP provider service shall be determined under this regulation and contributions payable in respect of the member's NHS employment shall be determined under regulation 2.C.3.

(6) In determining the contributions payable in accordance with this regulation, a Contracting Health board or someone who is appointed to act on their behalf, must take account of pensionable earnings as a non-GP provider from all non-GP provider sources.

(7) If, apart from this paragraph, the earnings for a scheme year in respect of a member's non-GP provider service would not be a whole number of pounds, those earnings must be rounded down to the nearest whole pound.”.

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

**24.** In regulation 2.D.2 (pension credit members)–

- (a) in paragraph (2) at the end, add (as full-out words) “This is subject to paragraphs (5) and (8)”;
- (b) after paragraph (4), add–

“(5) A pension credit member who has not reached the age of 65 is entitled to immediate payment of a reduced pension payable for life if the pension credit member has–

- (a) reached the age of 55, and
- (b) claimed the payment of the pension.

(6) The amount of the annual pension under paragraph (5)–

- (a) is first calculated as mentioned in paragraph (3) of this regulation, and
- (b) then that amount is reduced by such amount as the Scottish Ministers determine, after consulting the Scheme actuary, to be appropriate by reason of the payment of the pension before the member reaches 65.

(7) A claim under paragraph (5) must be made by notice in writing in such form as the Scottish Ministers require and takes effect from the date specified in the claim as the date on which the pension is to become payable.

(8) A pension credit member who has not reached the age of 65 is entitled to immediate payment of a pension payable for life if, in the opinion of the Scottish Ministers, the pension credit member–

- (a) meets the ill-health condition specified in paragraph 1 of Schedule 28 to the 2004 Act,
- (b) had previously been engaged in regular employment but is now permanently incapable of engaging in such employment due to mental or physical infirmity, and
- (c) has claimed the pension.

(9) The amount of the pension under paragraph (8) is calculated as specified in paragraph (3) of this regulation.

(10) For the purpose of paragraph (8), the Scottish Ministers may require whatever medical evidence that the Scottish Ministers consider necessary.”.

**Amendment of regulation 2.D.4**

25. In paragraph (3)(b) of regulation 2.D.4 (early payment of pensions with actuarial reduction) after “active member”, insert “or a non-contributing member”.

**Amendment of regulation 2.D.5**

26. In paragraphs (1) and (9)(b) (twice) of regulation 2.D.5 (partial retirement (members aged at least 55)) after “active member”, insert “or a non-contributing member”.

**Amendment of regulation 2.D.6**

27. In paragraphs (3) (three times) and (5) of regulation 2.D.6 (increase in pensionable pay following exercise of option under regulation 2.D.5) after “active member”, insert “or a non-contributing member”.

**Amendment of regulation 2.D.7**

28. In paragraph (1) of regulation 2.D.7 (application of regulations 2.D.5 and 2.D.6 where concurrent part-time employments held) after “active member”, insert “or a non-contributing member”.

**Amendment of regulation 2.D.8**

29. In regulation 2.D.8 (early retirement on ill-health (active members)) in–
- (a) the heading after “active members”, insert “and non-contributing members”;
  - (b) in paragraph (2) after “active member”, insert “or a non-contributing member”.

**Amendment of regulation 2.D.9**

30. In paragraph (2) of regulation 2.D.9 (re-assessment of entitlement to an ill-health pension determined under regulation 2.D.8)–
- (a) at the end of sub-paragraph (c)(ii) omit “and”;
  - (b) after sub-paragraph (d), add–  
“; and
  - (e) the member has not become entitled to an upper tier pension in respect of any later service under regulation 2.G.5.”.

**Amendment of regulation 2.D.11**

31. In paragraph (1)(a) of regulation 2.D.11 (early retirement on termination of employment by employing authority) after “active member”, insert “or a non-contributing member”.

**Amendment of regulation 2.D.13**

32. In paragraph (2)(a) of regulation 2.D.13 (exceptions to requirement that NHS employment must have ceased) after “active member”, insert “or a non-contributing member”.

### **Amendment of regulation 2.D.14**

**33.** In regulation 2.D.14 (general option to exchange part of pension for lump sum)–

(a) for paragraph (1) substitute–

“(1) A member (other than a pension credit member whose rights under the Scheme are attributable to a disqualifying pension credit for the purpose of paragraph 2 of Schedule 29 to the 2004 Act) may opt to exchange part of a pension to which the member would otherwise be entitled for a lump sum.”;

(b) in paragraph (7) at the end, add (as full-out words) “This is subject to paragraphs (8) and (9).”;

(c) after paragraph (7), add–

“(8) If the pension is an ill-health pension under regulation 2.D.8, the option under this regulation may only be exercised by giving notice in writing to the scheme administrator in such form as the Scottish Ministers require–

(a) where the member is awarded–

(i) a lower tier pension under paragraph (2) of that regulation, at the time of claiming that lower tier pension,

(ii) an upper tier pension under paragraph (3) of that regulation, at the time of claiming that upper tier pension; or

(b) before such later time as the scheme administrator specifies in writing.

(9) If the pension is an upper tier ill-health pension under regulation 2.D.9, in substitution for a lower tier ill-health pension under regulation 2.D.8, the option under this regulation may only be exercised–

(a) in relation to the difference between the lower tier pension that ceases to be payable in accordance with paragraph (3) of regulation 2.D.9 and the upper tier pension to which the member becomes entitled under that paragraph, and

(b) by giving notice in writing to the scheme administrator in such form as the Scottish Ministers require–

(i) at the time of award of the upper tier pension under that paragraph, or

(ii) before such later time as the scheme administrator specifies in writing.”.

### **Amendment of regulation 2.D.15**

**34.** In regulation 2.D.15 (option for members in serious ill-health to exchange whole pension for lump sum)–

(a) in paragraph (1) after “active member”, insert “or a non-contributing member”;

(b) in paragraph (4) after “active member”, insert “or a non-contributing member”;

(c) for paragraph (5), substitute–

“(5) A pension credit member who exercises the option is to be paid, as soon as reasonably practicable and before reaching the age of 75, an amount equal to the sum of–

(a) the maximum lump sum (if any) to which the pension credit member could have become entitled on exercising the option under regulation 2.D.14 at the appropriate time, and

(b) the total annual amount of the pension to which the pension credit member is entitled under regulation 2.D.2 after exercising that option, multiplied by 5.”;

(d) in paragraph (6) after “active member”, insert “or a non-contributing member”.

### **Omission of regulation 2.D.17**

**35.** Omit regulation 2.D.17 (pension credit member’s rights).

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

36. In paragraphs (2)(a) and (4)(b) of regulation 2.D.21 (dual capacity membership) after “active member”, insert “or a non-contributing member”.

**Amendment of regulation 2.E.1**

37. In paragraph (1) of regulation 2.E.1 (surviving adult dependants’ pensions) after “active member”, insert “, a non-contributing member”.

**Amendment of regulation 2.E.3**

38. In regulation 2.E.3 (amount of pensions under regulation 2.E.1: active members)–

- (a) in the heading after “active ”, insert “and non-contributing”;
- (b) for paragraph (1), substitute–

“(1) In the case of an active member or a non-contributing member, for the period of 6 months beginning with the day after the member’s death (“the initial period”) the rate of the pension payable under regulation 2.E.1 (if that amount is greater than the amount of the pension payable to the surviving adult under this Chapter apart from this paragraph), is equal to–

- (a) in the case of a deceased active member, the rate of the member’s pensionable pay at the time of death;
- (b) in the case of a deceased non-contributing member, the rate of the deceased’s reckonable pay.”.

**Amendment of regulation 2.E.4**

39. In paragraph (3) of regulation 2.E.4 (amount of pensions under regulation 2.E.1: pensioner members) after “paragraph (1)”, insert “and (2)”.

**Amendment of regulation 2.E.7**

40. In paragraph (3) of regulation 2.E.7 (re-employed pensioners: adult survivor pensions in initial period) for sub-paragraphs (a) and (b), substitute–

“(a) in the case of–

- (i) a deceased active member, the rate of the deceased’s pensionable pay at the time of death, or
  - (ii) a deceased non-contributing member, the rate of the deceased’s reckonable pay on the deceased’s last day of pensionable service, and
- (b) the rate of the deceased member’s pension payable at the time of death after taking account of any reduction in the rate of the pension under Chapter 2.H (abatement).”.

**Amendment of regulation 2.E.10**

41. In regulation 2.E.10 (amount of children’s pension under regulation 2.E.8: deceased active members)–

- (a) in the heading after “deceased active members” insert, “and deceased non-contributing members”;
- (b) in paragraph (1) after “active” insert, “, or a non-contributing member”;

- (c) for paragraph (4), substitute–
  - “(4) For this purpose “relevant service” means–
    - (a) in the case of an active member, the greater of–
      - (i) the pensionable service the deceased was entitled to count on the date of death, increased by the enhancement period (if any) that would have applied for the purposes of regulation 2.D.8(5) if the deceased had become entitled to a upper tier ill-health pension on the date of death, and
      - (ii) 10 years’ pensionable service;
    - (b) in the case of a non-contributing member, the pensionable service that the deceased was entitled to count on the date of death.”;
  - (d) in paragraph (6) for “equal to the rate of the deceased’s pensionable pay at the date of death.”, substitute–
    - “equal to–
      - (i) in the case of a deceased active member, the rate of the deceased’s pensionable pay at the date of death, and
      - (ii) in the case of a deceased non-contributing member, the rate of the deceased’s reckonable pay.”;
    - (e) in paragraph (7) for “equal to the rate of the deceased’s pensionable pay at the date of death.”, substitute–
      - “equal to–
        - (i) in the case of a deceased active member, the rate of the deceased’s pensionable pay at the date of death, and
        - (ii) in the case of a deceased non-contributing member, the rate of the deceased’s reckonable pay.”.

#### **Amendment of regulation 2.E.11**

**42.** In paragraph (1) of regulation 2.E.11 (amount of children’s pension under regulation 2.E.8: deceased pensioner members) after “active member”, insert “or a non-contributing member”.

#### **Amendment of regulation 2.E.12**

**43.** In paragraphs (1) and (3)(a) of regulation 2.E.12 (amount of children’s pension under regulation 2.E.8: deceased deferred members) after “active member”, insert “or a non-contributing member”.

#### **Amendment of regulation 2.E.13**

**44.** In paragraph (3) of regulation 2.E.13 (amount of children’s pension under regulation 2.E.8: recent leavers) for sub-paragraph (a), substitute–

- “(a) “the basic death pension” means 75% of the pension to which the deceased would have been entitled is the deceased had become entitled to–
  - (i) a pension under regulation 2.D.8(5) on the date of death, or
  - (ii) if greater, the amount that the member’s pension would have been if it had been based on 10 years’ pensionable service (disregarding any additional pension), and”.

#### **Amendment of regulation 2.E.15**

**45.** In regulation 2.E.15 (amount of children’s pension under regulation 2.E.8: re-employed pensioners)–

- (a) in paragraph (1) after “active member”, insert “or a non-contributing member”;

- (b) for paragraph (2)(a), substitute–
  - “(a) in the case of–
    - (i) a deceased active member, the rate of the deceased’s pensionable pay at the date of death, or
    - (ii) a deceased non-contributing member, the rate of the deceased’s reckonable pay, and”;
- (c) in paragraph (5)–
  - (i) in sub-paragraph (a) after “active member”, insert “or a non-contributing member”,
  - (ii) in sub-paragraph (b) after “active members”, insert “or non-contributing members”.

**Amendment of regulation 2.E.17**

**46.** In regulation 2.E.17 (amount of lump sum: single capacity members and recent leavers (disregarding regulation 2.D.5 employments))–

- (a) in paragraph (1) after “active member”, insert “or a non-contributing member”;
- (b) in paragraph (2)–
  - (i) after “active member”, insert “or a non-contributing member”,
  - (ii) at the end, insert (as full-out words) “This is subject to regulations 2.E.20A and 2.E.21.”;
- (c) in paragraph (3) for “is not an active member”, substitute “was not an active member or a non-contributing member”;
- (d) in paragraph (8)(a) for “is an active member”, substitute “was an active member or a non-contributing member”.

**Amendment of regulation 2.E.18**

**47.** In regulation 2.E.18 (amount of lump sum: dual capacity members (disregarding regulation 2.D.5 employments))–

- (a) in paragraph (1) after “active member”, insert “or a non-contributing member”;
- (b) in paragraph (2) for sub-paragraph (a), substitute–
  - “(a) five times the annual rate of pension–
    - (i) payable under regulation 2.D.8(5) (upper tier ill-health pension), if the deceased had not reached the age of 65,
    - (ii) payable under regulation 2.D.1 (normal retirement pensions), if the deceased had reached the age of 65,
  - to which the member would have been entitled–
    - (aa) in the case of a deceased active member, at the member’s date of death, or
    - (bb) in the case of a deceased non-contributing member, on the last day of the member’s pensionable service, and”

**Amendment of regulation 2.E.19**

**48.** In regulation 2.E.19 (amount of lump sum: dual capacity members: members with pensions under regulation 2.D.5)–

- (a) in paragraph (1)–
  - (i) in sub-paragraph (a) for “is an active member”, substitute “was an active member or a non-contributing member”,
  - (ii) in sub-paragraph (b) for “is, substitute “was”;



- (b) in paragraph (2)(a) for “final pensionable pay”, substitute “reckonable pay”;
- (c) in paragraph (5) (in the definition of “DPS”) after “active member”, insert “or a non-contributing member”.

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

**49.** In regulation 2.G.5 (re-employed lower tier ill-health pensioners)–

- (a) in paragraph (4) at the end, insert (as full-out words) “This is subject to paragraph (5).”;
  - (b) after paragraph (4) add–
    - “(5) If the re-employed member–
      - (a) ceases to be entitled to a lower tier ill-health pension in respect of the earlier service,
      - (b) becomes entitled to a upper tier ill-health pension in respect of that earlier service in accordance with regulation 2.D.9(3), and
      - (c) on the termination of the later service, the member becomes entitled to a lower tier or, as the case may be, an upper tier ill-health pension in respect of that later service,
- the re-employed member is entitled to the benefits set out in paragraph (6).
- (6) The benefits mentioned in paragraph (5) are–
    - (a) an upper tier ill-health pension paid in accordance with regulation 2.D.9 in respect of the member’s earlier service, and
    - (b) a lower tier ill-health pension in respect of the member’s later service.”.

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

**50.** In paragraph (2) of regulation 2.J.5 (commutation of small pensions), omit sub-paragraph (d).

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

**51.** In regulation 2.J.9 (interest on late payment of benefits and refunds of contributions)–

- (a) in paragraph (2) after “interim” insert, “or substitute”;
  - (b) for paragraph (3), substitute–
    - “(3) The Scottish Ministers must pay interest on the amount of a pension, lump sum, refund of contributions or an interim or substitute award which is unpaid (“the unpaid amount”) to the person to whom it should have been paid unless the Scottish Ministers are satisfied that the unpaid amount was not paid on the due date because of some act or omission on the part of the member or other person to whom it should have been paid.”;
  - (c) in paragraph (5) after “unpaid amount”, insert “(other than an unpaid amount in respect of an interim or substitute award)”;
  - (d) for paragraph (6), substitute–
    - “(6) The due date for an unpaid amount–
      - (a) referred to in paragraph (5) in respect of which the Scottish Ministers were not in possession of all the information necessary for the calculation of the amount of the pension, lump sum or refund of contributions referred to in that paragraph on the date which would, in accordance with paragraph (5) be the due date;
      - (b) in respect of an interim or substitute award,
- shall be the first day on which the Scottish Ministers were in possession of all the information necessary to calculate that pension, lump sum, refund of contributions or interim or substitute award.”;

- (e) in paragraph (7)–
  - (i) for “interim award” substitute “interim or substitute award”,
  - (ii) at the end of sub-paragraph (a), omit “and”,
  - (iii) at the end of sub-paragraph (b), add–
    - “; and
  - (c) any amount paid that increases the amount of an earlier payment due to the payment of an upper tier ill-health pension under regulation 2.D.8 paid to a member in substitution for a lower tier ill-health pension under that regulation following a determination by the Scottish Ministers under regulation 2.D.9.”.

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

52. In paragraph (4) of regulation 2.J.10 (determination of questions) before sub-paragraph (a), insert–

“(za) regulation 2.D.2(8) (pension credit members);”.

#### **Amendment of regulation 2.J.13**

53. For regulation 2.J.13 (employing authority and certain member record keeping contribution estimates), substitute–

##### **“2.J.13 Employing authority and certain member record keeping and contribution estimates**

(1) As regards a member who is a non-GP provider who derives practitioner income from the contracts, agreements or payments referred to in regulation 2.A.8(6), in respect of each scheme year, the member shall provide the contracting Health Board or someone appointed to act on their behalf with a certificate of their pensionable earnings based on–

- (a) the accounts drawn up in accordance with generally accepted accounting practice by the practice of which the member is a member; and
- (b) the return that member has made to Her Majesty’s Revenue & Customs in respect of their earnings for that year,

no later than 1 month after the date on which that return was required to be submitted to Her Majesty’s Revenue and Customs.

(2) As regards a GMS practice or a Section 17C Agreement provider or an HBPMS contractor, in respect of each scheme year, the practice or contractor shall provide the Scottish Ministers with a statement of estimated pensionable earnings in respect of any non-GP provider that is a Section 17C Agreement provider or HBPMS contractor or who assists in the provision of NHS services provided by that GMS or a Section 17C Agreement provider or an HBPMS contractor, at least 1 month before the beginning of that Scheme year.

(3) If, in respect of a scheme year, a non-GP provider has failed to comply with the requirements of paragraph (1), the non-GP provider’s pensionable earnings for that scheme year shall be zero.

This is subject to paragraph (4).

- (4) If, in respect of a scheme year–
  - (a) a non-GP provider has failed to comply with the requirements of paragraph (1),
  - (b) a benefit is payable for, or in respect of their non-GP provider service, and

- (c) the non-GP provider's employing authority is in possession of a figure representing all or part of the non-GP provider's pensionable earnings for that year,

the Scottish Ministers may treat that figure as the amount of the non-GP provider's pensionable earnings for that year.

(5) If, in respect of a scheme year, a non-GP provider–

- (a) dies without complying with the requirements of paragraph (1), or
- (b) is, in the opinion of the Scottish Ministers, unable to look after the non-GP provider's own affairs by reason of illness or mental disorder,

the Scottish Ministers may require that non-GP provider's personal representatives to provide the relevant certificate–

- (i) within the period referred to in paragraph (1), or
- (ii) within such other period as the Scottish Ministers should permit.

(6) All employing authorities under this Part of the regulations shall, for each scheme year–

- (a) provide the Scottish Ministers with a statement of estimated total contributions due to the Scheme under regulation 2.C.1 (contributions by members) and 2.C.1 (non-GP providers) and 2.C.5 (contributions by employing authorities: general), and
- (b) maintain records of contributions to the Scheme made under regulations 2.C.1 and 2.C.5.

(7) The statement referred to in paragraph (6)(a) shall be provided to the Scottish Ministers and no later than 2 months after the end of each scheme year.

(8) Except where the Scottish Ministers waives such requirement, an employing authority shall provide the Scottish Ministers with a statement of contributions to the Scheme recorded in accordance with paragraph (6)(b) no later than 2 months after the end of each scheme year.

(9) The certificates and statements referred to in this regulation–

- (a) shall be in such form as the Scottish Ministers shall from time to time require;
- (b) may be provided to the Scottish Ministers in such manner as the Scottish Ministers may from time to time permit.”.

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

**54.** In regulation 3.A.1 (interpretation: general)–

- (a) in the definition of “active member” for “3.D.5(9)”, substitute “3.D.5(8)”;
- (b) “member” after “active member,”, insert “a non-contributing member,”;
- (c) at the appropriate place in the alphabetical order, insert–
  - ““non-contributing member” means a member who–
  - (a) is under the age of 75 and in NHS employment,
  - (b) is no longer required to make contributions to the Scheme in accordance with regulation 3.C.1(1), but
  - (c) will be entitled to a pension under these Regulations–
    - (i) on ceasing to be employed in NHS employment and making a claim for the pension, or
    - (ii) upon reaching age 75;”

**Amendment of regulation 3.B.2**

55. In regulation 3.B.2 (restrictions on eligibility: general) after paragraph (5), add–

“(6) A person is not eligible to be an active member of the Scheme in any future employment if the person–

- (a) ceases to be entitled to a lower tier ill-health pension under regulation 3.D.7, and
- (b) becomes entitled to an upper tier ill-health pension under that regulation on the date the Scottish Ministers makes a determination under regulation 3.D.8(3).

This is subject to paragraph (7).

(7) A person to whom paragraph (6) applies is eligible to be an active member of the Scheme in any further employment after the first anniversary of that person’s first day of such employment following the date of the Scottish Ministers’ determination under regulation 3.D.8.”.

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

56. For regulation 3.C.2 (members’ contribution rate), substitute–

**“3.C.2 Members’ contribution rate**

(1) Contributions under regulation 3.C.1(1) must be paid in accordance with the following paragraphs of this regulation.

(2) Subject to paragraph (3), for the 2009-2010 scheme year and each subsequent scheme year, a member’s contribution rate is the percentage specified in Column 2 of the following table in respect of the corresponding pensionable earnings band specified in Column 1 of the Table into which the member’s earnings fall.

Table

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
Up to £20,224	5%
£20,225 to £66,789	6.5%
£66,790 to £105,318	7.5%
£105,319 to any higher amount	8.5%

(3) The Scottish Ministers may, with the consent of the Treasury, make a determination substituting any or all of the earnings bands or contribution percentage rates specified in the table in paragraph (2) with effect from a date specified in the determination.

(4) Before making a determination under paragraph (3), the Scottish Ministers must consider–

- (a) the advice of the Scheme Actuary; and
- (b) in accordance with regulation 1.B.2 (cost sharing), advice from such employee and employer representatives as the Scottish Ministers consider appropriate.

(5) If, in respect of a scheme year, a principal practitioner (other than a dentist ) has–

- (a) certified their pensionable earnings in accordance with regulation 3.J.13 and forwarded a record of those earnings to the Contracting Health Board or someone appointed to act on their behalf, or

(b) was not required to certify their earnings in accordance with that regulation but the Contracting Health Board or someone appointed to act on their behalf has the figure that represents the practitioner’s pensionable earnings for that scheme year, contributions payable for that scheme year, shall be those specified in column 2 of the table in paragraph (2) in respect of the amount of pensionable earnings referred to in column 1 of that table which corresponds to aggregate of–

- (i) the certified or final pensionable earnings from all practitioner sources, and
- (ii) any additional pensionable earnings the practitioner is treated as having received during a break in service in accordance with regulation 3.A.8.

(6) If paragraph (5) does not apply to a practitioner (other than a dentist) in respect of a scheme year, contributions are payable for that scheme year at the rate in column 2 of the table in paragraph (2), which–

- (a) have been agreed between the contracting Health Board, someone appointed on their behalf or employer on the one hand and the practitioner on the other hand, or
- (b) corresponds to the practitioner’s most recent certified or final pensionable earnings referred to in paragraph (5), or
- (c) corresponds to the estimate of the practitioner’s pensionable earnings from all practitioner sources for that year.

This is subject to paragraph (7).

(7) If paragraph (6) applies to a practitioner (other than a dentist) in respect of a scheme year and paragraph (5)(a) or (b) is subsequently satisfied in respect of that scheme year, that practitioner (other than a dentist ) shall pay contributions at the rate determined in accordance with paragraph (5).

(8) A Contracting Health Board or someone appointed on their behalf may adjust a practitioner’s contribution rate for any scheme year determined in accordance with paragraph (6) or (9)–

- (a) by agreement between the Contracting Health Board or someone appointed on their behalf, on the one hand and the practitioner on the other hand, or
- (b) without such agreement, if the Contracting Health Board or someone appointed to act on their behalf, is satisfied that pensionable earnings will exceed the amount used to determine the contribution rate in accordance with those paragraphs.

(9) If a member is in practitioner service and concurrently in NHS employment in respect of which the member is liable to pay contributions in accordance with regulation 2.C.1 of these Regulations, contributions payable in respect of the member’s practitioner service shall be determined under this Part of these Regulations and contributions payable in respect of the member’s NHS employment shall be determined under Part 2 of these Regulations.

(10) In determining the contributions payable in accordance with paragraph 2 of this regulation, a Contracting Health Board or someone appointed to act on their behalf must take account of pensionable earnings as a practitioner.

(11) Dentists are to provide their Contracting Health Board or someone appointed to act on their behalf are required.

(12) If, apart from this paragraph, the earnings for a scheme year in respect of a member’s practitioner service would not be a whole number of pounds, those earnings must be rounded down to the nearest whole pound.”.

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

**57.** In regulation 3.D.2 (pension credit members)–

- (a) in paragraph (2 at the end, add (as full-out words) “This is subject to paragraphs (5) and (8)”;

(b) –

“(5) A pension credit member who has not reached the age of 65 is entitled to immediate payment of a reduced pension payable for life if the pension credit member has–

- (a) reached the age of 55, and
- (b) claimed the payment of the pension.

(6) The amount of the annual pension under paragraph (5)–

- (a) is first calculated as mentioned in paragraph (3) of this regulation, and
- (b) then that amount is reduced by such amount as the Scottish Ministers determine, after consulting the Scheme actuary, to be appropriate by reason of the payment of the pension before the member reaches 65.

(7) A claim under paragraph (5) must be made by notice in writing in such form as the Scottish Ministers require and takes effect from the date specified in the claim as the date on which the pension is to become payable.

(8) A pension credit member who has not reached the age of 65 is entitled to immediate payment of a pension payable for life if, in the opinion of the Scottish Ministers, the pension credit member–

- (a) meets the ill-health condition specified in paragraph 1 of Schedule 28 to the 2004 Act,
- (b) had previously been engaged in regular employment but is now permanently incapable of engaging in such employment due to mental or physical infirmity, and
- (c) has claimed the pension.

(9) The amount of the pension under paragraph (8) is calculated as specified in paragraph (3) of this regulation.

(10) For the purpose of paragraph (8), the Scottish Ministers may require whatever medical evidence that the Scottish Ministers consider necessary.”.

#### **Amendment of regulation 3.D.4**

**58.** In paragraph (3)(b) of regulation 3.D.4 (early payment of pensions with actuarial reduction) after “active member”, insert “or a non-contributing member”.

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

**59.** In regulation 3.D.5 (partial retirement (members aged at least 55))–

- (a) in paragraph (1) after “active member” (twice), insert “or a non-contributing member”;
- (b) in paragraph (7)(b)(i) for “latest GP certificate referred to in regulation 3.J.13” to “in any other case”, substitute “latest certificate referred to in regulation 3.J.13, or the latest scheme year’s final pensionable earnings referred to in regulation 3.C.2, of these regulations and agreed with each relevant Health Board or someone appointed to act on their behalf or employer”;
- (c) in paragraph (8)(b)(twice) after “active member”, insert “or a non-contributing member”.

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

**60.** In paragraph (4) of regulation 3.D.6 (increase in level of engagement pay following exercise of option under regulation 3.D.5) after “active member”, insert “or a non-contributing member”.

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

**61.** In regulation 3.D.7 (early retirement on ill-health (active members)) in–

- (a) the heading after “active members”, insert “and non-contributing members”;

- (b) paragraph (2) after “active member”, insert “or a non-contributing member”.

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

**62.** In paragraph (2) of regulation 3.D.8 (re-assessment of entitlement to an ill-health pension determined under regulation 3.D.7)–

- (a) at the end of sub-paragraph (c)(ii) omit “and”;
- (b) after sub-paragraph (d), add–
  - “; and
- (e) the member has not become entitled to an upper tier pension in respect of any later service under regulation 3.G.5.”.

#### **Amendment of regulation 3.D.10**

**63.** In regulation 3.D.10 (general option to exchange part of pension for lump sum)–

- (a) in paragraph (1) for “other than a pension credit member”, substitute “(other than a pension credit member whose rights under the Scheme are attributable to a disqualifying pension credit for the purpose of paragraph 2 of Schedule 29 to the 2004 Act)”;
- (b) in paragraph (7) at the end, add (as full-out words) “This is subject to paragraphs (8) and (9).”;
- (c) after paragraph (7), add–
  - “(8) If the pension is an ill-health pension under regulation 3.D.7, the option under this regulation may only be exercised by giving notice in writing to the scheme administrator in such form as the Scottish Ministers require–
    - (a) where the member is awarded–
      - (i) a lower tier pension under paragraph (2) of that regulation, at the time of claiming that lower tier pension,
      - (ii) an upper tier pension under paragraph (3) of that regulation, at the time of claiming that upper tier pension; or
    - (b) before such later time as the scheme administrator specifies in writing.
  - (9) If the pension is an upper tier ill-health pension under regulation 3.D.8, in substitution for a lower tier ill-health pension under regulation 3.D.7, the option under this regulation may only be exercised–
    - (a) in relation to the difference between the lower tier pension that ceases to be payable in accordance with paragraph (3) of regulation 3.D.8 and the upper tier pension to which the member becomes entitled under that paragraph, and
    - (b) by giving notice in writing to the scheme administrator in such form as the Scottish Ministers require–
      - (i) at the time of award of the upper tier pension under that paragraph, or
      - (ii) before such later time as the scheme administrator specifies in writing.”.

#### **Amendment of regulation 3.D.11**

**64.** In regulation 3.D.11 (option for members in serious ill-health to exchange whole pension for lump sum)–

- (a) in paragraph (1) after “active member”, insert “or a non-contributing member”;
- (b) in paragraph (4) after “active member”, insert “or a non-contributing member”;
- (c) for paragraph (5) of regulation 3.D.11 (option for members in serious ill-health to exchange whole pension for lump sum), substitute–

“(5) A pension credit member who exercises the option is to be paid, as soon as reasonably practicable and before reaching the age of 75, an amount equal to the sum of–

- (a) the maximum lump sum (if any) to which the pension credit member could have become entitled on exercising the option under regulation 3.D.10 at the appropriate time, and
  - (b) the total annual amount of the pension to which the pension credit member is entitled under regulation 3.D.2 after exercising that option, multiplied by 5.”.
- (d) in paragraph (6) after “active member”, insert “or a non-contributing member”.

### **Omission of regulation 3.D.13**

**65.** Omit regulation 3.D.13 (pension credit member’s rights).

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

**66.** In paragraphs (2)(a) and (4)(b) of regulation 3.D.17 (dual capacity membership) after “active member”, insert “or a non-contributing member”.

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

**67.** In regulation 3.E.1 (surviving adult dependants’ pensions)–

- (a) in paragraph (1) after “active member”, insert “, a non-contributing member”;
- (b) in paragraph (3) for “3.C.14(4) and 3.C.16(3)”, substitute “3.C.12(4) and 3.C.14(3)”.

### **Amendment of regulation 3.E.3**

**68.** In regulation 3.E.3 (amount of pensions under regulation 3.E.1: active members)–

- (a) in the heading after “active ”, insert “and non-contributing”;
- (b) for paragraph (1), substitute–

“(1) In the case of an active member or a non-contributing member, for the period of 6 months beginning with the day after the member’s death (“the initial period”) the rate of the pension payable under regulation 3.E.1 (if that amount is greater than the amount of the pension payable to the surviving adult under this Chapter apart from this paragraph), is equal to–

- (a) in the case of a deceased active member, the rate of the member’s pensionable earnings during the last complete quarter before the member’s death;
- (b) in the case of a deceased non-contributing member, the monthly average of the deceased’s uprated earnings on the member’s last day of pensionable service.”.

### **Amendment of regulation 3.E.4**

**69.** For paragraph (3) of regulation 3.E.4 (amount of pensions under regulation 3.E.1: pensioner members), substitute–

“(3) Any reduction made in the rate of the pension–

- (a) under Chapter 3.H (abatement) is ignored for the purposes of paragraphs (1) and (2), and
- (b) under regulation 3.D.4 (early payment of pensions with actuarial reduction) is ignored for the purposes of paragraph (2).”.

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

**70.** In paragraph (3) of regulation 3.E.7 (re-employed pensioners: adult survivor pensions in initial period) for sub-paragraphs (a) and (b), substitute–



- “(a) in the case of–
  - (i) a deceased active member, the rate of the deceased’s pensionable earnings during the last complete quarter before the member’s death, or
  - (ii) a deceased non-contributing member, the rate of the monthly average of the deceased’s uprated earnings on the member’s last day of pensionable service, and
- (b) the rate of the deceased member’s pension (if any) payable at the time of death.”.

**Amendment of regulation 3.E.8**

**71.** In paragraph (10) of regulation 3.E.8 (surviving children’s pensions) for “3.C.14(4) and 3.C.16(3)”, substitute “3.C.12(4) and 3.C.14(3)”.

**Amendment of regulation 3.E.10**

**72.** In regulation 3.E.10 (amount of children’s pension under regulation 3.E.8: deceased active members)–

- (a) in the heading after “deceased active members” insert, “and deceased non-contributing members”;
- (b) in paragraph (1) after “active” insert, “,or a non-contributing member”;
- (c) for paragraph (3), substitute–

“(3) In this regulation “the basic death pension” means twice the appropriate proportion of the deceased member’s pension under regulation 3.D.1 and–

- (a) in the case of an active member, that pension will include the greater of–
  - (i) any increase due to such enhancement period (if any) that would have applied for the purposes of regulation 3.D.7(5) if the deceased had become entitled to a upper tier ill-health pension on the date of death, and
  - (ii) 10 years’ pensionable service;
- (b) in the case of a non-contributing member, will be based on the pensionable service that the deceased was entitled to count on the date of death.”;

- (d) in paragraph (5) for “equal to the average rate of the member’s pensionable earnings during the complete quarter before he died.”, substitute–

“equal to–

- (i) in the case of a deceased active member, the average rate of the deceased’s pensionable earnings during the last complete quarter before the member died, and
  - (ii) in the case of a deceased non-contributing member, the rate of the monthly average of the deceased’s uprated earnings on the member’s last day of pensionable service.”;
- (e) for paragraph (6), substitute

“(6) In a case within paragraph (4)(b) or (c), the rate of pension in respect of the dependent child or children for the period of 6 months beginning with the deceased’s death is equal to–

- (a) in the case of a deceased active member, the average rate of the deceased’s pensionable earnings during the last complete quarter before the member died, and
- (b) in the case of a deceased non-contributing member, the rate of the monthly average of the deceased’s uprated earnings on the member’s last day of pensionable service.”.

**Amendment of regulation 3.E.11**

73. In paragraph (1) of regulation 3.E.11 (amount of children’s pension under regulation 3.E.8: deceased pensioner members) after “active member”, insert “or a non-contributing member”.

**Amendment of regulation 3.E.12**

74. In paragraphs (1) and (3)(a) of regulation 3.E.12 (amount of children’s pension under regulation 3.E.8: deceased deferred members) after “active member”, insert “or a non-contributing member”.

**Amendment of regulation 3.E.13**

75. In paragraph (3) of regulation 3.E.13 (amount of children’s pension under regulation 2.E.8: recent leavers) for sub-paragraph (a), substitute–

- “(a) “the basic death pension” means twice the appropriate proportion of the pension to which the deceased would be entitled to–
  - (i) if the deceased had become entitled to a pension under regulation 3.D.7(5), or
  - (ii) if greater, the amount that the member’s pension would have been if it had been based on 10 years’ pensionable service (disregarding any additional pension), and”.

**Amendment of regulation 3.E.15**

76. In regulation 3.E.15 (amount of children’s pension under regulation 3.E.8: re-employed pensioners)–

- (a) in paragraph (1) after “active member”, insert “or a non-contributing member”;
- (b) for sub-paragraphs (a) and (b) of paragraph (2), substitute–
  - “(a) in the case of–
    - (i) a deceased active member, the rate of the deceased’s pensionable earnings during the last complete quarter before the member died, or
    - (ii) a deceased non-contributing member, the rate of the monthly average of the deceased’s uprated earnings on the last day of the member’s pensionable service, and
  - (b) the rate of the pension being received by the deceased (if any) at the date of death.”;
- (c) in paragraph (5)–
  - (i) in sub-paragraph (a) after “active member”, insert “or a non-contributing member”,
  - (ii) in sub-paragraph (b) after “active members”, insert “or non-contributing members”;
- (d) for paragraph (6)(a), substitute–
  - “(a) the service taken into account (in regulation 3.E.10(3)) for the purposes of the calculation of the amount referred to in paragraph (5)(a), and”.

**Amendment of regulation 3.E.17**

77. In regulation 3.E.17 (amount of lump sum: single capacity members and recent leavers (disregarding regulation 3.D.5 employments))–

- (a) for paragraph (1), substitute–
  - “(1) The lump sum payable on death of an active member or a non-contributing member, who is not a deferred member or a pensioner member, is an amount equal to–
    - (a) in the case of a deceased active member, twice the annual average of the member’s uprated earnings at the date of death, or

- (b) in the case of a deceased non-contributing member, twice the annual average of the member's uprated earnings on the member's last day of pensionable service.”.
- (b) in paragraph (2)–
  - (i) after “active member”, insert “or a non-contributing member”,
  - (ii) in sub-paragraph (b) for “at the date of death”, substitute “by which the pension was calculated”,
  - (iii) at the end, insert (as full-out words) “This is subject to regulations 3.E.20A and 3.E.21.”;
- (c) in paragraph (3) for “is not an active member”, substitute “was not an active member or a non-contributing member”;
- (d) in paragraph (8)(a) for “is an active member”, substitute “was an active member or a non-contributing member”.

#### **Amendment of regulation 3.E.18**

**78.** In regulation 3.E.18 (amount of lump sum: dual capacity members (disregarding regulation 3.D.5 employments))–

- (a) in paragraph (1)–
  - (i) in sub-paragraph (a) for “is an active member”, substitute “was an active member or a non-contributing member”,
  - (ii) in sub-paragraph (b) for “is”, substitute “was”;
- (b) in paragraph (2) for sub-paragraph (a), substitute–
  - “(a) five times the annual rate of pension–
    - (i) payable under regulation 3.D.7(5) (upper tier ill-health pension), if the deceased had not reached the age of 65,
    - (ii) payable under regulation 3.D.1 (normal retirement pensions), if the deceased had reached the age of 65,
  - to which the member would have been entitled–
    - (aa) in the case of a deceased active member, at the member's date of death, or
    - (bb) in the case of a deceased non-contributing member, on the last day of the member's pensionable service, and”.

#### **Amendment of regulation 3.E.19**

**79.** In regulation 3.E.19 (amount of lump sum: dual capacity members: members with pensions under regulation 3.D.5)–

- (a) in paragraph (1)–
  - (i) in sub-paragraph (a) for “is an active member”, substitute “was an active member or a non-contributing member”,
  - (ii) in sub-paragraph (b) for “is”, substitute “was”;
- (b) for paragraph (2), substitute–
  - “(2) The lump sum is an amount–
    - (a) equal to the sum of–
      - (i) in the case of a deceased active member, twice the appropriate fraction of the annual average of the member's uprated earnings at the date of death, or
      - (ii) in the case of a deceased non-contributing member, twice the appropriate fraction of the annual average of the member's uprated earnings at the member's last day of pensionable service, and”;

- (c) in paragraph (5) (in the definition of “DPS”) after “active member”, insert “or a non-contributing member”.

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

**80.** In regulation 3.G.5 (re-employed lower tier ill-health pensioners)–

- (a) in paragraph (4) at the end, insert (as full-out words) “This is subject to paragraph (5).”;
  - (b) after paragraph (4) add–
    - “(5) If the re-employed member–
      - (a) ceases to be entitled to a lower tier ill-health pension in respect of the earlier service,
      - (b) becomes entitled to an upper tier ill-health pension in respect of that earlier service in accordance with regulation 3.D.8(3), and
      - (c) on the termination of the later service, the member becomes entitled to a lower tier or, as the case may be, upper tier ill-health pension in respect of that later service,
- the re-employed member is entitled to the benefits set out in paragraph (6).
- (6) The benefits mentioned in paragraph (5) are–
    - (a) an upper tier ill-health pension paid in accordance with regulation 3.D.7 in respect of the member’s earlier service, and
    - (b) a lower tier ill-health pension in respect of the member’s later service.”.

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

**81.** In paragraph (2) of regulation 3.J.5 (commutation of small pensions), omit sub-paragraph (d).

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

**82.** In regulation 3.J.9 (interest on late payment of benefits and refunds of contributions)–

- (a) in paragraph (2) after “interim” insert, “or substitute”;
- (b) for paragraph (3), substitute–
  - “(3) The Scottish Ministers must pay interest on the amount of a pension, lump sum, refund of contributions or an interim or substitute award which is unpaid (“the unpaid amount”) to the person to whom it should have been paid unless the Scottish Ministers are satisfied that the unpaid amount was not paid on the due date because of some act or omission on the part of the member or other person to whom it should have been paid.”;
- (c) in paragraph (5) after “unpaid amount”, insert “(other than an unpaid amount in respect of an interim or substitute award)”;
- (d) for paragraph (6), substitute–
  - “(6) The due date for an unpaid amount–
    - (a) referred to in paragraph (5) in respect of which the Scottish Ministers were not in possession of all the information necessary for the calculation of the amount of the pension, lump sum or refund of contributions referred to in that paragraph on the date which would, in accordance with paragraph (5) be the due date;
    - (b) in respect of an interim or substitute award,

shall be the first day on which the Scottish Ministers were in possession of all the information necessary to calculate that pension, lump sum, refund of contributions or interim or substitute award.”;
- (e) in paragraph (7)–
  - (i) for “interim award” substitute “interim or substitute award”,

- (ii) at the end of sub-paragraph (a), omit “and”,
- (iii) at the end of sub-paragraph (b), add–
  - “; and
- (c) any amount paid that increases the amount of an earlier payment due to the payment of a upper tier ill-health pension under regulation 3.D.7 paid to a member in substitution for a lower tier ill-health pension under that regulation following a determination by the Scottish Ministers under regulation 3.D.8.”.

#### **Amendment of regulation 3.J.10**

**83.** In paragraph (2) of regulation 3.J.10 (determination of questions) before sub-paragraph (a), insert–

“(za) regulation 3.D.2(8) (pension credit members);”.

#### **Amendment of regulation 3.J.13**

**84.** For regulation 3.J.13 (employing authority and certain member record keeping and contribution estimates), substitute–

##### **“3.J.13 Employing authority and certain member record keeping and contribution estimates**

(1) As regards a principal medical practitioner, in respect of each scheme year, the member shall provide the Contracting Health Board or someone appointed on their behalf with a certificate of their pensionable earnings based on–

- (a) the accounts drawn up in accordance with generally accepted accounting practice by the practice of which the member is a member; and
- (b) the return that member has made to Her Majesty’s Revenue & Customs in respect of their earnings for that year,

no later than 1 month after the date on which that return was required to be submitted to Her Majesty’s Revenue and Customs.

(2) As regards an assistant practitioner or salaried GP, in respect of each scheme year, the member shall provide each Contracting Health Board or someone appointed on their behalf, employer, or scheme administrator as appropriate with a certificate of their pensionable earnings based on–

- (a) the payments they receive from employing authorities for practitioner services, and
- (b) the return that member has made to Her Majesty’s Revenue & Customs in respect of their earnings for that year,

no later than 1 month after the date on which that return was required to be submitted to Her Majesty’s Revenue and Customs.

(3) As regards a GMS practice, Section 17C contractor, or HBPMS contractor, in respect of each scheme year, the practice or contractor shall provide the Scottish Ministers with–

- (a) a statement of estimated pensionable earnings in respect of principal medical practitioners who perform medical services as, or on behalf of, the practice or contractor and assistant practitioner or salaried medical practitioners employed by the practice or contractor, and
- (b) an end-of-year statement of–
  - (i) pensionable earnings,
  - (ii) contributions to the Scheme made under regulation 3.C.1 (contributions by members),
  - (iii) contributions to the Scheme made under regulation 3.C.3 (contributions by employing authorities: general), and

(iv) any pensionable earnings deemed in accordance with regulation 3.A.8 of this Part,

in respect of assistant or salaried medical practitioners employed by the practice or contractor.

(4) The Scottish Ministers shall be provided with–

- (a) the statement referred to in paragraph (5)(a) at least 1 month before the beginning of that scheme year;
- (b) the statement referred to in paragraph (5)(b) no later than 3 months after the end of that scheme year.

(5) The Contracting Health Board or someone appointed to act on their behalf, for each scheme year and no later than 13 months after the end of each scheme year, shall forward to the Scottish Ministers a copy of the records the Contracting Health Board or someone appointed to act on their behalf maintains in respect of practitioners under regulation 3.C.5(17)(b).

(6) All employing authorities shall, for each scheme year–

- (a) provide the Scottish Ministers with a statement of estimated total contributions due to the Scheme under regulation 3.C.1 (contributions by members) and 3.C3 (contributions by employing authorities: general), and
- (b) maintain records of contributions to the Scheme made under regulation 3.C.1 and regulation 3.C.3.

(7) The statement referred to in paragraph (8)(a) shall be provided to the Scottish Ministers and no later than 2 months after the end of each scheme year.

(8) Except where the Scottish Ministers waive such requirement, an employing authority shall provide the Scottish Ministers with a statement of contributions to the Scheme recorded in accordance with paragraph (8)(b) no later than 2 months after the end of each scheme year.

(9) If, in respect of a scheme year, a member has failed to comply with the requirements of whichever of paragraphs (1) to (4) applies to that member, the member's pensionable earnings for that scheme year shall be zero.

This is subject to paragraph (12).

(10) If, in respect of a scheme year–

- (a) a member has failed to comply with the requirements of whichever of paragraphs (1) to (4) applies to the member,
- (b) a benefit is payable to, or in respect of that member, under this Part of these Regulations, and
- (c) the member's employing authority is in possession of a figure representing all or part of the member's pensionable earnings for that year,

the Scottish Ministers may treat that figure as the amount of the member's pensionable earnings for that year.

(11) If, in respect of a scheme year, a member–

- (a) dies without complying with the requirements of whichever of paragraphs (1) to (4) applies to the member, or
- (b) is, in the opinion of the Scottish Ministers, unable to look after the member's own affairs by reason of illness or mental disorder,

the Scottish Ministers may require that member's personal representatives to provide the relevant certificate–

- (i) within the period referred to in whichever of paragraphs (1) to (4) was or is applicable to the member, or
- (ii) within such other period as the Scottish Ministers should permit.

- (12) The certificates and statements referred to in this regulation–
- (a) shall be in such form as the Scottish Ministers shall from time to time require;
  - (b) may be provided to the Scottish Ministers in such manner as the Scottish Ministers may from time to time permit.”.

## PART 3

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

#### Interpretation of Part 3

**85.** In this Part an alphanumerical reference to a regulation is a reference to a provision of the National Health Service (Injury Benefits) (Scotland) Regulations 1998 bearing that designation.

#### Amendment of regulation 2

- 86.** In regulation 2(1) (interpretation) at the appropriate place in the alphabetical order, insert–
- ““ophthalmic provider” has the same meaning as in whichever of the 1995 Regulations or 2008 Regulations apply to that provider;”.

#### Amendment of regulation 4

- 87.** In paragraph (6) of regulation 4 (scale of benefits), after sub-paragraph (b)(iii), add–
- “(iv) employment and support allowance payable under section 1(2)(a) of the Welfare and Reform Act 2007, in respect of the injury or disease, during the ‘assessment phase’ referred to in section 2 of that Act, or as the case may be, after that phase has ended.”.

#### Amendment of regulation 13

- 88.** In regulation 13 (review and adjustment of allowance ), after paragraph (1) insert–
- “(1A) For the purposes of paragraph (1)(b)–
- (a) employment and support allowance payable during the assessment phase for that benefit and employment and support allowance payable after that phase has ended shall be treated as separate benefits, and
  - (b) where employment and support allowance was awarded to a person prior to 1st April 2009 and that person continues to be entitled to that allowance on that day, payment of that allowance shall be deemed to have commenced on that day.”.

- 89.** In regulation 18A (Requirement to provide evidence of entitlement)–

- (1) before “A person claiming to be entitled”, insert “(3)”;
  - (2) before the newly numbered paragraph (3), insert–

“(1) No person shall be entitled to any benefit under these Regulations unless, in addition to any other conditions relating to that benefit being satisfied, that person makes a claim for it–

    - (a) in writing (or in such manner as the Scottish Ministers may from time to time accept), and
    - (b) within–
      - (i) 6 months commencing with the day on which the other conditions relating to the benefit in question are satisfied, or

- (ii) such other longer period as the Scottish Ministers may from time to time accept.
- (2) If during the whole or part of the period mentioned in paragraph (1)(b) the person–
- (a) lacks capacity (within the meaning of the Mental Capacity Act 2005(a)), or
  - (b) is prevented by fraud or concealment from discovering the facts entitling that person to apply for a benefit, a claim may be made at any time before the end of the period of 6 months from the date on which that person no longer lacks capacity or, as the case may be, could with reasonable diligence have discovered those facts.”.

## PART 4

### Miscellaneous

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

**90.** 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, having served in an employment or office, service in which qualified the person to participate in the benefits provided under the regulations amended by these Regulations, ceased to serve therein before these Regulations came into force.

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).

A notice given pursuant to paragraph (2) shall be in writing and shall be delivered to the Scottish Ministers within 6 months of the coming into force of these Regulations or such longer period as the Scottish Ministers may allow.

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).

St Andrew's House,  
Edinburgh

2008

Authorised to sign by the Scottish Ministers

We consent

Two of the Lord's Commissioners of Her Majesty's Treasury

**EXPLANATORY NOTE**

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