

The National Health Service (Scotland) Superannuation and Pension Scheme, Injury Benefits and Additional Voluntary Contributions (Amendment) (no.3) Regulations 2009

Regulations **Part 1 of the draft Statutory Instrument (SI)**

1 set the context for the amending regulations

Names the regulations as the “National Health Service, Superannuation and Pension Scheme, Injury Benefits and Additional Voluntary Contributions (Scotland) (Amendment) (no.3) Regulations 2009”

Part 2 of the draft SI

Regulations 2 to 9 in Part 2 of the SI amend the provisions of the NHS Superannuation Scheme (Scotland) Regulations 1995 with effect from 1 October 2009.

There are 2 exceptions to this; regulations 6 and 7 have retrospective effect from 1 April 2008.

Part 3 of the draft SI

Regulations 10 to 100 in Part 3 of the SI amend the NHS Pension Scheme (Scotland) Regulations 2008 with effect from 1 October 2009.

The exception to this; regulation 15(3) has retrospective effect from 1 April 2008.

Part 4 of the draft SI

Regulation 101 in Part 4 amends the National Health Service (Scotland) (Injury Benefits) Regulations 1998 with effect from 1 October 2009.

Part 5 of the draft SI

Regulation 102 amends the National Health Service (Scotland) (Additional Voluntary Contributions) Regulations 1998 with retrospective effect from 1 April 2008.

Part 6 of the draft SI

Regulation 103 allows deferred members, or members in receipt of a relevant benefit, who are detrimentally affected by the amendments to elect for the provisions not to apply to them by giving notice within six months of the coming into force of the amending Statutory Instrument.

Explanation PART 2 Changes to the 1995 Section

Regulation 3 amends regulation A2 (interpretation)

In order to better differentiate between the 1995 and the 2008 regulations, references have been changed throughout both sets of regulations so that they refer to the 1995 Section and the 2008 Section of the NHS Pension Scheme (see particularly the schedules to the amending regulations).

These particular amendments change the definition of 'pensionable employment' in the 1995 regulations so that it refers to employment in accordance with the 1995 section of the scheme. The definition of 'scheme' is also changed so that it refers to both the 1995 and the 2008 regulations.

Regulation 4 adds a reference

Regulation 5 amends regulation E2B (re-assessment of ill-health condition determined under regulation E2A)

This change ensures that members cannot become entitled to a 1995 section upper tier ill-health pension for 1995 service and 2008 section upper tier ill-health pension for their later service.

1995 Section regulation E2B, provides a right for members of that Section to ask the Scottish Ministers to consider whether they subsequently meet the upper tier ill health condition, provided they have **not** become entitled to an upper tier pension in respect of any later (re-employed) service under regulation S3A(6). This amendment extends the latter restriction to "1995 pensioner/2008 active members" who become entitled to an upper tier pension for their later service under regulation 2.D.8 or 3.D.7 of the 2008 Section.

Regulation 6 amends regulation G3 (member dies after pension becomes payable)

This amendment ensures that the initial rate of any partner pension paid in respect of a "1995 pensioner/2008 active member" who dies takes account of any pension abatement in force.

Regulation 7 amends regulation G14 (surviving nominated partner's pension)

This is a technical amendment made to ensure that members who are on unpaid sick leave on and after 1 April 2008 may nominate a partner to receive a surviving partner pension.

Regulation 8 amends regulation H3 (member dies in pensionable employment)

This is a technical amendment made to ensure that any added years purchased are included in the service used to calculate a child allowance after that service has been increased to ten years if appropriate.

Regulation 9 amends regulation H4 (member dies before pension becomes payable)

Children's pensions are based on a proportion of the member's pension based on a minimum of 10 years service. In the case of re-employed pensioners the minimum only applies if both the earlier and the later service (in re-employment) combined is less than ten years. If the member's combined service is less than 10 years the later service is increased by the difference.

This amendment ensures that in the case of a "1995 pensioner/2008 active member" service is not increased to 10 years in both sections of the scheme (so that a child allowance would be based on 20 years service). The children's pension from the 1995 Section will be based on a proportion of the member's actual service in that section and where the member's combined service is less than 10 years, service in the 2008 Section will be increased by the shortfall (see new regulation 2.K.24 and 3.K.23)

Regulation 10 amends regulation U3

This regulation provide for the Scottish Ministers to determine the actuarial assumptions on which each scheme valuation will be based after taking advice from:

- Such representatives of employees and employing authorities as appear to the Scottish Ministers to be appropriate,
- The Scheme Actuary, and
- The Treasury

Regulation 11 amends Schedule 1, paragraphs (9)

Two new GP pension 'flexibilities' are added to the existing arrangements in paragraphs (9) and (9B) of Schedule 1. The changes will be introduced for practitioner members who retire on or after 1 October 2009, and apply to service accrued before and after that date.

The amendment to paragraph (9) removes 'principal' from sub-paragraph (1), so that the provision under that sub-paragraph to treat up to 10 years officer service before first becoming a principal practitioner, as if it were practitioner service, if that is beneficial, will also be available for 'Assistant practitioners'

Amending regulation 11(2)(e) inserts a new paragraph (5C) into regulation 9 (officer service treated as practitioner service) of Schedule 1 of the 1995 regulations

These amendments clarify the way in which pensionable earnings will be determined, if a member has officer service before practitioner service that was the result of a transfer-in. If the member was an officer when that transfer-in occurred, but later became a GP and is able to treat that officer service as if it were practitioner by dynamising the pay, that pay will be determined by means of the calculation set out in Schedule 2(18)(2) (if the member is a 1995 Section member) or that set out in regulation 3.F.11(2) (if the member is a 2008 Section member).

The amendment will apply to one or more periods of officer service that are 'sandwiched' between periods of practitioner service, and allow a separate officer benefit based on the total of that officer service to be revalued by RPI+1.5% (rather than the current RPI only) for the period between the end of the 'sandwiched' service and final retirement. It will remain possible to link the 'sandwiched' officer service with later officer service, for benefits based on the later final pensionable pay, if that would be more beneficial.

Amending regulation 11(3) inserts a new paragraph (6) into regulation 9B (practitioners with benefits from both practitioner service and officer service) of Schedule 1 This amendment makes it clearer that "sandwiched service" includes one or more periods of officer service that is not concurrent with practitioner service, prior to the final period of practitioner service.

Regulation 12 gives effect to Schedule 1 to the amending regulations

Parts 1 and 3 of Schedule 1 change appropriate references in the 1995 regulations from 'scheme' to 'this section of the scheme'. In Part 2 of Schedule 1 references to the '2008 scheme' are replaced by references to the '2008 section'.

Explanation: PART 3 Changes to the 2008 Section

Officer Members

Regulation 13 Introductory

Regulation 14 amends regulation 1.B.1

This regulation provide for the Scottish Ministers to determine the actuarial assumptions on which each scheme valuation will be based after taking advice from:

- Such representatives of employees and employing authorities as appear to the Scottish Ministers to be appropriate,
- The Scheme Actuary, and
- The Treasury

Regulation 15 amends regulation 1.B.3 (provision of information relevant for tax purposes)

References to ‘these regulations’ are replaced by references to ‘this section of the scheme’.

Regulation 16 amends regulation 2.A.1 (interpretation: general)

This amendment revises NHS Pension Scheme for Scotland definitions in the 2008 Section of the Scheme and, together with Schedule 2 of these amendments, names the provisions set out in the National Health Service Superannuation Scheme (Scotland) Regulations 1995 and the National Health Service (Scotland) Pension Scheme Regulations 2008 as the “1995 Section” and the “2008 Section” respectively.

Regulations 17 –20 and 22- 51 introduce amendments as a consequence of the insertion of new Chapter 2.K. This new Chapter provides for 1995 Section members to have an opportunity to exercise an option to join and transfer to the 2008 Section (“the choice exercise”) and the transitional arrangements that will apply to 1995 Section members who do choose to exercise this option. See amending regulation 45 below for more detail.

Regulation 21 inserts regulation 2.B.1A (eligibility: transitional)

Upper Tier ill-health pensioners are not entitled to accrue any further service in re-employment. This amendment prevents a “1995 pensioner/2008 active member” from accruing further service in the 2008 Section if, on review, their 1995 lower tier ill-health pension is converted into an upper tier ill health pension.

Amending regulation 52: Insertion of new Chapter 2.K “2008 Section Optants”

Choice Exercise, Transitional arrangements, and consequential amendments

2. K.1 Application of Chapter 2.K

This regulation provides a short introduction to new Chapter 2.K. which applies to 1995 Section members who are active on or after 1 October 2009 and who opt to join the 2008 Section.

For this purpose active members who will be offered ‘choice terms’ include:

- returners to the 1995 Section after 1 October 2009, and
- anyone who becomes a member of the 1995 Section as the result of a compulsory transfer from a scheme with a normal pension age of 60 (if the member was originally compulsorily transferred out of a public service scheme).

Active members who will not be offered choice terms are:

1995 Section re-employed pensioners who are in receipt of an 'old style' ill health pension with fixed enhancements.

Finally regulation 2.K.1, coins the phrase "2008 Section Optant" and that is how 1995 members who choose to join and transfer service to the 2008 Section under 'Choice' terms are known throughout Chapter 2.K.

Consequential amendments: 2.K.1 has consequential amendments in one amending regulation.

16(a) inserts "2008 Section Optant" into the definitions at regulation 2.A.1 (interpretation: general).

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2. K.2 Options for 1995 Section members to join this Section under Chapter 2.K

This new regulation makes provision for members of the 1995 Section of the Scheme to exercise an option to join the 2008 Section under the 'Choice' terms referred to in the explanation of 2.K.1 above. In order to make an option, a member must be:

- an "active member" of the 1995 Section on or after 1 October 2009 and on the day the option is received, and
- in an employment that qualifies them to be a member of the 2008 Section

There are two exceptions to this (see explanation below).

The Scottish Ministers will provide 1995 Section members with a comparative statement of benefits (by electronic communication or otherwise) under both the 1995 and 2008 Sections, and allow a period of at least 4 months from the date of issue of that statement for the member to make their option. A member's option:

- will only be accepted in writing,
- is irrevocable, and
- must be made before the date the Scottish Ministers specify on the statement

The Scottish Ministers may extend the (4 month) time limit described above if he considers that the member has not had a reasonable time in which to make their decision.

The "effective date" of a valid option to join the 2008 Section will be the date of the member's first day of pensionable employment in the 1995 Section, on or after 1 April 2008. A "2008 Optant" will be treated as if they have been a member of the 2008 Section from that date.

A “2008 Section Optant” will be able to count in the 2008 Section their 1995 Section “qualifying” and “pensionable” service from 1 April 2008 to the same extent as they could have done if they had been a member of the 2008 Section from that date.

A member who has outstanding Scheme contributions for any period beginning on or after 1 April 2008 must pay those arrears by deductions from their pensionable pay, and if they leave the Scheme before payment is completed, the balance will become payable immediately.

Exceptions to the requirement that members must be active in the 1995 Section on the day the option is received

Exception 1 – Members at or near retirement from the 1995 Section

The Scottish Ministers may accept an option to join the 2008 Section, made after the member has left the Scheme if:

- the member’s comparative statement was issued whilst they were an “active member”,
- on leaving they will or would have been entitled to the immediate payment of benefits from the 1995 Section, but
- they provide a notice in writing asking that those benefits are not paid
- within the (4 month) time limit, they give notice to the Scottish Ministers that they wish to join and take their pension benefits from the 2008 Section

A member who gives notice that benefits are not to be paid from the 1995 Section may revoke that notice at any time (in which case 1995 benefits will become payable) but once they have revoked that notice they cannot defer payment of 1995 benefits for a further period.

Exception 2 – members who have applied for ill health retirement in the 1995 Section

See new regulation and explanation for “2.K.19 Circumstances in which a 1995 Section member may defer making an option to join this Section of the Scheme under regulation 2.K.2”

Consequential amendments: 2.K.2 has consequential amendments in three amending regulations

17 amends regulation **2.A.2** (meaning of “pensionable service”) so that service an Optant is entitled to count under new Chapter 2.K is included in the meaning of pensionable service

18 amends regulation **2.A.5** (meaning of “qualifying service”) so that service an Optants is entitled to count as qualifying service under new Chapter 2.K is included in the meaning of qualifying service

21 inserts new regulation **2.B.1A** (Eligibility: transitional) to permit 2008 Section Optants to be members of the 2008 Section.

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2. K.3 Service credited from the 1995 Section

This regulation provides for the terms on which service in the 1995 Section up to and including 31 March 2008 (excluding ¹added years and Mental Health Officer doubled years and transfers in for members who joined the 1995 section after 1 April 2008) will transfer to the 2008 Section.

A 2008 Section Optant will be entitled to count in the 2008 Section:

- a period of “qualifying service” equal in length to their 1995 Section qualifying service up to 31.3.2008 (maximum 45 years), **and**

if the Optant is under age 60 on 1.10.2009,

- a period of “pensionable service” equal in length to their 1995 pensionable service up to 31.3.2008, **or**

where the Optant is age 60 or over on 1.10.2009,

- a period of “pensionable service” equal in length to their 1995 Section pensionable service up to 31.3.2008, multiplied by an actuarial factor that will reduce the period of service.

The amount by which the period of service is reduced will depend on the member’s age in years and months on 1.10 2009.

1995 Section service that was part-time will count in the 2008 Section at its whole-time equivalent length, in accordance with regulation C of the 1995 Section.

If a member becomes a 2008 Section Optant, all rights under the 1995 Section of the Scheme will be extinguished.

Consequential amendments: **2.K.3** has consequential amendments in three amending regulations

17 amends regulation **2.A.2** (meaning of “pensionable service”) so that service an Optant is entitled to count under new Chapter 2.K is included in the meaning of pensionable service

18 amends regulation **2.A.5** (meaning of “qualifying service”) so that service an Optant is entitled to count as qualifying service under new Chapter 2.K is included in the meaning of qualifying service

19 amends regulation **2.A.10** (meaning of “reckonable pay”: general). New paragraph (11) (b) (i) excludes the pensionable service an Optant is entitled to count under regulation 2.K.3 for the purposes of calculating ‘pensionable pay’.

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¹ See regulation **2.K.5 Treatment of Additional Service, 2.K.18 Transitional Provision: Treatment of additional service in respect of Optants retiring on the grounds of Ill Health under regulation 2.D.8 and 2.K.13 Transfers in: transitional provision.**

2. K.4 Treatment of Additional Pension

Arrangements to buy 'added years' of additional service at normal cost were withdrawn from the 1995 section from 1 April 2008, and new arrangements to buy amounts of 'additional pension' (AP) introduced into both that section and the new 2008 section. All AP contracts that member's have started in the 1995 section will transfer **automatically** on 'Choice' to the 2008 section, and new regulation 2.K.4 makes appropriate arrangements at paragraphs (1) and (2). The cost and general procedures involved for buying AP are the same in either section but, because of the earlier normal pension age in the 1995 section, member's are able to buy AP in that section priced for payment at both age 60 and 65. This means that:

In the case of AP bought in 1995 for payment at 65

Ongoing regular contribution contracts will simply transfer across to 2008 on 'Choice', without change in either the AP payable at retirement or the additional contributions payable. And for any AP contracts already completed (e.g. lump sum payment) or terminated early, the amount credited in the 1995 section will be exactly the same when moved to the 2008 section. However:

In the case of AP bought in 1995 for payment at 60

Completed, terminated and ongoing 'age 60 AP' contracts moved from 1995 must all be adjusted, since normal pension age in the 2008 section is 65 and AP must always be paid with main scheme benefits. Since AP payable at the earlier age of 60 will normally be in payment for longer, it effectively 'costs more' than 'age 65 AP' and is 'worth more' when moved across to the 2008 section. Paragraphs (4)(b) and (8) of regulation 2.K.4 will provide for completed and terminated 'age 60 AP' contracts to be actuarially increased on 'Choice' transfer, so that the member will get the extra amount of AP their lump sum payment or regular contributions would have purchased if they had bought 'age 65 AP' in the 1995 section. However, ongoing 'age 60 AP' contracts will be actuarially adjusted so that the member's contributions are reduced, but buy exactly the same amount of AP in the 2008 section as they would have in 1995.

Adjustment in the case of excess AP purchase

The higher value of 'age 60 AP' when transferred from 1995 to 2008, makes it theoretically possible that the above reduction of a member's ongoing contributions will not be enough to prevent the payments already made from buying AP in excess of the £5,000 limit referred to in regulation 2.C.8 of the 2008 Section. This could happen if a member was buying age 60 AP right up to the limit in a short-term regular payment contract, or a member had already made lump sum payment(s) for 'age 60 AP' that were sufficient to purchase the maximum AP of £5,000. Rules for all public service schemes make it impossible to credit the member with more than the AP limit of £5,000 but, in the unlikely event of this happening on 'Choice' transfer, paragraph (9) of new 2.K.4 will actuarially increase main scheme pensionable service (or pensionable earnings for a practitioner), to the value of the 'excess' AP payment made.

Consequential amendments: 2.K.4 has consequential amendments in five amending regulations

"In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.4."

Is inserted by the following amending regulations:

- 22 inserts a paragraph (9) of 2.C.8 (member's option to pay additional periodical contributions to purchase additional pension),
- 23 inserts at paragraph (7) of 2.C.10 (member's option to pay lump sum contribution to purchase additional pension),
- 24 inserts at paragraph (6) of 2.C.11 (payment of additional lump sum contributions by employing authority),
- 25 inserts at paragraph (11) of 2.C.14 (effect of payment of additional contributions under this Chapter) and paragraph
- 26 inserts at paragraph (6) of 2.C.16 (effect of part payment of periodical contributions)

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2. K.5 Treatment of Additional Service

Arrangements to buy 'added years' (AY) of additional service at normal cost were withdrawn from the 1995 section from 1 April 2008 and are not available in the 2008 Section. However, on 'Choice' transfer, paragraphs (1) and (2) of new 2.K.5 will provide for completed, terminated and ongoing AY contracts in the 1995 section to be **automatically** 'wound up' and an additional pensionable service credit added to the main scheme pensionable service credit transferred to the 2008 section. For those remaining members who bought additional service under 'old-style' arrangements in the previous regulations (the National Health Service (Scotland) (Superannuation) Regulations 1980) but have not yet retired, paragraph 2.K.5 (2) (b) makes equivalent arrangements.

For members under age 60 on 1 October 2009, the first day of 'Choice, 2.K.5 (5) will provide for the additional service bought in the 1995 section under already completed or terminated contracts to have the same 'day-for-day' value in the 2008 section and be added to the main scheme service credited in 2008 under new regulation 2.K.3 (3). However, for members aged 60 or over on 1 October 2009, the first day of 'Choice, 2.K.5(6) will provide for the additional service bought to be reduced in accordance with the same actuarial factor applied to main scheme service before it is added to the main scheme service credit under new 2.K.3(4).

Similar arrangements will apply for members with ongoing contracts to buy AYs by means of regular contributions, so that the contracts will be 'wound up' in accordance with the normal 1995 rules for terminated contracts and a credit calculated. 2.K.5(7) will provide for contributions to be ceased from the date the member's option to join the 2008 section on 'Choice' was received in accordance with new regulation 2.K.2, with any outstanding contributions at that date recovered in the same way as mains scheme contributions under new 2.K.2(6) and (7). Paragraph 2.K.5(2)(a) provides that members who have been buying AYs between 1 April 2008, when they will effectively join the 2008 section, and the 'Option date' will be credited with ALL the additional service bought up to that date, not just to 31 March 2008.

Consequential amendments: 2.K.5 has consequential amendments in two amending regulations

17 amends regulation 2.A.2 (meaning of “pensionable service”) so that service an Optant is entitled to count under new Chapter 2.K is included in the meaning of pensionable service.

19 amends regulation 2.A.10 (meaning of “reckonable pay”: general). New paragraph (11) (b) (ii) excludes the pensionable service an Optant is entitled to count under regulation 2.K.5 for the purposes of calculating ‘pensionable pay’.

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2. K.6 Treatment of unreduced retirement lump sum (URLS)

Arrangements in the 1995 section to buy a bigger retirement lump sum, where that lump sum would otherwise be reduced to pay for widow’s pension cover before 25 March 1972, or to buy a bigger dependant’s pension for service before 6 April 1988, in the case of widower’s and civil or nominated partners, will not apply in the 2008 section, since all members who transfer to that section will enjoy full and equal dependant’s benefits cover. This means that 1995 section ‘additional service style’ contracts to purchase increased lump sum or pension in these circumstances (URLS contracts) have no value on transfer to the 2008 section.

New regulation 2.K.6 will provide for members with existing URLS contracts in 1995 who transfer on ‘Choice’ **automatically** to have:

- any ongoing regular contribution contract(s) stopped, and
- any previously agreed contract(s) to pay for increased benefits by deduction from retirement lump sum cancelled
- any lump sum or regular contributions paid ‘in error’ (because of the date they were able to exercise their ‘Choice’) between 1 April 2008, when they will effectively join the 2008 section, and the ‘Choice’ ‘option date’ described in new 2.K.2, will have those contributions refunded

Members who paid lump sum or regular contributions up to 31 March 2008, whilst they were effectively still members of the 1995 section will not have those contributions refunded because of the additional dependants cover they enjoyed up to that date.

Consequential amendments: 2.K.6 does not have any consequential amendments

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2. K.7 Treatment of 2008 Section Optants to whom regulation L1 (3) of the 1995 regulations applied immediately before 1 April 2008

Regulation L1(3) of the 1995 Section provides for a separate pension to be paid in respect of service before a break of more than 12 months if this would be more favourable to the member than treating the member’s service as continuous.

This means that, if more favourable, the member may receive a separate pension at retirement in respect of a period of service before a 12 month break based on the pensionable pay that applied to that period.

Regulation 2.K.7 provides for this facility to carry forward into the 2008 Section.

This means that if a member has a period of service in the 1995 Section that accrued before a break of 12 months or more, the service credited in the 2008 Section for that period may also attract a separate pension.

When benefits are taken from the 2008 Section, if more favourable, the member will receive a separate pension in respect of that period based on the pensionable pay that would have applied in the 1995 Section.

Consequential amendments: 2.K.7 has consequential amendments in two amending regulations

19 amends regulation **2.A.10** (meaning of “reckonable pay”: general) so that, if more beneficial, 1995 pensionable pay may be used to calculate benefits for the relevant period of service in place of ‘reckonable pay’ determined under regulation 2.A.10.

31 amends regulation **2.D.8** (early retirement on ill-health (active members and non-contributing members)) so that an Optant whose service is treated separately under regulation 2.K.7 will not qualify for upper Tier ill health enhancements (this applies in the 1995 section where service is treated separately under regulation L1 (3)).

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2. K.8 Pension Debit Members

Following the implementation of a ‘Pension Sharing order’ a ‘pension debit’ is created. The pension debit is the annual amount of pension and lump sum that will be deducted from the member’s benefits at retirement. This deduction or ‘debit’ covers the cost of paying a pension and a lump sum to the member’s former spouse or civil partner.

New regulation 2.K.8 does two things in circumstances where a 1995 Section member with a pension sharing debit elects to join the 2008 Section.

Firstly, the amount of the pension and lump sum to be debited from benefits will be increased by a factor to take account of the later normal pension age of 65 in the 2008 Section.

Secondly, because the member may choose the amount of lump sum that is taken instead of pension in the 2008 Section, regulation 2.K.8 also allows the Scottish Ministers to vary how the member takes their retirement benefits, if, for example

- The member does not elect to take enough lump sum to cover the amount of the lump sum debit, or
- The member elects to take too much lump sum so that there is not enough pension left to cover the amount of the pension debit

Consequential amendments: 2.K.8 has consequential amendments in two amending regulations

35 amends regulation **2.D.14** (general option to exchange part of pension for lump sum) so that any amount of lump sum the Optant chooses to take in place of pension is subject to the provisions contained in new regulation 2.K.8.

36 amends regulation **2.D.16** (reduction in pension debit member's benefits) so that the debit in respect of a 2008 Section Optant determined under the 1999 Act (Welfare Reform and Pensions Act 1999) is subject to the increase determined under new regulation 2.K.8.

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2. K.9 Treatment of 2008 Section Optants to whom regulation R8 of the 1995 Regulations applied immediately before 1 April 2008

Regulation R8 of the 1995 Section provides for the protection of a member's pensionable pay and service in circumstances where earnings reduce through no fault of the member.

This means that, if more favourable, the member will receive a separate pension at retirement in respect of service and based on pensionable pay up to the date earnings reduced.

Regulation 2.K.9 provides for this protection to carry forward into the 2008 Section. This means that if a member has protection for a period of 1995 service, the service credited in the 2008 Section for that period will also be protected. When benefits are taken from the 2008 Section, if more favourable, the member will receive a separate pension in respect of that period based on the pensionable pay that would have applied in the 1995 Section.

Consequential amendments: **2.K.9** has consequential amendments in one amending regulation

19 amends regulation **2.A.10** (meaning of "reckonable pay": general) so that, if more beneficial, 1995 pensionable pay may be used to calculate benefits for the relevant period of service in place of 'reckonable pay' determined under regulation 2.A.10.

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2. K.10 Restriction on pensionable pay used for calculating benefits in respect of capped Optant service

2. K.11 meaning of "capped Optant service"

Together these two new regulations provide for the earnings cap to continue to apply in the 2008 Section if it applied to a period of service in the 1995 section up to and including 31 March 2008 that is transferred across.

The proportion of the service credited that will become subject to the earnings cap in the 2008 Section will be in the same proportion as the 1995 capped service was to the whole of the member's service in the 1995 scheme up to 31 March 2008.

For example: if 30% of the member's service up to 31.3.08 was capped in the 1995 Section, 30% of the member's service credited up to 31.3.2008 in the 2008 Section will be treated as capped service.

If the member's reckonable pay at retirement is higher than the earnings cap that applies at that time, a separate pension will be calculated in respect of capped service using the earnings cap as at retirement instead of the member's reckonable pay.

(The earnings cap was lifted by HMRC from 6 April 2006 and the equivalent cap that continued after that date in the NHS Scheme was lifted from 1 April 2008).

Consequential amendments: 2.K.10/11 has consequential amendments in one amending regulation

19 amends regulation **2.A.10** (meaning of "reckonable pay": general) so that, the earnings cap will be used to calculate benefits in respect of any 'capped optant service' in place of 'reckonable pay' determined under regulation 2.A.10.

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2. K.12 Amount of pension and lump sum to be paid to a 2008 Section Optant

2008 Section Optants are required to take an amount of lump sum on retirement. The pension payable to the Optant will be reduced to take account of this mandatory amount of lump sum (MLS). The MLS will be approximate to the amount of lump sum the Optant would have been required to take from the 1995 Section for service up to 31 March 2008.

The MLS is equal to three times the Optant's pension for relevant service.

Relevant service is

- Pensionable service credited in the 2008 section for 1995 service up to and including 31 March 2008, and
- Pensionable service credited in respect of any added years purchased in the 1995 section

Age retirement

In a straightforward age retirement case, the MLS will be calculated as follows:

$$3/80\text{ths} \times \text{relevant service} \times \text{reckonable pay} = \text{MLS}$$

The answer will be rounded down to the nearest multiple of 12 and the Optant's pension will be reduced by that amount divided by 12.

2008 Optants who take voluntary early retirement under regulation 2.D.4 or 'draw down' part of their pension under regulation 2.D.5 arrangements will also be required to take a MLS.

Early retirement

'Early retirement' for MLS purposes will mean retirement before age 60, the normal pension age in the 1995 Section. When this applies to an Optant, the MLS will be calculated in the same way as for an age retirement, but **reduced** by the early retirement factor that would have applied if they had retired from the 1995 Section, i.e.

$3/80\text{ths} \times \text{relevant service} \times \text{reckonable pay} \times 1995 \text{ reduction factor} = \text{MLS}$

Partial retirement

The MLS for a partial (draw down) retirement will be calculated in the same way as for an age retirement, but the amount of the Optant's service used in the calculation will be a percentage of the Optant's relevant service. This percentage will be the same as the percentage of benefits that the optant elects to 'draw down' under regulation 2.D.5.

If the Optant is also under age 60 when their 'draw down' pension becomes payable, the MLS calculated above will also be reduced by the early retirement factor that would have applied if they had retired from the 1995 Section.

Transfer Out

If the Optant transfers benefits to another pension scheme, the transfer value will be calculated by reference to the MLS and the reduced pension.

Earnings Cap

The amount of the MLS and the consequential reduction to pension will be calculated separately in respect of any capped and any uncapped service.

Consequential amendments 2.K.12 has consequential amendments in fourteen amending regulations

"In the case of 2008 Section Optant, this regulation is subject to regulation 2.K.12"

is inserted by the following amending regulations:

27 inserts at **paragraph (8) of regulation 2.D.1** (normal retirement pensions),

29 inserts at **paragraph (5) of regulation 2.D.4** (early payment of a pension with an actuarial reduction),

30 inserts at **paragraph (10) of regulation 2.D.5** (partial retirement (members aged at least 55))

31(4) inserts at **paragraph (18) of regulation 2.D.8** (early retirement on ill-health (active members and non-contributing members))

33 inserts at **paragraph (10) of regulation 2.D.10** (early retirement on ill-health (deferred members)),

34 inserts at **paragraph (9) of regulation 2.D.11** (early retirement on termination of employment by employing authority),

35 inserts at **paragraph (8) of regulation 2.D.14** (general option to exchange part of pension for lump sum)

46 inserts at **paragraph (6) of regulation 2.F.6** (calculating amounts of transfer value payments)

Consequential amendments are also inserted by the following amending regulations to ensure that the amount of pension that any death benefits are based on will be the amount of pension before it has been reduced to take account of the lump sum that was paid under regulation 2.K.12.

38 amends **paragraph (8) of regulation 2.E.4** (amount of pensions under regulation 2.E.1: pensioner members),

40 amends **paragraph (8) of regulation 2.E.11** (amount of children's pension under regulation 2.E.8: deceased pensioner members)

42 amends **paragraph (2) (b) and (6) of regulation 2.E.17** (amount of lump sum: single capacity members and recent leavers (disregarding regulation 2.D.5 employments))

43 inserts **new paragraph (4) at regulation 2.E.18** (amount of lump sum; dual capacity members (disregarding regulation 2.D.5 employments))

44 amends **paragraph (4) of regulation 2.E.19** (amount of lump sum; dual capacity members; members with pensions under regulation 2.D.5)

Finally, amending regulation **44** provides for interest to be due under **regulation 2.J.9** if a lump sum due under regulation 2.K.12 is paid late.

.....

2. K.13 Transfers in: transitional provision

In keeping with the principle that 1995 Section members who opt to join the 2008 Section are treated as if they had been members of the 2008 Section from 1 April 2008, any such members who:

- joined the 1995 Section after 1 April 2008 , and
- who bring with them an incoming transfer value payment

will have the service to be credited as a result of the transfer calculated (if not yet finalised) or recalculated (if the transfer payment has already been received) as if it had been received in the 2008 Section. However, the 'relevant date' for the purpose of calculating the service credit will be the relevant date that was or would have been used in the 1995 Section.

Consequential amendments 2.K.13 has consequential amendments in five amending regulations

19 amends regulation **2.A.10** (meaning of “reckonable pay”: general). New paragraph (11) (b) (iii) excludes the pensionable service an Optant is entitled to count under regulation 2.K.13 for the purposes of calculating ‘pensionable pay’.

“In the case of 2008 Section Optant, this regulation is subject to regulation 2.K.13”

is inserted by the following amending regulations:

47 inserts at **paragraph (5) of regulation 2.F.8** (right to apply for acceptance of transfer value payment from another scheme)

48 inserts at **paragraph (7) of regulation 2.F.10** (acceptance of transfer value payments),

49 inserts new **paragraph (8) of regulation 2.F.11** (calculation of transferred-in service),

50 inserts at **paragraph (5) of regulation 2.F.12** (meaning of “capped transferred-in service”)

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2. K.14 2008 Section Optants: Transitional Upper Tier ill-health pension

This regulation makes provision for 2008 Section Optants who applied for ill health retirement under regulation E2A of the 1995 Section before their option to join the 2008 Section was received. It works in conjunction with the amended definition of “permanently” inserted into regulation 2.D.8 by amending regulation **26(3)**. The amended definition allows a decision by medical advisers that a member qualifies for either a lower tier or upper tier ill – health pension in the 1995 Section to count for the same purposes under the 2008 section.

Therefore:

- if the member qualified for an upper tier ill health pension under the 1995 regulations before their option to join the 2008 Section is received, and
- they subsequently opt to join the 2008 Section, and
- claim a upper tier ill-health pension under 2008 Section ill health retirement regulations within one year of joining,

the amount of enhancement the Optant will receive will be calculated under 2.K.14 instead of 2.D.8. The period is known as the ‘transitional enhancement period’.

The transitional enhancement period is 2/3rds of the Optant’s prospective service to age 60 subject to a minimum amount of enhancement. The minimum amount is the lesser of 4 years service and full prospective service to age 60.

Consequential amendments: 2.K.14 has consequential amendments in two amending regulations

31(3) amends **regulation 2.D.8** (early retirement on ill-health (active members and non-contributing members)) as explained above by inserting a revised definition of “permanently”

31(4) amends **regulation 2.D.8** by making it subject to regulation 2.K.14 so that the transitional enhancement period under 2.K.14 applies in place of the enhancement period in 2.D.8.

.....

2. K.15 Treatment of ill-health retirement applications made by 2008 Section Optants within one year of joining this Section

This regulation makes provision for 2008 Section Optants who submit an application (AW8) for ill health retirement under the 2008 Section within one year of the Scottish Ministers receiving their option to join that section. If a 2008 Section Optant becomes entitled to an upper tier ill-health pension in these circumstances and as a result of that application any enhancement due will be calculated as described in regulation 2.K.14 (the transitional enhancement period will apply in place of the enhancement period calculated under regulation 2.D.8)

Consequential amendments: **2.K.15** has consequential amendments in one amending regulation

31(4) amends **regulation 2.D.8** by making it subject to regulation 2.K.15 so that the transitional enhancement period under 2.K.14 applies in place of the enhancement period in 2.D.8.

.....

2. K.16 Application of regulation 2.D.9 where a 2008 Section Optant has submitted an application for ill-health retirement under the 1995 Section

This regulation makes provision for 2008 Section Optants who applied for ill health retirement under regulation E2A of the 1995 Section before their option to join the 2008 Section was received. It also works in conjunction with the amended definition of “permanently” inserted into regulation 2.D.8 by amending regulation **26(3)**. The amended definition allows a decision by medical advisers that a member qualifies for a lower tier ill – health pension in the 1995 Section to count for the same purposes under the 2008 section.

Therefore

- if the member qualified for a lower tier ill health pension under the 1995 regulations before their option to join the 2008 Section is received, and

- they were also notified that they could ask the Scottish Ministers to re-assess this decision within a period of three years, and
- they subsequently opt to join the 2008 Section, and
- claim a lower tier ill-health pension under 2008 Section ill health retirement regulations within one year of joining,

They will also be entitled to ask for the decision to be reassessed under regulation 2.D.9 of the 2008 regulations.

For the purpose of the reassessment, the permanence criteria for an upper tier ill-health pension will be to age 60.

If, following the reassessment, the Optant qualifies for an upper tier ill-health pension to be paid in place of their lower tier ill – health pension, the enhancements will be calculated under regulation 2.K.14 (the transitional enhancement period will apply in place of the enhancement period calculated under regulation 2.D.8) except that the period of the enhancement will be calculated from the date of the Scottish Ministers’ decision that the Optant meets the upper tier ill-health criteria.

Consequential amendments: **2.K.16** has consequential amendments in two amending regulations

31(4) amends **regulation 2.D.8** by making it subject to regulation 2.K.16

32 amends **regulation 2.D.9** (re-assessment of entitlement to an ill-health pension determined under regulation 2.D.8) by making it subject to regulation 2.K.16 so that on a successful re-assessment to an upper tier pension the Optant is entitled to enhancements as provided for in 2.K.16.

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2. K.17 Application of regulation 2.D.9 where a 2008 Section Optant has submitted an application for ill-health retirement under the 2008 Section within a year of joining the 2008 Section

This regulation makes provision for 2008 Section Optants who submit an application (AW8) for ill health retirement under the 2008 Section within one year of the Scottish Ministers receiving their option to join that section and who become entitled to a lower tier ill-health pension as a result.

If, at the time that pension is awarded, the Optant is notified that they may ask the Scottish Ministers to reassess this decision within a period of three years and their subsequent application for a reassessment to an upper tier ill-health pension is successful any enhancement due will be calculated as described in regulation 2.K.14 (the transitional enhancement period will apply in place of the enhancement period calculated under

regulation 2.D.8) except that the period of the enhancement will be calculated from the date of the Scottish Ministers' decision that the Optant meets the upper tier ill-health criteria.

Consequential amendments: 2.K.17 has consequential amendments in two amending regulations

31(4) amends **regulation 2.D.8** by making it subject to regulation 2.K.17

32 amends **regulation 2.D.9** (re-assessment of entitlement to an ill-health pension determined under regulation 2.D.8) by making it subject to regulation 2.K.17 so that on a successful re-assessment to an upper tier pension the Optant is entitled to enhancements as provided for in 2.K.17.

.....

2. K.18 Transitional Provision: Treatment of additional service in respect of Optants retiring on the grounds of Ill Health under regulation 2.D.8

In the 1995 section, members who successfully apply for an ill health retirement (IHR) pension under regulation E2 or E2A of that section, before age 60 and at least 12 months after starting to pay regular additional contributions, are credited with the full amount of the additional service that they contracted to buy and any outstanding additional contributions are deemed to have been paid. 1995 members who have been making regular additional contributions for less than 12 months have their contract to buy AYs cancelled and their additional contributions to date refunded less tax. New regulation 2.K.18 will mirror these arrangements for members who apply for IHR before the date on which the member's option to join the 2008 section of the Scheme is received.

New 2.K.18 (3) and (4) provide that a member who is under age 60, has been making regular additional AY contributions for at least 12 months and whose claim for IHR is successful within one year of their option to move to 2008, will have their AYs credit in the 2008 section at 2.K.3 (3) increased by the **full** amount they contracted to buy, not just the AYs bought to date. Any outstanding contributions at the option date will be recovered in the same way as mains scheme contributions under new 2.K.2(6) and (7), but the balance of contributions will be waived.

If the member has been making regular additional AY contributions for less than 12 months, when they (successfully) apply for IHR, new 2.K.18(2) will provide for their contract to buy AYs to be cancelled, and their additional contributions to date refunded less tax. In these circumstances NO additional service credit will be added to the main scheme service transferred to the 2008 section.

Consequential amendments 2.K.18 has consequential amendments in one amending regulation

31(4) amends **regulation 2.D.8** by making it subject to regulation 2.K.18.

.....

2. K.19 Circumstances in which a 1995 Section member may defer making an option to join this Section of the Scheme under regulation 2.K.2

This regulation allows a 1995 Section member to defer making an option to join the 2008 Section until the outcome of an ill health application under the 1995 regulations is known.

The application for ill health retirement (AW8) must be received before a comparative statement of benefits is issued or before the date specified in the statement if the application is made after a statement has been issued.

In these circumstances a member may defer their decision on whether to join the 2008 Section until one month after they receive a decision on their ill health application.

If the application is not agreed and the member appeals against that decision within 12 months of the termination of their contract of employment, their decision to join the 2008 Section may be deferred until one month after they are notified of the outcome of the 1st appeal.

If the 1st appeal is not agreed and a second appeal is submitted within six months of the notification of the 1st appeal decision, their decision to join the 2008 Section may be deferred until one month after they are notified of the outcome of the 2nd appeal.

If the 2nd appeal is not agreed and a request for a determination by the Pensions Ombudsman is made within three years of the notification of the 2nd appeal decision, their decision to join the 2008 Section may be deferred until one month after they are notified of the outcome of the Pensions Ombudsman's investigation.

The option to defer a decision to join the 2008 Section under this regulation ceases if the member becomes re-employed in the NHS or if an actuarially reduced pension under the 1995 regulations is claimed.

Consequential amendments: 2.K.19 has no associated consequential amendments

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2. K.20 Nominations and notices accepted by the Scottish Ministers under the 1995 regulations to apply under Chapter 2.E of these Regulations

This amendment provides for 2008 Optants who have made nominations or given notices in the 1995 Section for:

- a lump sum nomination under regulations F1-4 of that Section,
- a notice under regulation F5(3)(a) that the member's surviving partner is not to receive a lump sum under regulations F1-4, or
- a notice for the purposes of regulation G14 of that Section nominating

a partner to receive a surviving nominated partner pension

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

Consequential amendments: 2.K.20 has consequential amendments in two amending regulations

“In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.20 (Nominations and notices accepted by the Scottish Ministers under the 1995 Regulations to apply under Chapter 2.E of these Regulations)”

Is inserted by

37 at **paragraph (3) of regulation 2.E.2** (meaning of “surviving nominated partner”)

45 at **paragraph (13) of regulation 2.E.21** (payment of lump sums or pensions on death)

.....

2. K.21 Late payment of pension with actuarial increase for a 2008 Optant

Pensions payable after the normal pension age of 65 in the 2008 Section attract a ‘late retirement factor’ (LRF) increase in respect of pensionable service up to age 65 under regulation 2.D.3. Service after age 65 does not attract an increase.

This amendment entitles a 2008 Section Optant to reckon **all** their 1995 Section service up to 31 March 2008 that counts under regulation 2.K.3 of the 2008 Section for a LRF increase, even if some of that 1995 service fell after age 65. The service a 2008 Section Optant will be able to count for a LRF increase is:

- all the service and pensionable earnings the Optant can count under regulation 2.K.3,
- any additional service (added years) the Optant is entitled to count under regulation 2.K.5,
- service in the 2008 Section on or after 1.4.2008 and **before** age 65, and
- any contributions payable before age 65 for Additional Pension

Service in the 2008 Section **after** age 65 from and including 1 April 2008 will continue to attract no late retirement increase.

Consequential amendments: 2.K.21 has consequential amendments in one amending regulation

28 inserts **paragraph (5) of regulation 2.D.3** (late payment of pension with actuarial increase) so that it is subject to 2.K.21 in the case of a 2008 Section Optant.

2.K.22 “2008 Section Optants who are in receipt of a lower tier ill-health pension under Regulation E2A of the 1995 Regulations”

The amendment ensures that where a “1995 pensioner/2008 active member’s” 1995 lower tier ill-health pension converts to an upper tier pension under regulation E2B, any further ill health pension, for service in the 2008 section, is restricted to lower tier . And, because such an Optant may be in the process of applying for an upper tier ill health pension for their re-employment in the 1995 Section, the regulation is made subject to the transitional arrangements in regulation 2.K.14 onwards.

2.K.23 inserts new regulation “Lump sum payable on the death of a 2008 Section Optant who is in receipt of a lower tier ill-health pension under regulation E2A of the 1995 Regulations”

The amendment ensures that the death benefit lump sum for a “1995 pensioner/2008 active member’s” later (2008) service is not twice their reckonable pay, but five times their upper tier ill health pension, in common with re employed pensioners whose service is all within one Section of the Scheme.

Consequential amendments: 2.K.23 has 2 consequential amendments.

“In the case of a 2008 Section Optant, this is subject to regulation 2.K.23 (lump sum payable on the death of a 2008 Section Optant who is in receipt of a lower tier ill-health pension under regulation E2A of the 1995 Regulations).” is inserted by the following amending regulations

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

44 inserts at the end of paragraph (2) of 2.E.19 (amount of lump sum; dual capacity members; members with pensions under regulation 2.D.5)

2.K.24 inserts new regulation “Children’s pensions payable on the death of a 2008 Section Optant who is in receipt of a lower tier ill health pension under regulation E2A of the 1995 Regulations”

As mentioned in paragraph 2.3, this regulation ensures that the 10 years service minimum for the calculation of children’s pensions takes account of service in both the 1995 and the 2008 section. Where the combined service across the two sections is less than 10 years, the later 2008 active service will be increased by the shortfall.

Consequential amendments: 2.K.24 has three consequential amendments :

“In the case of a 2008 Section Optant, this is subject to regulation 2.K.24 (children’s pensions payable on the death of a 2008 Section Optant who is in receipt of alower

tier ill-health pension under regulation E2A of the 1995 Regulations” is inserted by amending regulations:

39 at the end of paragraph (4) of 2.E.10 (amount of children’s pension under regulation 2.E.8: deceased active members and deceased non-contributing members)

40 at the end of paragraph (3) of 2.E.11 (amount of children’s pension under regulation 2.E.8: deceased pensioner members)

41 at the end of paragraph (3) of 2.E.12 (amount of children’s pension under regulation 2.E.8: deceased deferred members)

.....

2008 Section Amendments for Practitioner Members

Regulation 53 amends regulation 3. A.1 (Interpretation of Part 3: general)

This amendment revises NHS Pension Scheme for Scotland definitions in the 2008 Section of the Scheme and, together with Schedule 2 of these amendments, names the provisions set out in the National Health Service Superannuation Scheme (Scotland) Regulations 1995 and the National Health Service Pension Scheme (Scotland) Regulations 2008 as the “1995 Section” and the “2008 Section” respectively.

Regulation 57 amends regulation 3. A.11 (restriction on pensionable earnings used for calculating benefits in respect of capped transferred-in service)

Regulation 3.A.11, for practitioner members of the 2008 Section, currently ‘mirrors’ the officer member’s equivalent, at regulation 2.A.12. This amendment deletes 3.A.11 altogether, because it is not appropriate for practitioner members of the Scheme, whose contributions and benefits are ‘capped’ by restricting their pensionable earnings, not service.

Regulation 59 amends regulation 3. B.1 (eligibility: general)

This amendment corrects a problem in paragraph (3)(a), by moving the words “and meets any one of the other scheme conditions (see paragraph (5))” from their current position to form “full out” words below paragraph (3)(b), to match the form used in regulation 2.B.1.

and regulation 59 inserts regulation on 3.B.1A (eligibility: transitional)

Upper Tier ill-health pensioners are not entitled to accrue any further service in re-employment. This amendment prevents a “1995 pensioner/2008 active member” from accruing further service in the 2008 Section if, on review, their 1995 lower tier ill-health pension is converted into an upper tier ill health pension.

Regulation 65 amends regulation 3.C.15 (revaluation of increases bought under options: member's pensions)

This amendment corrects the 'Additional Pension' cross references in paragraph (2).

Regulation 84 amends regulation 3.F.6 (calculating amounts of transfer value payments)

Regulation 3.F.6 provides for the calculation of transfer values (CETVS) to external pension schemes. Regulation 3.F.6 (4) provides for the minimum amount of a CETV where the transfer is made to another scheme that does not participate in the Public Sector Transfer Club

The principle behind having a 'minimum amount' is that a CETV paid *out* of the Scheme should not be less than the contributions the member has paid into it and any CETVS paid *into* the scheme in respect of that member.

In the case of a former 1995 Section member, new paragraph 3.F.6(4) adds the following amount to the minimum amount of a CETV to be paid if the member subsequently transfers benefits out of the 2008 Section:

- Contributions made by the member under the 1995 Section for pensionable employment up to and including 31 March 2008, and
- The amount of any CETVs (if any) paid on behalf of the member into the 1995 Section
- Payments made (if any) to purchase added years in the 1995 Section

An amendment to paragraph 5 inserts sub-paragraph (c), to clarify that transfers value payments made under the Public Sector transfer arrangements must be calculated separately in respect of the aggregate amount of any pensionable earnings that falls to be treated as a capped increase to pensionable earnings in accordance with regulation 3.F.12 or, in the case of a 2008 Optant, an amount of capped Optant pensionable earnings in accordance with regulation 3.K.9.

Regulation 86 amends regulation 3.F.9 (procedure for applications under regulation 3.F.8)

This amendment clarifies the information that the Scheme is required to provide practitioner members, who request a statement of the increase in NHS Scheme pension rights they can expect following a transfer-in of rights from another scheme.

Such statements must include confirmation of the increase to pensionable earnings that can be expected, the effect of any capped increase to pensionable earnings that may apply in accordance with regulation 3.F.12 and in the case of a member of a corresponding 1995 scheme, the amount of pensionable service that will count in determining whether or not they have reached the 45 year service limit in regulation 3.A.3.

Regulation 87 amends regulation 3.F.10 (acceptance of transfer value payments)

This amendment clarifies for practitioner members the effect of an inward transfer value payment. The main change is to make clear that, in addition to receiving an appropriate increase in pensionable earnings for the calculation of benefits, practitioners will be credited with a period of pensionable service, for the purposes of determining whether or not they have reached the 45 years service limit.

Paragraph (3) explains that the above pensionable service credit will be-

- calculated in accordance with the relevant guidance and tables from the Scheme Actuary **in the case of transfers from a corresponding 1995 scheme or under the Public Sector arrangements,**
- **and**
- equal to the period of employment in the external scheme **in the case of all other transfers**

Regulation 88 amends regulation 3.F.11 (calculation of transferred-in pensionable service)

This amendment changes the regulation's title from that shown above to "*Calculation of increase to pensionable earnings as the result of a transfer-in*". The change is made to underline that, for practitioner members, the crucial effect of a transfer-in is to increase the pensionable earnings, which will be used to calculate Scheme benefits.

The amendment also confirms in replacement paragraph 2(b), that "more 12 months after the member joined the scheme" means "more than 12 months after *the day* on which the member joined the Scheme i.e. the "starting day". Finally, paragraph (3)(b), which explains how the increase in pensionable earnings is calculated for transfers-in other than those from the Public Sector or a corresponding 1995 scheme, is clarified by inserting the words "*equal to the amount of the transfer payment*" at the end.

Regulation 89(2) and (3) amend regulation 3.F.12 (meaning of capped transferred-in service)

This amendment also makes a change in the regulation's title, from that shown above, to "*Meaning of capped increase to pensionable earnings*". The change, like that made to regulation 3.F.11, underlines that, for practitioner members, a period of capped service is given effect by restricting the pensionable earnings used to calculate Scheme benefits.

The amendment also makes clear that any part of an increase to pensionable earnings, following a transfer-in, that the practitioner is entitled to count under regulation 3.F.10(2)(a) as a result of capped service is a "*capped increase to pensionable earnings*" for the purposes of this Section of the Scheme.

Regulations 53(a), 54 & 55, 60-64, 66 -70, 72 -85 and 87) introduce amendments as a consequence of the insertion of new Chapter 3.K. This new Chapter provides for 1995 Section members to have an opportunity to exercise an option to join and transfer to the

2008 Section (“the choice exercise”) and the transitional arrangements that will apply to 1995 Section members who do choose to exercise this option. See amending regulation 90 below for more detail.

Amendment regulation 90 - insertion of Chapter 3.K – 2008 Section Optants Choice Exercise, Transitional arrangements, and consequential amendments

3. K.1 Application of Chapter 3.K

This regulation provides a short introduction to new Chapter 3.K. which applies to 1995 Section members who are active on or after 1 October 2009 and who opt to join the 2008 Section.

For this purpose active members who will be offered ‘choice terms’ include:

- returners to the 1995 Section after 1 October 2009, and
- anyone who becomes a member of the 1995 Section as the result of a compulsory transfer from a scheme with a normal pension age of 60 (if the member was originally compulsorily transferred out of a public service scheme).

Active members who will not be offered choice terms are:

1995 Section re-employed pensioners who are in receipt of an ‘old style’ ill health pension with fixed enhancements.

Finally regulation 3.K.1, coins the phrase “2008 Section Optant” and that is how 1995 members who choose to join and transfer service to the 2008 Section under ‘Choice’ terms are known throughout Chapter 3.K.

Consequential amendments: 3.K.1 has consequential amendments in one amending regulation.

53(a) inserts “2008 Section Optant” into the definitions at regulation 3.A.1 (interpretation of Part 3: general).

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3. K.2 Options for 1995 Section members to join this section under Chapter 3.K

This new regulation makes provision for members of the 1995 Section of the Scheme to exercise an option to join the 2008 Section under the 'Choice' terms referred to in the explanation of 3.K.1 above. In order to make an option, a member must be:

- an “active member” of the 1995 Section on or after 1 October 2009 and on the day the option is received, and
- in practitioner service that qualifies them to be a member of the 2008 Section

There are two exceptions to this (see explanation below).

The Scottish Ministers will provide 1995 Section members with a comparative statement of benefits (by electronic communication or otherwise) under both the 1995 and 2008 Sections, and allow a period of at least 4 months from the date of issue of that statement for the member to make their option. A member's option:

- will only be accepted in writing,
- is irrevocable, and
- must be made before the date the Scottish Ministers specifies on the statement

The Scottish Ministers may extend the (4 month) time limit described above if he considers that the member has not had a reasonable time in which to make their decision.

The “effective date” of a valid option to join the 2008 Section will be the date of the member's first day of pensionable practitioner service in the 1995 Section, on or after 1 April 2008. A “2008 Optant” will be treated as if they have been a member of the 2008 Section from that date.

A “2008 Section Optant” will be able to count in the 2008 Section their 1995 Section “qualifying” and “pensionable” service from 1 April 2008, to the same extent as they could have done if they had been a member of the 2008 Section from that date.

A member who has outstanding Scheme contributions for any period beginning on or after 1 April 2008 must pay those arrears by deductions from their pensionable pay, and if they leave the Scheme before payment is completed, the balance will become payable immediately.

Exceptions to the requirement that members must be active in the 1995 Section on the day the option is received

Exception 1 – Members at or near retirement from the 1995 Section

The Scottish Ministers may accept an option to join the 2008 Section, made after the member has left the Scheme if:

- the member’s comparative statement was issued whilst they were an “active member”,
- on leaving they will or would have been entitled to the immediate payment of benefits from the 1995 Section, but
- they provide a notice in writing asking that those benefits are not paid
- within the (4 month) time limit, they give notice to the Scottish Ministers that they wish to join and take their pension benefits from the 2008 Section

A member who gives notice that benefits are not to be paid from the 1995 Section may revoke that notice at any time (in which case 1995 benefits will become payable) but once they have revoked that notice they cannot defer payment of 1995 benefits for a further period.

Exception 2 – members who have applied for ill health retirement in the 1995 Section

See new regulation and explanation for 3.K.20 “Circumstances in which a 1995 Section member may defer making an option to join this Section of the Scheme under regulation 3.K.2”

Consequential amendments: 3.K.2 has consequential amendments in three amending regulations

54 amends regulation **3.A.3** (meaning of “pensionable service”) so that service an Optant is entitled to count under new Chapter 3.K is included in the meaning of pensionable service

55 amends regulation **3.A.5** (meaning of “qualifying service”) so that service an Optant is entitled to count as qualifying service under new Chapter 3.K is included in the meaning of qualifying service

59 inserts new regulation **3.B.1A** (Eligibility: transitional) to permit 2008 Section Optants to be members of the 2008 Section.

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3. K.3 Service and pensionable earnings credited from the 1995 Section.

This regulation provides for the terms on which service in the 1995 Section up to and including 31 March 2008 (excluding ²added years and Mental Health Officer doubled years and transfers in for members who joined the 1995 section after 1 April 2008) will transfer to the 2008 Section.

A 2008 Section Optant will be entitled to count in the 2008 Section:

- a period of “qualifying service” equal in length to their 1995 Section qualifying service up to 31.3.2008 (maximum 45 years), **and**

If the Optant is under age 60 on 1.10.2009,

- an amount of “pensionable earnings” for practitioner service equal in length to their 1995 pensionable service up to 31.3.2008, **or**

where the Optant is age 60 or over on 1.10.2009,

- an amount of “pensionable earnings” for practitioner service equal in length to their 1995 Section pensionable service up to 31.3.2008, multiplied by an actuarial factor that will reduce the period of service and pensionable earnings.

The amount by which the period of service and pensionable earnings is reduced will depend on the member’s age in years and months on 1.10. 2009.

If a member becomes a 2008 Section Optant, all rights under the 1995 Section of the Scheme will be extinguished.

Consequential amendments: 3.K.3 has consequential amendments in two amending regulations

54 amends regulation **3.A.3** (meaning of “pensionable service”) so that service an Optant is entitled to count under new Chapter 3.K is included in the meaning of pensionable service

55 amends regulation **3.A.5** (meaning of “qualifying service”) so that service an Optant is entitled to count as qualifying service under new Chapter 3.K is included in the meaning of qualifying service

.....

² See regulation **3.K.5 Treatment of Additional Service, 3.K.18 Transitional Provision: Treatment of additional service in respect of Optants retiring on the grounds of ill Health under regulation 3.D.7 and 3.K.10 Transfers in: transitional provision**

3. K.4 Treatment of additional pension

Arrangements to buy 'added years' of additional service at normal cost were withdrawn from the 1995 section from 1 April 2008, and new arrangements to buy amounts of 'additional pension' (AP) introduced into both that section and the new 2008 section. All AP contracts that member's have started in the 1995 section will transfer **automatically** on 'Choice' to the 2008 section, and new regulation 3.K.4 makes appropriate arrangements at paragraphs (1) and (2). The cost and general procedures involved for buying AP are the same in either section but, because of the earlier normal pension age in the 1995 section, member's are able to buy AP in that section priced for payment at both age 60 and 65. This means that:

In the case of AP bought in 1995 for payment at 65

Ongoing regular contribution contracts will simply transfer across to 2008 on 'Choice', without change in either the AP payable at retirement or the additional contributions payable. And for any AP contracts already completed (e.g. lump sum payment) or terminated early, the amount credited in the 1995 section will be exactly the same when moved to the 2008 section. However:

In the case of AP bought in 1995 for payment at 60

Completed, terminated and ongoing 'age 60 AP' contracts moved from 1995 must all be adjusted, since normal pension age in the 2008 section is 65 and AP must always be paid with main scheme benefits. Since AP payable at the earlier age of 60 will normally be in payment for longer, it effectively 'costs more' than 'age 65 AP' and is 'worth more' when moved across to the 2008 section. Paragraphs (4)(b) and (8) of regulation 3.K.4 will provide for completed and terminated 'age 60 AP' contracts to be actuarially increased on 'Choice' transfer, so that the member will get the extra amount of AP their lump sum payment or regular contributions would have purchased if they had bought 'age 65 AP' in the 1995 section. However, ongoing 'age 60 AP' contracts will be actuarially adjusted so that the member's contributions are reduced, but buy exactly the same amount of AP in the 2008 section as they would have in 1995.

Adjustment in the case of excess AP purchase

The higher value of 'age 60 AP' when transferred from 1995 to 2008, makes it theoretically possible that the above reduction of a member's ongoing contributions will not be enough to prevent the payments already made from buying AP in excess of the £5,000 limit referred to in regulation 3.C.6 of the 2008 Section. This could happen if a member was buying age 60 AP right up to the limit in a short-term regular payment contract, or a member had already made lump sum payment(s) for 'age 60 AP' that were sufficient to purchase the maximum AP of 5,000. Rules for all public service schemes make it impossible to credit the member with more than the AP limit of £5,000 but, in the unlikely event of this happening on 'Choice' transfer, paragraph (9) of new 3.K.4 will actuarially increase main scheme pensionable service (or pensionable earnings for a practitioner), to the value of the 'excess' AP payment made.

Consequential amendments: 3.K.4 has consequential amendments in five amending regulations

“In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.4.”

Is inserted by the following amending regulations:

60 inserts at paragraph **(9) of 3.C.6** (member's option to pay additional periodical contributions to purchase additional pension),

61 inserts at paragraph **(7) of 3.C.8** (member's option to pay lump sum contribution to purchase additional pension),

62 inserts at paragraph **(6) of 3.C.9** (payment of additional lump sum contributions by employing authority),

63 inserts at paragraph **(11) of 3.C.12** (effect of payment of additional contributions under this Chapter) and paragraph

64 inserts at paragraph **(6) of 3.C.14** (effect of part payment of periodical contributions)

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3. K.5 Treatment of additional service and pensionable earnings

Arrangements to buy 'added years' (AY) of additional service at normal cost were withdrawn from the 1995 section from 1 April 2008 and are not available in 2008. However, on 'Choice' transfer, 3.K.5(1) and (2) will provide for completed, terminated and ongoing AY contracts in the 1995 section to be **automatically** 'wound up' and an additional pensionable earnings credit added to the main scheme pensionable earnings credit transferred to the 2008 section. For those remaining members who bought additional service under 'old-style' arrangements in the previous regulations (the National Health Service Superannuation (Scotland) Regulations 1980 but have not yet retired, paragraph 3.K.5(2)(b) makes equivalent arrangements.

For members under age 60 on 1 October 2009, the first day of 'Choice, 3.K.5 (5) will provide for the additional service bought in the 1995 section under already completed or terminated contracts to have the same 'day-for-day' value in the 2008 section and the appropriate amount of pensionable earnings added to the pensionable earnings for main scheme service credited in 2008 under new regulation 3.K.3 (3). However, for members age 60 or over on 1 October 2009, the first day of 'Choice, 3.K.5 (6) will provide for the pensionable earnings credit for additional service bought to be reduced in accordance with the same actuarial factor applied to pensionable earnings for main scheme service, before it is added to the main scheme pensionable earnings credit under new 3.K.3 (4).

Similar arrangements will apply for members with ongoing contracts to buy AYs by means of regular contributions, so that the contracts will be 'wound up' in accordance with the normal 1995 rules for terminated contracts and a credit calculated. 3.K.5(8) will provide for contributions to be ceased from the date the member's option to join the 2008 section on 'Choice' was received in accordance with new regulation 3.K.2, with any outstanding contributions at that date recovered in the same way as mains scheme contributions under new 3.K.2(6) and (7). Paragraph 3.K.5(2)(a) provides that members who have been buying

AYs between 1 April 2008, when they will effectively join the 2008 section, and the 'Option date' will be credited with ALL the pensionable earnings for additional service bought up to that date, not just to 31 March 2008.

Consequential amendments: 3.K.5 has consequential amendments in one amending regulation

54 amends regulation 3.A.3 (meaning of "pensionable service") so that service an Optant is entitled to count under new Chapter 3.K is included in the meaning of pensionable service

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3. K.6 Treatment of unreduced retirement lump sum (URLS)

Arrangements in the 1995 section to buy a bigger retirement lump sum, where that lump sum would otherwise be reduced to pay for widow's pension cover before 25 March 1972, or to buy a bigger dependant's pension for service before 6 April 1988, in the case of widower's and civil or nominated partners, will not apply in the 2008 section, since all members who transfer to that section will enjoy full and equal dependant's benefits cover. This means that 1995 section 'additional service style' contracts to purchase increased lump sum or pension in these circumstances (URLS contracts) have no value on transfer to the 2008 section.

New regulation 3.K.6 will provide for members with existing URLS contracts in 1995 who transfer on 'Choice' **automatically** to have:

- any ongoing regular contribution contract(s) stopped, and
- any previously agreed contract(s) to pay for increased benefits by deduction from retirement lump sum cancelled
- any lump sum or regular contributions paid 'in error' (because of the date they were able to exercise their 'Choice') between 1 April 2008, when they will effectively join the 2008 section, and the 'Choice' 'option date' described in new 3.K.2, will have those contributions refunded

Members who paid lump sum or regular contributions up to 31 March 2008, whilst they were effectively still members of the 1995 section will not have those contributions refunded because of the additional dependants cover they enjoyed up to that date.

Consequential amendments: 3.K.6 does not have any consequential amendments

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3. K.7 Treatment of 2008 Section Optants to whom regulation L1(3) of the 1995 regulations applied immediately before 1 April 2008

Regulation L1(3) of the 1995 Section provides for a separate pension to be paid in respect of service before a break of more than 12 months if this would be more favourable to the member than treating the member's service as continuous.

This means that, if more favourable, the member may receive a separate pension at retirement in respect of the period of service before a 12 month break, based on the updated pensionable earnings that applied to that period.

Regulation 3.K.7 provides for this facility to carry forward into the 2008 Section.

This means that if a practitioner member has a period of service in the 1995 Section that accrued before a break of 12 months or more, the service and pensionable earnings credited in the 2008 Section for that period may attract a separate pension.

So, when benefits are taken from the 2008 Section, if more favourable, the member will receive a separate pension based on their pensionable earnings as a practitioner, and any associated officer service under Part 2 of the 2008 Section regulations in respect of that period, that would have applied in the 1995 Section.

Consequential amendments: 3.K.7 has consequential amendments in one amending regulation

70 amends regulation 3.D.7 (early retirement on ill-health (active members and non-contributing members)) so that an Optant whose service and earnings are treated separately under regulation 3.K.7 will not qualify for upper Tier ill health enhancements (this applies in the 1995 section where service is treated separately under regulation L1(3)).

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3. K.8 Pension debit members

Following the implementation of a 'Pension Sharing order' a 'pension debit' is created. The pension debit is the annual amount of pension and lump sum that will be deducted from the member's benefits at retirement. This deduction or 'debit' covers the cost of paying a pension and a lump sum to the member's former spouse or civil partner.

New regulation 3.K.8 does two things in circumstances where a 1995 Section member with a pension sharing debit elects to join the 2008 Section.

Firstly, the amount of the pension and lump sum to be debited from benefits will be increased by a factor to take account of the later normal pension age of 65 in the 2008 Section.

Secondly, because the member may choose the amount of lump sum that is taken instead of pension in the 2008 Section, regulation 3.K.8 also allows the Scottish Ministers to vary how the member takes their retirement benefits, if, for example

- The member does not elect to take enough lump sum to cover the amount of the lump sum debit, or
- The member elects to take too much lump sum so that there is not enough pension left to cover the amount of the pension debit

Consequential amendments: 3.K.8 has consequential amendments in two amending regulations

73 amends regulation 3.D.10 (general option to exchange part of pension for lump sum) so that any amount of lump sum the Optant chooses to take in place of pension is subject to the provisions contained in new regulation 3.K.8.

74 amends regulation 3.D.12 (reduction in pension debit member's benefits) so that the debit in respect of a 2008 Section Optant determined under the 1999 Act is subject to the increase determined under new regulation 3.K.8.

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3. K.9 Pensionable earnings credited under regulations 3.K.3 and 3.K.5 to be treated as capped Optant pensionable earnings

This amendment confirms how 1995 Section pensionable earnings credited to the 2008 Section under the Choice arrangements will be described and treated in relation to any capped 1995 Section service the member may have.

For the purposes of the regulation, a practitioner's pensionable earnings in respect of-

- 1995 Section service before 6.4.2006 which was subject to Section 590C of the Income and Corporation Taxes Act 1988, and
- 1995 Section service between 6.4.2006 and 31.3.2008 (when the NHSPS cap was lifted) which was subject to the equivalent NHS Scheme 'earnings cap'

will be "capped Optant pensionable earnings", whether or not those earnings actually exceeded the amount of the limits that applied during those periods.

Consequential amendments: 3.K.9 does not have any consequential amendments

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3. K.10 Transfers in: transitional provision

In keeping with the principle that 1995 Section members who opt to join the 2008 Section are treated as if they had been members of the 2008 Section from 1 April 2008, any such members who:

- joined the 1995 Section after 1 April 2008 , and
- who bring with them an incoming transfer value payment

will have the service to be credited as a result of the transfer calculated (if not yet finalised) or recalculated (if the transfer payment has already been received) as if it had been received

in the 2008 Section. However, the 'relevant date' for the purpose of calculating the service credit will be the relevant date that was or would have been used in the 1995 Section.

Consequential amendments 3.K.10 has consequential amendments in four amending regulations

“In the case of 2008 Section Optant, this regulation is subject to regulation 3.K.10”

is inserted by the following amending regulations:

85 inserts at **paragraph (5) of regulation 3.F.8** (right to apply for acceptance of transfer value payment from another scheme)

87(12) inserts at **paragraph (12) of regulation 3.F.10** (acceptance of transfer value payments),

88(5) inserts at **paragraph (7) of regulation 3.F.11** (calculation of transferred-in pensionable service),

89(4) inserts at **paragraph (5) of regulation 3.F.12** (meaning of “capped transferred-in service”)

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3. K.11 Amount of pension and lump sum to be paid to a 2008 Section Optant

2008 Section Optants are required to take an amount of lump sum on retirement. The pension payable to the Optant will be reduced to take account of this mandatory amount of lump sum (MLS). The MLS will be approximate to the amount of lump sum the Optant would have been required to take from the 1995 Section for service up to 31 March 2008.

The MLS is equal to three times the Optant's pension for relevant service.

Relevant service is

- Pensionable earnings credited in the 2008 section for 1995 service up to and including 31 March 2008, and
- Pensionable earnings credited in respect of any added years purchased in the 1995 section

Age retirement

In a straightforward age retirement case, the MLS will be calculated as follows:

$3 \times 1.4\%$ of the member's relevant uprated earnings = MLS

The answer will be rounded down to the nearest multiple of 12 and the Optant's pension will be reduced by that amount divided by 12.

2008 Optants who take voluntary early retirement under regulation 3.D.4 or 'draw down' part of their pension under regulation 3.D.5 arrangements will also be required to take a MLS.

Early retirement

'Early retirement' for MLS purposes will mean retirement before age 60, the normal pension age in the 1995 Section. When this applies to an Optant, the MLS will be calculated in the same way as for an age retirement, but **reduced** by the early retirement factor that would have applied if they had retired from the 1995 Section, i.e.

$3 \times 1.4\%$ of the member's relevant uprated earnings \times 1995 reduction factor = MLS

Partial retirement

The MLS for a partial (draw down) retirement will be calculated in the same way as for an age retirement, but the amount of the Optant's relevant uprated earnings used in the calculation will be a percentage of those earnings. This percentage will be the same as the percentage of benefits that the optant elects to 'draw down' under regulation 3.D.5.

If the Optant is also under age 60 when their 'draw down' pension becomes payable, the MLS is calculated above will also be reduced by the early retirement factor that would have applied if they had retired from the 1995 Section.

Transfer Out

If the Optant transfers benefits to another pension scheme, the transfer value will be calculated by reference to the MLS and the reduced pension.

Earnings Cap

The amount of the MLS and the consequential reduction to pension will be calculated separately in respect of any capped and any uncapped earnings.

Consequential amendments 3.K.11 has consequential amendments in thirteen amending regulations

"In the case of 2008 Section Optant, this regulation is subject to regulation 3.K.11"

is inserted by the following amending regulations:

66 inserts at **paragraph (8) of regulation 3.D.1** (normal retirement pensions),

68 inserts at **paragraph (5) of regulation 3.D.4** (early payment of a pension with an actuarial reduction),

69 inserts at **paragraph (9) of regulation 3.D.5** (partial retirement (members aged at least 55))

70 inserts at **paragraph (18) of regulation 3.D.7** (early retirement on ill-health (active members and non-contributing members))

72 inserts at **paragraph (10) of regulation 3.D.9** (early retirement on ill-health (deferred members)),

73 inserts at **paragraph (8) of regulation 3.D.10** (general option to exchange part of pension for lump sum),

84(4) inserts at **paragraph (6) of regulation 3.F.6** (calculating amounts of transfer value payments)

Consequential amendments are also inserted by the following amending regulations to ensure that the amount of pension that any death benefits are based on will be the amount of pension before it has been reduced to take account of the lump sum that was paid under regulation 3.K.11.

76 amends **paragraph (8) of regulation 3.E.4** (amount of pensions under regulation 3.E.1: pensioner members),

78 amends **paragraph (8) of regulation 3.E.11** (amount of children's pension under regulation 3.E.8: deceased pensioner members)

80 amends **paragraph (2) (b) and (6) of regulation 3.E.17** (amount of lump sum: single capacity members and recent leavers (disregarding regulation 3.D.5 employments))

81 inserts **new paragraph (4) at regulation 3.E.18** (amount of lump sum; dual capacity members (disregarding regulation 3.D.5 employments))

82 amends **paragraph (4) of regulation 3.E.19** (amount of lump sum; dual capacity members with pensions under regulation 3.D.5)

Finally, amending regulation **81** provides for interest to be due under **regulation 3.J.9** if a lump sum due under regulation 3.K.11 is paid late.

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3. K.12 Nominations and notices accepted by the Scottish Ministers under the 1995 regulations to apply under Chapter 3.E of these regulations

This amendment provides for 2008 Optant practitioners who have made nominations or given notices in the 1995 Section for:

- a lump sum nomination under regulations F1-4 of that Section,
- a notice under regulation F5(3)(a) that the member's surviving partner is not to receive a lump sum under regulations F1-4, or
- a notice for the purposes of regulation G14 of that Section nominating a partner to receive a surviving nominated partner pension

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

Consequential amendments: 3.K.12 has consequential amendments in two amending regulations

“In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.12 (Nominations and notices accepted by the Scottish Ministers under the 1995 Regulations to apply under Chapter 3.E of these Regulations)”

Is inserted by

75 at **paragraph (3) of regulation 3.E.2** (meaning of “surviving nominated partner”)

83 at **paragraph (12) of regulation 3.E.21** (payment of lump sums or pensions on death)

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3. K.13 2008 Section Optants: Transitional Upper Tier ill-health pension

This regulation makes provision for 2008 Section Optants who applied for ill health retirement under regulation E2A of the 1995 Section before their option to join the 2008 Section was received. It works in conjunction with the amended definition of “permanently” inserted into regulation 3.D.7 by amending regulation **62(3)**. The amended definition allows a decision by medical advisers that a member qualifies for either a lower tier 1 or upper tier ill – health pension in the 1995 Section to count for the same purposes under the 2008 section.

Therefore:

- if the member qualified for an upper tier ill health pension under the 1995 regulations before their option to join the 2008 Section is received, and
- they subsequently opt to join the 2008 Section, and
- claim an upper tier ill-health pension under 2008 Section ill health retirement regulations within one year of joining,

the amount of enhancement the Optant will receive will be calculated under 3.K.13 instead of 3.D.7. The period is known as the ‘transitional enhancement period’.

The transitional enhancement period is 2/3rds of the Optant’s prospective service to age 60 subject to a minimum amount of enhancement. The minimum amount is the lesser of 4 years service and full prospective service to age 60.

Consequential amendments: 3.K.13 has consequential amendments in two amending regulations

70(3) amends **regulation 3.D.7** (early retirement on ill-health (active members and non-contributing members)) as explained above by inserting a revised definition of “permanently”

70(4) amends **regulation 3.D.7** by making it subject to regulation 3.K.13 so that the transitional enhancement period under 3.K.13 applies in place of the enhancement period in 3.D.7.

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3. K.14 Treatment of ill-health retirement applications made by 2008 Section Optants within one-year of joining this Section

This regulation makes provision for 2008 Section Optants who submit an application (AW8) for ill health retirement under the 2008 Section within one year of the Scottish Ministers receiving their option to join that section. If a 2008 Section Optant becomes entitled to an upper tier ill-health pension in these circumstances and as a result of that application any enhancement due will be calculated as described in regulation 3.K.13 - the transitional enhancement period will apply in place of the enhancement period calculated under regulation 3.D.7.

Consequential amendments: 3.K.14 has consequential amendments in one amending regulation

70(4) amends **regulation 3.D.7** by making it subject to regulation 3.K.14 so that the transitional enhancement period under 3.K.13 applies in place of the enhancement period in 3.D.7.

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3. K.15 Application of regulation 3.D.8 where a 2008 Section Optant has submitted an application for ill-health retirement under the 1995 Section

This regulation makes provision for 2008 Section Optants who applied for ill health retirement under regulation E2A of the 1995 Section before their option to join the 2008 Section was received. It also works in conjunction with the amended definition of “permanently” inserted into regulation 3.D.7 by amending regulation **62(3)**. The amended definition allows a decision by medical advisers that a member qualifies for a lower tier ill – health pension in the 1995 Section to count for the same purposes under the 2008 section.

Therefore

- if the member qualified for a lower tier ill health pension under the 1995 regulations before their option to join the 2008 Section is received, and
- they were also notified that they could ask the Scottish Ministers to re-assess this decision within a period of three years, and
- they subsequently opt to join the 2008 Section, and
- claim a lower tier ill-health pension under 2008 Section ill health retirement regulations within one year of joining,

They will also be entitled to ask for the decision to be reassessed under regulation 3.D.8 of the 2008 regulations.

For the purpose of the reassessment, the permanence criteria for an upper tier ill-health pension will be to age 60.

If, following the reassessment, the Optant qualifies for an upper tier ill-health pension to be paid in place of their lower tier ill-health pension, the enhancements will be calculated under regulation 3.K.13 (the transitional enhancement period will apply in place of the enhancement period calculated under regulation 3.D.7) except that the period of the enhancement will be calculated from the date of the Scottish Ministers' decision that the Optant meets the upper tier ill-health criteria.

Consequential amendments: **3.K.15** has consequential amendments in two amending regulations

70(4) amends **regulation 3.D.7** by making it subject to regulation 3.K.15

71 amends regulation 3.D.8 (re-assessment of entitlement to an ill-health pension determined under regulation 3.D.7) by making it subject to regulation 3.K.15 so that on a successful re-assessment to an upper tier pension the Optant is entitled to enhancements as provided for in 3.K.15.

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3. K.16 Application of regulation 3.D.8 where a 2008 Section Optant has submitted an application for ill-health retirement under the 2008 Section within a year of joining the 2008 Section

This regulation makes provision for 2008 Section Optants who submit an application (AW8) for ill health retirement under the 2008 Section within one year of the Scottish Ministers receiving their option to join that section and who become entitled to a lower tier ill-health pension as a result.

If, at the time that pension is awarded, the Optant is notified that they may ask the Scottish Ministers to reassess this decision within a period of three years and their subsequent application for a reassessment to an upper tier ill-health pension is successful any enhancement due will be calculated as described in regulation 3.K.13 (the transitional enhancement period will apply in place of the enhancement period calculated under regulation 3.D.7) except that the period of the enhancement will be calculated from the date of the Scottish Ministers' decision that the Optant meets the upper tier ill-health criteria.

Consequential amendments: **3.K.16** has consequential amendments in two amending regulations

70(4) amends **regulation 3.D.7** by making it subject to regulation 3.K.16

71 amends **regulation 3.D.8** (re-assessment of entitlement to an ill-health pension determined under regulation 3.D.7) by making it subject to regulation 3.K.16 so that on a successful re-assessment to a tier 2 pension the Optant is entitled to enhancements as provided for in 3.K.16.

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3. K.17 Late payment of pension with actuarial increase for a 2008 Optant

Pensions payable after the normal pension age of 65 in the 2008 Section attract a 'late retirement factor' (LRF) increase in respect of the practitioner's pensionable earnings for service up to age 65 under regulation 3.D.3. Service after age 65 does not attract an increase.

This amendment entitles a 2008 Section Optant to reckon **all** their 1995 Section service up to 31 March 2008 that counts under regulation 3.K.3 of the 2008 Section for a LRF increase, even if some of that 1995 service fell after age 65. The service and pensionable earnings a 2008 Section Optant will be able to count for a LRF increase is:

- all the service and pensionable earnings the Optant can count under regulation 3.K.3,
- any additional service (added years) the Optant is entitled to count under regulation 3.K.5,
- service in the 2008 Section on or after 1.4.2008 and **before** age 65, and
- any contributions payable before age 65 for Additional Pension

Service in the 2008 Section **after** age 65 from and including 1 April 2008 will continue to attract no late retirement increase.

Consequential amendments: 3.K.17 has consequential amendments in one amending regulation

67 inserts at new **paragraph (5) of regulation 3.D.3** (late payment of pension with actuarial increase) so that it is subject to 3.K.17 in the case of a 2008 Section Optant.

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3. K.18 Transitional Provision: Treatment of additional service and pensionable earnings in respect of Optants retiring on the grounds of ill-health under regulation 3.D.7

In the 1995 section, members who successfully apply for an ill health retirement (IHR) pension under regulation E2 or E2A of that section, before age 60 and at least 12 months after starting to pay regular additional AY contributions, are credited with the full amount of pensionable earnings for the additional service they contracted to buy and any outstanding additional contributions are deemed to have been paid. 1995 members who have been making regular additional contributions for less than 12 months have their contract to buy AYs cancelled and their additional contributions to date refunded less tax. New regulation

3.K.18 will mirror these arrangements for members who apply for IHR before the date on which the member's option to join the 2008 section of the Scheme is received.

New 3.K.18 (3) and (4) provide that a member who is under age 60, has been making regular additional AY contributions for at least 12 months and whose claim for IHR is successful within one year of their option to move to 2008, will have their AYs pensionable earnings credit in the 2008 section at 3.K.3 (3) increased by the **full** amount of AYs they contracted to buy, not just those bought to date. Any outstanding contributions at the option date will be recovered in the same way as mains scheme contributions under new 3.K.2(6) and (7), but the balance of contributions will be waived.

If the member has been making regular additional AY contributions for less than 12 months, when they (successfully) apply for IHR, new 3.K.18(2) will provide for their contract to buy AYs to be cancelled, and their additional contributions to date refunded less tax. In these circumstances NO additional pensionable earnings credit will be added to the main scheme pensionable earnings transferred to the 2008 section.

Consequential amendments 3.K.18 has consequential amendments in one amending regulation

70(4) amends **regulation 3.D.7** by making it subject to regulation 3.K.18.

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3. K.19 Treatment of service credited from the 1995 Section when benefits in cases of mixed service are payable

This new regulation provides for the GP pension 'flexibilities' contained in Part 4 of the 2008 Section to be extended to service transferred from the 1995 Section on 'Choice'.

For a practitioner member who is under age 60 on 1 October 2009, former 1995 Section service up to 31.3.2008 that would have counted for the purposes of one or more of the 'flexibilities' in Schedule 2, will, for the purposes of Part 4 (Benefits in cases of mixed service) of the 2008 Section, count at the same length, and any practitioner pensionable earnings will count at the same value.

For a practitioner member who is age 60 or over on 1 October 2009, 3.K.19(3) and (4) provides for the 1995 Section service up to 31.3.2008 to reckon at the same length for the purposes of determining whether a pension 'flexibility' should apply, and, for the purposes of calculating any benefit-

- at the appropriately reduced length after application of the factor Referred to in regulation 2.K.3 (4) **in the case of officer service, and**
- at the appropriately reduced value after application of the factor referred to in regulation 3.K.3(4) **in the case of practitioner pensionable earnings**

Consequential amendments: 3.K.19 does not have any consequential amendments

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3. K.20 Circumstances in which a 1995 Section member may defer making an option to join this Section of the Scheme under regulation 3.K.2

This regulation allows a 1995 Section member to defer making an option to join the 2008 Section until the outcome of an ill health application under the 1995 regulations is known.

The application for ill health retirement (AW8) must be received before a comparative statement of benefits is issued or before the date specified in the statement if the application is made after a statement has been issued.

In these circumstances a member may defer their decision on whether to join the 2008 Section until one month after they receive a decision on their ill health application.

If the application is not agreed and the member appeals against that decision within 12 months of the termination of their contract of employment, their decision to join the 2008 Section may be deferred until one month after they are notified of the outcome of the 1st appeal.

If the 1st appeal is not agreed and a second appeal is submitted within six months of the notification of the 1st appeal decision, their decision to join the 2008 Section may be deferred until one month after they are notified of the outcome of the 2nd appeal.

If the 2nd appeal is not agreed and a request for a determination by the Pensions Ombudsman is made within three years of the notification of the 2nd appeal decision, their decision to join the 2008 Section may be deferred until one month after they are notified of the outcome of the Pensions Ombudsman's investigation.

The option to defer a decision to join the 2008 Section under this regulation ceases if the member becomes re-employed in the NHS or if an actuarially reduced pension under the 1995 regulations is claimed.

Consequential amendments: 3.K.20 has no associated consequential amendments

3.K.21 “2008 Section Optants who are in receipt of a lower tier ill-health pension under Regulation E2A of the 1995 Regulations”

The amendment ensures that where a “1995 pensioner/2008 active member’s” 1995 lower tier ill-health pension converts to an upper tier pension under regulation E2B, any further ill health pension, for service in the 2008 section, is restricted to lower tier. And, because such an Optant may be in the process of applying for an upper tier ill health pension for their re-employment in the 1995 Section, the regulation is made subject to the transitional arrangements in regulation 3.K.14 onwards.

3.K.22 “Lump sum payable on the death of a 2008 Section Optant who is in receipt of a lower tier ill-health pension under regulation E2A of the 1995 Regulations”

The amendment ensures that the death benefit lump sum for a “1995 pensioner/2008 active member’s” later (2008) service is not twice their reckonable pay, but five times their upper tier ill health pension, in common with re employed pensioners whose service is all within one Section of the Scheme.

Consequential amendments: 3.K.22 have 2 consequential amendments .

“In the case of a 2008 Section Optant, this is subject to regulation 3.K.22 (lump sum payable on the death of a 2008 Section Optant who is in receipt of a lower tier ill-health pension under regulation E2A of the 1995 Regulations).” Is inserted by the following amending regulations:

80(2) inserts at the end of paragraph (1) of 3.E.17 (amount of lump sum: single capacity members and recent leavers (disregarding regulation 3.D.5 employments))

82(2) inserts at the end of paragraph(2) of Regulation 3.E.19 (amount of lump sum: dual capacity members with pensions under regulation 3.D.5)

3.K.23 “Children’s pensions payable on the death of a 2008 Section Optant who is in receipt of a lower tier ill health pension under regulation E2A of the 1995 Regulations”

this regulation ensures that the 10 years service minimum for the calculation of children’s pensions takes account of service in both the 1995 and the 2008 section. Where the combined service across the two sections is less than 10 years, the later 2008 active service will be increased by the shortfall.

Consequential amendments: 3.K.23 has three consequential amendments.:

“In the case of a 2008 Section Optant, this is subject to regulation 3.K.23 (children’s pensions payable on the death of a 2008 Section Optant who is in receipt of a lower tier ill-health pension under regulation E2A of the 1995 Regulations)” is inserted by amending regulations:

77 at the end of paragraph (3) of 3.E.10 (amount of children’s pension under regulation 3.E.8: deceased active members and deceased non-contributing members)

78 at the end of paragraph (3) of 3.E.11 (amount of children’s pension under regulation 3.E.8: deceased pensioner members)

79 at the end of paragraph (3) of 3.E.12 (amount of children’s pension under regulation 3.E.8: deceased deferred members)

.....

Regulations 82-88

4.A.2 - 4.C.1 Benefits in cases of mixed service

These amendments add two new GP pension ‘flexibilities’ to the existing arrangements in regulations 4.B.1 to 4.B.7 of this Part, by inserting a new regulation 4.B.7A and a new “Calculation method D” at 4.B.11. The changes will be effective for practitioner members who retire on or after 1 October 2009, and apply to pensionable service accrued both before and after that date.

The amendment to regulation 4.B.2 removes ‘Principal’ from paragraphs (2)(a) and (b), so that the provision under those paragraphs to treat up to 10 years officer service before first becoming a ‘Principal practitioner as if it were practitioner service (where that is beneficial) will also be available for ‘assistant and salaried’ practitioners.

Similarly, the amendment to regulation 4.B.3 extends to ‘assistant and salaried’ practitioners the alternative flexibility for members with **more** than 10 years service as an officer before first becoming a practitioner.

The new regulation 4.B.7A will apply to one or more periods of officer service that are ‘sandwiched’ between periods of practitioner service, and allow a separate officer benefit based on the total of that officer service to be revalued by RPI+1.5% (rather than the current RPI only) for the period between the end of the ‘sandwiched’ service and final retirement. It will remain possible to link the ‘sandwiched’ officer service with later officer service, for benefits based on the later final pensionable pay, if that would be more beneficial.

97 amends 4.B.8 (calculation method A) of the 2008 regulations.

These amendments clarify the way in which pensionable earnings will be determined, if a member has officer service before practitioner service that was the result of a transfer-in. If the member was an officer when that transfer-in occurred, but later became a GP and is able to treat that officer service as if it were practitioner by dynamising the pay, that pay will be determined by means of the calculation set out in Schedule 1(20)(2) (if the member is a 1995 Section member) or that set out in regulation 3.F.11(2) (if the member is a 2008 Section member).

The new “Calculation method D” at new regulation 4.B.11 describes how the 1.5% revaluation is applied between the end of the ‘sandwiched officer service’ and the date retirement benefits come into payment. Briefly the basic pension and any lump sum amounts are first calculated in the normal way, and then revalued (increased) by 1.5% per annum in the same way that a pension would be under the PI Act 1971 but up to the date the pension is put into payment only. Normal increases under PI Act (net of the additional 1.5%) are then applied so that ‘double indexation’ is avoided.

Regulation 100 – gives effect to Schedule 2 to the amending SI which replaces various references throughout the 2008 Regulations to “scheme” to “this section of the scheme”, and replaces references to the “NHS Pension Scheme 1995 ” with references to the “1995 section” and replaces references to “that scheme” with references to “that section”.

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

Regulation 101

Paragraph (1) - Introductory

Paragraph (2) - Interpretation

This amendment puts right the omission of the NHS Pension Scheme (Scotland) Regulations 2008 from the definition of “NHS employment”.

Amendment of the National Health Service (Scotland) (Additional Voluntary Contributions) Regulations 1998

Regulation 102

Paragraph (1) - Introductory

Paragraph (2) - Regulation 20 (loss of rights to benefits)

This amendment corrects the omission of a cross-reference to regulations 2.J.7 and 3.J.7 of the 2008 Regulations.

Paragraph (3) - Schedule 2 (pensions sharing on divorce or nullity of marriage or dissolution or nullity of civil partnership)

This amendment corrects the omission of cross-references to regulations 2.J.7 and 3.J.7 of the 2008 Regulations and updates certain references in accordance with the Finance Act 2004.

Miscellaneous

Amendment regulation 103 Option to persons detrimentally affected by these Regulations

This regulation provides for a deferred member, or a member in receipt of a relevant benefit, whose position under these regulations would be worsened by any retrospective provision, to elect that that provision will not apply to them.