

The National Health Service Superannuation Scheme, Pension Scheme and Additional Voluntary Contributions (Amendment) Regulations 2010

Regulations **Part 1 of the draft Scottish Statutory Instrument (SSI)**

1 sets the context for the amending regulations

Names the regulations as the “National Health Service Superannuation Scheme, Pension Scheme and Additional Voluntary Contributions (Scotland) (Amendment) (No.2) Regulations 2010”

Part 2 of the draft SI

Regulations 2 to 16 in Part 2 of the SSI amend the provisions of the NHS Superannuation Scheme Regulations (Scotland) 1995 in the main with effect from 1 April 2010

Part 3 of the draft SSI

Regulations 17 to 56 in Part 3 of the SSI amend the NHS Pension Scheme Regulations (Scotland) 2008 with effect from 1 April 2010.

Part 4 of the draft SSI

Regulation 57 amends the National Health Service (Additional Voluntary Contributions) (Scotland) Regulations 1998 with effect from 1 April 2010.

Part 5 of the draft SSI

Regulation 58 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 Scottish Statutory Instrument.

Explanations by subject area Parts 2, 3, 4 and 5 of the SSI

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3.	Future access to the 1995 Section for <ul style="list-style-type: none"> • persons who opt out for five years or more, and • persons with pensions in payment from other health service pension schemes 	10	4(2)(f), 12, 20, and 41
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1. Access to the 2008 Section of the NHS Pension Scheme for certain 1995 Section pensioners who are employed again in the NHS following retirement

(“Waiting Period Joiners”)

The NHS Review Partners agreed that NHS pensioners who were active in the 1995 Section on or after 1 April 2008 but who retired before having a choice to move to the new 2008 Section of the NHS Pension Scheme¹ will be able to join the 2008 Section if they return to NHS employment. However, there will be a requirement for a two year break in pensionable employment between taking 1995 Section retirement benefits and joining the 2008 Section. The pension choice exercise (PCE) will cover members who are active in the 1995 Section on or after 1 October 2009 so this arrangement will apply to members who retire from the 1995 Section between 1 April 2008 and 30 September 2009.

Regulations dealing with eligibility to join the 2008 Section

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

Regulation 41 amends regulation 3.B1A (eligibility: transitional)

New paragraphs added to these regulations provide for members retiring from the 1995 Section between 1 April 2008 (the day the 2008 Section was introduced) and 30 September 2009 (the day before the PCE begins), to be eligible to join the 2008 Section of the NHS Pension Scheme on re-employment in the NHS. Such pensioners will be able to join the 2008 Section after a period of time has passed since their retirement (“a waiting period”)².

¹ As set out in the NHS Pension Scheme (Scotland) Regulations 2008

² These new provisions will not apply to 1995 pensioners who are eligible to re-join the 1995 Section from the first day of their further employment (all members in receipt of an old style ill health or a new style lower tier ill health pension who are under 50 years of age)

The length of the “waiting period” before a 1995 Section pensioner may join the 2008 Section will depend on the kind of 1995 Section pension being paid to each pensioner.

The “waiting period“ will last for two years following the date of retirement if the 1995 Section pensioner is receiving:

- a normal (age) retirement pension³,
- an actuarially reduced early retirement pension⁴,
- a new style redundancy pension⁵, or
- a lower tier new style ill health pension⁶

If the pensioner is receiving an old style ill health pension or an old style redundancy pension⁷, both of which include extra service (known as enhancements), the “waiting period“ will start at the pensioner’s retirement date and continue for the longest of the following two periods:

- two years, or
- the calendar length of the extra service included in the pension,

If the pensioner is receiving an upper tier new style ill health pension⁸ the “waiting period“ will continue until the end of whichever of the following periods finishes last:

- two years following the date of retirement, or
- one year following the date the further NHS employment begins (on this date the pensioner’s upper tier pension will revert to a lower tier pension)

Upper tier ill-health pensioners are not entitled to accrue any further service in re-employment. Therefore these amendments also prevent a “Waiting Period Joiner” from accruing further service in the 2008 Section if, on review, their 1995 Section lower tier ill-health pension is converted into an upper tier ill health pension.

³ see regulation E1 (normal retirement pension)

⁴ see regulation E5 (early retirement pension with actuarial reduction)

⁵ see regulation E3A (early retirement pension (termination of employment by employing authority))

⁶ see regulation E2A(3)(a) (lower tier ill-health pension on early retirement)

⁷ See regulations E2 (early retirement pension (ill health)) and E3 (early retirement pension (redundancy etc additional provisions)),

⁸ see regulation E2A(3)(b) (upper tier ill-health pension on early retirement)

The waiting periods also apply to other health service scheme pensioners⁹ who are employed by NHS employing authorities in Scotland if their retirement took place between 1 April 2008 and 30 September 2009.

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Variations to benefits and consequential amendments

Regulation 38 inserts new Chapter 2.L “Waiting Period Joiners” and

Regulation 56 inserts new Chapter 3.L “Waiting Period Joiners”

When a 1995 Section pensioner joins the 2008 Section, that pensioner will have entitlement to benefits under the two separate sections of the NHS Pension Scheme. New Chapters 2.L and 3.L contain provisions that ensure that such pensioners are treated in the same way following a second ill health retirement or following their death as they would be if both their pension in payment and their further active service had accrued in the same section of the NHS Pension Scheme.

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2.L.1 and 3.L.1 Application of Chapter 2.L, Application of Chapter 3.L

These regulations provide a short introduction to new Chapters 2.L and 3.L. They coin the phrase “Waiting Period Joiner” and that is how 1995 pensioners who join the 2008 Section under the new provisions are referred to throughout new Chapters 2.L and 3.L.

Consequential Amendments - 2. L. 1 and 3.L.1 have consequential amendments in three amending regulations

3(e) inserts “**Waiting Period Joiner**” into the definitions in 1995 Regulation A2 (interpretation),

18(b) inserts “**Waiting Period Joiner**” into the definitions in 2008 Regulation 2.A.1 (interpretation general), and

39(b) inserts “**Waiting Period Joiner**” into the definitions in 2008 regulation 3.A.1 (interpretation of part 3 general)

22 amends **regulation 2.B.2** (restrictions on eligibility: general) so that restrictions that would prevent a Waiting Period Joiner from becoming a member of the 2008 Section are removed

⁹ England and Wales, Northern Ireland and the Isle of Man

42 amends **regulation 3.B.2** (restrictions on eligibility: general) so that restrictions that would prevent a Waiting Period Joiner from becoming a member of the 2008 Section are removed

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2.L.2 and 3.L.2 Nominations and notices accepted by the Scottish Ministers under the 1995 Regulations and Chapter 2.E and 3.E of the 2008 Regulations

These new regulations provide for Waiting Period Joiners who have made nominations or given notices in the 1995 Section for:

- a death benefit 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 also notices or nominations made in respect of any death benefits that may become payable as a result of their further membership in the 2008 Section.

These new regulations also work in tandem with the amendments made by:

- **amending regulation 8** (changes to 1995 regulation F5 (payment of lump sum)) and
- **amending regulation 10** (changes to 1995 regulation G14 (surviving nominated partner’s pension))

to ensure that any new notices, nominations or declarations given by a Waiting Period Joiner in respect of potential recipients of death benefits will apply to such benefits in both the 1995 and the 2008 Sections of the Scheme.

Consequential Amendments - 2.L. 2 and 3.L.2 have two consequential amendments each.

“In the case of a Waiting Period Joiner, this regulation is subject to regulation 2.L.2” is inserted by the following amending regulations

30 inserts at paragraph (4) of 2.E.2 (meaning of “surviving nominated partner”),
36 inserts at paragraph (14) of 2.E.21 (payment of lump sums or pensions on death)

“In the case of a Waiting Period Joiner, this regulation is subject to regulation 3.L.2” is inserted by the following amending regulations

49 inserts at paragraph (4) of 3.E.2 (meaning of “surviving nominated partner”),
54 inserts at paragraph (14) of 3.E.21 (payment of lump sums or pensions on death)

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2. L. 3 and 3.L.3 Waiting Period Joiners who are in receipt of a lower tier ill-health pension under Regulation E2A of the 1995 Regulations

These new regulations ensure that an upper tier ill- health pension cannot be paid twice in respect of 1995 and 2008 Section service.

Where a Waiting Period Joiner’s 1995 lower tier ill-health pension converts to an upper tier pension under 1995 Regulation E2B, any further ill health pension for service in the 2008 section is restricted to a lower tier pension. Conversely, these regulations also work in tandem with the amendments made by **amending regulation 5** to 1995 Regulation E2B to ensure that if a Waiting Period Joiner becomes entitled to an upper tier ill-health pension in respect of service in the 2008 Section, they cannot also be paid an upper tier pension in respect of their service in the 1995 Section following a review of their 1995 Section lower tier ill-health pension.

Consequential Amendments - 2.L. 3 and 3.L.3 have one consequential amendment each.

“In the case of a Waiting Period Joiner, this regulation is subject to regulation 2.L.3” and **“In the case of a Waiting Period Joiner, this regulation is subject to regulation 3.L.3”** are inserted by the following amending regulations

26 inserts at paragraph (19) of regulation 2.D.8 (early retirement on ill-health (active members and non-contributing members))

45 inserts at paragraph (19) of regulation 3.D.7 (early retirement on ill-health (active members and non-contributing members))

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2. L. 4 and 3.L.4 Lump sum payable on the death of a Waiting Period Joiner

The amendment ensures that the death benefit lump sum in respect of a Waiting Period Joiner’s later (2008 Section) service is not twice annual reckonable pay. Instead, if a Waiting Period Joiner dies ‘in service’, the death benefit lump sum will be equal to five times the upper tier ill-health pension for service in the 2008 Section or five times the normal retirement pension if they are over age 65 at the time of their death.

If the Waiting Period Joiner has ‘drawn down’ part of their 2008 Section benefits, the Scottish Ministers will decide the benefits to be paid following advice from the Scheme Actuary.

(These arrangements are the same as those that apply to re employed pensioners whose service is all within one Section of the Scheme.)

Consequential Amendments - 2.L. 4 and 3.L.4 have one consequential amendment each

“and in the case of a **Waiting Period Joiner**, this is subject to regulation 2.L.4” is inserted by the following amending regulation

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

“and in the case of a **Waiting Period Joiner**, this is subject to regulation 3.L.4” is inserted by the following amending regulation

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

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2. L. 5 and 3.L.5 Children's pensions payable on the death of a Waiting Period Joiner

Children's pensions are based on a proportion of the member's pension for 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.

These new regulations work in tandem with the amendments made by **amending regulation 11** to 1995 regulation H4 (member dies after pension becomes payable) to ensure that in the case of a **Waiting Period Joiner** service is not increased to 10 years in both sections of the scheme (so that a child allowance would be based on a minimum of 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.

Consequential Amendments - 2.L. 5 and 3.L.5 have three consequential amendments each

“and in the case of a **Waiting Period Joiner** , this is subject to regulation 2.L.5” is inserted by the following amending regulations

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

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

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

“and in the case of a Waiting Period Joiner , this is subject to regulation 3.L.5” is inserted by the following amending regulations

50 inserts at the end of paragraph (4) of regulation 3.E.10 (amount of children’s pension under regulation 3.E.8: deceased active members and deceased non-contributing members)

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

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

The final amendment made in respect of Waiting Period Joiners is made by **amending regulation 9**. This amendment to 1995 regulation G3 (member dies after pension becomes payable) ensures that the initial rate of any initial partner pension paid in respect of 1995 Section service will take account of any abatement in force if a Waiting Period Joiner dies whilst an active member of the 2008 Section. (This ensures consistency with the treatment of re employed pensioners whose pensionable service is all within one Section of the Scheme).

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2. Credit Pension Members

The Pension Sharing (Pension Credit Benefit) (Amendment) Regulations 2009 makes provisions effective from 1 April 2009 which will broadly align the general rules for the payment of pension credit benefit with other deferred pension rights held in occupational pension schemes. As a consequence of these changes, the following amendments have been made to both sections of the scheme from 1 April 2010:

- 1) Allow early payment of a pension credit with an actuarial reduction from normal minimum pension age,
- 2) Allow pension credit members the same access to pension commencement lump sums as those enjoyed by other deferred scheme members (as long as the sharing order is pre-retirement). This will mean that in addition to the fixed lump sum in the 1995 section pension credit members will be able to exchange part of their pension credit for lump sum up to the limits provided for in the Finance Act 2004.

3. Allow that a pension credit member who is terminally ill may commute the maximum amount of pension credit into lump sum before the pension is commuted. As a consequence we have also amended the paragraphs dealing with the death benefit lump sum payable when a pension credit member who is receiving their benefit dies so that the maximum amount of any lump sum that may be paid will take account of the amount of pension that was commuted to lump sum.

The changes to the regulations are:

15 New paragraphs (7) to (13) are inserted into regulation W11 (pension sharing on divorce or nullity of marriage or on dissolution or nullity of a civil partnership) of the 1995 section regulations allowing member to commute part of the pension into a lump sum. A new regulation WA is also inserted to allow the credit pension member to take the pension before normal pension age on an actuarially reduced basis.

25 inserts a new paragraph (5) into regulation 2.D.2 (pension credit members) of the 2008 section to allow the credit pension member to take the pension before normal pension age on an actuarially reduced basis.

27 Inserts a new paragraph into regulation 2.D.14 (general option to exchange part of the pension for lump sum) Amends paragraph (1) of 2.D.14 to allow pension credit members the same access to pension commencement lump sums as those enjoyed by other deferred scheme members (as long as the sharing order pre dates the members retirement)

28 Amends regulation 2.D.15 (options for members in serious ill health to exchange whole pension for lump sum) to extend to Pension Credit members the ability to commute the maximum amount of pension to lump sum where commuted benefits on terminal ill health are being paid.

29 Regulation 2.D.17 (pension credit member's rights) is deleted as no longer relevant

Regulations 44, 46, 47 and 48 mirror the provisions in Regulations 25, 27, 28 and 29 for practitioners.

3. Future access to the 1995 Section for

- **persons who opt out of that Section for five years or more**

Former 1995 Section members who return to the NHS on or after 1st October 2008 must join the 2008 Section for future service if the break in their service is five years or longer. Such returners then have an option to transfer their 1995 Section benefits to the 2008 Section on a cash equivalent basis.

The amendments made by:

Amending regulations 4(2)(f) which inserts new sub-paragraph (j) **into 1995 Regulations B2**

Amending regulation 12 which amends **1995 regulation M6, and**

Amending regulations 20 and 40 which amend to **2008 regulations 2.B.1 and 3.B.1**

introduce similar provisions in respect of persons who have ‘opted out’ of the 1995 Section. From 1 April 2010 if a person applies to join the NHS Pension Scheme after having opted out of the 1995 Section for a period of five years or more, they will be eligible to join the 2008 Section only and will have an opportunity to transfer any deferred 1995 Section benefits to the 2008 Section on a cash equivalent basis.

- **persons with pensions in payment from other health service pension schemes**

Amending regulations 4(2)(f) which inserts new sub-paragraph (l) **into 1995**

Regulations B2 ensures that pensioners from other 1995 health service pension schemes are only able to join the 1995 Section after retirement if they would be able to do so had their pension been paid as a result of NHS employment in Scotland. This ensures consistency of treatment of re-employed pensioners across all health service schemes.

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4. Clarification of “early retirement pension (with actuarial reduction) and “part payment for additional service or unreduced lump sum”

Amendments made by amending regulations 6, 7 and 13 to 1995 Regulations E5(2), E6(7)(b) and Q7(6)

When members take early retirement under regulation E5, the Scottish Ministers take the advice of the Scheme Actuary, and then reduces the benefits payable, to reflect how much earlier they are being taken than the normal (1995 Section) retirement age of 60. When the member retiring under regulation E5 has bought additional years of service, the additional service and benefits bought are similarly reduced, on the advice of the Scheme Actuary, so that the total of main scheme and additional service benefits paid reflects the appropriate degree of early payment. The reduction applied to the additional service benefits takes account of contracts running to age 55, 60 and 65.

This amendment makes no changes in the way that the above regulations operate, but makes technical changes to the drafting of 1995 regulations E5(2), E6(7)(b) and Q7(6), to clarify that benefits resulting from an additional service contract (including a part purchase, in the case of an additional service contract which has terminated early) are **separately** reduced, as described in regulation Q7(5) and (6), and are not also subject to the actuarial reduction mentioned in regulations E5(2) and E6(7)(b).

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5. Adjustments for the revaluation of Additional Pension when inflation is negative

Amendments made by amending regulations

14 to 1995 regulation Q17

24 and 43 to 2008 regulations 2.C.17 & 3.C.15

These amendments clarify the means by which Additional Pension (AP) is revalued to take account of inflation, and make technical adjustments in both Sections of the Scheme. The amendments will ensure that members always get at least the amount of Additional Pension they contracted to buy following a period(s) of 'negative inflation', and experience neither a "windfall gain", nor an "unexpected loss", if AP is purchased by lump sum payment close to retirement. The amendments are made to 1995 regulation Q17, and its 2008 Section equivalents at regulations 2.C.17 and 3.C.15, respectively.

New paragraph (2) of regulations 2.C.17 and 3.C.15 will ensure that AP is only revalued in line with the retail prices index (RPI) where the period between the purchase date and the payable date of the AP is greater than 2 months. New Step 4 of paragraph (4) of regulations 2.C.17 and 3.C.15 will remove any potential for 'negative' inflation during the

reevaluation period to cause a reduction in the basic amount of AP a member has contracted to buy.

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6. Technical changes to clarify the operation of certain regulations

Amending regulation (4)(2)(a) to (e) amends sub-paragraphs (e) to (i) of **1995 regulation B2(restrictions on membership)**.

These sub-paragraphs make provision for former members of the 1995 Section and former members of the 1995 Section of other health service pension schemes to be excluded from the England and Wales 1995 Section on their return in certain circumstances. Such members are however able to join the 2008 Section for future service. These amendments clarify that the paragraphs apply also to former members of the 1995 Section of other health service pension schemes who are coming to work in the NHS in Scotland for the first time.

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Amending regulation 19 amends **2008 regulation 2.A.10 (meaning of “reckonable pay”): general**

This amendment clarifies the meaning of ‘reckonable pay’ by fleshing out the aim and local definitions used for the calculation “ $IRP \times (RPa/RPi)$ ”, set out in paragraph (3) of the regulation.

‘IRP’ means the amount determined in regulation 2.A.10, paragraphs (4), (6) or (7), before the impact of any revaluation referred to in regulation 2.A.11.

‘RPa’ means the amount of the pension that the member would be entitled to if it had been calculated using the service they have built up and a “reckonable pay” figure equal to the amount of the ‘IRP’ calculated in accordance with paragraphs (4), (6) of (7) of regulation 2.A.10, and including the impact of the revaluation referred to in regulation 2.A.11.

‘RPI’ means the amount of the pension the member would be entitled to if it had been calculated using the service they have built up and a “reckonable pay” figure equal to the amount of the ‘IRP’ calculated in accordance with paragraphs (4), (6) of (7) of regulation 2.A.10, but excluding the impact of the revaluation referred to in regulation 2.A.11 and, instead, including the increases the IRP would attract if it were the annual rate of an official pension for the purposes of the Pensions (Increase) Act 1971.

There are no changes in the way that regulation 2.A.10 operates and no impact for the related regulations 2.A.11 to 2.A.14.

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Amending regulation 23 amends **2008 regulation 2.C.6 (contributions by employing authorities: members becoming entitled to pensions under regulation 2.D.11)**

This amendment clarifies that if a 2008 Section Optant is entitled to redundancy benefits their employing authority must pay a contribution to cover the cost of the early payment of the lump sum that Optant is required to take.

Amending regulation 37 amends **2008 regulation 2.H.4 (meaning of “relevant income”)** and **amending regulation 55** amends **3.H.4 (meaning of “relevant income”)**. These amendments clarify that if a 2008 Section Optant is being assessed for abatement, it is the pension after it has been reduced to provide the mandatory lump sum that is taken into account.

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7. NHS AVC Regulations – new commutation for certain investments up to £2,000

Amending regulation 57

Amendments to the NHS (Additional Voluntary Contributions) (Scotland) Regulations 1998, will take advantage of new HMRC easements made under “The Registered Pension Schemes (Authorised Payments) Regulations 2009 No 1171”. This Instrument “authorises” a variety of payments that currently would not be permitted under Finance Act 2004 rules, including the release of “small” or “stranded” investments in the AVC schemes of public service and other occupational pension schemes. Until now, most AVC Schemes have been required to provide pension, not cash benefits, but recently this has become a significant problem for members with “small” investments, frequently of a few hundred pounds or less, which are insufficient to secure an annuity at normal market rates.

Paragraphs (2), (5), (6) and (7), amend regulations 3, 11,15 and paragraph (4) of Schedule 2 to the NHS AVC Regulations, so that a member with AVC proceeds totalling less than £2,000 (disregarding main scheme and other pension holdings) who is unable to secure an annuity, will be able to take the AVC payment as a stand-alone lump sum. The arrangement will have few restrictions, but HMRC rules will require members to be aged between 60 and 75 and will exclude AVC funds that have received transfers in within the previous 5 years or transfers out within the past 3 years.

In addition, paragraphs (3) and (4) make technical amendments correcting references to the main NHS Pension Scheme Regulations.

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8. Persons detrimentally affected by the changes

Amending regulation 50 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.