

2010 No.

NATIONAL HEALTH SERVICE

The National Health Service (Superannuation Scheme, Pension Scheme and Additional Voluntary Contributions) (Scotland) Amendment (No. 2) Regulations 2010

<i>Made</i>	- - - -	2010
<i>Laid before the Scottish Parliament</i>		2010
<i>Coming into force</i>	- -	1 2010

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

In accordance with section 10(4) of that Act, these Regulations are made with the consent of the Treasury(b).

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

PART 1
INTRODUCTORY

1. Citation, commencement and effect

1.—(1) These Regulations may be cited as the National Health Service (Superannuation Scheme, Pension Scheme, and Additional Voluntary Contributions) (Scotland) Amendment (No. 2) Regulations 2010.

(2) These Regulations come into force on [?] 2010 and, have effect from 1 April 2010

(a) 1972 c.11; sections 10 and 12 were amended by the Pensions (Miscellaneous Provisions) Act 1990 (c.7) sections 4(2), 8(5) and 10; section 10(6) was amended by the Pension Schemes Act 1993 (c.48), Schedule 8, paragraph 7 and by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001/3649), Article 108. The functions of the Scottish Ministers were transferred to Scottish Ministers by virtue of article 2 of and Schedule 1 to the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750).

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

PART 2

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

Interpretation of Part 2

2. The National Health Service Superannuation Scheme (Scotland) Regulations 1995 are amended as follows.

Amendment of regulation A2

3. In regulation A2 (interpretation)—

- (a) in the definition of “GMS practice”—
 - (i) in paragraph (a), after “registered medical practitioner” insert “who is a principal medical practitioner”
 - (ii) in paragraph (b), after “or more” insert “such”;
- (b) at the appropriate place in the alphabetical order, insert—
 - ““Waiting Period Joiner” has the meaning given in regulation 2.L.1, or as the case may be, 3.L.1 of the 2008 Section.”.

Amendment of regulation B2

4.—(1) Regulation B2 (age limits and restrictions on membership) is amended as follows.

(2) In paragraph (1)—

- (a) for sub-paragraph (e) substitute—
 - “(f) that person, on or after 1st April 2008—
 - (i) enters NHS employment for the first time, and
 - (ii) has not previously been a member of this section of the Scheme or a health service scheme corresponding to this section;”;
- (b) in sub-paragraph (f)—
 - (i) after “returns to”, insert “or commences”;
 - (ii) after “last left”, insert “pensionable”;
- (c) in sub-paragraph (g)(ii) after “returning to”, insert “or commencing”;
- (d) for sub-paragraph (h)(iii), substitute—
 - (iii) returns to, or commences for the first time, NHS employment on or after 1 October 2008 and before that employment starts (whether it is employment that has been returned to or commenced for the first time) exercises the member’s right to transfer out all of that person’s benefits in accordance with regulation M1;”;
- (e) in sub-paragraph (i)(ii), after “returns to” insert “or commences”;
- (f) after sub-paragraph (i), add—
 - “(j) that person’s pension under a health service scheme is payable and in the opinion of the Scottish Ministers that person would not be eligible to join (or, where appropriate, accrue further pensionable service under) this Section of the Scheme if the pensionable employment—
 - (i) to which that health service scheme applied, and
 - (ii) in respect of which that pension is being paid,had been pensionable employment in this Section of the Scheme;

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- (k) that person is a person who—
 - (i) has given notice in accordance with paragraphs (1) or (1A) of regulation B4 that the person does not wish to, or no longer wishes to, participate in this Section of the Scheme, and
 - (ii) as a result of that notice has been treated—
 - (aa) as having left pensionable employment for any one period of five years or more beginning on the date that notice takes effect, or
 - (bb) as never having been included in this Section of the Scheme for any one period of five years or more;”.

(3) In paragraph (2)(b), for “regulations E6 , E9” substitute “regulations E2, E2A, , E6, E9, L1 –

Amendment of regulation E2B

5. For paragraph (2)(e) of regulation E2B (re-assessment of ill-health condition determined under regulation E2A), substitute—

- “(e) the member is not—
 - (i) a 2008 Section Optant within the meaning of regulation 2.K.1 or 3.K.1 of the 2008 Section of the Scheme, or
 - (ii) a Waiting Period Joiner within the meaning of regulation 2.L.1 or 3.L.1 of the 2008 Section of the Scheme,who has become entitled to an upper tier ill-health pension under regulation 2.D.8 or 3.D.7 of that Section.”.

Amendment of regulation E5

6. In paragraph (2) of regulation E5 (early retirement pension (with actuarial reduction)), for “but” substitute “, and except for any pension in respect of service calculated as a result of exercising the right to buy additional service under regulation Q1 or the right to buy an unreduced retirement lump sum under regulation Q2,”.

Amendment of regulation E8

7. In paragraph (7)(b) of regulation E8 (deductions from lump sum), after “will” insert “, except for any lump sum in respect of service calculated as a result of exercising the right to buy additional service under regulation Q1 or the right to buy an unreduced retirement lump sum under regulation Q2,”.

Amendment of regulation F5

8. After paragraph (12) of regulation F5 (payment of lump sum), add—

“(13) In the case of a Waiting Period Joiner, a notice given by a member for the purposes of regulation 2.E.21 or 3.E.21 of the 2008 Section of the Scheme shall be treated as a nomination or notice given by the member for the purposes of this regulation.”.

Amendment of regulation G3

9. For paragraph (3)(a) of regulation G3 (widow’s pension when member dies after pension becomes payable), substitute—

- “(a) the member is—
 - (i) a 2008 Section Optant within the meaning of regulation 2.K.1 or regulation 3.K.1 of the 2008 Section of the Scheme, or
 - (ii) a Waiting Period Joiner within the meaning of regulation 2.L.1 or 3.L.1 of that Section, and”.

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Amendment of regulation G14

10. After paragraph (9) of regulation G14 (surviving nominated partner's pension), add—

“(10) In the case of a Waiting Period Joiner, a declaration or notice given by a member for the purposes of regulation 2.E.2 or 3.E.2 of the 2008 Section of the Scheme shall be treated as a declaration or notice given by that member for the purposes of this regulation.”.

Amendment of regulation H4

11. In paragraph (2) of regulation H4 (child allowance when member dies after pension becomes payable)—

- (a) in sub-paragraph (b)(i), after “regulation 3.K.1 (application of chapter 3.K)” insert “or a Waiting Period Joiner” within the meaning of regulation 2.L.1 or 3.L.1;
- (b) in sub-paragraph (b)(ii), after “2008 section Optant” insert “or Waiting Period Joiner”.

Amendment of regulation M6A

12. In paragraph (3)(b) of regulation M6A (member's right to transfer a preserved pension to the 2008 section), after “B2(1)(i)” insert “or B2(1)(k)”.

Amendment of regulation Q7

13. For paragraph (6) of regulation Q7 (part payment for additional service or unreduced retirement sum), substitute—

“(6) If the member becomes entitled to receive benefits before the chosen date under regulation Q5(3), the proportion of additional service or unreduced retirement lump sum to be credited to the member will be—

- (a) calculated as described in paragraph (5), and
- (b) then reduced by reason of the payment of the pension and the lump sum by such amounts as the Scottish Ministers, after taking the advice of the Scheme Actuary, shall determine.”.

Substitution of regulation Q17

14. For regulation Q17 (revaluation of increases bought under options: members' pensions), substitute—

“Q17 Revaluation of increases bought under options: members' pensions

(1) Where an option under regulation Q8, Q10 or Q11 has been exercised, the final amount of the increase in a member's pension immediately before the beginning date for that pension shall be determined in accordance with this regulation.

(2) Where the increase in pension referred to in paragraph (1) is in respect of an option that was exercised—

- (a) less than 2 months before the increase becomes payable, the final amount is calculated in accordance with paragraph (3), or
- (b) 2 or more months before the increase in pension becomes payable, in accordance with paragraph (4).

(3) The calculation referred to in paragraph 2(a) is as follows—

Step 1 – Calculate the basic amount of the increase in accordance with regulations Q14 to Q16, to find the Step 1 amount.

Step 2 – Add to the Step 1 amount increases (if any) due under the Pensions (Increase)

Act 1971 on that amount when it first falls into payment to find the Step 2 amount.

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- Step 3 – Divide the Step 2 amount by the Step 1 amount to find the Step 3 factor.
- Step 4 – Divide the Step 1 amount by the Step 3 factor to find the final amount referred to in paragraph (1).
- (4) The calculation referred to in paragraph 2(b) is as follows—
- Step 1 - Calculate the basic amount of the increase in accordance with regulations Q14 to Q16, to find the Step 1 amount.
- Step 2 – Multiply the Step 1 amount by the retail prices index for the second month before the month in which the increase in pension will become payable to find the Step 2 amount.
- Step 3 – Divide the Step 2 amount by the retail prices index for the month in which the option was exercised to find the Step 3 amount.
- Step 4 – Take the greater of the Step 1 amount and Step 3 amount to find the Step 4 amount.
- Step 5 – Add to the Step 4 amount increases (if any) due under the Pensions (Increase) Act 1971 on that amount when it first falls into payment to find the Step 5 amount
- Step 6 – Divide the Step 5 amount by the Step 4 amount to find the Step 6 factor.
- Step 7 – Divide the Step 4 amount by the Step 6 factor to find the final amount referred to in paragraph (1).
- (5) In this regulation, “the beginning date”, in relation to a pension, means the date on which it is treated as beginning for the purposes of the Pensions (Increase) Act 1971 (see section 8(2) of that Act).”.

Amendment of Part W

15. Part W (pension sharing on divorce or nullity of marriage or on dissolution or nullity of a civil partnership) is amended as follows—

- (a) in regulation W11 (“appropriate rights”/“pension credit benefits” under the scheme) omit paragraph (7) and substitute—
- “(7) A pension credit member is entitled to a lump sum calculated on the same basis as if the pension was a deferred pension under the Scheme.
- (8) Except where the member opts to exchange part of his pension under paragraph (9) of this regulation the lump sum shall be equal to three times the annual rate of pension except that no lump sum on retirement shall be paid to the credit member if the corresponding pension debit member has already received lump sum on retirement from the scheme before the date of the implementation of the pension sharing order.
- (9) If a pension credit member opts to exchange part of a pension to which the pension credit member would otherwise be entitled for a lump sum, for every £1 by which the pension credit member’s annual pension is reduced, the pension credit member is to be paid a lump sum of £12.
- (10) An option under paragraph (9) must relate to an annual amount of pension that is a whole number of pounds (and accordingly the lump sum will be exactly divisible by 12).
- (11) In paragraph (10) “annual amount” in relation to a pension means the amount of the annual pension to which the pension credit member would be entitled under these regulations apart from the option, together with any increases payable under the Pensions (Increase) Act 1971, calculated as at the time the payment would be first due.
- (12) A pension credit member may not exchange pension for lump sum under this paragraph to the extent that it would result in a scheme chargeable payment for the purposes of Part 4 of the 2004 Act.

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(13) The option under paragraph (9) may only be exercised by giving notice in writing to the scheme administrator in the form required by the Scottish Ministers—

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

(b) after regulation W11 insert—

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

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

(2) The pension and the lump sum (if any) described in Regulation W11 paragraph will be reduced by such amount as the Scottish Ministers, after taking the advice of the Scheme Actuary, may determine.”;

(c) in regulation W12 (pension credit member dies after pension credit benefit becomes payable) for paragraph (3), substitute—

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

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

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

Amendment of Schedule 1

16.—(1) Schedule 1 (Medical and Dental Practitioners) is amended as follows.

(2) In paragraph 10(8)(b) (contributions to this Section of the Scheme), after “shall pay” insert “D2(1)”.

PART 3

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

Interpretation of Part 3

17. The National Health Service Pension Scheme (Scotland) Regulations 2008 are amended as follows.

Amendment of regulation 2.A.1

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

- (a) in the definition of “GMS practice”—
 - (i) in paragraph (a), after “registered medical practitioner” insert “who is a principal medical practitioner”
 - (ii) in paragraph (b), after “or more” insert “such”;
- (b) at the appropriate place in the alphabetical order, insert—

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““Waiting Period Joiner” has the meaning given in regulation 2.L.1;”

Amendment of regulation 2.A.10

19. For paragraph (3) of regulation 2.A.10 (meaning of “reckonable pay”: general), substitute—

“(3) A member’s “reckonable pay” is determined by the formula—

$$IRP \times (RPa / RPi)$$

Where—

IRP is the interim reckonable pay determined in paragraph (4), (6) or (7), as appropriate, before any adjustment for inflation in accordance with regulation 2.A.11,

RPa is the annual rate of retirement pension the member would be entitled to if the reckonable pay used to calculate it was the interim reckonable pay, including any adjustment for inflation described in regulation 2.A.11, and

RPi is the annual rate of retirement pension the member would be entitled to if the reckonable pay used to calculate it was the interim reckonable pay, excluding any adjustment for inflation described in regulation 2.A.11, but instead including any increases that pay would attract if it was the annual rate of an official pension within the meaning of section 5(1) of the Pensions (Increase) Act 1971.”.

Amendment of regulation 2.B.1

20. After paragraph (5)(f) of regulation 2.B.1 (eligibility: general), add—

“(g) the person has given notice for the purposes of regulation B4 of the 1995 Regulations (opting out of the Scheme) and as a result of that notice—

- (i) has been treated as ceasing to be an active member of that Section for 5 or more years, or
- (ii) has been treated as never having been an active member of the 1995 Section for 5 or more years.”.

Substitution of regulation 2.B.1A

21. For regulation 2.B.1A (eligibility: transitional), substitute—

“2.B.1A Eligibility: transitional

(1) A person is eligible to be an active member of this Section of the Scheme if—

- (a) the person is not prevented from being so by regulation 2.B.2, 2.B.3 or 2.B.6, and
- (b) either—
 - (i) the Scottish Ministers have accepted that person’s option to join this Section of Scheme under Chapter 2.K, or
 - (ii) that person meets all of the requirements in paragraph (2).

(2) Those requirements are that the person—

- (a) is under age 75,
- (b) was an active member of the 1995 Section on or after 1st April 2008,
- (c) became a pensioner member of the 1995 Section on or before 1st October 2008,
- (d) has returned to NHS employment, and
- (e) is not eligible to be an active member of the 1995 Section in respect of that further employment.

This is subject to the following paragraphs of this regulation.

(3) If a person referred to in paragraph (2) is entitled to a pension under one of the following regulations of the 1995 Regulations—

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- (a) E1 (normal retirement pension),
- (b) E2A(3)(a) (lower tier ill-health pension on early retirement),
- (c) E3A (early retirement pension (termination of employment by employing authority)), or
- (d) E5 (early retirement pension with actuarial reduction),

that person shall be eligible to be an active member of this Section of the Scheme from the day immediately following the end of Waiting Period A.

(4) If a person referred to in paragraph (2) is entitled to a pension under one of the following regulations of the 1995 Regulations—

- (a) E2 (early retirement pension (ill health)),
- (b) E3 (early retirement pension (redundancy etc additional provisions)),

that person shall be eligible to be an active member of this Section of the Scheme from the day immediately following the longer of Waiting Period A and Waiting Period B.

(5) If a person referred to in paragraph (2) is entitled to a pension under regulation E2A(3)(b) (upper tier ill-health pension on early retirement), that person shall be eligible to be an active member of this Section of the Scheme from the day immediately following whichever of the following occurs last—

- (a) the anniversary of that person entering NHS employment, or
- (b) the end of Waiting Period A.

(6) If a person referred to in paragraph (1)(b) or (3)(b)—

- (a) is entitled to a lower tier ill health pension under regulation E2A(3)(a) of the 1995 Regulations, and
- (b) as a result of a determination made by the Scottish Ministers under regulation E2B(3) of those Regulations (re-assessment of ill-health condition determined under regulation E2A), that person becomes entitled to an upper tier ill-health pension in place of that lower tier ill-health pension,

that person shall cease to be eligible to be an active member of this Section of the Scheme from the date the Scottish Ministers make that determination.

(7) For the purposes of this paragraph—

- (a) “Waiting Period A” is a period of two calendar years beginning on the day the person becomes entitled to the pension under the 1995 Regulations;
- (b) “Waiting Period B” is a period beginning on the day the person becomes entitled to the pension under the 1995 Regulations equal to the calendar length of—
 - (i) any increase to the person’s pensionable service in the 1995 Section of the Scheme which has been applied in accordance with paragraph (3) of regulation E2 of the 1995 Regulations, or
 - (ii) any additional service with which the person has been credited in accordance with regulation 5 of the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 1981.

(8) This regulation shall apply to any person who has previously been an active member of a corresponding 1995 scheme as though any reference to—

- (a) the “1995 Section” includes a reference to that corresponding 1995 scheme;
- (b) the “1995 Regulations” includes a reference to the regulations of that corresponding 1995 scheme;
- (c) regulations “E1”, “E2”, “E2A”, “E3A(3)(a)”, “E3A(3)(b)”, “E2B(3)”, “E3”, “E3A” or “E5” includes the equivalent of those regulations in a health service scheme the provisions of which correspond to the 1995 Regulations, and

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- (d) “regulation 5 of the National Health Service (Compensation for Premature Retirement) Regulations 1981” includes the equivalent of that regulation as it applies to a member of a corresponding 1995 scheme.”.

Amendment of regulation 2.B.2

22. In paragraph (2) of regulation 2.B.2 (restrictions on eligibility: general)—

- (a) for sub-paragraphs (a) and (b), substitute—

“(a) became a pensioner member of the 1995 Section on or before 1st April 2008 (except if paragraph (1)(b)(i) of regulation 2.B.1A applies to that person), or

- (b) became a pensioner member of that Section after that date (except if paragraph (1)(b)(i) or (ii) of regulation 2.B.1A applies to that person), or”.

Amendment to regulation 2.C.6

23. In regulation 2.C.6 (contributions by employing authorities: members becoming entitled to pensions under regulation 2.D.11)—

- (1) Paragraphs (6) to (10) are renumbered (1) to (5)

- (1) for paragraph (1)(a), substitute—

“(a) the cost of providing the pension under that regulation—

- (i) before any part of that pension is exchanged for a lump sum under regulation 2.D.14, and

- (ii) in the case of a 2008 Section Optant, after that pension is reduced in accordance with regulation 2.K.12,

for the period between the member leaving the employment in which the member was an active member and reaching the age of 65;”;

- (2) after paragraph (1)(b), add—

“; and

- (c) in the case of a 2008 Section Optant, the additional cost attributable to the early payment of the lump sum to be paid to such an Optant under regulation 2.K.12.”.

Substitution of regulation 2.C.17

24. For regulation 2.C.17 (revaluation of increases bought under options: members’ pensions), substitute—

“2.C.17 Revaluation of increases bought under options: members’ pensions

(1) Where an option under regulation 2.C.8, 2.C.10 or 2.C.11 has been exercised, the final amount of the increase in a member’s pension immediately before the beginning date for that pension shall be determined in accordance with this regulation.

(2) Where the increase in pension referred to in paragraph (1) is in respect of an option that was exercised—

- (a) less than 2 months before the increase becomes payable, the final amount is calculated in accordance with paragraph (3), or

- (b) 2 or more months before the increase in pension becomes payable, in accordance with paragraph (4).

- (3) The calculation referred to in paragraph (2)(a) is as follows—

Step 1 – Calculate the basic amount of the increase in accordance with regulations 2.C.14 to 2.C.16, to find the Step 1 amount.

Step 2 – Add to the Step 1 amount increases (if any) due under the Pensions (Increase) Act 1971 on that amount when it first falls into payment to find the Step 2 amount.

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Step 3 – Divide the Step 2 amount by the Step 1 amount to find the Step 3 factor.

Step 4 – Divide the Step 1 amount by the Step 3 factor to find the final amount referred to in paragraph (1).

(4) The calculation referred to in paragraph (2)(b) is as follows—

Step 1 - Calculate the basic amount of the increase in accordance with regulations 2.C.14 to 2.C.16, to find the Step 1 amount.

Step 2 – Multiply the Step 1 amount by the retail prices index for the second month before the month in which the increase in pension will become payable to find the Step 2 amount.

Step 3 – Divide the Step 2 amount by the retail prices index for the month in which the option was exercised to find the Step 3 amount.

Step 4 – Take the greater of the Step 1 amount and Step 3 amount to find the Step 4 amount.

Step 5 – Add to the Step 4 amount increases (if any) due under the Pensions (Increase) Act 1971 on that amount when it first falls into payment to find the Step 5 amount

Step 6 – Divide the Step 5 amount by the Step 4 amount to find the Step 6 factor.

Step 7 – Divide the Step 4 amount by the Step 6 factor to find the final amount referred to in paragraph (1).

(5) In this regulation, “the beginning date”, in relation to a pension, means the date on which it is treated as beginning for the purposes of the Pensions (Increase) Act 1971 (see section 8(2) of that Act).”.

Amendment of regulation 2.D.2

25. In regulation 2.D.2 (pension credit members)—

(a) at the beginning of paragraph (2), insert “Subject to paragraphs (5),”

(b) after paragraph (4), add—

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

(a) reached the age of 55; and

(b) claimed payment of the pension.

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

(a) is first calculated as mentioned in paragraph (3) of this regulation; and

(b) then that amount is reduced by such amount as the Scottish Ministers determine, after consulting the Scheme actuary, to be appropriate by reason of the payment of the pension before the member reaches 65.

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

Amendment of regulation 2.D.8

26. After paragraph (18) of regulation 2.D.8 (early retirement on ill-health (active members and non-contributing members)), insert—

“(19) In the case of a Waiting Period Joiner, this regulation is subject to regulation 2.L.3.”.

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Amendment of regulation 2.D.14

27. In regulation 2.D.14 (general option to exchange part of pension for lump sum)—

(a) for paragraph (1) substitute—

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

Amendment of regulation 2.D.15

28. In regulation 2.D.15 (option for members in serious ill-health to exchange whole pension for lump sum) for paragraph (5), substitute—

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

- (a) the maximum lump sum (if any) to which the pension credit member could have become entitled on exercising the option under regulation 2.D.14 at the appropriate time, and
- (b) the total annual amount of the pension to which the pension credit member is entitled under regulation 2.D.2 after exercising that option, multiplied by 5.”.

Omission of regulation 2.D.17

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

Amendment of regulation 2.E.2

30. After paragraph (3) of regulation 2.E.2 (meaning of “surviving nominated partner”), insert—

“(4) In the case of a Waiting Period Joiner, this regulation is subject to regulation 2.L.2.”.

Amendment of regulation 2.E.3

31.—(1) Regulation 2.E.3 (amount of pensions under regulation 2.E.1: active and non-contributing members) is amended as follows.

(2) At the end of paragraph (2), insert (as full out words) “Sub-paragraph (b) is subject to paragraph (7).”.

(3) At the beginning of paragraph (3), insert “Subject to paragraph (7).”.

(4) After paragraph (6), insert—

“(7) For the purposes of paragraphs (2)(b) and (3), no account is to be taken of any increase under—

- (a) regulation 2.D.3, or
- (b) regulation 2.K.21.”.

Amendment of regulation 2.E.10

32. In 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), after “2.K.24” (in the full out words) add “and in the case of a Waiting Period Joiner, this is subject to regulation 2.L.5”.

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Amendment of regulation 2.E.11

33. In paragraph (3) of regulation 2.E.11 (amount of children's pension under regulation 2.E.8: deceased pensioner members), after "2.K.24 (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)" add "and in the case of a Waiting Period Joiner , this is subject to regulation 2.L.5".

Amendment of regulation 2.E.12

34. In paragraph (3) of regulation 2.E.12 (amount of children's pension under regulation 2.E.8: deceased deferred members), after "2.K.24 (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)" add "and in the case of a Waiting Period Joiner, this is subject to regulation 2.L.5".

Amendment of regulation 2.E.17

35. In paragraph (1) of regulation 2.E.17 (amount of lump sum: single capacity members and recent leavers (disregarding regulation 2.D.5 employments)), after "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)" add "and in the case of a Waiting Period Joiner, this is subject to regulation 2.L.4".

Amendment of regulation 2.E.21

36. After paragraph (12) of regulation 2.E.21 (payment of lump sums or pensions on death), insert—

“(13) In the case of a Waiting Period Joiner, this regulation is subject to regulation 2.L.2.”

Amendment of regulation 2.H.4

37. For paragraph (6) or regulation 2.H.4 (meaning of “relevant income”), substitute—

“(6) If the employed pensioner—

- (a) exercised the option under regulation 2.D.18 (election to allocate pension) in relation to the old service pension, or
- (b) is a 2008 Section Optant who was entitled to a lump sum under regulation 2.K.12 in relation to the old service pension,

the resulting reduction in the pension is taken into account for the purposes of this regulation.”.

New Chapter 2.L

38. After Chapter 2.K (2008 Section Optants), insert—

**“Chapter 2.L
Waiting Period Joiners**

2.L.1 Application of Chapter 2.L

(1) This Chapter makes provision in relation to pensioner members of the 1995 Section of the Scheme who are eligible to be members of this Section of the Scheme in accordance with paragraph (1)(b)(ii) of regulation 2.B.1A (eligibility: transitional).

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(2) In these Regulations a member of this Section of the Scheme to whom this Chapter applies is referred to as a “Waiting Period Joiner”.

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

- (1) This regulation applies if—
- (a) on the day a Waiting Period Joiner becomes an active member of this section of the Scheme—
 - (i) the Scottish Ministers have accepted any of the nominations or notices specified in paragraph (2) of this regulation in respect of the benefits to be paid on the death of that Waiting Period Joiner, and
 - (ii) that Waiting Period Joiner has not revoked that nomination or notice, or
 - (b) at any time after a Waiting Period Joiner becomes an active member of this Section of the Scheme, that Waiting Period Joiner gives a notice, nomination or declaration for the purposes of a regulation listed in the table at paragraph (4).
- (2) The nominations and notices referred to in paragraph (1)(a) are—
- (a) a nomination made in accordance with regulation F5 of the 1995 Regulations (payment of lump sum) in favour of one or more persons in respect of any lump sum that becomes payable under regulations F1 to F4 of the 1995 Regulations (which deal with lump sum payments on the death of a member in different circumstances);
 - (b) a notice provided for the purposes of paragraph (3)(a) of regulation F5 of the 1995 Regulations that the person’s surviving partner (within the meaning of that regulation) is not to receive the payment of any lump sum that becomes payable under regulations F1 to F4 of the 1995 Regulations;
 - (c) a notice provided for the purpose of regulation G14 of the 1995 Regulations (surviving nominated partner’s pension) nominating a partner to receive a surviving nominated partner pension.
- (3) For the purpose of this Section of the Scheme a nomination or notice referred to in paragraph (1)(a) shall be treated—
- (a) in the case of the nomination referred to in paragraph (2)(a), as if that nomination has been accepted by the Scottish Ministers as a notice for the purposes of regulation 2.E.21,
 - (b) in the case of a notice referred to in paragraph (2)(b), as if that notice had been accepted by the Scottish Ministers as a notice for the purposes of regulation 2.E.21 specifying that the Waiting Period Joiner’s personal representatives are to receive any lump sum or pension on the death of the Waiting Period Joiner , and
 - (c) in the case of a notice referred to in paragraph (2)(c), as if that notice had been accepted by the Scottish Ministers as a declaration for the purposes of regulation 2.E.2.
- (4) A notice, nomination or declaration referred to in paragraph (1)(b) that is given by a Waiting Period Joiner for the purposes of a regulation listed in column 1 of the following table shall be treated as a notice, nomination or declaration given for the purposes of the corresponding regulation in column 2.

**Column 1
1995 Regulations**

F5
G14

**Column 2
2008 Regulations**

2.E.21
2.E.2

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

- (1) This regulation applies to a Waiting Period Joiner who—
- (a) is entitled to a lower tier ill-health pension under regulation E2A of the 1995 Regulations (ill-health pension on early retirement) in respect of service in the 1995 Section (“the earlier 1995 Section service”), and
 - (b) becomes entitled to a lower tier ill-health pension or, as the case may be, an upper tier ill-health pension under regulation 2.D.8 in respect of service in this Section of the Scheme (“the later 2008 Section service”).

(2) For the purposes of determining whether a Waiting Period Joiner can count 45 years of pensionable service for any purpose, the earlier 1995 Section service and the later 2008 Section service are aggregated.

(3) If, on the termination of the later 2008 Section service a Waiting Period Joiner becomes entitled, under regulation 2.D.8, to—

- (a) a lower tier ill-health pension, or
- (b) an upper tier ill-health pension,

in respect of the later 2008 Section service, a Waiting Period Joiner is entitled to the benefits set out in paragraph (4).

(4) The benefits mentioned in paragraph (3) are—

- (a) the member’s lower tier ill-health pension under regulation E2A of the 1995 Regulations in respect of the member’s earlier 1995 Section service, and
- (b) a lower tier or, as the case may be, an upper tier ill health pension in respect of the member’s later 2008 Section service.

This is subject to paragraph (5)

(5) If the Waiting Period Joiner—

- (a) ceases to be entitled to a lower tier ill-health pension in respect of the earlier 1995 Section service,
- (b) becomes entitled to an upper tier ill-health pension in respect of that earlier 1995 Section service in accordance with regulation E2B of the 1995 Regulations (re-assessment of ill health condition determined under regulation E2A), and
- (c) becomes entitled to a lower tier or, as the case may be, an upper tier ill-health pension in respect of the later 2008 Section service on the termination of that later service,

that Waiting Period Joiner is entitled to the benefits set out in paragraph (6).

(6) Those benefits are—

- (a) an upper tier ill-health pension paid in accordance with regulation E2B of the 1995 Regulations in respect of the earlier 1995 Section service, and
- (b) a lower tier ill-health pension in respect of the later 2008 Section service.

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

(1) This regulation applies to a Waiting Period Joiner who, on the date of that Waiting Period Joiner’s death, is an active or a non-contributing member in respect of service in this Section of the Scheme (“the later 2008 Section service”).

(2) The lump sum payable on the death of a Waiting Period Joiner referred to in paragraph (1) shall be—

- (a) calculated in accordance with whichever of paragraphs (3), (4) or (5) applies to that Waiting Period Joiner, and

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- (b) paid in place of the lump sum that, apart from this regulation, would otherwise be payable in respect of that Waiting Period Joiner's later 2008 Section service under regulation 2.E.17.

(3) If the deceased Waiting Period Joiner was, at the date of the Waiting Period Joiner's death, an active member who had not exercised the option under regulation 2.D.5, the lump sum referred to in paragraph (2)(a) is an amount equal to five times the annual rate of pension—

- (a) payable under regulation 2.D.8(5), if the deceased Waiting Period Joiner had not reached the age of 65, or
- (b) payable under regulation 2.D.1, if the deceased Waiting Period Joiner had reached the age of 65,

to which the deceased Waiting Period Joiner would have been entitled at the date of the Waiting Period Joiner's death.

(4) If the deceased Waiting Period Joiner was a non-contributing member who had not exercised the option under regulation 2.D.5, the lump sum referred to in paragraph (2)(a) is an amount equal to five times the annual rate of pension—

- (a) payable under regulation 2.D.8(5), if the deceased Waiting Period Joiner had not reached the age of 65, or
- (b) payable under regulation 2.D.1, if the deceased Waiting Period Joiner had reached the age of 65,

to which the Waiting Period Joiner would have been entitled on the last day of the Waiting Period Joiner's pensionable service.

(5) If the Waiting Period Joiner was an active member or a non-contributing member who had exercised the option under regulation 2.D.5, the lump sum referred to in paragraph (2)(a) shall be determined by the Scottish Ministers after taking advice from the Scheme actuary.

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

(1) This regulation applies to a Waiting Period Joiner who has died ("a deceased Waiting Period Joiner") and who, in respect of service in this Section of the Scheme, was—

- (a) at the date of the Waiting Period Joiner's death--
 - (i) an active member,
 - (ii) a non-contributing member,
 - (iii) a pensioner member, or
 - (iv) a deferred member, and
- (b) on that date was entitled to a pension under the 1995 Regulations in respect of service in the 1995 Section ("the earlier 1995 Section service").

(2) In the case of a deceased Waiting Period Joiner referred to in paragraph (1)(a)(i) and (ii), "relevant service" for the purposes of paragraph (3) of regulation 2.E.10 shall have the meaning given in paragraph (3) of this regulation.

(3) "Relevant service" means—

- (a) in the case of a deceased Waiting Period Joiner who was, at the date of the Waiting Period Joiner's death, an active member the greater of--
 - (i) the pensionable service the deceased Waiting Period Joiner was entitled to count at that date, increased by the enhancement period (if any) that would have applied for the purposes of regulation 2.D.8(5) if the deceased Waiting Period Joiner had become entitled to an upper tier ill-health pension at that date, and

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- (ii) the deceased Waiting Period Joiner's later 2008 Section service as an active member plus the difference between--
 - (aa) the aggregate of the deceased Waiting Period Joiner's earlier 1995 Section service and the later 2008 Section service as an active member, and
 - (bb) 10 years pensionable service,where the amount of service in (aa) is less than that specified in (bb);
- (b) in the case of a deceased Waiting Period Joiner referred to in paragraph (1)(a)(ii), the pensionable service that the deceased Waiting Period Joiner was entitled to count under this Section of the Scheme of the Scheme on the date of that Waiting Period Joiner's death.
- (4) In the case of a deceased Waiting Period Joiner referred to in paragraph (1)(a)(iii), "the basic death pension" for the purposes of paragraph (3) of regulation 2.E.11 shall have the meaning given in paragraph (5) of this regulation.
- (5) The "basic death pension" means the greater of—
 - (a) 75% of the deceased Waiting Period Joiner's annual pension (disregarding any additional pension), and
 - (b) 75% of the annual pension to which the deceased would have been entitled in respect of the aggregate of the deceased Waiting Period Joiner's later 2008 Section service plus the difference between—
 - (i) the aggregate of the deceased Waiting Period Joiner's earlier 1995 Section service and the later 2008 Section service, and
 - (ii) 10 years pensionable service,where the amount of service in (i) is less than that specified in (ii).
- (6) In the case of a deceased Waiting Period Joiner referred to in paragraph (1)(a)(iv), "the basic death pension" for the purposes of paragraph (3) of regulation 2.E.12 shall have the meaning given in paragraph (7) of this regulation.
- (7) The "basic death pension" means—
 - (a) if the deceased Waiting Period Joiner died within 12 months after ceasing to be an active member or a non-contributing member, the amount that would be the basic death pension for the purposes of regulation 2.E.10 if the deceased Waiting Period Joiner had died on the day of so ceasing (disregarding any additional pension), and
 - (b) if the deceased Waiting Period Joiner died more than 12 months after ceasing to be an active member or a non-contributing member, the greater of—
 - (i) 75% of the pension to which the deceased Waiting Period Joiner would have been entitled if the deceased Waiting Period Joiner had become entitled to a pension under regulation 2.D.1 on the date of death (disregarding any additional pension), and
 - (ii) 75% of the annual pension to which the deceased Waiting Period Joiner would have been entitled in respect of the aggregate of the deceased Waiting Period Joiner's later 2008 Section service that has been deferred plus the difference between—
 - (aa) the aggregate of the deceased Waiting Period Joiner's earlier 1995 Section service and the later 2008 Section service that has been deferred, and
 - (bb) 10 years pensionable service,where the amount of service in (aa) is less than that specified in (bb).".

Amendment of regulation 3.A.1

39. In regulation 3.A.1 (interpretation of Part 3: general)

- (a) in the definition of “GMS practice”—
 - (i) in paragraph (a), after “registered medical practitioner” insert “who is a principal medical practitioner”
 - (ii) in paragraph (b), after “or more” insert “such”;
- (b) at the appropriate place in the alphabetical order, insert—
 - ““Waiting Period Joiner” has the meaning given in regulation 3.L.1;”.

Amendment of regulation 3.B.1

40. After paragraph (5)(e) of regulation 3.B.1 (eligibility: general), add—

- “(f) the person has given notice for the purposes of regulation B4 of the 1995 Regulations (opting out of the Scheme) and as a result of that notice—
 - (i) has been treated as ceasing to be an active member of that Section for 5 or more years, or
 - (ii) has been treated as never having been an active member of the 1995 Section for 5 or more years.”.

Substitution of regulation 3.B.1A

41. For regulation 3.B.1A (eligibility: transitional), substitute—

“3.B.1A Eligibility: transitional

- (1) A person is eligible to be an active member of this Section of the Scheme if—
 - (a) the person is not prevented from being so by regulation 3.B.2, 3.B.3 or 3.B.6, and
 - (b) either—
 - (i) the Scottish Ministers have accepted that person’s option to join this Section of Scheme under Chapter 3.K, or
 - (ii) that person meets all of the requirements in paragraph (2).
- (2) Those requirements are that the person—
 - (a) is under age 75,
 - (b) was an active member of the 1995 Section on or after 1st April 2008,
 - (c) became a pensioner member of the 1995 Section on or before 1st October 2008,
 - (d) has returned to NHS employment, and
 - (e) is not eligible to be an active member of the 1995 Section in respect of that further employment.

This is subject to the following paragraphs of this regulation.

(3) If a person referred to in paragraph (2) is entitled to a pension under one of the following regulations of the 1995 Regulations—

- (a) E1 (normal retirement pension),
- (b) E2A(3)(a) (lower tier ill-health pension on early retirement),
- (c) E3A (early retirement pension (termination of employment by employing authority)), or
- (d) E5 (early retirement pension with actuarial reduction),

that person shall be eligible to be an active member of this Section of the Scheme from the day immediately following the end of Waiting Period A.

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(4) If a person referred to in paragraph (2) is entitled to a pension under one of the following regulations of the 1995 Regulations—

- (a) E2 (early retirement pension (ill health)),
- (b) E3 (early retirement pension (redundancy etc additional provisions)),

that person shall be eligible to be an active member of this Section of the Scheme from the day immediately following the longer of Waiting Period A and Waiting Period B.

(5) If a person referred to in paragraph (2) is entitled to a pension under regulation E2A(3)(b) (Upper tier ill-health pension on early retirement), that person shall be eligible to be an active member of this Section of the Scheme from the day immediately following whichever of the following occurs last —

- (a) the anniversary of that person entering NHS employment, or
- (b) the end of Waiting Period A.

(6) If a person referred to in paragraph (1)(b) or (3)(b)—

- (a) is entitled to a lower tier ill health pension under regulation E2A(3)(a) of the 1995 Regulations, and
- (b) as a result of a determination made by the Scottish Ministers under regulation E2B(3) of those Regulations (re-assessment of ill-health condition determined under regulation E2A), that person becomes entitled to an upper tier ill-health pension in place of that lower tier ill-health pension,

that person shall cease to be eligible to be an active member of this Section of the Scheme from the date the Scottish Ministers makes that determination.

(7) For the purposes of this paragraph—

- (a) “Waiting Period A” is a period of two calendar years beginning on the day the person becomes entitled to the pension under the 1995 Regulations;
- (b) “Waiting Period B” is a period beginning on the day the person becomes entitled to the pension under the 1995 Regulations equal to the calendar length of—
 - (i) any increase to the person’s pensionable service in the 1995 Section of the Scheme which has been applied in accordance with paragraph (3) of regulation E2 of the 1995 Regulations, or
 - (ii) any additional service with which the person has been credited in accordance with regulation 5 of the National Health Service (Compensation for Premature Retirement) Regulations 1981.

(8) This regulation shall apply to any person who has previously been an active member of a corresponding 1995 scheme as though any reference to—

- (a) the “1995 Section” includes a reference to that corresponding 1995 scheme;
- (b) the “1995 Regulations” includes a reference to the regulations of that corresponding 1995 scheme;
- (c) regulations “E1”, “E2”, “E2A”, “E3A(3)(a)”, “E3A(3)(b)”, “E2B(3)”, “E3”, “E3A” or “E5” includes the equivalent of those regulations in a health service scheme the provisions of which correspond to the 1995 Regulations, and
- (d) “regulation 5 of the National Health Service (Compensation for Premature Retirement)(Scotland) Regulations 1981” includes the equivalent of that regulation as it applies to a member of a corresponding 1995 scheme.”.

Amendment of regulation 3.B.2

42. In paragraph (1) of regulation 3.B.2 (restrictions on eligibility: general)—

- (a) for sub-paragraphs (a) and (b), substitute—

“(a) became a pensioner member of the 1995 Section on or before 1st April 2008 (except if paragraph (1)(b)(i) of regulation 3.B.1A applies to that person), or

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- (b) became a pensioner member of that Section after that date (except if paragraph (1)(b)(i) or (ii) of regulation 3.B.1A applies to that person), or”.

Substitution of regulation 3.C.15

43. For regulation 3.C.15 (revaluation of increases bought under options: members’ pensions), substitute—

“3.C.15 Revaluation of increases bought under options: members’ pensions

(1) Where an option under regulation 3.C.6, 3.C.8 or 3.C.9 has been exercised, the final amount of the increase in a member’s pension immediately before the beginning date for that pension shall be determined in accordance with this regulation.

(2) Where the increase in pension referred to in paragraph (1) is in respect of an option that was exercised—

- (a) less than 2 months before the increase becomes payable, the final amount is calculated in accordance with paragraph (3), or
- (b) 2 or more months before the increase in pension becomes payable, in accordance with paragraph (4).

(3) The calculation referred to in paragraph (2)(a) is as follows—

Step 1 – Calculate the basic amount of the increase in accordance with regulations 3.C.12 to 3.C.14, to find the Step 1 amount.

Step 2 – Add to the Step 1 amount increases (if any) due under the Pensions (Increase) Act 1971 on that amount when it first falls into payment to find the Step 2 amount.

Step 3 – Divide the Step 2 amount by the Step 1 amount to find the Step 3 factor.

Step 4 – Divide the Step 1 amount by the Step 3 factor to find the final amount referred to in paragraph (1).

(4) The calculation referred to in paragraph (2)(b) is as follows—

Step 1 - Calculate the basic amount of the increase in accordance with regulations 3.C.12 to 3.C.14, to find the Step 1 amount.

Step 2 – Multiply the Step 1 amount by the retail prices index for the second month before the month in which the increase in pension will become payable to find the Step 2 amount.

Step 3 – Divide the Step 2 amount by the retail prices index for the month in which the option was exercised to find the Step 3 amount.

Step 4 – Take the greater of the Step 1 amount and Step 3 amount to find the Step 4 amount.

Step 5 – Add to the Step 4 amount increases (if any) due under the Pensions (Increase) Act 1971 on that amount when it first falls into payment to find the Step 5 amount

Step 6 – Divide the Step 5 amount by the Step 4 amount to find the Step 6 factor.

Step 7 – Divide the Step 4 amount by the Step 6 factor to find the final amount referred to in paragraph (1).

(5) In this regulation, “the beginning date”, in relation to a pension, means the date on which it is treated as beginning for the purposes of the Pensions (Increase) Act 1971 (see section 8(2) of that Act).”.

Amendment of regulation 3.D.2

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

- (a) in paragraph (2) at the start, add “Subject to paragraph (5)”;

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(b) after paragraph (4) insert—

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

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

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

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

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

Amendment of regulation 3.D.7

45. After paragraph (18) of regulation 3.D.7 (early retirement on ill-health (active members and non-contributing members)), insert—

“(19) In the case of a Waiting Period Joiner, this regulation is subject to regulation 3.L.3.”.

Amendment of regulation 3.D.10

46. In regulation 3.D.10 (general option to exchange part of pension for lump sum), in paragraph (1) for “other than a pension credit member”, substitute “(other than a pension credit member whose rights under the Scheme are attributable to a disqualifying pension credit for the purpose of paragraph 2 of Schedule 29 to the 2004 Act)”.

Amendment of regulation 3.D.11

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

(a) for paragraph (5) substitute—

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

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

Omission of regulation 3.D.13

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

Amendment of regulation 3.E.2

49. After paragraph (3) of regulation 3.E.2 (meaning of “surviving nominated partner”), insert—

“(4) In the case of a Waiting Period Joiner, this regulation is subject to regulation 3.L.2.”.

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Amendment of regulation 3.E.10

50. In 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), after "3.K.23" (in the full out words) add "and in the case of a Waiting Period Joiner, this is subject to regulation 3.L.5."

Amendment of regulation 3.E.11

51. In paragraph (3) of regulation 3.E.11 (amount of children's pension under regulation 3.E.8: deceased pensioner members), after "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)" add "and in the case of a Waiting Period Joiner, this is subject to regulation 3.L.5."

Amendment of regulation 3.E.12

52. In paragraph (3) of regulation 3.E.12 (amount of children's pension under regulation 3.E.8: deceased deferred members) after "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)" add "and in the case of a Waiting Period Joiner, this is subject to regulation 3.L.5."

Amendment of regulation 3.E.17

53. In paragraph (1)(A) of regulation 3.E.17 (amount of lump sum: single capacity members and recent leavers (disregarding regulation 3.D.5 employments)) after "3.K.22" (in the full out words) add "and in the case of a Waiting Period Joiner, this is subject to regulation 3.L.4."

Amendment of regulation 3.E.21

54. After paragraph (12) of regulation 3.E.21 (payment of lump sums or pensions on death), insert—

“(13) In the case of a Waiting Period Joiner, this regulation is subject to regulation 3.L.2.”

Amendment of regulation 3.H.4

55. In regulation 3.H.4 (meaning of "relevant income")—

(a) after paragraph (5), insert—

“(5A) If the employed pensioner—

(a) exercised the option under regulation 3.D.14 (election to allocate pension) in relation to the old service pension, or

(b) is a 2008 Section Optant who was entitled to a lump sum under regulation 3.K.11 in relation to the old service pension,

the resulting reduction in the pension is taken into account for the purposes of this regulation.”

New Chapter 3.L

56. After Chapter 3.K (2008 Section Optants), insert—

**“Chapter 3.L
Waiting Period Joiners**

3.L.1 Application of Chapter 3.L

(1) This Chapter makes provision in relation to pensioner members of the 1995 Section of the Scheme who are eligible to be members of this Section of the Scheme in accordance with paragraph (1)(b)(ii) of regulation 3.B.1A (eligibility: transitional).

(2) In these Regulations a member of this Section of the Scheme to whom this Chapter applies is referred to as a “Waiting Period Joiner”.

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

(1) This regulation applies if—

- (a) on the day a Waiting Period Joiner becomes an active member of this section of the Scheme—
 - (i) the Scottish Ministers have accepted any of the nominations or notices specified in paragraph (2) of this regulation in respect of the benefits to be paid on the death of that Waiting Period Joiner, and
 - (ii) that Waiting Period Joiner has not revoked that nomination or notice, or
- (b) at any time after a Waiting Period Joiner becomes an active member of this Section of the Scheme, that Waiting Period Joiner gives a notice, nomination or declaration for the purposes of a regulation listed in the table at paragraph (4).

(2) The nominations and notices referred to in paragraph (1)(a) are—

- (a) a nomination made in accordance with regulation F5 of the 1995 Regulations (payment of lump sum) in favour of one or more persons in respect of any lump sum that becomes payable under regulations F1 to F4 of the 1995 Regulations (which deal with lump sum payments on the death of a member in different circumstances);
- (b) a notice provided for the purposes of paragraph (3)(a) of regulation F5 of the 1995 Regulations that the person’s surviving partner (within the meaning of that regulation) is not to receive the payment of any lump sum that becomes payable under regulations F1 to F4 of the 1995 Regulations;
- (c) a notice provided for the purpose of regulation G14 of the 1995 Regulations (surviving nominated partner’s pension) nominating a partner to receive a surviving nominated partner pension.

(3) For the purpose of this Section of the Scheme a nomination or notice referred to in paragraph (1)(a) shall be treated—

- (a) in the case of the nomination referred to in paragraph (2)(a), as if that nomination has been accepted by the Scottish Ministers as a notice for the purposes of regulation 3.E.21,
- (b) in the case of a notice referred to in paragraph (2)(b), as if that notice had been accepted by the Scottish Ministers as a notice for the purposes of regulation 3.E.21 specifying that the Waiting Period Joiner’s personal representatives are to receive any lump sum or pension on the death of the Waiting Period Joiner, and
- (c) in the case of a notice referred to in paragraph (2)(c), as if that notice had been accepted by the Scottish Ministers as a declaration for the purposes of regulation 3.E.2.

(4) A notice, nomination or declaration referred to in paragraph (1)(b) that is given by a Waiting Period Joiner for the purposes of a regulation listed in column 1 of the following table shall be treated as a notice, nomination or declaration given for the purposes of the corresponding regulation in column 2.

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Column 1
1995 Regulations

F5
G14

Column 2
2008 Regulations

3.E.21
3.E.2

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

- (1) This regulation applies to a Waiting Period Joiner who—
- (a) is entitled to a lower tier ill-health pension under regulation E2A of the 1995 Regulations (ill-health pension on early retirement) in respect of service in the 1995 Section (“the earlier 1995 Section service”), and
 - (b) becomes entitled to a lower tier ill-health pension or, as the case may be, an upper tier ill-health pension under regulation 3.D.7 in respect of service in this Section of the Scheme (“the later 2008 Section service”).

(2) For the purposes of determining whether a Waiting Period Joiner can count 45 years of pensionable service for any purpose, the earlier 1995 Section service and the later 2008 Section service are aggregated.

(3) If, on the termination of the later 2008 Section service a Waiting Period Joiner becomes entitled, under regulation 3.D.7, to—

- (a) a lower tier ill-health pension, or
- (b) an upper tier ill-health pension,

in respect of the later 2008 Section service, that Waiting Period Joiner is entitled to the benefits set out in paragraph (4).

(4) The benefits mentioned in paragraph (3) are—

- (a) the member’s lower tier ill-health pension under regulation E2A of the 1995 Regulations in respect of the member’s earlier 1995 Section service, and
- (b) a lower tier or, as the case may be, an upper tier ill-health pension in respect of the member’s later 2008 Section service.

This is subject to paragraph (5)

(5) If the Waiting Period Joiner—

- (a) ceases to be entitled to a lower tier ill-health pension in respect of the earlier 1995 Section service,
- (b) becomes entitled to an upper tier ill-health pension in respect of that earlier 1995 Section service in accordance with regulation E2B of the 1995 Regulations (re-assessment of ill health condition determined under regulation E2A), and
- (c) becomes entitled to a lower tier or, as the case may be, an upper tier ill-health pension in respect of the later 2008 Section service on the termination of that later service,

that Waiting Period Joiner is entitled to the benefits set out in paragraph (6).

(6) Those benefits are—

- (a) an upper tier ill-health pension paid in accordance with regulation E2B of the 1995 Regulations in respect of the earlier 1995 Section service, and
- (b) a lower tier ill-health pension in respect of the later 2008 Section service.

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

(1) This regulation applies to a Waiting Period Joiner who, on the date of that Waiting Period Joiner's death is an active or a non-contributing member in respect of service in this Section of the Scheme ("the later 2008 Section service").

(2) The lump sum payable on the death of a Waiting Period Joiner referred to in paragraph (1) shall be—

- (a) calculated in accordance with whichever of paragraphs (3), (4) or (5) applies to that Waiting Period Joiner, and
- (b) paid in place of the lump sum that, apart from this regulation, would otherwise be payable in respect of that Waiting Period Joiner's later 2008 Section service under regulation 3.E.17.

(3) If the deceased Waiting Period Joiner was, at the date of the Waiting Period Joiner's death, an active member who had not exercised the option under regulation 3.D.5, the lump sum referred to in paragraph (2)(a) is an amount equal to five times the annual rate of pension—

- (a) payable under regulation 3.D.7(5), if the deceased Waiting Period Joiner had not reached the age of 65, or
- (b) payable under regulation 3.D.1, if the deceased Waiting Period Joiner had reached the age of 65,

to which the deceased Waiting Period Joiner would have been entitled at the date of the Waiting Period Joiner's death.

(4) If the deceased Waiting Period Joiner was a non-contributing member who had not exercised the option under regulation 3.D.5, the lump sum referred to in paragraph (2)(a) is an amount equal to five times the annual rate of pension—

- (a) payable under regulation 3.D.7(5), if the deceased Waiting Period Joiner had not reached the age of 65, or
- (b) payable under regulation 3.D.1, if the deceased Waiting Period Joiner had reached the age of 65,

to which the Waiting Period Joiner would have been entitled on the last day of the Waiting Period Joiner's pensionable service.

(5) If the Waiting Period Joiner was an active member or a non-contributing member who had exercised the option under regulation 3.D.5, the lump sum referred to in paragraph (2)(a) shall be determined by the Scottish Ministers after taking advice from the Scheme actuary.

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

(1) This regulation applies to a Waiting Period Joiner who has died ("a deceased Waiting Period Joiner") and who, in respect of service in this Section of the Scheme, was—

- (a) at the date of the Waiting Period Joiner's death--
 - (i) an active member,
 - (ii) a non-contributing member,
 - (iii) a pensioner member, or
 - (iv) a deferred member, and
- (b) on that date was entitled to a pension under the 1995 Regulations in respect of service in the 1995 Section ("the earlier 1995 Section service").

(2) In the case of a deceased Waiting Period Joiner referred to in paragraph (1)(a)(i) and (ii), "the basic death pension" for the purposes of paragraph (3) of regulation 3.E.10 shall have the meaning given in paragraph (3) of this regulation.

(3) The "basic death pension" means twice the appropriate proportion of the deceased member's pension under regulation 3.D.1 and—

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- (a) in the case of a deceased Waiting Period Joiner who was, at the date of the deceased Waiting Period Joiner's death, an active member that pension will include the greater of—
 - (i) any increase due to such enhancement period that would have applied for the purposes of regulation 3.D.7(5) if the deceased Waiting Period Joiner had become entitled to an upper tier ill-health pension at that date, and
 - (ii) the deceased Waiting Period Joiner's later 2008 Section service as an active member plus the difference between—
 - (aa) the aggregate of the deceased Waiting Period Joiner's earlier 1995 Section service and the later 2008 Section service as an active member, and
 - (bb) 10 years pensionable service,where the amount of service in (aa) is less than that specified in (bb);
 - (b) in the case of a deceased Waiting Period Joiner referred to in paragraph (1)(a)(ii), the pensionable service that the deceased Waiting Period Joiner was entitled to count under this Section of the Scheme on the date of that Waiting Period Joiner's death.
- (4) In the case of a deceased Waiting Period Joiner referred to in paragraph (1)(a)(iii), "the basic death pension" for the purposes of paragraph (3) of regulation 3.E.11 shall have the meaning given in paragraph (5) of this regulation.
- (5) The "basic death pension" means the greater of—
- (a) twice the appropriate proportion of the deceased Waiting Period Joiner's annual pension (disregarding any additional pension), and
 - (b) twice the appropriate proportion of the annual pension to which the deceased Waiting Period Joiner would have been entitled calculated as the aggregate of the deceased Waiting Period Joiner's later 2008 Section service plus the difference between—
 - (i) the aggregate of the deceased Waiting Period Joiner's earlier 1995 Section service and the later 2008 Section service, and
 - (ii) 10 years pensionable service,where the amount of service in (i) is less than that specified in (ii).
- (6) In the case of a deceased Waiting Period Joiner referred to in paragraph (1)(a)(iv), "the basic death pension" for the purposes of paragraph (3) of regulation 3.E.12 shall have the meaning given in paragraph (7) of this regulation.
- (7) The "basic death pension" means—
- (a) if the deceased Waiting Period Joiner died within 12 months after ceasing to be an active member or a non-contributing member, the amount that would be the basic death pension for the purposes of regulation 3.E.10 if the deceased Waiting Period Joiner had died on the day of so ceasing (disregarding any additional pension), and
 - (b) if the deceased Waiting Period Joiner's died more than 12 months after ceasing to be an active member or a non-contributing member, the greater of—
 - (i) twice the appropriate proportion of the pension to which the deceased Waiting Period Joiner would have been entitled if the deceased had become entitled to a pension under regulation 3.D.1 on the date of death (disregarding any additional pension), and
 - (ii) twice the appropriate proportion of the annual pension to which the deceased Waiting Period Joiner would have been entitled in respect of the aggregate of the deceased Waiting Period Joiner's later 2008 Section service that has been deferred plus the difference between—

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- (aa) the aggregate of the deceased Waiting Period Joiner's earlier 1995 Section service and the later 2008 Section service that has been deferred, and
 - (bb) 10 years pensionable service,
- where the amount of service in (aa) is less than that specified in (bb).".

PART 4

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

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

57.—(1) The National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998 are amended as follows.

(2) At the end of paragraph (1) of regulation 3 (making and acceptance of elections), insert (as full out words) "Paragraph (1)(a) is subject to regulation 11(1A).".

(3) In paragraph (1) of regulation 9 (inwards transfer: mis-sold pensions)—

- (a) after "opting into", insert "this Section of";

(4) In regulation 11 (retirement and dependants' pensions)—

- (a) in paragraph (1)—

- (i) after "Subject to paragraph", insert "(1A) and";

- (ii) omit ",and not otherwise";

- (b) after paragraph (1), add—

"(1A) Where the proceeds of any investment made under regulation 7(1), 8(2) or 9(4) are—

- (a) insufficient for the authorised fund to provide benefits in accordance with paragraph (1), and

- (b) the participator is unwilling or unable to secure benefits in accordance with that paragraph from another insurer,

in the case of—

- (i) a single authorised fund, that fund may discharge its liability for the payment of the benefits described in paragraph (1) by the payment of a lump sum that complies with the conditions in paragraph (1C),

- (ii) more than one authorised fund, each such fund may discharge its liability for the payment of the benefits described in paragraph (1), by the payment of a lump sum.

(1B) Where paragraph (1A)(ii) applies, in aggregate the lump sums referred to in that paragraph must comply with the conditions in paragraph (1C).

(1C) Those conditions are that the lump sum or sums—

- (a) represent the capital value of the benefits referred to in paragraph (1), and

- (b) meet the requirements of regulation 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 (payments by larger pension schemes).";

- (c) at the beginning of paragraph (3), insert "Subject to paragraph (1A).";

- (d) at the beginning of paragraph (5), insert "Subject to paragraph (1A).";

- (e) in paragraph (7), omit "and paragraph 19 of the Schedule.".

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- (5) In regulation 15 (payments by the Scottish Ministers)—
- (a) for paragraph (1), substitute—

“(1) Subject to paragraph (2), where an authorised provider fails to pay any amount due by way of—

 - (a) an annuity,
 - (b) a pension commencement lump sum,
 - (c) a lump sum death benefit, or
 - (d) a lump sum payment referred to in regulation 11(1A),

the Scottish Ministers shall be liable to pay that amount.”;
 - (b) in paragraph (3), for “11(4), or under regulations” substitute “regulations 11(1B), 11(4),”;
 - (c) in paragraph (4), before “11(8)” insert “11(1B),”.
- (6) In paragraph 4 of Schedule 2 (pension sharing on divorce or nullity of marriage or dissolution or nullity of civil partnership)—
- (a) at the end of sub-paragraph (7), omit “, and not otherwise”;
 - (b) after sub-paragraph (8) add—

“(9) This paragraph is subject to regulation 11(1A).”.

PART 5

Miscellaneous

Option to persons detrimentally affected by these Regulations

58.—(1) This regulation applies in relation to any benefit which is being paid or may become payable under the regulations amended by these Regulations to or in respect of a person who, having served in an employment or office, service in which qualified the person to participate in the benefits provided under the regulations amended by these Regulations, ceased to serve therein before these Regulations came into force.

(2) Where, in a case to which this regulation applies, any provision of these Regulations would operate in relation to any person so as to place that person in a worse position than that person would have been if that provision had not applied, that person may elect that the provision shall not apply by giving notice in accordance with paragraph (3).

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

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

Name

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A member of the Scottish Executive

We consent

Name

Date

Two of the Lords Commissioners of Her Majesty's Treasury

Name

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the National Health Service Superannuation Scheme (Scotland Regulations 1995 (S.I. 1995/365) (“the 1995 Regulations”), the National Health Service Pension Scheme (Scotland) Regulations 2008 (S.S.I. 2008/224) (“the 2008 Regulations”) and the National Health Service Superannuation Scheme (Additional Voluntary Contributions) (Scotland) Regulations 1998 (S.I. 1998/1451) (“the AVC Regulations”).

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