

**2008 No.****NATIONAL HEALTH SERVICE**

**The National Health Service (Superannuation Scheme, Pension Scheme and Injury Benefits), (Scotland) Amendment Regulations 2008**

*Made* - - - - - 2008

*Laid before the Scottish the Scottish the Scottish Parliament* 2008

*Coming into force* - - - 2008

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

**Citation, commencement and effect**

**1.**—(1) These Regulations may be cited as the National Health Service (Superannuation Scheme, Pension Scheme and Injury Benefits) (Scotland) Amendment Regulations 2008.

(2) These Regulations come into force on ? and have effect from 1st October 2008, except for—

- (a) the following regulations which have effect from 1st April 2008—
- (i) regulation 12;
  - (ii) regulation 24(4);
  - (iii) regulation 27;
  - (iv) regulation 30;
  - (v) regulation 31;
  - (vi) regulation 36(4);
  - (vii) regulation 45;
  - (viii) regulation 51;
  - (ix) regulation 54;
  - (x) regulation 58;
  - (xi) regulation 59;

<sup>(a)</sup> 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.

<sup>(b)</sup> 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 Secretary of State 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).

- (xii) regulation 60; and
- (xiii) regulation 67(2) and (3) ; and

(b) regulation 77 which has effect from [ ?? ].

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

2. The National Health Service Superannuation Scheme (Scotland) Regulations 1995(a) are amended in accordance with regulations 3 to 18.

3.—(1) Regulation A2 (interpretation) is amended as follows.

(2) At the appropriate place in alphabetical order, insert—

““the 2008 scheme” means the scheme the rules of which are set out in Part 1 or 2 (whichever is applicable) of the National Health Service Pension Scheme (Scotland) Regulations 2008(b);”

““electronic communication” has the meaning given in section 15 of the Electronic Communications Act 2000(c);”;

(3) In the definition of “employing authority”, omit paragraph (e).

(4) In the definition of “OOH services”, for “GMS practice to patients to whom the practice is required by its GMS contract” substitute “GMS practice, Section 17C agreement provider or an HBPMS contractor to patients to whom the practice or contractor is required by his contract or agreement”.

(5) Omit the definitions of—

- (a) “pilot scheme”; and
- (b) “piloted services”.

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

(1) In paragraph (1)(g), for sub-paragraph (iii) substitute—

“(iii) that person has been a member of the 2008 scheme;”.

(2) After paragraph (1)(g) insert—

“(h) that person is a person who—

- (i) ceased to be in pensionable employment on or before 31st March 2008;
- (ii) on so ceasing was entitled to a preserved pension in accordance with regulation E6;
- (iii) returns to NHS employment on or after 1st October 2008 and before returning exercises the right to transfer out all of that person’s benefits in the scheme in accordance with regulation M1;
- (iv) has had a break in pensionable employment for any one period of five years or more beginning with the day immediately following the cessation of employment referred to in paragraph (i) and ending on the day immediately before the employment referred to in paragraph (iii) commences; and
- (v) is not in receipt of a pension under regulation E2 or E2A;

(i) that person is a person who—

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(a) S.I. 1995/365, as amended by S.I. 1997/1434 and 1916, 1998/1593, 1999/443, 2001/3649 and 2005/2011 and S.S.I. 2001/437 and 465, 2003/55, 270 and 517, 2005/512 and 544, 2006/307 and 561, 2008/92 and 226.  
(b) S.S.I. 2008/224.  
(c) 2000 c.7.

- (i) is entitled to a preserved pension in accordance with regulation E6;
- (ii) returns to NHS employment on or after 1st October 2008;
- (iii) has had a break in pensionable employment for any one period of five years or more beginning with the day immediately following the cessation of the pensionable employment in respect of which he is entitled to the pension referred to in paragraph (i) and ending on the day immediately before the employment referred to in paragraph (ii) commences; and
- (iv) is not in receipt of a pension under regulations E2 or E2A.”.

(3) After paragraph (2) insert–

“(2A) a reference to regulations E6, E9, M1 and M2 includes the equivalent of those regulations in a health service scheme the provisions of which correspond to the provisions of the National Health Service Superannuation Scheme for Scotland as set out in these Regulations”.

(4) In paragraph (3), for “(h)” substitute “(g) or (i)”.

#### **Amendment of regulation D1**

5. In regulation D1(2) (contributions by members) after “may” insert “, with the consent of the Treasury,”.

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

6. For regulation E2B(2)(b) (re-assessment of ill health condition determined under regulation E2A), substitute–

- “(b) the member provides further medical evidence to the Scottish Ministers relating to the satisfaction of the upper tier condition at the date of the Scottish Ministers’ consideration and that further medical evidence is provided–
  - (i) in the case of a member who does not engage in further NHS employment during the three year period referred to in sub-paragraph (a), before the end of that period; and
  - (ii) in the case of a member who does engage in further NHS employment during the three year period referred to in sub-paragraph (a), before the first anniversary of the day on which that employment commences or before the end of that period if sooner.”.

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

7. In regulation E6(14) (preserved pension), insert at the appropriate place in alphabetical order–  
“NHS employment” does not include employment with an employing authority in respect of which the member is eligible to join the 2008 scheme;”.

#### **Amendment of regulation E9**

8. After regulation E9(1) (refund of contributions), insert–

“(1A) A member who wishes to take a refund of contributions must apply in writing to the Scottish Ministers.

(1B) An application in writing referred to in paragraph (1A) may be–

- (a) made or given by means of an electronic communication that is approved by the Scottish Ministers for that purpose;

- (b) given to the Scottish Ministers by a person other than the member.”.

### **Amendment of regulation F2**

9. Regulation F2 (lump sum when member dies after pension becomes payable) is amended as follows.

- (1) In paragraph (1), for “Except” substitute “Subject to paragraph (7), except”.
- (2) After paragraph (6) insert–
- “(7) Where a member referred to in paragraph (1) has attained the age of 75 at the date of the member’s death–
- (a) the lump sum referred to in that paragraph ceases to be payable; and
  - (b) shall instead be converted into an annual pension to be determined and paid in accordance with paragraph (8).
- (8) The pension referred to in paragraph (7) shall be–
- (a) determined in accordance with guidance and tables provided by the scheme actuary for the purpose of converting the amount of the lump sum into an annual pension;
  - (b) paid to the person who would otherwise be entitled to receive the lump sum in accordance with regulation F5; and
  - (c) paid to that person from the day after the member’s death until the fifth anniversary of the day the member’s pension under the scheme became payable.
- (9) If, in accordance with regulation F5, a member has given notice that more than one person is to receive a share of the lump sum, each such person shall receive the same percentage of the annual pension as was specified for that person in the member’s notice.”.

### **Amendment of regulation M3**

10. Regulation M3 (amount of member’s cash equivalent) is amended as follows–

- (a) In paragraph (1), omit the words “, calculated and verified as required by Chapter IV of Part IV of the Pension Schemes Act 1993 (transfer values)”; and
- (b) After paragraph (1), insert–
- “(1A) The Scottish Ministers must–
- (a) take advice from the scheme actuary before determining the factors to be used in the calculation of the member’s guaranteed cash equivalent; and
  - (b) calculate and verify the amount of the guaranteed cash equivalent in accordance with the Occupational Pension Schemes (Transfer Values) Regulations 1996(a).”.

### **Insertion of new regulation M6A**

11. After regulation M6 (special terms for transfers out (bulk transfers etc)) insert–

#### **“Member’s right to transfer a preserved pension to the 2008 Scheme**

**M6A.**—(1) If a member meets the conditions referred to in paragraph (3) and subject to the following provisions of this regulation, a member may require the Scottish Ministers to use the cash equivalent of the member’s rights under these Regulations to acquire rights referred to in the 2008 scheme.

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(a) S.I. 1996/1847.

(2) A member's right to require the Scottish Ministers to use the cash equivalent of the member's rights in the way referred to in paragraph (1) may only be exercised once.

(3) The conditions referred to in paragraph (1) are that the member–

- (a) is entitled to a deferred benefit under regulation E6;
- (b) may not join the scheme in respect of any further NHS employment by virtue of regulation B2(1)(i); and
- (c) becomes an active member of the 2008 scheme before attaining the age of 60.

(4) The Scottish Ministers must provide a member to whom this regulation applies with a statement of the amount of the cash equivalent of the member's benefits accrued in accordance with these Regulations at the guarantee date (“a statement of entitlement”).

(5) In this regulation “the guarantee date” means any date that–

- (a) falls within the required period;
- (b) is chosen by the Scottish Ministers;
- (c) is specified in the statement of entitlement; and
- (d) is within the period of 10 days ending with the date on which the member is provided with the statement of entitlement.

(6) In counting the period of 10 days referred to in paragraph (5)(d), Saturdays, Sundays, Christmas Day, New Year's Day and Good Friday are excluded.

(7) In paragraph (5), “the required period” means–

- (a) the period of three months beginning with the date that the Scottish Ministers receive notification from the member's employing authority that the member has joined the 2008 ; or
- (b) such longer period beginning with that date (but not exceeding six months) as may be reasonably required if, for reasons beyond the control of the Scottish Ministers, the requisite information cannot be obtained to calculate the amount of the cash equivalent.

(8) Subject to paragraphs (9) to (11), the member's guaranteed cash equivalent shall be equal to the capitalised value of all of the member's rights to benefits accrued under these Regulations and any associated rights under Part I of the Pensions (Increase) Act 1971(a).

(9) The Scottish Ministers must–

- (a) take advice from the scheme actuary before determining the factors to be used in the calculation of the member's guaranteed cash equivalent; and
- (b) calculate and verify the amount of the guaranteed cash equivalent in accordance with the Occupational Pension Schemes (Transfer Values) Regulations 1996.

(10) Except in the case of a transfer payment accepted under regulation N3A (transfers in respect of members to whom regulation B6 applies who elect to rejoin the scheme), a member's cash equivalent will be at least equal to the amount of any transfer payments accepted in respect of the member under regulation N1(4) (which deals with the crediting of additional service upon transfer), plus the amount of the member's contributions to the scheme.

(11) Any part of the cash equivalent that relates to the service before 29th January 1988 will be calculated as described in the 1980 Regulations as applicable immediately before that date, if this would be more favourable to the member.

(12) A member who has received a statement of entitlement in accordance with paragraph (4) may apply to the Scottish Ministers for the cash equivalent of the member's rights under the scheme to be used to acquire rights under the 2008 scheme.

(13) An application under this regulation must be made in respect of each and every portion of the cash equivalent and shall be–

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(a) 1971 c.56.

- (a) made in writing on the form provided for this purpose by the Scottish Ministers
  - (b) made before the end of the period of three months beginning with the guarantee date;
  - (c) irrevocable.
- (14) On the making of such an application–
- (a) a member becomes entitled to be credited with a period of pensionable service or an equivalent increase to the member’s pensionable earnings in the 2008 scheme in respect of the cash equivalent value of the member’s benefits under the scheme calculated in accordance with whichever of regulation 2.F.17 or 3.F.17 of the 2008 scheme apply to the member, and
  - (b) the member’s rights under the scheme are extinguished on the day that the member is credited with a period of pensionable service or pensionable earnings in accordance with regulations 2.F.17 or 3.F.17 (as the case may be) of the 2008 scheme.”.

### **Amendment of regulation P3**

**12.** For regulation P3(1) and (1A) ( absence for reasons other than illness or injury) substitute–

“(1) If, on or after 1st April 2008, a member is on a leave of absence for reasons other than those referred to in regulation P2 the maximum period of such leave that will count as pensionable employment under this paragraph is–

- (a) where the member, for a continuous period of six months commencing with the member’s first day of leave of absence, pays to the scheme contributions due from the member in accordance with regulation D1, six months; and
- (b) where the member, for a continuous period of less than six months commencing with the member’s first day of leave of absence, pays to the scheme contributions due from the member in accordance with regulation D1, the period in respect of which those contributions were paid.

(1A) If, having paid contributions for the period referred to in paragraph (1)(a), a member remains on leave of absence for reasons other than those referred to in regulation P2 the maximum period of such leave that will count as pensionable employment under this paragraph is–

- (a) where the member pays to the scheme both contributions due from the member in accordance with regulation D1 and contributions due from the member’s employer in accordance with regulation D2 for a continuous period of 18 months commencing immediately after the expiry of the period referred to in paragraph (1)(a), 18 months; and
- (b) where the member pays to the scheme both contributions due from the member in accordance with regulation D1 and contributions due from the member’s employer in accordance with regulation D2 for a continuous period of less than 18 months commencing immediately after the expiry of the period referred to in paragraph (1)(a), the period in respect of which those contributions were paid.”.

### **Amendment of regulation S2**

**13.** For regulation S2(2) (reduction of pension on return to NHS employment), substitute–

“(2) A member to whom this regulation applies must–

- (a) inform the member’s employer, and any other person that the Scottish Ministers may specify, that the member’s pension under the scheme has become payable; and
- (b) if requested to do so, provide any information (or authorise any other person to provide information) about the member’s pay from NHS employment to the Scottish Ministers or to any other person the Scottish Ministers may specify.”.

**Amendment of regulation S4**

14.—(1) Regulation S4 (benefits on death in pensionable employment after pension under regulation E2 becomes payable) is amended as follows.

(2) In paragraph (1A)–

- (i) for “This regulation”, substitute “Subject to the modifications set out in paragraph (1B) this regulation”; and
- (ii) in sub-paragraph (b)(iii), after “members)” insert “on or before 1st April 2008”.

(3) After paragraph (1A), insert–

“(1B) The modifications referred to in paragraph (1A) are–

- (a) in paragraph (3A), for “on the date of the member’s death” substitute “on the member’s last day of pensionable employment”;
- (b) in paragraph (7), for “pensionable pay when he died” substitute “final year’s pensionable pay”;
- (c) in paragraph (8), for “the 6 months immediately following the member’s death” substitute “the 3 months immediately following the member’s death or the 6 months immediately following the member’s death if he leaves a dependent child”;
- (d) in paragraph (11), for “the six month period” substitute “the 3 month or, as the case may be, the 6 month period”;
- (e) in paragraph (12)(b)–
  - (i) for “rate of pensionable pay when he died” substitute “final year’s pensionable pay”; and
  - (ii) for “at that time” substitute “when he died”.

(1C) Subject to the modifications set out in paragraph (1D), this regulation also applies to a member in respect of whom a pension is payable under regulation E2 (early retirement on grounds of ill-health) who–

- (a) returns to pensionable employment after that pension becomes payable; and
- (b) on the day the member dies, is–
  - (i) under the age of 75;
  - (ii) in NHS employment;
  - (iii) no longer required to pay contributions pursuant to regulation D1(3) or (4) (contributions by members) on, or after, 2nd April 2008; and
  - (iv) except where regulation R4(6) applies, not in receipt of a pension under any of regulations E1 to E5 in respect of the member’s later service.

(1D) The modifications referred to in paragraph (1C) are–

- (a) in paragraph (3A), for “on the date of the member’s death” substitute “on the member’s last day of pensionable employment”;
- (b) in paragraph (7), for “pensionable pay when he died” substitute “final year’s pensionable pay”;
- (c) in paragraph (12)(b)–
  - (i) for “rate of pensionable pay when he died” substitute “final year’s pensionable pay”; and
  - (ii) for “at that time” substitute “when he died”.

**Amendment of regulation S4A**

15. In regulation S4A (benefits on death in pensionable employment after pension under regulation E2A becomes payable ) after paragraph (1), insert–

“(1A) Subject to the modifications set out in paragraph (1B), this regulation shall also apply to a member in respect of whom a pension is payable under regulation E2A who–

- (a) returns to pensionable employment after that pension becomes payable, and
- (b) on the day the member dies, the member is–
  - (i) under the age of 75;
  - (ii) in NHS employment;
  - (iii) no longer required to pay contributions pursuant to regulation D1(3) or (4) (contributions by members); and
  - (iv) except where regulation R4(6) applies, not in receipt of a pension under any of regulations E1 to E5 in respect of the member’s later service.

(1B) The modifications referred to in paragraph (1A) are–

- (a) in paragraph (6), for “on the date of the member’s death” substitute “on the member’s last day of pensionable employment”;
- (b) in paragraphs (10), for “rate of pensionable pay when the member died” substitute “final year’s pensionable pay”;
- (c) in paragraph (15)(a), for “rate of pensionable pay when the member died” substitute “final year’s pensionable pay”; and
- (d) in paragraph (15)(b), for “at that time” substitute “when he died”.

**Amendment of regulation T1**

16. For regulation T1 (claims for benefits), substitute–

**“Claims for benefits**

**T1.**—(1) A person claiming to be entitled to benefits under these Regulations (“the claimant”) must make a claim in writing to the Scottish Ministers in such form as the Scottish Ministers may from time to time require.

(2) Pursuant to such a claim, the claimant and the member’s employing authority (including any previous employing authority of the member) must provide such–

- (a) evidence of entitlement;
- (b) authority or permission as may be necessary for the release by third parties of information in their possession relating to the member or, where relevant, the claimant; and
- (c) any other information the Scottish Ministers considers is relevant to the claim,

as the Scottish Ministers may from time to time require for the purposes of these Regulations.

(3) A claim referred to in paragraph (1) may be given to the Scottish Ministers by a person other than the claimant.

(4) The Scottish Ministers may accept any claim for benefits in relation to which this regulation applies, and any evidence, authority or permission given in connection with that claim, if it is made or given by means of an electronic communication that is approved by the Scottish Ministers for that purpose.”.



### **Amendment of Regulation U2**

**17.** In Regulation U2 (determination of questions)–

- (a) in paragraph 1, omit “and their decision shall be final”; and
- (b) after paragraph (2) insert the following–

“(3) In making a determination under the regulations referred to in paragraph (4) the Scottish Ministers may require any person requesting a determination to submit to a medical examination by a registered medical practitioner selected by the Scottish Ministers, and in that event, the Scottish Ministers shall–

- (a) also offer the person an opportunity of submitting a report from his own medical adviser as a result of an examination by him; and
  - (b) take that report into consideration together with the report of the medical practitioner selected by the Scottish Ministers.
- (4) The regulations referred to in paragraph (3) are–
- (a) regulations E2, E2A, E2B, E2C and E6 in relation to physical or mental incapacity;
  - (b) regulations G8(2), G11(2) and G15(2) in relation to incapacity to earn a living because of physical or mental infirmity;
  - (c) regulation H1(6) in relation to incapacity to earn a living because of permanent physical or mental infirmity;
  - (d) regulation J1(6) in relation to the member’s good health; and
  - (e) regulations E1(4)(b) and E2A(7)(b) in relation to the life expectancy of the member.”.

### **Amendment of Schedule 1**

**18.**—(1) Schedule 1 (medical and dental practitioners) is amended as follows.

(2) In paragraph 3 (meaning of “pensionable earnings”), in sub-paragraph (2)(a)(vii), after “OOH provider” insert “or other employing authority providing OOH services”.

(3) In paragraph 9 (officer service treated as practitioner service)–

- (a) for sub-paragraph (1), substitute–

“(1) Subject to sub-paragraph (3), if a member does not have more than 10 years’ officer service on first becoming a principal practitioner, the member’s officer service before first becoming a principal practitioner will be treated as practitioner service.”;

- (b) in sub-paragraph (5), omit “(early retirement pension on the grounds of ill-health)”;
- (c) in sub-paragraph (5A), omit paragraph (b);

(4) In paragraph 10 (contributions to the scheme), in sub-paragraph (3)(a), for “70” substitute “75”;

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

**19.** The National Health Service Pension Scheme (Scotland) Regulations 2008(a) are amended in accordance with regulations 20 to 77.

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

**20.**—(1) Regulation 2.A.1 (interpretation: general) is amended as follows.

(2) At the appropriate place in alphabetical order insert–

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(a) S.S.I. 2008/224.

““the 1995 Scheme” means the scheme the rules of which set out in the National Health Service Superannuation Scheme (Scotland) Regulations 1995(a);”

““the 2006 Act” means the National Health Service Act 2006(b);” and

““the 2006 Wales Act” means the National Health Service (Wales) Act 2006(c);”.

(3) In the definition of “commissioned services”, in sub paragraph (b)(ii) delete “(3)”.

(4) Before the definition of “corresponding health service scheme” insert–

““corresponding 1995 scheme” means a corresponding health service scheme the provisions of which the Scottish Ministers have determined correspond to the 1995 scheme;

“corresponding 2008 scheme” means a corresponding health service scheme the provisions of which the Scottish Ministers have determined correspond to the provisions of the scheme;”.

(5) For the definition of “corresponding health service scheme” substitute–

““corresponding health service scheme” means–

(a) a superannuation scheme provided under regulations made under section 10 of the Superannuation Act 1972(d) and having effect in England Wales;

(b) a superannuation scheme provided under article 12 of the Superannuation (Northern Ireland) Order 1972(e);

(c) a scheme made under section 2 of the Superannuation Act 1984(f) (an Act of Tynwald); or

(d) any other occupational pension scheme approved for the purposes of this regulation by the Scottish Ministers;”.

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

**21.**—(1) Regulation 2.A.2 (meaning of “pensionable service”) is amended as follows.

(2) In paragraph (6), for “2.D.5(6)(a)” substitute “2.D.5(9)(a)”.

(3) After paragraph (7) insert–

“(8) Where a member is also a member of the 1995 scheme, any reference in this Part to “45 years” shall be taken to be a reference to a shorter period determined by the formula–

$$SP = 45 \text{ years} - LPS$$

where–

SP is the shorter period, measured in years and days; and

LPS is the length of pensionable service (within the meaning of the 1995 Regulations), measured in years and days, giving rise to membership of the 1995 scheme and, in the case of a member of that scheme who has become entitled to a pension (including a preserved pension) under that scheme, including any period that was taken into account for the purpose of determining whether the member was entitled to that pension, or for the purpose of calculating the amount of that pension.”.

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(a) S.I. 1995/365, amended by S.I. 1997/1434 and 1916, 1998/1593, 1999/443, S.S.I. 2001/437 and 465, 2003/55, 270 and 517, 2005/512 and 544 and 2006/307 and 561 and 2008/92 and 226.

(b) 2006 c.41.

(c) 2006 c.42.

(d) 1972 c.11.

(e) S.I. 1972/1073.

(f) 1984 c.8 (Tynwald).

**Amendment of regulation 2.A.4**

**22.** In regulation 2.A.4 (pensionable service: breaks in service), for paragraph (3) substitute–

“(3) If a member is on leave of absence that does not fall within paragraph (1)(a) to (e), and contributes to the scheme under regulation 2.C.1 (contributions by members) by contributions made at the same intervals as those made by the member before the absence, the maximum period of such leave that can be counted as pensionable service under this paragraph is–

- (a) where the member contributes for a continuous period of 6 months commencing with the first day of the member’s leave of absence, 6 months; and
- (b) where the member contributes for a continuous period of less than 6 months commencing with the first day of the member’s leave of absence, the period in respect of which the member pays those contributions.

(3A) If, having paid contributions for the period mentioned in paragraph (3)(a) a member remains on a leave of absence that does not fall within paragraph (1)(a) to (e) and contributes to the scheme, both member contributions under regulation 2.C.1 and employer contributions under regulation 2.C.5 by contributions made at the same intervals as those made by the member before the absence, the maximum period of such leave that can be counted as pensionable service under this paragraph is–

- (a) where the member contributes for a continuous period of 18 months commencing immediately after the expiry of the period mentioned in paragraph (3)(a), 18 months; and
- (b) where the member contributes for a continuous period of less than 18 months commencing immediately after the expiry of the period mentioned in paragraph (3)(a), the period in respect of which the member pays those contributions.”.

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

**23.** In regulation 2.A.5(1)(b) (meaning of “qualifying service”), after “pension arrangement” insert “(including the 1995 scheme)”.

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

**24.—**(1) Regulation 2.A.9 (pensionable pay: breaks in service) is amended as follows.

(2) In paragraph (2), for “paragraph (3)” substitute “paragraph (7) in the case of a non-GP provider or paragraph (3) in the case of a member who is not a non-GP provider”.

(3) In paragraph (3), before “falling” insert “who is not a non-GP provider”.

(4) In paragraph (6), for “(up to 6” substitute “or (3A) (up to 24”.

(5) In paragraph (7), for “2.A.8(9)” substitute “2.A.8(8)”.

(6) For paragraph (8), substitute–

“(8) If the earnings used to calculate a member's pensionable pay cease during a period of absence to which this regulation applies–

- (a) a non-GP provider falling within paragraph (1)(a) is, subject to sub-paragraph (b), to be treated as having continued in pensionable employment for a period of 12 months from the date on which the member’s earnings ceased and the member will not be treated as having left pensionable employment until the end of that 12 month period;
- (b) a non-GP provider falling within paragraph (1)(b) to (e) who paid contributions on the basis of reduced earnings in accordance with paragraph (4)(b) will, subject to paragraph (9), continue to pay contributions at that rate, except that no refund of contributions or other benefit will be payable until the member actually leaves pensionable employment; and

- (c) a member other than a non-GP provider will, subject to paragraph (5), be treated as having left pensionable employment except that no refund of contributions or other benefit will be payable until the member actually leaves pensionable employment.
- (8A) For the purposes of paragraph (8)(a)–
  - (a) during the 12 month period, the non-GP provider’s pensionable earnings will be calculated as described in paragraph (7)(a) or (b); and
  - (b) at the end of the 12 month period, when the member is regarded as having left pensionable employment, no refund of contributions or other benefit will be payable until the member actually leaves employment.”.
- (7) In paragraph (9), after “paragraph (8)” insert “(b)”.
- (8) In paragraph (10), for “non-GP provider” wherever it appears substitute “member”.
- (9) In paragraph (11)–
  - (a) for “non-GP provider” where it twice appears substitute “member”;
  - (b) for “paragraph (7) applies” substitute “this regulation applies”; and
  - (c) for “(7)(a) or (8)” substitute “(8)(c), (8A)(b) or (10)”.
- (10) In paragraph (12), for “non-GP provider” where it appears substitute “member”.

**Amendment of regulation 2.B.1**

**25. In regulation 2.B.1(5) (eligibility: general)–**

- (a) after paragraph (d) insert–
  - “(e) the person–
    - (i) ceased to be an active member of the 1995 scheme on leaving NHS employment;
    - (ii) became a deferred member of that scheme on leaving that employment and has not become a pensioner member of that scheme between the date of leaving that employment and joining the scheme; and
    - (iii) re-entered NHS employment on or after 1st October 2008 and 5 or more years since last leaving NHS employment; or
  - (f) the person–
    - (i) ceased to be an active member of the 1995 scheme before 1st April 2008 on leaving NHS employment;
    - (ii) became a deferred member of that scheme on leaving that employment;
    - (iii) re-entered NHS employment on or after 1st October 2008 and 5 or more years since last leaving NHS employment; and
    - (iv) before the person re-entered such employment–
      - (aa) a transfer payment was made in respect of the person under Part M (transfer-out arrangements and buy-outs) of the 1995 scheme; or
      - (bb) the person made an application under regulation M2 of that scheme (exercising a right to transfer or buy-out) from which the person may not withdraw.”; and
- (b) in the full-out words, for “sub-paragraph (d)” substitute “sub-paragraphs (d) to (f)”.

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

**26. In regulation 2.B.2 (restrictions on eligibility: general), for paragraph (2)(b) substitute–**

- “(b) became a pensioner member of that scheme on or after that date; or
- (c) is a deferred member of that scheme, but is not a deferred member–
  - (i) to whom regulation 2.B.1(5)(e) or (f) applies; and

- (ii) in respect of whom permission of the Scottish Ministers to rejoin the 1995 scheme has not been granted pursuant to regulation B2(3) (age limits and restrictions on memberships) of that scheme.”.

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

27. In regulation 2.C.2(3) (members’ contribution rate), after “may” insert “, with the consent of the Treasury,”.

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

28. In regulation 2.D.7(8)(b) for “(c)” substitute “(b)(ii)”.

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

29. In regulation 2.D.9 (re-assessment of entitlement to an ill-health pension determined under regulation 2.D.8)

for paragraph 2(a), substitute–

- “(a) in the case of a member who does not engage in further NHS employment during the period of three years referred to in paragraph (1)(b), the member makes the application in writing before the end of that period; or
- (aa) in the case of a member who does engage in further NHS employment during the period of three years referred to in paragraph (1)(b), the member makes the application in writing before the first anniversary of the day on which that employment commences or before the end of that period if sooner;”.

**Amendment of regulation 2.D.10**

30. In regulation 2.D.10(1)(a) (early retirement on ill health (deferred members) before “incapable” insert “permanently”.

**Amendment of regulation 2.E.6**

31. For regulation 2.E.6(3) (recent leavers) substitute–

“(3) In this Part “recent leaver” means a deferred member who left pensionable service less than 12 months before the date of death.”.

**Insertion of new regulation 2.E.20A**

32. After regulation 2.E.20 (amount of lump sum: pension credit members), insert–

**“Pension payable when member dies on or after reaching age 75**

**2.E.20A.**—(1) If a pensioner member or a pension credit member dies–

- (a) on or after reaching age 75; and
- (b) before the fifth anniversary of the date on which the member’s pension became payable,

an annual pension, calculated in accordance with paragraph (2), may be payable from the day following the date of the member’s death until the anniversary referred to in sub-paragraph (b).

(2) The pension payable under paragraph (1) is determined by–

- (a) calculating the amount of the lump sum that would have been payable to the pensioner member or pension credit member under regulation 2.E.17(2) or, as the

case may be, 2.E.20 as if on the day the member died the member had not reached the age of 75; and

- (b) converting any amount determined in sub-paragraph (a) to an annual pension payable for the period specified in paragraph (1), by reference to guidance and tables provide by the scheme actuary for the purpose.

(3) The “beginning date” of the pension calculated in paragraph (2) will, for the purposes of the Pensions (Increase) Act 1971<sup>(a)</sup>, be the day immediately following the date of death of the pensioner member or pension credit member.

(4) The pension calculated under this regulation will be payable in accordance with regulation 2.E.21.”.

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

**33.**—(1) Regulation 2.E.21 (payment of lump sums on death) is amended as follows—

- (2) In the heading to that regulation, after “lump sums” insert “or pensions”.
- (3) In paragraph (1), after “regulation 2.E.16” insert “or a pension payable under regulation 2.E.20A.
- (4) In paragraph (2)—
  - (a) after “lump sum” insert “or pension”; and
  - (b) for “under paragraph (4) or (6)” substitute “or body under paragraph (4), (6) or (10)”.
- (5) In paragraphs (3), (4) and (6), after “lump sum” in each paragraph insert “or pension”.
- (6) In paragraph (7), after “lump sum”, where it twice occurs insert “or pension”.
- (7) After paragraph (9), insert—

“(10) The member’s personal representatives may, as part of the distribution of the member’s estate, give irrevocable notice to the Scottish Ministers—

- (a) specifying—
  - (i) one or more individuals; or
  - (ii) one incorporated or unincorporated body,to whom the benefit of the pension under regulation 2.E.20A, from the date of receipt of the notice by the Scottish Ministers, is to be assigned; and
- (b) where two or more individuals are specified under sub-paragraph (a)(i), specifying the percentage of the pension payable to each of them,

and the pension (or, as the case may be, the percentage of it specified in respect of the person) may be paid to the person or body, unless paragraph (11) applies.

- (11) This paragraph applies if—
  - (a) the person specified in the notice has died before the payment can be made;
  - (b) payment to that person is not, in the opinion of the Scottish Ministers, reasonably practicable; or
  - (c) the person to whom the pension (or a specified percentage of the pension) would otherwise be payable has been convicted of an offence specified in regulation 2.J.7(2) (forfeiture of rights to benefits) and the Scottish Ministers have directed, as a consequence of that conviction, that the person’s right to a payment in respect of the member’s death is forfeited.”.

#### **Amendment of regulation 2.E.25**

**34.** In regulation 2.E.25(5) (dual capacity membership: death benefits), after sub-paragraph (h) insert—

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(a) 1971 c.56.

“(hh) regulation 2.E.20A (pension payable when member dies on or after reaching age 75).”.

**Amendment of regulation 2.F.6**

- 35.** For regulation 2.F.6 (calculating amounts of transfer value payments) (1) and (2) substitute—
- “(1) Subject to paragraphs (2), (3) and (5), the amount of the guaranteed cash equivalent transfer value payment is to be calculated and verified by the Scottish Ministers in accordance with the Occupational Pension Schemes (Transfer Values) Regulations 1996(a).
  - (2) Before determining the factors to be used in the calculation of the member’s guaranteed cash equivalent transfer value payment, the Scottish Ministers must take advice from the Scheme actuary.”.

**Amendment of regulation 2.F.8**

- 36.**—(1) Regulation 2.F.8 (right to apply for acceptance of transfer value payment from another scheme) is amended as follows.
- (2) In paragraph (2)(a), after “scheme” insert “other than a corresponding health service scheme”.
  - (3) For paragraph (2)(d) substitute—
    - “(d) a corresponding 1995 scheme; and
    - (e) a corresponding 2008 scheme.”.
  - (4) After paragraph (2) insert—
    - “(2A) A member who makes an application for a transfer value to be accepted by the Scottish Ministers in respect of his or her rights under a corresponding 2008 scheme may not also make an application for a transfer value to be accepted in respect of his or her rights under a corresponding 1995 scheme.”.
  - (5) In paragraph (4)(a)(ii), for “purposes of that Act” substitute “purposes of the 2004 Act”.

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

- 37.**—(1) In Regulation 2.F.9 (procedure for applications under regulation 2.F.8) is amended as follows.
- (2) In paragraph (1)(e)(ii), after “those arrangements” insert “(including a transfer of rights from a corresponding 1995 scheme)”.
  - (3) In paragraph (2), for “a such” substitute “such”.

**Amendment of regulation 2.F.11**

- 38.**—(1) Regulation 2.F.11 (calculation of transferred-in pensionable service) is amended as follows.
- (2) In paragraph (6), for “corresponding health service scheme” substitute “corresponding 2008 scheme”.
  - (3) Omit paragraph (7).

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(a) S.I. 1996/1847.

**Insertion of new regulation 2.F.17**

39. After regulation 2.F.16 (EU and other overseas transfers), insert–

*“Transfers across*

**Transfers across from the 1995 Scheme**

**2.F.17.**—(1) An active member who is entitled to have a cash equivalent value calculated in respect of the entirety of the member’s rights under the 1995 scheme, or that section of a corresponding health service scheme pursuant to regulation M7 (waiver of transfer payments) of the 1995 Regulations, may apply to convert that cash equivalent value into rights under the scheme.

(2) An application under paragraph (1)–

- (a) must be made in writing using an application form provided for the purpose by the Scottish Ministers;
- (b) may only be made before the end of the period of three months beginning with the guarantee date established under regulation M7 of the 1995 Regulations;
- (c) may only be made if the member has first been furnished with a statement of the pensionable service that the member will be entitled to count under the scheme if the application is accepted by the Scottish Ministers;
- (d) must meet such other conditions as the Scottish Ministers may require; and
- (e) is irrevocable.

(3) The statement mentioned in paragraph (2)(c) must inform the member of the amount of pensionable service that will count under the scheme, and must be calculated in accordance with any guidance, tables and other relevant factors provided by the scheme actuary for that purpose.

(4) If the Scottish Ministers accept an application under paragraph (1)–

- (a) the member is entitled to count the period of pensionable service mentioned in paragraph (3) for the purposes of calculating benefits payable to or in respect of the member under the scheme; and
- (b) that period of pensionable service shall be credited to the member on the day that the Scottish Ministers received the member’s application.”.

**Amendment of regulation 2.H.2**

40. For regulation 2.H.2 (information), substitute–

“(1) A person who becomes an employed pensioner must–

- (a) inform the person’s employer in the new employment and any other person that the Scottish Ministers may specify that the old service pension is payable; and
- (b) where requested, provide any information about their relevant income in the new employment to the Scottish Ministers or to any other person that the Scottish Ministers may specify.

(2) A person who ceases to be an employed pensioner in one new employment and becomes an employed pensioner in another new employment must–

- (a) inform the person’s employer in the other new employment, and any other person that the Scottish Ministers may specify, that the old service pension is payable; and
- (b) where requested, provide any information about their relevant income in the other new employment to the Scottish Ministers or to any person that the Scottish Ministers may specify.

(3) For the meaning of “relevant income” see regulation 2.H.4.”.



**Amendment of regulation 2.J.2**

**41.** For regulation 2.J.2 (claims for benefits), substitute–

“(1) A person claiming to be entitled to benefits under this Part (“the claimant”) must make a claim in writing to the Scottish Ministers.

(2) Pursuant to such a claim, the claimant and, where appropriate, the member’s employing authority (including any previous employing authority of the member) must provide such–

- (a) evidence of entitlement;
- (b) information required in order to deal with the claim; and
- (c) authority or permission as may be necessary for the release by third parties of information in their possession relating to the claimant or member,

as the Scottish Ministers may from time to time require for the purposes of this Part.

(3) A claim referred to in paragraph (1) may be made by a person or persons other than the claimant where the Scottish Ministers so provide.

(4) Any claim for benefit required in writing under this Part, and any evidence, information, authority or permission given in connection with that claim, may be made or given by means of an electronic communication where such method of communication is approved by the Scottish Ministers from time to time.

(5) In this regulation, “electronic communication” has the same meaning as in section 15(1) of the Electronic Communications Act 2000(a).”.

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

**42.** In regulation 2.J.7(5)(c) (forfeiture of rights to benefits), for “lump sums” substitute “lump sum or pension”.

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

**43.** In regulation 2.J.9(5) (interest on late payment of benefits and refunds of contributions)–

(a) in sub-paragraph (b), after “member’s death” insert “, other than a pension payable under regulation 2.E.20A (pension payable when member dies on or after reaching age 75)”; and

(b) after sub-paragraph (e) insert–

“(f) in the case of an amount in respect of a pension under regulation 2.E.20A that is payable to–

- (i) the member’s personal representatives, the date on which any document that is by law sufficient evidence of the grant of confirmation as executor of the member, was produced to the Scottish Ministers; and
- (ii) any person or body to whom the pension has been assigned by the member’s personal representatives, the date on which the notice under regulation 2.E.21(10) was received by the Scottish Ministers.”.

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

**44.**—(1) Regulation 2.J.10 (determination of questions) is amended as follows.

(2) After paragraph (4)(c) insert–

“(cc) regulation 2.D.15(1) (option for members in serious illhealth to exchange pension for lump sum),”.

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(a) 2000 c.7.

(3) For paragraph (3) substitute–

“(3) In relation to decisions within paragraph (2), the Scottish Ministers may require any person entitled, or claiming to be entitled, to a benefit under this Part to submit to a medical examination by a registered medical practitioner selected by the Scottish Ministers and in that event, the Scottish Ministers must also offer the person an opportunity of submitting a report from the person’s own medical adviser as a result of an examination by that medical adviser, and the Scottish Ministers must take that report into consideration together with the report of the medical practitioner selected by the Scottish Ministers.”.

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

**45.** In the heading to regulation 2.J.13 (employing authority record keeping and contribution estimates), after “employing authority” insert “and certain member”.

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

**46.**—(1) Regulation 3.A.1 (interpretation: general) is amended as follows.

(2) In the definition of “active member” delete “3.D.5(9)” and substitute “3.D.5(8)”.

(3) Before the definition of “corresponding health service scheme” insert–

““corresponding 1995 scheme” means a corresponding health service scheme the provisions of which the Scottish Ministers have determined correspond to the 1995 scheme;

“corresponding 2008 scheme” means a corresponding health service scheme the provisions of which the Scottish Ministers have determined correspond to the provisions of the scheme;”;

(4) For the definition of “corresponding health service scheme” substitute–

““corresponding health service scheme” means–

- (a) a superannuation scheme provided under regulations made under section 10 of the Superannuation Act 1972<sup>(a)</sup> and having effect in England and Wales;
- (b) a superannuation scheme provided under Article 12 of the Superannuation (Northern Ireland) Order 1972<sup>(b)</sup>;
- (c) a scheme made under section 2 of the Superannuation Act 1984<sup>(c)</sup> (an Act of Tynwald) applies; or
- (d) any other occupational pension scheme approved for the purposes of this regulation by the Scottish Ministers;”.

(5) For the definition of “Contracting Health Board” substitute–

““Contracting Health Board”, in respect of a person who is a registered medical practitioner or non-GP provider who is–

- (a) a partner in a partnership–
  - (i) that is a GMS practice; or
  - (ii) that has entered into a Section 17C agreement or is an HBPMS contractor that has entered into an HBPMS contract for the provision of primary medical services;
- (b) a shareholder in a company limited by shares that is a GMS practice or a Section 17C practice or an HBPMS contractor that has entered into Section 17C agreement or HBPMS contract for the provision of primary medical services;
- (c) an individual who is a GMS practice, Section 17C practice or an HBPMS contractor,

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(a) 1972 c.11.

(b) S.I. 1972/1073.

(c) 1984 c.8 (Tynwald).

means each Health Board with which that partnership (in the case of (a)), company (in the case of (b)) or practice or contractor (in the case of (c)) has entered into an agreement or contract referred to in those provisions and (in the case of a registered medical practitioner) the relevant Health Board on whose medical performers' list that practitioner's name appears, and such a person shall be deemed to be employed by the appropriate Health Board for the purposes of this Part;”.

(6) For the definition of “OOH services ” substitute–

““OOH services” means services which are required to be provided in the out of hours period and which if provided during core hours by a GMS Practice, a Section 17C Agreement provider or a HBPMS Contactor to patients to whom the practice or contractor is required to by its GMS contract, Section 17C agreement or HBPMS contract to provide essential services, would be or would be similar to essential services;”.

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

47. In regulation 3.A.3 (meaning of “pensionable service”), for paragraph (9) substitute–

“(9) Where a member is also a member of the 1995 scheme, any reference in this Part to “45 years” shall be taken to be a reference to a shorter period determined by the formula–

$$SP = 45 \text{ years} - LPS$$

where–

SP is the shorter period, measured in years and days; and

LPS is the length of pensionable service (within the meaning of the 1995 Regulations), measured in years and days, giving rise to membership of the 1995 scheme and, in the case of a member of that scheme who has become entitled to a pension (including a preserved pension) under that scheme, including any period that was taken into account for the purpose of determining whether the member was entitled to that pension, or for the purpose of calculating the amount of that pension.”.

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

48. In regulation 3.A.4 (pensionable service: breaks in service)–

(a) in paragraph (2)–

(i) for “Subject to paragraph (5), a” substitute “A”; and

(ii) for “scheme” substitute “scheme, under regulation 3.C.1 (contributions by members) in respect of the period of absence”; and

(b) for paragraph (3) substitute–

“(3) If a member is on leave of absence that does not fall within paragraph (1)(a) to (e), and contributes to the scheme, under regulation 3.C.1 by contributions made at the same intervals as those made by the member before the absence, the maximum period of such leave that can be counted as pensionable service under this paragraph is–

(a) where the member contributes for a continuous period of 6 months commencing with the first day of the member's leave of absence, 6 months; and

(b) where the member contributes for a continuous period of less than 6 months commencing with the first day of the member's leave of absence, the period in respect of which the member pays those contributions.

(3A) If, having paid contributions for the period mentioned in paragraph (3)(a) a member remains on a leave of absence that does not fall within paragraph (1)(a) to (e) and contributes to the scheme both member contributions under regulation 3.C.1 and

employer contributions under regulation 3.C.3 by contributions made at the same intervals as those made by the member before the absence, the maximum period of such leave that can be counted as pensionable service under this paragraph is–

- (a) where the member contributes for a continuous period of 18 months commencing immediately after the expiry of the period mentioned in paragraph (3)(a), 18 months; and
- (b) where the member contributes for a continuous period of less than 18 months commencing immediately after the expiry of the period mentioned in paragraph (3)(a), the period in respect of which the member pays those contributions.”.

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

**49.** In regulation 3.A.5(1)(b) (meaning of “qualifying service”), after “pension arrangement” insert “(including the 1995 scheme)”.

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

**50.** In regulation 3.A.7(2)(a)(vii) (meaning of “pensionable earnings”), after “OOH provider” insert “or other employing authority providing OOH services”.

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

**51.** In regulation 3.A.8 (pensionable earnings: breaks in service)–

- (a) in paragraph (2)(a), for “regulation 3.C.1” substitute “regulations 3.C.1 and 3.C.2”;
- (b) in paragraph (8), for “(3)(a) or (4)” substitute “(5)(b) or (7)”;
- (c) after paragraph (9) insert–

“(10) For the purposes of making contributions to the scheme under regulations 3.C.1 and 3.C.3, during any period of absence which counts as pensionable service under regulation 3.A.4(3) or (3A), amounts equal to the rate of the member’s pensionable earnings calculated as described in paragraph (3)(a) or (b) of this regulation are treated as pensionable earnings.”.

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

**52.** In regulation 3.B.1(5) (eligibility: general)–

- (a) in sub-paragraph (d) delete from “ but sub-paragraph (d) will not” to the end; and
- (b) for paragraph (e) substitute–

“(e) the person–

- (i) ceased to be an active member of the 1995 scheme on leaving NHS employment;
  - (ii) became a deferred member of that scheme on leaving that employment and has not become a pensioner member of that scheme between the date of leaving that employment and joining the scheme set out in this Part; and
  - (iii) re-entered NHS employment on or after 1st October 2008 and 5 or more years since last leaving NHS employment; or
- (f) the person–
- (i) ceased to be an active member of the 1995 scheme before 1st April 2008 on leaving NHS employment[?];
  - (ii) became a deferred member of that scheme on leaving NHS employment [?];
  - (iii) re-entered NHS employment on or after 1st October 2008 and 5 or more five years since last leaving NHS employment; and

- (iv) before the person re-entered such employment–
  - (aa) a transfer payment was made in respect of the person under Part M of the scheme, or
  - (bb) the person made an application under regulation M2 of that scheme (exercising a right to transfer or buy-out) from which the person may not withdraw,

but sub-paragraphs (d) to (f) will not apply if the Scottish Ministers have permitted such a person to rejoin the 1995 scheme in the circumstances described in regulation B2(3) of the 1995 Regulations.”.

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

- 53.** In regulation 3.B.2 (restrictions on eligibility: general), for paragraph (1)(b) substitute–
- “(b) became a pensioner member of that scheme on or after that date; or
  - (c) is a deferred member of that scheme, but is not a deferred member–
    - (i) to whom regulation 3.B.1(5)(e) or (f) applies; and
    - (ii) in respect of whom permission of the Scottish Ministers to rejoin the 1995 scheme has not been granted pursuant to regulation B2(3) of that scheme.”.

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

- 54.** In regulation 3.B.5(7) (opting out of the scheme)–
- (a) after “contribute to the scheme” insert “in respect of one or more employments as a practitioner under this Part must do so”; and
  - (b) before “may” insert “but”.

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

- 55.** In regulation 3.C.2 (members’ contribution rate)–
- (a) in paragraph (3), after “may” insert “, with the consent of the Treasury,”; and
  - (b) in the full-out words of paragraph (8), for “paragraph (5) of this regulation in respect of the earlier service” substitute “regulation 2.C.2 in respect of the earlier officer service”.

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

**56.** In the heading to regulation 3.D.6 (increase in pensionable earnings following exercise of option under regulation 3.D.5), for “pensionable earnings” substitute “level of engagement”.

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

- 57.** In regulation 3.D.8 (re-assessment of entitlement to an ill-health pension determined under regulation 3.D.7)–
- (a) paragraphs (2)(b) and (c) shall be re-numbered (c) and (d) respectively; and
  - (b) for paragraph 2(a), substitute–
    - “(a) in the case of a member who does not engage in further NHS employment during the period of three years referred to in paragraph (1)(b), the member makes the application in writing before the end of that period; or
    - (b) in the case of a member who does engage in further NHS employment during the period of three years referred to in paragraph (1)(b), the member makes the application in writing before the first anniversary of the day on which that employment commences or before the end of that period if sooner,”.

**Amendment of regulation 3.D.9**

58. In regulation 3.D.9(1)(a) (early retirement on ill-health (deferred members)), before “incapable” insert “permanently”.

**Amendment of regulation 3.E.6**

59. For regulation 3.E.6(3) (recent leavers) substitute–

“(3) In this Part “recent leaver” means a deferred member who left pensionable service less than 12 months before the date of death.”.

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

60. In regulation 3.E.10(2) (amount of children’s pension under regulation 3.E.8: deceased active members), for “paragraphs (6) and (7)” substitute “paragraphs (5) and (6)”.

**Insertion of new regulation 3.E.20A**

61. After regulation 3.E.20 (amount of lump sum: pension credit members), insert–

**“Pension payable when member dies on or after reaching age 75**

**3.E.20A.**—(1) If a pensioner member or a pension credit member dies–

- (a) on or after reaching age 75; and
- (b) before the fifth anniversary of the date on which the member’s pension became payable,

an annual pension, calculated in accordance with paragraph (2), may be payable from the day following the date of the member’s death until the anniversary referred to in sub-paragraph (b).

(2) The pension payable under paragraph (1) is determined by–

- (a) calculating the amount of the lump sum that would have been payable to the pensioner member or pension credit member under regulation 3.E.17(2) or, as the case may be, 3.E.20, as if on the day the member died the member had not reached the age of 75; and
- (b) converting any amount determined in sub-paragraph (a) to an annual pension payable for the period specified in paragraph (1), by reference to guidance and tables provide by the scheme actuary for the purpose.

(3) The “beginning date” of the pension calculated in paragraph (2) will, for the purposes of the Pensions (Increase) Act 1971(a), be the day immediately following the date of death of the pensioner member or pension credit member.

(4) The pension calculated under this regulation will be payable in accordance with regulation 3.E.21.”.

**Amendment of regulation 3.E.21**

62.—(1) Regulation 3.E.21 (payment of lump sums on death) is amended as follows–

- (2) In the heading after “lump sums” insert “or pensions”.
- (3) In paragraph (1), after “regulation 3.E.16” insert “or a pension payable under regulation 3.E.20A.
- (4) In paragraph (2)–

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(a) 1971 c.56.

- (a) after “lump sum” insert “or pension”; and
  - (b) for “under paragraph (4) or (6)” substitute “or body under paragraph (4), (6) or (10)”.
- (5) In paragraphs (3), (4) and (6), after “lump sum” in each paragraph insert “or pension”.
- (6) In paragraph (7), after “lump sum” (twice) insert “or pension”.
- (7) After paragraph (9), insert–
- “(10) The member’s personal representatives may, as part of the distribution of the member’s estate, give irrevocable notice to the Scottish Ministers–
- (a) specifying–
    - (i) one or more individuals; or
    - (ii) one incorporated or unincorporated body,to whom the benefit of the pension under regulation 3.E.20A from the date of receipt of the notice by the Scottish Ministers is to be assigned; and
  - (b) where two or more individuals are specified, specifying the percentage of the pension payable to each of them,
- and the pension (or, as the case may be, the percentage of it specified in respect of the person) may be paid to the person or body, unless paragraph (11) applies.
- (11) This paragraph applies if–
- (a) the person specified in the notice has died before the payment can be made;
  - (b) payment to that person is not, in the opinion of the Scottish Ministers, reasonably practicable; or
  - (c) the person to whom the pension (or a specified percentage of the pension) would otherwise be payable has been convicted of an offence specified in regulation 3.J.7(2) (forfeiture of rights to benefit) and the Scottish Ministers have directed, as a consequence of that conviction, that the person’s right to a payment in respect of the member’s death is forfeited.”.

**Amendment of regulation 3.E.25**

- 63.** After regulation 3.E.25(5)(h) (dual capacity membership: death benefits), insert–
- “(hh) regulation 3.E.20A (pension payable when member dies on or after age 75);”.

**Amendment of regulation 3.F.6**

- 64.** In regulation 3.F.6 (calculating amounts of transfer value payments), for paragraphs (1) and (2) substitute–
- “(1) Subject to paragraphs (2), (3) and (5) the amount of the guaranteed cash equivalent transfer value payment is to be calculated and verified by the Scottish Ministers in accordance with the Occupational Pension Schemes (Transfer Values) Regulations 1996(a).
  - (2) Before determining the factors to be used in the calculation of the member’s guaranteed cash equivalent, the Scottish Ministers must take advice from the scheme actuary.”.

**Amendment of regulation 3.F.8**

- 65.**—(1) Regulation 3.F.8 (right to apply for acceptance of transfer value payment from another scheme) is amended as follows.
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- (2) In paragraph (2)(a), after “scheme” insert “other than a corresponding health service scheme”.

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(a) S.I. 1996/1847.

(3) For paragraph (2)(d) substitute–

- “(d) a corresponding 1995 scheme; and
- (e) a corresponding 2008 scheme.”.

(4) After paragraph (2) insert–

“(2A) A member who makes an application for a transfer value to be accepted by the Scottish Ministers in respect of his rights under a corresponding 2008 scheme may not also make an application for a transfer value to be accepted in respect of his rights under a corresponding 1995 scheme.”.

(5) In paragraph (4)(a)(ii), for “purposes of that Act” substitute “purposes of the 2004 Act”.

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

**66.** In regulation 3.F.9(1)(d)(ii) (procedure for applications under regulation 3.F.8), after “those arrangements” insert “(including a transfer of rights from a corresponding 1995 scheme)”.

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

**67.**—(1) Regulation 3.F.11 (calculation of transferred-in pensionable service) is amended as follows.

(2) For paragraph (2) substitute–

“(2) Subject to paragraph (4), for the purposes of the calculation under paragraph (1), the benefits in respect of the transfer payment will be calculated by increasing the member’s pensionable earnings for–

- (a) the financial year in which the member joined the scheme; or
- (b) the financial year in which the transfer payment is received if the payment is received more than 12 months after the member joined the scheme.”.

(3) In paragraph (3)(b), for “final year’s pensionable” substitute “reckonable”.

(4) In paragraph (3)(c), for “final year’s pensionable” substitute “reckonable”.

(5) In paragraph (4), for “paragraph (3)” substitute “paragraph (2)(b)”.

(6) In paragraph (6), for “corresponding health service scheme” substitute “corresponding 2008 scheme”.

(7) Omit paragraph (7).

#### **Insertion of new regulation 3.F.17**

**68.** After regulation 3.F.16 (EU and other overseas transfers), insert–

*“Transfers across*

#### **Transfers across from the 1995 Scheme**

**3.F.17.**—(1) An active member who is entitled to have a cash equivalent value calculated in respect of the entirety of the member’s rights under the 1995 scheme, pursuant to regulation M7 of the 1995 Regulations, may apply to convert that cash equivalent value into rights under this scheme.

(2) An application under paragraph (1)–

- (a) must be made in writing using an application form provided for the purpose by the Scottish Ministers;
- (b) may only be made before the end of the period of three months beginning with the guarantee date established under regulation M7 of the 1995 Regulations;



- (c) may only be made if the member has first been furnished with a statement of the pensionable service and increase in pensionable earnings that the member will be entitled to count under this scheme if the application is accepted by the Scottish Ministers;
- (d) must meet such other conditions as the Scottish Ministers may require; and
- (e) is irrevocable.

(3) The statement mentioned in paragraph (2)(c) must inform the member of the amount of pensionable service and increase in pensionable earnings that will count under this scheme, and must be calculated in accordance with any guidance, tables and other relevant factors provided by the scheme actuary for that purpose.

(4) The amount of the increase in pensionable earnings mentioned in paragraph (3) is calculated by–

- (a) treating the member as entitled to a period of officer service equal to the period of employment that qualified the member for the rights in the 1995 scheme;
- (b) calculating the reckonable pay that would have given rise to a cash equivalent in respect of officer service under regulation 2.F.6 (calculating amounts of transfer value payments); and
- (c) increasing the member’s pensionable earnings by an amount equal to the pensionable pay that the member would have received during that period of officer service if the member’s pensionable pay had been equal to the reckonable pay mentioned in paragraph (b) throughout that period.

(5) The amount of pensionable service mentioned in paragraph (3) will be equal to the period of employment that qualified the member for the rights in the 1995 scheme.

(6) If the Scottish Ministers accept an application under paragraph (1)–

- (a) the member is entitled to count the period of pensionable service mentioned in paragraph (3) for the purposes of calculating benefits payable to or in respect of the member under this scheme;
- (b) that period of pensionable service shall be credited to the member on the day that the Scottish Ministers received the member’s application;
- (c) the member is entitled to count the increase in pensionable earnings calculated under paragraph (4) for the purposes of calculating benefits payable to or in respect of the member under this scheme, and
- (d) that increase in pensionable earnings shall be credited to the member in the financial year during which the day that the Scottish Ministers received the member’s application falls.”.

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

**69.** For regulation 3.H.2 (information), substitute–

“(1) A person who becomes an employed pensioner must–

- (a) inform the person’s employer in the new employment and any other person that the Scottish Ministers may specify that the old service pension is payable; and
- (b) where requested, provide any information about their relevant income in the new employment to the Scottish Ministers or to any other person that the Scottish Ministers may specify.

(2) A person who ceases to be an employed pensioner in one new employment and becomes an employed pensioner in another new employment must–

- (a) inform the person’s employer in the other new employment, and any other person that the Scottish Ministers may specify, that the old service pension is payable; and

- (b) where requested, provide any information about their relevant income in the new employment to the Scottish Ministers or to any other person that the Scottish Ministers may specify.

(3) For the meaning of “relevant income” see regulation 3.H.4. (meaning of “relevant income”).

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

**70.** For regulation 3.J.2 (claims for benefits), substitute–

“(1) A person claiming to be entitled to benefits under this Part (“the claimant”) must make a claim in writing to the Scottish Ministers.

(2) Pursuant to such a claim, the claimant and, where appropriate, the member’s employing authority (including any previous employing authority of the member) must provide such–

- (a) evidence of entitlement;
- (b) information required in order to deal with the claim; and
- (c) authority or permission as may be necessary for the release by third parties of information in their possession relating to the claimant or member,

as the Scottish Ministers may from time to time require for the purposes of this Part.

(3) A claim referred to in paragraph (1) may be made by a person or persons other than the claimant where the Scottish Ministers so provides.

(4) Any claim for benefit required in writing under this Part, and any evidence, information, authority or permission given in connection with that claim, may be made or given by means of an electronic communication where such method of communication is approved by the Scottish Ministers.

(5) In this regulation, “electronic communication” has the same meaning as in section 15(1) of the Electronic Communications Act 2000(a).

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

**71.** In regulation 3.J.7(5)(c) (forfeiture of rights to benefits), after “lump sum” insert “or pension”.

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

**72.** In regulation 3.J.9(5) (interest on late payment of benefits and refunds of contributions)–

- (a) in sub-paragraph (b), after “member’s death” insert “, other than a pension payable under regulation 3.E.20A (pension payable when member dies on or after reaching age 75)”; and

- (b) after sub-paragraph (e) insert–

“(f) in the case of an amount in respect of a pension under regulation 3.E.20A that is payable to–

- (i) the member’s personal representatives, the date on which any document that is by law sufficient evidence of the grant of confirmation as executor of the member, was produced to the Scottish Ministers;
- (ii) any person or body to whom the pension has been assigned by the member’s personal representatives, the date on which the notice under regulation 3.E.21(10) was received by the Scottish Ministers.”.

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(a) 2000 c.7.

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

**73.** In regulation 3.J.10(determination of questions)–

(a) after paragraph (4)(c) insert–

“(cc) regulation 3.D.11(1) (option for members in serious ill-health to exchange pension for lump sum),”; and

(b) for paragraph (3) substitute–

“(3) In relation to decisions within paragraph (4), the Scottish Ministers may require any person entitled, or claiming to be entitled, to a benefit under this Part to submit to a medical examination by a registered medical practitioner selected by the Scottish Ministers and in that event, the Scottish Ministers must also offer the person an opportunity of submitting a report from the person’s own medical adviser as a result of an examination by that medical adviser, and the Scottish Ministers must take that report into consideration together with the report of the medical practitioner selected by the Scottish Ministers.”.

**Amendment of regulation 3.J.14**

**74.** Regulation 3.J.14 is amended as follows–

(a) For regulation 3.J.14 substitute “Employing authority and certain member record keeping and contribution estimates”.

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(b) For paragraph (1) substitute–

(2)

“(1) As regards a member who is a principal medical practitioner, in respect of each financial year–

(a) the member must provide each relevant contracting health board or someone acting on its behalf, with a certificate of their pensionable earnings based on–

(i) the accounts drawn up in accordance with generally accepted accounting practice by the practice of which the member is a member; and

(ii) the return that member has made to Her Majesty’s Revenue & Customs in respect of his or her earnings for that year,

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

(b) a contracting health board or someone acting on its behalf, must forward to the Scottish Ministers a copy of the records maintained under regulation 3.C.5(17)(b) within 1 month of the end of the financial year immediately following the financial year to which the return in paragraph (1)(a)(ii) relates.”.

**Amendment of regulation 4.A.2**

**75.** In regulation 4.A.2 (interpretation: general), for the definition of “principal practitioner” substitute–

““principal practitioner” has the same meaning as in Part 3;”.

**Amendment of regulation 4.D.1**

**76.** After regulation 4.D.1(4) (pensionable service limit), insert–

“(5) Where a member is also a member of the 1995 scheme, any reference in this Part to “45 years” shall be taken to be a reference to a shorter period determined by the formula–

$$SP = 45 \text{ years} - LPS$$

where–

SP is the shorter period, measured in years and days; and

LPS is the length of pensionable service (within the meaning of the 1995 Regulations), measured in years and days, giving rise to membership of the 1995 scheme and, in the case of a member of that scheme who has become entitled to a pension (including a preserved pension) under that scheme, including any period that was taken into account for the purpose of determining whether the member was entitled to that pension, or for the purpose of calculating the amount of that pension.”.

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

77. In regulation 4.D.2 (applications, claims and notices), for the table substitute–

<i>Column 1</i>	<i>Column 2</i>
<i>Regulation in Part 2</i>	<i>Regulation in Part 3</i>
2.D.1	3.D.1
2.D.8	3.D.7
2.D.10	3.D.9
2.D.14	3.D.10
2.D.15	3.D.11
2.D.18	3.D.14
2.E.2	3.E.2
2.E.21	3.E.21
2.F.2	3.F.2
2.F.3	3.F.3

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

78.—(1) The National Health Service (Injury Benefits) (Scotland) Regulations 1998(a) is amended as follows.

(2) In regulation 4 (scale of benefits), for paragraph (4)(6)(a) substitute–

- “(a) any pension payable to the person under a relevant pension scheme, disregarding any–
- (i) reduction in the amount of that pension under regulation T5 or T6 of the 1995 Regulations (offset for crime, negligence or fraud and loss of rights to benefits) or regulation 2.J.6, 3.J.6, 2.J.7 or 3.J.7 (reduction in benefits in cases where loss caused by member’s crime, negligence or fraud and forfeiture of right to benefits) of the 2008 Regulations;
  - (ii) reduction in the amount of that pension under regulation E2A(7) or E7 (lump sum for members in serious ill-health and general option to exchange part of pension for lump sum) of the 1995 Regulations or regulation 2.D.14, 2.D.15, 3.D.10 or 3.D.11 (general option to exchange part of pension for lump sum and option for members in serious ill-health to exchange whole pension for lump sum) of the 2008 Regulations; and

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(a) S.I. 1998/1594 as amended by S.I. 1999/195 and 444, S.S.I. 2001/437, 2004/212, 2005/512 and 2008/92.

- (iii) increase in the amount of that pension, under the Pensions (Increase) Act 1971, after the date at which the average remuneration used in the calculation of the allowance was calculated;”

St Andrew’s House,  
Edinburgh

2008

Authorised to sign by the Scottish Ministers

We consent

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

**EXPLANATORY NOTE**

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

These Regulations further amend The National Health Service Superannuation Scheme (Scotland) Regulations 1995.