

ANNEX

All amendments are a consequence of THE FINANCE ACT 2004 (c.12). Proposed changes are as follows: -

1. Regulation 1 – Citation, commencement, effect, interpretation and extent

1.1 This paragraph names the amending regulations as:

“THE NATIONAL HEALTH SERVICE (SUPERANNUATION SCHEME AND ADDITIONAL VOLUNTARY CONTRIBUTIONS) (SCOTLAND) AMENDMENT REGULATIONS 2006”

1.2 It is expected that the amending regulations will come into force at the end of June 2006 although, making use of retrospective powers, the amendments will have effect from 6 April 2006.

REGULATIONS 2 – 17, MAKING AMENDMENTS TO NATIONAL HEALTH SERVICE SUPERANNUATION SCHEME (SCOTLAND) REGULATIONS 1995

2. Regulation 2 – *Amendment of Regulation A2 (interpretation).*

2.1 “**lump sum rule**” and “**lump sum death benefit rule**” and their meaning as defined in sections 166 and 168 of the Finance Act 2004 (“FA 04”) are included for the purposes of amendments to regulations E2 (early retirement pension (ill health)), T7 (commutation of trivial pensions) and W15 (commutation of small pensions on pension sharing on divorce or nullity of marriage). The amendments ensure that benefits may only be commuted to a lump sum under these regulations where FA 04 requirements are met.

2.2 “**normal minimum pension age**” and “**protected pension age**” are included for the purposes of amendments to regulations E3 (early retirement pension (redundancy)), E4 (early retirement pension (employer’s consent)) E5 (early retirement pension (with actuarial reduction) and E6 (preserved pension).). See explanation of amendments at Regulations **5, 6 and 7**.

2.3 The definitions of “**occupational Pension Scheme**” and “**personal pension scheme**” are amended for the purposes of regulations at Parts ‘M’ (Transfers and buy outs) and ‘N’ (transfers from other pension arrangements). The new definitions allow for transfers to and from appropriate registered pension schemes.

MIS-SOLD PENSIONS

3. Regulation 3– *Amendment of Regulation B6 (opting into the scheme: mis-sold pensions)*

The definition of “personal pension scheme” in Regulation B6(4) is amended to ensure that the regulation may operate in the case of personal pension schemes who are ‘registered schemes’ for the purpose of the FA 04.

EARLY RETIREMENT PROVISIONS

4. Regulation 4(1), (2) and (3) - *Amendments to Regulation E2 (Early retirement pension (ill health))*

4.1 Regulation E2(7) is amended to ensure that the circumstances in which ill health benefits may be commuted to a lump sum are consistent with FA 04 requirements.

4.2 E2(10) is amended to remove the requirement that ill health benefits paid as a lump sum represents benefits in excess of any guaranteed minimum pension only.

5. Regulation 5, 6 and 7 together with the new definitions for “normal minimum pension age**” and “**protected pension age**”– *Amendments to Regulations E3 (Early retirement pension***

(*redundancy*)), *E4 (Early retirement pension (employer's consent))* and *E5 (Early retirement pension (with actuarial reduction))*).

Finance Act 2004 requirements

5.1 The FA 04 requires schemes to adopt a new minimum pension age (mpa) of 55 by 6 April 2010. For new members joining on or after 6 April 2006, all scheme membership from that date must become subject to mpa 55 from 6 April 2010 or the date the scheme chooses to move to mpa 55 if sooner.

5.2 The FA 04 also provides for the protection of an existing and a returning member's current minimum pension age (50) from 6 April 2010 where certain entitlement and retirement conditions are satisfied. In brief, the FA 04 conditions for such protection are:

- **Entitlement Condition**

On 5 April 2006 the member must have had an actual or prospective right to an early retirement provision accessible at age 50. (NHS Pension Scheme members who are active on 5 April 2006 and members with deferred benefits who left on or after 31 March 2000 meet this condition).

- **Retirement Condition**

Having met the first condition, members who retire between the ages of 50 and 55 after 6 April 2010 must take all benefits under the scheme.

NHS Pension Scheme Regulations E3, E4 E5

5.3 Regulations E3, E4 and E5 are amended so that references to 'age 50' are replaced with references to '**normal minimum pension age**' or, where relevant, '**protected pension age**'. This will ensure that the regulations comply with FA 04 requirements **from 6 April 2010** and, beyond that date, that current mpa of 50 is protected under all of the circumstances permitted by the FA 04. To ensure full coverage the regulations now provide a direct link in the regulations to the definitions of 'normal minimum pension age' at section 279 of the FA 04 and with the 'protection conditions' to be met in order for an mpa 50 to operate after 6 April 2010 at Part 3 of Schedule 36 to the FA 04.

5.4 For members who are active on 5 April 2006 this will mean:

- **Their minimum pension age remains at age 50 until 6 April 2010**
- **From 6 April 2010 they will have a protected pension age of 50 but will be required to take all benefits under the scheme if they retire between age 50 and normal minimum pension age 55.**

5.5 Protected pension age (50) for members with deferred benefits on 5 April 2006

The entitlement condition is only met by deferred members who left the scheme on or after 31 March 2000 because on 5 April 2006 they had a prospective or actual right to claim their preserved benefits from age 50, with an actuarial reduction (provided by regulation E6 (3(d) of the Scheme). Deferred members who left before 31 March 2000 do not meet the entitlement condition.

5.6 For members with deferred pensions on 5 April 2006 who return to active membership on or after 6 April 2006 the FA 04 and the E3, E4 and E5 amendments will mean:

- **Their minimum pension age remains at age 50 until 6 April 2010**
- **From 6 April 2010 members who were active after 30 March 2000 will have a protected pension age of 50 but will be required to take all benefits under the scheme if they retire between age 50 and normal minimum pension age 55**
- **From 6 April 2010 those who were not active after 30 March 2000 will have a normal minimum pension age of 55 years for all membership.**

5.7 Normal Minimum Pension Age for new members joining after 6 April 2006

For new members joining on or after 6 April 2006 who do not qualify for a protected minimum pension age the FA 04 and the E3, E4 and E5 amendments will mean:

- **Their minimum pension age remains at age 50 until 6 April 2010**
- **From 6 April 2010 they will have a normal minimum pension age of 55 years for all membership.**

EARLY LEAVERS – PRESERVED PENSIONS

6. Regulation 8 – Amendments to regulation E6 (preserved pension)

6.1 Regulation E6 is amended so that references to ‘age 50’ are replaced with references to ‘**normal minimum pension age**’ or, where relevant, ‘**protected pension age**’.

6.2 This will ensure that the Scheme Regulations comply with FA 04 requirements **from 6 April 2010 and for members who leave the scheme with preserved benefits after 6 April 2006 this will mean:**

- **Members with a ‘protected pension age’ will be able to claim their preserved benefits (with an actuarial reduction) at age 50.**
- **Members who do not have a ‘protected pension age’ will be able to claim their preserved benefits (with an actuarial reduction) at age 50 if they reach that age before 6 April 2010, but, otherwise will not be able to claim them until age 55.**

LUMP SUM ON RETIREMENT

7. Regulation 9(1), (2) and (3) – Amendments to Regulation E7 (Lump sum on retirement)

Under the provisions of the FA 04 a pension commencement lump sum paid to a member over the age of 75 years will be an unauthorised payment. Regulation E7 is amended to reflect this restriction. The further amendment to E7 provides for an actuarial enhancement to be applied to the pension where a lump sum cannot be paid to a member over age 75.

REFUNDS

8. Regulation 10 - Amendments to Regulation E9 (refund of contributions)

The FA 04 introduces a two-tier tariff for the deduction of tax from a refund of contributions. The amendment to regulation E9 takes account of this.

LUMP SUM ON DEATH AFTER PENSION BECOMES PAYABLE

9. Regulation 11 - Addition of paragraphs (3) and (4) to Regulation F2 (member dies after pension becomes payable)

Members whose pension commences on or after 6th April 2006

9.1 Regulation F2 is amended to permit members retiring after 6 April 2006 to elect for any lump sum on death after retirement to be treated as a ‘Pension Protection Lump Sum Death Benefit’ for the purposes of the FA 04. This will mean that any amount paid is not subject to a lifetime allowance test but will be subject to an automatic tax charge at the rate of 35%. The Scheme Administrator is responsible for deducting this charge.

9.2 In the absence of such an election from a member retiring on or after 6 April 2006, any payment made under regulation F2 will be treated as a ‘Defined Benefit Lump Sum Death Benefit’ for the purposes of the FA 04. This means that any payment made will only attract a tax charge where the lifetime allowance is exceeded. The tax charge is 55% of any excess over the lifetime allowance and is the responsibility of the member’s personal representatives.

10. Regulation 11 – *Addition of paragraph (5) to Regulation F2*

Transitional arrangements for members whose pension commenced before 6 April 2006

Regulation F2 is also amended in accordance with the FA 04 transitional provisions for members who retired before 6 April 2006. The further amendment provides for any lump sum on death paid to members in this category to be treated automatically as a ‘Pension Protection Lump Sum Death Benefit’ but the tax charge of 35% will not apply.

CHILD ALLOWANCES

11. Regulation 12(1), (2) and (3) – *Amendments to Regulation H1(dependent child)*

Members whose pension commences on or after 6th April 2006

The FA 04 restricts the payment of child allowances after the age of 23 to children who are dependent on the member at the date of death and are at that time incapable of earning a living because of permanent mental or physical infirmity. The amendments to regulation H1(3) ensure that, in circumstances other than those described above, recipients over the age of 17 and in full time education will cease to qualify as a dependent child at age 23.

12. Regulation 12(5) – *Addition of paragraph (7) to Regulation H1(dependent child)*

Transitional arrangements for members and recipients of child allowances who were in receipt of payment before 6 April 2006

12.1 The further amendment to regulation H1 reflects the FA 04 transitional provisions for members receiving pension payments before 6 April 2006 and for child allowances already in payment on that date. The amendment allows the rules to operate without the effect of the 2006 amendments for members and children in this category.

12.2 This means that, after the age of seventeen, recipients of child allowances already in payment and recipients (born on or before 5th April 2007) of allowances that come into payment following the death of a member who retired before 6 April 2006:

- qualify as a dependant until full time education ceases
- continue to qualify as a dependent child whilst they are incapable of earning a living because of permanent mental or physical infirmity, not present at the time the member died, but from which they began to suffer whilst qualifying as a dependent child.

ALLOCATION OF PENSION

13. Regulation 13 - *Amendments to Regulation J1 (allocation of pension)*

Once in payment, the FA 04 prevents a pension from being reduced for reasons other than abatement and suspension under Part S or national insurance modification. Regulation J1 currently permits the making of an election to allocate part of a pension to a dependant up until one month after the pension comes into payment. The amendment ensures that after 6 April 2006 elections to allocate can only be made before the date on which the member’s pension comes into payment.

TRANSFERS

14. Regulation 14 – *Amendments to Regulation N1 (member’s right to transfer accrued rights to benefits to the scheme)*

The amendment substitutes a new paragraph (1) of regulation N1, restating the existing transfer rights and updating to include reference to ‘Free Standing AVC Schemes’ to take account of those registered for the purpose of the FA 04. Transfers from this type of scheme into the main NHS Scheme are not permitted.

DEDUCTION OF TAX

15. Regulation 15 – *insertion of Regulation T2A (Deduction of Tax)*

15.1 New Regulation T2A(1). The FA 04 defines the role and responsibilities of the ‘Scheme Administrator’ in relation to the taxation of pension benefits and related event reporting. This amendment confirms that the ‘Business Services Authority’ is the Scheme Administrator for the NHS Pension Scheme.

15.2 New Regulation T2A(2). This amendment gives the Scheme Administrator authority to pay a lifetime allowance charge due under the FA 04.

15.3 New Regulations T2A(3), (4), (5) and (6). HMRC have agreed that members whose lifetime allowance is subject to ‘enhanced protection’ under the FA 04 may continue to contribute to a defined benefit scheme as long as the increase in benefits between 6 April 2006 and retirement does not exceed a set limit. The limit is termed ‘relevant benefit accrual’. Where this limit is exceeded ‘enhanced protection’ is lost. Members may protect their position by voluntarily opting out of the NHS Pension Scheme at a point before the limit is breached. Alternatively, this amendment provides a ‘safety- net’ option to waive rights to personal benefits above the limits at retirement in order to retain enhanced protection. Where personal benefits above the limits are waived, contributions will remain payable by the member and the employer. The waiver will not affect any pensions subsequently payable to dependants and benefits would not be reduced if the member died after the waiver had been accepted by the ‘Scheme Administrator’ but before their last day of scheme membership.

15.4 New Regulations T2A (7), (8), (9) and (10). At retirement the FA 04 requires Scheme Administrators to establish each member’s position in relation to the lifetime allowance. Where enhanced protection is claimed the FA 04 requires members to provide the scheme with the reference number issued by HMRC. This amendment requires the member to provide the information necessary for the Scheme Administrator to discharge their responsibilities at retirement. Where the member does not provide all information needed within a reasonable period of time, the Scheme Administrator may treat the whole amount payable as a chargeable benefit.

15.5 New Regulation T2A (11). Where a member makes an election under the amended regulation F2 to have any lump sum on death treated as a ‘Pension Protection Lump Sum’, this amendment provides for the deduction of tax at the rate of 35% from any amount that becomes payable.

15.6 New Regulation T2A (12). This amendment confirms that for the purpose of regulation T2A the terms ‘appropriate limit’ and ‘relevant benefit accrual’ are to be construed in accordance with Schedule 36 of the FA 04.

COMMUTATION OF TRIVIAL PENSIONS

16. Regulation 16 – *Amendment of Regulation T7 (commutation of trivial pensions)*

Regulation T7 is amended to ensure that the circumstances in which a trivial pension may be commuted to a lump sum payment are consistent with FA 04 requirements.

COMMUTATION OF TRIVIAL PENSION CREDITS

17. Regulation 17 – *Amendment of Regulation W15 (commutation of small pensions on pension sharing on divorce or nullity of marriage)*

The Regulation is amended to ensure that the circumstances in which a pension credit may be commuted to a lump sum payment are consistent with FA 04 requirements.

REGULATIONS 18 – 32, MAKING AMENDMENTS TO NATIONAL HEALTH SERVICE SUPERANNUATION SCHEME (SCOTLAND) (ADDITIONAL VOLUNTARY CONTRIBUTIONS) REGULATIONS 1998

PART 1 PRELIMINARY

18. Regulation 18 - Amendment of Regulation 2 (interpretation)

18.1 This amendment inserts appropriate FA 04 and related references, “registered pension scheme”, “lifetime allowance”, “pension commencement lump sum”, and “personal pension scheme” and clarifies their meaning.

18.2 It removes obsolete references to “the Taxes Act” (Income and Corporation Taxes Act 1988) and related references to “approved pension schemes”, “retirement benefits scheme” and “free standing additional voluntary contributions scheme”

Part II ADDITIONAL VOLUNTARY CONTRIBUTIONS

19. Regulation 19 - Amendment of Regulation 3 (making and acceptance of elections)

This amendment replaces the obsolete reference to section 594(1) of the Taxes Act (exempt statutory schemes) with a reference to Section 190 (annual limit of relief) of the FA 04.

20. Regulation 20 - Amendment of Regulation 4 (payment and amount of additional voluntary contributions)

This amendment takes account of increases to the annual contribution limit provided for in the FA 04. It permits members to make NHS Money Purchase AVC Scheme contributions of up to 100% of NHS salary (less contributions being made to other registered schemes including the NHS Pension Scheme).

21. Regulation 21 - Amendment of Regulation 6 (circumstances in which elections cease to have effect)

This amendment replaces the reference to section 594(1) of the Taxes Act (exempt statutory schemes) with a reference to section 190 of the 2004 Act (annual limit of relief).

22. Regulation 22 - Amendment of Regulation 8 (inward transfers)

This amendment provides for transfers into the NHS Money Purchase AVC Scheme from other additional contribution schemes that are registered for the purpose of the FA 04.

23. Regulation 23 - Amendment of Regulation 10 (outward transfers)

Where a member has left NHS employment, this amendment makes provision for the transfer of an AVC fund to another registered pension scheme to which the member is contributing. The amendment also specifies that where the member is still in NHS employment a transfer may only be made to an AVC Scheme registered for the purpose of FA 04.

Part III PROVISION OF BENEFITS

24. Regulation 24 - Amendment of Regulation 11 (Retirement and dependants' pensions)

The FA 04 provides for the taking of up to 25% of the invested fund as a pension commencement lump sum. This amendment provides for the proceeds of an NHS MPAVC investment to be (a) taken partially as a pension commencement lump sum with the remainder used to buy an annuity from an insurer; or (b) used wholly to buy an annuity from an insurer. In view of this new option, the amendment also requires contributors to notify the Scottish Ministers as to what percentage of the fund, if any, they wish to take as a pension commencement lump sum. On receipt of such a notice the Scottish Ministers are required to release the invested amounts as soon as reasonably practicable in accordance with the member's notice.

25. Regulation 25 - Amendment of Regulation 12 (Lump sums on death)

This amendment provides that any lump sum payable on death shall not exceed the amount permitted under Part 2 of Schedule 29 of the FA 04.

26. Regulation 26- *Amendment of Regulation 13 (benefit limits)*

This amendment provides for benefits to be subject to the limitations of the member's Lifetime Allowance in accordance with the FA 04.

Part IV MISCELLANEOUS PROVISIONS

27. Regulation 27- *Amendment of Regulation 14 (Repayment of investments in certain cases)*

This amendment replaces references to sections 598 and 601 of the "Taxes Act" in regulation 14 with references to "2004 Act".

28. Regulation 28- *Amendment of Regulation 15 (Payments by the Scottish Ministers)*

The amendment to regulation 15(1) causes "pension commencement lump sums" to be included as one of the benefits the Scottish Ministers will be liable to pay in the event that an authorised provider fails to pay them. Paragraphs (5) to (9) of regulation 15 are removed as they relate to pre FA 04 limits on death benefits. The obsolete reference to the Taxes Act is removed from paragraph (11)

29. Regulation 29- *Amendment of Regulation 16 (Information)*

This amendment requires the member to provide all information necessary for the provider to discharge their responsibilities in respect of the lifetime allowance and any related tax charge. Where the member does not provide all information needed within a reasonable period of time, the amendment provides for the whole amount payable may be treated as a chargeable benefit.

30. Regulation 30- *Insertion of Regulation 22 (Tax)*

This regulation provides for benefits to be paid net of any tax due under the FA04.

31. Regulation 31- *Deletion of Schedule 1(benefit limits)*

Schedule 1 related to pre FA04 benefit limits and as such is deleted.

32. Regulation 32- *Amendment of schedule 2 (pension sharing on divorce or nullity of marriage)*

This amendment provides for an election to be made for a pension credit benefit resulting from an NHS MPAVC to be paid, in part, as a pension commencement lump sum.