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Your ref:

Our ref: NHS/01/31

6 March 2012

Dear Colleague

The National Health Service (Superannuation, Pension, Injury Benefit and AVC Schemes) (Scotland) Amendment Regulations 2012 (No.2)

I enclose, for your consideration and comments, a copy of the draft regulations which will amend the Scottish NHS pension scheme regulations as above. The main changes covered by the draft instrument include the following:

- Changes required as a result of the Finance Act 2011;
- Changes required as a result of the new unified public service pension scheme in the Isle of Man; and
- Other miscellaneous changes to give clarity and to correct previous errors.

Detailed information on the changes is contained in the explanatory note at Annex 1.

If you have any comments on the draft regulations they can be sent to me at the above address or e-mailed to Sharon.Liptrott@scotland.gsi.gov.uk.

The closing date for responses to this consultation is Tuesday 10 April 2012.

If you ask for your response to this consultation not to be published we will regard it as confidential, and we will treat it accordingly. All respondents should however be aware that the SPPA is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to the Agency under the Act for information relating to responses made to this consultation exercise.

Yours faithfully



Sharon Liptrott (Mrs)
Policy Manager, NHSSS



Addressees

HR Directors NHS Boards
Scottish NHS Pensions Group (SPG)
SPPA Technical Working Group
NHS Trade Unions and Professional Organisations
Scottish General Practitioners Committee
Institute of Health Service Management
Scottish Practice Nurse Association
Women's National Committee
SGHD Directorate of Primary Care
SGHD Health Workforce Directorate
SGLD Finance
NHS Retirement Fellowship
Home Office, Police and Firemen's Pension Schemes
Department of Health and Social Services, Northern Ireland
NHS BSA Pensions Division
Department for Children, Schools and Family
Cabinet Office
Department for Communities and Local Government
DWP
GAD (for information only)
Standard Life and Equitable Life
HM Treasury
Savings, Pensions, Share Schemes HMRC
SGLD
SPPA Senior and Regional Managers
NHS National Services Scotland (PSD)



The National Health Service (Superannuation Scheme, Pension Scheme, Additional Voluntary Contributions and Injury Benefits schemes) (Scotland) Amendment Regulations 2012 (No. 2)

Explanation of the changes

Changes in respect of the Finance Act 2011 (FA 11)

FA 11 makes changes to the Finance Act 2004 (FA 04). FA 04 provides for the taxation of pensions, and certain of its provisions prescribe annual and lifetime allowance limits on tax-relieved pension benefits.

Reduced annual allowance

From 6 April 2011, FA 04 restricts pension tax relief for active scheme members by reducing the annual allowance level (AAL) to £50,000. Active scheme members whose pension benefits increase in value by more than the AAL during any year are required to calculate an “AAL charge” through their self-assessment tax return. To support this, FA 11 imposes a new responsibility on scheme administrators, to issue those members affected with a “pension savings statement” (PSS), setting out benefits to date and the amount by which the value of their benefits has exceeded the AAL. Schemes are required to issue PSS by October following any tax year, extended to October 2013 for the first year. FA 11 also imposes a new responsibility on scheme employers to provide administrators with the information they will need to calculate and prepare PSS by July any year, extended to July 2013 for the first year. Consequential changes to NHS Scheme regulations apply with retrospective effect to 6 April 2011.

Finally, FA 11 permits scheme members with large AAL charges (over £2,000) to apply for a new “scheme pays” arrangement. The facility allows members to require schemes to pay large AAL charges to HMRC, on their behalf, subject to the scheme recovering that cost by reduction of current or future benefits. Consequential changes to NHS Scheme regulations apply with retrospective effect to 11 August 2011.

Reduced lifetime allowance

From 6 April 2012, FA 04 will also reduce the lifetime allowance (LTA), from £1.8m to £1.5 million. The change is accompanied by a new “transitional protection” arrangement (AKA “fixed protection”), which permits individuals with pension savings above £1.5 million (or who believe investment/growth will cause benefit value to rise above this level) to apply for a personal LTA of £1.8 million. Individuals requiring transitional protection must curtail pension saving in all registered pension schemes and apply to HMRC before 6 April 2012. Members granted “transitional protection” must provide pension schemes with information and the relevant HMRC reference number, to secure the increased LTA when retirement benefits are calculated.

These NHS Scheme changes:

- reference the HMRC legislation;
- provide for the “scheme pays” and “transitional protection” arrangements; and
- clarify AAL information responsibilities for practitioner and non-GP provider members.

Consequential changes to NHS Scheme regulations apply with effect from 6 April 2012.

Detailed changes

1995 section (2011 Regulations)

Amending regulation 3

This amendment inserts a new definition, “the 2011 Act”, in regulation A2 (interpretation). The new definition supports references in the amendments to the Finance Act 2011.

Amending regulation 9

This amendment makes the following changes to regulation T3 (deduction of tax: further provisions):

- Paragraph (4) introduces technical amendments to improve readability, and adds new LTA “transitional protection” to the circumstances in which scheme members must give the scheme administrator information to assess liability for an LTA charge.
- New paragraph (5A) provides for members to give the scheme administrator the relevant HMRC reference number, if they intend to rely on new “transitional protection”.
- New paragraphs (9) to (11) provide for scheme members to notify the scheme administrator that they want the scheme to pay some or all of an AAL charge exceeding £2,000. Where the administrator accepts such a notice, the scheme will pay the AAL charge on the member’s behalf and notify them of the actuarial adjustment required to current or future benefits. Members will be advised of the adjustment before they commit to “scheme pays”.
- New paragraphs (12), (13) and (14) clarify that the obligation on NHS Scheme employers to provide information to the scheme administrator for calculation of PSS includes practitioners and non-GP providers, some of whom will need initially to provide provisional estimates of their pensionable earnings, in order to meet HMRC deadlines for PSS production.

2008 section regulations

Amending regulation 14

This amendment makes changes to regulation 1.B.3 (provision of information relevant for tax purposes), which deals with these matters in Parts 2 and 3 of the 2008 section:

- New paragraph (3A) requires members relying on new “transitional protection” to provide the scheme administrator with information and the relevant HMRC reference number.
- New paragraphs (6) and (7) clarify that the obligation on NHS Scheme employers to provide information to the scheme administrator for calculation of PSS includes practitioners and non-GP providers, some of whom will need initially to provide provisional estimates of their pensionable earnings, in order to meet HMRC deadlines for PSS production.

Amending regulations 15(a) and 20(a)

These amendments insert in regulations 2.A.1 and 3.A.1 (interpretation: general) a new definition for the “Finance Act 2011”, to support changes made in the 2008 regulations.

Amending regulations 19 and 25

These amendments insert new paragraphs (5) and (6) into regulations 2.J.8 and 3.J.8 (deduction of tax), to provide the new “scheme pays” facility.

Introduction of Unified Public Service Pension Scheme in the Isle of Man

Background

From 1 April 2012, the Isle of Man Government will introduce a Unified Public Service Pension Scheme that will make provisions for NHS staff, Civil Servants, Fire Fighters and a number of other public sector workers on the Island. All active and deferred members of the Isle of Man (IoM) Health Service Pension Scheme (from both the IoM equivalents of our 1995 and 2008 Sections) will join the IoM Unified Scheme on 1 April 2012. In addition, all existing NHS Scheme service earned up to 31 March 2012 will be transferred into the Unified Scheme on that date. The IoM Unified Scheme will not participate in the Public Sector Transfer Club (“the Club”).

Currently, dedicated transfer arrangements apply to most members transferring between the four separate Health Service Pension Schemes in Scotland, England and Wales, Northern Ireland and the Isle of Man. In the first instance, a member leaving an NHS Scheme’s 1995 Section would usually be eligible to join and transfer into another NHS Schemes 1995 Section. On payment of a transfer value calculated in accordance with Club rules, the receiving NHS Scheme would accept and adopt the member’s NHS Scheme service, pay and contribution record from the sending NHS Scheme. In this way the member is treated as if all their NHS service had accrued in the receiving NHS Scheme.

Introduction of a non-Club Unified Scheme with different provisions to current NHS Schemes means that it will not be possible for the Isle of Man to be part of these dedicated arrangements in respect of members joining a UK Health Service Scheme on or after 2 April 2012.

From that date, when taking up qualifying employment in Scotland, former members of the Unified Scheme will be eligible to join the 2008 Section of the NHS Pension

Scheme. Subject to existing time limits, such members will be able to transfer benefits across from the Unified Scheme on a cash equivalent basis in the same way as members transferring from other HMRC approved overseas pension schemes.

Former members of the IoM Health Service Scheme, who joined either the 1995 Section or the 2008 Section on or before 1 April 2012, will be able to complete a transfer on the current basis as long as their application is within current time limits (a transfer must be applied for within a year of joining).

The cessation of “health service scheme” status for the IoM Unified Scheme from 1 April 2012, means that suspension and abatement of pension rules for Scottish NHS Scheme pensioners re-employed in the IoM Health Service on or after 1 April 2012 will also cease to apply. Suspension and abatement rules will continue to apply to Scottish Scheme pensioners re-employed on or before 31 March 2012.

Detailed changes

1995 section (2011 regulations) and 2008 section

Amending regulation 7

Amending regulation 7 alters the definition of “health service scheme” in regulation R7 of the 2011 Regulations so that the Isle of Man Health Service Pension Scheme is only included in that definition in respect of members whose pensionable employment started in Scotland on or before 1 April 2012. As explained above, the net effect of this change is twofold. It means that dedicated transfer arrangements do not apply to members joining the 1995 Section on or after 2 April 2012. In addition, because this definition is used in regulations governing who can and who cannot join the 1995 Section, eligibility to join the 1995 Section because of equivalent service in the IoM Health Service Scheme, ceases on 2 April 2012.

Amending regulation 8

Amending regulation 8 inserts (after “employment” in line 3 of 1995 regulation S1 (5) (a)) the words “commencing on or before 31 March 2012”. The effect is to make suspension of pension under regulation S1 and abatement of pension under regulation S2 (by virtue of the definition of “NHS employment” in paragraph 14) apply only to re-employment in the Isle of Man commencing on or before that date.

Amending regulations 15(b) and 20(b)

Amending regulations 15(b) and 20(b) alter the definition of “corresponding health service scheme” in Parts 2 and 3 of the 2008 Regulations so that the Isle of Man Health Service Pension Scheme is only included in that definition in respect of members whose NHS employment started on or before 1st April 2012. The net effect of this change is that former members of the Unified Scheme, whose NHS employment in Scotland begins on or after 2 April 2012, will be eligible to join the 2008 Section (regardless of any earlier IoM 1995 Section Service that has been transferred into the Unified Scheme).

The dedicated transfer arrangements that allow former IoM 2008 Section equivalent members to have a transfer of exact IoM service into the Scottish 2008 Section are provided for under regulations 2.F.11(6) (calculation of transferred-in pensionable service) and 3.F.11(6) (calculation of increase to pensionable earnings as the result of a transfer-in). Paragraph (6) of those regulations provides for those arrangements to apply when a transfer value payment has been accepted from “a corresponding 2008 Scheme”. This, in turn, is defined in regulations 2.A.1 and 3.A.1 as being “a corresponding health service scheme the provisions of which the Scottish Ministers have determined correspond to the provisions of the 2008 regulations”. Because the provisions of the IoM Unified Pension Scheme do not correspond to the provisions of the 2008 Regulations, it means that dedicated transfer arrangements will also cease for such members transferring from the Unified Scheme, without the need to make any further amendments.

Amending regulations 16 and 23

Amending regulation 16 inserts after “employment” (in 2008 section, Part 2, regulation 2.H.1 (2) (d)) the words “commencing on or before 31 March 2012”. This makes pension abatement under regulation 2.H.3 apply only to re-employment in the Isle of Man commencing on or before that date.

Amending regulation 23 inserts after “employment” (in 2008 section, Part 3, regulation 3.H.1 (3) (d)) the words “commencing on or before 31 March 2012”. This makes pension abatement under regulation 3.H.3 apply only to re-employment in the Isle of Man commencing on or before that date.

NHS (Injury Benefits) Regulations - change to reflect HMRC tax changes introduced under the Finance Act 2011

Background

Regulation 4(6) of the NHS (Injury Benefits) Regulations 1995 lists certain pensions and benefits paid to individuals to compensate them for injury that must be offset (deducted) from an injury benefit (IB) award, to avoid “compensating them twice from public funds” for the same purpose. Sub-paragraph (a) of regulation 4(6) lists circumstances in which a reduction to a pension named in 4(6) (e.g. because the member exchanges part of their pension for lump sum) must be *disregarded*. With no disregard, individuals would be “double compensated” for their injury.

The Finance Act 2011 changes referred to in this Explanatory Note make it possible for members to pay an annual allowance tax charge by reduction to pension benefits – the “Scheme Pays” facility. As a consequence, a further ‘disregard’ must be added to the list in IB regulation 4(6) (a).

Detailed change

Amending regulation 28

Amending regulation 28 inserts a new paragraph (iv) in NHS Injury Benefits regulation 4(6)(a), so that any reduction to a pension listed in IB regulation 4(6) to take account of a members request for the NHS Scheme to pay a tax charge via such reduction, will be disregarded. The amendment applies with retrospective effect from 11 August 2011, like the “Scheme Pays” changes referred to in Section 2 of this Note.

Other Miscellaneous Changes

Amending regulation 4

Makes a technical change to regulation B2 in 2011 regulations (restrictions on membership).

Amending regulation 5

Makes an amendment to the 2011 regulations to clarify the position that an employing authority shall not be responsible for meeting any costs in respect of early payment of benefits to the extent that any such benefits are attributable to a period of additional service purchased by the member.

Amending regulation 6

Corrects a previous error in regulation N4 of the 2011 regulations.

Amending regulations 10, 17 and 24

Amends regulation T8 (commutation of trivial pensions) of the 2011 regulations and 2.J.5 and 3.J.5 of the 2008 regulations as a result of the provisions of the Registered Pension Schemes (Authorised Payments) Regulations 2009 in relation to the circumstances in which a small NHS pension can be regarded as a trivial amount for permissive commutation to a one-off lump sum payment.

Amending regulations 11, 19 and 26

Amends regulation U2 of the 2011 regulations, and regulations 2.J.10 and 3.J.10 of the 2008 regulations as a result of changes made by the Finance Act 2011 in relation to the determination by medical practitioners as to whether an individual meets the severe health condition referred to in section 229 of the Finance Act 2004. Regulation 11 is also updated to include a requirement for a medical assessment when a credit member pensioner wishes to claim pension as a lump sum because of severe ill health.

Amending regulation 12 and 22

Makes amendments to Schedule 1 of the 2011 regulations (Medical and Dental Practitioners) and regulation 3.C.2 to clarify the position that dentists have arrangements with Health Boards to provide dental services which are different from medical practitioners who are have a contract to provide general medical services. Paragraph (13) of regulation 14 (contributions to this section of the scheme) of the 2011 regulations and paragraph (12) of 3.C.2 in the 2011 regulations which allowed for health boards to set a provisional employee contribution tier of 6.5% have been removed as this is an administrative convenience rather than a legal requirement.

Amending regulation 21

Regulation 21 corrects a previous error in the wording of regulation 3.A.7.

NHS Additional Voluntary Contribution regulations – change to age limit at which a transfer of funds can take place.

Amending regulation 27

Regulation 28 amends regulation 10 (Outward Transfers) the AVC regulations to in order to allow all members to transfer the value of the AVCs to any registered pension scheme and to increase the upper age limit from 60 to 75 at which members can transfer the value of their AVCs to another provider.

SCOTTISH STATUTORY INSTRUMENTS

2012 No.

NATIONAL HEALTH SERVICE

**The National Health Service Superannuation Scheme etc.
(Miscellaneous Amendments) (Scotland) Regulations 2012**

<i>Made</i>	- - - -	2012
<i>Laid before the Scottish Parliament</i>		2012
<i>Coming into force</i>	- -	28th June 2012

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

In accordance with section 10(1) of that Act, these Regulations are made with the consent of the Treasury(b).

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

PART I

Introductory

Citation, commencement and effect

1.—(1) These Regulations may be cited as the National Health Service Superannuation Scheme etc. (Miscellaneous Amendments) (Scotland) Regulations 2012.

(2) These Regulations come into force on 28th June 2012 and, except as provided in paragraphs (3) to (10), have effect from that date.

(3) Regulation 10 has effect from 1st April 2008.

(4) Regulation 6 has effect from 1st April 2011.

(5) Regulation 9(c) has effect from 6th April 2011.

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

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

- (6) Regulations 11(b) and 25 have effect from 19th July 2011
- (7) Regulation 5 has effect from 1st October 2011
- (8) Regulation 27 has effect from 28th November 2011
- (9) Regulations 7, 8, 15, 20 and 23 have effect from 1st April 2012
- (10) Regulations 9(a) and (b), 14(a), 18 and 25 have effect from 6th April 2012

PART 2

Amendment of the National Health Service Superannuation Scheme (Scotland) Regulations 2011

2. The National Health Service Superannuation Scheme (Scotland) Regulations 2011(a) are amended in accordance with this Part.

3. In regulation A2 (interpretation), in paragraph (4) after the definition of “the 2008 Section” insert—

““the 2011 Act” the Finance Act 2011(b);”.

4. In regulation B2 (age limits and restriction on membership), in paragraph (1)(o)(i) after “pensionable employment” insert “under regulation E15”.

5. In regulation D2 (contributions and other payments by employing authorities), after paragraph (8) insert—

“(8A) For the purposes of paragraph (5), an employing authority is not to be responsible for meeting any costs in respect of early payment of benefits to the extent that any such benefits are attributable to a period of additional service purchased by the member.”.

6. In regulation N4 (transfers that are not made under the Public Sector Transfer Arrangements), in paragraph (1) for “N2” substitute “N3”.

7. In regulation R7 (former members of health service schemes), for paragraph (1) substitute—

“(1) For the purposes of these Regulations, “health service scheme” means—

- (a) a superannuation scheme provided under the regulations made under section 10 of the Superannuation Act 1972 and for the time being in force in relation to England and Wales,
- (b) a superannuation scheme provided under regulations for the time being in force under article 12 of the Superannuation (Northern Ireland) Order 1972(c),
- (c) in the case of a member whose pensionable employment commenced on or before 1st April 2012, a superannuation scheme made under section 2 of the Superannuation Act 1984 (an Act of Tynwald), or
- (d) any other occupational pension scheme approved for this purpose by the Scottish Ministers.”.

8. In regulation S1 (suspension of pension on return to NHS employment), in paragraph (5)—

- (a) for “and” where it second appears, substitute “;”;

(a) S.S.I. 2011/117 as amended by S.S.I. 2011/173 and 364.

(b) 2011 c.11.

(c) S.I. 1972/1073 (N.I. 10).

- (b) for the words after “Order 1972”, substitute “apply, and employment commencing on or before 31st March 2012 to which a scheme made under section 2 of the Superannuation Act 1984 (an Act of Tynwald) applies”.

9. In regulation T3 (deduction of tax: further provisions)—

- (a) in paragraph (4) after “entitlement to” insert “transitional protection,”;

- (b) after paragraph (5) insert—

“(5A) If a person claiming a benefit under these Regulations intends to rely on entitlement to transitional protection against a lifetime allowance charge in accordance with paragraph 14 of Schedule 18 to the 2011 Act, that person must give to the scheme administrator—

- (a) the reference number issued by the Commissioners under the Registered Pension Schemes (Lifetime Allowance Transitional Protection) Regulations 2011^(a) in respect of that entitlement; and
- (b) the information referred to in paragraph (4).”;

- (c) for paragraph (9), substitute—

“(9) This paragraph applies to a member who—

- (a) is liable to an annual allowance charge in accordance with section 237A of the 2004 Act, and
- (b) meets the conditions specified in paragraph (1) of section 237B of that Act.

(10) Subject to section 273C of the 2004 Act, a member to whom paragraph (9) applies may give notice in writing to the scheme administrator specifying that the scheme administrator and the member are to be jointly and severally liable for the payment of the annual allowance charge due in respect of that member in accordance with section 237B of the 2004 Act.

(11) Unless the scheme administrator’s liability to an annual allowance charge referred to in paragraph (10) is discharged in accordance with section 237D of the 2004 Act—

- (a) that annual allowance charge will be paid by the scheme administrator on behalf of the member, and
- (b) that member’s present or future benefits in respect of which that charge arises are to be adjusted in accordance with section 237E of the 2004 Act and calculated by reference to advice provided by the Scheme Actuary for that purpose.

(12) Paragraph (13) applies to members who are practitioners or non-GP providers.

(13) The members referred to in paragraph (12) must provide the information required by regulation 15A of the Registered Pension Schemes (Provision of Information) Regulations 2006^(b) in respect of their benefits under the scheme, in a manner prescribed from time to time by the Scottish Ministers.

(14) “Enhanced lifetime allowance” and “enhanced protection” are to be construed in accordance with the 2004 Act.”.

10. In regulation T8 (commutation of trivial pensions), for sub-paragraph (b) of paragraph (3) substitute —

“(b) either—

- (i) the lump sum rule and lump sum death benefit rule, or
- (ii) the requirements of regulation 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 (payments by larger pension schemes)”.

(a) S.I. 2011/1752.

(b) S.I. 2006/567.

11. In regulation U2 (determination of questions)—

- (a) in paragraph (3), after “paragraph (4)” insert “or in making a decision referred to in paragraph (5),”;
- (b) in paragraph (4)(e), for “and E12” substitute “, E12 and V17”; and
- (c) after paragraph (4), insert—

“(5) The decision referred to in paragraph (3) is a decision as to whether a person is able to satisfy the severe ill health condition for the purposes of subsection (3)(a) of section 229 of the 2004 Act (total pension input amount).”.

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

- (a) for paragraph 5(2)(a)(viii) substitute—

“(viii) payments made to a principal practitioner by a Health Board with whom that practitioner has an arrangement to provide general dental services, general ophthalmic services or pharmaceutical services for the provision of such services”;

- (b) in paragraph 14—

- (i) in sub-paragraph (8) after “Health Board” insert “ (or, in the case of dentists or ophthalmic practitioners, the Health Board with whom they have an arrangement to provide practitioner services);

- (ii) in sub-paragraph (12), after the words “Health Board” wherever they appear insert “(or, in the case of dentists or ophthalmic practitioners, the Health Board with whom they have an arrangement to provide practitioner services);

- (iii) delete sub-paragraph (13);

- (iv) in sub-paragraph (20)(b), after “Health Board” insert “ (or, in the case of dentists or ophthalmic practitioners, the Health Board with whom they have an arrangement to provide practitioner services); and

- (v) in paragraph (21), after the words “Health Board” wherever they appear insert “(or, in the case of dentists or ophthalmic practitioners, the Health Board with whom they have an arrangement to provide practitioner services).

PART 3

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

13. The National Health Service Pension Scheme (Scotland) Regulations 2008(a) are amended in accordance with this Part.

14. In regulation 1.B.3 (provision of information for tax purposes)—

- (a) after paragraph (3) insert—

“(3A) If a person claiming a benefit under these Regulations intends to rely on entitlement to transitional protection against a lifetime allowance charge in accordance with paragraph 14 of Schedule 18 to the 2011 Act, that person must give to the scheme administrator the reference number issued by the Commissioners under the Registered Pension Schemes (Lifetime Allowance Transitional Protection) Regulations 2011 in respect of that entitlement.”; and

- (b) after paragraph (5) insert—

(a) S.S.I. 2008/224 amended by S.S.I 2009/19 and 208, 2010/22, 53 and 369, S.I. 2010/234 and S.S.I 2011/ 364.

“(6) Paragraph (7) applies to members who are practitioners or non-GP providers.

(7) The members referred to in paragraph (6) must provide the information required by regulation 15A of the Registered Pension Schemes (Provision of Information) Regulations 2006 in respect of their benefits under the scheme, in a manner prescribed from time to time by the Scottish Ministers.”.

15. In regulation 2.A.1 (interpretation: general), in paragraph (1)—

(a) after the definition of “2008 Section Optant” insert—

““the 2011 Act” means the Finance Act 2011;”; and

(b) in the definition of “corresponding health service scheme”, for paragraph (c) substitute—

“(c) a scheme made under section 2 of the Superannuation Act 1984 (an Act of Tynwald), in the case of a member who entered NHS employment on or before 1st April 2012;”.

16. In regulation 2.H.1 (application of Chapter 2.H), in paragraph (2)(d) after “employment” insert “commencing on or before 31st March 2012”.

17. In regulation 2.J.5 (commutation of small pensions), in paragraph (2),—

(a) omit the word “and” at the end of sub-paragraph (e); and

(b) after sub-paragraph (f), insert—

“; and

(g) regulation 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 (payments by larger pension schemes)”.

18. In regulation 2.J.8 (deduction of tax), after paragraph (4) insert—

“(5) Without prejudice to the generality of paragraph (1), a person who—

(a) is liable to an annual allowance charge in accordance with section 237A of the 2004 Act, and

(b) meets the conditions specified in paragraph (1) of section 237B of that Act

may give notice in writing to the scheme administrator specifying that the scheme administrator and the person are to be jointly and severally liable for the payment of the annual allowance charge due in respect of that person in accordance with section 237B of the 2004 Act.

(6) Unless the scheme administrator’s liability to an annual allowance charge referred to in paragraph (5) is discharged in accordance with section 237D of the 2004 Act—

(a) that annual allowance charge will be paid by the scheme administrator on behalf of the member, and

(b) the member’s present or future benefits in respect of which that charge arises are to be adjusted in accordance with section 237E of the 2004 Act and shall be calculated by reference to advice provided by the Scheme Actuary for that purpose.”.

19. In regulation 2.J.10 (determination of questions), in paragraph (4)—

(a) omit the word “or” at the end of sub-paragraph (e); and

(b) after sub-paragraph (f), insert—

“or

(g) determining whether an individual satisfies the severe ill health condition for the purposes of subsection (3)(a) of section 229 of the 2004 Act (total pension input amount)”.

20. In regulation 3.A.1 (interpretation of Part 3: general), in paragraph (1)—

(a) after the definition of “2008 Section Optant” insert—

““the 2011 Act” means the Finance Act 2011;”; and

(b) in the definition of “corresponding health service scheme” for paragraph (c) substitute—

“(c) a scheme made under section 2 of the Superannuation Act 1984 (an Act of Tynwald), in the case of a member who entered NHS employment on or before 1st April 2012;”.

21. In regulation 3.A.7 (meaning of “pensionable earnings”), for paragraph (1) substitute—

“(1) In the case of a principal practitioner and a non GP provider who is not in receipt of a salary, wages or fees or any regular payments in respect of their employment as an officer, “pensionable earnings” means practitioner income less—

(a) any sum on account of practice expenses; and

(b) in the case of a dental practitioner the pensionable earnings, to the extent allowed by the Scottish Ministers, of any assistant practitioner in the practitioner’s employment or in the case of an assistant practitioner who is not in pensionable employment under this Section of the scheme, the amount that would have been taken to be that practitioner’s pensionable earnings if the practitioner was in such pensionable employment.”.

22. In regulation 3.C.2—

(a) in paragraphs (5)(b), (8) and (10) after the words “Health Board” wherever they appear insert “ (or, in the case of dentists or ophthalmic practitioners, the Health Board with whom they have an arrangement to provide practitioner services);

(b) in paragraph (9), for “3.C.1” and substitute “2.C.1”; and

(c) omit paragraph (11).

23. In regulation 3.H.1 (application of Chapter 3.H), in paragraph (3)(d) after “employment” insert “commencing on or before 31st March 2012”.

24. In regulation 3.J.5 (commutation of small pensions), in paragraph (2),—

(a) omit the word “and” at the end of sub-paragraph (e); and

(b) after sub-paragraph (f), add—

“; and

(g) regulation 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 (payments by larger pension schemes)”.

25. In regulation 3.J.8 (deduction of tax) after paragraph (4) insert—

“(5) Without prejudice to the generality of paragraph (1), a person who—

(a) is liable to an annual allowance charge in accordance with section 237A of the 2004 Act, and

(b) meets the conditions specified in paragraph (1) of section 237B of that Act,

may give notice in writing to the scheme administrator specifying that the scheme administrator and the person are to be jointly and severally liable for the payment of the annual allowance charge due in respect of that person in accordance with section 237B of the 2004 Act.

(6) Unless the scheme administrator’s liability to an annual allowance charge referred to in paragraph (5) is discharged in accordance with section 237D of the 2004 Act—

(a) that annual allowance charge will be paid by the scheme administrator on behalf of the member, and

(b) the member’s present or future benefits in respect of which that charge arises are to be adjusted in accordance with section 237E of the 2004 Act and calculated by reference to advice provided by the Scheme Actuary for that purpose.”.

26. In regulation 3.J.10 (determination of questions), in paragraph (4)—

(a) omit the word “or” at the end of sub-paragraph (e); and

- (b) after sub-paragraph (f), insert—
 - “;or
 - (g) determining whether an individual satisfies the severe ill health condition for the purposes of subsection (3) (a) of section 229 of the 2004 Act (total pension input amount)”.

PART 4

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

27. In regulation 10 (outward transfers) of the National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998(a)—

- (a) for paragraph (1) substitute—
 - “(1) Subject to—
 - (a) paragraphs (4) to (7); and
 - (b) the cancellation, pursuant to regulation 5(1) or (2), of any election made under regulation 3(1),
- the Scottish Ministers must, as soon as reasonably practicable after having received a notice in writing from an eligible person requesting a transfer of the value of that person’s investments made in relation to that person under regulation 7(1), 8(2) or, as the case may be 9(4), pay a transfer value representing the value of all such investments at that person’s option to any other registered pension scheme in which the person may be participating.”; and
- (b) paragraph (3) is omitted.

PART 5

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

28. In regulation 4 (scale of benefits) of the National Health Service (Scotland) (Injury Benefits) Regulations 1998(b), after paragraph (6)(a)(iii) insert—

- “(iv) reduction in the amount of that pension under paragraph (11)(b) of regulation T3 of the 2011 Regulations (deduction of tax: further provisions) or paragraph (6)(b) of regulations 2.J.8 or 3.J.8 of the 2008 Regulations (deductions of tax).”.

(a) S.I. 1998/1451.
(b) S.I. 1998/1594

Draft 2 March 2012

St Andrew's House,
Edinburgh
2012

A member of the Scottish Executive

We consent,

2012

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 2011, the National Health Service Pension Scheme (Scotland) Regulations 2008, the National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998 and the National Health Service (Scotland) (Injury Benefits) Regulations 1998 (“the Injury Benefits Regulations”).

Regulation 1 provides for citation, commencement and effect, including that certain provisions of this instrument are to take effect from a date before the date of commencement. Section 12(1) of the Superannuation Act 1972 (c.11) provides authority for retrospection.

Amendments consequent on the Finance Act 2011

Regulations [] amend various provisions of the 2011 and 2008 Regulations as a result of changes made by the Finance Act 2011(c.11) in relation to—

- (a) an individual’s annual allowance in respect of year on year increases to pension savings before those savings incur a tax charge (“an annual allowance charge”),
- (b) a new requirement that, in certain circumstances, require a scheme to pay an annual allowance charge and reduce an individual’s benefits accordingly, and
- (c) an individual’s lifetime allowance in respect of total pension savings before those savings incur a tax charge (“a lifetime allowance charge”), and the process by which an individual can protect that allowance at the current value.

Amendments consequent on the introduction of the Isle of Man Unified Public Service Pension Scheme on 1st April 2012

Regulations [] amend various provisions of the 2011 and 2008 Regulations so that the dedicated pension transfer arrangements for staff moving from the NHS in the Isle of Man to the NHS in Scotland are discontinued in respect of staff joining on or after 2nd April 2012.

Other amendments