

**2023 No.**

**NATIONAL HEALTH SERVICE**

**The National Health Service Superannuation and Pension  
Schemes (Miscellaneous Amendments) (Scotland) Regulations  
2023**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	2023

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 10 and 12 and schedule 3 of the Superannuation Act 1972(a), sections 1(1) and (2)(e), 3(1), (2) and (3), and 18(5) of, and paragraph 5(a) of schedule 2, and schedule 3 to, the Public Service Pensions Act 2013(b) and all other powers enabling them to do so.

In accordance with section 10(4) of the Superannuation Act 1972, the Scottish Ministers have consulted with such representatives of persons likely to be affected by these Regulations as appear to them to be appropriate.

In accordance with section 22(2)(a) of the Public Service Pensions Act 2013, the Scottish Ministers consulted the representatives of such persons as appeared to them likely to be affected by these Regulations. In accordance with section 22(2)(b) of that Act, the Scottish Ministers laid before the Scottish Parliament a report concerning the changes to members' contribution rates under the NHS Pension Scheme (Scotland) 2015(c) made by these Regulations.

In accordance with section 3(5) of the Public Service Pensions Act 2013, these Regulations are made with the consent of the Treasury.

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- (a) 1972 c. 11. Section 10 was amended by Part II of schedule 7 of the National Health Service (Scotland) Act 1972 (c. 58), schedule 5 of the National Health Service Reorganisation Act 1973 (c. 32), sections 4(2) and 8(5) and (6) of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7) ("the 1990 Act"), paragraph 7 of schedule 8 of the Pensions Schemes Act 1993 (c. 48), paragraph 10 of schedule 8 of the Public Service Pensions Act 2013 (c. 25) and S.I. 2001/3649. Section 12 was amended by section 10 of the 1990 Act. The functions of the Secretary of State, in or as regards Scotland, were transferred to the Scottish Ministers by virtue of article 2 and schedule 1 of S.I. 1999/1750.
- (b) 2013 c. 25.
- (c) The pension scheme established by S.S.I. 2015/94 is to be known in terms of regulation 2(2) of that instrument as the NHS Pension Scheme (Scotland) 2015.

## PART 1

### Introductory

#### **Citation, commencement and effect**

1.—(1) These Regulations may be cited as the National Health Service Superannuation and Pension Schemes (Miscellaneous Amendments) (Scotland) Regulations 2023 and come into force on [     ].

(2) Regulations [   ] to [   ] have effect from 1 April 2023.

## PART 2

### Modifications of restrictions on return to work

#### **Duration of modifications in this Part**

2. The modifications in regulation 3 apply until the end of 31 March 2025 and the modifications in regulations 4 and 5 apply until the end of 31 March 2023.

#### **Modifications of the National Health Service Superannuation Scheme (Scotland) Regulations 2011**

3. The National Health Service Superannuation Scheme (Scotland) Regulations 2011 have effect as if in the opening words of regulation S2(4) (reduction of pension on return to NHS employment) the words “or (c)” were omitted.

#### **Modifications of the National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013**

4. The National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013 have effect as if the following regulations were omitted—

- (a) regulation 2.D.6(2)(a) (abatement of pension following increase in pensionable pay), and
- (b) regulation 3.D.6(2) (a) (abatement of pension following increase in engagement in employment).

#### **Modifications of the National Health Service Pension Scheme (Scotland) Regulations 2015**

5. The National Health Service Pension Scheme (Scotland) Regulations 2015 have effect as if regulation 85(3) (abatement of pension following continuation of employment) were omitted.

## PART 3

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

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

#### **Amendment of regulation C1**

7.(1) Regulation C1 (meaning of “pensionable pay” and “final year’s pensionable pay”) is amended as follows—

- (2) In paragraph (12), for “paragraph (13)”, substitute “paragraphs (13) and (13B)”; and

(3) After paragraph (13), insert—

“(13B) If a member becomes entitled to a pension under regulation E11A (partial retirement pension), “final year’s pensionable pay” means pensionable pay in respect of the year immediately preceding the day on which the reduction in the member’s pensionable pay takes effect by virtue of which the member becomes entitled to the partial retirement pension.”

### **Amendment of regulation C2**

**8.**(1) Regulation C2 (meaning of “pensionable service”) is amended as follows—

(2) In paragraph (2), for sub-paragraph (b) substitute—

“(b) in the case of a pensioner or deferred member, any period taken into account—

- (i) in determining the member’s entitlement to the pension in payment or, as the case may be, the deferred pension, or
- (ii) in calculating the amount of that pension,  
but, in the case of a pensioner or deferred member entitled to a pension under regulation E11A (partial retirement pension) subject to paragraph (8);”

(3) After paragraph (7), insert—

“(8) In the case of a pensioner or deferred member entitled to a pension under regulation E11A (partial retirement pension), paragraph (2)(b) only applies to so much of the member’s pensionable service as is mentioned in regulation E11A(11)(a) (the specified percentage of the pensionable service as respects which the member is an active member on the option day).”

### **Amendment of regulation D3**

**9.**—(1) Regulation D3 (further contributions by employing authorities in respect of excessive pay increases) is amended as follows.

(2) In paragraphs (3)(b)(i), (4)(b)(i) and (5)(b), for “4.5%” substitute “7%”.

(3) Omit paragraphs (7) to (11).

(4) After paragraph (12) insert—

“(12A) Paragraphs (12B) to (12G) apply in circumstances where a payer has been notified of a liability to pay an excess employer contribution on or after 1 April 2018.

(12B) Where a payer—

- (a) has paid all of the excess employee contribution, and
- (b) applies for a determination under this paragraph which is received by the Scottish Ministers within a period of six months from the commencement of this regulation,

the Scottish Ministers must determine the excess employer contribution in this regulation as in force on 1 April 2023.

(12C) Where the amount of any excess employer contribution payable following a determination under paragraph (12B) is less than the amount of any excess employer contribution together with any interest already paid, the Scottish Ministers must pay to the payer a sum equal to the difference between those amounts.

(12D) Where a payer—

- (a) has failed to pay all, or any part, of the excess employer contribution, and
- (b) applies for a determination under this paragraph which is received by the Scottish Ministers within a period of six months from the commencement of this regulation,

the Scottish Ministers must determine the excess employer contribution in accordance with this regulation as in force on 1 April 2023.

(12E) Subject to paragraph (12F), the amount of any excess employer contribution payable following a determination under paragraph (12D) must be paid to the Scottish Ministers within 1 month of the Scottish Ministers notifying the payer of its liability for that amount.

(12F) Where the amount of any excess employer contribution payable following a determination under paragraph (12D) is less than any excess employer contribution together with any interest already paid by the payer, the Scottish Ministers must pay to the payer a sum equal to the difference between those amounts.

(12G) Where the Scottish Ministers make a determination under paragraph (12B) or (12D), any previous determination of an excess employer contribution payable in respect of the same member has no effect.”.

(5) After paragraph (19B) insert—

“(19C) Where—

- (a) the Scottish Ministers have approved terms and conditions relating to NHS employment, and
  - (b) a member’s pensionable pay has increased pursuant to those terms and conditions,
- the increase in the member’s pensionable pay is to be disregarded for the purposes of this regulation.

(19D) An increase in a member’s pensionable pay by reason of an amount in respect of a national award recommended by the Scottish Advisory Committee on Distinction Awards is to be ignored for the purposes of this regulation.

(19E) An increase in a member’s pensionable pay due to promotion on the basis of fair and open competition is to be ignored for the purposes of this regulation.

(19F) An increase in the pensionable pay of a non-GP provider due to an increase in partnership profits within the three year period immediately prior to the date on which the non-GP provider ceased to be in pensionable employment is to be ignored for the purposes of this regulation if the non-GP provider’s percentage share in the partnership profits—

- (a) has not increased during the same three year period,
- (b) has increased during the same three year period, but only as a result of another partner leaving the practice, or
- (c) has increased during the same three year period, but only as a result of another partner reducing their sessional commitment.

(19G) An increase in a member’s pensionable pay solely due to the ending of a salary sacrifice arrangement is to be ignored for the purposes of this regulation.”.

(6) In paragraph (21)—

- (a) omit sub-paragraph (h),
- (b) after sub-paragraph (i) insert—

“(j) “salary sacrifice arrangement” means an arrangement under which the member gives up the right to receive an amount of pensionable pay in return for the provision of a benefit in kind including; but not limited to, a benefit consisting of a motor car or other vehicle, meals, care or vouchers.”.

## **New regulation E11A**

**10.** After regulation E11 (Early retirement pension (with actuarial reduction)), insert—

“Partial retirement pension

E11A.—(1) A member who is in pensionable employment may exercise an option under this regulation if—

- (a) the member—

(i) has reached normal minimum pension age or, where relevant, protected pension age;

(ii) has at least two years' qualifying service; and

(iii) continues to be in pensionable employment or, where the member is in more than one pensionable employment, the member continues to be in at least one of those pensionable employments;

(b) the terms on which the member holds the pensionable employment or employments referred to in sub-paragraph (a)(iii) change; and

(c) as a result of the change referred to in sub-paragraph (b), the annual rate of the member's pensionable pay is reduced to 90% or less of the amount of the member's pensionable pay during the period of 12 months ending with the option day.

(2) If the member was not in pensionable employment during the whole of the period of 12 months referred to in paragraph 1(c), that paragraph applies as if the member's pensionable pay during that period were—

$PP \times (365 / N)$

where—

PP is the member's pensionable pay for the part of that period during which the member was in pensionable employment, and

N is the number of days in that period on which the member was in pensionable employment.

(3) The option may only be exercised by notice in writing in such form as the Scottish Ministers require and must be accompanied by a statement in writing by the member's employing authority, or employing authorities, that the conditions in paragraph 1(b) and (c) are met.

(4) The option must specify—

(a) the percentage of the member's pension (excluding any additional pension) in respect of which the member claims immediate payment ("the specified percentage");

(b) whether the pensionable service used to calculate the pension referred to at sub-paragraph (a) is to include additional service (if any) that the member has purchased under regulation Q1 (right to buy additional service); and

(c) whether the member claims immediate payment of additional pension (if any).

(5) A member who duly exercises the option under this regulation is entitled—

(a) in the case of a member who has reached the age of 60, to immediate payment of the specified percentage of the pension to which the member would be entitled under regulation E1 (normal retirement pension) if the member had retired from pensionable employment on the option day (including any additional service specified under paragraph (4)(b) but disregarding any additional pension);

(b) in the case of a member who has not reached the age of 60, to immediate payment of the specified percentage of the pension to which the member would be entitled under regulation E11 (early retirement pension with actuarial reduction) if the member had retired from pensionable employment on the option day (including any additional service specified under paragraph (4)(b) but disregarding any additional pension);

(c) subject to any reduction in accordance with regulation S2 (reduction of pension on return to NHS employment), in the case of a member who is a special class officer, to immediate payment of the specified percentage of the pension to which the member would be entitled under—

(i) regulations E1 and R2 (nurses, physiotherapists, midwives and health visitors); or

(ii) regulations E1 and R3 (mental health officers),

if the member had retired from pensionable employment on the option day

(including any additional service specified under paragraph (4)(b) but disregarding any additional pension); and

(d) if the option specifies that the member claims immediate payment of additional pension—

(i) if the option day falls after the member's chosen birthday, to the additional pension; and

(ii) if the option day falls before the member's chosen birthday, to the additional pension reduced in accordance with paragraphs (5) and (6) of regulation Q15 (effect of death or early payment of pension after option exercised under regulation Q8, Q10 or Q11).

(6) If—

(a) the option specifies that the pensionable service used to calculate the pension referred to at paragraph (5)(a), (b) or (c) is to include additional service that the member has purchased under regulation Q1;

(b) the member's method of payment for the additional service is regular additional contributions; and

(c) the option day falls before the member's chosen date, the proportion of additional service to be included in the pensionable service used to calculate that pension will be reduced in accordance with paragraph (6) of regulation Q7.

(7) Subject to paragraph (8), the specified percentage must be such that the pension to which the member becomes entitled as a result of the option (before the exercise of the option under regulation E17 (general option to exchange part of pension for lump sum) and disregarding any additional benefits)—

(a) is not less than the amount of the pension payable by reference to 20% of the member's pensionable service at the end of the option day (disregarding any additional benefits); and

(b) is not less than 0.05% of the member's lifetime allowance on the option day.

(8) Where a member has reached protected pension age but not yet normal minimum pension age, the specified percentage must be 100% of the member's pensionable service at the end of the option day (disregarding any additional benefits).

(9) Where a pension is payable under paragraph (5)(b), the lump sum payable under regulation E13 (lump sum on retirement) will be reduced in accordance with paragraph (7) of regulation E14.

(10) The option under this regulation may only be exercised on no more than two occasions and the Secretary of State shall take advice from the Scheme Actuary regarding—

(a) any benefits to be paid after the exercise of the first option (but before the exercise of the second option);

(b) any benefits to be paid after the exercise of the second option; and

(c) the final payment.

(11) In this regulation—

“additional benefits” means any additional service specified under paragraph (4)(b) and any additional pension specified under paragraph (4)(c);

“chosen birthday” has the meaning given in paragraph (9) of regulation Q8 (option to pay additional periodical contributions to purchase additional pension);

“chosen date” has the meaning given in paragraph (3) of regulation Q5 (paying by regular additional contributions);

“pensionable employment” includes employment in circumstances where the member has reached their maximum pensionable service or age limit for contributions as set out in regulation D1(26) and (27);

“pensionable pay” includes pay relating to employment in circumstances where the member has reached their maximum pensionable service or age limit for contributions as set out in regulation D1(26) and (27); and

“the option day” means the day before the reduction in pensionable pay by virtue of which the option is exercisable takes effect.”

(12) For the purposes of this regulation, a member who has exercised the option under this regulation—

(a) is a pensioner member as respects the pension to which the member is immediately entitled as a result of exercising the option and the specified percentage of the pensionable service that pension represents, as respects which the member is an active member on the option day;

(b) if the member continues in pensionable service after the option day, is an active member as respects—

(i) the pensionable service after that day in which the member continues; and

(ii) so much of the pensionable service as respects which the member is an active member on the option day as does not fall within sub-paragraph (a) (“the unspecified service”); and

(c) if the member does not continue in pensionable service after the option day, is a deferred member as respects the unspecified service.

## **New regulation E11B**

**11.** After new regulation E1A (partial retirement pension), insert—

### **“Increase in pensionable pay following exercise of option under regulation E11A**

**E11B.**—(1) This regulation applies if, in a case where a member has exercised the option under regulation E11A—

(a) during the period of 12 months beginning with the day after the option day the terms on which the member holds the employment or employments referred to in regulation E11A(1)(a)(iii) change again; and

(b) as a result the member’s pensionable pay in that employment or those employments is increased to more than 90% of the member’s pensionable pay during the period of 12 months ending with the option day; or

(c) following an increase referred to in sub-paragraph (b), the member’s pensionable pay in that employment or those employments is reduced to less than 90% of the member’s pensionable pay during the period of 12 months ending with the option day.

(2) In the circumstances referred to in—

(a) paragraph (1)(b), the amount of the member's pension mentioned in sub paragraphs (a), (b) and (c) of regulation E11A(5) (excluding any additional benefits) shall be abated to zero from the first pension day immediately following the day on which the level of the member's pensionable pay increased;

(b) paragraph (1)(c), subject to any adjustments in accordance with sub-paragraph (c), the member shall again be entitled to receive payment of the full amount of the pension mentioned in sub-paragraphs (a), (b) and (c) of regulation E11A(5) as from the first pension day immediately following the day on which the level of the member's pensionable pay reduced;

(c) where sub-paragraph (b) applies, before restoring the payment of a pension the Scottish Ministers shall have regard to the advice of the Scheme Actuary as to whether the amount of the pension should be adjusted in view of the length of time during which it was abated to zero in accordance with sub-paragraph (a).

(3) If the member was not in pensionable employment during the whole of the period of 12 months mentioned in paragraph 1(b), that paragraph applies as if the member's pensionable pay during that period were—

$PP \times 365/N$

where—

PP is the member's pensionable pay for the part of that period during which the member was in pensionable employment; and

N is the number of days in that period on which the member was in pensionable employment.

(4) If, in the opinion of the Secretary of State, had the terms and conditions of the member's employment remained the same after the option day (apart from pensionable pay), the annual rate of pensionable pay for the employment as at the time of the change mentioned in paragraph (1)(a) would have exceeded the annual rate referred to in paragraph

(1)(b)—

(a) paragraph (2)(a) does not apply; and

(b) this regulation applies as if paragraph (1)(b) referred to that annual rate instead of the actual annual rate.

(5) For the purposes of this regulation, if during the period of 12 months beginning with the day after the option day the member enters a further pensionable employment or employments—

(a) that event is treated as if the terms on which the member holds the employment in respect of which the option was exercised ("the option employment") had changed again; and

(b) the member's pensionable pay in the further employment is treated as an increase in the member's pay in the option employment.

(6) In this regulation "the option day", "additional benefits", "pensionable employment" and "pensionable pay" have the same meaning as in regulation E11A (see paragraph (9) of that regulation)."



## **New regulation E11C**

**12.**After new regulation E11B (increase in pensionable pay following exercise of option under regulation E11A), insert—

### **“Application of regulations E11A and E11B where concurrent part-time employments held**

E11C.—(1) This regulation provides for the application of regulations E11A and E11B if a member is in pensionable employment in two or more part-time employments held concurrently on the option day.

(2) Those regulations apply in relation to each of the employments as if it were the only employment held by the member on that day, but subject to the following modifications.

(3) In regulation E11A(1), for sub-paragraph (c) substitute—

“(c) as a result of that change the sum of the annual rate of the member’s pensionable pay in that employment and every other employment held by the member on the option day is reduced to 90% or less of the sum of—

- (i) the member’s pensionable pay in the employment during the period of 12 months ending with the option day; and
- (ii) the member’s pensionable pay during that period in every other employment held by the member on the option day.”.

(4) In regulation E11A(2)—

- (a) after the words “paragraph 1(c)”, insert the words “in the employment or any other employment referred to in that paragraph”; and
- (b) after the words “that period”, insert the words “in that employment”.

(5) In regulation E11B(1), for sub-paragraph (b) substitute—

“(b) as a result the annual rate of the member’s pensionable pay in that employment is increased to more than 90% of the sum of—

- (i) the member’s pensionable pay in the employment during the period of 12 months ending with the option day; and
- (ii) the member’s pensionable pay during that period in every other employment held by the member on the option day.”.

(6) In regulation E11B(3)—

- (a) after the words “paragraph 1(b)”, insert the words “in the employment or any other employment referred to in that paragraph”; and
- (b) after the words “that period”, insert the words “in that employment”.

(7) For regulation E11B(4) substitute—

“If, in the opinion of the Scottish Ministers, had the terms and conditions of the member’s employment or any other such employment remained the same after the option day (apart from pensionable pay), the annual rate of pensionable pay for the employment as at the time of the change mentioned in paragraph (1)(a) would have exceeded the annual rate referred to in paragraph (1)(b) for that employment—

- (a) paragraph (2)(a) does not apply; and
- (b) this regulation applies as if paragraph (1)(b) referred to that annual rate instead of the actual annual rate.”.

(8) Where—

(a) a member's pension is abated in accordance with regulation E11B(2)(a), in the circumstances described in regulation E11B(1)(b); and

(b) the member's pensionable pay does not reduce in the manner described in regulation E11B(1)(c),

the pension will (in any event) be payable by the Scottish Ministers when the member retires, or partially retires again, from pensionable employment or attains the age of 75 and in doing so the Scottish Ministers shall—

(i) have regard to any pensions already paid, including any lump sum paid as a result of the member exercising an option under regulation E17; and

(ii) take advice of the Scheme Actuary.

(9) In this regulation “the option day”, “pensionable employment” and “pensionable pay” have the same meaning as in regulation E11A (see paragraph (9) of that regulation).”

### **Amendment of regulation E13**

**13.** (1) Regulation **E13** (lump sum on retirement) is amended as follows—

(2) In paragraph (1), for “E11”, substitute “E11A”; and

(3) In paragraph (7)—

(a) for “**E11** applies (early retirement pension with actuarial reduction)”, substitute “E11 (early retirement pension with actuarial reduction) or regulation E11A (partial retirement pension) applies”; and

(b) at the end of sub-paragraph (a), insert “or regulation E11A(5)(b)”.

### **Amendment of regulation J1**

**14.** In regulation J1 (allocation of pension), in paragraph (4)(a), after the words “put into payment” insert the words “other than a pension payable under regulation E11A (partial retirement pension)”

### **Amendment of regulation K2**

**15.** In regulation K2 (guaranteed minimum pensions), for paragraph (2)(b) substitute—

“(b) payment may be reduced under regulation S2 (reduction of pension on return to NHS employment) if the member returns to NHS employment; and”.

### **Amendment of regulation Q1**

**16.** In regulation Q1 (right to buy additional service), in paragraph (4), after sub-paragraph (b), insert—

“(c) for the purpose of calculating any pension the member becomes entitled to under paragraph (5)(a), (b) or (c) of regulation E11A (partial retirement pension), unless the member specifies that any additional service is to be included in the calculation of that pension in accordance with paragraph (4)(b) of that regulation.”

### **Amendment of regulation Q15**

**17.** In regulation Q15 (effect of death or early payment of pension after option exercised under regulation Q8, Q10 or Q11), in paragraph (5), after sub-paragraph (c), insert—

“; or

- (d) becomes entitled to a pension under regulation E11A before the member’s chosen birthday”.

#### **Amendment of regulation R4**

**18.** In regulation R4 (members doing more than one job), omit paragraph (6).

#### **Amendment of regulation S1**

**19.** The National Health Service Superannuation Scheme (Scotland) Regulations 2011 have effect as if regulation S1 (suspension of pension on return to NHS employment) were omitted.

#### **Amendment of regulation S2**

**20.** (1) In Regulation S2 (reduction of pension on return to NHS employment), in paragraph (2), in sub-paragraph (c), after paragraph (ii), omit “.” and insert-

“;or

- (iii) regulation E11A (partial retirement pension).”.

(2) In paragraph (16), for the definition of “NHS employment” substitute—

“NHS employment includes—

(a) employment in respect of which regulations made under section 10 of the Superannuation Act 1972, and having effect in Scotland, apply; employment to which regulations made under Article 12 of the Superannuation (Northern Ireland) Order 1972 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; and

(b) employment with an employer with whom an agreement has been made under section 235 of the 2006 Act or in respect of whom a direction has been made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967.”

#### **Amendment of Schedule 1**

**21.12.** In Schedule 1, after paragraph 16, insert—

##### **“Partial retirement pension**

**16A.**—(1) In the case of members who are or have been practitioners, regulations E11A (partial retirement pension) and E11B (increase in pensionable pay following exercise of option under regulation E11A) are modified as follows.

(2) Regulation E11A is modified so that—

- (a) the reference to holding pensionable employment in paragraph (1)(b) is treated as a reference to engaging in pensionable employment;
- (b) the condition in paragraph (1)(c)[, for the reduction of the member’s pensionable pay to 90% or less of the member’s pensionable pay during the period of 12 months ending with the option day,] is treated as a condition for the reduction of the member’s engagement in such employment to 90% or less of its pre-change level;
- (c) paragraph (2) is omitted;
- (d) the requirement in paragraph (3)[, for a statement in writing by the member’s employing authority that the conditions in paragraph 1(b) and (c) are met,] is treated as a requirement

for appropriate supporting evidence and a statement in writing approved by the host Board that the conditions in paragraph 1(b) and (c) are met;

- (e) the requirement in paragraph (7)(a) [, for the pension to which the member becomes entitled to not be less than the amount of the pension payable by reference to 20% of the member's pensionable service at the end of the option day (disregarding any additional benefits),] is treated as a requirement for the pension to which the member becomes entitled to not be less than 20% of the pension that would have been payable if the member had ceased to be employed in all of his employments at the end of the option day (disregarding any additional benefits);

- (f) for the purposes of regulation E11A—

- (i) “pre-change level” means the level of the member's engagement in the employment referred to in paragraph (1)(a)(iii) during the period of 12 months ending with the option day; and

- (ii) “pension” means the pension that a member would have been entitled to on the option day if the member had ceased to be employed in all of his employments and, in the case of practitioner services, the pensionable earnings taken into account when working out the pension will be drawn from the latest certificate referred to in paragraph 23 (accounts and actuarial reports), or the latest scheme year's final pensionable earnings referred to in paragraph 10 of this Schedule, and agreed with each relevant host Board.

- (3) Regulation E11B is modified so that—

- (a) the condition in paragraph (1)(b)[, for the member's pensionable pay to increase to more than 90% of the member's pensionable pay during the period of 12 months ending with the option day,] is treated as a condition for the level of the member's engagement in the employment or employments referred to in regulation E11A(1)(a)(iii) to increase to more than 90% of the member's pre-change level;

- (b) for the purposes of this regulation—

- (i) “pre-change level” has the meaning given in paragraph (2)(f)(i);

- (ii) a member's “employment” means practitioner service together with any concurrent NHS employment.”

## PART 4

### Amendment of the National Health Service Superannuation Scheme (Scotland) (2008 Section) Regulations 2013

#### General

**22.** The National Health Service Pension Scheme Regulations 2008 are amended in accordance with this Part.

#### Amendment of regulation 2.D.5

**23.14.** In regulation 2.D.5 (partial retirement (members aged at least 55)), omit paragraph (6)(b) and (c).

## PART 5

### Amendment of the National Health Service Pension Scheme (Scotland) Regulations 2015

**24.** The National Health Service Pension Scheme (Scotland) Regulations 2015 are amended in accordance with this Part.

#### Amendment of regulation 19

**25.** In regulation 19 (restrictions on membership), omit paragraph (1)(c)

#### Amendment of regulation 30

**26.** In regulation 30 (members' contributions: employees)—

(a) in paragraph (3)—

(i) after sub-paragraph (h), insert—

“(i) from 1 October 2023 is the percentage specified in column 2 of Table 9 below in respect of the corresponding pensionable earnings band specified in column 1 into which M's pensionable earnings fall,”, and

(ii) after table 8, insert—

**“Table 9**

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
Up to £13,330	5.8%
£13,331 - £23,819	6.2%
£23,820 - £28,186	6.8%
£28,187 - £35,365	8.3%
£35,366 - £43,421	10.5%
£43,422 - £48,784	11.0%
£48,785 - £68,222	11.6%
£68,223 to any higher amount	13.7%

(b) after paragraph (3), insert—

“(3A) Where paragraph 2A or 3 of Schedule 9 applies, M's contribution rate from 1 October 2023 is the percentage specified in column 2 of the following table in respect of the corresponding pensionable earnings band specified in column 1 into which M's pensionable earnings fall.

**Table Scheme Year 2023-24**

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
Up to £14,196	5.8%
£14,197 - £25,367	6.2%
£25,368 - £30,018	6.8%
£30,019 - £37,663	8.3%
£37,664 - £46,243	10.5%
£46,244 - £51,954	11.0%
£51,955 - £72,656	11.6%
£72,657 to any higher amount	13.7%

### **Amendment of regulation 31**

**27.** In regulation 31 (members' contributions: practitioners and non-GP providers)—

(a) in paragraph (3), after sub-paragraph (h), insert—

“(i) from 1 October 2023 is the percentage specified in column 2 of Table 9 in paragraph (9) in respect of the corresponding pensionable earnings band specified in column 1 into which M's pensionable earnings fall.”, and

(b) in paragraph (9), after table 8, insert—

**“Table 9**

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
Up to £13,330	5.8%
£13,331 - £23,819	6.2%
£23,820 - £28,186	6.8%
£28,187 - £35,365	8.3%
£35,366 - £43,421	10.5%
£43,422 - £48,784	11.0%
£48,785 - £68,222	11.6%
£68,223 to any higher amount	13.7%

### **Amendment of regulation 37**

**28.** In regulation 37 (members' contributions: supplementary: medical practitioners and non-GP providers)—

(a) in paragraph (3)—

(i) for “the Table” in the first place it occurs, substitute “the relevant table in regulation 31”,

(ii) for “the Table” in the second place it occurs, substitute “that table”,

(b) in paragraph (4), for “Table” substitute “relevant table in regulation 31”.

### **Amendment of regulation 38**

**29.**— In Regulation 39 (members' contributions: supplementary: dental practitioners)—

(a) in paragraph (3)—

(i) for “the Table” in the first place it occurs, substitute “the relevant table in regulation 31”,

(ii) for “the Table” in the second place it occurs, substitute “that table”,

(b) in paragraph (4), for “Table” substitute “relevant table in regulation 31”.

### **Amendment of regulation 83**

**30.** In regulation 83 (election for partial retirement (members over normal minimum pension age)), omit paragraph (5)(b)

### **Amendment of regulation 85**

**31.** In regulation 85 (terms of employment improve after election), in paragraph (3), after “regulation 84(2)” insert “(a) and (b)”.

### **Amendment of regulation 104**

**32.** In regulation 104 (previous earnings: general), in paragraph (7), in the definition of “re-valued pensionable earnings”, after “by order” insert “(in respect of the NHS Pension Scheme (Scotland) 2015)”.

#### **Amendment of schedule 4**

**33.** In Schedule 4 (opting out and re-joining), in paragraph 1 (opting out of the scheme), omit sub-paragraph (6).

#### **Amendment of schedule 7**

**34.**—(1) Schedule 7 (pension accounts) is amended as follows.

(2) In paragraph 1 (interpretation)—

(a) for the definition of “index adjustment” substitute—

““index adjustment” means—

- (a) in relation to the opening balance of earned pension for a scheme year (other than the opening balance of club transfer earned pension), the percentage increase or decrease in prices specified in an order (in respect of the NHS Pension Scheme (Scotland) 2015) made by the Treasury under section 9(2) of the 2013 Act in relation to the previous scheme year, plus 1.5%; and
- (b) in relation to the opening balance of club transfer earned pension for a scheme year, the adjustment that is—
  - (i) equal to the adjustment that would apply to the opening balance of that amount of earned pension under the sending scheme for the previous scheme year, and
  - (ii) applied to the opening balance of club transfer earned on the date that the order (in respect of the NHS Pension Scheme (Scotland) 2015) made by the Treasury under section 9(2) of the 2013 Act in relation to the previous scheme year, has effect.”,

(b) in the definition of “AP index adjustment, after “in an order”, insert “(in respect of the NHS Pension Scheme (Scotland) 2015)”.

(3) In paragraph 3 (meaning of “leaver index adjustment”)—

(a) in sub-paragraph (1), in Step 1, after “in an order”, insert “(in respect of the NHS Pension Scheme (Scotland) 2015)”,

(b) for sub-paragraph (2), substitute—

“(2) Subject to sub-paragraph (2A), the leaver index adjustment for an amount of club transfer accrued earned pension is—

- (a) equal to the adjustment that would apply under the sending scheme to an amount of accrued earned pension equal to the amount of club transfer accrued earned pension specified in the active member's account at the end of the relevant last day, and
- (b) applied to the amount of club transfer earned pension at the end of the relevant last day on the date that the order (in respect of the NHS Pension Scheme (Scotland) 2015) made by the Treasury under section 9(2) of the 2013 Act in relation to the previous scheme year, has effect.”.

(4) In paragraph 4 (meaning of “leaver AP index adjustment”), in sub-paragraph (2)(b), after “in an order”, insert “(in respect of the NHS Pension Scheme (Scotland) 2015)”.

#### **Amendment of schedule 9**

**35.** In Schedule 9 (determination of pensionable earnings: setting contribution rates)—

(a) in paragraph 2 (continuous employment spanning two scheme years)—

(i) in sub-paragraph (1)—

(aa) for “Sub-paragraph (2)” substitute “This paragraph”,

(bb) for “M” to the end substitute—

“(M)—

- (a) who is in pensionable employment with the same employing authority on both—
  - (i) the last day of the previous scheme year, and
  - (ii) the first day of the current scheme year, and
- (b) falls within any of the cases in sub-paragraph (2).”,
- (ii) in sub-paragraph (2), for the table of cases substitute—

“

<i>Column 1</i>	<i>Column 2</i>
<b>CASE 1</b>	
<p>M—</p> <p>(a) was in pensionable employment with an employing authority throughout the previous scheme year; and</p> <p>(b) paid contributions at the same percentage rate throughout that year.</p>	<p>The amount of M’s pensionable earnings received during the previous scheme year.</p>
<b>CASE 2</b>	
<p>M—</p> <p>(a) was in pensionable employment with an employing authority throughout the previous scheme year; and</p> <p>(b) did not pay contributions at the same percentage rate throughout that year.</p>	<p>The amount of M’s pensionable earnings determined by the formula-</p> $\frac{\text{RPE}}{\text{NDPE}} \times 365$ <p>where-</p> <p>RPE is the pensionable earnings received in respect of M’s employment for the period-</p> <ul style="list-style-type: none"> <li>(i) starting on the date M’s contribution rate last changed in the previous scheme year; and</li> <li>(ii) ending of the last day of that year; and</li> </ul> <p>NDPE is the number of days of pensionable employment with the employing authority-</p> <ul style="list-style-type: none"> <li>(i) starting on the date M’s contribution rate last changed in that year; and</li> <li>(ii) ending on the last day of</li> </ul>



	that year.
<b>CASE 3</b>	
<p>M—</p> <p>(a) started pensionable employment with an employing authority during the previous scheme year; and</p> <p>(b) paid contributions at the same percentage rate from the date the employment started to the last day of that year.</p>	<p>The amount of M's pensionable earnings determined by the formula-</p> $\frac{\text{RPE}}{\text{NDPE}} \times 365$ <p>where-</p> <p>RPE is the pensionable earnings received in respect of M's employment for the period-</p> <p>(i) starting on the date M started that employment in the previous scheme year; and</p> <p>(ii) ending on the last day of that year; and</p> <p>NDPE is the number of days of pensionable employment with the authority</p> <p>(i) starting on the day M started that employment in that year; and</p> <p>(ii) ending on the last day of that year.</p>
<b>CASE 4</b>	
<p>M—</p> <p>(a) started pensionable employment with an employing authority during the previous scheme year; and</p> <p>(b) did not pay contributions at the same percentage rate from the date the employment started to the last day of that year</p>	<p>The amount of M's pensionable earnings determined by the formula-</p> $\frac{\text{RPE}}{\text{NDPE}} \times 365$ <p>where-</p> <p>RPE is the pensionable earnings received in respect of M's employment for the period-</p> <p>(i) starting on the date M's contribution rate last changed in the previous scheme year; and</p> <p>(ii) ending on the last day of that year; and</p> <p>NDPE is the number of days of pensionable employment with the authority-</p>

	<p>(i) starting on the date M's contribution rate last changed in that year; and</p> <p>(ii) ending on the last day of that year.</p>
<b>CASE 5</b>	
<p>M—</p> <p>(a) was in pensionable employment on a part-time basis with an employing authority throughout the previous scheme year and during that year M's annual rate of pensionable earnings in respect of that employment changed; and</p> <p>(b) paid contributions in respect of that period at the same percentage rate throughout the year.</p>	<p>The amount of M's pensionable earnings determined by the formula-</p> $\frac{\text{RPE}}{\text{NDPE}} \times 365$ <p>where-</p> <p>RPE is the pensionable earnings received in respect of M's employment for the period-</p> <p>(i) starting on the date M's annual rate of pensionable earnings last changed in the previous scheme year; and</p> <p>(ii) ending on the last day of that year; and</p> <p>NDPE is the number of days of pensionable employment with the authority-</p> <p>(i) starting on the date M's annual rate of pensionable earnings last changed in that year; and</p> <p>(ii) ending on the last day of that year.</p>

- (i) omit sub-paragraphs (3) and (4),
- (b) after paragraph 2 (continuous employment spanning two scheme years), insert—

**“ Members who do not fall within any of the cases in paragraph 2**

**2A.**—(1) This paragraph applies for the purpose of determining the relevant contribution rate for the current scheme year for a member—

- (a) who is in pensionable employment with the same employing authority on both—
  - (i) the last day of the previous scheme year, and
  - (ii) the first day of the current scheme year, and
- (b) does not fall within any of the cases within column 1 of the table in paragraph 2.

(2) Where this paragraph applies—

- (a) the scheme manager must determine the amount of the member's pensionable earnings, and

- (b) the member must pay contributions during the current scheme year at the rate specified in column 2 of Table 9 in paragraph (3A) of regulation 30 in respect of the amount of pensionable earnings referred to in column 1 of that table which corresponds to the amount so determined.
- (3) For the purposes of sub-paragraph (2)(a), the scheme manager must take the advice of the scheme actuary and have regard to—
  - (a) pensionable earnings attributable to pensionable service comparable to that of the member,
  - (b) prevailing pay scales,
  - (c) prevailing rates of pensionable allowances.
- (4) A member is regarded as being in pensionable employment throughout the previous scheme year regardless of any period in that year during which the member continued to be employed by the same employer, but did not make contributions to this scheme.
- (5) For the purposes of calculating the member's pensionable earnings, additional pensionable earnings that the member is treated as having received during an absence from work (see regulation 28) are included.
- (6) The amount of pensionable earnings determined in accordance with this paragraph must be rounded down to the nearest whole pound.”.
- (c) In paragraph 3 (change to employment or rate of pensionable earnings or allowances)—
  - (i) in sub-paragraph (1), for “(3)” substitute “(3A)”,
  - (ii) in sub-paragraph (2)(a), for “(3)” substitute “(3A)”,
  - (iii) omit sub-paragraph (4),
  - (iv) for sub-paragraph (5) substitute—
 

“(5) Where sub-paragraph (1) or (2) applies the scheme manager must determine the member's pensionable earnings by applying the formula—

$$\frac{\text{EPE} \times 365}{\text{NDPE}}$$

NDPE

Where, for the purposes of this sub-paragraph-

EPE is the pensionable earnings that the member's employing authority estimates will be payable to the member from the date the employment mentioned in that sub-paragraph starts to the end of the current scheme year; and

NDPE is the number of days pensionable employment from the date the employment starts to the end of that year.”,

- (d) in sub-paragraph (7), for “(6)” to the end substitute “(6) is to be taken as such amount as the employing authority considers appropriate for the current scheme year.”.

### **Amendment of schedule 13**

#### **36. In schedule 13 (definitions)—**

- (a) after the definition of “assistant dental practitioner”, insert—
 

“”assistant practitioner” means—

  - (a) in the case of a registered medical practitioner—
    - (i) a GP performer who is not a GP provider but who is—
      - (aa) employed (whether under a contract of service or for services) by a GMS practice, a section 17C agreement provider, an HBPMS contractor, an OOH provider or a Health Board, and

- (bb) in that employment engaged wholly or mainly in assisting that practitioner's employer in the discharge of the employer's duties as a GMS practice, a section 17C agreement provider, an HBPMS contractor, an OOH provider or a Health Board, or
- (ii) a registered medical practitioner who is participating in a Doctors' Retainer Scheme, and
- (b) in the case of a dental practitioner, an assistant as defined in regulation 2(1) of the National Health Service (General Dental Services) (Scotland) Regulations 2010."

## PART 6

### Amendment of The National Health Service Pension Scheme (Transitional and Consequential Provisions) (Scotland) Regulations 2015

#### General

**37.** The National Health Service Pension Scheme (Transitional and Consequential Provisions) (Scotland) Regulations 2015 are amended in accordance with this Part.

#### Amendment of regulation 2

**38.** In regulation 2 (Interpretation), insert each of the following definitions at the appropriate place in the alphabetical order—

““non-pensionable 1995 Section member” means a member of-

(a) the 1995 Section who, on 31 March 2022, is no longer required to pay contributions pursuant to regulation D1(3) or (4) (contributions by members: age and pensionable service limits) of the 1995 Regulations; and

(b) the new scheme in respect of service on or after 1 October 2023;”

““non-pensionable 2008 Section member” means a member of-

(a) the 2008 Section who, on 31 March 2022, is a non-contributing member within the meaning of regulation 2.A.1 (interpretation of Part 2: officers) or 3.A.1 (interpretation of Part 3: practitioners and out-of-hours providers) of the 2008 Regulations; and

(b) the new scheme in respect of service on or after 1 October 2023;”

““non-pensionable old scheme member” means-

(a) a non-pensionable 1995 Section member; or

(b) a non-pensionable 2008 Section member

#### Amendment of regulation 14

**39.** (1) Regulation 14 (determination of pensionable pay, final pensionable pay and reckonable pay) is amended as follows—

(2) In paragraph (1), after the words “a 1995 offer transition member” insert the words “or a non-pensionable 1995 Section member”

(3) In paragraph (2), after the words “a 2008 officer transition member” insert the words “or a non-pensionable 2008 Section member”.

#### New regulation 17A

**40.** After regulation 17 (Final salary link: Mental Health Officers), insert—

### **“Final salary link: non-pensionable old scheme members**

17A. Schedule 7 (final Salary Link) to the 2013 Act does not apply in the case of non-pensionable old scheme members who join the new scheme on or after 1 October 2023.”

### **Amendment of regulation 31**

**41.**(1) Regulation 31 (partial retirement) is amended as follows—

(2) In paragraph (1), for “regulations 2.D.5 or 3.D.5” substitute “regulation E11A or paragraph 16A of Schedule 2 of the 1995 Regulations, or regulations 2.D.5 or 3.D.5 of the 2008 Regulations,”.

(3) In paragraph (2), for the words “the 2008 Section” substitute “first the 1995 Section (if applicable), then the 2008 Section (if applicable)”.

(4) For paragraph (3) substitute—

“(3) For the purposes of regulation E11A(7) and paragraph 16A of Schedule 2 of the 1995 Regulations, or regulation 2.D.5(6) and 3.D.5(5) of the 2008 Regulations (as the case may be), and regulation 83(5) of the 2015 Regulations—

(a) The pension, other than additional benefits (in the case of regulation E11A of the 1995 Regulations) or additional pension (in the case of regulation 2.D.5 and 3.D.5 of the 2008 Regulations), to which the member becomes entitled as a result of the option or election (before converting pension to lump sum) is not to be less than the amount of pension payable by reference to 20% of the aggregate of the member’s pensionable service under the 1995 Regulations, or the 2008 Regulations (as the case may be), and the 2015 Regulations at the end of the option day; and

(b) taken together with any increase to which the member has become entitled as a result of the option or election, the aggregate of the member’s pension under the 1995 Regulations, or the 2008 Regulations (as the case may be), and the 2015 Regulations is not less than 0.05% of the member’s lifetime allowance on the option day.”

### **Amendment of regulation 35**

**42.** In regulation 35(1) (variations to lump sums for 1995 and 2008 pensioners joining new scheme) for “and 7”, in the first place it occurs, substitute “, 7, 9 and 10”.

### **Amendment of regulation 38**

**43.** (1) Regulation 38 (death in service) is amended as follows—

(1) In paragraph (1)—

(a) for “the table” substitute “Table”;

(b) for the heading “Table” substitute “Table 1 Transition member entitlements”

(2) After paragraph (1), insert—

“(1A) As regards a non-pensionable old scheme member, or a person who derives a benefit from the old scheme or new scheme in respect of a non-pensionable old scheme member, the entitlement listed in column 1 of table 2 is disapplied and the corresponding entitlement in column 2 applies instead.”

Table 2 Non-pensionable old scheme member entitlements

<i>Column 1</i>	<i>Column 2</i>
<i>Original entitlement</i>	<i>Revised entitlement</i>

PART 1

Entitlements from the 1995 Section

a lump sum on death under regulation F1.	<p>a lump sum on death under regulation 111(a) of the 2015 Regulations which is equal to the greater of–</p> <p>(a) the lump sum calculated in accordance with paragraph 2 (death of active member) of schedule 12 (lump sum on death) to the 2015 Regulations; and</p> <p>(b) the lump sum otherwise due under the original entitlement to a lump sum on death under regulation F1 of the 1995 Regulations.</p>
an initial adult survivor pension under regulation G2(5) at the rate of the member's pensionable pay for the first six months after the member's death.	<p>a pension payable from the new scheme during the initial period at the rate which is equal to the greater of–</p> <p>(a) the rate of the member's pensionable earnings under regulation 114(4) of the 2015 Regulations; and</p> <p>(b) the rate of the member's pensionable pay that would have applied under the original entitlement in respect of the member under regulation G2(5) of the 1995 Regulations</p> <p>where references in regulation G2(6) and H3(7) and (8) of the 1995 Section to regulation G2(5) are to be taken to be a reference to a pension payable under regulation 114(4) of the 2015 Regulations.</p>
an ongoing pension under regulation G2(5) based on one half of the member's notional ill-health pension had the member become entitled to a tier 2 pension under regulation E3 on the member's last day of pensionable employment.	<p>(a) payable from the 1995 Section in respect of service in that Section, an ongoing adult survivor pension equal to the pension that would have been payable to the adult survivor under Part G of the 1995 Section if the member had retired with a pension under regulation E1 of the 1995 Section on the member's last day of pensionable employment; and</p>

	(b) payable from the new scheme in respect of service in that scheme, an ongoing survivor pension based on a Tier 2 IHP under regulation 114(5) of the 2015 Regulations
<p>a dependant child's pension under regulation H3 equal to the rate of the member's final year's pensionable pay, payable for the first—</p> <p>(a) three months under paragraph (8);  (b) six months under paragraph (9);  (c) six months under paragraph (10).</p>	<p>an initial pension payable from the new scheme equal to the greater of—</p> <p>(a) an initial pension of the same amount and for the same duration under paragraph (6) or (7) of regulation 122 of the 2015 Regulations; and</p> <p>(b) an initial pension of the same amount and for the same duration as the original entitlement in respect of the member under regulation H3 of the 1995 Regulations.</p>
<p>an ongoing pension under regulation H3(3) based on a proportion of the member's notional ill-health pension had the member become entitled to a tier 2 pension under regulation E3 on the member's last day of pensionable employment or, if greater, the amount that pension would have been had it been based on 10 years pensionable service.</p>	<p>(a) payable from the 1995 Section in respect of service in that Section, an ongoing pension equal to the relevant proportion of the pension that would have been payable to the member if the member had retired with a pension under regulation E1 of the 1995 Section on the member's last day of pensionable employment; and</p> <p>(b) payable from the new scheme in respect of service in that scheme, an ongoing pension based on the appropriate fraction of the basic death pension specified under regulation 122(3) and (4) of the 2015 Regulations.</p>

## PART 2

### Entitlements from the 2008 Section

<p>a lump sum on death under regulation 2.E.17(1) or 3.E.17(1).</p>	<p>a lump sum on death under regulation 112(a) of the 2015 Regulations which is equal to the greater of—</p> <p>(a) the lump sum calculated in accordance with paragraph 2 (death of active member) of schedule 2 (lump sum on death) to the 2015 Regulations; and</p> <p>(b) the lump sum otherwise due under the original entitlement to a lump sum on death under regulation 2.E.17(1) or 3.E.17(1) of the 2008 Regulations.</p>
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<p>a surviving adult dependent's pension during the initial period of six months—</p> <p>(a) under regulation 2.E.3(1)(b) equal to the deceased's reckonable pay; or</p> <p>(b) under regulation 3.E.3(1)(b) equal to the monthly average of the deceased's uprated earnings on the member's last day of pensionable service</p>	<p>a pension payable from the new scheme during the initial period at the rate which is equal to the greater of—</p> <p>(a) the rate of the member's pensionable earnings under regulation 115(4) of the 2015 Regulations; and (b) the rate of the deceased's reckonable pay under regulation 2.E.3(1)</p> <p>(b) of the 2008 Regulations or the monthly average of the deceased's uprated earnings on the member's last day of pensionable service under regulation 3.E.3(1)(b) of the 2008 Regulations</p> <p>where references in regulation 2.E.3(2) and 3.E.3(2) of the 2008 Regulations to “after the initial period” are to be taken to be a reference to the period for which the initial pension payable under regulation 114(4) of the 2015 Regulations is payable.</p>
<p>If the member has not reached the age of 65: an ongoing pension after the initial period—</p> <p>(a) under regulation 2.E.3(2)(a) equal to 37.5% of the tier 2 ill health pension under regulation 2.D.8 to which the member would have been entitled if, on the date of death, the member had become entitled to such a pension; or</p> <p>(b) under regulation 3.E.3(2)(a) equal to the appropriate proportion of the tier 2 ill health pension under regulation 3.D.7 to which the member would have been entitled if, on the date of death, the member had become entitled to such a pension.</p> <p>If the member has reached the age of 65: an ongoing pension after the initial period—</p> <p>(a) under regulation 2.E.3(2)(b) equal to 37.5% of the pension under regulation 2.D.1 to which the member would have been entitled if, on the date of death, the member had become entitled to such a pension in respect of any period of pensionable service; or</p> <p>(b) under regulation 3.E.3(2)(b) equal to the appropriate proportion of the tier 2 ill health pension under regulation 3.D.1 to which the member would have been entitled if, on the date of death, the member had become entitled to such a pension in respect of any period of pensionable service.</p>	<p>(a) payable from the 2008 Section in respect of service in that Section, an ongoing adult survivor pension after the initial period equal to—</p> <p>(i) 37.5% of the pension under regulation 2.D.1 to which the member would have been entitled if, on the date of death, the member had become entitled to such a pension in respect of any period of pensionable service that the member is entitled to count; or</p> <p>(ii) the appropriate proportion of the pension under regulation 3.D.1 to which the member would have been entitled if, on the date of death, the member had become entitled to such a pension in respect of any period of pensionable service that the member is entitled to count; and</p> <p>(b) payable from the new scheme in respect of service in that scheme, an ongoing survivor pension based on a Tier 2 IHP under regulation 114(5) of the 2015 Regulations</p>



<p>a dependant child's pension under—</p> <p>(a) regulation 2.E.10 equal to the rate of the deceased member's reckonable pay, payable for the first—</p> <p style="padding-left: 40px;">(i) three months under paragraph (6)(ii);</p> <p style="padding-left: 40px;">(ii) six months under paragraph (7)(ii); or</p> <p>(b) regulation 3.E.10 equal to the rate of the monthly average of the deceased's uprated earnings on the member's last day of pensionable pay, payable for the first—</p> <p style="padding-left: 40px;">(i) three months under paragraph (5)(ii);</p> <p style="padding-left: 40px;">(ii) six months under paragraph (6)(b)</p>	<p>an initial pension payable from the new scheme equal to the greater of—</p> <p>(a) an initial pension of the same amount and for the same duration under paragraph (6) or (7) of regulation 123 of the 2015 Regulations; and</p> <p>(b) an initial pension of the same amount and for the same duration as the original entitlement in respect of the member under regulation 2.E.10 or 3.E.10 of the 2008 Regulations.</p>
<p>an ongoing pension under regulation 2.E.10(3) or 3.E.10(3) equal to the appropriate fraction of the basic death pension.</p>	<p>(a) payable from the 2008 Section in respect of service in that Section, an ongoing pension equal to the appropriate fraction of the basic death pension payable under –</p> <p style="padding-left: 40px;">(i) regulation 2.E.10(3) or 3.E.10(3) of the 2008 Section; or</p> <p style="padding-left: 40px;">(ii) regulation 3.E.10(3) of the 2008 Section</p> <p>where that pension is based on the pensionable service that the deceased was entitled to count at the date of death; and</p> <p>(b) payable from the new scheme in respect of service in that scheme, an ongoing pension based on the appropriate fraction of the basic death pension specified under regulation 122(3) and (4) of the 2015 Regulations.</p>

(3) In paragraph (2) , for “the table”, in both places it occurs, substitute “Table 1 or Table 2”

#### **Amendment of Schedule 1**

**44.** In paragraph 1 of Schedule 1 (eligibility of 1995 Section pensioners to join new scheme), at the end of the table insert—

“9	<p>a 1995 Section pensioner in receipt of a lower tier pension under regulation E3 of the 2011 Regulations—</p> <p>(a) who returns to NHS employment and the first anniversary of that return is on or after 1st April 2023; and</p> <p>(b) whose protection period for the purposes of regulation E5 of the 2011 Regulations spans 1st April 2023 or begins on or after 1st April 2023.</p>	<p>eligible to be an active member of the new scheme on the day after the protection period in <b>regulation E5(6)(b) of the 2011 Regulations</b> ends.</p>
10	<p>a 1995 Section pensioner, other than a lower tier ill-health pensioner, who does not fall within one of the Groups above.</p>	<p>eligible to be an active member of the new scheme, or re-join the new scheme, on the first day on or after 1st April 2023 on which the member is in an employment that would, apart from the operation of <b>regulation 19(d) of the 2015 Regulations</b>, otherwise be eligible for membership under those Regulations.”</p>

## PART 7

### Modifications of member contribution provisions in The National Health Service Pension Scheme (Scotland) Regulations 2015

#### General

**45.** The National Health Service Pension Scheme (Scotland) Regulations 2015 are modified in accordance with this Part.

#### Expiry of modifications in this Part

**46.** The modifications in this Part apply until the end of 31st March 2024.

#### Modification of regulation 31

**47.** Regulation 31 (members' contributions: practitioners and non-GP providers) is to be read as if—

- (a) in paragraph (3)(h), for “from 1 April 2022” there were substituted “for each relevant period of the scheme year 2022/23 and for the scheme year 2023/24”,
- (b) after paragraph (9), there were inserted—
  - “(9A) For the purposes of this regulation, the “relevant period of the scheme year 2022/23” means the period, as applicable—
  - (a) beginning with 1st April 2022 and ending with 30th September 2022,
  - (b) beginning with 1st October 2022 and ending with 31st March 2023.”,
- (c) in paragraph (10), at the end, there were inserted “and references to the relevant period of the scheme year 2022/23 in regulations 38 and 39 must be construed in accordance with paragraph (9A)”.

### Modification of regulation 37

48. Regulation 37 (members' contributions: supplementary: medical practitioners, non-GP providers) is to be read as if—

- (a) in paragraph (2)—
  - (i) in the words before sub-paragraph (a), for “a scheme year” there were substituted “each relevant period of the scheme year 2022/23”,
  - (ii) in sub-paragraph (b), after “M’s pensionable earnings for” there were inserted “each relevant period of”,
- (b) after paragraph (2), there were inserted—

“(2A) Paragraph (3A) applies if, in respect of the scheme year 2022/23, M—

- (a) has certified M’s pensionable earnings in accordance with Part 1 of Schedule 10 and forwarded a record of the earnings to the contracting Health Board, or
- (b) was not required to certify M’s earnings in accordance with Part 1 of Schedule 10 but the contracting Health Board has the figure that represents M’s pensionable earnings for that year.”,

- (c) in paragraph (3)—

- (i) in the words before sub-paragraph (a), for “the scheme year in question” there were substituted “each relevant period of the scheme year 2022/23”,
- (ii) for sub-paragraph (a), there were substituted—

“(a) certified or final pensionable earnings from all group D sources for each relevant period of the scheme year 2022/23 uprated according to the formula—

$$\frac{PE}{NDRP} \times 365$$

where—

PE is the certified or final amount of M’s pensionable earnings from all group D sources for each relevant period of the scheme year 2022/23,

NDRP is the number of days of M’s group D service in each relevant period of the scheme year 2022/23, and”,

- (iii) in sub-paragraph (b)—

- (i) after “received” there were inserted “for each relevant period of the scheme year 2022/23”,
- (ii) at the end, there were inserted—  
“,

and the pensionable earnings to which the contribution rate is applied for each relevant period of the scheme year 2022/23 are M’s certified or final pensionable earnings from all group D sources for each relevant period”,

- (d) after paragraph (3), there were inserted—

“(3A) If paragraph (3) does not apply to M in respect of the scheme year 2022/23, M’s contributions payable for each relevant period of the scheme year 2022/23 are those specified in column 2 of the relevant table in respect of the amount of pensionable earnings referred to in column 1 of that table which corresponds to the aggregate of—

- (a) the pensionable earnings from all group D sources for each relevant period of the scheme year 2022/23 determined by applying the formula—

$$\frac{PE}{NDPS} \times NDRP$$

where—

PE is the certified or final amount of M's pensionable earnings from all group D sources for the scheme year 2022/23,

NDPS is the number of days of M's group D service in the scheme year 2022/23,

NDRP is the number of days of M's group D service in each relevant period of the scheme year 2022/23,

and uprated according to the formula—

$$\frac{PE}{NDRP} \times 365$$

where—

PE is M's pensionable earnings from all group D sources for each relevant period of the scheme year 2022/23 determined in accordance with this paragraph,

NDRP is the number of days of M's group D service in each relevant period of the scheme year 2022/23, and

- (b) any additional pensionable earnings M is treated as having received for each relevant period of the scheme year 2022/23 during an absence from work in accordance with regulation 28,

and the pensionable earnings to which the contribution rate is applied for each relevant period of the scheme year 2022/23 are determined by applying the formula—

$$\frac{PE}{NDPS} \times NDRP$$

where—

PE is the certified or final amount of M's pensionable earnings from all group D sources for the scheme year 2022/23,

NDPS is the number of days of M's group D service in the scheme year 2022/23,

NDRP is the number of days of M's group D service in each relevant period of the scheme year 2022/23.”,

- (e) in paragraph (4), in the words before sub paragraph (a), for “paragraph (3) does” there were substituted “paragraphs (3) or (3A) do”,

- (f) in paragraph (5)—

- (i) for “paragraph (2)(a) or (b) is”, there were substituted “paragraphs (2)(a) or (b) or (2A)(a) or (b) are”,

- (ii) after “rate” there were inserted “or rates”,

- (iii) for “paragraph (3)” there were substituted “paragraphs (3) or (3A)”.

Signatory text

St Andrew's House  
Edinburgh  
Date

*Name*  
Authorised to sign by the Scottish Ministers

**EXPLANATORY NOTE**

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