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## EXPLANATORY NOTE

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

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

These Regulations make amendments to the Superannuation Scheme Regulations and the AVC Regulations following the coming into force of the Finance Act 2004 (c. 12). That Act makes new provision from 6th April 2006 on the tax treatment of occupational pension schemes. The provisions of regulations 2 to 29 of these Regulations have retrospective effect from 6th April 2006 as authorised by section 12 of the Superannuation Act 1972 (c. 11).

Regulation 1 provides for citation, commencement, effect, interpretation and extent.

Regulation 2 amends regulation A2 of the Superannuation Scheme Regulations (interpretation) by inserting definitions which are needed to give effect to the provisions of the Finance Act 2004.

Regulation 3 amends regulation B6 of the Superannuation Scheme Regulations (opting into the scheme: mis-sold pensions) by amending the definition of “personal pension scheme” to take account of the change in status of such schemes to “registered schemes” for the purposes of the Finance Act 2004.

Regulation 4 amends regulation E2 of the Superannuation Scheme Regulations (early retirement pension (ill-health)) so that any lump sum payment is consistent with the Pension Schemes Act 1993 (c. 48) provisions relating to contracting-out and preservation of benefits and the new lump sum rule from the Finance Act 2004. It also amends that regulation so as to provide for the calculation of such a lump sum.

Regulations 5, 6, 7 and 8 respectively amend regulations E3 (early retirement pension (redundancy etc.)), E4 (early retirement pension (employer’s consent)), E5 (early retirement pension (with actuarial reduction)) and E6 (preserved pension) of the Superannuation Scheme Regulations so as to refer to those who are to have the normal minimum pension age of 55 or, where provided for under the Finance Act 2004, a lower protected pension age.

Regulation 9 amends regulation E7 of the Superannuation Scheme Regulations (lump sum on retirement) so as to provide that where a member of the scheme has attained the age of 75, he shall no longer be entitled to a lump sum but shall instead have his pension increased in lieu of that lump sum.

Regulation 10 amends regulation E9 of the Superannuation Scheme Regulations (early leavers’ entitlement to refund of contributions) so as to provide that a member who becomes entitled to a refund of his contributions shall receive a lump sum less tax at 20 per cent on such part of that sum which does not exceed £10,800 and at 40 per cent on such part of that sum which exceeds that limit.

Regulation 11 amends regulation F2 of the Superannuation Scheme Regulations (lump sum when member dies after pension becomes payable) so as to provide that a member may notify the scheme administrator that he wants a lump sum payable under the regulation to be treated as a pension protection lump sum death benefit in accordance with the provisions of the Finance Act 2004.

Regulation 12 amends regulation H1 of the Superannuation Scheme Regulations (dependent child) so that it refers to a child aged 17 or over but who has not reached the age of 23. It also makes transitional provision for children who may become entitled to a child allowance on or before 6th

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

April 2006 or whose dependency is to be assessed in relation to a person who became entitled to a pension on or before that date.

Regulation 13 amends regulation J1 of the Superannuation Scheme Regulations (allocation of pension by member for benefit of dependent) so as to provide that a member who wishes to allocate part of his pension to another person must do so before the date on which that pension becomes payable to him.

Regulation 14 amends regulation N1 of the Superannuation Scheme Regulations (member's right to transfer accrued rights to benefits to the scheme) so as to provide that a member may, within 12 months of joining the scheme, request the Scottish Ministers to accept a transfer payment in respect of his or her rights under certain other schemes except rights under a free-standing AVC scheme which was established on, or after, 6th April 2006 or which existed prior to that date and became a free-standing AVC scheme for the purposes of the Finance Act 2004.

Regulation 15 inserts a new regulation (regulation T2A (deduction of tax: further provisions)) to the Superannuation Scheme Regulations. New regulation T2A provides, amongst other things, for any lifetime charge under the Finance Act 2004 to be paid by the scheme administrator (to be the Scottish Ministers), and for such a person to notify the scheme administrator of certain matters if he or she wishes to rely on protections provided for under the Finance Act 2004 (i.e. enhanced lifetime allowance protection).

Regulation 16 amends regulation T7 of the Superannuation Scheme Regulations (commutation of trivial pensions) so as to provide that any commutation must be consistent not only with the contracting-out and preservation requirements of the Pension Schemes Act 1993 but also the lump sum and lump sum death benefit rules provided for in the Finance Act 2004.

Regulation 17 amends regulation W15 of the Superannuation Scheme Regulations (commutations: small pensions) so as to provide that any pension credit benefit which is to be commuted has to satisfy the requirements of the Finance Act 2004 in respect of trivial commutation of lump sums.

Regulation 18 amends regulation 2 of the AVC Regulations (interpretation) by inserting definitions of the Finance Act 2004, "lifetime allowance" and "registered pension scheme" so as to give effect in the remainder of the AVC Regulations to the provisions of the Finance Act 2004.

Regulations 19 and 20 respectively amend regulations 3 (making and acceptance of elections) and 6 (circumstances when elections cease to have effect) of the AVC Regulations so as to refer to the correct section of the Finance Act 2004.

Regulation 21 amends regulation 8 of the AVC Regulations (inward transfers) so as to provide that a person who has paid contributions to a registered AVC scheme for the purposes of the Finance Act 2004 can give notice to the Scottish Ministers saying that they wish the Scottish Ministers to accept a transfer from that scheme.

Regulation 22 amends regulation 10 of the AVC Regulations (outward transfers) to omit obsolete references to the Income and Corporation Taxes Act 1988 (c. 1) and so that the regulation correctly refers to the Finance Act 2004.

Regulation 23 amends regulation 12 of the AVC Regulations (lump sums on death) so as to provide that a lump sum payable on death cannot exceed the limits set down in the Finance Act 2004.

Regulation 24 amends regulation 13 of the AVC Regulations (benefit limits) to make it clear that any benefits paid under the Regulations are limited by reference to the person's lifetime allowance under the Finance Act 2004.

Regulation 25 amends regulation 14 of the AVC Regulations (repayment of investments in certain cases) so that the regulation refers to the relevant provisions of the Finance Act 2004.

Regulation 26 amends regulation 15 of the AVC Regulations (payments by Secretary of State) to remove outdated references to limits on death benefits applying prior to the Finance Act 2004 and to remove an obsolete statutory reference.

Regulation 27 amends regulation 16 of the AVC Regulations (information) to impose an obligation on a person who wishes to take advantage of an entitlement to an enhanced lifetime allowance in accordance with the Finance Act 2004 to provide the AVC provider with certain information.

Regulation 28 inserts a new regulation (regulation 22: tax) in the AVC Regulations making it clear that benefits payable under the Regulations are paid net of tax due under the Finance Act 2004.

Regulation 29 deletes Schedule 1 to the AVC Regulations (benefit limits) to reflect the fact that the benefit limits are now subject to the Finance Act 2004 (see new regulation 22) and not the limits previously set out in Schedule 1 to the AVC Regulations.

Regulations 30 to 35 have effect from 30th June 2006. Regulation 30 further amends regulation 2 of the AVC Regulations (interpretation) by inserting a definition of “pension commencement lump sum”.

Regulation 31 further amends regulation 3 of the AVC Regulations (making and acceptance of elections) so as to provide that an AVC scheme may provide either for an annuity or for both a pension commencement lump sum and an annuity on retirement.

Regulation 32 amends regulation 4 of the AVC Regulations (payment of an amount of additional voluntary contributions) so as to enable a person to make contributions to an AVC scheme which do not exceed 100 per cent of their salary (subject to certain exceptions).

Regulation 33 amends regulation 11 of the AVC Regulations (retirement and dependants' pensions) so as to reflect the fact that investments made under a scheme may be realised to provide not just an annuity but also a pension commencement lump sum and an annuity on retirement.

Regulation 34 further amends regulation 15 of the AVC Regulations (payments by Secretary of State) to provide that AVC investments may be realised and used to purchase either an annuity or a pension commencement lump sum or lump sum death benefit.

Regulation 35 amends Schedule 2 to the AVC Regulations (pension sharing on divorce or nullity of marriage or dissolution or nullity of civil partnership) to provide that an AVC investment may be realised so as to provide a pension commencement lump sum, and to allow for a percentage of the proceeds of any investment specified in a notice of election to be used in that manner.

A regulatory impact assessment has not been produced for these Regulations as they have no additional impact on business, charities, voluntary bodies or any public bodies distinct from that of the Finance Act 2004 itself. A regulatory impact assessment in respect of the provisions of Part 4 of the Finance Act 2004 and subordinate legislation under it was published by the Board of Inland Revenue on 8th April 2004, and is available on the website of Her Majesty's Revenue and Customs at <http://www.hmrc.gov.uk/ria/simplifying-pensions.pdf> or (for hard copies) by writing to the Ministerial Correspondence Unit, Capital and Savings 1st Floor Ferrers House, PO Box 38, Castle Meadow Road, Nottingham, NG2 1BB.