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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 117**

**The National Health Service Superannuation  
Scheme (Scotland) Regulations 2011**

**PART A**

**PRELIMINARY**

**Citation and commencement**

**A1.**—(1) These Regulations may be cited as the National Health Service Superannuation Scheme (Scotland) Regulations 2011.

(2) These Regulations come into force on 1st April 2011.

**Interpretation**

**A2.**—(1) Paragraph (4) of this regulation contains a list of expressions and in these Regulations, unless the context otherwise requires, any expression for which there is an entry in the first column of that paragraph has the meaning given against it in the second column or is to be construed in accordance with directions given against it in that column.

(2) In these Regulations, unless the context otherwise requires—

- (a) any reference to a regulation, Part or Schedule identified by a letter or number or both (an “indicator”) is to be construed as a reference to the regulation, Part or Schedule, as the case may be, identified by that indicator in these Regulations, and any reference in a regulation of or a Schedule to these Regulations to a numbered paragraph is to be construed as a reference to the paragraph bearing that number in that regulation or, as the case may be, that Schedule;
- (b) any reference to the scheme, except where the context otherwise requires, means the National Health Service Superannuation Scheme for Scotland, the rules of which are set out in these Regulations and the National Health Service Pension Scheme (Scotland) Regulations 2008; and
- (c) any reference to this Section of the scheme, except where the context otherwise requires, means these Regulations.

(3) Where these Regulations require anything to be done within a specified period after or from a specified day or event, the period begins immediately after the specified day or, as the case may be, the day on which the specified event occurs.

(4) The following two columns are those referred to in paragraph (1) of this regulation:—

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<i>Expression</i>	<i>Meaning</i>
“the 1978 Act”	The National Health Service (Scotland) Act 1978
	M1
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**Status:** Point in time view as at 25/03/2020.

**Changes to legislation:** There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)

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“the 1980 Regulations”	The National Health Service (Superannuation) (Scotland) Regulations 1980 M2 ;
“the 1993 Act”	The Pension Schemes Act 1993 M3 ;
“the 1995 Act”	The Pensions Act 1995 M4 ;
“the 1995 Regulations”	The National Health Service Superannuation Scheme (Scotland) Regulations 1995 M5
“the 1997 Act”	The National Health Service (Primary Care) Act 1997 M6 ;
“the 1999 Act”	The Welfare Reform and Pensions Act 1999 M7 ;
“the 2004 Act”	The Finance Act 2004 M8 ;
[ <sup>F1</sup> “the 2008 Act”	The Pensions Act 2008;]
“the 2008 Section”	means the Section of the scheme, the rules of which are set out in [ <sup>F2</sup> the National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013];
[ <sup>F3</sup> “the 2010 Regulations”	The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010;]
[ <sup>F4</sup> “the 2013 Act”	The Public Service Pensions Act 2013;]

[ <sup>F4</sup> “the 2015 Scheme”	The scheme set out in the National Health Service Pension Scheme (Scotland) Regulations 2015;]
“active member”	A person who is in pensionable service under this Section of the scheme;
“additional services”	(a) with regard to a GMS practice, the meaning given in [ <sup>F5</sup> schedule 1 of the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018]; and  (b) with regard to any other performer or provider of primary medical services, means services which, if provided by a GMS practice, would be additional services within the meaning given in Schedule 1 to those Regulations;
“age”	Shall be construed in accordance with section 181(1) of the 1993 Act;
“appropriate percentage”	The meaning given in regulation V5(4);
“appropriate rights”	The meaning given in regulation V11(1);
“assistant practitioner”	The meaning given in paragraph 1 of Schedule 1;
[ <sup>F6</sup> “automatic enrolment date”	The date referred to in section 3(7) of the 2008 Act;
“automatic re-enrolment date”	The date determined in accordance with regulation 12 of the 2010 Regulations (as modified by regulation 14 of those Regulations);]
“buy-out policy”	A policy of insurance or annuity contract that is appropriate for the purposes of section 19 of the 1993 Act <sup>M9</sup> (extinguishment of liability of scheme for pensions secured by insurance policies or annuity contracts) and satisfies any requirements of Revenue and Customs [ <sup>F7</sup> : and “buy-out” is to be construed accordingly];

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“cash equivalent”	Is to be construed in accordance with [F8Chapter 1 (transfer rights: general) of Part 4ZA] of the 1993 Act;
“CCT”	means a Certificate of Completion of Training awarded under section 34L(1) of the Medical Act 1983, including any such certificate awarded in pursuance of the competent authority functions of the General Medical Council specified in section 49B of, and Schedule 4A to, that Act;
“certification services”	Services related to the provision of the medical certificates listed in [F9schedule 4 of the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018];
[F4“civil partner” and “civil partnership”	Are to be construed in accordance with regulation A4;]
“collaborative services”	<p>Primary medical services provided by a GP performer, a GMS practice, a section 17C agreement provider, an HBPMS contractor or an OOH provider under or as a result of an arrangement between—</p> <p>(a) the Scottish Ministers or a Health Board; and</p> <p>(b) a local authority,</p> <p>under section 15 of the 1978 Act M10</p> <p>, under which the Scottish Ministers or the Health Board is responsible for providing services for purposes related to the provision of health care;</p>
“commissioned services”	<p>Services provided under a contract between—</p> <p>(a) a GP performer, a GMS practice, a section 17C agreement provider, an HBPMS contractor or an OOH provider; and</p> <p>(b) either—</p> <p>(i) a Special Health Board, which relates to the provision of health care; or</p>

- (ii) the Scottish Ministers or a Health Board under section 16(1) of the 1978 Act,

which is for the purposes of the health service;

[<sup>F10</sup>“contracted-out employment”

the meaning given in section 8 of the 1993 Act;]

“Contracting Health Board”

- (a) in the case of a non GP provider who is—

- (i) a partner in a partnership that—

- (aa) is a GMS practice; or

- (bb) has entered into a section 17C agreement; or

- (cc) is an HBPMS contractor and has entered into a contract for the provision of primary medical services; or

- (ii) a shareholder in a company limited by shares that is—

- (aa) a GMS practice; or

- (bb) a section 17C agreement provider; or

- (cc) an HBPMS contractor and has entered into a section 17C agreement for the provision of primary medical services; or

- (iii) an individual who is a GMS practice, section 17C agreement provider or an HBPMS contractor,

the Health Board with which that partnership, company, practice, provider or contractor has entered into a contract or agreement referred to in those provisions:

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- (b) in the case of a principal practitioner, the Health Board on whose medical performers list their name appears; and
- (c) in the case of an assistant practitioner or locum practitioner, the Health Board engaging the practitioner under a contract of services or for services and on whose medical performers list their name appears;
- “contracting-out requirements” The requirements set out in sections 13 to 24 of the 1993 Act;
- “core hours” The period beginning at 0800 hours and ending at 1830 hours on any day apart from Saturday, Sunday, Christmas Day, New Year's Day and any other public or local holiday which has been agreed in writing by the Health Board when entering into a GMS contract;
- “dental pilot scheme employee” An individual who, in connection with the provision of personal dental services in accordance with a pilot scheme, is employed by an individual or body providing those services;
- “dental therapist” A person whose name is registered in the dental care professionals register established under section 36B of the Dentists Act 1984  
M11  
under the title of dental therapist;
- “dependent child” The meaning given by regulation H1;
- “dispensing services” The provision of drugs, medicines and such appliances which are included in the list prepared by the Scottish Ministers under section 27(1) of the 1978 Act;
- “electronic communication” has the meaning given in section 15 of the Electronic Communications Act 2000  
M12  
;
- “employing authority” (a) a Health Board, Special Health Board or NHS National Services Scotland (established under section 2 and section 10 of the 1978 Act);
- (b) a person who is providing piloted services;

- (c) the Mental Welfare Commission established under section 4 of the Mental Health (Care and Treatment) (Scotland) Act 2003  
M13  
;
  - (d) an OOH provider;
  - (e) a GMS practice;
  - (f) a section 17C agreement provider;
  - (g) any other body constituted under an Act relating to health services and which the Scottish Ministers agree to treat as an employing authority for the purposes of this Section of the scheme; or
  - (h) as regards a person who is subject to a direction made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967  
M14  
and subject to such modifications to these Regulations as the Scottish Ministers may in any particular case direct, any employer of such a person whom the Scottish Ministers agree to treat as an employing authority for the purposes of these Regulations.
- “enhanced services”
- (a) with regard to a GMS practice, the meaning given in [F11]regulation 3(1) of the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018]; and
  - (b) with regard to any other performer or provider of primary medical services, services which, if provided by a GMS practice, would be enhanced services within the meaning given in [F11]regulation 3(1) of the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018];
- “essential services”
- Services required to be provided in accordance with [F12]regulation 18 of the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018];

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“ex-civil partner”	A former civil partner to whom pension credit rights under the Scheme have been or are to be allocated following a pension sharing order;
“ex-spouse”	A former spouse to whom pension credit rights under the Scheme have been or are to be allocated following a pension sharing order;
“final year's pensionable pay”	The meaning given in regulation C1;
“GMS contract”	A contract under section 17J of the 1978 Act M15 or under article 13 of the General Medical Services and Section 17C Agreements (Transitional and other Ancillary Provisions) (Scotland) Order 2004 M16 ;
“GMS practice”	(a) a registered medical practitioner who is a principal practitioner;  (b) two or more such individuals practising in a partnership; or  (c) a company limited by shares,  with whom a Health Board has entered into a GMS contract;
“GP performer”	A registered medical practitioner, other than a GP registrar or a locum practitioner, whose name is included in a medical performers list and who performs essential services, additional services, enhanced services, dispensing services, collaborative services, commissioned services, OOH services or certification services, or a combination thereof—  (a) under a GMS contract, section 17C agreement or an HBPMS contract;  (b) on behalf of an OOH provider; or



	(c) under a contract of service or for services with a Health Board which relates to arrangements by which it is to provide services under section 2C of the 1978 Act M17 ;
“GP provider”	A GP performer who is—  (a) a GMS practice, a section 17C agreement provider, an HBPMS contractor;  (b) a partner in a partnership that is a GMS practice, a section 17C agreement provider or an HBPMS contractor; or  (c) a shareholder in a company limited by shares that is a GMS practice, section 17C agreement provider or an HBPMS contractor,  and who performs medical services as or on behalf of that practice, provider or contractor;
“GP Registrar”	means a medical practitioner who is being trained in general practice by a GP trainer, whether as part of training leading to a CCT or otherwise;
“guaranteed minimum pension”	Is to be construed in accordance with section 14 of the 1993 Act;
“health service”	The meaning given in section 108 of the 1978 Act;
“health service scheme”	The meaning given by regulation R7(1);
“HBPMS contract”	Arrangements for the provision of services in accordance with section 2C(2) of the 1978 Act between a Health Board and a HBPMS contractor;
“HBPMS contractor”	A person with whom a Health Board has made arrangements under section 2C(2) of the 1978 Act, but only if that person is also a person who would be eligible to enter into, a GMS contract or a section 17C agreement for the provision of primary

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	medical services and has not entered into such a GMS contract or section 17C agreement;
“lifetime allowance”	Is to be construed in accordance with Part 4 of the 2004 Act (pension schemes etc.);
“local authority”	A council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (constitution of councils) M18 ;
“locum practitioner”	A registered medical practitioner (other than a GP registrar) whose name is included in a medical performers list and who is engaged, otherwise than in pursuance of a commercial arrangement with an agent, under a contract for services by— <ul style="list-style-type: none"> <li>(a) a GMS practice;</li> <li>(b) a section 17C agreement provider;</li> <li>(c) an HBPMS contractor;</li> <li>(d) an OOH provider; or</li> <li>(e) a Health Board,</li> </ul> to deputise or assist temporarily in the provision of essential services, additional services, enhanced services, dispensing services, OOH services, commissioned services, certification services or collaborative services (or any combination of those services);
“lump sum death benefit rule”	The meaning given in section 168 of the 2004 Act;
“lump sum rule”	The meaning given in section 166 of the 2004 Act;
[ <sup>F4</sup> “marriage” and “married”	Do not include a reference to marriage of a same sex couple unless otherwise provided;]

“medical performers list”	A list prepared by a Health Board pursuant to regulation 4(1) of the National Health Service (Primary Medical Services Performers List) (Scotland) Regulations 2004 M19 ;
“member”	A person who has been included in this Section of the scheme and in respect of whom benefits under this Section of the scheme are, or will become, payable;
“member of the scheme”	A member of the Scheme and includes an active member, a deferred member and a pension credit member;
“mental health officer”	The meaning given in regulation R3(16);
“NHS dental employee”	An individual who, in the connection with the provision of dental health services in the health service, is employed by—  (a) a Health Board; or  (b) a registered dentist, including one who is providing personal dental services in accordance with a pilot scheme;
“NHS employee”	The meaning given in section 2(3) of the 1997 Act;
“NHS employment”	Employment with an employing authority;
“non GP provider”	(a) a partner in a partnership that is a GMS practice, who is not a GP provider and who demonstrates to the satisfaction of the Scottish Ministers that that partner assists in the provision of NHS services provided by that practice;  (b) a partner in a partnership all of whose members have entered into a section 17C agreement for the provision of primary medical services, provided that the partner is not a GP provider and that the partner demonstrates to the satisfaction of the Scottish Ministers that that partner assists in the provision of NHS services provided by that partnership;

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(c) a partner in a partnership that is an HBPMS contractor which has entered into an HBPMS contract for the provision of primary medical services, provided that the partner is not a GP provider, and that the partner demonstrates to the satisfaction of the Scottish Ministers that that partner assists in the provision of NHS services provided by that HBPMS contractor;

(d) a shareholder in a company limited by shares that is—

(i) a GMS practice;

(ii) a section 17C agreement provider; or

(iii) an HBPMS contractor,

provided that shareholder is not a GP provider, and that the shareholder demonstrates to the satisfaction of the Scottish Ministers that that shareholder assists in the provision of NHS services provided by that practice, provider or contractor; or

(e) an individual who is a section 17C agreement provider or an HBPMS contractor, provided that the individual is not a GP provider, and that the individual demonstrates to the satisfaction of the Scottish Ministers that that individual assists in the provision of NHS services provided by that practice or contractor;

“normal benefit age” Age 60;

“normal minimum pension age” The meaning given in section 279 of the 2004 Act;

“occupational pension scheme” An occupational pension scheme within the meaning of section 1 of the 1993 Act (categories of pension schemes) which—

(a) in the case of such a scheme established on, or after, 6th April 2006, is a registered pension scheme for the purposes of the 2004 Act and which the Scottish Ministers agree to recognise as a transferring scheme for the purposes of Parts M and N of these Regulations; and

- (b) in the case of such a scheme established before that date, was—
- (i) approved by the Commissioners for Her Majesty's Revenue and Customs  
M20  
for the purposes of Chapter I of Part XIV of the Taxes Act (retirement benefits schemes) or whose application for approval under that Chapter was under consideration;
  - (ii) a statutory scheme as defined in section 612(1) of the Taxes Act (interpretation); or
  - (iii) a scheme to which section 608 of the Taxes Act applied (superannuation funds approved before 6th April 1980);

and on 6th April 2006 became a registered pension scheme for the purposes of the 2004 Act;

“officer”	A person (other than a GP performer) employed by an employing authority;
“OOH provider”	Is to be construed in accordance with regulation A3;
“OOH services”	Services which are required to be provided in the out of hours period and which, if provided during core hours by a GMS practice, Section 17C agreement provider or an HBPMS contractor to patients to whom the practice or contractor is required by its contract or agreement to provide essential services, would be or would be similar to essential services;
“ophthalmic medical practitioner”	A medical practitioner providing general ophthalmic services under the National Health Service (Scotland) Act 1978;
“opting out”	Is to be construed in accordance with regulation B4;
“out of hours period”	(a) the period beginning at 1830 hours on any day from Monday to Thursday and ending at 0800 hours the following day;

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- (b) the period between 1830 hours on Friday and 0800 hours the following Monday; and
- (c) Christmas Day, New Year's Day and any other public or local holiday which has been agreed in writing by the Health Board when entering into a GMS contract,

and part of an out of hours period means any part of any one or more of the periods described in sub-paragraphs (a) to (c);

“part-time service”	Service under a contract which provides for regular service of less than whole-time service;
[ <sup>F13</sup> “pay period”	In relation to members who receive either salary, wages or other regular payments under a contract of employment or a contract for services, the period in respect of which each payment is made in accordance with the terms of that contract;]
“pension credit”	The meaning given in regulation V3(b);
“pension credit benefit”	In relation to the Scheme the benefits payable under the Scheme to or in respect of a pension credit member by virtue of the pension credit member's appropriate rights under the Scheme attributable to a pension credit;
“pension credit member”	An individual who is a member of the Scheme, either, <ul style="list-style-type: none"> <li>(i) solely for the provision of a pension credit benefit, or,</li> <li>(ii) for the wholly separate provision of a pension credit benefit, where benefits accrue or have accrued to that individual under the Scheme for any other reason;</li> </ul>
“pension credit rights”	Rights to future benefits under the Scheme which are attributable to a pension credit;
“pension debit”	The meaning given in regulation V3(a);

“pension debit member”	A member, whether an active member, a deferred member or a pensioner member, whose shareable rights under the Scheme are subject to a pension debit;
“pension sharing order”	Any order which is mentioned in section 28(1) of the 1999 Act or Article 25(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 M21 ;
“pensionable employment”	NHS employment in respect of which the member contributes to this Section of the scheme;
“pensionable pay”	The meaning given in regulation C1;
“pensionable service”	The meaning given in regulation C2;
“personal dental services”	The meaning given in section 1(8) of the 1997 Act;
“personal pension scheme”	A personal pension scheme which—  (a) in the case of such a scheme established on, or after, 6th April 2006 is a registered pension scheme for the purposes of the 2004 Act and which the Scottish Ministers agree to recognise as a transferring scheme for the purposes of Parts M and N of these Regulations; and  (b) in the case of such a scheme established before that date, was—  (i) approved by the Commissioners for Her Majesty's Revenue and Customs for the purposes of Chapter IV of Part XIV of the Taxes Act (personal pension schemes); and  (ii) on the 6th April 2006 became a registered pension scheme for the purpose of the 2004 Act;
“practice staff”	A person (other than an assistant practitioner, principal practitioner, GP registrar or non GP provider) employed by a GMS practice, a section 17C agreement provider, an HBPMS contractor or an OOH provider to assist in the provision of the services they provide;

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“practitioner”	<p>(a) a registered medical practitioner, other than a GP registrar, who is a locum practitioner, a GP provider or a GP performer;</p> <p>(b) a registered dentist or a person treated as a practitioner under regulation R13,</p> <p>but excluding a person who is paid wholly by way of salary by a Health Board or a person treated as an officer under regulation R13;</p>
“preservation requirements”	The requirements of Chapter I of Part IV of the 1993 Act relating to preservation of benefits under occupational pension schemes;
“primary medical services”	Is to be construed in accordance with section 2C(5) of the 1978 Act M22 ;
“principal practitioner”	The meaning given in paragraph 1 of Schedule 1;
“protected pension age”	The pension age provided for in Part 3 of Schedule 36 to the 2004 Act for the purposes of that Part (which deals with pre-commencement benefit rights and the right to take benefit before normal minimum pension age) where the conditions specified in that Part are satisfied;
“Public Sector Transfer Arrangements”	Arrangements applying to certain public sector and other schemes under which a common basis for transfer payments is applied by this Section of the scheme and those other participating schemes;
“qualifying service”	The meaning given in regulation C3;
“quarter”	A three month period ending on the last day of March, June, September or December;
“registered dentist”	The meaning given in section 53(1) of the Dentists Act 1984 M23 ;



[ <sup>F4c</sup> “registered medical practitioner”	A fully registered medical practitioner within the meaning given in section 55 of the Medical Act 1983;]
“Regulatory Authority”	The meaning given in regulation V10(4);
“relevant daily proportion”	1/365th of the amount that would apply in respect of one year;
“remuneration”	For the purposes of Tables 1 and 2 of Schedule 3, as defined in regulation Q3(3) (paying for additional service by single payment) and Q4(6) (paying for unreduced retirement lump sum by single payment);
“Revenue and Customs”	The Commissioners for Her Majesty's Revenue and Customs;
“scheme”	Is to be construed in accordance with regulation A2(2)(b);
“scheme actuary”	The actuary appointed from time to time by the Scottish Ministers to provide a consulting service on actuarial matters relevant to these Regulations;
“scheme year”	A period of one year beginning on 1st April and ending on 31st March;
“section 9(2B) rights”	The same meaning as it has in the Occupational Pension Schemes (Contracting-out) Regulations 1996 M24 ;
“section 17C agreement”	An agreement made under section 17C of the 1978 Act M25 ;
“section 17C agreement provider”	Any person or body who is providing primary medical services in accordance with a section 17C agreement;
“self-employed pension arrangements”	A personal pension scheme within the meaning of Chapter IV of Part XIV of the Taxes Act which is approved by Revenue and Customs under that Chapter; but which is neither a personal pension scheme within the meaning of the 1993 Act nor a contract or a scheme approved under Chapter III of Part XIV of the Taxes Act;

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**Changes to legislation:** *There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)*

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“shareable rights”	The meaning given by section 27(2) of the 1999 Act and means any rights under a pension arrangement other than as described in section 2 of the Pension Sharing (Valuation) Regulations 2000 M26 ;
[ <sup>F14</sup> “shared parental leave”	the meaning given in regulation 3 of the Shared Parental Leave Regulations 2014;]
“special class officer”	A mental health officer or a person employed by an employing authority as a nurse, physiotherapist, midwife or health visitor to whom regulations R2 and R3 apply;
“specialist”	The expression means a consultant, other than a nurse consultant, or a senior hospital medical officer or senior hospital dental officer;
“state pension age”	In the case of a man, age 65; in the case of a woman, age 60;
“tax year”	Any year beginning on 6th April and ending on 5th April the following year;
“Taxes Act”	The Income and Corporation Taxes Act 1988 M27 ;
“transfer day”	The meaning given in regulation W5(4);
“transfer values laws”	Chapter IV of Part IV of the 1993 Act;
“Waiting Period Joiner”	has the meaning given in regulation 2.L.1, or as the case may be, 3.L.1 of the 2008 Section.
“whole-time service”	Service under a contract providing for service at standard hours, half-days or sessions for the grade;
[ <sup>F4</sup> “widow” and “widower”	Do not include a reference to marriage of a same sex couple.]

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### Textual Amendments

- F1** Words in reg. A2(4) inserted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **3(a)** (with reg. 71)
- F2** Words in reg. A2(4) substituted (28.6.2014) by [The National Health Service Superannuation Scheme \(Scotland\) \(Miscellaneous Amendments\) Regulations 2014 \(S.S.I. 2014/154\)](#), regs. 1(2), **3**
- F3** Words in reg. A2(4) inserted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **3(b)** (with reg. 71)
- F4** Words in reg. A2(4) inserted (with effect in accordance with reg. 1(3) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/96\)](#), regs. 1(2), **3**
- F5** Words in reg. A2(4) substituted (1.4.2018) by [The National Health Service \(General Medical Services Contracts\) \(Scotland\) Regulations 2018 \(S.S.I. 2018/66\)](#), reg. 1, **sch. 10 para. 6(2)(a)** (with reg. 2)
- F6** Words in reg. A2(4) inserted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **3(c)** (with reg. 71)
- F7** Words in reg. A2(4) inserted (13.3.2017) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), **3(a)** (with reg. 53)
- F8** Words in reg. A2(4) substituted (13.3.2017) by virtue of [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), **3(b)** (with reg. 53)
- F9** Words in reg. A2(4) substituted (1.4.2018) by [The National Health Service \(General Medical Services Contracts\) \(Scotland\) Regulations 2018 \(S.S.I. 2018/66\)](#), reg. 1, **sch. 10 para. 6(2)(b)** (with reg. 2)
- F10** Words in reg. A2(4) inserted (with effect in accordance with reg. 1(2)(f) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), **3(c)** (with reg. 53)
- F11** Words in reg. A2(4) substituted (1.4.2018) by [The National Health Service \(General Medical Services Contracts\) \(Scotland\) Regulations 2018 \(S.S.I. 2018/66\)](#), reg. 1, **sch. 10 para. 6(2)(c)** (with reg. 2)
- F12** Words in reg. A2(4) substituted (1.4.2018) by [The National Health Service \(General Medical Services Contracts\) \(Scotland\) Regulations 2018 \(S.S.I. 2018/66\)](#), reg. 1, **sch. 10 para. 6(2)(d)** (with reg. 2)
- F13** Words in reg. A2(4) substituted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **3(d)** (with reg. 71)
- F14** Words in reg. A2(4) inserted (with effect in accordance with reg. 1(2)(b) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), **3(d)** (with reg. 53)

### Marginal Citations

- M1** 1978 c.29.
- M2** S.I. 1980/1177 as amended by S.I. 1981/1680, 1983/272, 1988/1956, 1989/807 and 1749, 1990/382 and 1992/3046.
- M3** 1993 c.48.
- M4** 1995 c.26.
- M5** S.I. 1995/365 as amended by S.I. 1997/1434 and 1916, 1998/1593, 1999/443, 2001/3649, 2005/2011 and 2010/234 and S.S.I. 2001/437 and 465, 2003/55, 270 and 517, 2005/445, 512 and 544, 2006/307 and 561, 2008/92 and 226, 2009/19 and 208 and 2010/22 and 369.
- M6** 1997 c.46.
- M7** 1999 c.30.
- M8** 2004 c.12.

*Status: Point in time view as at 25/03/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)*

- M9** See also section 81 of that Act.
- M10** 1978 c.29. Section 15 was relevantly amended by the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), Schedule 1.
- M11** 1984 c.24.
- M12** 2000 c.7. Section 15 was amended by paragraph 158 of Schedule 17 to the [Communications Act 2003 \(c.21\)](#).
- M13** 2003 asp 13.
- M14** 1967 c.28.
- M15** Section 17J was inserted by the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), section 4.
- M16** S.S.I. 2004/163.
- M17** Section 2C was inserted by the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), section 1.
- M18** 1994 c.39. Section 2 was amended by the [Pensions Act 1995 \(c.25\)](#), Schedule 22.
- M19** S.S.I. 2004/114.
- M20** The functions of the Commissioners for Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs by the [Commissioners for Revenue and Customs Act 2005 \(c.11\)](#), section 5.
- M21** S.I. 1999/3147 (N.I. 11).
- M22** Section 2C was inserted by the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#).
- M23** 1984 c.24. Section 53(1) was amended by S.I. 1996/1496, 1997/1177 (N.I. 7), 1998/2840, 2005/2011, 2007/3101, 2009/1182, the [National Health Service \(Primary Care\) Act 1997 \(c.46\)](#), Schedule 2, paragraph 62 and the [National Health Service \(Consequential Provisions\) Act 2006 \(c.43\)](#), Schedule 1, paragraph 82.
- M24** S.I. 1996/1172. Regulation 1 was amended by S.I. 1998/786 and 3198, 2000/2975, 2005/2050 and 3377, 2006/744, 2007/60, 814, 1154 and 3014 and 2009/598 and 2930.
- M25** Section 17C was inserted by the [National Health Service \(Primary Care\) Act 1997 \(c.46\)](#), section 21(2).
- M26** S.I. 2000/1052.
- M27** 1988 c.1.

### Approved Out of Hours providers

- A3.**—(1) For the purposes of these Regulations, an “OOH provider” is—
- (a) a company limited by guarantee (which is not otherwise an employing authority)—
- (i) in which all the members of the company are registered medical practitioners, HBPMS contractors, GMS practices or section 17C agreement providers and the majority of those members are—
- (aa) HBPMS contractors, GMS practices or section 17C agreement providers whose HBPMS contracts, GMS contracts or section 17C agreements require them to provide OOH services; or
- (bb) registered medical practitioners who are partners or shareholders in a HBPMS contractor, GMS practice or section 17C agreement provider which is a partnership or a company limited by shares and which is required to provide OOH services under its HBPMS contract, GMS contract or section 17C agreement;
- (ii) which has a contract with a Health Board, an HBPMS contractor, a GMS practice or a section 17C agreement provider for the provision of OOH services; and
- (iii) in respect of which a Health Board appointed by the Scottish Ministers to act on their behalf—
- (aa) is satisfied that the provision of OOH services by the company is wholly or mainly a mutual trading activity;

- (bb) is satisfied that the company has met all the conditions for being an OOH provider in this regulation; and
  - (cc) has, pursuant to a written application made by the company to it for that purpose, approved the company as an employing authority; or
- (b) some other body corporate (which is not otherwise an employing authority) which—
- (i) operates in the interests of those who are the recipients of the primary medical services it provides or of the general public;
  - (ii) operates on a not for profit basis;
  - (iii) is not an associated company in relation to another person;
  - (iv) has a memorandum or articles or rules which—
    - (aa) prohibit the payment of dividends to its members;
    - (bb) require its profits (if any) or other income to be applied in promoting its objects; and
    - (cc) require all assets which would be otherwise available to its members generally to be transferred on its winding up either to another body which operates on a not for profit basis and whose purpose is to provide health or social care for the benefit of the community or to another body the objects of which are the promotion of charity and anything incidental or conducive thereof;
  - (v) has at least one member who is—
    - (aa) an HBPMS contractor, GMS practice or a section 17C agreement provider; or
    - (bb) a partner in a partnership which is an HBPMS contractor, GMS practice or a section 17C agreement provider; or
    - (cc) a shareholder in a company limited by shares that is a HBPMS contractor, GMS practice or a section 17C agreement provider;
  - (vi) has a contract with a Health Board, an HBPMS contractor, GMS practice or section 17C agreement provider, for the provisions of OOH services; and
  - (vii) is approved as an employing authority by a Health Board appointed by the Scottish Ministers to act on their behalf—
    - (aa) pursuant to a written application made by the body to it for that purpose; and
    - (bb) that Board being satisfied that the body has met all the conditions for being an OOH provider in this regulation.
- (2) For the purposes of paragraph (1)(b)(iii), a body corporate is to be treated as another person's "associated company" if that person has control of it, except where that person is an employing authority, and for these purposes a person shall be taken to have control of a body corporate if they exercise, or are able to exercise, or are entitled to acquire direct or indirect control over its affairs.
- (3) A company limited by guarantee or other body corporate which provides or is to provide OOH services and which wishes to be approved as an employing authority shall make a written application to a Health Board appointed by the Scottish Ministers to act on their behalf ("the appointed Board").
- (4) An application referred to in paragraph (3) may specify a date from which approval by the appointed Board (if given) shall have effect ("the nominated date").
- (5) Where, before 21st February 2006—

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- (a) a company limited by guarantee or other body corporate made an application which contains a nominated date earlier than the date on which approval is subsequently given (“the approval date”); and
- (b) the appointed Board is satisfied that, throughout the period beginning with the nominated date and ending with the approval date, the company or other body corporate has satisfied the conditions for approval,

that approval shall be treated as having been given on the nominated date.

(6) Where before 21st February 2006—

- (a) a company limited by guarantee or other body corporate made an application which contains a nominated date later than the approval date; and
- (b) the appointed Board is satisfied that the company or other body corporate will satisfy the conditions for approval at that later date,

that approval shall take effect on the nominated date.

(7) Where, on or after 21st February 2006, a company limited by guarantee or other body corporate made an application and—

- (a) the appointed Board is satisfied that the company or other body corporate meets the conditions for approval or will do so at any nominated date which is later than the approval date; and
- (b) it approves that application,

that approval shall take effect on the later of the nominated date and approval date.

(8) Where—

- (a) paragraph (5) or (6) applies, the NHS employment shall be treated as commencing on the nominated date;
- (b) paragraph (7) applies, it shall be treated as commencing on the later of the nominated date (if any) and the approval date.

(9) For the purposes of this regulation—

- (a) the conditions for approval are those referred to in paragraph (1)(a) or (b) as the case may be; and
- (b) the nominated date cannot be earlier than 1st April 2004.

(10) The appointed Board may give an OOH provider a notice in writing terminating its participation in this Section of the scheme where that provider—

- (a) does not have in force a guarantee, indemnity or bond as required by the Scottish Ministers in accordance with regulation D2(10); or
- (b) has ceased to satisfy the conditions for approval; or
- (c) has notified or has an obligation to notify the Board that any one of the following events has occurred in respect of it—
  - (i) a proposal for a voluntary arrangement has been made or approved under Part 1 of the Insolvency Act 1986<sup>M28</sup> (“the 1986 Act”); or
  - (ii) an administration application has been made, or a notice of intention to appoint an administrator has been filed with the court, or an administrator has been appointed under Schedule B1 to the 1986 Act; or
  - (iii) a receiver, manager or administrative receiver has been appointed under Part III of the 1986 Act; or

- (iv) a winding up petition has been presented, a winding up order has been made or a resolution for voluntary winding up has been passed under Part IV or Part V of the 1986 Act or an instrument of dissolution has been drawn up in accordance with section 58 of the Industrial and Provident Societies Act 1965<sup>M29</sup>; or
  - (v) notice has been received by it that it may be struck off the register of companies, or an application to strike it off has been made, under Part 31 of the Companies Act 2006<sup>M30</sup>.
- (11) An OOH provider—
- (a) must give the appointed Board notice in writing upon the occurrence of any of the events referred to in paragraph (10)(c) and must give such notice on the same day as that event;
  - (b) that wishes to cease to participate in this Section of the scheme must give the appointed Board and its employees not less than 3 months notice in writing (to commence with the date of the notice) of that fact.
- (12) An OOH provider ceases to participate in this Section of the scheme on—
- (a) such date as the appointed Board may specify in notice under paragraph (10); or
  - (b) the day upon which the period referred to in paragraph (11)(b) expires where a notice under that sub-paragraph (b) has been given.

#### Marginal Citations

**M28** 1986 c.45.

**M29** 1965 c.12. Section 58 was amended by S.I. 2001/2617 and 3649.

**M30** 2006 c.46.

### [F15] Civil partnerships and marriage of same sex couples

- A4.**—(1) In these Regulations, a reference to—
- (a) civil partnership is to be read as including a reference to marriage of a same sex couple and a reference to civil partners and a person who is in a civil partnership is to be construed accordingly;
  - (b) a person who is living with another person as if they were in a civil partnership is to be read as including a reference to a person who is living with another person of the same sex as if they were married.
- (2) Where paragraph (1) requires a reference to be read in a particular way, any related reference (such as a reference to a civil partnership that has ended, a reference to a person whose civil partnership has ended, or a reference to persons formerly living together as civil partners) is to be read accordingly.
- (3) For the purposes of paragraphs (1) and (2) it does not matter how a reference is expressed.
- (4) In this regulation, “civil partnership” and “civil partners” have the meanings given by section 1 of the Civil Partnership Act 2004.
- (5) Where—
- (a) a deceased member of this Scheme was a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004, and
  - (b) at the time of the member’s death, the member was married to a woman and that marriage subsisted before the time when the certificate was issued,

the member's widow is to be treated for the purposes of Part G and Part K of these Regulations as if the certificate had not been issued.]

#### Textual Amendments

- F15** Reg. A4 inserted (with effect in accordance with reg. 1(3) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/96\)](#), regs. 1(2), 4

## PART B

### MEMBERSHIP OF THE SCHEME

#### Membership of this Section of the scheme

**B1.**—(1) Subject to regulation B2 (age limits and restrictions on membership) the following persons are eligible to be included in this Section of the scheme:—

- (a) officers; and
- (b) medical and dental practitioners, assistant and associate practitioners and GP registrars.

[<sup>F16</sup>(2) Subject to paragraph (3), each eligible person will be included in this Section of the scheme—

- (a) automatically on commencing NHS employment;
- (b) subject to regulation B5(3), where the person has previously opted out of this Section of the scheme and has given notice in accordance with regulation B5(1), on the date determined under paragraph (2) of that regulation;
- (c) subject to regulation B5(3), where the person has previously opted out of this Section of the scheme and is a person to whom section 3 or section 5 of the 2008 Act applies—
  - (i) on that person's automatic enrolment date; or
  - (ii) on that person's automatic re-enrolment date, except where the notice referred to in regulation B4(1) was given within the period of 12 months immediately preceding that date.]

(3) A person who, on the coming into force of this regulation, is already in NHS employment but is not included in the scheme shall not be included automatically, but may elect to be included in the scheme, if eligible in terms of paragraph (1), by giving notice in writing to the [<sup>F17</sup>Scottish Ministers] at any time, subject to paragraph (4). The person shall be included in the scheme on the first day of the pay period immediately after the notice is received or such later date (which must be the first day of a pay period) as is specified in the notice.

(4) A person may not elect to be included in the scheme in terms of paragraph (3) during a period of absence from work for any reason.

(5) A person who is included in the scheme may opt out at any time in accordance with regulation B4.

#### Textual Amendments

- F16** Reg. B1(2) substituted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), 4 (with reg. 71)



**F17** Words in reg. B1(3) substituted (1.4.2011) by [The National Health Service Superannuation Scheme \(Scotland\) Amendment Regulations 2011 \(S.S.I. 2011/173\)](#), regs. 1(2), **2(b)**

### Age limits and restrictions on membership

**B2.**—(1) A person is not eligible to join this Section of the scheme if—

- (a) that person is—
    - (i) under the age of 16;
    - (ii) over the age of 75; or
    - (iii) over the age of 70 on or before 31st March 2008;
  - (b) that person is a special class officer over the age of 65;
  - (c) that person is an officer in “contributory service” under the Teachers' Superannuation (Scotland) Regulations 2005 <sup>M31</sup> in any hospital vested in the Scottish Ministers;
  - (d) that person holds an honorary appointment and does not at the same time hold any other employment which entitles that person to join this Section of the scheme;
  - (e) that person enters NHS employment for the first time on or after 1st April 2008 and has not previously been a member of this Section of the scheme or a health service scheme corresponding to this Section;
  - (f) that person, on or after 1st April 2008, returns to or commences NHS employment and was entitled to a refund of contributions under regulation E15 (early leavers' entitlement to refund of contributions) when that person last left pensionable employment, unless paragraph (4), but not paragraph (5), of regulation L1 (treatment of pensionable service of early leavers returning to pensionable employment) applies to that person;
  - (g) that person—
    - (i) leaves pensionable employment on, or after, 1st April 2008; and
    - (ii) before returning to or commencing NHS employment, exercises that person's right to transfer out all of that person's benefits in this Section of the scheme in accordance with regulation M1 (member's right to a transfer or a buy-out) or M2 (exercising a right to a transfer or a buy-out); or
    - (iii) has been a member of the 2008 Section.
  - (h) that person—
    - (i) ceased to be in pensionable employment on or before 31st March 2008;
    - (ii) on so ceasing was entitled to a preserved pension in accordance with regulation E12;
    - (iii) returns to, or commences for the first time, NHS employment on or after 1st October 2008 and before that employment starts (whether it is employment that has been returned to or commenced for the first time) exercises the member's right to transfer out all of that person's benefits in accordance with regulation M1;
    - (iv) has had a break in pensionable employment for any one period of five years or more beginning with the day immediately following the cessation of employment referred to in head (i) and ending on the day immediately before the employment referred to in head (iii) commences; and
- <sup>F18</sup>(v) .....
- (i) that person—
    - (i) is entitled to a preserved pension in accordance with regulation E12;
    - (ii) returns to or commences NHS employment on or after 1st October 2008;

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- (iii) has had a break in pensionable employment for any one period of five years or more beginning with the day immediately following the cessation of the pensionable employment in respect of which that person is entitled to the pension referred to in paragraph (i) and ending on the day immediately before the employment referred to in paragraph (ii) commences; and
- <sup>F19</sup>(iv) . . . . .
- (j) that person's pension under a health service scheme is payable and in the opinion of the Scottish Ministers that person would not be eligible to—
- (i) join this Section of the scheme, or
  - (ii) where appropriate, accrue further pensionable service under this Section of the scheme,
- if the pensionable employment to which that health service scheme applied, and in respect of which that pension is being paid, had been pensionable employment in this Section of the Scheme;
- (k) that person is a person who—
- (i) is entitled to a preserved pension in accordance with regulation E12;
  - (ii) has given notice in accordance with [<sup>F20</sup>paragraph (1)] of regulation B4 that the person does not wish to, or no longer wishes to, participate in this Section of the Scheme;
  - (iii) as a result of that notice has been treated as having left pensionable employment; and
  - (iv) pursuant to that notice remains opted out of this Section of the scheme for any one period of five years or more beginning on the date that notice takes effect;
- (l) that person is a person who—
- (i) is entitled to a preserved pension in accordance with regulation E12;
  - (ii) has given notice in accordance with paragraph (1) <sup>F21</sup>... of regulation B4 that the person does not wish to, or no longer wishes to, participate in this Section of the Scheme;
  - (iii) following that notice, has had a break in pensionable employment for any one period of five years or more, comprising the aggregate of—
    - (aa) any period during which the person leaves NHS employment, and
    - (bb) any period during which the person is treated as never having been included in this Section of the scheme in accordance with paragraph [<sup>F22</sup>(7)] of regulation B4 in respect of one or more later periods of NHS employment entered into after having given the notice referred to in (ii);
- (m) that person is a person who—
- (i) enters NHS employment before 1st April 2008;
  - (ii) has given notice in respect of that employment (and all other such employments with an employing authority) that that person does not wish to participate in the Scheme in accordance with paragraph (1) <sup>F23</sup>... of regulation B4; and
  - (iii) as a result of that notice on 1st April 2008 is treated as never having been in pensionable employment with any employing authority in accordance with paragraph (6) of regulation B4;
- (n) that person is a person who—
- (i) enters NHS employment before 1st April 2008;

- (ii) has given notice in respect of that employment (and all other such employments with an employing authority) that that person does not wish to, or no longer wishes to, participate in the Scheme in accordance with paragraph (1) <sup>F24</sup>... of regulation B4;
  - (iii) as a result of that notice has been treated as having left pensionable employment with all employing authorities for a period of 12 months or more; and
  - (iv) is not entitled to a preserved pension in accordance with regulation E12; or
- (o) that person is a person who—
- (i) enters pensionable employment before 1st April 2008;
  - (ii) has given notice in respect of that employment (and all other such employments with an employing authority) that that person does not wish to, or no longer wishes to, participate in the Scheme in accordance with paragraph (1) <sup>F25</sup>... of regulation B4;
  - (iii) is not entitled to a preserved pension in accordance with regulation E12; and
  - (iv) has, in respect of that pensionable employment, either received a repayment of contributions [<sup>F26</sup>under regulation E15] or exercised the right to a transfer payment under Part M.
- (2) In paragraph (1)—
- (a) “pensionable employment” includes employment that qualified the member for a benefit under a health service scheme; and
  - (b) a reference to regulations E2, E3, E12, E15, L1, M1 and M2 includes the equivalent of those regulations in a health service scheme the provisions of which correspond to the provisions of the National Health Service Superannuation Scheme for Scotland as set out in these Regulations;
- <sup>F27</sup>(c) for the purposes of sub-paragraphs (i) and (1)(iii)(aa), any break in pensionable employment where the member was in pensionable public service as defined in paragraph 3(2) of Schedule 7 to the 2013 Act is to be disregarded.]
- (3) The Scottish Ministers may permit a person who would otherwise not be permitted to join this Section of the scheme in accordance with paragraph (1)(e), (f), (g) and (i) to do so if—
- (a) that person's NHS employment was transferred to another employer by virtue of—
    - (i) a transfer of undertakings or arrangements equivalent to a transfer of undertakings; and
    - (ii) at no time since that transfer (or the last of them if more than one) has the person had a break in pensionable employment for any one period of five years or more; and
  - (b) that person's employment is transferred to an employing authority by virtue of—
    - (i) a transfer of undertakings or arrangements equivalent to a transfer of undertakings, (whether or not the transferring employer is in the public sector provided that the person's employment was originally transferred out of the public sector); and
    - (ii) the employment from which the member is transferred—
      - (aa) qualified the member for benefits under an occupational pension scheme; and
      - (bb) the rules of that scheme (in the opinion of the Scottish Ministers) entitle the member to receive benefits on retirement upon, or prior to, attaining the age of 60 years.
- (4) The reference in paragraph (3)(a) to arrangements equivalent to a transfer of undertakings is to arrangements—

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- (a) which the Scottish Ministers consider to be equivalent to the transfer of an undertaking; and
  - (b) under which the parties to the arrangements have agreed that the rights of the persons whose employments are being transferred should as far as practicable be treated in the same way as they would have been under a transfer of an undertaking.
- (5) For the purposes of paragraph (3)(b)(ii) a person is not to be treated as being entitled under the rules of a pension scheme to receive benefits upon, or prior to, attaining the age of 60 years, where such entitlement arises by virtue of any scheme rule making special provision—
- (a) as to early retirement on the grounds of ill health, redundancy or otherwise; or
  - (b) for benefits to be reduced for early payment.
- (6) Before permitting a person referred to in paragraph (3) to join this Section of the scheme the Scottish Ministers must take advice from the scheme actuary.

#### Textual Amendments

- F18** Reg. B2(1)(h)(v) omitted (1.4.2015) by virtue of [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), reg. 1(b), [sch. 2 para. 2\(a\)](#)
- F19** Reg. B2(1)(i)(iv) omitted (1.4.2015) by virtue of [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), reg. 1(b), [sch. 2 para. 2\(a\)](#)
- F20** Words in reg. B2(1)(k)(ii) substituted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), [5\(a\)](#) (with reg. 71)
- F21** Words in reg. B2(1)(l)(ii) omitted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by virtue of [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), [5\(b\)](#) (with reg. 71)
- F22** Word in reg. B2(1)(l)(iii)(bb) substituted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), [5\(c\)](#) (with reg. 71)
- F23** Words in reg. B2(1)(m)(ii) omitted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by virtue of [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), [5\(b\)](#) (with reg. 71)
- F24** Words in reg. B2(1)(n)(ii) omitted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by virtue of [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), [5\(b\)](#) (with reg. 71)
- F25** Words in reg. B2(1)(o)(ii) omitted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by virtue of [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), [5\(b\)](#) (with reg. 71)
- F26** Words in reg. B2(1)(o)(iv) inserted (with effect in accordance with reg. 1(7) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/364\)](#), regs. 1(2), [3](#)
- F27** Reg. B2(2)(c) inserted (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), reg. 1(b), [sch. 2 para. 2\(b\)](#)

#### Marginal Citations

- M31** [S.S.I. 2005/393](#), to which there are amendments not relevant to these Regulations.

## Restrictions on further participation in this Section of the scheme

**B3.**—(1) Members who—

- (a) cease to satisfy the conditions for eligibility for membership specified in regulation B1(1); or
- (b) opt out of this Section of the scheme in accordance with regulation B4,

may not continue to contribute to or accrue further pensionable service under this Section of the scheme.

(2) Persons whose pensions under this Section of the scheme are payable may not contribute to or accrue further pensionable service under this Section of the scheme, except in the cases referred to in—

- (a) regulation E2(12) (early retirement pension (ill health));
- (b) regulation E3(11) (ill health pension on early retirement) but subject to paragraph (3); or
- (c) regulation R4(4) (members doing more than one job).

(3) Persons to whom—

- (a) regulation E4(3)(a) (re-assessment of ill health condition determined under regulation E3) applies may not (except where sub-paragraph (b) applies) contribute to or accrue further pensionable service under this Section of the scheme from the date the Scottish Ministers make a determination under that regulation;
- (b) sub-paragraph (a) applies may contribute to or accrue further pensionable service under this Section of the scheme from the day after the first anniversary of that person's NHS employment following the date of the Scottish Ministers' determination under regulation E3 if that person is under the age of 50 on that day.

<sup>F28</sup>(4) A person who on 1st April 2012 has not attained the age of 41 years and 7 months may not contribute to or accrue further pensionable service under this Section of the scheme in respect of service in NHS employment on, or after, 1st April 2015.

(5) A person who on 1st April 2012 has attained the age of 50 may not contribute to or accrue further pensionable service under this Section of the scheme unless that person either—

- (a) is in pensionable employment on 31st March 2015; or
- (b) returns to pensionable employment on or after 1st April 2015 in circumstances where the provisions of regulation B2 do not apply.

(6) A person who on 1st April 2012 has attained the age of 45 but not the age of 46 years and 7 months may not contribute to or accrue further pensionable service under this Section of the scheme unless either paragraph (7) or (8) applies to that person and that person—

- (a) is in pensionable employment on 31st March 2015; or
- (b) returns to pensionable employment on or after 1st April 2015 in circumstances where the provisions of regulation B2 do not apply.

(7) This paragraph applies to a person who was on 1st April 2012 in pensionable employment as a special class officer—

- (a) under regulation R2; or
- (b) under regulation R3 and would, if that employment were to continue until that person attained the age of 60 years, be able to count 20 years or more pensionable service as a mental health officer for the purposes of paragraphs (5) and (6) of that regulation.

(8) This paragraph applies to a person who was on 31st March 2015 in pensionable employment as a special class officer—

- (a) under regulation R2; or

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*Status: Point in time view as at 25/03/2020.*

**Changes to legislation:** *There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)*

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- (b) under regulation R3 and would, if that employment were to continue until that person attained the age of 60 years, be able to count 20 years or more pensionable service as a mental health officer for the purposes of paragraphs (5) and (6) of that regulation.
- (9) A person who on 1st April 2012 has attained the age of 46 years and 7 months but has not attained the age of 50, may not contribute to or accrue further pensionable service under this Section of the scheme unless one of paragraph (10), (11) or (12) applies to that person and that person—
- (a) is in pensionable employment on 31st March 2015; or
- (b) returns to pensionable employment on or after 1st April 2015 in circumstances where the provisions of regulation B2 do not apply.
- (10) This paragraph applies to a person whose eligibility cessation date calculated in accordance with paragraph (15) has not been reached.
- (11) This paragraph applies to a person if on the day before that person’s eligibility cessation date calculated in accordance with paragraph (10), that person is in pensionable employment as a special class officer—
- (a) under regulation R2; or
- (b) under regulation R3 and would, if that employment were to continue until that person attained the age of 60 years, be able to count 20 years or more pensionable service as a mental health officer for the purposes of paragraphs (5) and (6) of that regulation.
- (12) A person who on 1st April 2012 has attained the age of 41 years and 7 months but has not attained the age of 45, may not contribute to or accrue further pensionable service under this Section of the scheme unless either paragraph (13) or (14) applies to that person and that person—
- (a) is in pensionable employment on 31st March 2015; or
- (b) returns to pensionable employment on or after 1st April 2015 in circumstances where the provisions of regulation B2 do not apply.
- (13) This paragraph applies to a person if that person was on 1st April 2012 in pensionable employment as a special class officer—
- (a) under—
- (i) regulation R2; or
- (ii) regulation R3 and would, if that employment were to continue until that person attained the age of 60 years, be able to count 20 years or more pensionable service as a mental health officer for the purposes of paragraphs (5) and (6) of that regulation; and
- (b) that person’s eligibility cessation date calculated in accordance with paragraph (16) has not been reached.
- (14) This paragraph applies to a person if that person was on 31st March 2015 in pensionable employment as a special class officer—
- (a) under—
- (i) regulation R2; or
- (ii) regulation R3 and would, if that employment were to continue until that person attained the age of 60 years, be able to count 20 years or more pensionable service as a mental health officer for the purposes of paragraphs (5) and (6) of that regulation; and
- (b) that person’s eligibility cessation date calculated in accordance with paragraph (16) has not been reached.
- (15) For the purposes of paragraphs (10) and (11), the “eligibility cessation date” in relation to a person is to be determined according to the formula—

$A - 2 \times M$

where—

A is 1st April 2022;

M is the number of months (rounded up to the nearest whole month) by which the person’s age on 1st April 2012 is less than 50.

(16) For the purposes of paragraphs (13) and (14), the “eligibility cessation date” in relation to a person is to be determined according to the formula—

$A - (2 \times N)$

where—

A is 1st April 2022;

N is the number of months (rounded up to the nearest whole month) by which the person’s age on 1st April 2012 is less than 45.

(17) Paragraph (18) applies to a person where in the opinion of the Scottish Ministers—

- (a) that person was previously an active member of a health service scheme corresponding to this Section of the scheme;
- (b) the regulations governing that corresponding scheme include provisions pursuant to subsection (5) of section 18 of the 2013 Act that provide for exceptions to subsection (1) of that section, and
- (c) pursuant to those provisions, the member would have been eligible to re-join that corresponding scheme if the member had returned to NHS employment for the purposes of that scheme on the day the member commenced NHS employment within the meaning of these Regulations.

(18) The Scottish Ministers may permit a person referred to in paragraph (17) to join this Section of the scheme and, for the purposes of paragraphs (5) to (16), the member’s previous pensionable employment under the corresponding health service scheme referred to in paragraph (17) will be treated as if it were previous pensionable employment under this Section of the scheme.]

**Textual Amendments**

**F28** Reg. B3(4)-(18) added (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), reg. 1(b), **sch. 2 para. 3**

**Opting out of this Section of the scheme**

**B4.**—(1) A person who does not wish to, or who no longer wishes to, participate in this Section of the scheme may opt out of this Section of the scheme at any time by giving notice in writing to the employing authority.

<sup>F29</sup>(2) .....

<sup>F29</sup>(3) .....

<sup>F29</sup>(4) .....

[<sup>F30</sup>(5) A notice referred to in paragraph (1) takes effect—

- (a) from the first day of the pay period immediately following its receipt by the employing authority; or
- (b) where a later date is specified in the notice, from the first day of the pay period following the pay period in which the specified date falls.]

*Status: Point in time view as at 25/03/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)*

(6) Subject to paragraphs (7) [<sup>F31</sup>to] (8), a member who opts out of this Section of the scheme will be treated as having left pensionable employment on the day the notice takes effect.

[<sup>F32</sup>(7) This paragraph applies if the person opts out of this Section of the scheme in relation to NHS pensionable employment—

- (a) before the end of 3 months after that person's first day of that pensionable employment (or within any longer period the scheme manager considers appropriate); or
- (b) before the end of 3 months after that person's automatic re-enrolment date (or within any longer period the scheme manager considers appropriate).

(7A) Where paragraph (7)(a) applies, the person is taken never to have been in pensionable service in this Section of the scheme.

(7B) Where sub-paragraph (b) of paragraph (7) applies, the person is taken never to have been in pensionable service in this Section of the scheme during the period referred to in that sub-paragraph.]

[<sup>F33</sup>(8) A notice under paragraph (1) ceases to have effect on the day immediately preceding, as the case may be, the person's—

- (a) automatic enrolment date; or
- (b) automatic re-enrolment date: this does not apply where the notice was given within the period of 12 months immediately preceding that date.]

(9) A person is not to be treated as having retired from pensionable employment by reason only of having opted out of this Section of the scheme.

[<sup>F34</sup>(10) This regulation and regulation B5 do not apply to a person to whom section 3, 5 or 8 of the 2008 Act and regulation 9 or 15 of the 2010 Regulations apply (that is, a person who is subject to automatic enrolment or automatic re-enrolment in this Section of the scheme as a qualifying scheme who does not wish to participate in it): this paragraph does not affect the rights of such a person who subsequently becomes a member of this Section of the scheme in circumstances where those provisions of the 2008 Act and 2010 Regulations do not apply.]

#### Textual Amendments

- F29** Reg. B4(2)-(4) omitted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by virtue of [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **6(a)** (with reg. 71)
- F30** Reg. B4(5) substituted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **6(b)** (with reg. 71)
- F31** Word in reg. B4(6) substituted (13.3.2017) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), **4(a)** (with reg. 53)
- F32** Reg. B4(7)-(7B) substituted for reg. B4(7) (13.3.2017) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), **4(b)** (with reg. 53)
- F33** Reg. B4(8) substituted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **6(d)** (with reg. 71)
- F34** Reg. B4(10) inserted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **6(e)** (with reg. 71)



### [<sup>F35</sup>Joining or rejoining this Section of the scheme after opting out]

**B5.**—(1) Subject to [<sup>F36</sup>paragraph (3), a person] who has opted out of this Section of the scheme in accordance with regulation B4(1) may, if in NHS employment, [<sup>F37</sup>join or] rejoin this Section of the scheme by giving notice in writing to the employing authority.

(2) The [<sup>F38</sup>person] referred to in paragraph (1) is to be included in this Section of the scheme on the first day of the pay period immediately after the notice referred to in paragraph (1) is received or such later date (which must be the first day of a pay period) as is specified in the notice.

[<sup>F39</sup>(3) A person who has opted out may not rejoin this Section of the scheme during any period of absence from work for any reason.]

#### Textual Amendments

- F35** Reg. B5 heading substituted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **7(d)** (with reg. 71)
- F36** Words in reg. B5(1) substituted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **7(a)(i)** (with reg. 71)
- F37** Words in reg. B5(1) inserted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **7(a)(ii)** (with reg. 71)
- F38** Word in reg. B5(2) substituted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **7(b)** (with reg. 71)
- F39** Reg. B5(3) substituted for reg. B5(3)(4) (with effect in accordance with reg. 1(6) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **7(c)** (with reg. 71)

### Opting into this Section of the scheme: mis-sold pensions

- B6.**—(1) Subject to paragraph (3), this regulation applies to a person who, during any period—
- was eligible to be an active member of this Section of the scheme;
  - opted out of this Section of the scheme under regulation B4(1) and made contributions to a personal pension scheme; and
  - has suffered loss as the result of a contravention which is actionable under section 62 of the Financial Services Act 1986<sup>M32</sup> or section 150 of the Financial Services and Markets Act 2000<sup>M33</sup>.

(2) Where, at any time, a person to whom this regulation applies elects to [<sup>F40</sup>join or] rejoin this Section of the scheme under regulation B5, there must be, if the Scottish Ministers so determine, counted as pensionable service in respect of that person a period equal to the aggregate of—

- that person's additional period of pensionable service as approved by the Scottish Ministers for the purposes of regulation N5(2)(a); and
- that person's transferred out service, if any, within the meaning of regulation N5(5)

provided there has been paid to the Scottish Ministers in respect of that person a transfer payment calculated in accordance with regulation N5.

(3) Where, at any time, a person to whom this regulation applies elects to [<sup>F41</sup>join or] rejoin this Section of the scheme under regulation B5 but dies in pensionable employment or becomes entitled

*Status: Point in time view as at 25/03/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)*

to benefits under Part E of these Regulations before the transfer payment referred to in paragraph (2) has been paid to the Scottish Ministers in respect of that person, paragraph (2) continues to apply in the case of that person.

(4) In this regulation—

“active member” means a person who is in pensionable service under the scheme; and

“personal pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993 and includes—

- (a) a retirement annuity contract approved under Chapter III of Part XIV of the Taxes Act;
- (b) a personal pension scheme approved under Chapter IV of Part XIV of the Taxes Act;
- (c) a retirement benefits scheme approved under section 591(2)(g) of the Taxes Act;
- (d) a scheme referred to in (a), (b) or (c) that obtained relevant approval under the Taxes Act before 6th April 2006 and on that date became a registered scheme for the purpose of the 2004 Act; and
- (e) a scheme established on, or after, 6th April 2006, as a registered scheme for the purposes of the 2004 Act and which the Scottish Ministers agree to recognise as a transferring scheme for the purposes of Parts M and N of these Regulations.

#### Textual Amendments

- F40** Words in reg. B6(2) inserted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **8(a)** (with reg. 71)
- F41** Words in reg. B6(3) inserted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **8(b)** (with reg. 71)

#### Marginal Citations

- M32** 1986 c.60.  
**M33** 2000 c.8.

## PART C

### PENSIONABLE PAY, PENSIONABLE SERVICE AND QUALIFYING SERVICE

#### Meaning of “pensionable pay”

**C1.**—(1) In these Regulations, “pensionable pay” means, subject to the provisions of this regulation—

- (a) all salary, wages, fees and other regular payments made to a member in respect of pensionable employment as an officer, but does not include bonuses, [<sup>F42</sup>pay awards and pay increases that are expressed by the Scottish Ministers to be non-consolidated,] payments made to cover expenses or payments for overtime; and
- (b) in respect of a non GP provider who, by virtue of regulation R1(3) of these Regulations is treated as an officer, pensionable earnings calculated in accordance with—
  - (i) paragraph 5 of Schedule 1; or
  - (ii) where the non GP provider is a practitioner in partnership, paragraph 6 of Schedule 1.

(2) Paragraphs (3) to (14) apply in respect of pensionable employment before 1st April 2008.

(3) Subject to paragraphs (4) and (7), any amount by which a member's pensionable pay exceeds the permitted maximum will be ignored when calculating the amount of any contributions or benefits payable under these Regulations.

(4) Subject to paragraph (5), in the case of a member who joined this Section of the scheme before 1st June 1989 pensionable pay in excess of the permitted maximum will not be ignored.

(5) In the case of a member who joined this Section of the scheme before 1st June 1989 and has a break in pensionable employment on or after that date—

- (i) any pensionable pay earned preceding the break in that employment in excess of the permitted maximum will not be ignored;
- (ii) any pensionable pay earned after the break in that employment in excess of the permitted maximum will be ignored.

(6) Where a member who was eligible to be a member before 1st June 1989 becomes a member on or after that date by virtue of being a person to whom regulation B6 applies, any amount by which that member's pensionable pay exceeds the permitted maximum will not be ignored when calculating the amount of any contributions or benefits payable under these Regulations except in relation to a period following a break in pensionable employment on or after that date.

(7) For the purposes of paragraphs (4) and (6) no account shall be taken of a break in pensionable employment if—

- (a) the member returns to pensionable employment within 12 months after leaving;
- (b) the break is due to the member's secondment or posting to another employer and, at the time of the secondment or posting, the member has a definite expectation of returning to pensionable employment when the period of secondment or posting ends;
- (c) the break is due to the member being engaged in other employment which is approved for this purpose by the Scottish Ministers;
- (d) the break is due to the member's unpaid absence from work and the member returns to pensionable employment within one month after returning to work;
- (e) the break corresponds to the member's absence from work wholly or partly because of pregnancy or confinement and the member returns to work after the break in exercise of her right under section 39(1)(a) of the Employment Protection (Consolidation) Act 1978<sup>M34</sup> and returns to pensionable employment no later than one month after returning to work; or
- (f) the break is due to the member opting out of this Section of the scheme as the result of a contravention which is actionable under section 62 of the Financial Services Act 1986<sup>M35</sup>.

(8) Paragraphs (9) to (14) apply in respect of pensionable employment on, or after, 1st April 2008.

(9) Subject to paragraph (10), pensionable pay in excess of the permitted maximum will not be ignored.

(10) Pensionable pay in excess of the permitted maximum will be ignored in respect of additional service being bought under regulation Q1 (right to buy additional service) and an unreduced lump sum being bought under regulation Q2 (right to buy an unreduced retirement lump sum) if—

- (a) the member elected to make such a purchase under regulation Q6(3) (electing to buy additional service or unreduced retirement lump sum) from a birthday falling before 1st April 2008;
- (b) the member's pensionable pay was restricted under paragraph (3) before that date; or
- (c) the member's pensionable pay would have been restricted under that paragraph if it had exceeded the permitted maximum.

*Status: Point in time view as at 25/03/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)*

(11) This regulation applies to a member in respect of whom a transfer payment has been accepted from a health service scheme in the same way as if the period of employment that qualified the member for benefits under the health service scheme had been pensionable employment.

(12) Subject to paragraph (13), in these Regulations “final year's pensionable pay” means pensionable pay in respect of the member's last year of pensionable employment, ending on the date the member ceases to be in such employment, or dies, whichever occurs first, except—

- (a) if the member was in pensionable employment for less than 12 months, “final year's pensionable pay” means—

$$\frac{\text{Pensionable pay}}{\text{Number of days pensionable employment}} \times 365$$

- (b) if pensionable pay was greater in either or both of the two consecutive years immediately preceding the last year, “final year's pensionable pay” means pensionable pay in respect of the year immediately preceding the last year or, if greater, pensionable pay in respect of the first of those two consecutive years.

(13) If the pensionable pay of a member credited with any period of pensionable service under regulation N3 (transfers made under the public sector transfer arrangements) or N6 (special terms for transfers in (bulk transfers etc.)) has exceeded the permitted maximum and either—

- (a) paragraph 20 of Schedule 6 to the Finance Act 1989 <sup>M36</sup> applied to the member without the modification made by regulation 5 of the Retirement Benefits Schemes (Continuation of Rights of Members of Approved Schemes) Regulations 1990 <sup>M37</sup> in respect of benefits derived from all or part of that service under the transferring scheme; or
- (b) any equivalent scheme provision applied to the member in respect of all or part of that service when that person was a member of the transferring scheme from which the transfer was accepted,

that excess shall be ignored for the purposes of calculating the final year's pensionable pay under paragraph (12) in respect of the corresponding period of pensionable service credited under regulation N3 or N6.

(14) In this regulation, “permitted maximum” means—

- (a) in relation to any tax year before the tax year 2006-07, the figure specified for that tax year in an order made under section 590C <sup>M38</sup> of the Taxes Act; or
- (b) subject to paragraphs (15) and (16), the figure for any later year is £108,600.

(15) If the retail prices index for the month of September preceding the tax year 2007-08 or any later tax year is higher than it was for the previous September, the figure for that year is an amount arrived at by—

- (a) increasing the figure for the previous tax year by the same percentage as the percentage increase in the retail prices index; and
- (b) if the result is not a multiple of £600, rounding it up to the nearest amount which is such a multiple.

(16) If the retail prices index for the month of September preceding the tax year 2007-08 or the month of September preceding any later tax year is not higher than it was for the previous September, the figure for that year shall be the same as for the previous tax year.

[<sup>F43</sup>(17) Where, having regard to the matters referred to in paragraph (18), the Scottish Ministers consider that the amount which would, but for their determination under this paragraph, constitute

the member's final year's pensionable pay is inordinate, they may for the purposes of this regulation determine—

- (a) what the amount of that pensionable pay is to be; and
  - (b) the date from which any change in the amount of that pay as a result of that determination is to take effect
- (18) Those matters are—
- (a) any variations in the level of the member's pay during a period not exceeding ten years and ending with the later of the date the member ceases to be in pensionable employment or the date the member dies;
  - (b) the general level of pensionable pay pertaining in NHS employment for members of the same or an equivalent grade or post during the period under consideration for the purposes of sub-paragraph (a);
  - (c) promotion and re-grading prospects pertaining in NHS employment for members of the same or an equivalent grade or post;
  - (d) any other matters the Scottish Ministers consider relevant.
- (19) Where the Scottish Ministers determine the amount of a member's pensionable pay pursuant to paragraph (17)—
- (a) the difference between the amount which would, but for the determination pursuant to paragraph (17), be the member's pensionable pay and the amount so determined pursuant to that paragraph, is to be ignored for the purposes of this regulation (“the ignored amount”);
  - (b) any contributions referable to the ignored amount and paid by the member pursuant to regulation D1 or Q6, or paragraph 14 or 31 of Schedule 1 are, net of any tax payable, to be refunded to that member;
  - (c) any contributions referable to the ignored amount and paid by the employing authority pursuant to regulation D2 or paragraph 14 or 31 of Schedule 1, are to be refunded to that employing authority;
  - (d) the amount so determined is not be regarded as an “excessive pay increase” for the purposes of regulation D3.]

#### Textual Amendments

- F42** Words in reg. C1(1)(a) inserted (with effect in accordance with reg. 1(4) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/96\)](#), regs. 1(2), 5
- F43** Reg. C1(17)-(19) inserted (28.6.2014) by [The National Health Service Superannuation Scheme \(Scotland\) \(Miscellaneous Amendments\) Regulations 2014 \(S.S.I. 2014/154\)](#), regs. 1(2), 5

#### Marginal Citations

- M34** 1978 c.44; section 39 was substituted by the [Trade Union Reform and Employment Rights Act 1993 \(c.19\)](#), Schedule 2.
- M35** 1986 c.60.
- M36** 1989 c. 26. Paragraph 20 of Schedule 6 was repealed by the 2004 Act, Schedule 42, paragraph 1.
- M37** S.I. 1990/2101. Regulation 5 was repealed by implication on the repeal of the enabling provision subject to transitional provisions and savings by the 2004 Act, Schedule 42, paragraph 1.
- M38** Section 590C was repealed by the 2004 Act, Schedule 42, paragraph 1.

**Meaning of “pensionable service”**

**C2.**—(1) In these Regulations, for the purpose of calculating the amount of any benefit payable to or in respect of a member, “pensionable service” means, subject to paragraphs (2) and (3)—

- (a) any period of pensionable employment in respect of which the member contributes to this Section of the scheme under regulation D1 (contributions by members);
- (b) any period of contributing service that was so reckonable under the 1995 Regulations;
- (c) any period of contributing service that is reckonable under regulation 3 of the National Health Service (Superannuation) (War Service, etc.) (Scotland) Regulations 1977 <sup>M39</sup> (reckoning war service as contributing service under the principal regulations);
- (d) any period of additional service which the member has purchased under regulation Q1; and
- (e) any period of pensionable service credited to the member under regulation N1(5) (member's right to transfer accrued rights to benefits to this Section of the scheme) or as a result of transfer payment to this Section of the scheme under regulation R7(2) (former members of health service schemes).

(2) A member's pensionable service does not include—

- (a) any period of employment in respect of which the Scottish Ministers have paid contributions to another occupational pension scheme in respect of the member;
- (b) in the case of a member who has become entitled to a pension (including a preserved pension) under this Section of the scheme, any period that was taken into account for the purpose of determining whether that member was entitled to that pension, or for the purpose of calculating the amount of that pension;
- (c) any period of employment in respect of a temporary additional session;
- (d) any period of employment where contributions under regulation D1 have ceased;
- (e) any period in respect of which the Scottish Ministers have discharged their liability to provide benefits under regulation E15 (early leavers' entitlement to refund of contributions), Part M (transfer-out arrangements and buy-outs) and regulation K7 (state scheme premiums); and
- (f) in the case of practice staff any employment or portion of their employment which does not relate to the provision of services under a GMS contract, a section 17C agreement, an HBPMS contract or to the provision of OOH services.
- (g) in the case of a member who is not a special class officer, any period of pensionable service in excess of 40 years that relates to a period before—
  - (i) the member's 60th birthday; and
  - (ii) 1st April 2008.

(3) Pensionable service in respect of part-time employment will be calculated as described in regulation C4 (pensionable service in respect of part-time employment).

(4) Subject to paragraph (2), the benefits described in these Regulations will be calculated by reference to a maximum of—

- (a) 45 years' pensionable service in the case of a member who is not a special class officer; and
- (b) 45 years' pensionable service (of which only 40 years may relate to the period before the member reaches age 55) in the case of a member who is a special class officer,

and if the member's pensionable service exceeds these limits, the amount of the excess will be ignored.

(5) Where the member has pensionable service in excess of the limits described in paragraph [F44(4)], the Scottish Ministers are to select those years, by reference to which the benefits are to be calculated, which produce the most favourable result to the member.

(6) If, when a member leaves pensionable employment or dies, a payment is made in respect of leave not taken—

- (a) the member's pensionable employment will be treated, subject to paragraph (4), as continuing for a period equal to the period of leave for which payment is made; and
- (b) the payment will be treated as the member's pensionable pay for that period.

(7) In order to calculate the length of a member's pensionable service, all periods of pensionable service will be added and each resulting period of 365 days (without regard to pensionable service on 29th February in a leap year) will be treated as one year.

#### Textual Amendments

**F44** Word in reg. C2(5) substituted (with effect in accordance with reg. 1(7) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/364\), regs. 1\(2\), 4](#)

#### Marginal Citations

**M39** [S.I. 1977/2138](#); amended by [S.I. 1981/1018](#).

### Meaning of “qualifying service”

**C3.**—(1) Where a member's entitlement to benefit is conditional on having a length of “qualifying service” specified in a regulation, “qualifying service” means the aggregate of the following:—

- (a) pensionable service under these Regulations, except for any period of additional service referred to in regulation Q1 (right to buy additional service);
- (b) where a transfer payment has been accepted under Part N (transfers-in from other pension arrangements) in respect of the member's rights under another occupational pension scheme, a personal pension scheme or a buy-out policy, the period of employment that qualified the member for those rights;
- (c) in the case of a person who—
  - (i) has become a member on the transfer of that person's employment to a new employer as a result of a transfer of an undertaking to that employer, and
  - (ii) has rights under another occupational pension scheme to which that person was eligible to belong in that person's former employment in respect of which no transfer payment has been accepted under regulations N1(4) or N6, the period of employment that qualified the member for those rights,
- (d) any period reckonable as “service” under the 1995 Regulations; and
- (e) any period of part-time pensionable service in accordance with regulation C4(11).

(2) If a member leaves and subsequently returns to pensionable employment paragraphs (3) and (4) will apply for the purpose of calculating the member's qualifying service.

(3) If the break between leaving and rejoining does not exceed one month or is due to a trade dispute, the member's pensionable service before and after the break will be treated as continuous (but excluding the break) for the purpose of calculating the member's qualifying service after the break, even if the member's pensionable service before and after the break is otherwise treated separately for the purpose of calculating the member's benefits.



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(4) If the member is entitled to a preserved pension under regulation E12 in respect of an earlier period of employment (whether or not the pension has become payable), and the periods of pensionable service before and after the break are not treated as continuous under regulation L1, the period of employment to which that pension relates will be treated as qualifying service.

(5) Where a member who is employed on a casual basis—

(a) ceases to pay contributions because of a break in the member's pensionable-employment of a period not exceeding three months, and

(b) re-enters pensionable employment on the same basis after the break,

for the purposes of these Regulations the member is treated as continuing to be in qualifying service (but not pensionable service) during the break, and as not being required to rejoin this Section of the scheme when the member re-enters pensionable employment.

(6) If a pension becomes payable to a member under regulation E6 or E7 and the member has elected under regulation R4(4) to take a benefit only in respect of the employment that has ended, the pensionable service in respect of which that benefit is calculated will be treated as qualifying service in relation to the employment in respect of which benefits continue to accrue.

#### **Pensionable service in respect of part-time employment**

**C4.**—(1) Subject to paragraphs (7) and (11), a member's pensionable service in part-time employment will not count at its full length but will be calculated as described in paragraphs (2) or (3), whichever is applicable, as its whole-time equivalent.

(2) If the member's part-time employment is expressed as a specified number of half-days or sessions a week, the whole-time equivalent of the member's pensionable service in respect of that employment will be calculated by the following fraction:—

$$\frac{\text{Number of half days or sessions}}{\text{comparable whole } \diamond?? \text{ time service}} \times 365.$$

(3) In any case where paragraph (2) does not apply, the whole-time equivalent of the member's pensionable service in respect of part-time employment will be calculated by multiplying the full length of that pensionable service by the following fraction:—

$$\frac{\text{member ' s hours of employment each week}}{\text{hours constituting comparable whole } \diamond?? \text{ time employment .}}$$

(4) Subject to paragraph (6), for the purpose of calculating a member's final year's pensionable pay in respect of part-time employment, the member's pensionable pay will be the amount that the Scottish Ministers determine would have been paid in respect of a single comparable whole-time employment and any amount by which the member's actual final year's pensionable pay in respect of part time employment exceeds the amount determined will be ignored.

(5) For the purposes of paragraph (4) “a single comparable whole-time employment” means the number of hours, half days or session which the Scottish Ministers determine would constitute comparable whole-time employment.

(6) Paragraph (4) does not apply to the calculation of final year's pensionable pay for the purposes of—

(a) regulations F1(2) and F2(2) (lump sum payable on death in pensionable employment or after becoming entitled to receive a pension); or



- (b) sub-paragraph (b) of the definition of previous pay in regulation S2(16) (reduction of pension for members who return to pensionable employment after becoming entitled to a pension).
- (7) If a member with pensionable service in part-time employment becomes entitled to a pension under regulation E2 (early retirement pension (ill health)), E3 (ill health pension on early retirement), E6 (early retirement pension (redundancy etc.)) or E7 (early retirement pension (redundancy etc., new starters and post-transition))—
- (a) the member's pensionable service in part-time employment will count at its full length for the purpose of calculating—
- (i) whether and (if so) to what extent, the pensionable service upon which the pension under regulation E2 or E3 is based should be increased under either of those regulations; or
- (ii) the qualifying service for the purposes of regulation E6(2)(a) or regulation E7(2)(a); and
- (b) the pension will be based on the whole-time equivalent of the period of part-time employment and, in the case of a pension under regulation E2 or E3, the increase under either of those regulations will be limited to such amount as bears the same proportion to the amount that would have been paid had the pensionable service not been part-time as the whole-time equivalent bears to comparable whole-time employment.
- (8) If a member in part-time pensionable employment elects to buy additional service as described in regulation Q1 (right to buy additional service), the period of additional service will be calculated in accordance with Table 1 or Table 3 of Schedule 3 (whichever is applicable) and then reduced by multiplying the full length of that additional service by the following fraction:—

*part-time pensionable employment*

*comparable whole-time pensionable employment*

where—

“part-time pensionable employment” means the number of hours, half-days or sessions that the member was required to work under the member's contract of employment during the period by reference to which “remuneration” was calculated for the purposes of Table 1 of Schedule 3 or regular additional contributions were paid in accordance with regulation Q5 (paying by regular additional contributions); and

“comparable whole-time pensionable employment” means the number of hours, half-days or sessions that would have constituted comparable whole-time pensionable employment during that period.

(9) If a member in part-time pensionable employment elects to buy an unreduced retirement lump sum as described in regulation Q2 (right to buy an unreduced retirement lump sum), the period referred to in Table 2 or Table 4 of Schedule 3 (whichever is applicable) will be reduced as described in paragraph (8) above.

(10) Paragraphs (8) and (9) above also apply for the purposes of regulation Q7 (part payment for additional service or unreduced retirement lump sum).

(11) A member's pensionable service in respect of part-time employment will count at its full length (and concurrent periods of employment will be treated as a single employment) for the purposes of regulations C3(1) (qualifying service), C2(4) (limit on service that counts for benefits) and R3(5) (extra service credited to long-serving mental health officers), R6(6) (members entitled to fees for domiciliary consultations) and T9 (reduction in benefits to take account of benefits under the National Insurance Acts).

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## PART D

### CONTRIBUTIONS TO THE SCHEME

#### Contributions by members

**D1.**—(1) Each member in pensionable employment must contribute to this Section of the scheme in accordance with the following paragraphs of this regulation.

[<sup>F45</sup>(2) Where paragraph (6) applies, a member's [<sup>F46</sup>contribution rate—

- (a) for the scheme year 2015-16 is the percentage specified in column 2 of table 1 in respect of the corresponding pensionable pay band specified in column 1 of that table into which the member's pensionable pay falls;
- (b) for the scheme year 2016-17 is the percentage specified in column 2 of table 2] in respect of the corresponding pensionable pay band specified in column 1 of that table into which the member's pensionable pay falls[<sup>F47</sup>;
- (c) for the scheme year 2017-18 is the percentage specified in column 2 of table 3 in respect of the corresponding pensionable pay band specified in column 1 of that table into which the member's pensionable pay falls][<sup>F48</sup>;
- (d) for the scheme year 2018-19 is the percentage specified in column 2 of table 4 in respect of the corresponding pensionable pay band specified in column 1 of that table into which the member's pensionable pay falls][<sup>F49</sup>;
- (e) for the scheme year 2019-20 is the percentage specified in column 2 of table 5 in respect of the corresponding pensionable pay band specified in column 1 of that table into which the member's pensionable pay falls.]

[<sup>F50</sup>[<sup>F51</sup>Table 1]

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable pay band</i>	<i>Contribution percentage rate</i>
Up to £15,828	5.2%
£15,829 - £21,601	5.8%
£21,602 - £27,089	7.3%
£27,090 - £49,967	9.5%
£49,968 - £71,337	12.7%
£71,338 - £111,376	13.7%
£111,377 to any higher amount	14.7%]

[<sup>F52</sup>Table 2

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable pay band</i>	<i>Contribution percentage rate</i>
Up to £16,128	5.2%

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable pay band</i>	<i>Contribution percentage rate</i>
£16,129 - £21,817	5.8%
£21,818 - £27,360	7.3%
£27,361 - £50,466	9.5%
£50,467 - £72,050	12.7%
£72,051 - £112,490	13.7%
£112,491 to any higher amount	14.7%]

[<sup>F53</sup>Table 3

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable pay band</i>	<i>Contribution percentage rate</i>
Up to £16,528	5.2%
£16,529 - £22,217	5.8%
£22,218 - £27,634	7.3%
£27,635 - £50,971	9.5%
£50,972 - £72,770	12.7%
£72,771 - £113,625	13.7%
£113,626 to any higher amount	14.7%]

[<sup>F54</sup>Table 4

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable pay band</i>	<i>Contribution percentage rate</i>
Up to £16,928	5.2%
£16,929 to £22,439	5.8%
£22,440 to £27,910	7.3%
£27,911 to £51,481	9.5%
£51,482 to £73,498	12.7%
£73,499 to £114,760	13.7%
£114,761 to any higher amount	14.7%]

[<sup>F55</sup>Table 5

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable pay band</i>	<i>Contribution percentage rate</i>
Up to £17,864	5.2%

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<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable pay band</i>	<i>Contribution percentage rate</i>
£17,865 to £23,112	5.8%
£23,113 to £28,747	7.3%
£28,748 to £53,025	9.5%
£53,026 to £75,703	12.7%
£75,704 to £116,360	13.7%
£116,361 to any higher amount	14.7%]

[<sup>F56</sup>(2A) Where paragraph (20), (21) or (25) applies, a member’s contribution rate for the scheme year [<sup>F57</sup>2019-20] is the percentage specified in column 2 of [<sup>F58</sup>table 5] in paragraph (2) in respect of the corresponding pensionable pay band specified in column 1 of that table into which the member’s pensionable pay falls.]]

(3) The Scottish Ministers will, with the consent of the Treasury, determine the pensionable pay bands and contribution percentage rates specified in [<sup>F59</sup>the tables set out in this regulation] in respect of each scheme year.

[<sup>F60</sup>(4) Before determining those pensionable pay bands or contribution percentage rates under paragraph (3), the Scottish Ministers must consider the advice of the scheme actuary.]

(5) For the purposes of this regulation—

- (a) “previous scheme year” means the scheme year immediately preceding the scheme year in respect of which contributions are payable in accordance with this regulation (“the current scheme year”); and
- (b) if a member holds two or more pensionable employments at the same time—
  - (i) the calculations or determinations referred to in paragraphs (8) to (25) shall apply to each such employment separately; and
  - (ii) each such employment shall be treated separately for the purpose of paying contributions.

<sup>F61</sup>(c) .....

(6) Subject to paragraphs (20) and (21), for the purposes of determining the relevant annual contribution percentage rate for the current scheme year paragraphs (7) to (19) apply to a member who is in pensionable employment with the same employing authority on both the last day of the previous scheme year and the first day of the current scheme year.

(7) For the purposes of paragraphs (8) to (19)—

- (a) a member shall be 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 Section of the scheme;
- (b) for the purposes of calculating the member's pensionable pay—
  - (i) contributions for any period referred to in sub-paragraph (a) shall be deemed to have been paid; and
  - (ii) any additional pensionable pay that the member is treated as having received during an absence from work in accordance with regulation P1 (maternity, paternity and adoption absence) or P2 (absence because of illness or injury) shall be included; and

- (c) the amount of pensionable pay determined in accordance with those paragraphs shall be rounded down to the nearest whole pound.

(8) If a member—

- (a) was in pensionable employment with an employing authority on a whole-time basis throughout the previous scheme year;
- (b) paid contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member must pay contributions during the current scheme year at the rate specified in column 2 of [F62[F63the applicable table] in paragraph (2)] in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay received during the previous scheme year.

(9) If a member—

- (a) was in pensionable employment with an employing authority on a part-time basis throughout the previous scheme year;
- (b) paid contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member must pay contributions during the current scheme year at the rate specified in column 2 of [F62[F63the applicable table] in paragraph (2)] in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by reference to the amount the Scottish Ministers determine would have been paid in respect of a single comparable whole-time employment during the previous scheme year.

(10) If a member—

- (a) was in pensionable employment with an employing authority on a combination of a whole-time and part-time basis throughout the previous scheme year;
- (b) paid contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member must pay contributions during the current scheme year at the rate specified in column 2 of [F62[F63the applicable table] in paragraph (2)] in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the aggregate of—

- (i) the member's pensionable pay received during the previous scheme year in respect of the member's whole-time employment; and
- (ii) the amount the Scottish Ministers determine would have been paid in respect of a single comparable whole-time employment for that period in respect of the member's part-time employment.

(11) If a member—

- (a) was in pensionable employment with an employing authority on a whole-time basis throughout the previous scheme year;
- (b) did not pay contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member must pay contributions during the current scheme year at the rate specified in column 2 of [F62[F63the applicable table] in paragraph (2)] in respect of the amount of pensionable pay referred

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to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula—

$$\frac{RPP}{NDPE} \times 365$$

where—

RPP is the pensionable pay received in respect of that employment for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year; and

NDPE is the number of days of pensionable employment with that employer commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(12) If a member—

- (a) was in pensionable employment with an employing authority on a part-time basis throughout the previous scheme year;
- (b) did not pay contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member must pay contributions during the current scheme year at the rate specified in column 2 of [<sup>F62</sup>[<sup>F63</sup>the applicable table] in paragraph (2)] in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula—

$$\frac{CWTE}{NDPE} \times 365$$

where—

CWTE is the amount the Scottish Ministers determine would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year; and

NDPE is the number of days of pensionable employment with that employer commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(13) If a member—

- (a) was in pensionable employment with an employing authority on a combination of a whole-time and part-time basis throughout the previous scheme year;
- (b) did not pay contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member must pay contributions during the current scheme year at the rate specified in column 2 of [<sup>F62</sup>[<sup>F63</sup>the applicable table] in paragraph (2)] in respect of the amount of pensionable pay referred

to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula—

$$\frac{(RPP + CWTE)}{NDPE} \times 365$$

where—

RPP is the pensionable pay received for the whole-time employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

CWTE is the amount the Scottish Ministers determine would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year; and

NDPE is the number of days of pensionable employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(14) If a member—

- (a) commenced pensionable employment with an employing authority on a whole-time basis during the previous scheme year;
- (b) paid contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member must pay contributions during the current scheme year at the rate specified in column 2 of [<sup>F62</sup>[<sup>F63</sup>the applicable table] in paragraph (2)] in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

$$\frac{RPP}{NDPE} \times 365$$

where—

RPP is the pensionable pay received in respect of that employment during the previous scheme year; and

NDPE is the number of days of pensionable employment with that employer during the previous scheme year.

(15) If a member—

- (a) commenced pensionable employment with an employing authority on a part-time basis during the previous scheme year;
- (b) paid contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member must pay contributions during the current scheme year at the rate specified in column 2 of [<sup>F62</sup>[<sup>F63</sup>the applicable table] in paragraph (2)] in respect of the amount of pensionable pay referred

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to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

$$\frac{CWTE}{NDPE} \times 365$$

where—

CWTE is the amount the Scottish Ministers determine would have been paid for that employment during the previous scheme year in respect of a single comparable whole-time employment; and

NDPE is the number of days of pensionable employment with that employer during the previous scheme year.

(16) If a member—

- (a) commenced pensionable employment with an employing authority during the previous scheme year and has since been employed on both a whole-time and part-time basis;
- (b) paid contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member must pay contributions during the current scheme year at the rate specified in column 2 of [<sup>F62</sup>[<sup>F63</sup>the applicable table] in paragraph (2)] in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

$$\frac{(RPP + CWTE)}{NDPE} \times 365$$

where—

RPP is the pensionable pay received for the whole-time employment with that employer during the previous scheme year;

CWTE is the amount the Scottish Ministers determine would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment with that employer during the previous scheme year; and

NDPE is the number of days of pensionable employment with that employer during the previous scheme year.

(17) If a member—

- (a) commenced pensionable employment with an employing authority on a whole-time basis during the previous scheme year;
- (b) did not pay contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year;

the member must pay contributions during the current scheme year at the rate specified in column 2 of [<sup>F62</sup>[<sup>F63</sup>the applicable table] in paragraph (2)] in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—



$$\frac{RPP}{NDPE} x 365$$

where—

RPP is the pensionable pay received in respect of that employment for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year; and

NDPE is the number of days of pensionable employment with that authority commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(18) If a member—

- (a) commences pensionable employment with an employing authority on a part-time basis during the previous scheme year;
- (b) did not pay contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member must pay contributions during the current scheme year at the rate specified in column 2 of [<sup>F62</sup>[<sup>F63</sup>the applicable table] in paragraph (2)] in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

$$\frac{CWTE}{NDPE} x 365$$

where—

CWTE is the amount the Scottish Ministers determine would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year; and

NDPE is the number of days of pensionable employment with that employer commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(19) If a member—

- (a) commenced pensionable employment with an employing authority during the previous scheme year and has since been employed on both a whole-time and part-time basis with that employing authority;
- (b) did not pay contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member must pay contributions during the current scheme year at the rate specified in column 2 of [<sup>F62</sup>[<sup>F63</sup>the applicable table] in paragraph (2)] in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula—

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$$\frac{(RPP + CWTE)}{NDPE} \times 365$$

where—

RPP is the pensionable pay received for the whole-time employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

CWTE is the amount the Scottish Ministers determine would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year; and

NDPE is the number of days of pensionable employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(20) If, at any time during the current scheme year, a member commences a new employment, the member must pay contributions in respect of that employment at the rate specified in column 2 of [F64[F65]table 5] in paragraph (2)] in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (24).

(21) Subject to paragraph (22), if at any time during the current scheme year, a change is made to a member's annual rate of pensionable pay or pensionable allowances in respect of an existing employment the member shall pay contributions—

(a) from the first day of the pay period in which the change is made at the rate specified in column 2 of [F66[F67]table 5] in paragraph (2)] in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (24); and

(b) as if the member's employment had commenced on that date.

(22) Paragraph (21) does not apply to a change made to a member's annual rate of pensionable allowances in respect of an existing employment that is determined by that member's employer to have been made in respect of—

(a) unplanned changes to that member's duties; or

(b) changes to that member's duties that are unlikely to persist for at least 12 months.

(23) If the change to a member's pensionable pay referred to in paragraph (21) is made in respect of an existing part-time employment, that paragraph shall not apply unless there is a corresponding change to the amount of pensionable pay that would be paid to that member in respect of a whole-time comparable employment.

(24) Where paragraphs (20) or (21) apply the Scottish Ministers must determine the member's pensionable pay—

(a) by applying the formula—

$$\frac{EPP}{NDPE} \times 365$$

where—

EPP is the estimated pensionable pay that the member's employing authority estimates will be payable to the member in respect of that employment during the current scheme year; and

NDPE is the number of days of pensionable employment from the date employment commences to the end of the current scheme year; and

- (b) if the further employment is part-time employment, by determining how much would be paid in respect of a whole-time comparable employment,

with the amount determined under sub-paragraph (a) being the member's pensionable pay for the purposes of this paragraph if the further employment is whole-time employment and the amount determined under sub-paragraph (b) being the member's pensionable pay for the purposes of this paragraph if the further employment is part-time employment.

(25) If none of paragraphs (8) to (21) apply—

- (a) the Scottish Ministers must determine the amount of the member's pensionable pay, and in doing so shall, in addition to the matters referred to in paragraph (4), have regard to the pensionable pay attributable to pensionable employment comparable to the member's employment, prevailing pay scales and prevailing rates of pensionable allowances; and
- (b) the member must pay contributions at the rate specified in column 2 of [F68[F69]table 5] in paragraph (2)] in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with sub-paragraph (a).

(26) If the member is a special class officer, contributions must be paid until the member reaches age 65, or completes 45 years' pensionable service and reaches age 60.

(27) If the member is not a special class officer, contributions must be paid until the member reaches age 75, or completes 45 years' pensionable service.

(28) The employing authority must deduct each member's contributions from the member's earnings and shall recover any contributions not so deducted and pay them to the Scottish Ministers not later than the 19th day of the month following the month in which the earnings were paid.

(29) Without prejudice to any other method of recovery, where an employing authority has failed to deduct contributions in accordance with paragraph (28), the Scottish Ministers may recover any sum that remains due in respect of those contributions by deduction from any payment by way of benefits to, or in respect of, the member [F70]entitled to them where the Scottish Ministers have notified the member of an intention to do so].

#### Textual Amendments

- F45** Reg. D1(2)(2A) substituted for reg. D1(2) (with effect in accordance with reg. 1(2) of the amending S.S.I.) by [The National Health Service \(Superannuation Scheme and Pension Scheme\) \(Scotland\) Amendment \(No. 2\) Regulations 2013 \(S.S.I. 2013/168\)](#), regs. 1(2), **3(a)**
- F46** Words in reg. D1(2) substituted (with effect in accordance with reg. 1(2)(e) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2016 \(S.S.I. 2016/98\)](#), regs. 1(1), **3(a)(i)**
- F47** Reg. D1(2)(c) inserted (with effect in accordance with reg. 1(2)(e) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), **5(a)(i)** (with reg. 53)
- F48** Reg. D1(2)(d) inserted (31.1.2018) by [The National Health Service Superannuation Scheme \(Scotland\) \(Miscellaneous Amendments\) \(No. 2\) Regulations 2017 \(S.S.I. 2017/434\)](#), regs. 1(1), **3(a)(i)** (with reg. 19)
- F49** Reg. D1(2)(e) inserted (1.4.2019) by [The National Health Service Superannuation and Pension Schemes \(Scotland\) \(Miscellaneous Amendments\) Regulations 2019 \(S.S.I. 2019/46\)](#), regs. 1, **3(a)(i)**

*Status: Point in time view as at 25/03/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)*

- F50** Reg. D1(2) Table substituted (1.4.2015) by The National Health Service Superannuation Scheme (Miscellaneous Amendments) (Scotland) Regulations 2015 (S.S.I. 2015/96), regs. 1(2), **6(b)**
- F51** Words in reg. D1(2) substituted (with effect in accordance with reg. 1(2)(e) of the amending S.S.I.) by The National Health Service Superannuation Scheme (Miscellaneous Amendments) (Scotland) Regulations 2016 (S.S.I. 2016/98), regs. 1(1), **3(a)(ii)**
- F52** Reg. D1(2) Table 2 inserted (with effect in accordance with reg. 1(2)(e) of the amending S.S.I.) by The National Health Service Superannuation Scheme (Miscellaneous Amendments) (Scotland) Regulations 2016 (S.S.I. 2016/98), regs. 1(1), **3(a)(iii)**
- F53** Reg. D1(2) Table 3 inserted (with effect in accordance with reg. 1(2)(e) of the amending S.S.I.) by The National Health Service Superannuation Scheme (Miscellaneous Amendments) (Scotland) Regulations 2017 (S.S.I. 2017/27), regs. 1(1), **5(a)(ii)** (with reg. 53)
- F54** Reg. D1(2) Table 4 inserted (31.1.2018) by The National Health Service Superannuation Scheme (Scotland) (Miscellaneous Amendments) (No. 2) Regulations 2017 (S.S.I. 2017/434), regs. 1(1), **3(a)(ii)** (with reg. 19)
- F55** Reg. D1(2) Table 5 inserted (1.4.2019) by The National Health Service Superannuation and Pension Schemes (Scotland) (Miscellaneous Amendments) Regulations 2019 (S.S.I. 2019/46), regs. 1, **3(a)(ii)**
- F56** Reg. D1(2A) substituted (31.1.2018) by The National Health Service Superannuation Scheme (Scotland) (Miscellaneous Amendments) (No. 2) Regulations 2017 (S.S.I. 2017/434), regs. 1(1), **3(b)** (with reg. 19)
- F57** Words in reg. D1(2A) substituted (1.4.2019) by The National Health Service Superannuation and Pension Schemes (Scotland) (Miscellaneous Amendments) Regulations 2019 (S.S.I. 2019/46), regs. 1, **3(b)(i)**
- F58** Words in reg. D1(2A) substituted (1.4.2019) by The National Health Service Superannuation and Pension Schemes (Scotland) (Miscellaneous Amendments) Regulations 2019 (S.S.I. 2019/46), regs. 1, **3(b)(ii)**
- F59** Words in reg. D1(3) substituted (with effect in accordance with reg. 1(2) of the amending S.S.I.) by The National Health Service (Superannuation Scheme and Pension Scheme) (Scotland) Amendment (No. 2) Regulations 2013 (S.S.I. 2013/168), regs. 1(2), **3(b)**
- F60** Reg. D1(4) substituted (with effect in accordance with reg. 1(8) of the amending S.S.I.) by The National Health Service Superannuation Scheme etc. (Miscellaneous Amendments) (Scotland) Regulations 2013 (S.S.I. 2013/109), regs. 1(2), **9** (with reg. 71)
- F61** Reg. D1(5)(c) omitted (1.4.2012) by virtue of The National Health Service (Superannuation Scheme and Pension Scheme) (Scotland) Amendment Regulations 2012 (S.S.I. 2012/69), regs. 1(2), **3(c)**
- F62** Words in reg. D1(8)-(21) substituted (1.4.2012) by The National Health Service (Superannuation Scheme and Pension Scheme) (Scotland) Amendment Regulations 2012 (S.S.I. 2012/69), regs. 1(2), **3(d)**
- F63** Words in reg. D1(8)-(19) substituted (with effect in accordance with reg. 1(2)(e) of the amending S.S.I.) by The National Health Service Superannuation Scheme (Miscellaneous Amendments) (Scotland) Regulations 2016 (S.S.I. 2016/98), regs. 1(1), **3(c)**
- F64** Words in reg. D1(20) substituted (with effect in accordance with reg. 1(2)(e) of the amending S.S.I.) by The National Health Service Superannuation Scheme (Miscellaneous Amendments) (Scotland) Regulations 2016 (S.S.I. 2016/98), regs. 1(1), **3(d)**
- F65** Words in reg. D1(20) substituted (1.4.2019) by The National Health Service Superannuation and Pension Schemes (Scotland) (Miscellaneous Amendments) Regulations 2019 (S.S.I. 2019/46), regs. 1, **3(c)**
- F66** Words in reg. D1(21)(a) substituted (with effect in accordance with reg. 1(2)(e) of the amending S.S.I.) by The National Health Service Superannuation Scheme (Miscellaneous Amendments) (Scotland) Regulations 2016 (S.S.I. 2016/98), regs. 1(1), **3(d)**
- F67** Words in reg. D1(21)(a) substituted (1.4.2019) by The National Health Service Superannuation and Pension Schemes (Scotland) (Miscellaneous Amendments) Regulations 2019 (S.S.I. 2019/46), regs. 1, **3(c)**

- F68** Words in reg. D1(25)(b) substituted (with effect in accordance with reg. 1(2)(e) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2016 \(S.S.I. 2016/98\)](#), regs. 1(1), **3(d)**
- F69** Words in reg. D1(25)(b) substituted (1.4.2019) by [The National Health Service Superannuation and Pension Schemes \(Scotland\) \(Miscellaneous Amendments\) Regulations 2019 \(S.S.I. 2019/46\)](#), regs. 1, **3(c)**
- F70** Words in reg. D1(29) substituted (1.4.2014) by [The National Health Service \(Superannuation Scheme\) \(Scotland\) Amendment Regulations 2014 \(S.S.I. 2014/43\)](#), regs. 1(2), **3(c)**

### Contributions and other payments by employing authorities

**D2.**—(1) Each employing authority must contribute to the scheme, in respect of the pensionable pay of each member in pensionable employment with the authority, at the rate determined by the Scottish Ministers and specified in paragraph (4) (“the employer's standard rate”).

(2) The employer's standard rate must include the cost of providing any increases in pensions which are payable by virtue of Part 1 of the Pensions (Increase) Act 1971 <sup>M40</sup>.

(3) In determining the employer's standard rate, the Scottish Ministers must [<sup>F71</sup>consider] the advice of the scheme actuary and obtain the Treasury's consent.

(4) The employer's standard rate is [<sup>F72</sup>20.9] per cent.

(5) Where, on leaving NHS employment, a pension becomes payable to a member under regulation E6 (early retirement pension (redundancy etc)) or regulation E7 (Redundancy etc new starters and post-transition) the employing authority must make additional payments to the Scottish Ministers in respect of—

- (a) the cost of providing the pension under regulations E6 [<sup>F73</sup>or E7] (including any amount of pension that is exchanged for a lump sum under regulation E17) <sup>F74</sup>... for the period between the member's leaving NHS employment and reaching age 60 or, in the case of a member who is a special class officer in respect of whom regulation R2 (nurses, physiotherapists, midwives and health visitors) or regulation R3 (mental health officers) applies, the age of 55;
- (b) the cost of providing, under regulation R6 (members entitled to fees for domiciliary consultations), any benefit that supplements the pension referred to in sub-paragraph (a) above for the period referred to in that sub-paragraph;
- (c) the cost of providing compensation under regulations 4(1) (payment of compensation), 8(1) (compensation payable to widow, widower, surviving civil partner or dependants) or 9 (compensation where lump sum on death becomes payable) of the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003 <sup>M41</sup>;
- (d) the cost of providing any increase under Part I of the Pensions (Increase) Act 1971 <sup>M42</sup> in the rate of the benefits referred to in sub-paragraphs (a) to (c) above but in the case of the benefits referred to in sub-paragraphs (a) and (b) above which has not been contributed pursuant to paragraph (1), only for the periods referred to in those sub-paragraphs; and
- (e) the additional cost attributable to the early payment of the lump sum under regulation E13, such cost being determined by the Scottish Ministers on the advice of the scheme actuary,

and where, on such a pension becoming payable, a pension also becomes payable to the member in respect of pensionable service with one or more other employing authorities, the employing authority in relation to whom the redundancy arose or by whom the consent to early retirement pension was given shall be responsible for making additional payments in accordance with this paragraph in respect of all such pensionable service.

[<sup>F75</sup>(5A) In paragraph (5)(a), the cost of providing the pension excludes any increase in the benefits payable to the member which are attributable to the purchase by the member of additional service or additional pension under Part Q of this Section of the scheme.]

(6) Any contributions that are payable under paragraph (1) shall be paid to the Scottish Ministers on the same day as the member's contributions under regulation D1(28).

(7) Any additional payments that are due to the Scottish Ministers under paragraph (5) [<sup>F76</sup>in respect of a pension payable under regulation E6 or under paragraph (5)(c) in respect of a pension payable under regulation E7] shall be made—

- (a) by way of additional payments which shall be paid before the end of the quarter following the quarter in which the benefits in question were provided; or
- (b) if the Scottish Ministers agree, by—
  - (i) a single payment of an amount determined by the Scottish Ministers, on the advice of the scheme actuary, made within one month of the date on which the pension under regulation E6 or E7 became payable; or
  - (ii) not more than 5 equal annual instalments each of an amount determined by the Scottish Ministers, on the advice of the scheme actuary, the first of which to be made within one month of the date on which the pension under regulation E6 [<sup>F77</sup>or E7] became payable and the others to be paid by 31st October in each of the following 4 financial years.

[<sup>F78</sup>(7A) Any additional payments that are due to the Scottish Ministers under paragraph (5)(a), (b), (d) and (e) in respect of a pension payable under regulation E7 shall be made in whichever of the following ways the employing authority chooses—

- (a) a single payment of an amount determined by the Scottish Ministers, on the advice of the scheme actuary, made within one month of the date on which the pension under regulation E7 became payable; or
- (b) not more than 5 equal annual instalments each of an amount determined by the Scottish Ministers, on the advice of the scheme actuary, the first of which to be made within one month of the date on which the pension under regulation E7 became payable and the others to be paid by 31st October in each of the following 4 financial years.

[<sup>F79</sup>This is subject to paragraph (7B).]

[<sup>F80</sup>(7B) Where the member leaves pensionable employment on or after 1st April 2013, any additional contributions that are due to the Scottish Ministers under paragraph (5)(a), in respect of a pension payable under regulation E7, and paragraph (5)(b), (d) and (e) may only be paid by a single payment of an amount determined by the Scottish Ministers on the advice of the scheme actuary: that payment must be made within one month of the date on which the pension under regulation E7 became payable.]

(8) An employing authority making quarterly additional payments in accordance with paragraph (7)(a) may, if the Scottish Ministers agree, discharge that employing authority's liability under paragraph (5) by making—

- (a) a single payment of an amount determined by the Scottish Ministers, on the advice of the scheme actuary, made within one month of the date on which the Scottish Minister's consent is notified to the employing authority, or
- (b) not more than 5 equal annual instalments each of an amount determined by the Scottish Ministers, on the advice of the scheme actuary, the first of which to be made within one month of the date on which the Scottish Minister's consent is notified to the employing authority and the others to be paid by 31st October in each of the following 4 years.



(9) Where a pension is in payment under regulation 10(1)(a)(iii) of the 1980 Regulations, an employing authority may, if the Scottish Ministers agree, make payment in accordance with paragraph (8)(a) or (b) in respect of payments under paragraph (5)(c) above.

(10) Where an employing authority which is—

- (a) a GMS practice;
- (b) a section 17C agreement provider;
- (c) and HBPMS contractor; or
- (d) an OOH provider,

fails to pay or remit contributions in accordance with the provisions of this regulation, the Scottish Ministers may thereafter require that authority to have in force a guarantee, indemnity or bond in a form and amount, and provided by a person approved by the Scottish Ministers, which provides for payment to the Scottish Ministers of all future liabilities of the employing authority under these Regulations or under the National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998<sup>M43</sup> should that authority fail to meet them.

(11) In any particular case the Scottish Ministers may direct that, for the purposes of this regulation, “employing authority” includes—

- (a) a successor, transmittee or assignee of an employing authority's business or functions; and
- (b) the last employing authority of a person to whom these Regulations apply.

#### Textual Amendments

- F71** Word in reg. D2(3) substituted (1.12.2011) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/364\)](#), regs. 1(2), **5(a)**
- F72** Word in reg. D2(4) substituted (1.4.2019) by [The National Health Service Superannuation and Pension Schemes \(Scotland\) \(Miscellaneous Amendments\) Regulations 2019 \(S.S.I. 2019/46\)](#), regs. 1, **4**
- F73** Words in reg. D2(5)(a) inserted (with effect in accordance with reg. 1(7) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/364\)](#), regs. 1(2), **5(b)(i)**
- F74** Words in reg. D2(5)(a) omitted (with effect in accordance with reg. 1(7) of the amending S.S.I.) by virtue of [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/364\)](#), regs. 1(2), **5(b)(ii)**
- F75** Reg. D2(5A) inserted (with effect in accordance with reg. 1(7) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2012 \(S.S.I. 2012/163\)](#), regs. 1(2), **3** (with reg. 30)
- F76** Words in reg. D2(7) inserted (with effect in accordance with reg. 1(9) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/364\)](#), regs. 1(2), **5(c)**
- F77** Words in reg. D2(7)(b)(ii) inserted (with effect in accordance with reg. 1(9) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/364\)](#), regs. 1(2), **5(d)**
- F78** Reg. D2(7A) inserted (with effect in accordance with reg. 1(9) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/364\)](#), regs. 1(2), **5(e)**
- F79** Words in reg. D2(7A) inserted (with effect in accordance with reg. 1(8) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **10(a)** (with reg. 71)
- F80** Reg. D2(7B) inserted (with effect in accordance with reg. 1(8) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **10(b)** (with reg. 71)

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*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)*

### Marginal Citations

- M40** 1971 c.56 (“the 1971 Act”). Section 2 was replaced by section 59 of the [Social Security Pensions Act 1975 \(c.60\)](#) (“the 1975 Act”) but the 1975 Act provides that section 59 is to have effect as if contained in the 1971 Act.
- M41** S.S.I. 2003/344. Relevant amendments made by S.S.I. 2005/544 and 2008/225.
- M42** 1971 c.56.
- M43** S.I. 1998/1451, amended by S.I. 2001/3649, S.S.I. 2001/465, 2004/62, 2005/544, 2006/307, 2008/92 and 225 and 2010/22 and 369.

### [<sup>F81</sup>Further contributions by employing authorities in respect of excessive pay increases

**D3.**—(1) This regulation applies where a member becomes entitled to a benefit in accordance with regulation E1, E3, E7, E9, E11 or E12 and the Scottish Ministers determine that the member’s final year’s pensionable pay determined under regulation C1(12) exceeds the allowable amount.

(2) For the purposes of this regulation—

- (a) Year 1 is the year in which the member ceases to be in pensionable employment or dies, whichever occurs first;
- (b) Year 2 is the year immediately preceding Year 1;
- (c) Year 3 the year immediately preceding Year 2.

(3) The allowable amount in respect of Year 1 is the lower of—

- (a) the member’s pensionable pay for Year 1, and
- (b) the allowable amount for Year 2 increased by the lower of—
  - (i) the aggregate of 4.5% and the percentage increase in the consumer prices index over the preceding twelve months, and
  - (ii) the percentage increase in the member’s pensionable pay Year 1 compared with Year 2.

(4) The allowable amount in respect of Year 2 is the lower of—

- (a) the member’s pensionable pay for Year 2, and
- (b) the allowable amount for Year 3 increased by the lower of—
  - (i) the aggregate of 4.5% and the percentage increase in the consumer prices index over the preceding twelve months, and
  - (ii) the percentage increase in the member’s pensionable pay Year 2 compared with Year 3.

(5) The allowable amount for Year 3 is the lower of—

- (a) the member’s pensionable pay for Year 3, and
- (b) the member’s pensionable pay for the year immediately preceding Year 3 increased by the aggregate of 4.5% and the percentage increase in the consumer prices index over the preceding twelve months.

(6) An excess employer contribution is determined as follows—

Step 1: find Amount A, which is the difference between the member’s final year’s pensionable pay and the allowable amount for that year

Step 2: calculate Amount B, which is the amount of the pension payable to the member as if the member’s final year’s pensionable pay consisted only of Amount A increased by an amount equal to any increases that would be due under the Pensions (Increase) Act 1971 on a pension of that amount



Step 3: calculate Amount C, which is the amount of the lump sum payable to the member as if the member's final year's pensionable pay consisted only of Amount A increased by an amount equal to any increases that would be due under the Pensions (Increase) Act 1971 on a lump sum of that amount

Step 4: multiply Amount B by the applicable factor to find Amount D

Step 5: in the case of a member who is entitled to a benefit under regulation L1, multiply Amount C by the applicable factor to find Amount E

Step 6: add together—

- (a) Amount D and Amount E, in the case of a member entitled to a benefit under regulation L1;
- (b) Amount C and Amount D, in all other cases,

to find the amount of the excess employer contribution.

(7) Where the member's final year's pensionable pay exceeds the allowable amount by reason only of it including an amount in respect of a national award recommended by the Scottish Advisory Committee on Distinction Awards ("the Committee"), the body responsible for the funding of that award must pay the excess employer contribution.

(8) Paragraphs (9) and (10) apply where Amount A found under Step 1 of paragraph (6) includes both—

- (a) an increased pay award from the member's employing authority, and
- (b) a national award recommended by the Committee.

(9) Where—

- (a) the inclusion of both of the awards referred to in paragraph (8) in the member's pensionable pay in Year 3, Year 2 or, as the case may be, Year 1 means that pay is the member's final year's pensionable pay in accordance with regulation C1(12), but
- (b) the exclusion of the award referred to in paragraph (8)(b) from the member's pensionable pay in the year identified in sub-paragraph (a) would result in a different one of those years being so identified,

the Scottish Ministers, after consulting the Scheme Actuary, are to determine the proportion of the excess employer contribution determined in accordance with paragraph (6) to be paid by the member's employing authority and the body responsible for the funding of awards recommended by the Committee: the determination of the excess employer contribution is to take account of the award referred to in paragraph (8)(b).

(10) Where the inclusion of both of the awards referred to in paragraph (8) in the member's pensionable pay in Year 3, Year 2 or, as the case may be, Year 1 means that pay is the member's final year's pensionable pay in accordance with regulation C1(12), and the exclusion of the award referred to in paragraph (8)(b) would not result in a different one of those years being so identified, the amount of the excess employer contribution determined in accordance with paragraph (6) (and taking account of the amount referred to in paragraph (8)(b)) payable by the member's employing authority and the body responsible for the funding of awards recommended by the Committee is to be determined in accordance with paragraph (11).

(11) The amount of the excess employer contribution payable by the member's employing authority and the body responsible for the funding of awards recommended by the Committee is to be determined as follows—

Step 1: find Amount A in accordance with Step 1 of paragraph (6)

Step 2: find Amount F, which is the difference between—

*Status: Point in time view as at 25/03/2020.*

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- (a) the member's pensionable pay for the member's last year of pensionable employment as if that, and the member's pensionable pay in previous years, did not include the award referred to in paragraph (8)(b), and
- (b) the allowable amount for that year as if the member's pensionable pay for previous years had not included the award referred to in paragraph (8)(b)

Step 3: divide Amount F by Amount A and express the result as a percentage: that is the percentage of the excess employer contribution payable by the member's employing authority

Step 4: subtract the percentage found under Step 3 from 100% to find the percentage of the excess employer contribution payable by the body responsible for the funding of awards recommended by the Committee.

(12) The amount of an excess employer contribution must be paid to the Scottish Ministers within 1 month of them notifying the payer of its liability for that amount, but the Scottish Ministers may exceptionally specify that they are to be paid within some other period.

(13) Where a payer fails to pay all, or any part, of the excess employer contribution it is liable to pay, the Scottish Ministers are to give that payer a written notice ("a late payment notice") specifying all of the following—

- (a) the amount of the excess employer contribution that is unpaid;
- (b) the amount of any interest due on the amount referred to in sub-paragraph (a);
- (c) the amount of the administration charge arising from the late payment of the excess employer contribution;
- (d) that the amounts in sub-paragraphs (a) to (c) are to be received by the Scottish Ministers within 1 month of the date of the notice.

(14) Where a payer fails to comply with a late payment notice, the Scottish Ministers may issue a further late payment notice amended to take account of that failure.

(15) Where a member has pensionable employment with more than one employing authority during the years referred to in paragraph (2), this regulation applies to each such employment separately.

(16) In the case of a member in part-time employment, this regulation is subject to regulation C4.

(17) For the purposes of this regulation, an increase in pensionable pay during Year 3, Year 2 or, as the case may be, Year 1 is to be ignored where it arises solely as a result of the member taking up a new employment with a new employer, provided that the Scottish Ministers are satisfied that the employer in question is a new employer.

(18) If the Scottish Ministers are not satisfied that the employer in question is a new employer, that employer is to be treated as an employing authority liable for an excess employer contribution in accordance with this regulation.

(19) An increase in a member's pensionable pay due to the acceptance of a transfer payment in the circumstances described in regulation C1(11) is to be ignored for the purposes of this regulation.

[<sup>F82</sup>(19A) For the purposes of this regulation, an increase in a member's pensionable pay solely due to an increase in the national minimum wage is to be ignored.]

(20) In any particular case the Scottish Ministers may direct that, for the purposes of this regulation, "employing authority" includes one or more of a successor, transmittee or assignee of an employing authority's business or functions.

(21) For the purposes of this regulation—

- (a) a "payer" is the person who is liable to pay all or part of an excess employer contribution to the Scottish Ministers in accordance with this regulation;

- (b) the pensionable pay to be taken into account by the Scottish Ministers for a year or part of a year referred to in paragraph (2) will be derived from the pensionable pay for that period recorded in scheme year pension records provided to the Scottish Ministers in accordance with paragraph (5) of regulation U3;
- (c) where the member is in pensionable employment for less than 12 months, pensionable pay for that year means—
- $$(\text{pensionable pay/number of days pensionable employment}) \times 365;$$
- (d) no account is to be taken of increases in pensionable pay prior to 1st April 2014 or more than 1095 days prior to the member's last day of pensionable employment;
- (e) the applicable factor is to be determined from time to time by the Scottish Ministers, having considered the advice of the Scheme Actuary and having obtained the Treasury's consent;
- (f) if the percentage increase in the consumer prices index referred to in paragraphs (3), (4) and (5) is less than zero, it will be regarded as a percentage increase of 0% for the purposes of this regulation;
- (g) a benefit referred to in paragraph (1) means—
- (i) in the case of regulation E3, a benefit including the effects of any increase in pensionable service referred to in paragraph (4) of that regulation;
  - (ii) in the case of regulation E5, a benefit including the effects of any reduction referred to in paragraph (2) of that regulation; and
- (h) for the purposes of making any payment it is liable to pay under this regulation, the body responsible for the funding of awards recommended by the Committee shall have the same liabilities and duties as an employing authority under these Regulations in respect of that payment<sup>F83</sup>; and
- (i) the national minimum wage referred to in paragraph (19A) means the single hourly rate which is for the time being in force by virtue of regulations made under section 1(3) of the National Minimum Wage Act 1998].]

#### Textual Amendments

- F81** Reg. D3 inserted (28.6.2014) by [The National Health Service Superannuation Scheme \(Scotland\) \(Miscellaneous Amendments\) Regulations 2014 \(S.S.I. 2014/154\)](#), regs. 1(2), 7
- F82** Reg. D3(19A) inserted (with effect in accordance with reg. 1(2)(b) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Scotland\) \(Miscellaneous Amendments\) \(No. 2\) Regulations 2017 \(S.S.I. 2017/434\)](#), regs. 1(1), **4(a)** (with reg. 19)
- F83** Reg. D3(21)(i) and word inserted (with effect in accordance with reg. 1(2)(b) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Scotland\) \(Miscellaneous Amendments\) \(No. 2\) Regulations 2017 \(S.S.I. 2017/434\)](#), regs. 1(1), **4(b)** (with reg. 19)

## PART E

### BENEFITS FOR MEMBERS

#### Normal retirement pension

**E1.**—(1) A member who retires from pensionable employment at any time on or after attaining age 60 is entitled to a pension under this regulation at a yearly rate of 1/80th of final year's

pensionable pay for each complete year of pensionable service, plus the relevant daily proportion of that rate for each additional day of such service.

(2) A member who stays in pensionable employment until age 75 is entitled to receive a pension under this regulation at that age even if that member does not retire from such employment.

(3) Subject to paragraph (4), where a member who leaves pensionable employment on or after 1st April 2008 becomes entitled to a pension under this regulation, the Scottish Ministers may discharge their liability for that pension by the payment of a lump sum of an amount consistent—

- (a) with the contracting-out and preservation requirements of the 1993 Act; and
- (b) the lump sum rule.

(4) A lump sum payment under paragraph (3) may be made only if the Scottish Ministers are satisfied that it is appropriate in all the circumstances having regard to the life expectancy of the member.

(5) For the purposes of paragraph (4), the Scottish Ministers may require whatever medical evidence they consider necessary.

(6) The amount of the lump sum payable under paragraph (3)—

- (a) is equal to 5 times the yearly rate of the member's pension (calculated in accordance with this regulation); and
- (b) is payable in addition to the lump sum on retirement payable under regulation E13 (which is not subject to any reduction under regulation E14(1)) and the lump sum in place of part of a pension payable under regulation E7.

(7) For the purposes of calculating the amount of the lump sum payable under paragraph (6), the member will be treated as if the member had made an election under regulation E17 to receive the maximum amount of a further lump sum payable under that regulation.

### **Early retirement pension on ill health grounds (pre 1st April 2008)**

**E2.**—(1) This regulation applies to a member who—

- (a) retires from pensionable employment on or after 1st April 2008 and submitted a claim together with supporting medical evidence pursuant to regulation T1 (claims for benefits) for benefits under this regulation which was received by the Scottish Ministers before 1st April 2008; or
- (b) returns to employment which attracts a pension in accordance with paragraph (12).

(2) A member to whom this regulation applies who retires from pensionable employment because of physical or mental infirmity that makes that member permanently incapable of efficiently discharging the duties of that employment is entitled to receive an immediate pension under this regulation if that member has at least 2 years' qualifying service or qualifies for a pension under regulation E1 (normal retirement pension).

(3) Subject to paragraph (4), the pension under this regulation will be calculated as described in regulation E1 (normal retirement pension).

(4) If the member retires from pensionable employment before reaching age 65 and satisfies the requirements of any of paragraphs (5) to (7), the pensionable service upon which the pension is based, excluding any additional service purchased under regulation Q1 or additional service under regulation R3(5), will be increased as described in whichever of paragraphs (5) to (7) is applicable or, if both of paragraphs (6) and (7) apply, as described in whichever of those paragraphs is more favourable to the member.

(5) If the member has at least 5 years' qualifying service but not more than 10 years' pensionable service, the pension will be based on the shorter of—

- (a) twice the member's pensionable service; and
  - (b) the pensionable service the member could have completed if the member had stayed in pensionable employment until age 65.
- (6) If the member has more than 10 but not more than 20 years' pensionable service, the pension will be based on the shorter of—
- (a) the pensionable service the member could have completed if the member had stayed in pensionable employment until age 65; and
  - (b) 20 years' pensionable service.
- (7) If the member has more than 10 years' pensionable service and has not reached age 60, the pension will be based on the shortest of—
- (a) the member's actual pensionable service increased by a period of 6 years and 243 days;
  - (b) the pensionable service the member could have completed if the member had stayed in pensionable employment until age 60; and
  - (c) 40 years' pensionable service.
- (8) Subject to paragraph (9), where a member becomes entitled to a pension under paragraph (2), the Scottish Ministers may discharge their liability for that pension by the payment of a lump sum of an amount consistent—
- (a) with the contracting-out and preservation requirements of the 1993 Act; and
  - (b) the lump sum rule.
- (9) A lump sum payment under paragraph (8) may be made only if the Scottish Ministers are satisfied that it is appropriate in all the circumstances having regard to the life expectancy of the member.
- (10) For the purpose of paragraph (9), the Scottish Ministers may require whatever medical evidence that they consider necessary.
- (11) The amount of the lump sum payable under paragraph (8)—
- (a) will be equal to 5 times the yearly rate of the member's incapacity pension (calculated in accordance with this regulation); and
  - (b) is payable in addition to the lump sum on retirement payable under regulation E13 (which must not be subject to any reduction under regulation E14 (deductions from lump sum)) and the lump sum in place of part of pension payable under regulation E17.
- (12) Where a member to whom a pension is payable under this regulation returns to NHS employment, that employment may be pensionable under this Section of the scheme provided that the member is under the age of 50 at the date on which the member returns to NHS employment.
- (13) Where further employment becomes pensionable by virtue of paragraph (12), the subsequent period of pensionable employment is to be treated separately from all other pensionable employment for the purposes of calculating the member's benefits.
- (14) For the purposes of calculating the amount of lump sum payable under paragraph (11), the member will be treated as if the member had made an election under regulation E17 to receive the maximum amount of further lump sum payable under that regulation.

### **Early retirement pension on ill health grounds (post 1st April 2008)**

- E3.**—(1) This regulation applies to a member who—
- (a) retires from pensionable employment on or after 1st April 2008;

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*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)*

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- (b) did not submit a claim together with supporting medical evidence pursuant to regulation T1 (claims for benefits) for benefits under regulation E2 which was received by the Scottish Ministers before 1st April 2008; and
  - (c) is not in receipt of a pension under regulation E2.
- (2) A member to whom this regulation applies who retires from pensionable employment before normal benefit age is entitled to a pension under this regulation if—
- (a) the member—
    - (i) has at least 2 years qualifying service; or
    - (ii) qualifies for a pension under regulation E1; and
  - (b) the member's employment is terminated because of physical or mental infirmity as a result of which the member is—
    - (i) permanently incapable of efficiently discharging the duties of that employment (the “lower tier condition”); or
    - (ii) permanently incapable of any regular employment of like duration (the “upper tier condition”) in addition to meeting the lower tier condition.
- (3) Subject to paragraph (4), the pension to which a member is entitled—
- (a) upon satisfaction of the lower tier condition (“the lower tier pension”); or
  - (b) upon satisfaction of the upper tier condition in addition to meeting the lower tier condition (“the upper tier pension”),
- will be calculated as described in regulation E1.
- (4) Subject to paragraphs (5) and (6), if the member meets the upper tier condition in addition to meeting the lower tier condition, the pensionable service on which the pension is based will be increased by two-thirds of the pensionable service the member could have completed had the member stayed in pensionable employment until normal benefit age.
- (5) If the member's employment is terminated on or before 31st March 2016, the minimum amount by which the member's pensionable service will be increased under paragraph (4) will be the lesser of—
- (a) 4 years pensionable service; and
  - (b) the pensionable service the member could have completed if the member had stayed in pensionable employment until normal benefit age.
- (6) To the extent that any increase under paragraph (4) or (5) would cause a member's pensionable service to exceed the limit provided for in regulation C2(7) (meaning of “pensionable service”), the amount of any excess will be reduced accordingly.
- (7) Subject to paragraph (8), where a member becomes entitled to a pension by virtue of meeting the upper tier condition, the Scottish Ministers may discharge their liability for that pension by the payment of a lump sum of an amount consistent—
- (a) with the contracting-out requirements and preservation requirements of the 1993 Act; and
  - (b) the lump sum rule.
- (8) A lump sum payment under paragraph (7) may be made only if the Scottish Ministers are satisfied that it is appropriate in all the circumstances having regard to the life expectancy of the member.
- (9) For the purpose of paragraph (8), the Scottish Ministers may require whatever medical evidence they consider necessary.
- (10) The amount of the lump sum payable under paragraph (7)—

- (a) is equal to 5 times the yearly rate of the member's pension (calculated in accordance with this regulation); and
  - (b) is payable in addition to the lump sum on retirement payable under regulation E13 (which is not subject to any reduction under regulation E14) and the lump sum in place of part of pension payable under regulation E17.
- (11) The employment of a member to whom a pension is payable under this regulation may be pensionable under this Section of the scheme if the member is under age 50—
- (a) on the date the member returns to NHS employment if the member became entitled to receive a pension under a lower tier condition on the day the member retired from pensionable employment;
  - (b) on the day after the protection period in regulation E5(6)(b) ends if—
    - (i) the member became entitled to receive a pension under an upper tier condition on the day he retired from pensionable employment; and
    - (ii) the Scottish Ministers did not discharge their liability for that pension by the payment of a lump sum in accordance with paragraph (7) of this regulation; or
  - (c) on the day after the protection period in regulation E5(6)(b) ends if—
    - (i) the member became entitled to receive a pension under an upper tier condition in place of a pension under a lower tier condition on the date of the Scottish Ministers determination under regulation E4; and
    - (ii) the Scottish Ministers did not discharge their liability for that pension by the payment of a lump sum in accordance with paragraph (7) of this regulation.
- (12) For the purposes of calculating the amount of lump sum payable under paragraph (10), the member will be treated as if the member had made an election under regulation E17 to receive the maximum amount of a further lump sum payable under that regulation.
- (13) For the purposes of determining whether a member is permanently incapable of efficiently discharging the duties of the member's employment under paragraph (2)(b)(i), the Scottish Ministers must have regard to the factors in paragraph (15) and disregard the member's personal preferences for or against engaging in that employment.
- (14) For the purposes of determining whether a member is permanently incapable of regular employment under paragraph (2)(b)(ii), the Scottish Ministers must have regard to the factors in paragraph (16) and disregard the factors in paragraph (17).
- (15) The factors to be taken into account for paragraph (13) are—
- (a) whether the member has received appropriate medical treatment in respect of the incapacity;
  - (b) the member's—
    - (i) mental capacity; and
    - (ii) physical capacity;
  - (c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of the member's incapacity, irrespective of whether such rehabilitation is undergone; and
  - (d) any other matter which the Scottish Ministers consider appropriate.
- (16) The factors to be taken into account for paragraph (14) are—
- (a) whether the member has received appropriate medical treatment in respect of the incapacity;

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- (b) such reasonable employment as the member would be capable of engaging in if due regard is given to the member's—
- (i) mental capacity;
  - (ii) physical capacity;
  - (iii) previous training; and
  - (iv) previous practical, professional and vocational experience,
- irrespective of whether or not such employment is actually available to the member;
- (c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of the member's incapacity (irrespective of whether such rehabilitation is undergone) having regard to the member's—
- (i) mental capacity; and
  - (ii) physical capacity;
- (d) such type and period of training which it would be reasonable for the member to undergo in respect of the member's incapacity (irrespective of whether such training is undergone) having regard to the member's—
- (i) mental capacity;
  - (ii) physical capacity;
  - (iii) previous training; and
  - (iv) previous practical, professional and vocational experience; and
- (e) any other matter which the Scottish Ministers consider appropriate.
- (17) The factors to be disregarded for paragraph (14) are—
- (a) the member's personal preference for or against engaging in any particular employment; and
  - (b) the geographical location of the member.
- (18) For the purpose of this regulation—
- “appropriate medical treatment” means such medical treatment as it would be normal to receive in respect of the incapacity, but does not include any treatment that the Scottish Ministers consider—
- (a) that it would be reasonable for the member to refuse;
  - (b) would provide no benefit to restoring the member's capacity for—
    - (i) efficiently discharging the duties of the member's employment under paragraph (2)(b)(i); or
    - (ii) regular employment of like duration under paragraph (2)(b)(ii), before the member reaches normal benefit age; and
  - (c) that, through no fault on the part of the member, it is not possible for the member to receive before the member reaches normal benefit age;
- “permanently” means the period until normal benefit age; and
- “regular employment of like duration” means—
- (a) in the case of a non-GP provider, such employment as the Scottish Ministers consider would involve a similar level of engagement to the member's current pensionable service as a non-GP provider; and
  - (b) in all other cases, where prior to retiring from employment that is pensionable the member was employed—



- (i) on a whole-time basis, regular employment on a whole-time basis; or
  - (ii) on a part-time basis, regular employment on a part-time basis,
- having regard to the number of hours, half days and sessions the member worked in that pensionable employment.

### **Re-assessment of ill health condition determined under regulation E3**

**E4.**—(1) This regulation applies to a member in receipt of a lower tier pension under regulation E3.

(2) A member to whom this regulation applies may ask the Scottish Ministers to consider whether the member subsequently meets the upper tier condition if—

- (a) by notice in writing at the time of award of the pension, the Scottish Ministers informed the member that the member's case may be considered once within a period of three years commencing with the date of that award to determine whether the member satisfies the upper tier condition at the date of such a consideration;
- (b) the member provides further medical evidence to the Scottish Ministers relating to the satisfaction of the upper tier condition at the date of the Scottish Ministers' consideration and that further medical evidence is provided—
  - (i) in the case of a member who does not engage in further NHS employment during the three year period referred to in sub-paragraph (a), before the end of that period; or
  - (ii) in the case of a member who does engage in further NHS employment during the three year period referred to in sub-paragraph (a), before the first anniversary of the day on which that employment commences or before the end of that period if sooner;
- (c) that further medical evidence relates to the same physical or mental infirmity that qualified the member for the member's lower tier pension;
- (d) the member has not become entitled to an upper tier pension in respect of any later service under regulation S4(6) (benefits in respect of pensionable employment after pension becomes payable under regulation E3); and
- (e) the member is not—
  - (i) a 2008 Section Optant within the meaning of regulation 2.K.1 or 3.K.1 of the 2008 Section of the Scheme, or
  - (ii) a Waiting Period Joiner within the meaning of regulation 2.L.1 or 3.L.1 of the 2008 Section of the Scheme, who has become entitled to an upper tier ill-health pension under regulation 2.D.8 or 3.D.7 of that Section.

(3) If, after considering the further medical evidence provided by a member the Scottish Ministers determine that the member satisfies the upper tier condition—

- (a) the Scottish Ministers must pay from the date of that determination an upper tier pension under regulation E3(2) in place of the lower tier pension being paid to that member; and
- (b) that pension is calculated in accordance with regulation E3(4) as if that paragraph included the words “from the date of the Scottish Ministers determination under regulation E4” after “employment”.

(4) Only one consideration of a member's case may be undertaken under this regulation.

### **Further employment after a benefit is paid under regulation E3**

**E5.**—(1) This regulation applies to a member who—

- (a) is in receipt of an upper tier pension under regulation E3 (“the original pension”); and

- (b) enters into further employment.
- (2) Such a member is to be paid a lower tier pension (“a substitute pension”) in place of the original pension—
  - (a) from the next substitute pension payment date following the day on which the member's annual earnings from further employment (whether NHS employment or otherwise) in any tax year exceed the lower earnings limit for national insurance contributions applicable to that year; or
  - (b) in the case of a member who enters into further NHS employment, from the next substitute pension payment date following the first day on which the member is so employed which falls after the anniversary of the member's entry into the further NHS employment (whether or not that day is part of a continuous period of further NHS employment beginning with the member's entry into that employment), if sooner.
- (3) A member who is in receipt of a substitute pension may ask the Scottish Ministers to consider reinstating the original pension if—
  - (a) the member is under normal benefit age;
  - (b) the member makes such a request in writing and provides supporting medical evidence to the Scottish Ministers before the end of the protection period; and
  - (c) the member's further employment is terminated before the end of the protection period.
- (4) If, after considering that evidence the Scottish Ministers determine that the member again satisfies an upper tier condition in respect of the member's earlier employment, the Scottish Ministers must recommence paying, from the day after the date that the further employment is terminated, the original pension in place of the substitute pension.
- (5) A member to whom this regulation applies who is in receipt of an upper tier pension must—
  - (a) notify the Scottish Ministers immediately and in writing if either of the following apply—
    - (i) the member's annual earnings in any tax year exceed the lower earnings limit for national insurance contributions applicable to that year; or
    - (ii) the member is engaged in further NHS employment after the end of the protection period in paragraph (6)(b); and
  - (b) provide any other information in connection with the member's earnings or further employment requested by the scheme administrator or any other person that the Scottish Ministers may specify.
- (6) In this regulation “the protection period” means—
  - (a) a period of one year beginning with the day on which the member's annual earnings from further employment that is not NHS employment first exceed the lower earnings limit for national insurance contributions applicable to that year; or
  - (b) a period of one year beginning with the first day the member enters into further NHS employment.

#### **Early retirement pension (redundancy etc.)**

- E6.**—(1) This regulation applies to a member—
- (a) who—
    - (i) was in pensionable employment on 1st December 2006; or
    - (ii) returns to such employment on, or after, that date and who is entitled to a preserved pension under regulation L1 (early leavers returning to pensionable employment); or

- (iii) returns to pensionable employment on or after that date that attracts a pension in accordance with regulation E2(12) or E3(11); [<sup>F84</sup>or]
  - (iv) returns to pensionable employment after that date having had a break in such employment which does not exceed 12 months but includes 1st December 2006 and who is not entitled to a preserved pension under regulation L1; or
  - (v) is certified by the member's employing authority as having a period of continuous employment (determined in accordance with terms and conditions relevant to that employment and as they applied on 1st October 2006);
- (b) whose employment is terminated by the member's employing authority before 1st October 2011; and
- (c) who satisfies the conditions specified in paragraph (2).
- (2) Those conditions are that—
- (a) the member has at least 5 years' qualifying service and has attained normal minimum pension age or, where relevant, protected pension age;
  - (b) the Scottish Ministers certify—
    - (i) that the member's employment is terminated by reason of redundancy; or
    - (ii) with the agreement of the employing authority, that the member's employment is terminated in the interests of the efficiency of the service in which the member is employed; and
  - (c) the member's employing authority does not certify that the member has unreasonably refused to seek suitable alternative employment or accept an offer of such employment.
- (3) A member who satisfies the conditions in paragraph (2) is entitled to a pension calculated as described in regulation E1 (normal retirement pension).
- (4) This regulation does not apply to—
- (a) practice staff;
  - (b) practitioners;
  - (c) non-GP providers;
  - (d) a member who is providing piloted services under a pilot scheme;
  - (e) a member to whom regulation R13(1)(a) or (b) of these Regulations applies; or
  - (f) a member who is a dental pilot scheme employee and who is employed by a provider of piloted services other than a Health Board.

#### Textual Amendments

**F84** Word in reg. E6(1)(a)(iii) inserted (1.4.2011) by [The National Health Service Superannuation Scheme \(Scotland\) Amendment Regulations 2011 \(S.S.I. 2011/173\)](#), regs. 1(2), 2(e)

#### Early retirement pension (redundancy etc. new starters and post-transition)

- E7.—(1) This regulation applies to a member—
- (a) whose pensionable employment is terminated by the member's employing authority; and
  - (b) who satisfies the conditions specified in paragraph (2).
- [<sup>F85</sup>(2) Those conditions are that—

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- (a) the member has two years' qualifying service and has attained normal minimum pension age or, where relevant, protected pension age;
  - (b) the member's employing authority certifies—
    - (i) that the member has at least two years' continuous employment determined in accordance with any terms and conditions applying to that employment; and
    - (ii) if the member's employment is terminated by reason of redundancy, that the member is entitled to claim a pension under this regulation as an alternative to receiving the lump sum payment (in whole or in part) otherwise payable to [<sup>F86</sup>the member] in accordance with those terms and conditions;
  - (c) the member's employing authority does not certify that the member has unreasonably refused to seek suitable alternative employment or accept an offer of such employment;
  - (d) the Scottish Ministers certify—
    - (i) that the member's employment is terminated by reason of redundancy; or
    - (ii) with the agreement of the employing authority, that the member's employment is terminated in the interests of the efficiency of the service in which the member is employed; and
  - (e) the member makes a claim for the pension referred to in this regulation.]
- (3) A claim referred to in paragraph (2)(e) must—
- (a) be in writing and addressed to the Scottish Ministers;
  - (b) be made within 6 months of the employment being terminated; and
  - (c) contain such information as the Scottish Ministers may require.
- (4) [<sup>F87</sup>Subject to paragraph (4A), a person] who satisfies the conditions in paragraph (2) is entitled to a pension calculated as described in regulation E1.
- [<sup>F88</sup>(4A) A member who satisfies the conditions in paragraph (2) is not entitled to a pension under this regulation if the Scottish Ministers, after consultation with the scheme actuary, decide that the amount of the pension would be less than the amount of the guaranteed minimum pension to which the member is entitled.]
- (5) Where—
- (a) a person who claims a pension under this regulation has received—
    - (i) a redundancy payment under the Employment Rights Act 1996 <sup>M44</sup>; or
    - (ii) a corresponding payment under the arrangements of the Whitley Councils for the Health Services of Great Britain; or
    - (iii) a payment made by virtue of any arrangement made pursuant to paragraph 20(2) of Schedule 7A to the National Health Service Act 1978 (National Health Service Trusts – general powers) <sup>M45</sup>,
 in respect of the cessation of the employment; and
  - (b) the terms and conditions relevant to the employment require that payment or payments be reduced to take account of the additional contributions the employing authority must make to the Scottish Ministers in accordance with regulation D2(5); but
  - (c) payment or payments have not been so reduced,
- the pension must be reduced by an amount equal to the amount of that payment or those payments and may be reduced to zero.
- (6) This regulation does not apply to—
- (a) practice staff;

- (b) practitioners;
- (c) non-GP providers;
- (d) a member who is providing piloted services under a pilot scheme;
- (e) a member to whom regulation R11(1)(a) or (b) of these Regulations applies; or
- (f) a member who is a dental pilot scheme employee and who is employed by a provider of piloted services other than a Health Board.

#### Textual Amendments

- F85** Reg. E7(2) substituted (with effect in accordance with reg. 1(8) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **11** (with reg. 71)
- F86** Words in reg. E7(2)(b)(ii) substituted (28.6.2014) by [The National Health Service Superannuation Scheme \(Scotland\) \(Miscellaneous Amendments\) Regulations 2014 \(S.S.I. 2014/154\)](#), regs. 1(2), **8**
- F87** Words in reg. E7(4) substituted (1.4.2015) by virtue of [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/96\)](#), regs. 1(2), **8(a)**
- F88** Reg. E7(4A) inserted (1.4.2015) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/96\)](#), regs. 1(2), **8(b)**

#### Marginal Citations

- M44** 1996 c.18.
- M45** 1978 c.29. Schedule 7A was inserted by Schedule 6 to the [National Health Service and Community Care Act 1990 \(c.19\)](#).

#### Early retirement pension (redundancy etc. notifications)

- E8.**—(1) This regulation applies to a member—
- (a) who satisfies the conditions specified in regulations E6 and E7; and
  - (b) whose pensionable employment is terminated by the member's employing authority on, or after, 1st December 2006 but before 1st October 2011.
- (2) A member referred to in paragraph (1) may notify the Scottish Ministers as to which of those regulations the member wishes to apply to the member and such a notification must be—
- (a) in writing (but the Scottish Ministers may, in their discretion, accept notification in another form);
  - (b) given within 6 months of the employment being terminated; and
  - (c) given on an irrevocable basis.
- (3) Where a member does not notify the Scottish Ministers within the period mentioned in paragraph (2)(b), regulation E6 shall apply.

#### Early retirement pension (redundancy and special classes)

- E9.**—(1) This regulation applies to a member—
- (a) who has attained the age of 55;
  - (b) to whom regulation R2 (nurses, physiotherapists, midwives and health visitors) or regulation R3 (mental health officers) applies; and
  - (c) whose employment is terminated on, or after, 1st October 2011, and either—

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- (i) the Scottish Ministers certify that that employment is terminated by reason of redundancy; or
  - (ii) with the agreement of the employing authority, the Scottish Ministers, certify that that employment is terminated in the interests of the efficiency of the service in which the member is employed.
- (2) A member referred to in paragraph (1) who would, if the member made a claim for it, be entitled to a pension in accordance with regulation E7—
- (a) must (for the purpose of this regulation) be treated as retiring from pensionable employment on the day on which the member's employment terminates; and
  - (b) is entitled to a pension under regulation E1 or E11 if the member makes a claim for it.
- (3) A claim referred to in paragraph (2)(b) must—
- (a) be in writing and addressed to the Scottish Ministers;
  - (b) be made within 6 months of the employment being terminated; and
  - (c) contain such information as the Scottish Ministers may require.

#### **Continuing entitlement to a pension under regulation E1 or E11**

**E10.**—(1) This regulation applies to a member—

- (a) whose employment is certified by the Scottish Ministers to have terminated by reason of redundancy on, or after, 1st December 2006; and
- (b) who has attained—
  - (i) normal minimum pension age, or, where relevant, protected pension age; or
  - (ii) age 60.

(2) A member referred to in paragraph (1) who would, if the member made a claim for it, be entitled to a pension in accordance with regulation E7—

- (a) must (for the purposes of this regulation) be treated as retiring from pensionable employment on the day on which the member's employment terminates; and
  - (b) is entitled to a pension under regulation E1 or E11 if—
    - (i) the member satisfies the conditions set out in those regulations; and
    - (ii) the member makes a claim for it.
- (3) A claim referred to in paragraph (2)(b) must—
- (a) be in writing and addressed to the Scottish Ministers;
  - (b) be made within 6 months of employment terminating; and
  - (c) contain such information as the Scottish Ministers may require.

#### **Early retirement pension (with actuarial reduction)**

**E11.**—(1) A member with at least 2 years' qualifying service, who retires from pensionable employment at any time after reaching normal minimum pension age or, where relevant, protected pension age but before reaching age 60 will, if a request is made in writing to the Scottish Ministers, be entitled to payment of an immediate pension.

(2) The pension under this regulation will be calculated as described in regulation E1 (normal retirement pension), and except for any pension in respect of service calculated as a result of exercising the right to buy additional service under regulation Q1 or the right to buy an unreduced

retirement lump sum under regulation Q2, it will then be reduced by such amount as the Scottish Ministers, after consulting the scheme actuary, may determine.

(3) Where a pension is payable under paragraph (1), any additional amount payable under these Regulations shall also become payable and be reduced in like manner as described in paragraph (2).

(4) A member shall not be entitled to a pension under this regulation if the Scottish Ministers determine, having taken advice from the scheme actuary, that the pension, as reduced under paragraph (2), would be insufficient to meet the liability to provide a guaranteed minimum pension.

### **Preserved pension**

**E12.**—(1) Subject to paragraphs (3) and (4), a member who leaves pensionable employment before age 60 without becoming entitled to an immediate pension under any of regulations E1 to E11 will be entitled to receive a pension and retirement lump sum under this regulation from age 60 if—

- (a) the member leaves with at least 2 years' qualifying service, or
- (b) a transfer payment has been made to this Section of the scheme in respect of the member's rights under a personal pension scheme.

(2) The pension under this regulation will be calculated—

- (a) where it becomes payable by virtue of paragraph (3)(d) below, in accordance with paragraphs (2) to (4) of regulation E11, as if it were a pension under that regulation; and
- (b) in any other case, as described in regulation E1 as if it were a pension under that regulation,

and the retirement lump sum will be calculated as described in regulation E13.

(3) The member will become entitled to receive the pension and retirement lump sum under this regulation before age 60 if—

- (a) the member is in NHS employment and the Scottish Ministers are satisfied that the member is permanently incapable by reason of physical or mental infirmity of efficiently discharging the duties of that employment;
- (b) the member is not in NHS employment and the Scottish Ministers are satisfied that the member is suffering from mental or physical infirmity that makes the member permanently incapable of engaging in regular employment of like duration; or
- (c) some other benefit becomes payable to the member under regulations E2 to E11 (pensions for members);
- (d) the member—
  - (i) left pensionable employment after 30th March 2000;
  - (ii) has reached the normal minimum pension age or, where relevant, protected pension age; and
  - (iii) has applied to the Scottish Ministers for payment of the pension and retirement lump sum under this regulation.

(4) Except in a case to which paragraph (5) applies—

- (a) if the member is in NHS employment at the relevant time (whether with the same or another employing authority), the pension and lump sum on retirement will not become payable until the member leaves NHS employment or, if sooner—
  - (i) when the member attains the age of 70, if the member attains that age on or before 31st March 2008; or
  - (ii) when the member attains the age of 75, if the member attains the age of 70 on or after 1st April 2008; and
- (b) the relevant time—

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- (i) in the case of a member to whom paragraph (3)(d) applies, is when the member makes the application referred to in head (iii) of that sub-paragraph; or
- (ii) in any other case, when the member attains the age of 60.

(5) Paragraph (4) may not apply where the NHS employment which the member is in when the member reaches age 60 is employment into which the member has been transferred as a result of a transfer of an undertaking to the employer.

(6) Where a member receives a pension under paragraph (1) while being in the new employment to which paragraph (5) applies—

- (a) the member's benefits in respect of any pensionable service in that new employment will be calculated without regard to any pensionable service in any earlier employment; and
- (b) for the purposes of regulation C2 (meaning of “pensionable service”) and regulation D1(26) and (27) (contributions by members), the member's service in the earlier employment and in the new employment will be aggregated.

(7) Subject to paragraph (8), where on or after the coming into force of these Regulations a member becomes entitled to a pension under paragraph (3)(a) or (b) of this regulation, the Scottish Ministers may discharge their liability for that pension by the payment of a lump sum of an amount consistent with—

- (a) the contracting-out and preservation requirements of the 1993 Act; and
- (b) the lump sum rule.

(8) A lump sum payment under paragraph (7) may be made only if the Scottish Ministers are satisfied that it is appropriate in all the circumstances having regard to the life expectancy of the member and the member was in pensionable employment on or after the coming into force of these Regulations.

(9) For the purpose of paragraph (6), the Scottish Ministers may require whatever medical evidence that they consider necessary.

(10) The amount of the lump sum payable under paragraph (7) will be equal to 5 times the difference between yearly rate of the member's pension calculated in accordance with this regulation and the annual rate of the member's guaranteed minimum pension and the amount of the lump sum shall be payable in addition to any retirement lump sum under regulation E13 (which shall not be subject to any reduction under regulation E14).

(11) For the purposes of determining whether a member is permanently incapable of efficiently discharging the duties of the member's employment under paragraph (3)(a), the Scottish Ministers must have regard to the factors in paragraph (13) and disregard the member's personal preferences for or against engaging in that employment.

(12) For the purposes of determining whether a member is permanently incapable of regular employment under paragraph (3)(b), the Scottish Ministers must have regard to the factors in paragraph (14) (no one of which is decisive) and disregard the factors in paragraph (15).

(13) The factors to be taken into account for paragraph (11) are—

- (a) whether the member has received appropriate medical treatment in respect of the incapacity;
- (b) the member's—
  - (i) mental capacity; and
  - (ii) physical capacity;
- (c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of the member's incapacity, irrespective of whether such rehabilitation is undergone; and



- (d) any other matter which the Scottish Ministers consider appropriate.
- (14) The factors to be taken into account for paragraph (12) are—
- (a) whether the member has received appropriate medical treatment in respect of the incapacity; and
  - (b) such reasonable employment as the member would be capable of engaging in if due regard is given to the member's—
    - (i) mental capacity;
    - (ii) physical capacity;
    - (iii) previous training; and
    - (iv) previous practical, professional and vocational experience,irrespective of whether or not such employment is actually available to the member;
  - (c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of the member's incapacity (irrespective of whether such rehabilitation is undergone) having regard to the member's—
    - (i) mental capacity; and
    - (ii) physical capacity;
  - (d) such type and period of training which it would be reasonable for the member to undergo in respect of the member's incapacity (irrespective of whether such training is undergone) having regard to the member's—
    - (i) mental capacity;
    - (ii) physical capacity;
    - (iii) previous training; and
    - (iv) previous practical, professional and vocational experience; and
  - (e) any other matter which the Scottish Ministers consider appropriate.
- (15) The factors to be disregarded for paragraph (12) are—
- (a) the member's personal preference for or against engaging in any particular employment; and
  - (b) the geographical location of the member.
- (16) For the purpose of this regulation—
- “appropriate medical treatment” means such medical treatment as it would be normal to receive in respect of the incapacity, but does not include any treatment that the Scottish Ministers consider—
- (a) would be reasonable for the member to refuse;
  - (b) would provide no benefit to restoring the member's capacity for—
    - (i) efficiently discharging the duties of the member's employment under paragraph (3)(a); or
    - (ii) regular employment of like duration under paragraph (3)(b), before the member reaches normal benefit age; and
  - (c) that, through no fault on the part of the member, it is not possible for the member to receive before the member reaches normal benefit age;
- [<sup>F89</sup>“NHS employment” does not include employment with an employing authority in respect of which a member is eligible to join—
- (a) the 2008 Section; or

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- (b) the 2015 Scheme and that member’s service in this Section does not qualify as, or has ceased to be, pensionable service to which paragraph 1(2)(i) and (ii) or paragraph 2(i) and (ii) of Schedule 7 (final salary link) to the 2013 Act applies;]

“permanently” means the period until normal benefit age; and

“regular employment of like duration” means—

- (a) in the case of a member who was a non-GP provider, such employment as the Scottish Ministers consider would involve a similar level of engagement to the member’s pensionable service as a non-GP provider immediately before that service ceased; and
- (b) in all other cases, where prior to leaving pensionable employment the member was employed—
- (i) on a whole-time basis, regular employment on a whole-time basis; or
- (ii) on a part-time basis, regular employment on a part-time basis,
- having regard to the number of hours, half days and sessions the member worked in that pensionable employment.

#### Textual Amendments

- F89** Words in reg. E12(16) substituted (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\), reg. 1\(b\), sch. 2 para. 4](#)

#### Lump sum on retirement

**E13.**—(1) Subject to paragraphs (3) and (4), each member shall, on becoming entitled to a pension under regulations E1 to E11, also become entitled to a retirement lump sum.

(2) Subject to regulation E14, the lump sum will be equal to 3 times the yearly rate of the pension [<sup>F90</sup>to which the member is entitled under regulations E1 to E11 (and in relation to which any additional pension purchased under regulations Q8, Q10 or Q11 is disregarded)].

(3) Where regulation E4(3) applies, the lump sum payable will be equal to the difference between—

- (a) three times the yearly rate of pension calculated in accordance with regulation E3(3)(a) (ill health pension on early retirement); and
- (b) three times the yearly rate of pension calculated in accordance with regulation E4(3)(b).

(4) Where a member [<sup>F91</sup>on becoming] entitled to a lump sum under this regulation [<sup>F92</sup>on or before 5th April 2011] has attained the age of 75—

- (a) the member will cease to be entitled to a lump sum; and
- (b) will instead be entitled to have the member’s pension increased by such amount as the Scottish Ministers may, after taking advice from the scheme actuary, determine.

#### Textual Amendments

- F90** Words in reg. E13(2) inserted (with effect in accordance with reg. 1(7) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/364\), regs. 1\(2\), 6\(a\)](#)
- F91** Words in reg. E13(4) inserted (with effect in accordance with reg. 1(8) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/364\), regs. 1\(2\), 6\(b\)\(i\)](#)

**F92** Words in reg. E13(4) inserted (with effect in accordance with reg. 1(8) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/364\)](#), regs. 1(2), **6(b)(ii)**

**Modifications etc. (not altering text)**

**C1** Reg. E13 applied (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), regs. 1(b), **25(5)**

### Deductions from lump sum

**E14.**—(1) In the case of a man whose pensionable service started before 25th March 1972 and who is or has been married, the lump sum will be reduced in accordance with whichever of paragraphs (2) to (4) is applicable except to the extent that the reduction has been off-set by payments made under regulation Q2 (right to buy an unreduced retirement lump sum).

(2) If the man is married, the reduction will be equal to 2 times the yearly rate of the part of the man's pension that is based on pensionable service before 25th March 1972.

(3) If the man's wife died, or the man was divorced from his wife, after 24th March 1972, the reduction will be equal to 2 times the yearly rate of the part of the man's pension that is based on pensionable service before 25th March 1972.

(4) If the man's wife died, or the man was divorced from his wife, before 25th March 1972, the reduction will be equal to 2 times the yearly rate of the part of the man's pension that is based on pensionable service up to and including the date of the death or divorce.

(5) If a female member has nominated her husband under regulation G8 to receive a dependent widower's pension on her death the lump sum will be reduced in accordance with regulation G8(6).

(6) If a female member has elected before 1st July 1989 to buy an increased widower's pension under regulation G9, the lump sum will be reduced in accordance with regulation G9(2).

(7) In any case where regulation E11 applies (early retirement pension (with actuarial reduction))

- (a) the pension referred to in paragraph (2) of regulation E13 means the pension before any reduction is made under regulation E11(2); and
- (b) the lump sum as calculated under paragraph (2) of regulation E13 will, except for any lump sum in respect of service calculated as a result of exercising the right to buy additional service under regulation Q1 or the right to buy an unreduced retirement lump sum under regulation Q2, be reduced by such amount as the Scottish Ministers will, after consulting the scheme actuary, determine.

### Early leavers' entitlement to refund of contributions

**E15.**—(1) A member who leaves pensionable employment without becoming entitled to an immediate pension or a preserved pension shall, subject to regulation R4(11), be entitled to receive a lump sum refund of the member's contributions, less tax at—

- (a) 20% (or at such other rate as applies under the 2004 Act) in respect of so much of the lump sum as does not exceed £10,800 (or such other amount as applies under the 2004 Act); and
- (b) 40% (or at such other rate as applies under the 2004 Act) in respect of so much (if any) of it as exceeds that limit.

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

(3) An application in writing referred to in paragraph (2) may be—

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- (a) made or given by means of an electronic communication that is approved by the Scottish Ministers for that purpose;
- (b) given to the Scottish Ministers by a person other than the member.

(4) If the member's employment was contracted-out by reference to this Section of the scheme, the member (and the member's spouse or civil partner, if any) will remain entitled to a guaranteed minimum pension under this Section of the scheme, unless the Scottish Ministers discharge their liability to provide a guaranteed minimum pension by paying a contributions equivalent premium under section 55(2) of the 1993 Act <sup>M46</sup>.

(5) If the member's employment was contracted-out by reference to this Section of the scheme, the member (and the member's spouse or civil partner, if any) will remain entitled to a guaranteed minimum pension and section 9(2B) rights under this Section of the scheme, unless the Scottish Ministers discharge their liability in respect of that entitlement by paying a contributions equivalent premium under section 55(2) (payment of state scheme premiums on termination of certified status) of the 1993 Act.

(6) If a contributions equivalent premium is not paid, the member's refund of contributions will be reduced by the amount that the Scottish Ministers estimate would have been recoverable under section 61 of the 1993 Act if the premium had been paid.

(7) Where a member does not apply for a refund of contributions under paragraph (1) the Scottish Ministers may nonetheless make a refund of those contributions if the member does not return to pensionable employment within 12 months.

(8) A member shall not be entitled to a refund of contributions for any period of pensionable service in respect of which the Scottish Ministers have received a transfer payment in respect of the member's rights under a personal pension scheme.

(9) Where a refund of contributions is made, the Scottish Ministers are discharged from any obligation to provide benefits under this Section of the scheme except to any extent provided for under paragraph (4).

#### **Marginal Citations**

**M46** Section 55 was amended by [S.I. 2005/2050](#), Schedule 1, paragraph 16.

#### **Payment of interest with refund of contributions**

**E16.**—(1) Compound interest will be added to the refund of contributions under regulation E15 except where the employment was terminated by reason of misconduct or inefficiency or at the member's own request.

(2) Subject to paragraph (3), where compound interest is added to a refund of contributions, it will be calculated at the rate of 2 and one-half per cent a year, for the period starting on the 1st April after the contributions were paid and ending on the day the member leaves pensionable employment.

(3) In the case of any contributions paid under another enactment or scheme and included in a transfer payment to this Section of the scheme, interest for the period before the transfer payment was accepted will be calculated as described in the enactment or scheme from which the transfer payment was received.

#### **General option to exchange part of pension for lump sum**

**E17.**—(1) This regulation applies to a member who is in pensionable employment on or after 1st April 2008.

(2) A member may opt to exchange part of a pension to which the member would otherwise be entitled for a lump sum, which must be an evenly divisible multiple of £12.

(3) If a member so opts, for every £1 by which the member's annual pension is reduced, the member is to be paid a lump sum of £12.

(4) An option under paragraph (2) must relate to an annual amount of pension that is a whole number of pounds (and accordingly the lump sum will be exactly divisible by 12).

(5) In paragraph (4) “annual amount” in relation to a pension means the amount of the annual pension to which the member would be entitled under these regulations apart from the option, together with any increases payable under the Pensions (Increase) Act 1971<sup>M47</sup>, calculated as at the time the payment would be first due.

(6) A member may not exchange pension for a lump sum under this regulation to the extent that it would result in a scheme chargeable payment for the purposes of Part 4 of the 2004 Act<sup>M48</sup>.

(7) If the member has a guaranteed minimum under section 14 of the 1993 Act in relation to the whole or part of a pension, paragraph (2) only applies to so much of the pension as exceeds that guaranteed minimum, multiplied by such factor as is indicated for a person of the member's description in tables provided by the scheme actuary.

(8) Subject to paragraphs (9) and (10), the option under this regulation may only be exercised by giving notice in writing to the scheme administrator in the form required by the Scottish Ministers—

- (a) at the time of claiming the pension; or
- (b) before a later time specified in writing by the scheme administrator.

(9) If the pension is an ill health pension under regulation E3, the option under this regulation may only be exercised by giving notice in writing to the Scottish Ministers in the form required by the Scottish Ministers—

- (a) where the member is awarded—
  - (i) a lower tier pension under paragraph (3)(a) of that regulation, at the time of claiming that lower tier pension;
  - (ii) an upper tier pension under paragraph (3)(b) of that regulation, at the time of claiming that upper tier pension; or
- (b) before such later time as the Scottish Ministers specify in writing.

(10) If the pension is an upper tier pension under regulation E4 to be paid in place of a lower tier pension under regulation E3, the option under this regulation may only be exercised—

- (a) in relation to the difference between the lower tier pension that is replaced by the upper tier pension in accordance with regulation E4(3) and the upper tier pension to which the member becomes entitled under that regulation; and
- (b) by giving notice in writing to the Scottish Ministers in the form required by the Scottish Ministers—
  - (i) at the time of award of the upper tier pension under that regulation; or
  - (ii) before such later time as the Scottish Ministers specify in writing.

**Modifications etc. (not altering text)**

**C2** Reg. E17 applied (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), regs. 1(b), **25(5)**

**Marginal Citations**

**M47** [1971 c.56](#).

**M48** See in particular section 241 of and paragraph 1 of Schedule 29 to that Act.

## PART F

### LUMP SUM ON DEATH

#### Lump sum when member dies in pensionable employment

**F1.**—(1) If a member dies in pensionable employment before reaching age 75, a lump sum shall be payable in accordance with regulation F5 (payment of lump sum).

(2) A lump sum on death shall be payable in accordance with regulation F5 where on the day a member dies, the member is—

- (a) under the age of 70;
- (b) in NHS employment;
- (c) no longer required to pay contributions from a date before 1st April 2008 pursuant to regulation D1(26) or (27) (contributions by members); and
- (d) except where regulation E2(12) or R4(4) apply, not in receipt of any pension under any of regulations E1 to E11.

(3) A lump sum on death shall be payable in accordance with regulation F5 where, on the day the member died, the member is—

- (a) under the age of—
  - (i) 75 if not a special class officer; or
  - (ii) 70 if a special class officer;
- (b) in NHS employment;
- (c) no longer required to pay contributions on or after 1st April 2008 pursuant to regulation D1(26) or (27) (contributions by members); and
- (d) except where regulations E2(12) (early retirement pension (ill health)), E3(11) (ill health pension on early retirement) or R4(4) (members doing more than one job) apply, not in receipt of a pension under any of regulations E1 to E11.

(4) Subject to regulation S5 (benefits on death in pensionable employment after pension becomes payable), the lump sum on death will be equal to twice the member's final year's pensionable pay.

#### Lump sum when member dies after pension becomes payable

**F2.**—(1) Subject to paragraph (7), and except where a lump sum payment is made under regulation E2(8), if a member dies after a pension under this Section of the scheme becomes payable, a lump sum shall be payable in accordance with regulation F5 (payment of lump sum).

(2) Subject to regulation S5 the lump sum will be equal to 5 times the yearly rate of the member's pension (less the amount of pension already paid) provided that the maximum payment under this paragraph shall not exceed an amount equal to twice the member's final year's pensionable pay less an amount equal to the aggregate of—

- (a) the member's retirement lump sum paid under regulation E13 (lump sum on retirement); and
- (b) any lump sum paid to the member under regulation E17 (general option to exchange part of pension for lump sum).

(3) A person who retires from pensionable employment on, or after, 6th April 2006 may give notice to the scheme administrator in accordance with paragraph (4) below that any lump sum payable under this regulation is to be treated as a pension protection lump sum death benefit in accordance with paragraph 14 of Part 2 of Schedule 29 to the 2004 Act.

(4) Such a notice—

- (a) shall be given in writing; and
- (b) may be revoked in writing at any time.

(5) A lump sum paid under this regulation in respect of a member who became entitled to a pension under regulations E1 to E12 before 6th April 2006, shall be treated as a pension protection lump sum death benefit but regulation T3(7) shall not apply.

(6) If a member who was in receipt of a substitute pension under regulation E5 (further employment after a benefit is paid under regulation E3) dies before the end of the protection period that applies to [F93the member] under regulation E5(6)(a) or (b), the member's pension referred to in paragraph (2) means that member's original upper tier pension.

(7) Where a member referred to in paragraph (1) [F94died on or before 5th April 2011 and had] attained the age of 75 at the date of the member's death—

- (a) the lump sum referred to in that paragraph ceases to be payable; and
- (b) shall instead be converted into an annual pension to be determined and paid in accordance with paragraph (8).

(8) The pension referred to in paragraph (7) shall be—

- (a) determined in accordance with guidance and tables provided by the scheme actuary for the purpose of converting the amount of the lump sum into an annual pension;
- (b) paid to the person who would otherwise be entitled to receive the lump sum in accordance with regulation F5; and
- (c) paid to that person from the day after the member's death until the fifth anniversary of the day the member's pension under this Section of the scheme became payable.

(9) If, in accordance with regulation F5, a member has given notice that more than one person is to receive a share of the lump sum, each such person shall receive the same percentage of the annual pension as was specified for that person in the member's notice.

(10) If, in accordance with regulation F5, the annual pension is to be paid to the member's personal representatives, they may, as part of the distribution of the member's estate, give irrevocable notice to the Scottish Ministers—

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

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

(11) This paragraph applies if—

- (a) the person specified in the notice has died before payment can be made;
- (b) payment to the person or body specified in the notice is not, in the opinion of the Scottish Ministers, reasonably practicable; or

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- (c) the person to whom the pension (or a specified percentage of the pension) would otherwise be payable has been convicted of an offence specified in regulation T7(2) (loss of rights to benefits) and the Scottish Ministers have directed, as a consequence of that conviction, that the person's right to a payment in respect of the member's death is forfeited.

(12) The prohibition on assignment of benefits in regulation T4 (benefits not assignable) shall not apply to an assignment by personal representatives under this regulation.

#### **Textual Amendments**

- F93** Words in reg. F2(6) substituted (28.6.2014) by [The National Health Service Superannuation Scheme \(Scotland\) \(Miscellaneous Amendments\) Regulations 2014 \(S.S.I. 2014/154\)](#), regs. 1(2), **9**
- F94** Words in reg. F2(7) substituted (with effect in accordance with reg. 1(8) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/364\)](#), regs. 1(2), **7**

#### **Modifications etc. (not altering text)**

- C3** Reg. F2 applied (with modifications) (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), regs. 1(b), **25(7)(a)**

### **Lump sum where member dies with preserved pension**

**F3.**—(1) If a member leaves pensionable employment with a preserved pension under regulation E12 (preserved pension) and dies before becoming entitled to receive a pension under this Section of the scheme, a lump sum will be paid in accordance with regulation F5.

(2) The lump sum will be equal to 3 times the yearly rate of the member's preserved pension calculated as if the member had become entitled to it immediately before the member's death.

### **Lump sum when member dies within 12 months after leaving pensionable employment without immediate or preserved pension**

**F4.**—(1) This regulation applies if a member leaves pensionable employment without becoming entitled to a pension under any of regulations E1 to E12 and dies within 12 months after leaving.

(2) If the member dies before receiving a refund of contributions under regulation E15 (refund of contributions) or before a transfer payment is made under regulation M5 (early leaver without preserved pension), a lump sum is payable in accordance with regulation F5.

(3) The lump sum on death will be calculated as described in regulation F3 (member dies with preserved pension) as if, on leaving pensionable employment, the member had become entitled to a preserved pension calculated as described in regulation E12 and as if the member had become entitled to receive that pension immediately before the member's death.

### **Payment of lump sum**

**F5.**—(1) A lump sum payable under any of regulations F1 to F4 will be paid in accordance with the following paragraphs.

(2) If a member dies without leaving a surviving partner and without having made a nomination in favour of another person, the lump sum will be paid to the member's personal representatives.

(3) If a member dies leaving a surviving partner and without having made a nomination in favour of another person, the lump sum will be paid to that surviving partner unless—



- (a) the member has given notice to the Scottish Ministers that the surviving partner is not to receive the payment and has not revoked that notice;
- (b) the surviving partner has been convicted of an offence specified in regulation T7(2) (loss of rights to benefits) and the Scottish Ministers have directed, as a consequence of that conviction, that the surviving partner's right to payment in respect of the member's death is forfeited; or
- (c) payment to the surviving partner is not, in the opinion of the Scottish Ministers, reasonably practicable,

in which case the lump sum shall be paid to the member's personal representatives.

(4) If a member dies having made a nomination in favour of one person (whether or not he also leaves a surviving partner), the lump sum will be paid to that nominee unless—

- (a) the member has given notice to the Scottish Ministers revoking that nomination;
- (b) the nominee has died before the payment could be made;
- (c) the nominee has been convicted of an offence specified in regulation T7(2) and the Scottish Ministers have directed, as a consequence of that conviction, that the nominee's right to payment in respect of the member's death is forfeited; or
- (d) payment to the nominee is not, in the opinion of the Scottish Ministers, reasonably practicable,

in which case the lump sum will be paid to the member's personal representatives.

(5) If a member dies having made a nomination in favour of two or more persons (whether or not the member also leaves a surviving partner) and has not given notice to the Scottish Ministers revoking that notice, the lump sum will be paid to those nominees, unless—

- (a) one or more of those nominees has—
  - (i) died before the payment could be made; or
  - (ii) been convicted of an offence specified in regulation T7(2) and the Scottish Ministers have directed, as a consequence of that conviction, that the nominee or nominees' right to payment in respect of the member's death is forfeited; or
- (b) the Scottish Ministers are of the opinion that payment to one or more of the nominees is not reasonably practicable,

in which case the percentage of the lump sum due to that nominee, or as the case may be, those nominees will be paid to the member's personal representatives.

- (6) A nomination may only be made by a member—
  - (a) who is in pensionable employment in this Section of the scheme at the time of making the nomination; or
  - (b) whose pensionable employment in this Section of the scheme ceased on, or after, 1st April 2008.
- (7) A nomination must specify one or more persons who may be—
  - (a) an individual;
  - (b) a body corporate;
  - (c) an unincorporated body; or
  - (d) the member's personal representatives,

but is not entitled to specify one or more persons referred to in sub-paragraph (a) together with a body referred to in either of sub-paragraphs (b) or (c).

- (8) A nomination or notice referred to in this regulation is only valid—

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- (a) if addressed to the Scottish Ministers;
- (b) upon receipt by the Scottish Ministers;
- (c) if made (or revoked) in writing; and
- (d) if it nominates the whole of the lump sum to a nominee and, in the case of a nomination specifying more than one person, if it also specifies the percentage of the lump sum to be paid to each such individual.

(9) A member who has any pensionable employment in this Section of the scheme on or after 1st April 2008 cannot give a notice referred to in paragraph (3)(a).

(10) If the lump sum on death does not exceed the specified amount, the Scottish Ministers may pay it to any person claiming to be the member's personal representative or to be entitled to a share of it, without requiring proof of the title of the person concerned.

(11) In paragraph (10), “the specified amount” means £5,000 or any higher amount specified in an order made under section 6(1) of the Administration of Estates (Small Payments) Act 1965 <sup>M49</sup> as the amount to be treated as substituted for references to £500 in section 1 of that Act.

(12) In this regulation “surviving partner” means a—

- (a) widow;
- (b) widower;
- (c) civil partner; or
- (d) nominated partner,

who survives the member.

(13) In the case of a Waiting Period Joiner, a notice given by a member for the purposes of regulation 2.E.21 or 3.E.21 of the 2008 Section of the Scheme shall be treated as a nomination or notice given by the member for the purposes of this regulation.

#### **Marginal Citations**

**M49** 1965 c. 32.

## **PART G**

### **SURVIVING PARTNER PENSIONS**

#### **Widow's pension**

**G1.**—(1) Subject to the following provisions of this regulation, if a male member dies in the circumstances described in any of regulations G2 to G6 and leaves a surviving widow, the widow is entitled to receive a pension as described in whichever of regulations G2 to G6 applies.

(2) Paragraphs (3) to (11) apply if a member's pensionable employment ceases before 1st April 2008.

(3) Subject to paragraphs (7) to (9)—

- (a) no widow's pension shall be payable in respect of any period during which the widow and a man to whom she is not married are living as husband and wife; and
- (b) the widow ceases to be entitled to the widow's pension if she remarries.

(4) Subject to paragraphs (7) to (9)—

- (a) no widow's pension will be payable in respect of any period during which the widow and a woman who is not her civil partner are living together as if they were civil partners; and
- (b) the widow ceases to be entitled to a widow's pension if she forms a civil partnership.
- (5) Paragraph (4) does not apply where the member dies before 5th December 2005.
- (6) For the purposes of this regulation, two people of the same sex are to be regarded as living together as if they were civil partners if they would be regarded as living together as husband and wife if they were not of the same sex.
- (7) Nothing in paragraphs (3) or (4) affects any entitlement to a widow's guaranteed minimum pension under this Section of the scheme.
- [<sup>F95</sup>(8) If the Scottish Ministers are satisfied that the widow will otherwise suffer severe financial hardship, the Scottish Ministers may pay a pension to a widow who—
- (a) has remarried;
- (b) has formed a civil partnership;
- (c) is living together as husband and wife with a man to whom the widow is not married;
- (d) is living together as if in a civil partnership with a woman who is not the widow's civil partner.
- (9) If the Scottish Ministers are satisfied that the widow will otherwise suffer hardship, the Scottish Ministers may pay a pension to a widow who has—
- (a) remarried and that later marriage has come to an end,
- (b) formed a civil partnership which has come to an end.]
- (10) The amount of any pension payable under paragraph (8) or (9) may, at the Scottish Minister's discretion, be equal to, or less than, the original widow's pension and the Scottish Ministers may (subject to any widow's guaranteed minimum pension) vary the amount, or stop paying the pension, at any time.
- (11) If a dependent child is born after the member's death, any entitlement to a widow's pension under regulation G2 (member dies in pensionable employment) or G3 (member dies after a pension becomes payable) will be recalculated (if necessary) as if the child had been born before the member died.

#### Textual Amendments

**F95** Reg. G1(8)(9) substituted (with effect in accordance with reg. 1(5) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/96\)](#), regs. 1(2), 9

### Widow's pension when member dies in pensionable employment

**G2.**—(1) The widow's pension payable on a member's death in pensionable employment before reaching age 75 will be as described in this regulation.

(2) The widow's pension for the first three months after the member's death (six months if the member leaves at least one dependent child who is dependent on the widow) will be equal to the rate of the member's pensionable pay when the member died if that amount is greater than the amount of widow's pension and child allowance that would otherwise be payable under these Regulations.

(3) Except while the widow's pension is payable at the rate mentioned in paragraph (2), if the member dies with at least 2 years' qualifying service, the widow's pension will be equal to one-half of the pension that would have been payable to the member under this Section of the scheme if the

member had retired through ill-health with a pension under regulation E2 (early retirement pension (ill-health)) on the day the member died.

(4) Paragraphs (5) to (8) apply if a member dies on or after 1st April 2008.

(5) The widow's pension for the first 6 months after the member's death will be equal to the rate of the member's pensionable pay when the member died if that amount is greater than the amount of widow's pension that would otherwise be payable under these Regulations.

(6) Except while the widow's pension is payable at the rate mentioned in paragraph (5), if the member dies with 2 years or more qualifying service, the widow's pension will be equal to one-half of the pension to which the member would have been entitled if, on the date of death, the member had become entitled to an upper tier pension under regulation E3 (ill health pension on early retirement).

(7) Except while the widow's pension is payable at the rate mentioned in paragraph (2) or (5), if the member dies with less than 2 years' qualifying service but after reaching age 60, the widow's pension will be equal to one-half of the pension that would have been payable to the member under this Section of the scheme if the member had retired with a pension under regulation E1 (normal retirement pension) on the day the member died.

(8) Except while the widow's pension is payable at the rate mentioned in paragraph (2) or (5), if the member dies with less than 2 years' qualifying service and before reaching age 60, the widow will receive a pension equal to her guaranteed minimum pension under this Section of the scheme, unless the Scottish Ministers discharge their liability to provide this pension by paying a contributions equivalent premium under section 55(2) of the 1993 Act.

(9) The widow's pension payable on a member's death where, on the day the member dies, the member is—

- (a) under the age of 70;
- (b) in NHS employment;
- (c) no longer required to pay contributions pursuant to regulation D1(26) or (27) (contributions by members); and
- (d) except where regulation R4(4) applies, not in receipt of any pension under any of regulations E1 to E11,

will be as described in paragraphs (2) and (3), but with the modifications set out in paragraph (10).

(10) The modifications referred to in paragraph (9) are—

- (a) in paragraph (2), for “member's pensionable pay when the member died” substitute “member's final year's pensionable pay”; and
- (b) in paragraph (3), for “on the day the member died” substitute “on the member's last day of pensionable employment”.

(11) The widow's pension payable on a member's death if, on the day the member died, the member is—

- (a) under the age of 75 if not a special class officer or under the age of 70 if a special class officer;
- (b) in NHS employment;
- (c) no longer required to pay contributions on or after 2nd April 2008 pursuant to regulation D1(26) or (27) (contributions by members); and
- (d) except where regulation R4(6) (members doing more than one job) applies, not in receipt of a pension under any of regulations E1 to E11,

will be as described in paragraphs (5) and (6), but with the modifications set out in paragraph (12).

(12) The modifications referred to in paragraph (11) are—

- (a) in paragraph (5), for “member's pensionable pay when the member died” substitute “member's final year's pensionable pay”; and
- (b) in paragraph (6), for “ on the date of death” substitute “ on the member's last day of pensionable employment. ”.

### **Widow's pension when member dies after pension becomes payable**

**G3.**—(1) Except where regulation G6 applies (member marries after leaving pensionable employment) and regulation S5 (benefits on death in pensionable employment after pension becomes payable), the widow's pension payable on a member's death after a pension becomes payable under this Section of the scheme will be as described in this regulation.

(2) Subject to paragraph (3), the widow's pension for the first three months after the member's death (six months if the member leaves at least one dependent child who is dependent on the widow) will be equal to the member's pension if that amount is greater than the amount of widow's pension and child allowance that would otherwise be payable under these Regulations.

(3) For the purpose of paragraph (2), no account is to be taken of any reduction to the member's pension under regulation S2 (reduction of pension on return to NHS employment) unless—

- (a) the member is—
  - (i) a 2008 Section Optant within the meaning of regulation 2.K.1 or regulation 3.K.1 of the 2008 Section of the Scheme, or
  - (ii) a Waiting Period Joiner within the meaning of regulation 2.L.1 or 3.L.1 of that Section, and
- (b) on the date of the member's death the member is an active or non-contributing member of that Section.

(4) Except while the widow's pension is payable at the rate mentioned in paragraph (2), the widow's pension will be equal to one half of the member's pension calculated without regard to any reduction under regulation E11.

(5) If a member who was in receipt of a substitute pension under regulation E5 (further employment after a benefit is paid under regulation E3) dies before the end of the protection period that applies to the member under regulation E5(6)(a) or (b), the member's pension referred to in paragraph (2) means that member's original upper tier pension.

(6) For the purposes of paragraphs (2) and (4), no account will be taken of any reduction to the member's pension under regulation E17 (general option to exchange part of pension for lump sum).

#### **Modifications etc. (not altering text)**

- C4** Reg. G3 applied (with modifications) (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), regs. 1(b), 25(7)(a)

### **Widow's pension when member dies with preserved pension**

**G4.**—(1) Except where regulation G6 applies (member marries after leaving pensionable employment), the widow's pension payable on the death of a member with a preserved pension under regulation E12 (preserved pension) that had not yet become payable at the date of death will be as described in this regulation.

(2) If a member leaves pensionable employment before 1st April 2008 and dies within 12 months after leaving, the widow's pension will be equal to one-half of the pension that would have been payable to the member under this Section of the scheme if the member had retired through ill health

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with a pension under regulation E2 (early retirement pension (ill health) on the day the member left pensionable employment.

(3) If a member leaves pensionable employment on or after 1st April 2008 and dies within 12 months after leaving, the widow's pension will be equal to one-half of the pension that would have been payable to the member under this Section of the scheme if the member had retired through ill health with an upper tier pension under regulation E3 (ill health pension on early retirement) on the day the member left pensionable employment.

(4) If the member dies 12 months or more after leaving pensionable employment, the widow's pension will be equal to one-half of the member's preserved pension.

### **Widow's pension when member dies within 12 months after leaving pensionable employment without immediate or preserved pension**

**G5.**—(1) This regulation applies if a member leaves pensionable employment without becoming entitled to a pension under E1 to E12 and dies within 12 months after leaving.

(2) If the member dies before receiving a refund of contributions under regulation E15 (refund of contributions) or before a transfer payment is made under regulation M4 (applications for transfer value payments - general), the widow shall be entitled to a widow's guaranteed minimum pension unless the Scottish Ministers discharge their liability to provide this pension by paying a contributions equivalent premium under section 55(2) of the 1993 Act.

### **Widow's pension when member marries after leaving pensionable employment**

**G6.**—(1) This regulation applies where the member and his wife were not married to each other during any period of pensionable employment.

(2) Subject to paragraph (3), the widow's pension will be equal to one-half of a pension calculated as described in regulation E1 (normal retirement pension) on the basis of the member's pensionable service on or after 6th April 1978.

(3) If the member dies after the pension under this Section of the scheme became payable, the widow's pension for the first three months after the member's death (six months if the member dies leaving at least one dependent child dependent on the widow) will be equal to the amount of the pension that would have been payable under regulation G3 (member dies after pension becomes payable) if this regulation had not applied.

[<sup>F96</sup>(4) Where the nominated partner referred to in G14 (surviving nominated partner's pension) becomes the member's widow on the member's death, the widow's pension will, if it would be more beneficial to the widow, be equal to the nominated partner pension that would have been payable if the widow and the member had not been married to each other.]

#### **Textual Amendments**

**F96** Reg. G6(4) inserted (with effect in accordance with reg. 1(4) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), 12 (with reg. 71)

### **Widower's pension**

**G7.**—(1) Subject to the following provisions of this regulation, if a female member dies in the circumstances described in any of regulations G2 to G6 and leaves a surviving widower, the widower shall be entitled to receive a pension as described in this regulation.

(2) Subject to paragraph (3), regulations G1 to G6 (pensions for widows) apply to the calculation and payment of pensions for widowers in like manner as they apply to pensions for widows.

(3) Subject to regulations G8 and G9, when calculating a widower's pension, any part of a member's benefit that is based on pensionable service before 6th April 1988 will, subject to paragraphs (4) and (5), be disregarded.

(4) If regulation G2(3), G2(6), G4(2) or G4(3) applies to the calculation of the widower's pension on a member's death in pensionable employment or with a preserved pension—

(a) the whole of the member's pensionable service will be taken into account when calculating whether and (if so) to what extent there would have been an increase, by virtue of regulation E2(3) (early retirement pension (ill health) or E3(4) (ill health pension or early retirement), in the pensionable service on which the member's pension under regulation E2 or E3 would have been based; and

(b) the whole period (if any) by which the member's pension would have been increased will be treated as pensionable service after 5th April 1988.

(5) Where regulation G3(2) applies to the calculation of the widower's pension, so that the widower's pension is equal to the member's pension for a limited period, the widower's pension for that limited period will be equal to the whole of the member's pension (including any part of the member's pension that is based on pensionable service before 6th April 1988).

(6) Any reference in these Regulations to regulations G1 to G6 means, in relation to benefits in respect of a female member, those regulations as applicable to the member's widower (if any).

### **Dependent widower's pension**

**G8.**—(1) A female member may, by giving notice in writing to the Scottish Ministers, nominate her husband to receive a dependent widower's pension on her death in respect of any pensionable service before 6th April 1988 for which she did not elect to purchase an increased widower's pension.

(2) The member must give notice to the Scottish Ministers before leaving pensionable employment or, if earlier, reaching age 70.

(3) The Scottish Ministers will accept the member's nomination only if they are satisfied that the member's husband is permanently incapable of earning a living because of physical or mental infirmity and is wholly or mainly dependent on the member.

(4) If the Scottish Ministers have accepted the member's nomination and the member subsequently dies before her husband, the dependent widower will be entitled to a dependent widower's pension.

(5) The dependent widower's pension will be calculated in the same way as a widow's pension under regulations G1 to G6 (pensions for widows), and will be based on all of the member's pensionable service; in which case no widower's pension will be payable under regulation G7.

(6) If the Scottish Ministers accept a member's nomination for a dependent widower's pension and the member's pensionable service started before 25th March 1972 any lump sum payable to the member under regulation E13 (lump sum on retirement) will be reduced by an amount equal to 2 times the yearly rate of the part of the member's pension that is based on pensionable service before 25th March 1972 except to the extent that the reduction has been off-set by payments made under regulation Q2 (right to buy an unreduced retirement lump sum).

### **Increased widower's pension**

**G9.**—(1) If a female member elected, before 1st July 1989, to buy an increased widower's pension, the widower's pension described in regulation G7 will be based on pensionable service from

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6th April 1988 plus the period of pensionable service before that date that the member elected to buy for this purpose under regulation 20(2) of the 1980 Regulations<sup>M50</sup> (widower's pension).

(2) Subject to paragraph (3), any retirement lump sum payable to a member under regulation E13 in respect of any period of pensionable service that the member elected to buy as described in paragraph (1), will be reduced by 2/80ths of final year's pensionable pay for each complete year of pensionable service before 25th March 1972, and by 1/80th of final year's pensionable pay for each complete year of pensionable service after 24th March 1972 plus, in each case, the relevant daily proportion of that rate for each additional day.

(3) Where the member elected to buy an unreduced retiring allowance under regulation 29 of the 1980 Regulations, regulations Q2 (right to buy an unreduced retirement lump sum) and Q7 (part payment for additional service or unreduced retirement lump sum) will apply to the reduction in benefits described in paragraph (2) of this regulation as if the election had been made under regulation Q2.

(4) If a female member who has made an election under this regulation—

<sup>F97</sup>(a) .....

(b) dies without leaving a widower but leaving a surviving civil partner or, as the case may be, a surviving nominated partner,

the widower's pension described in paragraph (1) shall be paid to that surviving partner.

#### Textual Amendments

**F97** Reg. G9(4)(a) and word omitted (with effect in accordance with reg. 1(3) of the amending S.S.I.) by virtue of [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/96\)](#), regs. 1(2), **10**

#### Marginal Citations

**M50** Regulation 20(2) was inserted into the 1980 Regulations by regulation 13 of [S.I. 1989/1749](#).

### Surviving civil partner's pension

**G10.**—(1) Subject to the following provisions of this regulation, if a member who is in a civil partnership dies in the circumstances described in any of regulations G2 to G6 and leaves a surviving civil partner, the surviving civil partner shall be entitled to a pension as described in this regulation.

(2) Subject to paragraph (3), regulations G1 to G6 (pensions for widows) apply to the calculation and payment of pensions for surviving civil partners in like manner as they apply to pensions for widows.

(3) When calculating a surviving civil partner's pension, any part of the member's benefit that is based on pensionable service before 6th April 1988 will, subject to paragraphs (4) and (5), be disregarded.

(4) If regulation G2(3), G2(6), G4(2) or G4(3) applies to the calculation of the surviving civil partner's pension on a member's death in pensionable employment or with a preserved pension—

(a) the whole of the member's pensionable service will be taken into account when calculating whether and (if so) to what extent there would have been an increase, by virtue of regulation E2(3) or E3(4), in the pensionable service on which the member's pension under regulation E2 or E3 would have been based; and

(b) the whole period (if any) by which the member's pension would have been increased will be treated as pensionable service after 5th April 1988.



(5) Where regulation G3(2) applies to the calculation of the surviving civil partner's pension, so that the surviving civil partner's pension is equal to the member's pension for a limited period, the surviving civil partner's pension for that limited period will be equal to the whole of the member's pension (including any part of the member's pension that is based on pensionable service before 6th April 1988).

(6) Any reference in these Regulations to regulations G1 to G6 means, in relation to benefits in respect of a member who has formed a civil partnership, those regulations as applicable to the member's surviving civil partner (if any).

(7) For the purposes of this regulation, two people of the same sex are to be regarded as living together as if they were civil partners if they would be regarded as living together as husband and wife if they were not of the same sex.

### **Dependent surviving civil partner's pension**

**G11.**—(1) A member who has formed a civil partnership may, by giving notice in writing to the Scottish Ministers prior to leaving pensionable employment, nominate the other party to the civil partnership to receive a dependent surviving civil partner's pension on the member's death.

(2) The Scottish Ministers will accept a member's nomination only if they are satisfied that the member's civil partner is permanently incapable of earning a living because of physical or mental infirmity and is wholly or mainly dependent on the member.

(3) If the Scottish Ministers have accepted a member's nomination and the member subsequently dies before the other party to the civil partnership, the dependent surviving civil partner is entitled to a dependent surviving civil partner's pension.

(4) The dependent surviving civil partner's pension will be calculated in the same way as a widow's pension under regulations G1 to G6, but based only on the member's pensionable service before 6th April 1988.

(5) If the Scottish Ministers have accepted a member's nomination for a dependent surviving civil partner's pension and the member's pensionable service started before 6th April 1988 any lump sum payable to the member will be reduced by an amount equal to 1.4 times the yearly rate of the part of the member's pension that is based on pensionable service before 6th April 1988 (except to the extent that any reduction has been off-set under regulation Q2 (right to buy an unreduced retirement sum)).

(6) Where regulation E2(10), regulation E3(10) or regulation E12(10) applies to a member who has formed a civil partnership, any reference in those regulations to a lump sum payable on retirement means, in relation to a member to whom paragraph (5) of this regulation refers, a lump sum which is not reduced as described in that paragraph.

### **Purchase of surviving civil partner's pension in respect of service prior to 6th April 1988**

**G12.**—(1) Subject to the following provisions of this regulation an officer or a practitioner, unless the officer or practitioner is a person in respect of whom a pension has already become payable under regulation E2 (early retirement provision (ill health)) and to whom E2(12) applies, may, in respect of the whole or any part of the officer or practitioner's contributing service prior to 6th April 1988, elect to purchase an increase in the amount of any surviving civil partner's pension which may become payable by virtue of regulation G10 (surviving civil partner's pension).

(2) The purchase of an increase pursuant to paragraph (1) may be made only in respect of complete years of service unless the officer or practitioner wishes to purchase an increase in respect of all of the officer or practitioner's service before 6th April 1988 in which case the whole of the requisite period may be purchased whether or not it constitutes a multiple of complete years of service.

(3) An election pursuant to paragraph (1)—

(a) must not be made later than 28th February 2007;

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- (b) must be made by giving notice in writing to the Scottish Ministers specifying the period in respect of which the election is made;
- (c) must be accompanied by a declaration in writing signed by the officer or practitioner that the officer or practitioner is of sound health for the officer or practitioner's age; and
- (d) is irrevocable.

(4) Schedule 3, tables 2 and 4, multiplied by a factor of 0.7 shall have effect with regard to the cost of providing the increase provided pursuant to paragraph (1).

**Increased surviving civil partner's pension**

**G13.**—(1) If a member, who has formed a civil partnership, elects before 28th February 2007 to buy an increased surviving civil partner's pension pursuant to regulation G12(1), the surviving civil partner's pension described in regulation G10 (surviving civil partner's pension) will be based on pensionable service after 5th April 1988 plus the period of pensionable service before that date that the member elected to buy for this purpose under regulation G12(1).

(2) Subject to paragraph (3) any retirement lump sum payable to a member under regulation [F98E13] (lump sum on retirement), in respect of any period of pensionable service that the member elected to buy as described in paragraph (1), will be reduced by 1.4 times the yearly rate of the member's pension plus the relevant daily portion of that rate for each additional day (except to the extent that any lump sum reduction has been set off under regulation Q2 (right to buy an unreduced retirement lump sum)).

(3) Where regulation E2(10), regulation E3(10) or regulation E12(10) applies to a member who has formed a civil partnership, any reference in those regulations to a lump sum payable on retirement means, in relation to a member whom paragraph (2) of this regulation refers, a lump sum which is not reduced as described in that paragraph.

(4) Subject to paragraph (5), where by virtue of an election under regulation G12(1), the amount of the retirement lump sum would fall to be reduced by 1.4 times the yearly rate of the member's pension plus the relevant daily proportion of that rate for each additional day, the member may, prior to 28th February 2007, make an election to purchase an unreduced lump sum under regulation Q2 (right to buy an unreduced retirement lump sum).

(5) A member who has purchased additional service in accordance with regulation Q1 (right to buy additional service) by way of a payment under regulation Q6 (paying for additional service or an unreduced retirement lump sum by regular additional contributions) may not make an election under paragraph (4) in respect of the purchase of an unreduced lump sum.

(6) If a member who has made an election under this regulation—

<sup>F99</sup>(a) .....

- (b) dies without leaving a civil partner but leaving a surviving widower or, as the case may be, a surviving nominated partner,

the surviving civil partner's pension described in paragraph (1) will be paid to that surviving widower, or as the case may be, that surviving nominated partner.

**Textual Amendments**

**F98** Word in reg. G13(2) substituted (with effect in accordance with reg. 1(7) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/364\)](#), regs. 1(2), **8**

**F99** Reg. G13(6)(a) and word omitted (with effect in accordance with reg. 1(3) of the amending S.S.I.) by virtue of [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/96\)](#), regs. 1(2), 11

### Surviving nominated partner's pension

**G14.**—(1) A member whose pensionable employment ceases on or after 1st April 2008 may, by giving notice in writing to the Scottish Ministers, nominate a person (“the nominated partner”) to receive a surviving nominated partner pension on the member's death and such a nomination is effective from the date the Scottish Ministers accept it.

(2) The Scottish Ministers must accept a member's nomination if—

- (a) the member and the nominated partner have jointly made and signed a declaration in the form required by the Scottish Ministers that remains effective at the member's death; and
- (b) the nominated partner satisfies the Scottish Ministers that for a continuous period of at least two years ending with the member's death—
  - (i) the member and the nominated partner were living together as if they were husband and wife or civil partners;
  - (ii) the member and the nominated partner were not prevented from marrying or entering into a civil partnership;
  - (iii) the member and the nominated partner were financially interdependent or the nominated partner was financially dependent on the member; and
  - (iv) neither the member nor the nominated partner was living with a third person as if they were husband and wife or as if they were civil partners.

(3) A declaration under paragraph (2)(a) ceases to have effect if—

- (a) it is revoked by the member or the nominated partner by a signed notice in writing given to the Scottish Ministers in the required form (if any);
- (b) the member makes a later declaration under paragraph (2)(a); or
- (c) the member or the nominated partner marries or enters into a civil partnership [<sup>F100</sup>with a person who is not, respectively, the nominated partner or the member].

(4) If the Scottish Ministers have accepted a member's nomination and the member subsequently dies before the member's nominated partner in the circumstances described in any of regulations G2 to G6, the nominated partner is entitled to a pension as described in paragraphs (6) to (10) of this regulation.

(5) Subject to paragraph (6), regulations G1 to G6 apply to the calculation and payment of pensions for nominated partners in the same manner as they apply to pensions for widows and regulation G6(1) shall be read as if, for the words “where the member and his wife were not married to each other [<sup>F101</sup>during any period of pensionable employment]” it said “where a nomination for a surviving partner pension [<sup>F102</sup>becomes effective after all pensionable employment has ceased]”.

(6) When calculating a nominated partner's pension, any part of the member's benefit that is based on pensionable service before 6th April 1988 will, subject to paragraphs (7) and (8), be disregarded.

(7) If regulation G2(3) or (6) or regulation G4(2) or (3) apply to the calculation of the nominated partner's pension on a member's death in pensionable employment or with a preserved pension—

- (a) the whole of the member's pensionable service will be taken into account when calculating whether and (if so) to what extent there would have been an increase, by virtue of regulation E2(3) or E3(4) in the pensionable service on which the member's pension under regulation E2 or E3 would have been based; and

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(b) the whole period (if any) by which the member's pension would have been increased will be treated as pensionable service after 5th April 1988.

(8) If regulation G3(2) applies to the calculation of the nominated partner's pension, so that the nominated partner's pension is equal to the member's pension for a limited period, the nominated partner's pension for that limited period will be equal to the whole of the member's pension (including any part of the member's pension that is based on pensionable service before 6th April 1988).

(9) Any reference in these Regulations to regulations G1 to G6 means, in relation to benefits in respect of a member who has nominated a partner, those regulations as applicable to the member's nominated partner (if any).

(10) In the case of a Waiting Period Joiner, a declaration or notice given by a member for the purposes of regulation 2.E.2 or 3.E.2 of the 2008 Section of the Scheme will be treated as a declaration or notice given by that member for the purposes of this regulation.

#### Textual Amendments

**F100** Words in reg. G14(3)(c) inserted (with effect in accordance with reg. 1(7) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/364\)](#), regs. 1(2), **9**

**F101** Words in reg. G14(5) inserted (with effect in accordance with reg. 1(4) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **13(a)** (with reg. 71)

**F102** Words in reg. G14(5) substituted (with effect in accordance with reg. 1(4) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **13(b)** (with reg. 71)

#### Dependent surviving nominated partner's pension

**G15.**—(1) A member may, by giving notice in writing to the Scottish Ministers before leaving pensionable employment, apply for the member's nominated partner to receive a dependent surviving nominated partner's pension on the member's death.

(2) The Scottish Ministers must accept a member's application only if they are satisfied that the member's nominated partner is—

- (a) permanently incapable of earning a living because of physical or mental infirmity; and
- (b) wholly or mainly dependent on the member.

(3) If the Scottish Ministers have accepted a member's application and the member subsequently dies before the member's nominated partner, the dependent surviving nominated partner is entitled to a dependent surviving nominated partner's pension.

(4) The dependent surviving nominated partner's pension is to be calculated in the same way as a widow's pension under regulations G1 to G6 but based only on the member's pensionable service before 6th April 1988.

(5) If the Scottish Ministers have accepted a member's application for a dependent surviving nominated partner's pension and the member's pensionable service started before 6th April 1988 any lump sum payable to the member will be reduced by an amount equal to 1.4 times the yearly rate of the part of the member's pension that is based on pensionable service before 6th April 1988 (except to the extent that any reduction has been off-set under regulation Q2).

(6) If regulation E2(10), E3(10) or E2(10) applies to a member who has a nominated partner, any reference in those provisions to a lump sum payable on retirement means, in relation to a member to whom paragraph (5) of this regulation refers, a lump sum that is not reduced as described in that paragraph.

### Purchase of surviving partner's pension in respect of service before 6th April 1988

**G16.**—(1) Subject to this regulation, an officer in respect of whom a pension has not already become payable under regulations E2 or E3 may, in respect of the whole or any part of his contributing service before 6th April 1988, elect to purchase an increase in the amount of any survivor's pension that becomes payable under this Section of the scheme.

(2) The purchase of an increase under paragraph (1) may be made only in respect of complete years of service, unless the officer wishes to purchase an increase in respect of all of the officer's service before 6th April 1988, in which case the whole of the requisite period may be purchased whether or not it constitutes a multiple of complete years of service.

(3) An election under paragraph (1)—

[<sup>F103</sup>(a) must be made—

(i) during the period beginning on 28th June 2008 and ending on 27th September 2009; or

(ii) during the period beginning on 16th December 2014 and ending on 31st December 2015;]

(b) must be made by notice in writing, given to the Scottish Ministers;

(c) must specify the period in respect of which the election is made;

(d) must be accompanied by a declaration in writing signed by the officer that the officer is of sound health for the officer's age; and

(e) is irrevocable.

(4) Each figure in tables 2 and 4 of Schedule 3 is multiplied by a factor of 0.7 in respect of the cost of providing the increase provided under paragraph (1).

(5) In this regulation “survivor's pension” means a pension that becomes payable by virtue of—

(a) regulation G7;

(b) regulation G10; or

(c) regulation G14.

#### Textual Amendments

**F103** Reg. G16(3)(a) substituted (with effect in accordance with reg. 1(3) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/96\), regs. 1\(2\), 12](#)

### Increased surviving partner's pension

**G17.**—(1) If a member [<sup>F104</sup>makes a valid election pursuant to] regulation G16(3)(a) to buy an increased surviving partner's pension under regulation G16(1), any survivor's pension that becomes payable in respect of that member will be based on pensionable service after 5th April 1988 plus any period of pensionable service before that date that the member elected to buy for this purpose under regulation G16(1).

(2) Any survivor's pension payable in respect of the member shall be paid to (as the case may be) the member's surviving widower, civil partner or nominated partner regardless of whether that pension is payable by virtue of regulation G7, regulation G10 or regulation G14.

(3) Subject to paragraph (4), any retirement lump sum payable to a member under regulation E13, in respect of any period of pensionable service that the member elected to buy as described in paragraph (1), will be reduced by 1.4 times the yearly rate of the member's pension plus the relevant

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daily proportion of that rate for each additional day (except to the extent that any lump sum reduction has been off-set under regulation Q2).

(4) If regulation E2(10), E3(10) or E12(10) applies to a member to whom this regulation refers, any reference in those regulations to a lump sum payable on retirement must be taken to mean a lump sum that is not reduced as described in paragraph (2) of this regulation.

(5) Subject to paragraph (6) if, by virtue of an election under regulation G16(1), the amount of the retirement lump sum would fall to be reduced by 1.4 times the yearly rate of a member's pension plus the relevant daily proportion of that rate for each additional day, the member may make an election to purchase an unreduced lump sum under regulation Q2 (right to buy an unreduced retirement lump sum) provided that the election is made [<sup>F105</sup>during either of the periods specified in regulation G16(3)(a)].

(6) A member who has purchased additional service in accordance with regulation Q1 (right to buy additional service) by way of a payment under regulation Q6 (electing to buy additional service or unreduced retirement lump sum) is not entitled to make an election under paragraph (4) in respect of the purchase of an unreduced lump sum.

#### Textual Amendments

**F104** Words in reg. G17(1) substituted (with effect in accordance with reg. 1(3) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/96\)](#), regs. 1(2), **13(a)**

**F105** Words in reg. G17(5) substituted (with effect in accordance with reg. 1(3) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/96\)](#), regs. 1(2), **13(b)**

## PART H

### DEPENDENT CHILD ALLOWANCE

#### Dependent child

**H1.**—(1) This regulation applies to any child who satisfies the requirements of paragraph (2) and who is—

- (a) a child or grandchild of the member;
- (b) a stepchild of the member by a marriage entered into or a civil partnership formed before the date on which the member leaves pensionable employment or reaches age 70 (whichever occurs first), or a child legally adopted by the member before that date;
- (c) a brother or sister, or a child of a brother or sister, of the member or the member's spouse, civil partner or nominated partner (any half-brother or step-brother being treated as a brother, and any half-sister or step-sister being treated as a sister, for this purpose); or
- (d) a child whom, immediately before the member left pensionable employment, reached age 70 or died (whichever occurs first), the member had intended to adopt, or a child who, at that time, had been dependent on the member for 2 years or (if less) half the child's life; or
- (e) a child of a member's nominated partner from a nominated partnership formed before the date on which the member leaves pensionable employment.

(2) The requirements of this paragraph are satisfied by any child described in paragraph (1) who is—

- (a) born before the member leaves pensionable employment, reaches age 70 or dies (whichever occurs first) and who is dependent on the member when the member dies and, if the member dies after leaving pensionable employment, was also dependent on the member when the member left pensionable employment; or
  - (b) born one year or less after the member leaves pensionable employment, reaches age 70 or dies (whichever occurs first), and who either is dependent on the member both immediately after being born and when the member dies, or would have become dependent on the member if the member had not died before the child was born.
- (3) A child is a dependent child of a person whose pensionable employment ceases on or after 1st April 2008 for so long as the child is—
- (a) under age 23; or
  - (b) aged 23 or over and incapable of earning a living because of permanent physical or mental infirmity from which the child was suffering at the time the member died.
- (4) Subject to paragraphs (7) and (8), a child is a dependent child of a person whose pensionable employment ceases on or before 31st March 2008 for so long as the child is—
- (a) under age 17; or
  - (b) age 17 or over but has not reached the age of 23 and in full-time education; or
  - (c) age 17 or over but has not reached the age of 23 and in full-time training for a trade, profession or vocation, for which the child is not receiving remuneration in excess of the allowable maximum; or
  - (d) age 17 or over but has not reached the age of 23 and taking a break in full-time education, or full-time training for a trade, profession or vocation, where the Scottish Ministers are satisfied that the child intends to return to some such education or training; or
  - (e) under age 19 and not engaged in remunerative full-time work and not entitled to income support in terms of section 124 of the Social Security Contributions and Benefits Act 1992<sup>M51</sup>; or
  - (f) age 17 or over but has not reached the age of 23 and is incapable of earning a living because of permanent physical or mental infirmity from which the child started to suffer whilst qualifying as a dependent child; but such a person will only be treated as a dependent child for so much of the period commencing with the day on which the child attains the age of 17 and ending immediately before the day on which the child attains the age of 23, during which the child remains incapable of earning a living.
- (5) A child who is age 17 or over and who has ceased to be a dependent child will be treated as a dependent child if the child returns to full-time education, or to full-time training for a trade, profession or vocation for which the child is not receiving remuneration in excess of the allowable maximum, before reaching age 21 and within 12 months after ceasing to be a dependent child.
- (6) In this regulation, the “allowable maximum” means the amount to which a pension of £1702 a year beginning on 11th April 1994 would have been increased under Part I of the Pensions (Increase) Act 1971<sup>M52</sup> at the date in question plus the yearly amount of any expenses necessarily incurred for the purposes of the education or training.
- (7) A child who is incapable of earning a living because of permanent physical or mental infirmity from which the child was suffering at the time the member died as described in paragraph (4) will be treated as a dependent child for so long as the child remains incapable of earning a living.
- (8) Where—
- (a) a dependent child became entitled to a child allowance under regulation H2 (payment of dependent child's allowance) before 6th April 2006; or



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- (b) the dependency of a child born on, or before, 5th April 2007 is to be assessed in respect of a person who became entitled to a pension under regulations E1 to E12 on, or before, 6th April 2006,

paragraphs (4)(b), (c) and (d) are to be read as if they did not include the words “but has not reached the age of 23”, paragraph (4)(f) does not apply and paragraph (7) is to be read as if it included the words “or from which the child started to suffer whilst qualifying as a dependent child” after the words “member died”.

#### Marginal Citations

**M51** 1992 c.4.

**M52** 1971 c.56.

### Payment of dependent child's allowance

**H2.**—(1) Subject to the following provisions of this regulation, if a member dies in the circumstances described in any of regulations H3 to H7 and leaves a dependent child, the dependent child will be entitled to a child's allowance as described in this regulation and regulations H3 to H7.

(2) If a dependent child is born after the member's death, a child allowance shall be payable as if the child had been born before the member died.

(3) The child allowance will be paid to the child or, where the Scottish Ministers so decide, to some other person for the child's benefit and if there is more than one dependent child, the Scottish Ministers will divide the allowance between them in such shares as they decide from time to time.

(4) Where a child is a dependent child by virtue of regulation H1(4)(d), the child allowance ceases to be payable after 12 months if the child has not then returned to full-time education, or full-time training for a trade, profession or vocation, but will be reinstated if the child later returns to some such education or training and the Scottish Ministers are satisfied that the child intended to do so from the start of the break.

(5) No allowance will be payable to, or for the benefit of, a child who is incapable of earning a living because of permanent physical or mental infirmity for any period exceeding one month during which the child is maintained out of money provided by the Scottish Parliament in a hospital or other institution.

(6) Where a child is a dependent child in relation to 2 or more members, the child allowance will be payable in respect of the death of not more than 2 of those members and if an allowance would be payable in respect of 2 or more members then the allowance will be equal to the sum of the 2 highest allowances.

(7) The child allowance ceases to be payable when there is no remaining dependent child.

### Child allowance when member dies in pensionable employment

**H3.**—(1) The child allowance payable in the case of a member who dies whilst in pensionable employment and under age 70 will be as described in this regulation.

(2) Subject to paragraph (3), if the member dies before 1st April 2008 and regulation T9(4), the allowance will be calculated, as described in whichever of paragraphs (5) to (13) apply, as a proportion of the pension that would have been payable to the member under this Section of the scheme if the member had retired through ill-health with a pension under regulation E2 (early retirement pension (ill-health)) on the day the member died.

(3) If the member dies on or after 1st April 2008 the allowance will be calculated as described in whichever of paragraphs (6) to (9) apply—



- (a) as a proportion of the pension that would have been payable to the member under this Section of the scheme if the member retired through ill health and had qualified for an upper tier pension under regulation E3 on the day the member died; or
  - (b) if greater, the amount that pension would have been if it had been based on 10 years pensionable service.
- (4) If the member dies with less than 5 years' pensionable service, the allowance will be calculated as if the pension described in paragraph (2) were based on the shorter of—
- (a) 10 years' pensionable service, and
  - (b) the pensionable service the member could have completed if the member had stayed in pensionable employment until age 65.
- (5) Subject to paragraphs (11) to (14) and regulation H7 if the member dies leaving a dependent child and there is a surviving parent (or spouse or civil partner of a parent), the allowance will be equal to one-quarter of the pension described in paragraph (2) if there is only one dependent child, and one-half if there are two or more.
- (6) Subject to paragraphs (7) to (10), if the member dies leaving a dependent child and there is a surviving parent (or spouse, civil partner or nominated partner of a parent), the allowance will be equal to—
- (a) one-quarter of the pension described in paragraph (3) if there is only one dependent child; and
  - (b) one-half if there are two or more.
- (7) If a widow's, widower's, surviving civil partner's or nominated partner's pension is payable at the rate mentioned in regulation G2(5) (widow's pension when member dies in pensionable employment), the allowance payable in respect of any dependent child who is dependent on that widow, widower, surviving civil partner or surviving nominated partner will be payable from the day following the member's death.
- (8) If a widow's, widower's, surviving civil partner's or nominated partner's pension is payable at the rate mentioned in regulation G2(5) but there is a dependent child who is not dependent on that widow, widower, surviving civil partner or surviving nominated partner, the allowance in respect of that child for the first three months after the member's death will be equal to the rate of member's pensionable pay when the member died.
- (9) If a member dies leaving a dependent child and there is no surviving parent (or spouse, civil partner or nominated partner of a parent), the allowance will be equal to—
- (a) one-third of the pension described in paragraph (3) if there is only one dependent child; and
  - (b) two-thirds if there are two or more,
- except that the allowance for the first six months after the member's death will be equal to the rate of the member's pensionable pay when the member died.
- (10) If the member dies leaving a dependent child and there is a surviving parent (or spouse, civil partner or nominated partner of a parent) but there is no entitlement to a widow's, widower's or surviving civil partner's pension calculated under regulation G2, the allowance will be paid at the rates described in paragraph (9).
- (11) If a widow's, widower's or surviving civil partner's pension is payable at the rate mentioned in regulation G2(2), no allowance shall be payable in respect of any dependent child who is dependent on the widow, widower or surviving civil partner until the end of the first six months after the member's death.
- (12) If a widow's, widower's or surviving civil partner's pension is payable at the rate mentioned in regulation G2(2), but there is a dependent child who is not dependent on that widow, widower

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or surviving civil partner, the allowance in respect of that child for the first three months after the member's death will be equal to the rate of the member's pensionable pay when the member died.

(13) If the member dies leaving a dependent child and there is no surviving parent (or spouse or civil partner of a parent), the allowance will be equal to one-third of the pension described in paragraph (2) if there is only one dependent child and two-thirds if there are two or more; except that the allowance for the first six months after the member's death will be equal to the rate of the member's pensionable pay when the member died.

(14) If the member dies leaving a dependent child and there is a surviving parent (or spouse or civil partner of a parent) but there is no entitlement to a widow's, widower's or surviving civil partner's pension under regulation G2, or regulation G2(8) applies, the allowance will be paid at the rates described in paragraph (13).

(15) The child allowance payable on a member's death where, on the day the member dies, the member is—

- (a) under the age of 70;
- (b) in NHS employment;
- (c) no longer required to pay contributions on or before 1st April 2008 pursuant to regulation D1(26) or (27) (contributions by members); and
- (d) except where regulation R4(4) applies, not in receipt of any pension under any of regulations E1 to E11,

will be as described in paragraph (2), but with the modifications set out in paragraph (16).

(16) The modifications referred to in paragraph (15) are—

- (a) in paragraph (2), for “on the day the member died” substitute “ on the member's last day of pensionable employment ”; and
- (b) in each of paragraphs (12) and (13), for “member's pensionable pay when the member died” substitute “ member's final year's pensionable pay ”.

(17) The child allowance payable on a member's death if, on the day the member died, the member is—

- (a) under the age of 75 if not a special class officer or under the age of 70 if a special class officer;
- (b) in NHS employment;
- (c) no longer required to pay contributions on or after 2nd April 2008 pursuant to regulation D1(26) or (27) (contributions by members); and
- (d) except where regulation R4(6) (members doing more than one job) applies, not in receipt of a pension under any of regulations E1 to E11,

will be as described in paragraph (3) but with the modifications set out in paragraph (18).

(18) The modifications referred to in paragraph (17) are—

- (a) in paragraph (3)(a) for “on the day the member died” substitute “ on the member's last day of pensionable employment ”; and
- (b) in paragraphs (8) and (9) for “member's pensionable pay when the member died” substitute “ member's final year's pensionable pay ”.

#### **Child allowance when member dies after pension becomes payable**

**H4.**—(1) The child allowance payable in the case of a member who dies after a pension under this Section of the scheme becomes payable will be as described in this regulation.

(2) Subject to paragraphs (3) and (9)—

- (a) the allowance will be calculated as described in whichever of paragraphs (4) or (5) apply; and
  - (b) where the member was, on the date of the member's death—
    - (i) not a 2008 Section Optant within the meaning of regulation 2.K.1 (application of chapter 2.K) or regulation 3.K.1 (application of chapter 3.K) or a Waiting Period Joiner within the meaning of regulation 2.L.1 or 3.L.1 of the 2008 Section whose pensionable service—
      - (aa) equalled, or exceeded, 10 years, as a proportion of the amount of the member's pension based on that service;
      - (bb) was less than 10 years, as a proportion of the amount of that the member's pension would have been if it had been based on 10 years pensionable service;
    - (ii) a 2008 Section Optant or Waiting Period Joiner, as a proportion of the amount of the member's pension.
- (3) If the member's pensionable employment ceased on or before 31st March 2008, the allowance will be calculated in whichever of paragraphs (4) or (5) apply, as a proportion of the amount of the member's pension or, if greater, the amount that the member's pension would have been if it had been based on the shorter of—
- (a) 10 years pensionable service; and
  - (b) the pensionable service the member could have completed if the member had stayed in pensionable employment until age 65.
- (4) If the member dies leaving a dependent child and there is a surviving parent (or spouse, civil partner or nominated partner of a parent), the allowance will, subject to paragraphs (6) to (8), be equal to one-quarter of the pension described in paragraph (2) if there is only one dependent child, and one-half if there are two or more.
- [<sup>F106</sup>(5) If the member dies leaving a dependent child and there is no surviving parent (or spouse, civil partner or nominated partner of a parent) the allowance—
- (a) for the period of 6 months beginning with the member's death, will be the greater of—
    - (i) the amount of the member's pension calculated without regard to any reduction made under regulation S2 (reduction of pension on return to NHS employment); and
    - (ii) the amount of child allowance that would otherwise be payable under these Regulations; and
  - (b) following the period referred to in sub-paragraph (a), will be equal to—
    - (i) one-third of the pension described in paragraph (2) if there is only one dependent child; and
    - (ii) two-thirds of the pension described in paragraph (2) if there are two or more dependent children.]

(6) If the member dies leaving a dependent child and there is a surviving parent (or spouse, civil partner or nominated partner of a parent) but there is no entitlement to a widow's, widower's, surviving civil partner's or surviving nominated partner's pension under regulation G3 (member dies after pension becomes payable) the allowance will be paid at the rates described in paragraph (5).

(7) If a widow's, widower's, surviving civil partner's or surviving nominated partner's pension is payable at the rate mentioned in regulation G3(2), no allowance shall be payable in respect of any dependent child who is dependent on the widow, widower, surviving civil partner or surviving nominated partner until the end of the first six months after the member's death.

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(8) If a widow's, widower's, surviving civil partner's or surviving nominated partner's pension is payable at the rate mentioned in regulation G3(2) but there is a dependent child who is not dependent on that widow, widower, surviving civil partner or surviving nominated partner, the allowance in respect of that child for the first three months after the member's death, will be equal to the rate of the member's pension.

(9) Where the member was in receipt of a pension payable under regulation E11 (early retirement pension (with actuarial reduction)), the member's pension referred to in paragraph (2) means the member's pension calculated without regard to the reduction made under regulation E11(2).

(10) If a member who was in receipt of a substitute pension under regulation E5 dies before the end of the protection period that applies to that member under regulation E5(6)(a) or (b), the member's pension referred to in paragraph (2) means that member's original upper tier pension.

(11) For the purpose of paragraphs (2) and (8), no account will be taken of any reduction to the member's pension under regulation E17 (general option to exchange part of pension for lump sum).

#### Textual Amendments

**F106** Reg. H4(5) substituted (with effect in accordance with reg. 1(4) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **14** (with reg. 71)

#### Modifications etc. (not altering text)

**C5** Reg. H4 applied (with modifications) (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), regs. 1(b), **25(7)(a)**

### Child allowance when member dies with preserved pension

**H5.**—(1) The child allowance payable on the death of a member with a preserved pension under regulation E12 (preserved pension) that has not become payable will be as described in this regulation.

(2) Subject to paragraph (3), if the member dies within 12 months after leaving pensionable employment, the allowance will be calculated, as described in whichever apply of paragraphs (7) to (9) or regulation H7, as a proportion of the amount of the pension described in regulation H3(3) as if the member had died on the day the member left pensionable employment.

(3) Subject to paragraph (4), if the member's pensionable employment ceased on or before 31st March 2008 the allowance will be calculated, as described in whichever of paragraphs (7) to (9) apply, as a proportion of the pension that would have been payable to the member under this Section of the scheme if the member retired through ill health with a pension under regulation E2 on the day the member died.

(4) If the member has less than 5 years' pensionable service, the allowance will be calculated as if the pension described in paragraph (3) were based on the shorter of—

- (a) 10 years' pensionable service; and
- (b) the pensionable service the member could have completed if the member had stayed in pensionable employment until age 65.

(5) Subject to paragraph (6), if the member dies 12 months or more after leaving pensionable employment, the allowance will be calculated as described in whichever of paragraphs (7) to (9) apply, as a proportion of the amount of the member's preserved pension or, if greater, the amount that the preserved pension would have been if it had been based on 10 years' pensionable service.

(6) If the member's pensionable employment ceased on or before 31st March 2008, the allowance will be calculated as described in whichever of paragraphs (7) to (9) apply, as a proportion of the amount of the member's preserved pension or, if greater, the amount that the preserved pension would have been if it had been based on the shorter of—

- (a) 10 years' pensionable service; and
- (b) the pensionable service the member could have completed if the member had stayed in pensionable employment until age 65.

(7) If the member dies leaving a dependent child and there is a surviving parent (or spouse, civil partner or nominated partner of the parent) the allowance will be equal to one-quarter of the pension described in paragraphs (2) to (6) (whichever is applicable) if there is only one dependent child, and one-half if there are two or more.

(8) If the member dies leaving a dependent child and there is no surviving parent (or spouse, civil partner or nominated partner of the parent), the allowance will be equal to one-third of the pension described in paragraphs (2) to (6) (whichever is applicable) if there is only one dependent child, and two-thirds if there are two or more.

(9) If the member dies leaving a dependent child and there is a surviving parent (or spouse, civil partner or nominated partner of the parent) but there is no entitlement to a widow's, widower's, surviving civil partner's or surviving nominated partner's pension under regulation G4 (member dies with preserved pension) except where regulation G1(2) applies the allowance will be paid at the rate described in paragraph (8).

#### **Child allowance when member dies within 12 months after leaving pensionable employment without immediate or preserved pension**

**H6.**—(1) This regulation applies if a member leaves pensionable employment without becoming entitled to a pension under any of regulations E1 to E12 and dies within 12 months after leaving.

(2) If the member dies before receiving a refund of contributions under regulation E15 the dependent child will be entitled to a child's allowance as described in this regulation.

(3) The child allowance will be calculated as described in regulation H5 (member dies with a preserved pension) as if, on leaving pensionable employment, the member had become entitled to a preserved pension calculated as described in regulation E12.

#### **Increase of child allowance when child not dependent on surviving parent or spouse, civil partner or nominated partner of a parent**

**H7.**—(1) If a member dies leaving a dependent child and there is a surviving parent (or spouse, civil partner or nominated partner of the parent) and at least one dependent child who is not being maintained by the surviving parent (or spouse, civil partner or nominated partner of the parent), the Scottish Ministers may increase the amount of the child allowance that would otherwise be payable under these Regulations.

(2) The allowance may, at the Scottish Minister's discretion, be increased up to an amount equal to the amount that would have been payable if there were no surviving parent (or spouse, civil partner or nominated partner of the parent).

## PART J

### ALLOCATION TO A SPOUSE OR DEPENDANT

#### Allocation of pension by member for benefit of dependant

**J1.**—(1) Subject to the following provisions of this Part, a member may elect to allocate part of the member's pension under this Section of the scheme so as to provide, following the member's death, a pension for a spouse, a civil partner or dependant.

(2) Any pension provided for a spouse or a civil partner under this regulation will be payable in addition to any other widow's, widower's or surviving civil partner's pension under these Regulations.

(3) Any pension provided under this regulation will be calculated in accordance with tables prepared by the scheme actuary.

(4) A member wishing to allocate part of the member's pension under this regulation may elect to do so—

- (a) on making a claim for payment of the member's benefits under regulation T1 (claims for benefits), or at any time after making such a claim but before the date on which a pension payable to the member under this Section of the scheme is put into payment; or
- (b) if in pensionable employment—
  - (i) in the case of a member who is not a special class officer, at any time after completing 45 years pensionable service; or
  - (ii) in the case of a member who is a special class officer, at any time after reaching age 55 and completing 40 years pensionable service; or
- (c) at any time after reaching age 65 (60 for special class officers).

(5) A member wishing to allocate part of the member's pension as described in this regulation must do so by giving notice in writing to the employing authority on the form provided, giving such information as may be required.

(6) The Scottish Ministers must not accept an election unless satisfied that the member is in good health.

#### Limits on allocation

**J2.**—(1) A member may not allocate more than one-third of the member's pension to provide a pension on the member's death for a surviving spouse, a civil partner or a dependant and must keep a pension at least equal to the member's guaranteed minimum pension

(2) A member may not allocate so much pension as to provide a bigger spouse's pension, civil partner's pension or dependant's pension under regulation J1 than the pension the member has retained.

(3) The part of a member's pension that is allocated must be an exact number of pounds and must be sufficient to provide a pension for the spouse, civil partner or dependent of at least £260 a year or, if greater, of the minimum amount that cannot be treated as trivial for the purposes of regulation T8 (commutation of trivial pensions).

#### Date on which allocation has effect

**J3.**—(1) An allocation becomes effective once the election to allocate is accepted by the Scottish Ministers.

(2) The allocation will not take effect if—

- (a) the member dies on or before the day on which the Scottish Ministers accept the member's election;
  - (b) the dependent, spouse or civil partner dies before the member is told that the Scottish Ministers accept the election; or
  - (c) the member withdraws the member's application before it is accepted by the Scottish Ministers.
- (3) An allocation may not be withdrawn or cancelled, once the Scottish Ministers have accepted the member's election to allocate.

#### Death of member after allocation

**J4.**—(1) If a member elects to allocate part of the member's pension in the circumstances described in regulation J1(4)(b) or (c) and then dies before becoming entitled to receive a pension the member will be treated, for the purposes of regulation J2, as entitled to the pension the member would have received if the member had retired immediately before the member's death.

(2) If a member allocates part of the member's pension as described in this regulation and then dies after becoming entitled to receive a pension, the amount of pension already paid to the member under this Section of the scheme will be treated, for the purpose of calculating the lump sum payable under regulation F2 (member dies after becoming entitled to receive a pension), as including the amount of the additional pension that would have been paid to the member if the member had not allocated part of the member's pension.

## PART K

### CONTRACTING OUT AND GUARANTEED MINIMUM PENSIONS

#### Contracting-out conditions to be overriding

**K1.**—(1) This Section of the scheme will be administered in conformity with the contracting-out conditions and, with the exception of the circumstances specified in paragraph (2), regulations K2 to K7 override any inconsistent provisions of these Regulations.

(2) The circumstances referred to in paragraph (1) are—

- (a) where a trivial pension is commuted in accordance with regulation T8 (commutation of trivial pensions);
- (b) where a pension is commuted in accordance with regulations E2(10) (early retirement pension (ill health)), E3(10) (ill health pension on early retirement) or E12(7) (preserved pension); or
- (c) where a pension is forfeited for the reasons specified in regulation T7(1)(b) or (c) [F107 or (2)] (loss of rights to benefits).

(3) In this Part—

- (a) “contracting-out conditions” means the conditions specified in sections 9(2A) and (2B) (requirements for certification of schemes) of the 1993 Act;
- (b) “guaranteed minimum” means the guaranteed minimum as defined in sections 13 to 17 of the 1993 Act;
- (c) “guaranteed minimum pension” is a pension calculated in accordance with the guaranteed minimum requirements;
- (d) “guaranteed minimum pension age” means age 65 in the case of a man or age 60 in the case of a woman; and

*Status: Point in time view as at 25/03/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)*

- (e) “protected rights” has the same meaning as in the 1993 Act.

#### Textual Amendments

**F107** Words in reg. K1(2)(c) inserted (with effect in accordance with reg. 1(2)(f) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), 6 (with reg. 53)

#### Guaranteed minimum pensions

**K2.**—(1) This regulation applies where the member has a guaranteed minimum, in relation to the pension provided for the member under this Section of the scheme, in accordance with section 13 (minimum pensions for earners) of the 1993 Act.

(2) The weekly rate of the member's pension from guaranteed minimum pension age will not be less than the member's guaranteed minimum, except that—

- (a) payment may at the discretion of the Scottish Ministers be postponed for up to 5 years if the member remains in NHS employment, or for any period if the postponement continues or occurs more than 5 years after guaranteed minimum pension age if the member consents; in which case the member's guaranteed minimum pension will be increased as described in regulation K3 (late retirement);
- (b) payment may be reduced or suspended under regulation S1 to S3 (members who return to pensionable employment after becoming entitled to receive a pension) if the member returns to NHS employment; in which case the member's guaranteed minimum pension will be increased as described in regulation K3 (late retirement); and
- (c) payment may be reduced or suspended where the Scottish Ministers have made a direction under regulation T7 (loss of rights to benefit) or where they have discharged their liability by making a payment under regulation T8 or under Part M (transfers or buy-outs).

(3) If the member is a man and dies leaving a widow, the weekly rate of the widow's pension will not be less than half the member's guaranteed minimum for any period such as is mentioned in section 17(5) of the 1993 Act.

(4) If the member is a woman and dies leaving a widower, the weekly rate of the widower's pension will not be less than half the part of the member's guaranteed minimum that is attributable to earnings for the tax years 1988-89 to 1996-97 inclusive for any period such as is mentioned in section 17(6) of the 1993 Act.

(5) If the member is in a civil partnership and dies leaving a surviving civil partner, the weekly rate of the surviving civil partner's pension will not be less than one-half of the part of the member's guaranteed minimum that is attributable to earnings for the tax years 1988-89 to 1996-97 inclusive for any period mentioned in section 17(6) of the 1993 Act.

(6) The part of any guaranteed minimum pension that is attributable to earnings for the tax years 1988-89 to 1996-97 inclusive will increase in each year by the percentage specified in any order made by the Secretary of State under section 109 of the 1993 Act (annual increases of guaranteed minimum pensions).

(7) A member who on leaving pensionable employment—

- (a) becomes entitled to a refund of contributions under regulation E15 (early leavers' entitlement to refund of contributions); or
- (b) exercises a right to require a transfer or buy-out in accordance with regulation M2 (exercising a right to transfer or buy-out),



but, in either case, remains (as described in regulation E15(2)) entitled to a guaranteed minimum pension or section 9(2B) rights, is entitled to the benefits specified in paragraphs (8) and (9).

(8) The benefits are—

- (a) a pension payable from the date on which the member reaches guaranteed minimum pension age at a weekly rate equal to the member's guaranteed minimum (if any); and
- (b) a pension and lump sum from the date the member reaches normal benefit age in respect of the member's section 9(2B) rights.

(9) On the death of a member to whom paragraph (7) applies, no benefit will be payable except for a widow's, widower's, surviving civil partner's or nominated partner's pension equal to the aggregate of—

- (a) that described in paragraph (3) or, as the case may be, paragraph (4); and
- (b) half the member's pension in respect of section 9(2B) rights.

(10) Where paragraph (3) of regulation K7 applies, a guaranteed minimum pension of the amount described in paragraph (4) will be payable.

### Late retirement

**K3.** If a member's pension is postponed for more than 7 weeks after guaranteed minimum pension age, or is reduced or suspended after it becomes payable, the member's guaranteed minimum pension as increased under section 109 of the 1993 Act (annual increases of guaranteed minimum pensions) will be increased by 1/7th per cent for each complete 7 days of postponement.

### Early leavers

**K4.**—<sup>F108</sup>(1) Subject to paragraph (2), this paragraph applies if a member who is under guaranteed minimum pension age—

- (a) leaves contracted-out employment under this Section of the scheme before 6th April 2016; or
- (b) was in contracted-out employment under this Section of the scheme on 5th April 2016 but leaves pensionable employment on or after 6th April 2016.

(1A) Where paragraph (1) applies, the member's guaranteed minimum pension at the date of leaving will be increased, when the member reaches guaranteed minimum pension age or dies (if earlier), by the appropriate percentage specified in relation to each relevant year in the last order under section 148 of the Social Security Administration Act 1992 (revaluation of earnings factors) to come into force before the tax year in which the member reaches guaranteed minimum pension age or dies (if earlier).]

(2) If a guaranteed minimum pension is to be transferred to another scheme, or bought out by a buy-out policy, under which early leavers' guaranteed minimum pensions are increased by a method other than that described in <sup>F109</sup>paragraph (1A)], the Scottish Ministers may adopt that other method for the guaranteed minimum pension in question.

(3) If a member <sup>F110</sup>to whom paragraph (1) applies returns to pensionable] employment under this Section of the scheme within six months after leaving, the two periods of <sup>F111</sup>... employment will be treated as continuous, unless the first period is covered by—

- (a) a state scheme premium under Chapter III of Part III of the 1993 Act, or
- (b) a transfer to another occupational pension scheme or to a personal pension scheme, or
- (c) any guaranteed minimum pensions being bought out under a buy-out policy.

*Status: Point in time view as at 25/03/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)*

#### Textual Amendments

- F108** Reg. K4(1)(1A) substituted for reg. K4(1) (with effect in accordance with reg. 1(2)(f) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), **7(a)** (with reg. 53)
- F109** Words in reg. K4(2) substituted (with effect in accordance with reg. 1(2)(f) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), **7(b)** (with reg. 53)
- F110** Words in reg. K4(3) substituted (with effect in accordance with reg. 1(2)(f) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), **7(c)(i)** (with reg. 53)
- F111** Word in reg. K4(3) omitted (with effect in accordance with reg. 1(2)(f) of the amending S.S.I.) by virtue of [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), **7(c)(ii)** (with reg. 53)

#### Guaranteed minimum pensions transferred to this Section of the scheme

**K5.**—<sup>F112</sup>(1) This paragraph applies where a guaranteed minimum pension has been transferred to this Section of the scheme and the member—

- (a) subsequently leaves contracted-out employment under this Section of the scheme before 6th April 2016; or
- (b) was in contracted-out employment under this Section of the scheme on 5th April 2016 but leaves pensionable employment on or after 6th April 2016.

(1A) Where paragraph (1) applies, the guaranteed minimum pension transferred to this Section of the scheme will be increased for each complete tax year after the date of leaving under this Section of the scheme in which the transferred guaranteed minimum pension accrued, until the member reaches guaranteed minimum pension age or dies (if earlier).]

(2) If the transfer is from another occupational pension scheme, the guaranteed minimum pension will be increased by the appropriate percentage specified in relation to each relevant year in the last order under section 148 of the Social Security Administration Act 1992 (revaluation of earnings factors) to come into force before the tax year in which the member reaches guaranteed minimum pension age or dies (if earlier).

(3) If the transfer is from a buy-out policy, the guaranteed minimum pension will be increased by the same method as was in use under the policy or by the appropriate percentage specified in relation to each relevant year in the last order under section 148 of the Social Security Administration Act 1992 to come into force before the tax year in which the member reaches guaranteed minimum pension age or dies (if earlier).

#### Textual Amendments

- F112** Reg. K5(1)(1A) substituted for reg. K5(1) (with effect in accordance with reg. 1(2)(f) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), **8** (with reg. 53)

#### Protected rights transferred to this Section of the scheme

**K6.**—(1) Where<sup>F113</sup>, before 6th April 2012,] protected rights have been transferred to this Section of the scheme from another occupational pension scheme or a personal pension scheme, the protected rights will be used to provide guaranteed minimum pensions equal to those to which the member

and the member's spouse or civil partner would have been treated as entitled under the transferring scheme had the transfer not been made.

(2) Any guaranteed minimum pensions to which a member and the member's spouse or civil partner are entitled by virtue of paragraph (1) will be revalued as described in regulation K5(2) (transferred guaranteed minimum pensions).

#### Textual Amendments

**F113** Words in reg. K6(1) inserted (with effect in accordance with reg. 1(5) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **15** (with reg. 71)

#### State scheme premiums

**K7.**—(1) Subject to paragraph (3) the Scottish Ministers may discharge their liability to provide guaranteed minimum pensions by paying a state scheme premium under Chapter III of Part III of the 1993 Act.

(2) Where a member, or a member's widow, widower or surviving civil partner, is entitled to a pension under this Section of the scheme in respect of a period for which a contributions equivalent premium has been paid under section 55(2) of the 1993 Act the pension will be reduced by the amount of the guaranteed minimum pension that would have been payable under this Section of the scheme to the member, widow, widower or surviving civil partner as the case may be, if the contributions equivalent premium had not been paid.

(3) Notwithstanding paragraph (1) the Scottish Ministers may not discharge any liability under paragraph (1) when a female member dies with less than 2 years' service.

## PART L

### EARLY LEAVERS RETURNING TO PENSIONABLE EMPLOYMENT

#### Treatment of pensionable service of early leavers returning to pensionable employment

**L1.**—(1) This regulation applies to any member who leaves pensionable employment without becoming entitled to an immediate pension under regulation E1 to E11 (pensions for members) and later returns to pensionable employment before becoming entitled to receive a pension under this Section of the scheme.

(2) Subject to paragraph (5), if the member leaves pensionable employment with a preserved pension and then returns to pensionable employment within 12 months after leaving, the member will cease to be entitled to the preserved pension under regulation E12 and the member's pensionable service before and after the break will be treated as continuous.

(3) Where the member leaves NHS employment with a preserved pension and then returns to pensionable employment 12 months or more after leaving—

- (a) the member's pensionable service before and after the break will be treated separately unless, when the member becomes entitled to receive a pension or the member dies (whichever occurs first), it would be more favourable to the member to treat the member's pensionable service before and after the break and all other such breaks (if any) as continuous; in which case it will be treated as continuous; and
- (b) where the member becomes entitled to receive a pension under regulation E2 [F114(early retirement pension on ill health grounds (pre 1st April 2008))] or E3 [F115(early retirement

*Status: Point in time view as at 25/03/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)*

pension on ill health grounds (post 1st April 2008)], the pensionable service upon which that pension is based will be increased as described in paragraphs (5) to (7) of regulation E2 or (4) to (6) of regulation E3, whichever is applicable, if the member's pensionable service before and after the break is treated as continuous; [<sup>F116</sup>but there will be no such increase to any of the member's pensionable service if the member's pensionable service before and after the break is treated separately].

(4) Subject to regulation L2, if the member leaves pensionable employment without becoming entitled to a preserved pension and then returns to pensionable employment within 12 months after leaving, the member's pensionable service before and after the break will be treated as continuous.

(5) Where paragraph (4) applies and the member has received a refund of contributions in respect of pensionable service before the break, the member's pensionable service before and after the break will be treated as continuous provided that the member returns within 12 months, and, within 6 months after rejoining this Section of the scheme, the member pays to the Scottish Ministers an amount equal to the refund of contributions including any interest paid.

#### Textual Amendments

- F114** Words in reg. L1(3)(b) substituted (with effect in accordance with reg. 1(7) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/364\)](#), regs. 1(2), **10(a)**
- F115** Words in reg. L1(3)(b) substituted (with effect in accordance with reg. 1(7) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/364\)](#), regs. 1(2), **10(b)**
- F116** Words in reg. L1(3)(b) substituted (1.12.2011) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/364\)](#), regs. 1(2), **10(c)**

#### Calculation of benefits

**L2.**—(1) If the member's pensionable service before and after the break is treated as continuous, the member's pensionable employment before and after the break will be treated as continuous for the purpose of calculating the member's final year's pensionable pay under regulation C1 for any specified period of pensionable employment.

(2) If a member's pensionable service before and after a break in pensionable employment is treated separately, the member's benefits in respect of each period of pensionable employment shall be calculated—

- (a) separately; and
- (b) by reference to—
  - (i) the member's pensionable service before and after a break in pensionable employment as the case may be; and
  - (ii) the member's final pensionable pay in respect of that particular period, as if that period had been the member's only period of pensionable employment.

#### Preserved pension to count as qualifying service

**L3.** If a member leaves pensionable employment with a preserved pension and, after returning, again leaves pensionable employment without becoming entitled to an immediate pension under regulation E1 to E11 (pensions for members), the member will be entitled to a preserved pension under regulation E12 in respect of the period after the break whether or not the member has 2 years' qualifying service in respect of that period.

### Continuation of additional contributions

**L4.** A member whose pensionable service before and after a break is treated as continuous and who, before the break, was paying for additional benefits by regular additional contributions under regulation Q5 (paying for additional service or unreduced retirement lump sum) must continue to pay for those additional benefits after the break.

## PART M

### TRANSFER-OUT ARRANGEMENTS AND BUY-OUTS

#### Member's right to a transfer or a buy-out

**M1.**—(1) A member who leaves pensionable employment with a preserved pension has the right to require the Scottish Ministers to transfer or buy-out the member's rights under this Section of the scheme as described in this regulation.

(2) Subject to the following provisions of this regulation, the member may require the Scottish Ministers to use the cash equivalent of the member's rights under this Section of the scheme—

- (a) to purchase one or more buy-out policies from one or more insurance companies chosen by the member [<sup>F117</sup>which satisfies or satisfy the requirements set out in regulation 12(2) of the Occupational Pension Schemes (Transfer Values) Regulations 1996];
- (b) to acquire rights under—
  - (i) another occupational pension scheme; or
  - (ii) a personal pension scheme,<sup>F118</sup> ... ;
- (c) to acquire rights under an arrangement that is a qualifying recognised overseas pension scheme for the purposes of section 169(2) (recognised transfers) <sup>M53</sup> of the 2004 Act; or
- (d) in any combination of the ways described in sub-paragraphs (a), (b) and (c).

[<sup>F119</sup>(2A) Any use of the cash equivalent of a member's rights under paragraph (2) must satisfy the requirements of Chapter 1 (transfer rights: general) of Part 4ZA of the 1993 Act.]

(3) The member must exercise the member's right under paragraph (1) in relation to each and every portion of the cash equivalent unless paragraph (4) applies.

(4) The benefits attributable to—

- (a) the member's accrued rights to a guaranteed minimum pension; or
- (b) the member's accrued rights attributable to service in contracted-out employment on or after 6th April 1997,

may be excluded from the cash equivalent transfer value payment if section 96(2) (further provisions concerning exercise of option under s.95) of the 1993 Act applies (trustees or managers of certain receiving schemes or arrangements able and willing to accept a transfer payment only in respect of the member's other rights).

(5) A member who requires the cash equivalent to be used to acquire rights under another occupational pension scheme in accordance with paragraph (2) may exercise the right—

- (a) at any time before reaching age 60; or
- (b) at a later time if the member exercises the right to require a transfer on the transfer of the member's employment to a new employer as a result of a transfer of an undertaking to that employer.

*Status: Point in time view as at 25/03/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)*

(6) A member may require the Scottish Ministers to use the cash equivalent of the member's rights under this Section of the scheme to purchase one or more buy-out policies or to acquire rights under a personal pension scheme only—

- (a) if the member leaves pensionable employment on or after 1st January 1986; and
- (b) if those rights are to be transferred to a personal pension scheme, in relation to any period of service of 2 years or more falling before 6th April 1988, only if a period of not less than one month has elapsed between the date the member left NHS employment and the date of commencement of any further NHS employment.

(7) Paragraph (8) applies where a member—

- (a) leaves pensionable employment by opting-out;
- (b) on so doing becomes entitled to a preserved pension under regulation E12 (preserved pension); and
- (c) has at least 2 years' service before 6th April 1988.

(8) In relation to the member's rights—

- (a) the member's right to require a transfer or buy-out will be limited to the cash equivalent of the part of the member's rights that is attributable to service after 5 April 1988; and
- (b) the member will acquire a right to the cash equivalent of the member's remaining rights only if the member actually leaves NHS employment before reaching age 60.

(9) A member who leaves pensionable employment before reaching age 60, without becoming entitled to a pension under any of regulations E1 to E11 or a preserved pension under regulation E12 will be treated, for the purposes of regulations M1 to M5, as if the member had left pensionable employment with a preserved pension, except that—

[<sup>F120</sup>(za) a member may require the cash equivalent to be used to acquire rights in one or more of the ways permitted under section 101AE of the 1993 Act;]

- (a) a member who requires the cash equivalent to be used to buy one or more buy-out policies must exercise the right to buy-out within 12 months after leaving pensionable employment; and
- (b) a member who requires the cash equivalent to be used to acquire rights under another occupational pension scheme, a personal pension scheme or a qualifying recognised overseas pension scheme must join that other scheme within 12 months after leaving pensionable employment and exercise the right to transfer within 12 months after joining that other scheme.

#### Textual Amendments

**F117** Words in reg. M1(2)(a) inserted (13.3.2017) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), **9(a)** (with reg. 53)

**F118** Words in reg. M1(2)(b) omitted (13.3.2017) by virtue of [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), **9(b)** (with reg. 53)

**F119** Reg. M1(2A) inserted (13.3.2017) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), **9(c)** (with reg. 53)

**F120** Reg. M1(9)(za) inserted (1.4.2015) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/96\)](#), regs. 1(2), **14**

### Marginal Citations

**M53** To which there are amendments not relevant to these Regulations.

### Exercising a right to a transfer or a buy-out

**M2.**—(1) A member who wishes to exercise the member's right to a transfer or a buy-out must apply in writing to the Scottish Ministers for a statement of the amount of the cash equivalent of the member's accrued benefits under this Section of the scheme at the guarantee date (“statement of entitlement”).

(2) In these Regulations, “the guarantee date” means any date that—

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

(3) In counting the period of 10 days referred to in paragraph (2)(d), Saturdays, Sundays, Christmas Day, New Year's Day and Good Friday are excluded.

(4) In paragraph (2) “the required period” means—

- (a) the period of 3 months beginning with the date of the member's application for a statement of entitlement; or
- (b) such longer period beginning with that date (but not exceeding six months) as may reasonably be required if, for reasons beyond the control of the Scottish Ministers, the requisite information cannot be obtained to calculate the amount of the cash equivalent.

(5) The member may withdraw the application for a statement of entitlement by notice in writing at any time before the statement is provided.

### Amount of member's cash equivalent

**M3.**—(1) Subject to the following provisions of this regulation, the member's guaranteed cash equivalent will be equal to the capitalised value of all the member's accrued rights to benefits under this Section of the scheme and any associated rights under Part I of the Pensions (Increase) Act 1971 <sup>M54</sup>.

(2) The Scottish Ministers must—

- (a) take advice from the scheme actuary before determining the factors to be used in the calculation of the member's guaranteed cash equivalent; and
- (b) calculate and verify the amount of the guaranteed cash equivalent in accordance with the Occupational Pension Scheme (Transfer Values) Regulations 1996 <sup>M55</sup>.

(3) Except in the case of a transfer payment accepted under regulation N5 (transfers in respect of members to whom regulation B6 applies who elect to rejoin this Section of the scheme), a member's cash equivalent will be at least equal to the amount of any transfer payments accepted in respect of the member under regulation N1(5) (member's right to transfer accrued rights to benefits to this Section of the scheme), plus the amount of the member's contributions to this Section of the scheme.

(4) If a member's cash equivalent is used to acquire rights under another occupational pension scheme, any part of the cash equivalent that relates to service before 29th January 1988 will be calculated as described in the 1980 Regulations as applicable immediately before that date, if this would be more favourable to the member.

*Status: Point in time view as at 25/03/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)*

(5) If the transfer value payment is made under the public sector transfer arrangements, the amount of the transfer value payment is calculated—

- (a) in accordance with those arrangements rather than paragraphs (2) and (3); and
- (b) by reference to the guidance and tables provided by the scheme actuary for the purposes of this paragraph that are in use on the date used for the calculation.

(6) In any case where the Scottish Ministers have directed, under regulation T7 (loss of rights to benefits), that part of a member's benefits under these Regulations is forfeited, the cash equivalent payable in respect of that member will be reduced by the capitalised value of the forfeited part of those benefits.

#### **Marginal Citations**

**M54** 1971 c.56.

**M55** S.I. 1996/1847.

#### **Applications for transfer value payments - general**

**M4.**—(1) A member who has applied for and received a statement of entitlement under regulation M2 may apply in writing to the Scottish Ministers for a transfer value payment to be made.

(2) On making such an application a member becomes entitled to a payment of an amount equal, or amounts equal in aggregate, to the amount specified in the statement of entitlement (or such other amount as may be payable by virtue of regulation M5(2)).

(3) In these Regulations such a payment is referred to as “the guaranteed cash equivalent transfer value payment”.

(4) The application must specify the pension scheme or other arrangement to which the payment or payments should be applied.

(5) The application must meet such other conditions as the Scottish Ministers may require.

(6) An application under this regulation may be withdrawn by notice in writing to the Scottish Ministers, unless an agreement for the application of the whole or part of the guaranteed cash equivalent transfer value payment has been entered into with a third party before the notice is given.

#### **Applications for transfer value payments: time limits**

**M5.**—(1) Subject to paragraph (5), an application under regulation M4 must be made before the end of the period of 3 months beginning with the guarantee date, and the payment must be made no later than—

- (a) 6 months after that date; or
- (b) if it is earlier, the date on which the member reaches 60.

(2) If the payment is made later than 6 months after the guarantee date, the amount of the payment to which the member is entitled must be increased by—

- (a) the amount by which the amount specified in the statement of entitlement falls short of the amount it would have been if the guarantee date had been the date on which the payment is made; or
- (b) if it is greater and there was no reasonable excuse for the delay in payment, interest on the amount specified in the statement of entitlement, calculated on a daily basis over the period from the guarantee date to the date when the payment is made at an annual rate of 1% above the Bank of England base rate.

(3) In this regulation “Bank of England base rate” means—



- (a) except where sub-paragraph (b) applies, the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets; or
  - (b) if an order under section 19 (reserve powers) of the Bank of England Act 1998 <sup>M56</sup> is in force, any equivalent rate determined by the Treasury under that section.
- (4) Paragraph (5) applies if—
- (a) disciplinary or court proceedings against the member are begun within 12 months after the member leaves the employment which qualified the member to belong to this Section of the scheme; and
  - (b) it appears to the Scottish Ministers that the proceedings may lead to all or part of the member's benefits being forfeited under regulation T7 (loss of rights to benefits).
- (5) The Scottish Ministers may defer doing what is needed to carry out what the member requires until the end of the period of 3 months beginning with the date on which those proceedings (including any proceedings on appeal) are concluded.
- (6) In any case where a direction is given under regulation T7 for the forfeiture of a member's benefits, this regulation applies as if the amount specified in the statement of entitlement were reduced by an amount equal to the value of the benefits forfeited, as determined by the scheme actuary.
- (7) Subject to paragraph (8), if a transfer value payment is made in respect of a member's rights under this Section of the scheme, those rights are extinguished.
- (8) If the member's rights described in regulation M1(4) have been excluded from the transfer payment, the Scottish Ministers will continue to be liable to provide the benefits described in regulation K2(7) (guaranteed minimum pensions).

**Marginal Citations**

M56 1998 c.11.

**Special terms for transfer out (bulk transfers etc.)**

**M6.**—(1) If one or more members (the transferring members)—

- (a) leave pensionable employment;
- (b) join another occupational pension scheme; and
- (c) exercise a right to transfer to that scheme under regulation M2,

the Scottish Ministers may, after taking advice from this Section of the scheme's actuary, make a single transfer payment to that scheme in respect of the transferring members.

(2) The Scottish Ministers must calculate the amount of any transfer payment paid under this regulation taking advice from this Section of the scheme's actuary.

**Member's right to transfer a preserved pension to the 2008 Section**

**M7.**—(1) If a member meets the conditions referred to in paragraph (3) and subject to the following provisions of this regulation, the member may require the Scottish Ministers to use the cash equivalent of the member's rights under these Regulations to acquire rights referred to in the 2008 Section.

*Status: Point in time view as at 25/03/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)*

- (2) A member's right to require the Scottish Ministers to use the cash equivalent of the member's rights in the way referred to in paragraph (1) may only be exercised once.
- (3) The conditions referred to in paragraph (1) are that the member—
- (a) is entitled to a deferred benefit under regulation E12 (preserved pension);
  - (b) may not join this Section of the scheme in respect of any further NHS employment by virtue of regulation B2(1)(i), (k) or (l); and
  - (c) becomes an active member of the 2008 Section [<sup>F121</sup>on or before 31st March 2015 and] before attaining the age of 60.
- (4) The Scottish Ministers must provide a member to whom this regulation applies with a statement of the amount of the cash equivalent of the member's benefits accrued in accordance with these Regulations at the guarantee date (“a statement of entitlement”).
- (5) In this regulation “the guarantee date” means any date that—
- (a) falls within the required period;
  - (b) is chosen by the Scottish Ministers;
  - (c) is specified in the statement of entitlement; and
  - (d) is within the period of 10 days ending with the date on which the member is provided with the statement of entitlement.
- (6) In counting the period of 10 days referred to in paragraph (5)(d), Saturdays, Sundays, Christmas Day, New Year's Day and Good Friday are excluded.
- (7) In paragraph (5)(a), “the required period” means—
- (a) the period of three months beginning with the date that the Scottish Ministers receive notification from the member's employing authority that the member has joined the 2008 Section; or
  - (b) such longer period beginning with that date (but not exceeding six months) as may be reasonably required if, for reasons beyond the control of the Scottish Ministers, the requisite information cannot be obtained to calculate the amount of the cash equivalent.
- (8) Subject to paragraphs (9) to (11), the member's guaranteed cash equivalent will be equal to the capitalised value of all of the member's rights to benefits accrued under these Regulations and any associated rights under Part I of the Pensions (Increase) Act 1971.
- (9) The Scottish Ministers must—
- (a) take advice from the scheme actuary before determining the factors to be used in the calculation of the member's guaranteed cash equivalent; and
  - (b) calculate and verify the amount of the guaranteed cash equivalent in accordance with the Occupational Pension Schemes (Transfer Values) Regulations 1996.
- (10) Except in the case of a transfer payment accepted under regulation N5 (transfers in respect of members to whom regulation B6 applies who elect to rejoin this Section of the scheme), a member's cash equivalent will be at least equal to the amount of any transfer payments accepted in respect of the member under regulation N1(5) (which deals with the crediting of additional service upon transfer), plus the amount of the member's contributions to this Section of the scheme.
- (11) Any part of the cash equivalent that relates to the service before 29th January 1988 will be calculated as described in the 1980 Regulations as applicable immediately before that date, if this would be more favourable to the member.
- (12) A member who has received a statement of entitlement in accordance with paragraph (4) may apply to the Scottish Ministers for the cash equivalent of the member's rights under this Section of the scheme to be used to acquire rights under the 2008 Section.

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

- (a) made in writing on the form provided for this purpose by the Scottish Ministers;
- (b) made before the end of the period of three months beginning with the guarantee date; and
- (c) irrevocable.

(14) On the making of such an application—

- (a) a member becomes entitled to be credited with a period of pensionable service or an equivalent increase to the member's pensionable earnings in the 2008 Section in respect of the cash equivalent value of the member's benefits under this Section of the scheme calculated in accordance with whichever of regulation 2.F.17 or 3.F.17 of the 2008 Section apply to the member, and
- (b) the member's rights under this Section of the scheme are extinguished on the day that the member is credited with a period of pensionable service or pensionable earnings in accordance with regulations 2.F.17 or 3.F.17 (transfers across from the National Health Service superannuation scheme for Scotland 1995) (as the case may be) of the 2008 Section.

#### Textual Amendments

**F121** Words in reg. M7(3)(c) inserted (1.4.2015) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/96\)](#), regs. 1(2), **15**

#### <sup>F122</sup>Member's right to transfer a preserved pension to the 2015 Scheme

**M7A.**—(1) An active member of the 2015 Scheme, who meets both condition A and one of either condition B or condition C, may require the Scottish Ministers to use the cash equivalent of the member's rights under this Section of the scheme to acquire rights in the 2015 Scheme: this is subject to the following provisions of this regulation.

(2) Condition A is that the member—

- (a) is entitled to a deferred benefit under regulation E12,
- (b) has not been a member of the 2008 Section, and
- (c) became an active member of the 2015 Scheme before attaining the age of 60.

(3) Condition B is that the member has a break in pensionable employment for any one period of more than five years beginning with the day immediately following the cessation of the pensionable employment in respect of which that person is entitled to the pension referred to in paragraph (2)(a), and ending on the day immediately before the person became an active member of the 2015 Scheme in accordance with paragraph (2)(c).

(4) Condition C is that the member—

- (a) has a break in active membership of the 2015 Scheme for any one period of more than five years which is the first break of such a period since that membership commenced, and
- (b) has not previously had a break in pensionable employment before becoming an active member of the 2015 Scheme which would satisfy condition B.

(5) For the purposes of paragraphs (3) and (4), any break in pensionable employment where the member was in pensionable public service as defined in paragraph 3(2) of Schedule 7 to the 2013 Act is to be disregarded.

[

<sup>F123</sup>(5A) The Scottish Ministers must provide a member to whom this regulation applies with a notice in writing stating that the member has the right to request a statement of the amount of the cash equivalent of the member's benefits accrued in accordance with these Regulations ("a statement of entitlement").

(5B) The Scottish Ministers must provide the member with the notice referred to in paragraph (5A) within the period of three months beginning with the date on which the Scottish Ministers receive notification from the member's employing authority that the member has joined the 2015 Scheme.

(5C) In accordance with paragraph (5D), a member who has received a notice provided in accordance with paragraph (5A) may request the Scottish Ministers to provide a statement of entitlement.

(5D) For the purposes of paragraph (5C), a request for a statement of entitlement must—

- (a) be made by the member in writing on the form provided by the Scottish Ministers for that purpose;
- (b) be received by the Scottish Ministers before the end of the three month period beginning with the date of the notice under paragraph (5A).]

<sup>F124</sup>(6) The Scottish Ministers must provide a member who has requested a statement of entitlement in accordance with paragraph (5D) with a statement of entitlement at the guarantee date.]

(7) In this regulation, "the guarantee date" means any date that falls within the required period and is—

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

(8) In counting the period of 10 days referred to in paragraph (7)(c), Saturdays, Sundays, Christmas Day, New Year's Day and Good Friday are excluded.

(9) In paragraph (7), "the required period" means—

- <sup>F125</sup>(a) the period of three months beginning with the date on which the Scottish Ministers receive the member's request for a statement of entitlement made in accordance with paragraph (5D); or]
- (b) such longer period beginning with that date (but not exceeding six months) as may be reasonably required if, for reasons beyond the control of the Scottish Ministers, the requisite information cannot be obtained to calculate the amount of the cash equivalent.

(10) Subject to paragraphs (11) to (13), the member's guaranteed cash equivalent shall be equal to the capitalised value of all of the member's rights to benefits accrued under these Regulations and any associated rights under Part 1 of the Pensions (Increase) Act 1971.

(11) The Scottish Ministers shall—

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

(12) Except in the case of a transfer payment accepted under regulation N5, a member's cash equivalent will be at least equal to the amount of any transfer payments accepted in respect of the member under regulation N1(5), plus the amount of the member's contributions to this Section of the scheme.

(13) A member who has received a statement of entitlement in accordance with paragraph (6) may apply to the Scottish Ministers for the cash equivalent of the member's rights under this Section of the scheme to be used to acquire rights under the 2015 Scheme.

(14) An application under this regulation must be made in respect of each and every portion of the cash equivalent and is—

- (a) to be made in writing on the form provided for this purpose by the Scottish Ministers;
- (b) to be made before the end of the period of three months beginning with the guarantee date;
- (c) irrevocable.

(15) On the making of such an application—

- (a) a member becomes entitled to be credited with an increase to the member's pensionable earnings and a period of pensionable service in the 2015 Scheme in respect of the cash equivalent value of the member's benefits under this Section of the scheme calculated in accordance with regulation 144 of the 2015 Scheme, and
- (b) the member's rights under this Section of the scheme are extinguished on the day that the member is credited with an increase to the member's pensionable earnings and a period of pensionable service in accordance with regulation 144 of the 2015 Scheme.

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

#### Textual Amendments

- F122** Reg. M7A inserted (1.4.2015) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/96\)](#), regs. 1(2), **16**
- F123** Regs. M7A(5A)-(5D) inserted (31.1.2018) by [The National Health Service Superannuation Scheme \(Scotland\) \(Miscellaneous Amendments\) \(No. 2\) Regulations 2017 \(S.S.I. 2017/434\)](#), regs. 1(1), **5(2)** (with reg. 19)
- F124** Reg. M7A(6) substituted (31.1.2018) by [The National Health Service Superannuation Scheme \(Scotland\) \(Miscellaneous Amendments\) \(No. 2\) Regulations 2017 \(S.S.I. 2017/434\)](#), regs. 1(1), **5(3)** (with reg. 19)
- F125** Reg. M7A(9)(a) substituted (31.1.2018) by [The National Health Service Superannuation Scheme \(Scotland\) \(Miscellaneous Amendments\) \(No. 2\) Regulations 2017 \(S.S.I. 2017/434\)](#), regs. 1(1), **5(4)** (with reg. 19)

#### Waiver of transfer payments

**M8.** If an occupational pension scheme waives payment of any cash equivalent or transfer payment that would otherwise be payable to it under regulations M1 to M6, the payment will nevertheless be treated as made for the purposes of these Regulations.

## PART N

### TRANSFERS-IN FROM OTHER PENSION ARRANGEMENTS

#### Member's right to transfer accrued rights to benefits to this Section of the scheme

**N1.**—(1) Within 12 months after joining this Section of the scheme, a member in pensionable employment may, in writing, request the Scottish Ministers to accept a transfer payment in respect of the member's rights under another occupational pension scheme, a personal pension scheme, or a buy-out policy but not in respect of rights under a free-standing AVC scheme—

*Status: Point in time view as at 25/03/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)*

- (a) established on, or after, 6th April 2006 as a registered free-standing AVC scheme for the purposes of the 2004 Act; or
  - (b) which on 6th April 2006 became a registered free-standing AVC scheme for the purposes of the 2004 Act and which immediately before that date was approved by the Commissioners for Her Majesty's Revenue and Customs by virtue of section 591(2)(h) of the Taxes Act (free-standing AVC schemes).
- (2) The Scottish Ministers must not accept the transfer payment unless—
- (a) the transferring scheme or insurance company provides all the information about the member's rights that the Scottish Ministers reasonably require; and
  - (b) the amount of the transfer payment that relates to rights accrued in the transferring scheme before 6th April 1997 is not less than the yearly rate of the guaranteed minimum pension for which the Scottish Ministers would be liable as a result of accepting the transfer payment, multiplied by the factor appropriate to the member's age, as set out in the following table:—

<i>Member's age</i>	<i>Appropriate factor</i>
29 or under	8
30-39	9
40-49	10
50 or over	12

- (3) Except in the case of a person to whom regulation B6 applies, the Scottish Ministers must not accept a transfer payment if—
- (a) except where paragraph (4) applies, the member joins this Section of the scheme, or requests the Scottish Ministers to accept the transfer payment, after reaching age 60; or
  - (b) the request is made following a notice given under regulation B5 <sup>F126</sup>(joining or rejoining this Section of the scheme after opting out)] in circumstances where the member had a previous opportunity to request the Scottish Ministers to accept a transfer payment in respect of those same rights but did not take that opportunity.
- (4) This paragraph applies where the member's employment is transferred to an employing authority as a result of a transfer of an undertaking to that employing authority.
- (5) If the Scottish Ministers accept the transfer payment, the member will be credited with an additional period of service under this Section of the scheme in respect of the transfer payment, as described in whichever of regulations N3 (transfers made under the Public Sector Transfer Arrangements), N4 (transfers that are not made under the Public Sector Transfer Arrangements) and N5 (transfers in respect of members to whom regulation B6 applies who elect to rejoin this Section of the scheme) is applicable.
- (6) For the purposes of calculating a member's final year's pensionable pay any period of service with which a member is credited in respect of a transfer payment will be treated as pensionable employment and the pensionable pay by reference to which that service is calculated will be treated as pensionable pay received in respect of that employment.

#### **Textual Amendments**

**F126** Words in reg. N1(3)(b) substituted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\), regs. 1\(2\), 16 \(with reg. 71\)](#)

### Transfers in from health service schemes

N2. In the case of a member transferring in service from another health service scheme the time limit referred to in regulation N1 will not apply in respect of service from such a scheme.

### Transfers made under the Public Sector Transfer Arrangements

N3.—(1) Subject to paragraph (2), if the transfer is from another occupational pension scheme that participates in the Public Sector Transfer Arrangements, the additional period of pensionable service to be credited to the member in respect of the transfer payment will be equal to the period that, if used to calculate a cash equivalent under regulation M3 (amount of member's cash equivalent), would produce an amount equal to the amount of the transfer payment.

(2) Paragraph (1) applies only if the transfer payment—

- (a) represents all the member's benefits under the transferring scheme; and
- (b) is calculated in a manner that is consistent with the actuarial methods and assumptions used by the Scottish Ministers to calculate cash equivalents under regulation M3, in the case of transfers under the Public Sector Transfer Arrangements.

(3) For the purpose of calculating the additional period of pensionable service under paragraph (1), regard shall be had to the member's age and marital status, and to the yearly rate of pay and any other factor notified to the Scottish Ministers by the trustees or managers of the transferring scheme as having been taken into account for the purpose of calculating the amount of the transfer payment.

### Transfers that are not made under the Public Sector Transfer Arrangements

N4.—(1) Except where regulation [F127N3] (transfers made under the Public Sector Transfer Arrangements) applies, the additional period of pensionable service to be credited to the member in respect of the transfer payment will be calculated in a manner that is consistent with the actuarial methods and assumptions used by the Scottish Ministers to calculate cash equivalents under regulation M3 (amount of member's cash equivalent), in the case of transfers that are not made under Public Sector Transfer Arrangements.

(2) When calculating the additional period of pensionable service under paragraph (1), due allowance will be made for the expected increase in the pensionable pay of all members of the same age as the member in respect of whom the transfer payment is being accepted between the date on which that member joins this Section of the scheme (or the date on which the transfer payment is accepted, if this is more than 12 months later) and the date on which the member will reach age 60.

#### Textual Amendments

F127 Word in reg. N4(1) substituted (with effect in accordance with reg. 1(4) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2012 \(S.S.I. 2012/163\)](#), regs. 1(2), 4 (with reg. 30)

### Transfers in respect of members to whom regulation B6 applies who elect to [F128]join or rejoin this Section of the scheme after opting out]

N5.—(1) In the case of a member to whom regulation B6 applies, this regulation applies for the purpose of calculating the amount of the transfer payment by reference to which an additional period of pensionable service may be credited by the Scottish Ministers to that member.

(2) Subject to paragraphs (3) and (4), the transfer payment in respect of which an additional period of pensionable service may be credited by the Scottish Ministers to a member referred



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to in paragraph (1) shall be calculated in a manner that is consistent with the actuarial methods and assumptions used by the Scottish Ministers to calculate cash equivalents under regulation M3 (amount of members cash equivalent) in the case of transfers that are not made under the Public Sector Transfer Arrangements and will be of an amount equal to the total amount of—

- (a) an amount which would enable the member to be credited by this Section of the scheme with such additional period of pensionable service as the Scottish Ministers may approve in respect of the period during which the member made contributions to a personal pension scheme (“the relevant scheme”);
- (b) the amount of the cash equivalent, if any, which the member transferred to the relevant scheme by exercising a right under regulation M2 (exercising a right to transfer or buy-out) (“the transferred rights”); and
- (c) an amount, to be determined from time to time by the scheme actuary, which represents the income which would have been received on the amount referred to in sub-paragraph (b) had that amount been invested during the period commencing at the end of the month in which it was paid by this Section of the scheme to the relevant scheme and ending at the end of the month in which the transfer payment was paid to this Section of the scheme by the relevant scheme.

(3) The amount, if any, payable by virtue of paragraphs 2(b) and (c) will be at least equal to the amount of the cash equivalent transfer value which would be payable by this Section of the scheme in respect of the transferred-out service if this Section of the scheme were to pay a cash equivalent transfer value in respect of that service immediately after the time at which the transfer payment is paid to this Section of the scheme by the relevant scheme.

(4) In the case of a member to whom regulation B6 applies who has been credited with an additional period of pensionable service calculated as specified in regulation N4 (transfers that are not made under the Public Sector Transfer Arrangements), the Scottish Ministers may adjust the amount of the transfer payment referred to in paragraph (2) on account of the payment by reference to which that pensionable service was credited.

(5) In this regulation—

“personal pension scheme” has the same meaning as in regulation B6;

“transfer payment” means the payment payable to this Section of the scheme by the relevant scheme in respect of a member to whom regulation B6 applies who elects to join or rejoin this Section of the scheme; and

“transferred-out service” means the period of pensionable service which the member transferred-out of this Section of the scheme by exercising a right under regulation M2 (exercising a right to transfer or buy-out)

#### **Textual Amendments**

**F128** Words in reg. N5 heading substituted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by virtue of [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), 17 (with reg. 71)

#### **Special terms for transfers in (bulk transfers etc.)**

**N6.**—(1) This regulation applies where one or more members of another occupational pension scheme (“the transferring members”)—

- (a) cease to be in pensionable employment under that scheme,
- (b) join this Section of this scheme, and



- (c) consent in writing to a transfer payment being accepted in respect of them and pensionable service being credited to them as mentioned in paragraphs (2) and (3).
- (2) The Scottish Ministers may, after taking advice from the scheme actuary, accept a single transfer payment in respect of the transferring members.
- (3) Where such a transfer payment is accepted, each of the transferring members shall be credited with such additional period of pensionable service as the Scottish Ministers determine to be appropriate after taking advice from the scheme actuary.

## PART P

### ABSENCE FROM WORK

#### Maternity, paternity and adoption absence

**P1.**—(1) A period of absence for pregnancy or confinement, or for paternity, parental<sup>F129</sup>, shared parental] or adoption leave will count as pensionable service for so long as the member contributes to this Section of the scheme.

(2) If the earnings used to calculate a member's pensionable pay are reduced during a period of absence for pregnancy or confinement, or for paternity, parental<sup>F130</sup>, shared parental] or adoption leave, then for the purpose of calculating the member's contributions to this Section of the scheme, pensionable pay for the period of absence will be calculated on the basis of the member's reduced earnings and if the member's earnings are subsequently suspended the member's contributions will be calculated on the basis of the member's reduced earnings immediately before the commencement of unpaid absence.

(3) The rate of contributions payable will be the rate that would have been payable on the basis of reduced earnings in accordance with paragraph (2) had the member's reduced earnings excluded any earnings for a day during which the member returned to work for the purposes of keeping in touch with the workplace.

(4) If a member is not entitled to paid maternity, paternity, parental<sup>F131</sup>, shared parental] or adoption leave under the member's terms of employment or under statute, for the purpose of calculating the member's contributions to this Section of the scheme, pensionable pay for the period of absence will be calculated on the basis of the member's pensionable pay immediately before the absence started.

(5) For all purposes (including employer contributions) other than calculating the member's contributions to this Section of the scheme, a member's pensionable pay for the period of absence for pregnancy or confinement will be calculated as if no reduction were being made.

(6) For the purposes of this regulation, “maternity leave” includes any day during which the member returns to work for the purposes of keeping in touch with the workplace.

#### Textual Amendments

**F129** Words in reg. P1(1) inserted (with effect in accordance with reg. 1(2)(b) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), **10** (with reg. 53)

**F130** Words in reg. P1(2) inserted (with effect in accordance with reg. 1(2)(b) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), **10** (with reg. 53)

*Status: Point in time view as at 25/03/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)*

**F131** Words in reg. P1(4) inserted (with effect in accordance with reg. 1(2)(b) of the amending S.S.I.) by *The National Health Service Superannuation Scheme (Miscellaneous Amendments) (Scotland) Regulations 2017 (S.S.I. 2017/27)*, regs. 1(1), **10** (with reg. 53)

### **Absence because of illness or injury**

**P2.**—(1) This regulation applies to members who are absent from work because of illness or injury.

(2) If the earnings used to calculate a member's pensionable pay are reduced during a period of absence for illness or injury—

- (a) for the purpose of calculating the member's contributions to this Section of the scheme, pensionable pay for the period of absence will be calculated on the basis of the member's reduced earnings; and
- (b) for all other purposes, the member's pensionable pay for the period of absence will be calculated as if no reduction were being made.

(3) Except for the purpose of regulation Q3(4) (in which event no account will be taken of the suspension), if a member's earnings are suspended during a period of absence for illness or injury, the member will be treated as if the member had left pensionable employment, except that the member will not be entitled to any benefits or refund of contributions until the member actually leaves pensionable employment.

(4) If, on account of illness or injury, a member leaves pensionable employment or, by virtue of paragraph (3), is treated as if the member had left pensionable employment, without becoming entitled to a preserved pension, then if the member later returns to pensionable employment, regulation L1(4) (early leavers returning to pensionable employment) will apply as if the reference to “12 months” was a reference to “3 years”.

(5) The benefits payable on the death of a member whose earnings are suspended during a period of absence from work for illness or injury will be calculated as if the member had died in pensionable employment on the day before the member's earnings were suspended, unless the member has exercised the right to require a transfer or buy-out in accordance with regulation M1 (member's right to require a transfer or buy-out).

### **Absence for reasons other than illness or injury**

**P3.**—(1) If, on or after 1st April 2008, a member is on a leave of absence for reasons other than those referred to in regulation P2 the maximum period of such leave that will count as pensionable employment under this paragraph is—

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

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

- (a) where the member pays to this Section of the scheme both contributions due from the member in accordance with regulation D1 and contributions due from the member's employer in accordance with regulation D2 for a continuous period of 18 months

commencing immediately after the expiry of the period referred to in paragraph (1)(a), 18 months; and

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

(3) If the earnings used to calculate a member's pensionable pay are reduced or suspended during a period of leave of absence for reasons other than illness or injury, "pensionable pay" (and, consequently, the member's contributions and benefits) for the period of absence will be calculated on the basis of the member's earnings immediately before the absence started.

(4) A member who is absent from work without leave and whose earnings are suspended will be treated as if the member had left pensionable employment, except that the member shall not be entitled to any benefits or a refund of contributions until the member returns to or actually leaves pensionable employment.

## PART Q

### RIGHT TO BUY ADDITIONAL SERVICE, UNREDUCED LUMP SUM AND ADDITIONAL PENSION

#### Right to buy additional service

**Q1.**—(1) Subject to the provisions of this regulation and regulations Q3 (paying by single payment) and Q5 (paying by regular additional contributions) a member in pensionable employment may increase the member's rights to benefits by buying additional pensionable service in accordance with the regulations in this Part.

(2) A member may only increase the member's rights to benefits by buying additional service, other than service to which paragraph (16) refers, if—

- (a) the member has given notice of the member's intention to exercise that right—
- (i) in writing; or
  - (ii) in such other form as the Scottish Ministers agree to accept;
- (b) that notice was received by the member's employing authority or this Section of the scheme administrator on or before 31st March 2008;
- (c) the Scottish Ministers accept an election to pay for additional service under regulation Q6; and
- (d) the member makes regular additional contributions in respect of that election from a birthday that falls between 1st April 2008 and 31st March 2009.

(3) A member buying additional service to which paragraph (16) refers, may choose to pay for that additional service by—

- (a) making a single payment in accordance with regulation Q3;
- (b) making regular additional contributions in accordance with regulation Q5; or
- (c) a combination of payments described in sub-paragraphs (a) and (b).

(4) A member buying additional service other than that to which paragraph (16) refers, must pay for that additional service by making regular additional contributions in accordance with regulation Q5.

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**Status:** Point in time view as at 25/03/2020.

**Changes to legislation:** There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)

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(5) A member must exercise the member's right to buy additional service within the time limits described in regulation Q3 or, as the case may be, regulation Q5 and before becoming entitled to receive a pension under regulation E1 (normal retirement pension) or E12 (preserved pension).

(6) Any period of additional service that a member buys will count as pensionable service for all the purposes of this Section of the scheme, except—

(a) for the purpose of calculating whether and, if so, by how much the member's pensionable service should be (or, where the member dies in pensionable employment, would have been) increased as described in regulation E2 (early retirement pension (ill health)) or E3 (ill health pension on early retirement); and

(b) for the purpose of calculating the member's qualifying service in accordance with regulation C3 (qualifying service).

(7) For the purposes of regulation G7 (widower's pension), if a woman exercised her right to buy additional service before 6th April 1988, the additional service bought as a result of that exercise of her right will be treated as service before 6th April 1988.

(8) For the purposes of regulation G10 (surviving civil partner's pension) if a civil partner exercised the civil partner's right to buy additional service before 6th April 1988, the additional service bought as a result of the exercise of that right will be treated as service before 6th April 1988.

(9) For the purpose of regulation G14 (surviving nominated partner's pension) if a member who has a nominated partner exercised the member's right to buy additional service before 6th April 1988, the additional service bought as a result of the exercise of that right will be treated as service before 6th April 1988.

(10) Subject to paragraph (14) and regulation C2(4), the maximum period of additional service that a member may buy is the period set out in the following table opposite the number of years of pensionable service that the member could complete (“potential years of service”) if the member stayed in pensionable employment until age 60 or, in the case of a special class officer, age 55:—

<i>Potential years of service</i>	<i>Maximum period of additional service that member may buy</i>
9	1 year
10	2 years
11	3 years
12	4 years
13	5 years
14	7 years
15	9 years
16	11 years
17	13 years
18	15 years
19	17 years
20 or more	20 years

(11) A member who will not be able to complete at least 9 years' pensionable service prior to reaching age 60 or, in the case of a special class officer, age 55 may not buy any additional service.

(12) A member who—

- (a) joined this Section of the scheme on or after 17th March 1987;
- (b) has made an application prior to 1st September 1997 to buy additional service; and
- (c) does not commence making payments under regulation Q5 until on or after 1st September 1997,

may, up until and including 31st August 1998, elect that paragraph (10) shall cease to apply to that member.

(13) Paragraph (10) ceases to apply to a member who—

- (a) joined this Section of the scheme on or after 17th March 1987;
- (b) makes an application on or after 1st September 1997 to buy additional service; and
- (c) commences payments under regulation Q5 on or after 1st September 1997.

(14) Subject to paragraph (17), the member's right to buy additional service is subject to any limits imposed by Revenue and Customs.

(15) Where a special class officer buys a period of additional service, the amount of the benefits attributable to that period of additional service will be those that would be payable in the case of a member who is not a special class officer.

(16) Where a member, following a break in pensionable employment in respect of which the member received a refund of contributions which has not been repaid, rejoins this Section of the scheme, the member may buy all or any part of the previous pensionable service [<sup>F132</sup>up to and including 5th April 2016 provided that the employment giving rise to that service was not contracted-out employment].

(17) Except in the case of a pension debit member who is a moderate earner, a member may not replace any rights debited as a consequence of a pension sharing order with any rights which the member would not have been able to acquire (in addition to the debited rights) had the pension sharing order not been made.

(18) For the purposes of paragraph (17)—

“moderate earner” means a member whose pensionable pay during the tax year preceding the tax year in which the member's marriage or civil partnership is dissolved or annulled is not more than 25 per cent. of the permitted maximum for the tax year in which the dissolution or annulment occurred;

“pension debit member” means a person whose shareable rights under this Section of the scheme are subject to a debit under section 29(1)(a) of the 1999 Act;

“permitted maximum” means the same as in section 590C of the Taxes Act (earnings cap); and

“tax year” means any year beginning on 6th April and ending on 5th April the following year.

#### Textual Amendments

**F132** Words in reg. Q1(16) substituted (with effect in accordance with reg. 1(2)(f) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), **11** (with reg. 53)

#### Modifications etc. (not altering text)

**C6** Regs. Q1-Q6 modified (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), regs. 1(b), **22**

*Status: Point in time view as at 25/03/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)*

### Right to buy an unreduced retirement lump sum

**Q2.**—(1) Subject to the provisions of this regulation and regulations Q4 (paying by single payment) and Q5 (paying by regular additional contributions) a member in pensionable employment whose service started before 25th March 1972 and who is, or has been, married may make payments to this Section of the scheme to off-set all or part of any reduction in the lump sum payable to the member under regulation E13 (lump sum on retirement).

(2) The member may choose to pay for an unreduced retirement lump sum by making a single payment in accordance with regulation Q4 or by making regular additional contributions in accordance with regulation Q5 or partly in one way and partly in the other.

(3) A member must exercise the right to buy an unreduced retirement lump sum within the time limits described in regulation Q4, or as the case may be, regulation Q5 and before the lump sum becomes payable.

#### Modifications etc. (not altering text)

**C6** Regs. Q1-Q6 modified (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), regs. 1(b), **22**

### Paying for additional service by single payment

**Q3.**—(1) A member who wishes to buy additional service for all or part of the member's previous pensionable service in accordance with regulation Q1(16) by a single payment must elect to do so within 12 months of re-joining this Section of the scheme following the break in pensionable employment described in that regulation.

(2) The amount of a single payment for additional service will be one-half of the cost calculated in accordance with table 1 of Schedule 3.

(3) For the purposes of Table 1 of Schedule 3, “remuneration” means, subject to paragraph (4), the yearly average of a member's pensionable pay in respect of the three months' pensionable employment immediately preceding the date on which the member elects to buy the additional service or unreduced retirement lump sum.

(4) If the member has not been in pensionable employment for three months before electing to buy the additional service or unreduced retirement lump sum, “remuneration” means the yearly average of the member's pensionable pay in respect of the first three months' pensionable employment.

(5) The member must make any single payment for additional service within three months after electing to do so or, if later, within six months after starting pensionable employment.

#### Modifications etc. (not altering text)

**C6** Regs. Q1-Q6 modified (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), regs. 1(b), **22**

### Paying for unreduced retirement lump sum by single payment

**Q4.**—(1) A man who wishes to pay for an unreduced retirement lump sum by a single payment must elect to do so within 12 months after getting married, or if he is not then a member, within 12 months of first rejoining this Section of the scheme after getting married.

(2) A woman who wishes to pay for an unreduced retirement lump sum by a single payment must elect to do so within 12 months after nominating her husband to receive a dependent widower's pension under regulation G8 (dependent widower's pension).

(3) A member who has formed a civil partnership who wishes to pay for an unreduced lump sum by a single payment must elect to do so within 12 months after nominating the member's civil partner to receive a dependent surviving civil partner's pension under regulation G11 (dependent surviving civil partner's pension).

(4) A member who has a nominated partner who wishes to pay for an unreduced lump sum by a single payment must elect to do so within 12 months after applying for the member's nominated partner to receive a dependent surviving nominated partner's pension under regulation G15.

(5) The amount of a single payment for an unreduced retirement lump sum will be calculated in accordance with Table 2 of Schedule 3.

(6) For the purposes of Table 2 of Schedule 3, "remuneration" means, subject to paragraph (7), the same as in regulation Q3(3) and (4) (meaning of "remuneration" for the purposes of Table 1 of Schedule 3).

(7) In the case of a member who elects to buy an unreduced retirement lump sum but who is no longer required to contribute under regulation D1 (contributions by members) because regulation D1(26) or (27) applies, "remuneration" means the amount to which a pension equal to the member's final year's pensionable pay and beginning on the day on which regulation D1(26) or (27) started to apply would have been increased under Part I of the Pension (Increases) Act 1971<sup>M57</sup> at the date on which the member elects to buy an unreduced retirement lump sum.

(8) The member must make any single payment for an unreduced retirement lump sum within three months after electing to do so or, if later, within six months after starting pensionable employment.

#### Modifications etc. (not altering text)

**C6** Regs. Q1-Q6 modified (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), regs. 1(b), **22**

#### Marginal Citations

**M57** 1971 c.56.

### Paying by regular additional contributions

**Q5.**—(1) A member who wishes to pay for additional service or unreduced retirement lump sum by regular additional contributions must elect to do so before reaching age 63.

(2) Regular additional contributions will be deducted from the member's earnings, and paid to the Scottish Ministers, in like manner as under regulation D1(28) (contributions by members).

(3) Subject to paragraph (4), the member must start paying the regular additional contributions from the member's next birthday following the date on which the member elects to buy the additional service or unreduced retirement lump sum until either the member's 60th or 65th birthday, whichever the member chooses (the "chosen date").

(4) The period for which a member elects to pay regular additional contributions must be at least 2 years.

(5) The regular additional contributions will be calculated as a percentage of the member's pensionable pay, in accordance with Table 3 of Schedule 3, (if the member is buying additional service) or Table 4 of Schedule 3 (if the member is buying an unreduced retirement lump sum).

(6) The member's total regular contributions to this Section of the scheme before 1st April 2008 (including contributions under regulation D1) may not exceed 15 per cent of pensionable pay, or any other limit specified for the time being by Revenue and Customs.



*Status: Point in time view as at 25/03/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)*

(7) The member's total regular additional contributions made on or after 1st April 2008 under this regulation may not exceed—

- (a) in the case of a member paying contributions of 5 per cent of the member's pensionable pay under regulation D1 (contributions by members) on the member's birthday immediately following the date of the election referred to in paragraph (3), 10 per cent of pensionable pay;
- (b) in the case of a member paying contributions of more than 5 per cent of the member's pensionable pay under regulation D1 on the birthday referred to in sub-paragraph (a), 9 per cent of pensionable pay; and
- (c) in any case referred to in sub-paragraph (a) or (b), any other limit specified for the time being by Revenue and Customs.

(8) If a member who has elected to pay for additional service or unreduced retirement lump sum by regular additional contributions stops paying the contributions before the chosen date under paragraph (3), regulation Q7 (part payment for additional service) will apply.

(9) Where a member elects to make payment for additional service in the circumstances described in regulation Q1(16), the cost will be calculated as one-half of the cost calculated under paragraph (5).

**Modifications etc. (not altering text)**

**C6** Regs. Q1-Q6 modified (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), regs. 1(b), **22**

**Electing to buy additional service or unreduced retirement lump sum**

**Q6.**—(1) A member electing to buy additional service or unreduced retirement lump sum must do so by giving notice in writing to the Scottish Ministers on the form provided, giving such information as may be required.

(2) A member may not exercise a right to buy additional service or unreduced retirement lump sum benefits during a period of absence from work without leave or because of ill-health or injury, or while the member's earnings are reduced or suspended.

(3) For the purposes of these Regulations, the date on which a member elects to buy additional service or unreduced lump sum means the date on which the Scottish Ministers receive the member's completed form exercising that right.

(4) If a member who elects to pay for additional service or unreduced retirement lump sum by a single payment leaves pensionable employment within three months after starting that employment, the election will cease to have effect.

(5) For the purposes of paragraph (4), and notwithstanding regulation P2(3) (temporary absence through illness or injury), a member whose earnings are suspended during a period of absence from work for illness or injury will not be treated as if the member had left pensionable employment.

(6) A member who wishes to pay for additional service or unreduced retirement lump sum by regular additional contributions must be able to sign a declaration, in the form provided, that the member knows of no reason why the member's health should prevent the member from paying the additional contributions for the whole period for which the member has chosen to pay them.

(7) Where payment in accordance with regulation Q5(5) is causing, or continuation would cause, financial hardship the Scottish Ministers may consent to the discontinuance of the payments and regulation Q7 will apply.



**Modifications etc. (not altering text)**

- C6 Regs. Q1-Q6 modified (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), regs. 1(b), 22

**Part payment for additional service or unreduced retirement lump sum**

**Q7.**—(1) If a member who is paying for additional service or unreduced retirement lump sum by regular additional contributions stops paying before the chosen date under regulation Q5(3), the member's benefits will be calculated as described in this regulation.

(2) If the member dies or becomes entitled to a pension under regulation E2 (early retirement pension (ill health)) or E3 (ill health pension on early retirement) within 12 months after starting to pay the additional contributions, an amount equal to the contributions (less any tax that may be payable) will be returned to the member or the member's personal representatives.

(3) If 12 months or more after starting to pay the additional contributions but before reaching the age of 60 the member dies in pensionable employment or becomes entitled to a pension under regulation E2 or E3 the member will be treated as if the contributions have been paid, and the member's benefits will be increased to include the additional service or unreduced retirement lump sum that the member has chosen to buy.

(4) If a member who retires through ill health later returns to pensionable employment before the chosen date under regulation Q5(3), the member must continue paying the additional contributions until the chosen date.

(5) If neither of paragraphs (2) or (3) apply, the member's benefits will include a proportion of the additional service or unreduced retirement lump sum that the member has chosen to buy, calculated as described in whichever of paragraphs (6) and (7) applies.

(6) If the member becomes entitled to receive benefits at or after the chosen date under regulation Q5(3) the proportion will be calculated as—

*period for which contributions were paid*

*period for which contributions should have been paid .*

(7) If the member becomes entitled to receive benefits before the chosen date under regulation Q5(3), the proportion of additional service or unreduced retirement lump sum to be credited to the member will be—

- (a) calculated as described in paragraph (6), and
- (b) then reduced by reason of the payment of the pension and the lump sum by such amounts as the Scottish Ministers, after taking the advice of the scheme actuary, determine.

**Modifications etc. (not altering text)**

- C7 Reg. Q7 modified (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), regs. 1(b), 22

**Option to pay additional periodical contributions to purchase additional pension**

**Q8.**—(1) A member who is in pensionable employment may opt to make additional periodical contributions during the contribution option period to increase by a specified amount—

*Status: Point in time view as at 25/03/2020.*

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- (a) the benefits payable to the member under Parts E and S (including if a member dies after a pension becomes payable, the benefits paid to a surviving partner and dependent children at the same rate as the member's pension for three to six months under Parts G, H and S); or
  - (b) those benefits and the benefits payable in respect of surviving partners and dependent children under Parts G, H and S.
- (2) A member may exercise the option under paragraph (1) more than once.
- (3) If a member exercises an option under paragraph (1), the member's employing authority must—
- (a) deduct the member's contributions from the member's earnings; and
  - (b) pay them to the Scottish Ministers not later than the 19th day of the month following the month in which the earnings were paid.
- (4) The annual amount of the periodical contributions payable at the beginning of the contribution option period must not be—
- (a) an amount less than the minimum amount; or
  - (b) an amount other than a multiple of that amount.
- (5) In paragraph (4) “minimum amount” means the amount that would, in accordance with tables prepared for the Scottish Ministers by the scheme actuary for the scheme year in which the contributions are paid, be the amount of the contributions required to secure an increase in the member's pension of—
- (a) £250; or
  - (b) such other amount as the Scottish Ministers may for the time being determine assuming that the contributions are made in accordance with the option for the remainder of the option period.
- (6) The tables referred to in paragraph (5)—
- (a) may specify different amounts for different descriptions of members; and
  - (b) may be amended during a scheme year, but no such amendment affects the contributions payable under any option during that year, except an option under which contributions begin to be paid after the date on which the amendment takes effect.
- (7) The total increase in the member's pension as a result of contributions made under this regulation, taken together with any increase as a result of—
- (a) contributions made under regulation Q10 (member's option to pay lump sum contributions to purchase additional pension); or
  - (b) contributions made under regulation Q11 (payment of additional lump sum contributions by employing authority),
- may not exceed £5000 or such other amount as the Scottish Ministers may for the time being determine.
- (8) In these Regulations “the contribution option period”, in relation to an option under this regulation, means a period of whole years, that—
- (a) is specified in the option;
  - (b) begins with the pay period in respect of which the first contribution is made under the option;
  - (c) is not less than 1 year nor more than 20 years; and
  - (d) does not end later than the member's chosen birthday as specified in the option.
- (9) For the purposes of this Part, a member's ‘chosen birthday’ must be either the member's 60th or 65th birthday.

**Modifications etc. (not altering text)**

- C8** Regs. Q8-Q15 modified (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), regs. 1(b), **23**

**Effect of member being absent or leaving and rejoining this Section of the scheme during the contribution option period**

**Q9.**—(1) This paragraph applies if during the contribution option period a member who has exercised the option under regulation Q8—

- (a) is absent from work for any of the reasons described in regulation P1(2) (maternity, paternity and adoption absence); or
- (b) is on a leave of absence in accordance with regulation P2 (absence because of illness or injury).

(2) If paragraph (1) applies—

- (a) the contributions under the option continue to be payable unless the member ceases paying contributions under regulation D1; and
- (b) where the member does so cease, the member may continue to make contributions in accordance with the option if the member resumes making contributions under regulation D1 before the end of the period of 12 months beginning with the day on which the member first ceased to pay those contributions.

(3) This paragraph applies if a member—

- (a) exercises the option under regulation Q8;
- (b) leaves pensionable employment during the contribution option period; and
- (c) returns to pensionable employment within 12 months of leaving.

(4) If paragraph (3) applies, the member may continue to make contributions in accordance with the option after returning to pensionable employment unless a refund of contributions has been made to the member under regulation E15 (early leavers' entitlement to refund of contributions).

(5) For the purposes of paragraph (4) it does not matter whether the member has paid any of the repaid contributions to the Scottish Ministers in accordance with regulation E15(3).

**Modifications etc. (not altering text)**

- C8** Regs. Q8-Q15 modified (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), regs. 1(b), **23**

**Member's option to pay lump sum contributions to purchase additional pension**

**Q10.**—(1) A member who is in pensionable employment may opt to make a single lump sum contribution to increase by a specified amount—

- (a) the benefits payable to the member under Parts E and S, including if a member dies after a pension becomes payable, the benefits paid to a surviving partner and dependent children at the same rate as the member's pension for three to six months under Parts G, H and S; or
- (b) those benefits and the benefits payable in respect of surviving partners and dependent children under Parts G, H and S.

(2) A member may only make a contribution under this regulation of an amount—

*Status: Point in time view as at 25/03/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)*

- (a) that is not less than the minimum amount; or
- (b) a multiple of that amount.

(3) In paragraph (2) “the minimum amount” means the amount that is, in accordance with tables prepared for the Scottish Ministers by this Section of the scheme's actuary, the amount of the single contribution required at the time that the option is exercised to secure an increase in the member's pension of—

- (a) £250; or
- (b) such other amount as the Scottish Ministers may for the time being determine.

(4) A member may exercise the option under paragraph (1) more than once.

(5) If a member exercises an option under paragraph (1) the additional contribution is payable by the member to the employing authority—

- (a) by deduction from the member's earnings or otherwise; and
- (b) before the end of the period of 1 month beginning with the day on which the member is notified by the Scottish Ministers that the option is accepted.

(6) The employing authority must pay the additional contributions to the Scottish Ministers not later than the 19th day of the month following the month in which the earnings were paid or, as the case may be, the authority received payment of the contribution.

(7) The total increase in the member's pension as a result of contributions made under this regulation, taken together with any increase as a result of—

- (a) contributions made under regulation Q8; or
- (b) contributions made under regulation Q11,

may not exceed £5000 or such other amount as the Scottish Ministers may for the time being determine.

**Modifications etc. (not altering text)**

**C8** Regs. Q8-Q15 modified (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), regs. 1(b), **23**

**Payment of additional lump sum contributions by employing authority**

**Q11.**—(1) The employing authority of a member who is in pensionable employment may opt to make a single lump sum contribution to increase by a specified amount—

- (a) the benefits payable to the member under Parts E and S, including if a member dies after a pension becomes payable, the benefits paid to a surviving partner and dependent children at the same rate as the member's pension for three to six months under Parts G, H and S; or
- (b) those benefits and the benefits payable in respect of surviving partners and dependent children under Parts G, H and S.

(2) An employing authority may only make a contribution under this regulation of an amount—

- (a) that is not less than the minimum amount (as defined in regulation Q10(3)); or
- (b) a multiple of that amount.

(3) An employing authority may only exercise the option under paragraph (1) with the member's consent, but may exercise it more than once in respect of the same member.

(4) The total increase in the member's pension as a result of contributions made under this regulation, taken together with any increase as a result of—

- (a) contributions made under regulation Q8; or
- (b) contributions made under regulation Q10,

may not exceed £5000 or such other amount as the Scottish Ministers may for the time being determine.

(5) A contribution under this regulation must be paid by the employing authority to the Scottish Ministers within one month of the date on which the authority gave the Scottish Ministers notice under regulation Q12(2).

**Modifications etc. (not altering text)**

**C8** Regs. Q8-Q15 modified (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), regs. 1(b), **23**

**Exercise of options under regulations Q8, Q10 and Q11**

**Q12.**—(1) A member exercising an option under regulation Q8 or Q10 must do so by giving notice in writing to the employing authority, giving such information as may be required.

(2) An employing authority exercising an option under regulation Q11 must do so by giving notice in writing to the Scottish Ministers, giving such information as may be required.

(3) An option under regulation Q8, Q10 or Q11 may not be exercised during a period when the member is absent from work.

(4) For the purposes of these Regulations—

- (a) a member is treated as exercising an option under regulation Q8 or Q10 on the date on which the employing authority receives the member's notice under paragraph (1); and
- (b) an employing authority is treated as exercising an option under regulation Q11 on the date on which the Scottish Ministers receives the authority's notice under paragraph (2).

(5) The Scottish Ministers—

- (a) must refuse to accept an option exercised under—
  - (i) regulation Q8 if not satisfied that that the member is in good health and there is no reason why the member's health should prevent the member from paying the contributions for the whole contribution period; and
  - (ii) regulation Q10 or Q11 if not satisfied that the member is in good health; and
- (b) may refuse to accept an option under regulation Q8, Q10 or Q11 in any other circumstances.

(6) If the Scottish Ministers refuse to accept an option described in paragraph (5), the Scottish Ministers must give notice in writing of that fact—

- (a) in the case of an option exercised under regulation Q8 or Q10, to the member; and
- (b) in the case of an option exercised under regulation Q11, to the employing authority and the member.

(7) These Regulations apply as if an option—

- (a) under regulation Q8, Q10 or Q11 had not been exercised if the Scottish Ministers refuse to accept the option;
- (b) under regulation Q10 had not been exercised if the payment is not received by the employing authority—

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*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)*

- (i) before the end of the period of 1 month beginning with the day on which the Scottish Ministers notify the member of the acceptance of the option; or
- (ii) if it is earlier, on or before the member's chosen birthday; and
- (c) under regulation Q11 had not been exercised if the payment is not received by the Scottish Ministers on or before the member's chosen birthday.

**Modifications etc. (not altering text)**

**C8** Regs. Q8-Q15 modified (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), regs. 1(b), **23**

**Cancellation and cessation of options under regulation Q8**

**Q13.**—(1) A member may cancel an option under regulation Q8(1) by giving the employing authority notice in writing.

(2) If a member cancels such an option, the additional periodical contributions cease to be payable for the first pay period beginning after the date on which the employing authority receives the notice and all subsequent pay periods.

(3) If it appears to the Scottish Ministers that the requirement in regulation Q8(7) will not be met if the member continues to make periodical contributions under an option exercised under regulation Q8, the Scottish Ministers may cancel the option by giving the member notice in writing.

(4) If the Scottish Ministers cancel such an option [<sup>F133</sup>in accordance with paragraph (3)], the additional periodical contributions cease to be payable for the first pay period beginning after the date specified in the notice and all subsequent pay periods.

[<sup>F134</sup>(5) If, after the exercise of the option under regulation Q8, the Scottish Ministers have reasonable grounds to believe that the member's health will prevent the member from paying contributions for the whole contribution period, the Scottish Ministers may cancel the option by giving the member notice in writing.

(6) If the Scottish Ministers cancel such an option in accordance with paragraph (5), the additional periodical contributions cease to be payable for the first pay period beginning after the date specified in the notice and all subsequent pay periods and any periodical payments made before the date of cancellation must be returned to the member.]

**Textual Amendments**

**F133** Words in reg. Q13(4) inserted (20.5.2013) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **18(a)** (with reg. 71)

**F134** Reg. Q13(5)(6) inserted (20.5.2013) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **18(b)** (with reg. 71)

**Modifications etc. (not altering text)**

**C8** Regs. Q8-Q15 modified (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), regs. 1(b), **23**

## Effect of payment of additional contributions under this Part

**Q14.**—(1) This regulation applies if—

- (a) an option is exercised by a member under regulation Q8 and all the contributions to be made under the option are made; or
- (b) an option is exercised by a member under regulation Q10 or by a member's employing authority under regulation Q11 and the lump sum payment is made.

(2) Subject to paragraph (7) the member's pension is increased by the full amount of the increase to be made in accordance with the terms of the option after the final adjustment in that amount in accordance with regulation Q17.

(3) Paragraph (2) is without prejudice to any reduction falling to be made in accordance with regulation Q15(5) as a result of the member becoming entitled to payment of a pension before his chosen birthday.

(4) In the case of an option under regulation Q8(1)(b), Q10(1)(b) or Q11(1)(b), any benefit payable to a surviving partner or a dependent child in respect of the member under these Regulations is increased by the appropriate amount.

(5) In paragraph (4), subject to regulations Q15 and Q16(3), “the appropriate amount” means—

- (a) in the case of a surviving partner pension payable under regulation G2 (widow's pension when member dies in pensionable employment), G4 (widow's pension when member dies with preserved pension) or S6(12) (benefits on death in pensionable employment after pension under regulation E3 becomes payable), 37.5% of the amount of the increase mentioned in paragraph (2) that would have applied in the member's case if the member had become entitled to the increase on the date of death (disregarding paragraph (3));
- (b) in the case of a surviving partner pension payable under regulation G3 (widow's pension when member dies after pension becomes payable), 37.5% of the amount of the increase in the member's pension as a result of the option;
- (c) in the case of a child allowance payable under regulation H3 (child allowance when member dies in pensionable employment), H5 (child allowance when member dies with preserved pension) or S6(19)(b), the appropriate fraction of 75% of the amount of the increase mentioned in paragraph (2) that would have applied in the member's case if the member had become entitled to the increase on the date of death (disregarding paragraph (3)); and
- (d) in the case of a child allowance payable under regulation H4 (child allowance when member dies after pension becomes payable) or S6(19)(a), the appropriate fraction of 75% of the amount of the increase in the member's pension as a result of the option.

(6) For the purposes of paragraph (5) the “appropriate fraction” means the same fraction as that applied to the member's pension in order to calculate the amount of child allowance payable in respect of that member.

(7) Paragraph (8) applies only to an option under regulation Q8(1)(a), Q10(1)(a) or Q11(1)(a) where a pension is to be paid for either three or six months at the same rate as the member's pension was being paid at the date of that member's death.

(8) Any increase in a member's pension shall be included only in a benefit payable to a surviving partner or a dependent child in respect of the member under these Regulations whilst it is being paid at the rate and for the duration of one of the periods referred to in paragraph (7).

### Modifications etc. (not altering text)

- C8** Regs. Q8-Q15 modified (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), regs. 1(b), **23**



*Status: Point in time view as at 25/03/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)*

**C9** Reg. Q14(4)-(8) applied (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), regs. 1(b), **25(8)(a)**

### **Effect of death or early payment of pension after option exercised under regulation Q8, Q10 or Q11**

**Q15.**—(1) If a member in respect of whom an option under regulation Q8, Q10 or Q11 has been exercised dies before the end of the period of 12 months beginning with the date on which the option was exercised—

- (a) an amount equal to the contributions paid under the option must be paid—
  - (i) in the case of an option under regulation Q8 or Q10, to the member's personal representatives; and
  - (ii) in the case of an option under regulation Q11, to the employing authority which made the contribution; and
- (b) regulation Q14(4) does not apply.

(2) [<sup>F135</sup>Subject to regulation Q13(5) and (6),] if a member in respect of whom an option under regulation Q8 has been exercised dies after the end of the period of 12 months beginning with the date on which the option was exercised and before the end of the contribution option period, regulation Q14(4) applies as if all contributions due after the date of death had been made.

(3) If a member in respect of whom an option under regulation Q8, Q10 or Q11 has been exercised becomes entitled to a pension under regulation E3 as a result of a claim made before the end of the period of 12 months beginning with the date on which the option was exercised—

- (a) regulation Q14(2) and (4) does not apply; and
- (b) an amount equal to the contributions paid under the option must be paid—
  - (i) in the case of an option under regulation Q8 or Q10, to the member; and
  - (ii) in the case of an option under regulation Q11, to the employing authority which made the contribution.

(4) [<sup>F136</sup>Subject to regulation Q13(5) and (6),] if a member in respect of whom an option under regulation Q8 has been exercised becomes entitled to a pension under regulation E3 before the end of the contribution period as a result of a claim made after the end of the period of 12 months beginning with the date on which the option was exercised, regulation Q14(2) and (4) applies as if all contributions under the option had been made.

(5) If a member in respect of whom an option under regulation Q8, Q10 or Q11 has been exercised—

- (a) becomes entitled to a pension under regulation E6, E7, or E11;
- (b) becomes entitled to a pension under regulation E1 or E12 before reaching the age of 60; or
- (c) becomes entitled to a pension under regulation E1 after age 60 but before the member's chosen birthday,

the increase in the member's pension which would otherwise be due under regulation Q14(2) or regulation Q16 is reduced.

(6) The amount of the reduction is such amount as the Scottish Ministers determine, after consulting the scheme actuary, to be appropriate by reason of the payment of the increase before the member reaches the member's chosen birthday.



### Textual Amendments

- F135** Words in reg. Q15(2) inserted (20.5.2013) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **19** (with reg. 71)
- F136** Words in reg. Q15(4) inserted (20.5.2013) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **19** (with reg. 71)

### Modifications etc. (not altering text)

- C8** Regs. Q8-Q15 modified (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), regs. 1(b), **23**

### Effect of part payment of periodical contributions

- Q16.**—(1) This regulation applies if—
- (a) the full number and amount of contributions due under an option under regulation Q8 for the whole contribution option period are not made; and
  - (b) regulation Q15(1) to (4) do not apply.
- (2) The increase in the member's pension is—
- (a) the appropriate proportion of the increase that would have been made under regulation Q14(2) if the full number and amount of contributions had been made; or
  - (b) the appropriate proportion of the increase calculated in accordance with sub-paragraph (a) reduced in accordance with regulation Q15(6) if regulation Q15(5) applies to the member.
- (3) In the case of an option under regulation Q8(1)(b), Q10(1)(b) or Q11(1)(b), the increase in any surviving partner or child allowance payable under Parts G, H and S in respect of the member is—
- (a) the appropriate proportion of the increase that would have been made under regulation Q14(4) if the full number and amount of contributions had been made; or
  - (b) the appropriate proportion of the increase calculated in accordance with sub-paragraph (a) reduced in accordance with regulation Q15(5) if that regulation applies to the member.
- (4) For the purposes of paragraphs (2) and (3), the appropriate proportion is calculated in accordance with such method as the scheme actuary may determine and specify in guidance given to the Scottish Ministers.
- (5) In making a determination under paragraph (4), the scheme actuary must have regard to—
- (a) the proportion that the total contributions paid bears to the full amount of contributions due under an option under regulation Q8 for the whole contribution option period; and
  - (b) the preservation requirement.

### Modifications etc. (not altering text)

- C10** Reg. Q16 modified (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), regs. 1(b), **23**

*Status: Point in time view as at 25/03/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)*

### Revaluation of increases bought under options: members' pensions

**Q17.**—(1) Where an option under regulation Q8, Q10 or Q11 has been exercised, the final amount of the increase in a member's pension immediately before the beginning date for that pension shall be determined in accordance with this regulation.

(2) Where the increase in pension is in respect of an option that was exercised less than 2 months before the increase becomes payable, the final amount is calculated in accordance with paragraph (4).

(3) Where the increase in pension is in respect of an option that was exercised 2 or more months before the increase in pension becomes payable, the final amount is calculated in accordance with whichever of paragraphs (5) and (6) applies.

(4) The calculation referred to in paragraph (2) is as follows—

Step 1—	Calculate the basic amount of the increase in accordance with regulations Q14 to Q16, to find the Step 1 amount.
Step 2—	Add to the Step 1 amount an amount that is equal to any increases that would be due under the Pensions (Increase) Act 1971 <small>M58</small> on a pension of the same amount as the Step 1 amount when it first falls into payment, to find the Step 2 amount.
Step 3—	Divide the Step 2 amount by the Step 1 amount, to find the Step 3 factor.
Step 4—	Divide the Step 1 amount by the Step 3 factor to find the final amount referred to in paragraph (1).

(5) If the member exercised the option on or before 31st March 2011, the calculation referred to in paragraph (3) is as follows—

Step 1—	Calculate the basic amount of the increase in accordance with regulations Q14 to Q16, to find the Step 1 amount.
Step 2—	Multiply the Step 1 amount by the retail prices index for the second month before the month in which the increase in pension will become payable, to find the Step 2 amount.
Step 3—	Divide the Step 2 amount by the retail prices index for the month in which the option was exercised, to find the Step 3 amount.
Step 4—	Take the greater of the Step 1 amount and Step 3 amount, to find the Step 4 amount.
Step 5—	Add to the Step 4 amount an amount that is equal to any increases that would be due under the Pensions (Increase) Act 1971 on a pension of the same amount as the Step 4 amount when it first falls into payment, to find the Step 5 amount.
Step 6—	Divide the Step 5 amount by the Step 4 amount, to find the Step 6 factor.
Step 7—	Divide the Step 4 amount by the Step 6 factor to find the final amount referred to in paragraph (1).

(6) If the member exercised the option on or after 1st April 2011, the calculation referred to in paragraph (3) is as follows—

Step 1—	Calculate the basic amount of the increase in accordance with regulations Q14 to Q16, to find the Step 1 amount.
Step 2—	Multiply the Step 1 amount by the prices index for the second month before the month in which the increase in pension will become payable, to find the Step 2 amount.
Step 3—	Divide the Step 2 amount by the prices index for the month in which the option was exercised, to find the Step 3 amount.
Step 4—	Take the greater of the Step 1 amount and Step 3 amount, to find the Step 4 amount.
Step 5—	Add to the Step 4 amount an amount that is equal to any increases that would be due under the Pensions (Increase) Act 1971 on a pension of the same amount as the Step 4 amount when it first falls into payment, to find the Step 5 amount.
Step 6—	Divide the Step 5 amount by the Step 4 amount, to find the Step 6 factor.
Step 7—	Divide the Step 4 amount by the Step 6 factor to find the final amount referred to in paragraph (1).

(7) In this regulation—

“the beginning date”, in relation to a pension, means the date on which it is treated as beginning for the purposes of the Pensions (Increase) Act 1971 <sup>M59</sup> (see section 8(2) of that Act);

“the prices index” means, as regards any month, the change in the general level of prices for that month used to determine increases to official pensions for the purposes of the Pensions (Increase) Act 1971.

#### **Modifications etc. (not altering text)**

**C11** Reg. Q17 modified (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), regs. 1(b), **23**

#### **Marginal Citations**

**M58** 1971 c.56.

**M59** 1971 c.56.

## **PART R**

### **SPECIAL PROVISIONS FOR CERTAIN MEMBERS**

#### **Medical and dental practitioners and trainee practitioners**

**R1.**—(1) These Regulations apply to members who are or have been practitioners as if they were officers employed by the relevant Health Board but with the modifications described in Schedule 1 to these Regulations.

(2) These Regulations apply to members who are or have been GP registrars as if they were whole-time officers employed by the relevant Health Board.

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*Status: Point in time view as at 25/03/2020.*

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(3) These Regulations apply from 1st April 2004 to non GP providers as if they were whole-time officers employed by the relevant Health Board with the modifications described in paragraphs 5, 6, 7, 14 and 31 of Schedule 1.

### **Nurses, physiotherapists, midwives and health visitors**

**R2.**—(1) Subject to paragraph (2) this regulation applies to a member—

(a) who, [<sup>F137</sup>on 1st April 1995]—

(i) [<sup>F138</sup>was in] pensionable employment as a nurse, physiotherapist, midwife or health visitor, or

(ii) [<sup>F139</sup>had accrued] rights to benefits under this Section of the scheme arising out of a previous period in which the member was engaged in such employment and at no time since the last occasion on which the member was so engaged has had a break in pensionable employment for any one period of 5 years or more, and

(b) who spends the whole of the last 5 years of pensionable employment as a nurse, physiotherapist, midwife or health visitor.

(2) This regulation ceases to apply if the member has a break in pensionable employment of 5 years or more ending after the coming into force of the 1995 Regulations.

(3) Where this regulation applies—

(a) regulation E1 (normal retirement pension) will apply to the member as if the references, in paragraph (1) of that regulation, to age 60 were a reference to age 55;

(b) if the member leaves NHS employment because of redundancy but without becoming entitled to an immediate pension under regulation E6 (early retirement pension (redundancy etc.)) or regulation E7 (Redundancy etc. new starters and post-transition)), regulation E12 (preserved pension) will apply as if the references in that regulation to age 60 were references to age 55.

(4) Where, in accordance with paragraph (3), a member becomes entitled to receive a pension before age 60, the amount payable will—

(a) in the case of a female member, be calculated by reference to all of her pensionable service under this Section of the scheme; and

(b) in the case of a male member, be calculated only by reference to pensionable service on or after 17th May 1990.

(5) Subject to paragraph (6), if the member chooses to pay for additional service or unreduced retirement lump sum by regular additional contributions under regulation Q5, contributions may be made from the next birthday following the exercise of the right to do so, until the member's 55th, 60th or 65th birthday, whichever the member chooses, and that date will be the chosen date under regulation Q5(3).

(6) The period for which a member chooses to pay regular additional contributions under regulation Q5 must be at least 2 years.

(7) For the purposes of paragraph (1), “pensionable employment” includes employment that qualified the member for benefit under a health service scheme from which a transfer payment has been made to this Section of the scheme.

(8) For the purposes of paragraph (1) and (2), a person will not be treated as having ceased to be in pensionable employment during any period in respect of which that person is a member of a health service scheme.

(9) For the purpose of calculating the 5 year period referred to in paragraph (1)(b), “pensionable employment” does not include additional service bought under regulation Q1 or a period in respect of which a refund of contributions has been paid under regulation E15.

#### Textual Amendments

**F137** Words in reg. R2(1)(a) substituted (with effect in accordance with reg. 1(2)(a) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2016 \(S.S.I. 2016/98\)](#), regs. 1(1), **4(a)**

**F138** Words in reg. R2(1)(a) substituted (with effect in accordance with reg. 1(2)(a) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2016 \(S.S.I. 2016/98\)](#), regs. 1(1), **4(b)**

**F139** Words in reg. R2(1)(a) substituted (with effect in accordance with reg. 1(2)(a) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2016 \(S.S.I. 2016/98\)](#), regs. 1(1), **4(c)**

#### Modifications etc. (not altering text)

**C12** Reg. R2(1)(b)(2) modified (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), regs. 1(b), **30(1)**

### Mental health officers

**R3.**—(1) Subject to paragraph (2), this regulation applies to a member who at the coming into force of the 1995 Regulations—

- (a) is in pensionable employment under this Section of the scheme as a mental health officer, or
- (b) has accrued rights to benefits under this Section of the scheme arising out of a previous period in which the member was engaged in such employment and at no time since the last occasion on which the member was so engaged has the member had a break in pensionable employment for any one period of 5 years or more.

(2) Subject to paragraph (3), this regulation shall cease to apply if the member has a break in pensionable employment for any period of 5 years or more ending after the coming into force of the 1995 Regulations.

(3) Paragraph (2) shall be without prejudice to the operation of paragraph (5)(a) in relation to any period prior to this regulation ceasing to apply.

(4) For the purposes of paragraphs (1) and (2), a person shall not be treated as having had a break in pensionable employment during any period in respect of which that person is a member of a health service scheme.

(5) Subject to paragraphs (6) to (8), where this regulation applies—

- (a) each complete year of the member's pensionable service as a mental health officer in excess of 20 years will count as 2 years' pensionable service; and
- (b) where there is 20 years or more of such pensionable service the member shall be entitled to a pension under regulation E1 (normal retirement pension) on leaving NHS employment at any time after reaching age 55 but only if the member was in pensionable employment as a mental health officer immediately before leaving.

(6) For the purposes of calculating the 20 year period referred to in paragraph (5) the pensionable service as a mental health officer will be based on either—

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- (a) a total of 20 years' pensionable service as a mental health officer unless it would be more favourable to the member (or, if the member has died, to the person entitled to benefits in respect of the member) to disregard this paragraph; or
- (b) in the case of a member who has reached age 50, any period before the member became a mental health officer in which the member was employed on the staff of a hospital used wholly or partly for the treatment of persons suffering from mental disorder and in which the member devoted the whole or substantially the whole of the member's time to the treatment and care of such persons unless it would be more favourable to the member (or, if the member has died, to the person entitled to benefits in respect of the member) to disregard this paragraph;

and pensionable service does not include additional service bought under regulation Q1 (right to buy additional service).

(7) If both sub-paragraphs (6)(a) and (6)(b) apply to a member the member's pensionable service will be calculated so as to produce the more favourable result to the member or, if the member has died, to the person entitled to benefits in respect of the member.

(8) Paragraph (5) does not apply—

- (a) for the purpose of calculating, under regulations E2 (early retirement pension (ill health)) or E3 (ill health pension on early retirement) and H3(4)(b), H4(2)(b) and H5(4)(b) (child allowances), the pensionable service the member could have completed if the member stayed in NHS employment until a particular age;
- (b) for the purpose of calculating a minimum widow's, widower's, surviving civil partner's or surviving nominated partner's pension based on the member's pensionable service on or after 6th April 1978 under regulation G6(2) (member marries after leaving pensionable employment) or from 6th April 1988 under regulation G7(3) (widower's pension) or under regulation G11(4) (dependent surviving civil partner's pension);
- (c) for the purpose of calculating a member's benefits where it would be more favourable to the member or other person entitled to the benefits not to apply that paragraph and to calculate the member's final year's pensionable pay when the member leaves pensionable employment, completes 45 years' pensionable service (calculated without regard to paragraph (5)(a)), reaches age 65 or dies, whichever occurs first.

(9) Where, by virtue of paragraph (8)(c), paragraph (5) does not apply to a member's benefits because it is more favourable to the member or other person entitled to the benefits not to apply that paragraph, the amount of any contributions that should have been paid under regulation D1 (contributions by members) but which were not deducted from the member's earnings will be deducted from the lump sum payable on the member's retirement or death.

(10) If a member to whom paragraph (5) applies leaves NHS employment before reaching age 55 because of redundancy but without becoming entitled to an immediate pension under regulation E6 (early retirement pension (redundancy etc.)), or regulation E7 (Redundancy etc. new starters and post-transition)) and was in pensionable service as a mental health officer immediately before leaving, regulation E12 (preserved pension) will apply as if the references to age 60 were to age 55.

(11) Subject to paragraph (13), if any member to whom this regulation applies becomes entitled to a preserved pension under regulation E12 on ceasing to be a mental health officer, the pension will be based on the greater of the member's basic pensionable service and a period of service calculated as—

$$\frac{\text{basic service}}{\text{potential basic service}} \times \text{potential service}$$

where—

“basic service” means the member's pensionable service calculated without regard to paragraph (5);

“potential basic service” means the pensionable service the member could have completed if the member had stayed in pensionable employment until age 55, calculated without regard to paragraph (5); and

“potential service” means the pensionable service the member could have completed, taking account of paragraph (5), if the member had stayed in pensionable employment as a mental health officer until age 55.

(12) Subject to paragraph (13), if a member with at least 2 years' qualifying service ceases to be a mental health officer while continuing in pensionable employment, the member's pension in respect of the period before ceasing to be a mental health officer will be equal to the preserved pension to which the member would have become entitled in accordance with paragraph (11) if the member had left pensionable employment on the day the member ceased to be a mental health officer, if this would be more favourable to the member.

(13) Paragraphs (11) and (12) do not apply if the member again becomes a mental health officer within 12 months after the date on which he ceased to be a mental health officer.

(14) Subject to paragraph (15), if a member elects to pay for additional service or unreduced retirement lump sum by regular additional contributions under regulation Q5 the member may elect to make those contributions from the member's next birthday following the date on which the member elected to buy the additional service or reduced lump sum until the member's 55th, 60th or 65th birthday, whichever the member chooses, and that date will be the chosen date under regulation Q5(3).

(15) The period for which a member elects to pay regular additional contributions under regulation Q5 must be at least 2 years.

(16) In this regulation, “mental health officer” means—

- (a) an officer working whole-time on the medical or nursing staff of a hospital used wholly or partly for the treatment of people suffering from mental disorder, who devotes all, or almost all, of the officer's time to the treatment or care of people suffering from mental disorder;
- (b) any other officer employed in such a hospital who is within a class or description of officers designated by the Scottish Ministers as mental health officers for this purpose; and
- (c) a specialist, in part-time NHS employment who devotes all, or almost all, of the specialist's time to the treatment or care of people suffering from mental disorder and who satisfies the requirements of paragraph (17).

(17) A member satisfies the requirements of this paragraph if the member holds a whole-time specialist post and either—

- (a) the member receives at least 10/11ths of the pensionable pay that the member would have received for whole-time NHS employment, or
- (b) the member was appointed before 1st January 1980 and retains the right, to which the member was entitled on 31st December 1979, to be paid at least 9/11ths of the pensionable pay that the member would have received for whole-time NHS employment.

(18) The Scottish Ministers may agree to treat as a mental health officer any person who would otherwise, on transferring to part-time pensionable employment, cease to be a mental health officer providing that member is engaged in work which, had it been whole-time, would have qualified that member for mental health officer status and there is no break in pensionable employment between the transfer from whole-time to part-time employment.

*Status: Point in time view as at 25/03/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)*

(19) Where a member is treated as a mental health officer under paragraph (18) each year of part-time pensionable service shall, for the purpose of determining whether the member has in excess of 20 years' service for the purposes of paragraph (5) (but for no other purpose), be treated as if it were a year of whole-time pensionable service.

**Modifications etc. (not altering text)**

**C13** Reg. R3(2) modified (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), regs. 1(b), **30(2)(a)**

**C14** Reg. R3(5)(a) modified (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), regs. 1(b), **30(2)(b)**

**Members doing more than one job**

**R4.**—(1) This regulation applies to members in NHS employment—

- (a) with more than one employing authority;
- (b) who hold, under one employing authority, two or more separate employments; or
- (c) to whom paragraph (9) below applies.

(2) A member may contribute to this Section of the scheme in respect of all or any of the member's employments with employing authorities, subject to an aggregated maximum of 365 days' whole-time equivalent pensionable employment; except that a member who is contributing to this Section of the scheme in respect of whole-time NHS employment cannot contribute to this Section of the scheme in respect of concurrent employment with the same or another employing authority.

(3) Subject to paragraphs (4) and (6), a member will not become entitled to a pension under any of regulations E1 to E11 until the termination of all NHS employments (including employment as a practitioner) or until the member reaches age 75.

(4) If a member leaves employment with an employing authority and becomes entitled to a pension under regulation E6 (early retirement pension (redundancy etc.) or regulation E7 (Redundancy etc. new starters and post-transition)) in relation to the employment that has ended, the member may, instead of taking benefits in respect of all NHS employment, elect to take benefits only in respect of the employment that has ended and to continue to accrue benefits in respect of the other continuing pensionable employments.

(5) Where a member elects under paragraph (4), paragraph (3) will apply in relation to any employment in respect of which the member continues to accrue benefits.

(6) For the purposes of paragraph (3) a member, on leaving NHS employment, will be treated as having terminated all NHS employment where any remaining NHS employment amounts to 16 hours per week or less.

(7) Regulation S2 (members who return to NHS employment after pension becomes payable) will apply to any member who becomes entitled to a pension under paragraph (4) while continuing to accrue benefits in respect of other NHS employment.

(8) Subject to paragraph (9), in calculating the member's final year's pensionable pay there will be taken into account pensionable pay in respect of any other pensionable employment in that final year except a pensionable employment in respect of which the member continues to accrue benefits in accordance with paragraph (4).

(9) A member who becomes entitled to a pension under regulation E6 or E7 in respect of the member's employment as an officer and has terminated concurrent employment as a practitioner not more than 12 months before the date on which the member becomes entitled to that pension is not entitled to receive a pension under that regulation in respect of any employment as a practitioner,



but is entitled to receive only a pension under regulation E1 or E11 or a preserved pension under regulation E12, in respect of any such employment.

(10) Where paragraph (9) applies, the member may, in respect of any service as an officer which has terminated and to which paragraph 11(1), (9) or (14) of Schedule 1 applies, elect for the said paragraph 11 not to apply and instead to receive a pension under regulation E6 or E7 in respect of that service.

(11) A member will not receive a refund of contributions under regulation E15 (refund of contributions) until the member leaves all pensionable employment without becoming entitled to a pension or a preserved pension under any of regulations E1 to E12.

(12) A member may only exercise a right to transfer or buy-out under Part M (transfers and buy-outs) if the member leaves all NHS employment before reaching age 60 in the case of a transfer and age 59 for a buy-out policy and before becoming entitled to receive a pension under this Section of the scheme.

(13) Any amount by which a member's pensionable pay in respect of concurrent part-time employments exceeds the amount which the Scottish Ministers determine would have been paid in respect of a single comparable whole-time employment will be ignored.

(14) Any amount by which a member's pensionable service in respect of concurrent part-time employments, calculated as described in regulation C4(2) and (3) (service in respect of part-time employment), exceeds the period during which the member carried on those employments will be ignored.

### **Transferred officers (supplementary payments)**

**R5.**—(1) This regulation applies to members who were transferred from local authority employment under the National Health Service (Scotland) Act 1972 <sup>M60</sup>.

(2) When the member leaves NHS employment, becomes entitled to receive a pension or dies (whichever occurs first), the following benefits will be added to the benefits otherwise payable to, or in respect of, the member under the scheme:—

- (a) a yearly amount equal to any additional superannuation benefits that would have been granted by the local authority had the member stayed in its employment until the date the member left NHS employment, became entitled to receive a pension or died (as the case may be), and
- (b) any payments other than superannuation benefits that the local authority would have made if the circumstances in which the member left NHS employment, became entitled to receive a pension or died (as the case may be) had occurred immediately before the date on which the member was transferred to NHS employment.

(3) Where a member dies after becoming entitled to receive a pension, the amount of any benefits paid to the member under paragraph (2)(b) will be ignored when calculating the amount of any lump sum payable on the member's death under regulation F2 (member dies after becoming entitled to receive a pension).

#### **Marginal Citations**

**M60** 1972 c.58.

### **Members entitled to fees for domiciliary consultations**

**R6.**—(1) This regulation applies to members who, as medical or dental officers, have received fees from an employing authority in respect of domiciliary consultations.

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*Status: Point in time view as at 25/03/2020.*

**Changes to legislation:** *There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)*

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(2) Any fees received in respect of domiciliary consultations will be included in the member's pensionable pay for the purposes of regulation D1 (contributions by members).

(3) Any fees in respect of domiciliary consultations that are included in the member's pensionable pay for the purposes of regulation D1 will also be included in the member's pensionable pay for the purpose of deciding the year by reference to which final year's pensionable pay is to be calculated, but the member's final year's pensionable pay will then be reduced by the amount of any fees received in respect of domiciliary consultations during that year.

(4) If the member's final year's pensionable pay is reduced as described in paragraph (3), a supplementary benefit will be payable with each benefit that is payable to, or in respect of, the member under this Section of the scheme.

(5) Subject to paragraph (6), each supplementary benefit that is payable in accordance with paragraph (4) will be calculated in the same way as the benefit that it supplements as if the amount of the fees received in respect of domiciliary consultations during the year by reference to which final year's pensionable pay is calculated were the member's final year's pensionable pay.

(6) Any supplementary benefit will be based on the same pensionable service as the benefit that it supplements, except that—

- (a) any period of additional service bought as described in regulation Q1 (right to buy additional service) will be ignored;
- (b) any additional period of service credited to the member by virtue of paragraph (5)(a) of regulation R3 (mental health officers) will be ignored;
- (c) any period of pensionable service in respect of part-time employment will count at its full length and will not be reduced to its whole-time equivalent as described in regulations C4(2) and C4(3) (pensionable service in respect of part-time employment);
- (d) the member's pensionable service will include any period of additional service credited to the member under regulation 5 of the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003<sup>M61</sup> (crediting of additional period of service); and
- (e) any period of pensionable service calculated as described in regulation 37(7) of the 1980 Regulations (calculation of pensionable service in respect of part-time employment before 15th December 1966) will be ignored.

(7) Except as described in paragraph (8), if the member exercises a right to buy additional service under regulation Q1 or unreduced retirement lump sum under regulation Q2, the amount of any fees received from an employing authority in respect of domiciliary consultations will not be included in the member's pensionable pay for the purpose of calculating the cost of the additional service or unreduced retirement lump sums.

(8) If the member exercises a right to buy an unreduced retirement lump sum under regulation Q2—

- (a) any fees received during the last financial year to end before the member elects to buy an unreduced retirement lump sum will be included in the member's remuneration for the purpose of calculating the amount payable under regulation Q4(3) (paying for an unreduced retirement lump sum by single payment); and
- (b) any fees received while the member is paying for an unreduced retirement lump sum by regular additional contributions will be included in the member's pensionable pay for the purposes of regulation Q5(5) (paying by regular additional contributions).

(9) If the member returns to NHS employment after becoming entitled to receive a pension the member's final year's pensionable pay will include, for the purposes of calculating previous pay under regulation S2 (reduction of pension where member returns to NHS employment after

becoming entitled to receive pension), the amount of any fees received in respect of domiciliary consultations during the year by reference to which final year's pensionable pay is calculated.

(10) For the purposes of paragraph (9), “NHS employment” means the same as in regulation S1(5).

#### Marginal Citations

**M61** S.S.I. 2003/344; regulation 5 was amended by S.S.I. 2005/512 and 2006/561.

#### Former members of health service schemes

**R7.**—(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 <sup>M62</sup> and for the time being in force in relation to England and Wales, or
- (b) a superannuation scheme provided under regulations for the time being in force under Article 12 of the Superannuation (Northern Ireland) Order 1972 <sup>M63F140</sup> ... , or
- <sup>F141</sup>(ba) in the case of a member whose pensionable employment commenced on or before 31st March 2012, a superannuation scheme made under section 2 of the Superannuation Act 1984 (an Act of Tynwald), or]
- (c) any other occupational pension scheme approved for this purpose by the Scottish Ministers.

(2) A member who leaves employment in respect of which the member qualified for benefit under a health service scheme and who joins this Section of the scheme may, subject to paragraphs (3) and (4), require the Scottish Ministers to credit the member with a period of service (together with the rights attaching to that service) under this Section of the scheme calculated as if—

- (a) the employment to which the health service scheme applied were NHS employment, and
- (b) the member's contributions to the health service scheme were contributions to this Section of the scheme.

(3) The member may exercise this right only if a transfer payment is made from the health service scheme to this Section of the scheme.

(4) A member who wishes to exercise this right must do so by making application in writing to the Scottish Ministers <sup>F142</sup> ... .

(5) A member who leaves employment to which a health service scheme applied without becoming entitled to any benefits other than a refund of contributions may buy additional service as described in regulation Q1 (right to buy additional service) and regulations Q3 and Q5(9) will apply, as the case may be, as if the previous service under a health service scheme were previous pensionable service under this Section of this scheme.

<sup>F143</sup>(6) Subject to paragraphs (8) and (9), a member who leaves employment in respect of which the member qualified for benefit under a health service scheme and who joins the 2015 Scheme may, by notice in writing, require the Scottish Ministers to credit the member with a relevant period of pensionable service (together with the rights attaching to that service) under this Section of the scheme.

(7) That relevant period of pensionable service is calculated as if—

- (a) the employment to which the health service scheme applied were NHS employment; and
- (b) the member’s contributions to that health service scheme were contributions to this Section of the scheme.

- (8) The member may only exercise the right referred to in paragraph (6) if—
- (a) a transfer payment is made from the health service scheme to this Section of the scheme; and
  - (b) on the day the member becomes an active member of the 2015 Scheme, paragraph 2 of Schedule 7 to the 2013 Act<sup>F144</sup> or paragraph 2 of schedule 7 of the Public Service Pensions Act (Northern Ireland) 2014] applies to the period of service in respect of which that transfer value payment is made.
- (9) A notice referred to in paragraph (6) must be addressed to the Scottish Ministers and given within 1 year after joining the 2015 Scheme.]

#### Textual Amendments

- F140** Words in reg. R7(1)(b) omitted (with effect in accordance with reg. 1(9) of the amending S.S.I.) by virtue of [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2012 \(S.S.I. 2012/163\)](#), regs. 1(2), **5(a)** (with reg. 30)
- F141** Reg. R7(1)(ba) inserted (with effect in accordance with reg. 1(9) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2012 \(S.S.I. 2012/163\)](#), regs. 1(2), **5(b)** (with reg. 30)
- F142** Words in reg. R7(4) omitted (28.6.2014) by virtue of [The National Health Service Superannuation Scheme \(Scotland\) \(Miscellaneous Amendments\) Regulations 2014 \(S.S.I. 2014/154\)](#), regs. 1(2), **10**
- F143** Reg. R7(6)-(9) added (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), reg. 1(b), **sch. 2 para. 5**
- F144** Words in reg. R7(8)(b) inserted (with effect in accordance with reg. 1(2)(c) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), **12** (with reg. 53)

#### Marginal Citations

- M62** 1972 c.11; section 10(1)(a) was amended by the [National Health Service \(Scotland\) Act 1972 \(c.58\)](#), Schedule 7, Part II, and section 10(2A) and (3A) and (6) were inserted and section 10(1) amended by the [Pensions \(Miscellaneous Provisions\) Act 1990 \(c.7\)](#), sections 4(2) and 8(5).
- M63** S.I. 1972/1073 (N.I.10).

#### Members whose earnings are reduced

- R8.**—(1) The Scottish Ministers may agree to pay a preserved pension under regulation E12 in respect of a member's pensionable service before the member's earnings are reduced if—
- (a) the member has at least two year's qualifying service; and
  - (b) either of the following is the case—
    - (i) within the three month period after the member's earnings are reduced that member's employer certifies that the reduction is due to the circumstances described in paragraph (2); or
    - (ii) the member satisfies the conditions specified in paragraph (3).
- (2) The circumstances referred to in paragraph (1)(b)(i) are that the reduction is due to—
- (a) the member being transferred to other employment with an employing authority;
  - (b) the member taking up other employment with an employing authority in circumstances approved by the Scottish Ministers; or
  - (c) a change in the member's duties, while continuing in the same employment, otherwise than at the member's request or as a result of something done by the member.

- (3) The conditions referred to in paragraph (1)(b)(ii) are that—
- (a) the member has attained—
    - (i) normal minimum pension age; or
    - (ii) where relevant, protected pension age;
  - (b) the member makes an election and the Scottish Ministers have not previously accepted an election made by that member; and
  - (c) the member's employer has certified that—
    - (i) the member's pensionable pay is reduced by at least 10% for a period of at least one year beginning with the first pay day on which the reduced pensionable pay was paid;
    - (ii) for a period of at least 12 months ending immediately before the reduction referred to in head (i), the member's pensionable pay had not been subject to any other reduction; and
    - (iii) the reduction to the member's pensionable pay is the result of a change to that member's duties so that the member's new, or remaining, duties are less demanding and carry less responsibility than the member's previous duties.
- (4) The preserved pension will be calculated and paid as described in regulation E12 (preserved pension), as if the member had left pensionable employment immediately before the member's earnings were reduced.
- (5) An election referred to in paragraph (3) of this regulation must be made—
- (a) in writing and addressed to the Scottish Ministers; and
  - (b) within 15 months of the member's pensionable pay being reduced.
- (6) If a member continues to contribute to this Section of the scheme after the Scottish Ministers agree to pay a preserved pension under regulation E12 in accordance with paragraph (1), the member's pensionable service before and after the member's earnings are reduced will, subject to paragraph (7), be treated separately unless, when the member becomes entitled to receive a pension, or dies, (whichever occurs first), it would be more favourable to the member to treat the member's pensionable service before and after the reduction, and all such other reductions (if any), as continuous.
- (7) The member's pensionable service before and after the member's earnings are reduced—
- (a) will be treated as continuous for the purpose of calculating the member's qualifying service under regulation C3 (qualifying service); and
  - (b) if the member next leaves NHS employment with an immediate pension under regulation E2 (early retirement pension (ill health)) or E3 (ill health pension on early retirement), will be treated as continuous for the purpose of calculating whether, and if so to what extent, the pensionable service on which the pension is based should be increased.
- (8) If the member leaves pensionable employment with a pension under regulation E2 or E3 and the member's pensionable service falls to be increased as described in—
- (a) regulation E2(5) to (7); or
  - (b) regulation E3(4) to (6),
- then, if the member's pensionable service before and after the break is treated separately under paragraph (6), the increase will apply only in respect of benefits attributable to the period after the member's earnings were reduced.
- (9) For the purposes of this regulation “pensionable pay” in respect of part-time employment means the amount that the Scottish Ministers determine would have been paid in respect of a single comparable whole-time employment.

*Status: Point in time view as at 25/03/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)*

- (10) If a member dies in pensionable employment after exercising the option described in this regulation, the benefits that become payable on the member's death will be equal to the greater of—
- (a) the benefits that would be payable in the case of death in pensionable employment, in which case the member's exercise of the option will be disregarded; and
  - (b) the benefits that would have been payable if the member had left pensionable employment immediately before the member's death.

### **Polygamous marriages**

**R9.**—(1) If a member dies and at the date of death the member was married to a spouse or spouses under a law which permits polygamy, any benefits payable to a widow or widower will be payable in equal shares to the member's widow or widower, if any, and any other spouse or spouses.

(2) The shares will be calculated as at the date the member dies.

(3) Where the death of one or more spouse occurs the pension will be paid in full to the surviving spouse or divided between the surviving spouses in equal shares.

### **Members who work temporary additional sessions**

**R10.**—(1) This regulation applies to members who work temporary additional sessions.

(2) Any period of employment in respect of a temporary additional session will be ignored when calculating a member's pensionable service, and any payment received in respect of that employment will be ignored when calculating the member's pensionable pay.

(3) In this regulation, “temporary additional session” means a session equivalent to an extra notional half-day which a consultant, senior hospital medical officer or senior hospital dental officer or an officer appointed to a post in the grade of associate specialist has, in exceptional circumstances, undertaken to work and which does not form part of the member's normal contractual duties.

(4) In the case of a member who holds a whole-time consultant post and who receives at least 10/11ths of the pensionable pay that he would have received for whole-time pensionable employment, “temporary additional session” also includes any session in excess of 10 in any one week, regardless of its length.

### **Officers on the staff of special hospitals**

**R11.**—(1) This regulation applies to persons employed on the staff of a state hospital provided under section 102(1) of the National Health Service (Scotland) Act 1978 <sup>M64</sup>.

(2) For the purposes of these Regulations, the Scottish Ministers or a Special Health Board constituted under section 2(1)(b) of the National Health Service (Scotland) Act 1978 is regarded as an employing authority in relation to officers to whom this regulation applies and the scheme established under section 1 of the Superannuation Act 1972 <sup>M65</sup> will not apply.

#### **Marginal Citations**

**M64** 1978 c.29.

**M65** 1972 c.11. Section 1 was amended by the [Pensions \(Miscellaneous Provisions\) Act 1990 \(c.7\)](#), section 8, and by the [Pension Schemes Act 1993 \(c.48\)](#), Schedule 8, paragraph 6.

### **Part-time specialists with service before 15th December 1966**

**R12.**—(1) Subject to paragraph (2), this regulation applies where it would result in the payment of greater benefits than would otherwise be the case to and in respect of members who—

- (a) are in whole-time pensionable employment immediately before benefits become payable to or in respect of them under this Section of the scheme; and
  - (b) have previous pensionable service as specialists in respect of part-time employment before 15th December 1966, where that part-time employment occupied substantially the whole of the member's time.
- (2) This regulation applies, subject to paragraph (3), only for the purpose of calculating benefits for pensionable service in respect of—
- (a) any period of whole-time employment;
  - (b) any period of part-time employment as a specialist before 1st January 1980, if the part-time employment occupied substantially the whole of the member's time; and
  - (c) any period of employment as a maximum part-time consultant during which the member satisfies the requirements of paragraph (4).
- (3) This regulation does not apply to pensionable service in respect of any period of employment as a practitioner.
- (4) A member satisfies the requirements of paragraph (2) if the member holds a whole-time consultant post and either—
- (a) the member receives at least 10/11ths of the pensionable pay that the member would have received for whole-time pensionable employment, or
  - (b) the member was appointed before 1st January 1980 and retains the right, to which the member was entitled on 31st December 1979, to be paid at least 9/11ths of the pensionable pay that the member would have received for whole-time pensionable employment.
- (5) If it would be more favourable to the member or other person entitled to the benefits—
- (a) benefits for the pensionable service mentioned in paragraph (2) will be based on the full length of that pensionable service rather than (in the case of pensionable service in respect of part-time employment) the whole-time equivalent of that pensionable service;
  - (b) if the full length of the pensionable service mentioned in paragraph (2) is not a whole number of years, any additional period of more than 182 days will be treated as half a year and any additional period of 182 days or less will be ignored; and
  - (c) the benefits in respect of that pensionable service will be calculated by reference to the yearly average of the member's pensionable pay during the last 3 years of pensionable employment, instead of by reference to the member's final year's pensionable pay.

### Participants in pilot schemes

- R13.**—(1) For the purposes of these Regulations, for the duration of any pilot scheme—
- (a) a registered dentist—
    - (i) who, immediately before the commencement of the pilot scheme, was a member by reason of the registered dentist's employment as a practitioner; and
    - (ii) who is involved in the operation of the pilot scheme, whether as a person providing piloted services or a dental pilot scheme employee,is to be treated as a practitioner employed by the relevant Health Board;
  - (b) a registered dentist, who immediately before the commencement of the pilot scheme was not a member by reason of the registered dentist's employment as a practitioner, is to—
    - (i) if the registered dentist is providing piloted services, be treated as a practitioner employed by the relevant Health Board or

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- (ii) if the registered dentist is a dental pilot scheme employee, be treated as an officer employed by the provider of the piloted services,
  - (c) a registered dentist who is engaged, under a contract for services, by a person providing piloted services to carry out personal dental services in accordance with a pilot scheme is to be treated as a practitioner employed by the relevant Health Board ;
  - (d) a member who, immediately before the commencement of a pilot scheme—
    - (i) was employed as an NHS employee or as an NHS dental employee and was not a registered dentist, or
    - (ii) was employed as a dental pilot scheme employee and was not a registered dentist, and who, after the commencement of the pilot scheme, is providing piloted services, is to be treated as a whole-time officer employed by the relevant Health Board;
  - (e) a person other than a registered dentist who—
    - (i) is employed as a dental pilot scheme employee otherwise than by Health Board
    - (ii) immediately prior to the commencement of such employment, was employed by a Health Board as an NHS dental employee; and
    - (iii) was at that time a member,
 continues to be eligible to be a member;
  - (f) a dental therapist who—
    - (i) is a provider of piloted services or is a dental pilot scheme employee; and
    - (ii) immediately prior to the commencement of the dental pilot scheme was not a member,
 is eligible to be a member;
  - (g) a person who is providing piloted services is liable to pay contributions under regulation D2 in respect of a member to whom paragraph (c) above applies, or who is employed by that person as a dental pilot scheme employee;
- (2) In paragraph (1) above, “relevant Health Board” means the Health Board with which agreement or agreements constituting the pilot scheme in question has or have been made.

#### **Pension sharing on divorce or nullity of marriage or dissolution or nullity of a civil partnership**

**R14.**—(1) PART W and Schedule 2 have effect in relation to—

- (a) pension credit rights, or, as the case may be,
- (b) pension credit benefit payable, or
- (c) pension debits,

under this section of the Scheme.

(2) Except as provided for in this regulation, in Part W and in Schedule 2, Parts B to V do not apply to a person entitled to a pension credit or to a pension credit member.



## PART 5

### MEMBERS WHO RETURN TO PENSIONABLE EMPLOYMENT AFTER PENSION BECOMES PAYABLE

#### [<sup>F145</sup>Suspension of pension on return to NHS employment

**S1.**—(1) This regulation applies where a pension becomes payable to a member by virtue of regulation E1 (normal retirement pension), or E11 (early retirement pension (with actuarial reduction)) or a preserved pension is payable to the member in the circumstances described in E12, and, within one month of the date on which the pension becomes payable, the member enters NHS employment in which the member is engaged for more than 16 hours per week.

(2) A member to whom this regulation applies must inform the member's employer, and any other person that the Scottish Ministers may specify, that the member's pension under this Section of the scheme has become payable.

(3) Where this regulation applies the pension referred to in paragraph (1) shall, subject to paragraph (4), cease to be payable.

(4) The pension referred to in paragraph (1) becomes payable again—

- (a) if the member for a period of 1 month—
  - (i) ceases to be in any NHS employment; or
  - (ii) reduces the number of hours worked to 16 or less; or
- (b) if sooner than events described in sub-paragraph (a)—
  - (i) from the date of the member's 70th birthday if the pension referred to in paragraph (1) becomes payable on or before 31st March 2008; or
  - (ii) from the date of the member's 75th birthday if the pension referred to in paragraph (1) becomes payable on or after 1st April 2008.

[<sup>F146</sup>(5) For the purposes of this regulation “NHS employment” includes—

- (a) employment in respect of which regulations made under section 10 of the Superannuation Act 1972, and having effect in England and Wales, apply;
- (b) employment to which regulations made under Article 12 of the Superannuation (Northern Ireland) Order 1972 apply; <sup>F147</sup>...
- (c) 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;
- [<sup>F148</sup>(d) employment with an employer with whom an agreement has been made under section 235 of the National Health Service Act 2006; and
- (e) employment with an employer in respect of whom a direction has been made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967.]]]

#### Textual Amendments

**F145** Reg. S1 omitted (temp.) (25.3.2020) by virtue of [Coronavirus Act 2020 \(c. 7\)](#), **ss. 46(1)(a)**, 87(1) (with **ss. 89, 90**) (which affecting provision expires (25.3.2022) by virtue of [Coronavirus Act 2020 \(c. 7\)](#), **s. 89**)

**F146** Reg. S1(5) substituted (with effect in accordance with reg. 1(9) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2012 \(S.S.I. 2012/163\)](#), **regs. 1(2), 6** (with **reg. 30**)

*Status: Point in time view as at 25/03/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)*

- F147** Word in reg. S1(5)(b) omitted (with effect in accordance with reg. 1(4) of the amending S.S.I.) by virtue of [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **20(a)** (with reg. 71)
- F148** Reg. S1(5)(d)(e) inserted (with effect in accordance with reg. 1(4) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **20(b)** (with reg. 71)

## Reduction of pension on return to NHS employment

- S2.**—(1) Subject to paragraph (17), this regulation applies to a member—
- (a) until the member attains the age of 60;
  - (b) who is in receipt of a relevant pension; and
  - (c) who continues in, or subsequently returns to, NHS employment.
- (2) A relevant pension for the purpose of this regulation is a pension payable—
- (a) in respect of pensionable employment that ceased before 1st April 2008—
    - (i) under any of regulations E2 to E9; or
    - (ii) in accordance with regulation E12(2)(b);
  - (b) in respect of pensionable employment that ceased on or after 1st April 2008—
    - (i) <sup>F149</sup>under] any of regulations E2 to E6;
    - (ii) in accordance with regulation E7(2)(d)(ii); or
    - (iii) except where paragraph (c) applies, in accordance with E12(2)(b); or
  - (c) where the member is a special class officer—
    - (i) if regulation E1; or
    - (ii) if regulation R2(3)(b) <sup>F150</sup>(nurses, physiotherapists, midwives and health visitors) or regulation R3(10) (mental health officers)] applies to the member, in accordance with E12(2)(b).
- (3) A member to whom this regulation applies must—
- (a) inform the member's employer, and any other person that the Scottish Ministers may specify, that the member's pension under this Section of the scheme has become payable; and
  - (b) if requested to do so, provide any information (or authorise any other person to provide information) about the member's pay from NHS employment to the Scottish Ministers or to any other person the Scottish Ministers may specify.
- (4) If the relevant pension is one referred to in paragraph (2)(a) <sup>F151</sup>or (c)]—
- (a) the member's pension will be reduced by the appropriate amount; and
  - (b) the appropriate amount is the difference between the member's previous pay and the aggregate of—
    - (i) the amount of the member's pension (including any amount by which that pension has been reduced pursuant to an election under regulation E17); and
    - (ii) the amount of the member's pay from NHS employment for the financial year after the pension becomes payable.
- (5) If the relevant pension is one referred to in paragraph (2)(b), the member's pension will be reduced in accordance with paragraphs (6) to (8) if amount A exceeds the member's previous pay.

(6) The reduction in that member's pension will be equal to the difference between amount A and the member's previous pay, but will not exceed amount B.

(7) For the purposes of paragraphs (5) and (6), amount A is the aggregate of—

- (a) the amount of the member's pay from NHS employment for any financial year after the pension becomes payable; and
- (b) amount B.

(8) For the purposes of paragraphs (6) and (7), amount B is the difference between—

- (a) the amount of the member's pension (including any amount by which that pension has been reduced pursuant to an election under regulation E13); and
- (b) the amount of an actuarially reduced pension.

(9) <sup>F152</sup>A] member's pension will be reduced as described in this regulation whether or not the member is included in this Section of the scheme in respect of the employment after the member's pension becomes payable and regardless of any provision of these Regulations under which a member may be treated as having left NHS employment without actually leaving.

<sup>F153</sup>(10) . . . . .

(11) For the purposes of paragraph (4), the amount to be taken as previous pay will—

- (a) be increased in each financial year by the amount by which a pension beginning on the date on which the member's benefits under this Section of the scheme became payable (or, if earlier, the date the member left pensionable employment) would have been increased under Part I of the Pensions (Increase) Act 1971 at the 6th April falling in that financial year;
- (b) in the case of a person who holds a continuing employment (otherwise than as a practitioner), be increased by adding to it the amount of the annual rate of pay in respect of the continuing employment;
- (c) in the case of a person who is employed as a practitioner in continuing employment, be increased by adding to it the amount of the average of the annual amounts of uprated earnings as defined in paragraph 15 of Schedule 1 in respect of the last 3 financial years prior to the pension referred to in paragraph (1) becoming payable.

(12) For the purpose of calculating the reduction to be made under paragraph (4) <sup>F154</sup>or (5)] in respect of any part of a financial year, the amount of the member's previous pay will be reduced proportionately.

(13) This paragraph applies to a person who held a part-time pensionable employment before the pension described in paragraph (1) became payable and who at any time during the period of that employment held a concurrent part-time pensionable employment.

(14) Where paragraph (13) applies and the concurrent part-time pensionable employment terminated before the pension described in paragraph (1) became payable, previous pay will be increased as described in paragraph (15).

(15) For the purpose of paragraph (14), previous pay will be increased by the amount of the member's pensionable pay or annual rate of pay whichever is the greater, that relates to the member's last year of concurrent pensionable employment increased in accordance with paragraph (11)(a).

(16) For the purposes of this regulation—

“actuarially reduced pension” means such annual amount as the Scottish Ministers determine, after consulting the scheme actuary, to be the amount that would have been payable to the member (regardless of whether the member has reached normal minimum pension age or protected minimum pension age) if the member had become entitled to a pension—

*Status: Point in time view as at 25/03/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)*

- (a) calculated in accordance with regulation E11 at the time the member became entitled to a pension mentioned in paragraph (2)(b) of this regulation; and
- (b) any increases to that amount payable under Part I of the Pensions (Increase) Act 1971 for that period;

“annual rate of pay” means that annual rate of so much of the member's pensionable pay immediately before the member's pension became payable as consisted of salary, wages or other regular payments of a fixed nature plus so much of the member's pensionable pay as consisted of fees and other regular payments not of a fixed nature as was payable during the last year before the member's pension became payable;

“continuing employment” means, for the purposes of paragraph (1), a pensionable employment which a person held immediately before the person became entitled to the said pension and which the person continues to hold whether it is pensionable or not;

“NHS employment” has the same meaning as in regulation S1(5);

“pension” means the amount of pension paid under this Section of the scheme for any financial year, plus any increases to that pension payable under Part I of the Pensions (Increase) Act 1971 for that period;

“pay” means the amount of pensionable pay received by the member during that financial year from NHS employment (or what would have been the member's pensionable pay had the member been in pensionable employment); and

“previous pay” means, subject to paragraphs (11) to (13), the greater of—

- (a) final year's pensionable pay; and
- (b) the annual rate of pay for any pensionable employment in respect of which the pension referred to in paragraph (1) becomes payable and which the member held before becoming entitled to that pension.

(17) This regulation does not apply to—

- (a) practice staff in respect of whom a pension is payable under any of regulations E1 to E12 who were employed by a registered medical practitioner on both 31st August 1997 and 1st September 1997 and who—
  - (i) were ineligible to rejoin this Section of the scheme with effect from 1st September 1997; or
  - (ii) made an election not to rejoin this Section of the scheme with effect from that date and who have not cancelled that election; and
- (b) members who are transferred into NHS employment as a result of a transfer of an undertaking to the employer.

#### Textual Amendments

- F149** Word in reg. S2(2)(b)(i) inserted (with effect in accordance with reg. 1(7) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/364\), regs. 1\(2\), 11\(a\)](#)
- F150** Words in reg. S2(2)(c)(ii) inserted (with effect in accordance with reg. 1(7) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/364\), regs. 1\(2\), 11\(b\)](#)
- F151** Words in reg. S2(4) omitted (temp.) (25.3.2020) by virtue of [Coronavirus Act 2020 \(c. 7\), ss. 46\(1\)\(b\), 87\(1\)](#) (with [ss. 89, 90](#)) (which affecting provision expires (25.3.2022) by virtue of [Coronavirus Act 2020 \(c. 7\), s. 89](#))

- F152** Word in reg. S2(9) substituted (with effect in accordance with reg. 1(4) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\), regs. 1\(2\), 21\(a\)](#) (with reg. 71)
- F153** Reg. S2(10) omitted (with effect in accordance with reg. 1(4) of the amending S.S.I.) by virtue of [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\), regs. 1\(2\), 21\(b\)](#) (with reg. 71)
- F154** Words in reg. S2(12) inserted (with effect in accordance with reg. 1(4) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\), regs. 1\(2\), 21\(c\)](#) (with reg. 71)

### **Benefits in respect of pensionable employment after pension becomes payable under regulation E2**

**S3.**—(1) This regulation applies to any member in respect of whom a pension becomes payable under regulation E2 (early retirement pension (ill-health)) and who subsequently enters pensionable employment.

(2) For the purposes of paragraphs (3) and (5), the member's "previous service" means the pensionable service in respect of which the member became entitled to receive a pension under regulation E2 and the member's "later service" means any pensionable service which accrues after the member becoming so entitled.

(3) Subject to paragraph (5), the member's benefits in respect of later service will be calculated without regard to the member's previous service.

(4) Where the member becomes entitled, under regulation E2, to a pension in respect of later service, the increase as described in regulation E2(3) will be in accordance with the proportioned increase described in regulation L1(3)(b).

(5) For the purposes of regulations D1(26) and (27) (contributions by members) and regulation C2(4) (meaning of "pensionable service") the member's previous service and later service will be aggregated.

### **Benefits in respect of pensionable employment after pension becomes payable under regulation E3**

**S4.**—(1) This regulation applies to a member in respect of whom a pension is payable under regulation E3 and who subsequently returns to pensionable employment.

(2) For the purposes of this regulation—

- (a) the member's "previous service" means the pensionable service in respect of which the member became entitled to receive a pension under regulation E3; and
- (b) the member's "later service" means any pensionable service which accrues after becoming so entitled.

(3) Subject to paragraph (4), the member's benefits in respect of later service will be calculated without regard to the member's previous service.

(4) For the purposes of regulation C2 (meaning of "pensionable service") and regulation D1(26) and (27) (contributions by members), the member's previous service and later service will be aggregated.

(5) Subject to the following provisions of this regulation, a member who—

- (a) is entitled to a lower tier pension in respect of the member's previous service; and
- (b) satisfies the lower tier condition or, as the case may be, the upper tier condition in respect of the member's later service,

is entitled to the benefits described in paragraph (6).

- (6) Those benefits are—
  - (a) the member's original lower tier pension in respect of the member's previous service; and
  - (b) a lower tier pension or, as the case may be, an upper tier pension in respect of the member's later service.
- (7) A member—
  - (a) to whom an upper tier pension is payable in place of a lower tier pension in respect of the member's previous service in accordance with regulation E4(3); and
  - (b) who satisfies the lower tier condition or, as the case may be the upper tier condition, in respect of the member's later service,

is entitled to the following benefit.

- (8) That benefit is the aggregate of—
  - (a) an upper tier pension paid in accordance with regulation E4 in respect of the member's previous service; and
  - (b) a lower tier pension in respect of the member's later service.

#### **Benefits on death in pensionable employment after pension under regulation E2 becomes payable**

**S5.**—(1) This regulation applies to a member in respect of whom a pension is payable under regulation E2 (early retirement pension (ill health)) who—

- (a) returns to pensionable employment after that pension under regulation E2 becomes payable; and
- (b) dies in pensionable employment.

(2) Subject to the modifications set out in paragraph (3) this regulation also applies to a member in respect of whom a pension is payable under regulation E2 (early retirement pension (ill health)) who—

- (a) returns to pensionable employment after that pension becomes payable; and
- (b) on the day the member dies, is—
  - (i) under the age of 70;
  - (ii) in NHS employment;
  - (iii) no longer required to pay contributions pursuant to regulation D1(26) or (27) (contributions by members) on or before 1st April 2008; and
  - (iv) except where regulation R4(4) applies, not in receipt of a pension under any of regulations E1 to E11 in respect of later service.

(3) The modifications referred to in paragraph (2) are—

- (a) in paragraph (8), for “on the date of the member's death” substitute “ on the member's last day of pensionable employment ”;
- (b) in paragraph (12), for “pensionable pay when the member died” substitute “ final year's pensionable pay ”;
- (c) in paragraph (13), for “the 6 months immediately following the member's death” substitute “ the 3 months immediately following the member's death or the 6 months immediately following the member's death if the member leaves a dependent child ”;
- (d) in paragraph (16), for “the 6 month period” substitute “ the 3 month or, as the case may be, the 6 month period ”; and

- (e) in paragraph (17)—
- (i) for “rate of pensionable pay when the member died” substitute “ final year's pensionable pay ”; and
  - (ii) for “at that time” substitute “ when the member died ”.
- (4) Subject to the modifications set out in paragraph (5), this regulation also applies to a member in respect of whom a pension is payable under regulation E2 (early retirement on grounds of ill-health) who—
- (a) returns to pensionable employment after that pension becomes payable; and
  - (b) on the day the member dies, is—
    - (i) under the age of 75;
    - (ii) in NHS employment;
    - (iii) no longer required to pay contributions pursuant to regulation D1(26) or (27) (contributions by members) on, or after, 2nd April 2008; and
    - (iv) except where regulation R4(6) applies, not in receipt of a pension under any of regulations E1 to E11 in respect of the member's later service.
- (5) The modifications referred to in paragraph (4) are—
- (a) in paragraph (8), for “on the date of the member's death” substitute “ on the member's last day of pensionable employment ”;
  - (b) in paragraph (12), for “pensionable pay when the member died” substitute “ final year's pensionable pay ”; and
  - (c) in paragraph (11)—
    - (i) for “rate of pensionable pay when the member died” substitute “ final year's pensionable pay ”; and
    - (ii) for “at that time” substitute “ when the member died ”.
- (6) In this regulation, the member's “previous service” and “later service” have the same meaning as in regulation S3(2).
- (7) Where this regulation applies, a lump sum payable on the member's death will be payable in addition to any lump sum payable under regulation F2.
- (8) The additional lump sum referred to in paragraph (7) will be equal to 5 times the amount of the pension that would have been payable to the member had the member left NHS employment and been entitled to a pension based on later service under regulation E1 (normal retirement pension) on the date of the member's death.
- (9) If a member to whom this regulation applies leaves a surviving—
- (a) spouse or civil partner; or
  - (b) nominated partner (if the member became entitled to the pension referred to in paragraph (1) on or after 1st April 2008),
- the amount of pension payable to the surviving spouse, civil partner or nominated partner will be the aggregate of the amounts referred to in paragraphs (10) and (12).
- (10) Subject to paragraph (14), the amount payable in respect of the member's previous service will be equal to the amount of the member's pension (if any) that was payable when the member died.
- (11) The amount referred to in paragraph (10) will be paid for—
- (a) the 3 months immediately following the member's death; or
  - (b) the 6 months immediately following the member's death if the member leaves a dependent child who is dependent on the surviving spouse, civil partner or nominated partner.

*Status: Point in time view as at 25/03/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)*

(12) The amount payable in respect of the member's later service will be equal to the rate of the member's pensionable pay when the member died.

(13) The amount referred to in paragraph (12) will be paid for the 6 months immediately following the member's death.

(14) Paragraph (10) will not apply if the aggregate of the spouse's, civil partner's or nominated partner's pension and any child allowance which would otherwise be payable under these Regulations in respect of the member's previous service is greater.

(15) Upon expiry of the 3 month or, as the case may be, 6 month period referred to in paragraph (11), the amount of the surviving spouse's, civil partner's or nominated partner's pension in respect of the member's previous service will be the amount determined in accordance with regulation G3 (widow's pension when member dies after pension becomes payable).

(16) Upon expiry of the 6 month period referred to in paragraph (13), the amount of the surviving spouse's, civil partner's or nominated partner's pension in respect of the member's later service will be equal to one-half of the rate of pension mentioned in paragraph (8) that would have been payable to the member.

(17) If a member to whom this regulation applies leaves a dependent child but—

- (a) does not leave a surviving spouse or civil partner; and
- (b) a nominated partner pension is not payable in respect of the member's later service,

the child allowance, for the 6 months immediately following the member's death, will be equal to the aggregate of the member's rate of pensionable pay when the member died and the amount of the member's pension (if any) that the member was receiving at that time.

(18) If a member to whom this regulation applies leaves a dependent child not dependent on a surviving spouse or civil partner and a nominated partner pension is not payable in respect of the member's later service, the child allowance, for the 6 months immediately following the member's death, will be the aggregate of the member's pensionable pay when the member died and the amount of the member's pension (if any) that the member was receiving at the time.

(19) Subject to paragraph (20), except where a child allowance is payable at the rate mentioned in paragraph (17) or (18), the child allowance in respect of the member's later service will—

- (a) be paid as a proportion of the rate of pension mentioned in paragraph (8) that would have been payable to the member; and
- (b) such proportion shall be determined in accordance with the circumstances as described in regulation H3 (child allowance when member dies in pensionable employment).

(20) If a member to whom this regulation applies leaves a child who was a dependent child both at the time the member terminated his previous service and when the member died, any child allowance payable under these Regulations will be calculated according to—

- (a) regulation H4 (child allowance when member dies after pension becomes payable) in respect of the pension already in payment; and
- (b) regulation H3 in respect of later pensionable employment.

(21) If the aggregate of the pensionable service used in the calculation referred to in paragraph (20)(a) and that used in the calculation referred to in paragraph (20)(b) ("the member's aggregated service") is less than 10 years, additional service will be allocated to the later period of pensionable employment for the purpose of the calculation under regulation H3.

(22) The amount of additional service referred to in paragraph (21) is the difference between 10 years pensionable service and the member's aggregated service.



## **Benefits on death in pensionable employment after pension under regulation E3 becomes payable**

**S6.**—(1) This regulation applies to a member in respect of whom a pension is payable under regulation E3 (ill health pension on early retirement) who—

- (a) returns to pensionable employment after that pension becomes payable; and
- (b) dies in pensionable employment.

(2) Subject to the modifications set out in paragraph (3), this regulation also applies to a member in respect of whom a pension is payable under regulation E3 who—

- (a) returns to pensionable employment after that pension becomes payable; and
- (b) on the day the member dies, the member is—
  - (i) under the age of 75;
  - (ii) in NHS employment;
  - (iii) no longer required to pay contributions pursuant to regulation D1(26) or (27) (contributions by members); and
  - (iv) except where regulation R4(6) applies, not in receipt of a pension under any of regulations E1 to E11 in respect of the member's later service.

(3) The modifications referred to in paragraph (2) are—

- (a) in paragraph (8), for “on the date of the member's death” substitute “ on the member's last day of pensionable employment ”;
- (b) in paragraphs (12), for “rate of pensionable pay when the member died” substitute “ final year's pensionable pay ”;
- (c) in paragraph (17)(a), for “rate of pensionable pay when the member died” substitute “ final year's pensionable pay ”; and
- (d) in paragraph (17)(b), for “at that time” substitute “ when the member died ”.

(4) For the purposes of this regulation, the member's “previous service” means the pensionable service in respect of which the member became entitled to receive a lower or upper tier pension under regulation E3 and the member's “later service” means any pensionable service which accrues after becoming so entitled.

(5) Subject to paragraph (6), the member's benefits in respect of later service will be calculated without regard to the member's previous service.

(6) For the purposes of regulation C2 and regulation D1(26) and (27), the member's previous service and later service will be aggregated.

(7) If this regulation applies, a lump sum payable on the member's death will be payable in addition to any lump sum payable under regulation F2 (lump sum when member dies after pension becomes payable).

(8) The additional lump sum referred to in paragraph (7) will be equal to 5 times the amount of the pension that would have been payable to the member had the member left NHS employment and been entitled to an upper tier pension based on the member's later service under regulation E3 on the date of the member's death.

(9) If a member to whom this regulation applies leaves a surviving spouse, civil partner or nominated partner, the amount of pension payable to the surviving spouse, civil partner or nominated partner will be the aggregate of the amounts referred to in paragraphs (10) and (12).

(10) Subject to paragraph (14), the amount payable in respect of the member's previous service will be equal to the amount of the member's pension (if any) that was payable when the member died.

(11) The amount referred to in paragraph (10) will be paid for—

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- (a) the 3 months immediately following the member's death; or
  - (b) the 6 months immediately following the member's death if the member leaves a dependent child who is dependent on the surviving spouse, civil partner or nominated partner.
- (12) The amount payable in respect of the member's later service will be equal to the member's rate of pensionable pay when the member died.
- (13) The amount referred to in paragraph (12) will be paid for the 6 months immediately following the member's death.
- (14) Paragraph (10) will not apply if the aggregate of the spouse's, civil partner's or nominated partner's pension and any child allowance which would otherwise be payable under these Regulations in respect of the member's previous service is greater.
- (15) Upon expiry of the 3 month or, as the case may be, 6 month period referred to in paragraph (11), the amount of the surviving spouse's, civil partner's or nominated partner's pension in respect of the member's previous service will be the amount determined in accordance with regulation G3 (widows pension when member dies after pension becomes payable).
- (16) Upon expiry of the 6 month period referred to in paragraph (13), the amount of the surviving spouse's, civil partner's or nominated partner's pension in respect of the member's later service will be equal to one-half of the rate of pension that would have been payable to the member had the member become entitled to the pension mentioned in paragraph (8).
- (17) If a member to whom this regulation applies leaves a dependent child but does not leave a surviving spouse, civil partner, or nominated partner, the child allowance, for the 6 months immediately following the member's death, will be equal to the aggregate of—
- (a) the member's rate of pensionable pay when the member died; and
  - (b) the amount of the member's pension (if any) that the member was receiving at that time.
- (18) Subject to paragraph (19), except where a child allowance is payable at the rate mentioned in paragraph (17), the child allowance in respect of the member's later service will—
- (a) be paid as a proportion of the rate of pension that would have been payable to the member had the member become entitled to the pension mentioned in paragraph (8); and
  - (b) such proportion shall be determined in accordance with the circumstances as described in regulation H3 (child allowance when member dies in pensionable employment).
- (19) If a member to whom this regulation applies leaves a child who was a dependent child both at the time the member terminated the member's previous service and when the member died, any child allowance payable under these Regulations will be calculated according to—
- (a) regulation H4 (child allowance when member dies after pension becomes payable) in respect of the pension already in payment; and
  - (b) regulation H3 in respect of later pensionable employment.
- (20) If the aggregate of the pensionable service used in the calculation referred to in paragraph (19)(a) and that used in the calculation referred to in paragraph (19)(b) (“the member's aggregated service”) is less than 10 years, additional service will be allocated to the later period of pensionable employment for the purpose of the calculation under regulation H3.
- (21) The amount of additional service referred to in paragraph (20) is the difference between 10 years pensionable service and the member's aggregated service.

## PART T

### GENERAL RULES ABOUT BENEFITS

#### Claims for benefits

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

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

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

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

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

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

#### [<sup>F155</sup> Provision of information: continuing entitlement to benefit

**T1A.**—(1) The Scottish Ministers may specify a date by which a person who is in receipt of a benefit under this Section of the scheme is to provide the Scottish Ministers with all or any of the following material—

- (a) evidence of the person's identity;
- (b) the person's contact details; and
- (c) evidence of the person's continuing entitlement to the benefit.

(2) Where a person fails to provide the material referred to in paragraph (1) in accordance with that paragraph the Scottish Ministers may withhold all, or any part of, any benefit payable to that person.]

#### Textual Amendments

**F155** Reg. T1A inserted (20.5.2013) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **22** (with reg. 71)

#### Deduction of tax

**T2.** The Scottish Ministers will be entitled to deduct from any payment under this Section of the scheme any tax for which they may be liable in respect of it.

**Deduction of tax: further provisions**

**T3.**—(1) For the purposes of these Regulations and the 2004 Act, the scheme administrator will be the Scottish Ministers.

(2) Subject to paragraph (3), if a person's entitlement to a benefit under these Regulations—

(a) constitutes a benefit crystallisation event in accordance with section 216 of the 2004 Act (benefit crystallisation events and amounts crystallised); and

(b) a lifetime allowance charge under that Act is payable in respect of that event,

that charge will be paid by the scheme administrator.

(3) The member's present or future benefits in respect of which any charge under paragraph (2) arises will be reduced by an amount that fully reflects the amount of tax paid by the scheme administrator and will be calculated by reference to advice provided by the scheme actuary for that purpose.

(4) Where a person is entitled to a benefit under these Regulations the person must (whether or not the person intends to rely on entitlement to [<sup>F156</sup>[<sup>F157</sup>fixed] protection against a lifetime allowance charge,] an enhanced lifetime allowance, or to enhanced protection) give to the scheme administrator such information as will enable the scheme administrator to determine—

(a) whether any lifetime allowance is payable in respect of the benefit and, if so,

(b) the amount of that charge.

(5) If a person applying for a benefit under these Regulations intends to rely on entitlement to an enhanced lifetime allowance by virtue of any of the provisions listed in section 256(1) of the 2004 Act (enhanced lifetime allowance regulations), the person must give to the scheme administrator—

(a) the reference number issued by Revenue and Customs under the Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006 <sup>M66</sup> in respect of that entitlement; and

(b) the information referred to in paragraph (4).

[<sup>F158</sup>(5A) If a person claiming a benefit under these Regulations intends to rely on entitlement to [<sup>F159</sup>fixed] protection against a lifetime allowance charge in accordance with paragraph 14 of Schedule 18 to the Finance Act 2011 [<sup>F160</sup>or paragraph 1 of Schedule 22 to the Finance Act 2013], 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 [<sup>F161</sup>or the Registered Pension Schemes and Relieved Non-UK Pension Schemes (Lifetime Allowance Transitional Protection) (Notification) Regulations 2013] in respect of that entitlement; and

(b) the information referred to in paragraph (4).]

[<sup>F162</sup>(5B) If a person claiming a benefit under these Regulations intends to rely on entitlement to individual protection against a lifetime allowance charge in accordance with paragraph 1 of [<sup>F163</sup>Schedule 6] to the Finance Act 2014, that person must give to the scheme administrator—

(a) the reference number issued by the Commissioners under [<sup>F164</sup>the Registered Pension Schemes and Relieved Non-UK Pension Schemes (Lifetime Allowance Transitional Protection) (Individual Protection 2014 Notification) Regulations 2014] in respect of that entitlement; and

(b) the information referred to in paragraph (4).]

(6) The information referred to in paragraph (4) or, as the case may be, paragraph (5) [<sup>F165</sup>, (5A) or (5B)] must be given to the scheme administrator—

- (a) at the time the person makes a claim for a benefit; or
- (b) where that information has not been provided at the time of making the claim, within such time as the scheme administrator specifies in writing.

(7) Where the person fails to provide all, or part of, the information referred to in paragraph (4) or, as the case may be, paragraph (5) [<sup>F166</sup>, (5A) or (5B)] within the time limits specified by the scheme administrator where relevant, the scheme administrator may treat the whole of the benefit as a chargeable benefit and pay the charge on that basis.

(8) Subject to regulation F2(4), where—

- (a) a member has given notice to the scheme administrator in accordance with regulation F2(3) that a lump sum payable under that regulation is to be treated as a pension protection lump sum death benefit in accordance with paragraph 14 of Part 2 of Schedule 29 to the 2004 Act; and
- (b) has not revoked that notice, the scheme administrator will deduct tax at [<sup>F167</sup>55%] (or such other rate as applies under the 2004 Act) from the lump sum payable in accordance with section 206 of the 2004 Act (special lump sum death benefits charge).

[<sup>F168</sup>(8A) Where—

- (a) a lump sum is payable by virtue of regulation F2 (lump sum when member dies after pension becomes payable); and
- (b) that lump sum is payable in respect of a member who had reached the age of 75 at the date of the member's death,

the scheme administrator shall deduct tax at the rate of 55% (or such other rate as applies under the 2004 Act) from the lump sum payable in accordance with section 206 of the 2004 Act.

(8B) Where—

- (a) the Scottish Ministers' liability to pay a pension under regulation E1 (normal retirement pension) is discharged by the payment of a lump sum in accordance with paragraph (3) of that regulation; and
- (b) that lump sum payment is made to a member who has reached the age of 75,

the scheme administrator shall deduct tax at the rate of 55% (or such other rate as applies under the 2004 Act) from the lump sum payable in accordance with section 205A of the 2004 Act.]

[<sup>F169</sup>(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 237C 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.

*Status: Point in time view as at 25/03/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)*

(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 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.]

### Textual Amendments

- F156** Words in reg. T3(4) inserted (with effect in accordance with reg. 1(10) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2012 \(S.S.I. 2012/163\)](#), regs. 1(2), **7(a)** (with reg. 30)
- F157** Word in reg. T3(4) substituted (with effect in accordance with reg. 1(2)(b) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Scotland\) \(Miscellaneous Amendments\) Regulations 2014 \(S.S.I. 2014/154\)](#), regs. 1(2), **11(a)**
- F158** Reg. T3(5A) inserted (with effect in accordance with reg. 1(10) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2012 \(S.S.I. 2012/163\)](#), regs. 1(2), **7(b)** (with reg. 30)
- F159** Word in reg. T3(5A) substituted (with effect in accordance with reg. 1(2)(b) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Scotland\) \(Miscellaneous Amendments\) Regulations 2014 \(S.S.I. 2014/154\)](#), regs. 1(2), **11(b)(i)**
- F160** Words in reg. T3(5A) inserted (with effect in accordance with reg. 1(2)(b) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Scotland\) \(Miscellaneous Amendments\) Regulations 2014 \(S.S.I. 2014/154\)](#), regs. 1(2), **11(b)(ii)**
- F161** Words in reg. T3(5A) inserted (with effect in accordance with reg. 1(2)(b) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Scotland\) \(Miscellaneous Amendments\) Regulations 2014 \(S.S.I. 2014/154\)](#), regs. 1(2), **11(b)(iii)**
- F162** Reg. T3(5B) inserted (with effect in accordance with reg. 1(2)(b) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Scotland\) \(Miscellaneous Amendments\) Regulations 2014 \(S.S.I. 2014/154\)](#), regs. 1(2), **11(c)**
- F163** Words in reg. T3(5B) substituted (with effect in accordance with reg. 1(2)(c) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2016 \(S.S.I. 2016/98\)](#), regs. 1(1), **5(a)**
- F164** Words in reg. T3(5B)(a) substituted (with effect in accordance with reg. 1(2)(c) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2016 \(S.S.I. 2016/98\)](#), regs. 1(1), **5(b)**
- F165** Words in reg. T3(6) inserted (with effect in accordance with reg. 1(2)(b) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Scotland\) \(Miscellaneous Amendments\) Regulations 2014 \(S.S.I. 2014/154\)](#), regs. 1(2), **11(d)**
- F166** Words in reg. T3(7) inserted (with effect in accordance with reg. 1(2)(b) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Scotland\) \(Miscellaneous Amendments\) Regulations 2014 \(S.S.I. 2014/154\)](#), regs. 1(2), **11(e)**
- F167** Word in reg. T3(8)(b) substituted (with effect in accordance with reg. 1(8) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/364\)](#), regs. 1(2), **12(a)**
- F168** Reg. T3(8A)(8B) inserted (with effect in accordance with reg. 1(8) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/364\)](#), regs. 1(2), **12(b)**
- F169** Reg. T3(9)-(14) substituted for reg. T3(9) (with effect in accordance with reg. 1(5) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2012 \(S.S.I. 2012/163\)](#), regs. 1(2), **7(c)** (with reg. 30)

#### Marginal Citations

M66 S.I. 2006/131.

#### Benefits not assignable

**T4.**—(1) Any assignment of, or charge on or security over, or any agreement to assign or charge or grant a security over, any right to benefit under this Section of the scheme is void.

(2) On the bankruptcy or sequestration of any person entitled to a benefit under this Section of the scheme, no part of the benefit will be paid to any trustee or other person acting on behalf of the creditors, except as provided for in paragraph (3).

(3) Where, following the bankruptcy or sequestration of any person entitled to a benefit under this Section of the scheme, [<sup>F170</sup>a person makes or varies a debtor contribution order under section 32A or 32F of the Bankruptcy (Scotland) Act 1985 or the court makes an income payments order] under section 310 of the Insolvency Act 1986 <sup>M67</sup> (income payments orders) that requires the Scottish Ministers to pay all or part of the benefit to the person's trustee in bankruptcy, the Scottish Ministers must comply with that order.

#### Textual Amendments

**F170** Words in reg. T4(3) substituted (1.4.2015) by [The Bankruptcy and Debt Advice \(Scotland\) Act 2014 \(Consequential Provisions\) Order 2014 \(S.S.I. 2014/293\)](#), art. 1, [sch. para. 12](#) (with art. 3(2))

#### Marginal Citations

M67 1986 c.45.

#### Beneficiary who is incapable

**T5.**—(1) If the Scottish Ministers consider that a beneficiary is unable to look after the beneficiary's affairs (by reason of illness, mental disorder, minority or otherwise), the Scottish Ministers may use any amounts due to the beneficiary for the beneficiary's benefit or may pay them to some other person to do so.

(2) Payment under paragraph (1) to a person other than the beneficiary will discharge the Scottish Ministers from any obligation in respect of the amount concerned.

#### Offset for crime, fraud or negligence

**T6.**—(1) If they are satisfied that a loss to public funds has occurred as a result of a member's criminal, fraudulent or negligent act or omission, the Scottish Ministers may reduce any benefits or other amounts payable to, or in respect of, the member (other than guaranteed minimum pensions and benefits arising out of a transfer payment) by an amount equal to the loss.

(2) If the loss to public funds is greater than the value of the benefits or other amounts payable to or in respect of the member a reduction under paragraph (1) may result in the benefits ceasing to be payable.

(3) The Scottish Ministers must give the member a certificate specifying the amount of the loss to public funds and of the reduction in benefits.

(4) If the amount of the loss is disputed, no reduction in benefits will be made until the member's obligation to make good the loss has become enforceable under the order of a court or arbiter.

(5) Where the loss referred to in paragraph (1) is suffered by an employing authority, the amount of the reduction in benefits will be paid to the employing authority.

*Status: Point in time view as at 25/03/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)*

## Loss of rights to benefits

**T7.**—(1) Subject to paragraph (3), the Scottish Ministers may direct that all or part of any benefit payable to, or in respect of, a member be forfeited if the member is convicted of any of the following offences, committed before the benefit becomes payable:—

- (a) an offence in connection with employment to which this Section of the scheme applies which is certified by the Scottish Ministers either to have been gravely injurious to the State or to be liable to lead to serious loss of confidence in the public service;
- (b) an offence of treason;
- (c) one or more offences under the Official Secrets Acts 1911 to 1989 <sup>M68</sup> for which the member has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in the aggregate to, at least 10 years.

(2) Subject to paragraph (3), the Scottish Ministers may also direct that all or part of any rights to benefits or other amounts payable in respect of a member be forfeited where such benefits or amounts are payable to a person who is—

- (a) the member's widow, widower, surviving nominated partner or surviving civil partner; or
- (b) a dependent of the member; or
- (c) a person not coming within sub-paragraph (a) or (b) who is specified in a notice or nomination given under regulation F5; or
- (d) a person to whom such benefits or amounts are payable under the member's will or on their intestacy,

and that person is convicted of the offence of murder or culpable homicide of that member or of any other offence of which the unlawful killing of that member is an element.

(3) A guaranteed minimum pension may be forfeited only if paragraph (1)(b) or (c) [<sup>F171</sup>or paragraph (2)] applies.

### Textual Amendments

**F171** Words in reg. T7(3) inserted (with effect in accordance with reg. 1(2)(f) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), 13 (with reg. 53)

### Marginal Citations

**M68** 1911 c.28; 1920 c.75; 1939 c.121; 1989 c.6.

## Commutation of trivial pensions

**T8.**—(1) Where a person has become entitled to a pension of a trivial amount, the Scottish Ministers may pay to that person a lump sum representing the capital value of that pension and of any benefits that might otherwise have become payable on that person's death.

(2) Any lump sum payable under this regulation will be calculated by the Scottish Ministers, after consulting the scheme actuary.

(3) A pension may be treated as trivial only if all benefits payable to the person concerned under this Section of the scheme are of an amount consistent with—

[<sup>F172</sup>(a) the preservation requirements;]

[<sup>F173</sup>(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).]

(4) A payment made under paragraph (1) discharges the Scottish Minister's liability in respect of that pension and of any benefits that might otherwise have become payable on that person's death.

#### Textual Amendments

**F172** Reg. T8(3)(a) substituted (with effect in accordance with reg. 1(2)(f) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), 14 (with reg. 53)

**F173** Reg. T8(3)(b) substituted (28.6.2012) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2012 \(S.S.I. 2012/163\)](#), regs. 1(2), 8 (with reg. 30)

#### Reduction in benefits to take account of benefits under the National Insurance Acts

**T9.**—(1) This regulation applies to members—

- (a) who had ceased to be in pensionable employment before the coming into force of the 1995 Regulations unless after that date they return to pensionable employment; or
- (b) who became entitled to receive a pension under the 1980 Regulations and who, before the coming into force of the 1995 Regulations, returned to pensionable employment, in which case the pension under the 1980 Regulations will be subject to this regulation unless their benefits fall to be calculated by reference to combined pensionable service before and after the coming into force of the 1995 Regulations.

(2) Where this regulation applies, pensions payable under this Section of the scheme to women who have reached age 60 and men who have reached age 65 will be reduced in accordance with paragraph (3) to take account of benefits payable under the National Insurance Act 1946<sup>M69</sup> and the National Insurance Act 1965<sup>M70</sup>.

(3) The reduction referred to in paragraph (2) will be £1.70 for each year of pensionable service after 4th July 1948 and before 1st April 1980, or such lesser reduction as would have applied under regulation 56 of the previous Regulations.

(4) Benefits for members who paid contributions under section 1(1)(b) of the National Insurance Act 1959<sup>M71</sup>, section 4 of the National Insurance Act 1965<sup>M72</sup> or the corresponding provisions of the National Insurance Act (Northern Ireland) 1959<sup>M73</sup> or the National Insurance (Isle of Man) Act 1961 (an Act of Tynwald) will be reduced to take account of benefits payable under those Acts (provided that no such reduction shall be of a greater amount than that which would have applied under Schedule 10 of the 1980 Regulations).

(5) Any amount by which a member's pension is reduced under this regulation will be ignored for the purposes of calculating—

- (a) the member's retirement lump sum, and
- (b) the lump sum, any widow or widower's pension and any child allowance, payable on the member's death in pensionable employment or, subject to paragraph (6), after becoming entitled to receive a pension.

(6) For the purpose of calculating any higher rate spouse's pension or child allowance that becomes payable on a member's death after becoming entitled to receive a pension, if the member dies after reaching age 60 (if a woman) or 65 (if a man), the references to the member's pension in regulations G3(2) and H4(2)(b) and (8) (member dies after pension becomes payable) are to the member's pension as reduced by virtue of this regulation.

**Marginal Citations**

- M69** 1946 c.67; this Act was repealed by the [Social Security Act 1973 \(c.38\)](#), Schedule 28 but a savings provision is necessary to cover benefits already paid under the 1946 Act.
- M70** 1965 c.51.
- M71** 1959 c.47; this Act was repealed by S.L.R. 1965 but a savings provision is necessary to cover benefits already paid under the 1946 Act.
- M72** 1965 c.51; section 4 was amended by the [National Insurance Act 1966 \(c.6\)](#), section 1, by the [National Insurance Act 1969 \(c.44\)](#), section 1, and by the [National Insurance Act 1971 \(c.50\)](#), section 1.
- M73** 1959 c.21 (N.I.).

**Interest on late payment of benefits**

**T10.**—(1) Subject to paragraph (2) below, where the whole or any part of a qualifying payment under these Regulations is not paid by the end of the period of one month beginning with the due date, the Scottish Ministers must pay interest, calculated in accordance with paragraph (3) below, on the unpaid amount to the person to whom the qualifying payment should have been made.

(2) Interest under paragraph (1) above will not be payable where the Scottish Ministers are satisfied that the qualifying payment was not made on the due date by reason of some act or omission on the part of the member or other recipient of the qualifying payment.

(3) The interest referred to in paragraph (1) above will be calculated at the base rate on a day to day basis from the due date to the date of payment, and will be compounded with three-monthly rests.

(4) In this regulation—

“base rate” means the official Bank Rate for the time being quoted by the Bank of England;

“due date” means the later of, either, the applicable day described in sub-paragraph (a), and the day described in sub-paragraph (b), or the applicable day in sub-paragraph (aa) and the applicable day in sub-paragraph (b) (whichever is applicable)—

- (a) (i) in the case of a lump sum under Part F above, the day immediately following the day of the member's death, unless the lump sum falls to be paid to the member's personal representative, in which case it means—
- (aa) the day on which confirmation probate or letters of administration are produced to the Scottish Ministers; or
- (bb) the day on which the Scottish Ministers are satisfied that the lump sum may be paid as provided in regulation F5(4),  
whichever is the earlier;
- (ii) in the case of a pension payable on a member's death other than a pension payable under regulation F2 the day immediately following the day of this death;
- (iii) in the case of a pension under regulation E12, the day on which the pension becomes payable in accordance with that regulation;
- (iv) in the case of a refund of contributions, the day after that on which the Scottish Ministers receive from Revenue and Customs the information they require for the purposes of compliance with paragraphs (2) to (4) of regulation E15; and
- (v) in any other case, the day immediately following that of the member's retirement from pensionable employment; and
- (b) in the case of an amount in respect of pension under regulation F2 (lump sum when member dies after pension becomes payable) that is payable to—

- (i) the member's personal representatives, the date on which confirmation, probate or letters of administration were produced to the Scottish Ministers;
  - (ii) any person or body to whom the pension has been assigned by the member's personal representatives, the date on which the notice under regulation F2(10) was received by the Scottish Ministers; and
  - (iii) any person or body other than those referred to in heads (i) and (ii), the day immediately following the day of the member's death.
- (c) the first day on which the Scottish Ministers are in possession of all information (including information which the Scottish Ministers obtain in connection with a determination under regulation E4(3)) necessary to be able to calculate the value of the qualifying payment;

“qualifying payment” means any amount payable by way of a pension or lump sum, or by way of a refund of contributions, under these Regulations, and for these purposes—

- (a) any amount paid by way of an interim payment calculated by reference to an expected pension benefit award, pending final calculation of the full value of that benefit; or
- (b) any amount paid that increases the amount of an earlier payment due to—
  - (i) a backdated or later increase in pensionable pay; or
  - (ii) the payment of an upper tier pension under regulation E3 in place of a lower tier pension being paid to a member following a determination by the Scottish Ministers under regulation E4(3),

will be treated as a separate qualifying payment.

#### **[<sup>F174</sup>Interest and administration charges: late paid contributions**

**T11.**—(1) For the purposes of this regulation, there is a “chargeable event” where an employing authority fails to pay, by the dates therein specified, the full amount of contributions it is required to pay under any of the following provisions—

- (a) regulations D1, D2, D3, Q3, Q4, Q5, Q8, Q10 and Q11;
- (b) paragraph 14 or 23 of Schedule 1.

(2) Where there is a chargeable event, the amount of contributions that should have been paid under a provision referred to in paragraph (1) is to be determined by the Scottish Ministers having regard to—

- (a) the amount of contributions historically paid pursuant to the provision in question by that employing authority;
- (b) any reasons or explanation provided by the employing authority for the change in the amount of contributions (if any) it has paid pursuant to that provision;
- (c) any other factors that the Scottish Ministers consider relevant.

(3) Where there is a chargeable event, the employing authority is liable to pay standard rate interest on the amount of unpaid contributions determined under paragraph (2) and an administration charge in respect of each such event.

(4) Where the Scottish Ministers become aware of a chargeable event, the Scottish Ministers must give the employing authority a written notice specifying—

- (a) the date of that event;
- (b) the amount of unpaid contributions determined under paragraph (2);
- (c) the amount of standard rate interest payable in respect of that event;

*Status: Point in time view as at 25/03/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)*

- (d) the amount of administration charge payable in respect of it;
- (e) that payment of the amounts referred to in sub-paragraphs (c) and (d) is to be made within 1 month of the date of the notice and that failure to do so incurs further interest and administration charges.

(5) Any amount payable by way of interest or payable by way of an administration charge is to be paid as a single lump sum unless the Scottish Ministers consider the case to be exceptional and consider it appropriate for that amount to be paid over a period, and by a number of instalments, determined by the Scottish Ministers.

(6) Where the Scottish Ministers consider the case to be exceptional, nothing in the preceding paragraphs prevents the Scottish Ministers from waiving all or any part of the amount of interest, or all or any administration charges, payable.

(7) The standard rate of interest is the Superannuation Contributions Adjusted for Past Experience discount rate set by the Treasury.

(8) In respect of arrears relating to the scheme year 2014-15 and subsequent years, the administration charge is £75.

(9) In any particular case the Scottish Ministers may direct that, for the purposes of this regulation, “employing authority” includes a successor, transmittee or assignee of all or part of an employing authority’s business or functions.]

#### **Textual Amendments**

**F174** Reg. T11 inserted (28.6.2014) by [The National Health Service Superannuation Scheme \(Scotland\) \(Miscellaneous Amendments\) Regulations 2014 \(S.S.I. 2014/154\)](#), regs. 1(2), **12**

## **PART U**

### **ADMINISTRATIVE MATTERS**

#### **Extension of time limits**

**U1.** In any particular case, the Scottish Ministers may extend any time limit mentioned in these Regulations.

#### **Determination of questions**

**U2.—**(1) The Scottish Ministers must determine any question concerning any person’s rights or liabilities under these Regulations.

(2) Any dispute shall be resolved in accordance with the dispute resolution procedure issued from time to time by the Scottish Ministers in conformity with section 50 of the 1995 Act.

(3) In making a determination under the regulations referred to in paragraph (4) [<sup>F175</sup>or in making a decision referred to in paragraph (5),] the Scottish Ministers may require any person requesting a determination to submit to a medical examination by a registered medical practitioner selected by the Scottish Ministers, and in that event, the Scottish Ministers must—

- (a) also offer the person an opportunity of submitting a report from the person’s own medical adviser as a result of an examination by that medical adviser; and
- (b) take that report into consideration together with the report of the medical practitioner selected by the Scottish Ministers.

- (4) The regulations referred to in paragraph (3) are—
- (a) regulations E2, E3, E4, E5 and E12 in relation to physical or mental incapacity;
  - (b) regulations G8(3), G11(2) and G15(2) in relation to incapacity to earn a living because of physical or mental infirmity;
  - (c) regulation H1(7) in relation to incapacity to earn a living because of permanent physical or mental infirmity;
  - (d) regulation J1(6) in relation to the member's good health; and
  - (e) regulations E1(4), E3(8)<sup>F176</sup>, E12 and V17], in relation to the life expectancy of the member.

<sup>F177</sup>(5) The decision referred to for the purposes of paragraph (3) is a decision as to whether a person is able to satisfy the severe ill-health condition for the purposes of section 229(3)(a) of the 2004 Act (total pension input amount).]

#### Textual Amendments

- F175** Words in reg. U2(3) inserted (with effect in accordance with reg. 1(5) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2012 \(S.S.I. 2012/163\)](#), regs. 1(2), **9(a)** (with reg. 30)
- F176** Words in reg. U2(4)(e) substituted (with effect in accordance with reg. 1(5) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2012 \(S.S.I. 2012/163\)](#), regs. 1(2), **9(b)** (with reg. 30)
- F177** Reg. U2(5) inserted (with effect in accordance with reg. 1(5) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2012 \(S.S.I. 2012/163\)](#), regs. 1(2), **9(c)** (with reg. 30)

#### <sup>F178</sup>Accounts and actuarial reports

**U3.**—(1) The Scottish Ministers are to keep accounts of the scheme in a form approved by the Treasury.

- (2) The accounts are to be open to examination by the Auditor General for Scotland.
- (3) In respect of a member, an employing authority must keep a record of all—
  - (a) contributions paid under regulations D1, Q5 and Q8;
  - (b) contributions due under regulations D1, Q5 and Q8, but unpaid;
  - (c) contributions paid under regulation D2(1);
  - (d) contributions due under regulation D2(1), but unpaid;
  - (e) hours, half-days or sessions constituting part-time pensionable employment for the purposes of regulation C4;
  - (f) pensionable pay;
  - (g) absences from work referred to in regulations P1, P2 and P3;
  - (h) commencement and termination of pensionable employment;
  - (i) reason for termination of pensionable employment.
- (4) That record is to be kept in a manner approved by the Scottish Ministers.

(5) Except where the Scottish Ministers waive such a requirement, an employing authority must within 2 calendar months of the end of each scheme year provide to the Scottish Ministers a statement in respect of the matters referred to in paragraph (3) in respect of all scheme members.

*Status: Point in time view as at 25/03/2020.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011. (See end of Document for details)*

(6) Where an employing authority has provided the information in accordance with paragraph (5) and there is then a change to any of the information provided, that employing authority must, within 1 month of the change, provide the Scottish Ministers with the revised information.

(7) In respect of each scheme year an employing authority must, within 2 months of a request and in a manner specified by the Scottish Ministers, provide them with a statement of the total contributions paid for all scheme members under regulations D1, D2(1), Q5 and Q8.

(8) Where an employing authority has provided a statement under paragraph (7) and there is a revision to the total contributions paid, that employing authority must, within 1 month of the change, provide the Scottish Ministers with the revised total.]

#### Textual Amendments

**F178** Reg. U3 substituted (28.6.2014) by [The National Health Service Superannuation Scheme \(Scotland\) \(Miscellaneous Amendments\) Regulations 2014 \(S.S.I. 2014/154\)](#), regs. 1(2), **13**

#### Cost Sharing

<sup>F179</sup>U4. ....

#### Textual Amendments

**F179** Reg. U4 omitted (with effect in accordance with reg. 1(8) of the amending S.S.I.) by virtue of [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **24** (with reg. 71)

#### [<sup>F180</sup>Benefit information statements

**U5.**—(1) The Scottish Ministers must provide a benefit information statement to each member in accordance with—

- (a) section 14 (information about benefits) of the 2013 Act; and
- (b) any Treasury directions given from time to time pursuant to that section.

(2) Paragraph (1) does not provide a right for a member to request a benefit information statement.

(3) The Scottish Ministers are only required to provide a member with one benefit information statement per scheme year.

(4) A benefit information statement provided pursuant to paragraph (1) is to be treated as though it is the information mentioned in regulation 16(2)(a) of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 for the purposes of determining whether or not information must be given under regulation 16(1) of those Regulations.]

#### Textual Amendments

**F180** Reg. U5 inserted (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), reg. 1(b), **sch. 2 para. 6**

## PART V

### PENSION SHARING ON DIVORCE OR NULLITY OF MARRIAGE OR ON DISSOLUTION OR NULLITY OF A CIVIL PARTNERSHIP PRELIMINARY PROVISIONS

#### Interpretation

**V1.** The definitions of expressions contained in regulation A2(4) apply for their interpretation to this Part.

#### SHARING OF RIGHTS

#### Pension sharing mechanism in the Scheme

**V2.**—(1) Pension sharing is available under the Scheme in respect of any of a person's shareable rights under the Scheme except as otherwise provided in this regulation.

(2) Excluded from shareable rights<sup>M74</sup> for the purposes of these Regulations are any rights under the Scheme in respect of which a person is in receipt of a pension by virtue of being the surviving spouse or other dependent of a deceased member with pension rights under the Scheme and any other rights which are prescribed as excluded<sup>M75</sup>.

#### Marginal Citations

**M74** See section 27(2) of the 1999 Act and section 2 of the [Pension Sharing \(Valuation\) Regulations 2000 \(S.I. 2000/1052\)](#).

**M75** See regulation 2(1) of the [Pension Sharing \(Valuation\) Regulations 2000 \(S.I. 2000/1052\)](#) which describes rights of a description which are not to be classed as shareable rights for the purposes of section 27(2) of the 1999 Act. Regulation 2(1)(b)(iv) was substituted by the [Taxation of Pension Schemes \(Consequential Amendments of Occupational and Personal Pension Schemes Legislation\) Order 2006 \(S.I. 2006/744\)](#), article 16(3)(a).

#### Pension sharing order activates pension sharing creating pension debits and credits

**V3.** On the coming into effect of a pension sharing order—

- (a) the transferor's shareable rights under the Scheme become subject to a debit of the appropriate amount (“pension debit”<sup>M76</sup>) as defined in regulation V4, and
- (b) the transferee becomes entitled to a credit of that amount (“pension credit”<sup>M77</sup>) as against the Scottish Ministers.

#### Marginal Citations

**M76** This definition is that in section 29(1)(a) of the 1999 Act and under corresponding Northern Ireland legislation.

**M77** This definition is that in section 29(1)(b) of the 1999 Act and under corresponding Northern Ireland legislation.

**Calculation of “appropriate amount”**

**V4.**—(1) Where the relevant pension sharing order specifies a percentage value to be transferred, the appropriate amount for the purposes of regulation V3 is the specified percentage of the cash equivalent of the relevant benefits on the valuation day.

(2) Where the relevant pension sharing order specifies an amount to be transferred, the appropriate amount for the purposes of regulation V3 is the lesser of—

- (a) the specified amount, and
- (b) the cash equivalent of the relevant benefits on the valuation day.

(3) Where the transferor is in pensionable service under the Scheme on the transfer day, the relevant benefits for the purposes of paragraphs (1) and (2) are the benefits or future benefits to which the transferor would be entitled under the Scheme by virtue of the transferor's shareable rights under the scheme had the transferor's pensionable service terminated immediately before that day.

(4) Otherwise, the relevant benefits for the purposes of sub-paragraphs (1) and (2) are the benefits or future benefits to which, immediately before the transfer day, the transferor is entitled under the terms of the Scheme by virtue of the transferor's shareable rights under it.

(5) For the purposes of this regulation, the valuation day is such day within the implementation period for the discharge of the credit referred to in regulation V3(b) as the Scottish Ministers may specify by notice in writing to the transferor and transferee.

(6) In this regulation, the transfer day means the day on which the relevant pension sharing order takes effect <sup>M78</sup>.

**Marginal Citations**

**M78** This definition is that in section 29(8) of the 1999 Act.

**Pension debits and reduction of benefit**

**V5.**—(1) Subject to paragraph (2), where a member's shareable rights are subject to a pension debit, each benefit or future benefit—

- (a) to which the member is entitled under the Scheme by virtue of those rights, and
- (b) which is a qualifying benefit,

is reduced by the appropriate percentage.

(2) Where a pension debit relates to the shareable rights under the Scheme of a member who is in pensionable service under the Scheme on the transfer day, each benefit or future benefit—

- (a) to which the person is entitled under the Scheme by virtue of those rights, and
- (b) which corresponds to a qualifying benefit,

is reduced by an amount equal to the appropriate percentage of the corresponding qualifying benefit.

(3) A benefit is a qualifying benefit for the purposes of paragraphs (1) and (2) if the cash equivalent by reference to which the amount of the pension debit is determined includes an amount in respect of it.

(4) In this regulation <sup>M79</sup>—

“appropriate percentage”, in relation to a pension debit, means—

- (a) if the relevant order or provision specifies the percentage value to be transferred, that percentage;



- (b) if the relevant order specifies an amount to be transferred, the percentage which the appropriate amount for the purposes of subsection (1) of section 29 of the 1999 Act represents of the amount mentioned in subsection (3)(b) of that section;

“relevant order or provision”, in relation to a pension debit, means the pension sharing order on which the debit depends;

“transfer day”, in relation to a pension debit, means the day on which the relevant order or provision takes effect.

**Marginal Citations**

**M79** The definitions in this paragraph are those in section 31(5) of the 1999 Act.

**Effect of pension sharing on protected rights and guaranteed minimum pension**

**V6.** Where a member has protected rights or a guaranteed minimum in relation to a pension provided by the Scheme, these shall in the case of a pension debit in relation to the member's rights under the Scheme be reduced in terms of the provisions in sections 10(4) and (5) and 15A of the 1993 Act <sup>M80</sup>.

**Marginal Citations**

**M80** 1993 c.48. Sections 10(4) and (5) and 15A of that Act were inserted by section 32 of the 1999 Act.

*MODE OF DISCHARGE AND “IMPLEMENTATION PERIOD”*

**Discharge of pension credit liability**

**V7.—(1)** The Scottish Ministers in relation to a pension credit derived from the Scheme may discharge their liability in respect of the credit by conferring appropriate rights under the Scheme on the ex-spouse or the ex-civil partner.

(2) For the purposes of this paragraph, rights conferred on the ex-spouse or the ex-civil partner are appropriate if—

- (a) they are conferred with effect from, and including, the day on which the pension sharing order, under which the credit arises takes effect, and
- (b) their value, when calculated in accordance with regulations made by the Secretary of State under section 30(1) of the 1999 Act in relation to the calculation of cash equivalents <sup>M81</sup>, equals the amount of the credit.

**Marginal Citations**

**M81** See the [Pension Sharing \(Valuation\) Regulations 2000 \(S.I. 2000/1052\)](#).

**Adjustment to the amount of the pension credit payments made without the knowledge of the pension debit**

**V8.** If—

- (a) a person's shareable rights under the Scheme have become subject to a pension debit,

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- (b) the Scottish Ministers make a payment which is referable to those rights without knowing of the pension debit, and
- (c) the cash equivalent of the member's shareable rights after deduction of the payment is less than the amount of the pension debit,

the pension credit shall be reduced to that lesser amount <sup>M82</sup>.

#### **Marginal Citations**

**M82** See paragraph 9 of Schedule 5 to the 1999 Act and regulation 17 of the [Pension Sharing \(Implementation and Discharge of Liability\) Regulations 2000 \(S.I. 2000/1053\)](#).

#### **“Implementation period” for discharge of pension credit**

**V9.**—(1) The Scottish Ministers must discharge their liability in respect of a pension credit within “the implementation period”<sup>M83</sup>, which for a pension credit is the period of 4 months beginning with the later of—

- (a) the day on which the relevant pension sharing order takes effect, and
- (b) the first day on which the Scottish Ministers in relation to the relevant pension sharing order are in receipt of—
  - (i) the relevant documents, and
  - (ii) such information relating to the transferor and transferee as the Secretary of State may prescribe by regulations made under section 34(1)(b)(ii) of the 1999 Act <sup>M84</sup>.

(2) The reference in sub-paragraph (1)(b)(i) to the relevant documents is to copies of—

- (a) the relevant pension sharing order, and
- (b) the order, decree or declarator responsible for the divorce, annulment or dissolution to which it relates,

and, if the pension credit depends on provision falling within sub-section (1)(f) of section 28 of the 1999 Act, to documentary evidence that the agreement containing the provision is one to which sub-section (3)(a) of that section applies.

(3) Paragraph (1) is subject to any provision made by regulations under section 41(2)(a) of the 1999 Act <sup>M85</sup>.

(4) The provisions of this regulation are subject to any provisions or requirements which the Secretary of State may make by regulations under sections 34(4)(a) and (c) of the 1999 Act which—

- (a) make provision requiring a person subject to liability in respect of a pension credit to notify the transferor and transferee of the day on which the implementation period for the credit begins;
- (b) provide for that section to have effect with modifications where the pension credit depends on a pension sharing order and the order is the subject of an application for leave to appeal out of time <sup>M86</sup>.

#### **Marginal Citations**

**M83** Section 33(1) of the 1999 Act.

**M84** See regulation 5 of the [Pensions on Divorce etc. \(Provision of Information\) Regulations 2000 \(S.I. 2000/1048\)](#).

**M85** See regulation 7 of the [Pensions on Divorce etc. \(Charging\) Regulations 2000 \(S.I. 2000/1049\)](#), which specifies circumstances in which the implementation period may be postponed.

**M86** See regulation 4 of [S.I. 2000/1053](#).

### **Failure to discharge liability in respect of pension credit within the implementation period – Death of ex-spouse or ex-civil partner within period**

**V10.**—(1) Where the Scottish Ministers have not done what is required to discharge their liability in respect of a pension credit before the end of the implementation period for the credit—

- (a) they must, except in such cases as the Secretary of State may prescribe by regulations under section 33(2)(a) of the 1999 Act <sup>M87</sup>, notify the Regulatory Authority of that fact within such period as the Secretary of State may so prescribe, and
- (b) section 10 of the 1995 Act (power of the Regulatory Authority to impose civil penalties) shall apply where Scottish Ministers have failed to take all such steps as are reasonable to ensure that liability in respect of the credit was discharged before the end of the implementation period for it.

(2) If the Scottish Ministers fail to perform the obligation imposed by regulation 10(1)(a), section 10 of the 1995 Act will apply.

(3) Where the Scottish Ministers are subject to liability in respect of a pension credit, the Regulatory Authority may, on the application of the Scottish Ministers, extend the implementation period for the pension credit for the purposes of this section if it is satisfied that the application is made in such circumstances as the Secretary of State may prescribe by regulations made under section 33(4) of the 1999 Act <sup>M88</sup>.

(4) In this regulation “the Regulatory Authority” means the Occupational Pensions Regulatory Authority.

(5) Where an ex-spouse or ex-civil partner dies before the Scottish Ministers have discharged their liability in respect of the pension credit, that liability may be discharged by payment of a lump sum.

(6) The lump sum referred to in paragraph (5) will be equal to 3 times the annual rate of the pension which would have been paid to the deceased if on the date of death the deceased had become entitled to a pension as a pension credit member calculated under regulation W11(3) in accordance with guidance issued by the scheme actuary.

(7) The Scottish Ministers must pay the lump sum to the deceased's personal representative.

#### **Marginal Citations**

**M87** See regulation 2 of [S.I. 2000/1053](#) which prescribes a 21 day period beginning with the day immediately following the end of the implementation period.

**M88** See regulation 3 of [S.I. 2000/1053](#).

### *APPROPRIATE RIGHTS/PENSION CREDIT BENEFITS*

#### **“Appropriate rights”/ “Pension credit benefits” under the Scheme**

**V11.**—(1) Except as referred to in regulation V15 or otherwise in this Regulation, the “appropriate rights” under the Scheme to which a pension credit member is entitled consist only of a pension, a lump sum on retirement and rights in relation to a lump sum on death as provided under the Scheme.

(2) Pension credit benefits are subject to the same indexing as other benefits payable under the Scheme.

(3) The value of the pension referred to in this paragraph is to equal the value of the pension credit rights which have accrued to or in respect of the pension credit member.

(4) A pension credit member is entitled to pension credit benefits on reaching normal benefit age.

(5) The pension credit benefits are payable immediately on reaching normal benefit age and may not be deferred.

(6) A pension payable in accordance with this regulation is payable to the pension credit member for life.

(7) A pension credit member is entitled to a lump sum calculated on the same basis as if the pension was a deferred pension under the Scheme.

(8) Except where the member opts to exchange part of the member's pension under paragraph (9) the lump sum is to be equal to three times the annual rate of pension except that no lump sum on retirement shall be paid to the credit member if the corresponding pension debit member has already received a lump sum on retirement from the Scheme before the date of the implementation of the pension sharing order.

(9) If a pension credit member opts to exchange part of a pension to which the pension credit member would otherwise be entitled for a lump sum, for every £1 by which the pension credit member's annual pension is reduced, the pension credit member is to be paid a lump sum of £12.

(10) An option under paragraph (9) must relate to an annual amount of pension that is a whole number of pounds (and accordingly the lump sum will be exactly divisible by 12).

(11) In paragraph (10) "annual amount" in relation to a pension means the amount of the annual pension to which the pension credit member would be entitled under these Regulations apart from the option, together with any increases payable under the Pensions (Increase) Act 1971, calculated as at the time the payment would be first due.

(12) A pension credit member may not exchange pension for lump sum under this regulation to the extent that it would result in a scheme chargeable payment for the purposes of Part 4 of the 2004 Act.

(13) The option under paragraph (9) may only be exercised by giving notice in writing to the scheme administrator in the form required by the Scottish Ministers—

- (a) at the time of claiming the pension; or
- (b) before a later time specified in writing by the scheme administrator.

#### **Pension credit benefit before attaining normal benefit age (with actuarial reduction)**

**V12.**—(1) Subject to paragraph (2), a pension credit member is entitled to the payment of the pension credit benefit described in regulation V11 on or after attaining normal minimum pension age but before attaining normal benefit age.

(2) The pension and the lump sum (if any) described in regulation V11(1) will be reduced by such amount as the Scottish Ministers, after taking the advice of the scheme actuary, may determine.

#### **Pension credit member dies after pension credit benefit becomes payable**

**V13.**—(1) If a pension credit member dies after the member's pension under the Scheme becomes payable, a lump sum on death is payable in accordance with regulation F5 (payment of lump sum).

(2) Subject to paragraph (3), the lump sum on death will be equal to 5 times the annual rate of the pension credit member's pension as calculated under regulation V11(3) less the amount of pension already paid.

(3) The maximum payment under this regulation must not exceed an amount calculated in accordance with paragraph (4) less the aggregate of—

- (a) the amount of any lump sum paid to the pension credit member in accordance with regulation V11 (8); and
- (b) the amount of any lump sum paid to the pension credit member in accordance with regulation V11(9).

(4) An amount calculated in accordance with this sub-paragraph is an amount equal to twice the amount on the valuation day of the final year's pensionable pay of the member from whose rights the pension credit is derived.

(5) The final year's pensionable pay under paragraph (3) will be increased by the amount that the member's benefits would have been increased under Part 1 of the Pensions (Increase) Act 1971 <sup>M89</sup> if benefits had been preserved on the valuation day.

(6) Where a pension credit member referred to in paragraph (1) <sup>F181</sup> died on or before 5th April 2011 and had attained the age of 75 at the date of the pension credit member's death—

- (a) the lump sum referred to in that paragraph ceases to be payable; and
- (b) that lump sum is to be converted into an annual pension to be determined and paid in accordance with paragraph (6).

(7) The annual pension referred to in paragraph (5) will be—

- (a) determined in accordance with guidance and tables provided by the scheme actuary for the purpose of converting the amount of the lump sum into an annual pension;
- (b) paid to the person who would otherwise be entitled to receive the lump sum in accordance with regulation F5 (payment of lump sum); and
- (c) paid to that person from the day after the pension credit member's death until the fifth anniversary of the day the pension credit member's pension under this Section of the scheme became payable.

(8) If, in accordance with regulation F5, a pension credit member has given notice that more than one person is to receive a share of the lump sum, each such person will receive the same percentage of the annual pension as was specified for that person in the pension credit member's notice.

(9) If, in accordance with regulation F5, the annual pension is to be paid to the pension credit member's personal representatives they may, as part of the distribution of the pension credit member's estate, give irrevocable notice to the Scottish Ministers—

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

and the pension (or, as the case may be, the percentage of it specified in respect of the person) may be paid to the person or body, unless paragraph (10) applies.

(10) This paragraph applies if—

- (a) the person specified in the notice has died before payment can be made;
- (b) payment to the person or body specified in the notice is not, in the opinion of the Scottish Ministers, reasonably practicable; or

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(c) the person to whom the pension (or a specified percentage of the pension) would otherwise be payable has been convicted of an offence specified in regulation T7(2) and the Scottish Ministers have directed, as a consequence of that conviction, that the person's right to a payment in respect of the pension credit member's death is forfeited.

(11) The prohibition on assignation of pension credit benefits in regulation V23 shall not apply to an assignation by personal representatives under this regulation.

#### Textual Amendments

**F181** Words in reg. V13(6) substituted (with effect in accordance with reg. 1(8) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/364\)](#), regs. 1(2), **13**

#### Marginal Citations

**M89** [1971 c.56](#).

### Pension credit member dies before pension credit benefit becomes payable

**V14.**—(1) If a pension credit member dies before the member's pension under the Scheme becomes payable, a lump sum is payable in accordance with regulation F5 (payment of lump sum).

(2) The lump sum will be equal to 3 times the annual rate of the pension credit member's pension calculated under regulation V11(3).

### Additional contributions and additional periods

**V15.**—(1) Subject to paragraph (2), an active member, whose benefits have been made subject to a pension sharing order, is not allowed to replace any rights debited to the member as a consequence of the pension sharing order with any rights which the member would not have been able to acquire (in addition to the debited rights) had the pension sharing order not been made <sup>M90</sup>.

(2) The provisions of paragraph (1) are relaxed if in line with any taxation exception or concession, which Revenue and Customs may stipulate in relation to “moderate earners” in accordance with the limits imposed in Schedule 10 to the Finance Act 1999 <sup>M91</sup> and any modifications thereto made by Revenue and Customs from time to time under paragraph 18(10) and (11) of that Schedule <sup>M92</sup>, or otherwise.

#### Marginal Citations

**M90** See section 590(3)(bb) of the Taxes Act, inserted by paragraph 2(3) of Schedule 10 to the [Finance Act 1999 \(c.16\)](#).

**M91** [1999 c.16](#).

**M92** See [S.I.s 2000/1085](#) and [1093](#).

### Commutation: small pensions

**V16.**—(1) Regulation T8 applies if as a result of a pension sharing order the annual rate of the retirement pension, which a member who has attained state pensionable age is entitled to be paid, falls below the sum mentioned in that regulation.

(2) A pension may be treated as “trivial” under regulation T8 in respect of the retirement pension payable to a pension credit member in respect of a pension credit providing that the total benefit payable to the pension credit member, including any pension credit benefit, is of an amount that

complies with the provisions of paragraphs 7 to 9 of Part 1 of Schedule 29 to the 2004 Act (lump sum rule: trivial commutation lump sum) at normal benefit age.

### Commutation: exceptional ill-health

**V17.**—(1) The whole of the pension element payable in respect of the pension credit may be commuted for a lump sum before normal benefit age in circumstances where the person entitled to the pension credit benefit is suffering from serious ill-health prior to the normal benefit age.

(2) In this regulation, “serious ill-health” means ill-health which is such as to give rise to a life expectancy of less than one year from the date on which the commutation of the pension credit benefit is applied for.

(3) The lump sum will be equal to five times the annual rate of the pension to which the pension credit member would have been entitled as calculated under regulation V11(3) of this Part if on the date of commutation the member had already reached the normal benefit age and is payable in addition to any retirement lump sum as calculated under regulation V11(7), (8) and (9) of this Part.

### Pension Transfers

**V18.** The Scottish Ministers must not accept any transfer value into the Scheme or pay any transfer value out of the Scheme in respect of any pension credit rights or pension credit benefits.

## MISCELLANEOUS

### Charges in respect of pension sharing costs

**V19.**—(1) The Scottish Ministers may recover from the parties involved in pension sharing, charges as set out in paragraph (2).

(2) The charges referred to in paragraph (1) are any costs reasonably incurred by the Scottish Ministers in connection with pension sharing activity other than those costs specified in paragraph (3).

(3) The costs specified in this paragraph are any costs which are not directly related to the costs which arise in relation to an individual case <sup>M93</sup>.

(4) The Scottish Ministers must, before a pension sharing order is made, inform the member or his spouse or civil partner, as the case may be, in writing of their intention to recover costs incurred with any description of pension sharing activity and provide the member or the member's spouse or civil partner, as the case may be, with a written schedule of charges in accordance with regulations which may be made by the Scottish Ministers under section 41(1) of the 1999 Act <sup>M94</sup>.

#### Marginal Citations

**M93** See regulation 5 of the [Pensions on Divorce etc. \(Charging\) Regulations 2000 \(S.I. 2000/1049\)](#).

**M94** See regulation 2-9 of [S.I. 2000/1049](#).

### Excluded membership

**V20.**—(1) Subject to regulation V16(2) of this Part, pension credit rights or pension credit benefits may not be aggregated with any other rights or benefits under the Scheme (including those attributable to a different pension credit).

(2) Where a pension credit member is also an active member of the Scheme, the member may not count any period which may count for any purpose in connection with the member's pension credit benefit towards any membership period required under the Scheme.

### **General rules about benefits**

**V21.** Regulations T1 (claims for benefits), T2 (deduction of tax), T3 (deduction of tax: further provisions) and T5 (beneficiary who is incapable) apply to a pension credit member.

### **Interest on late payment of benefits**

**V22.**—(1) Regulation T10 (interest on late payment of benefits) applies in respect of a pension credit member with the following modifications.

(2) In paragraph (2)—

- (a) the reference to “member” is a reference to “pension credit member”; and
- (b) the reference to “member's” is a reference to “pension credit member's”.

(3) In paragraph (4) in the definition of “due date”—

(a) in sub-paragraph (a)—

- (i) the reference to “a lump sum under Part F above” is a reference to “a lump sum under regulation V13, V14 or paragraph 2 of Schedule 2”; and
- (ii) the reference to “the member's death” is a reference to “the death of the person entitled to the pension credit or the pension credit member”;

(b) sub-paragraphs (a)(ii), (iii) and (iv) are omitted; and

(c) in sub-paragraph (a)(v) the reference to “of the member's retirement from pensionable employment” is a reference to “when the pension credit member becomes entitled to the payment of pension credit benefit”.

(4) In paragraph (4) in the definition of “qualifying payment” the reference to “, or by way of a refund of contributions,” is omitted.

### **Assignment**

**V23.** Except as may be required by law, or is necessary in law to give effect to a pension sharing order or is otherwise permitted for the purpose of this Part of the Scheme, pension credit benefits under the Scheme may not be assigned, charged or otherwise made subject to a security.

### **Administrative matters**

**V24.** Regulation U2 (determination of questions) applies to a person who is entitled to a pension credit or, as the case may be, a pension credit member.

## **PART W**

### **MISCELLANEOUS AND SUPPLEMENTARY**

#### **Options to persons detrimentally affected by these Regulations**

**W1.**—(1) This regulation applies in relation to any pension which is payable under these Regulations to or in respect of a person who, having served in an employment or office, service



in which qualified persons to participate in the benefits provided under the 1995 Regulations, has ceased to serve therein or died before these Regulations come into force.

(2) Where, in a case to which this regulation applies, any provision of these Regulations would operate in relation to any person so as to place that person in a worse position than that person would have been in if the provision had not applied, that person may elect that the provision shall not so apply by giving notice in accordance with paragraph (3).

(3) A notice given pursuant to paragraph (2) must be in writing and must be delivered to the Scottish Ministers within 6 months of the coming into force of these Regulations.

(4) An election pursuant to paragraph (2) shall have effect in relation to the pension referred to in paragraph (1) only to the extent that such pension has accrued by virtue of contributions made and periods of service rendered prior to the cessation referred to in paragraph (1) (or, if there has been more than one such cessation, the last of them before the coming into force of these Regulations) and in determining entitlement to, and the amount of, the pension to that extent such person will be treated as if that person had never recommenced pensionable employment at any time after that cessation (or, as the case may be, the last such cessation).

#### **Revocations, savings and transitional provisions**

**W2.**—(1) The Regulations specified in column 1 of the Table in Schedule 4 are revoked to the extent specified in Column 3 of that Table.

(2) Anything done under or by virtue of any regulation revoked by these Regulations if it could have been done under or for the purposes of these Regulations, will be deemed to have been done under or by virtue of the corresponding provision of these Regulations and anything begun under or by virtue of any such regulation may be continued under these Regulations as if begun under these Regulations.

St Andrew's House,  
Edinburgh

*JOHN SWINNEY*  
A member of the Scottish Executive

We consent

of Her Majesty's Treasury

*MICHAEL FABRICANT*  
*ANGELA WATKINSON*  
Two of the Lords Commissioners

**Status:**

Point in time view as at 25/03/2020.

**Changes to legislation:**

There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011.