
SCOTTISH STATUTORY INSTRUMENTS

2014 No. 154

**The National Health Service Superannuation Scheme
(Scotland) (Miscellaneous Amendments) Regulations 2014**

PART 2

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

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

2. The National Health Service Superannuation Scheme (Scotland) Regulations 2011(1) are amended in accordance with this Part.

Amendment of regulation A2

3. In paragraph (4) of regulation A2 (interpretation), in the definition of “the 2008 Section” for “the National Health Service (Scotland) Pension Scheme Regulations 2008” substitute “the National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013(2)”.

Amendment of regulation B4

4. In paragraph (7) of regulation B4 (opting out of this Section of the scheme), for “one month” substitute “three months”.

Amendment of regulation C1

5. After paragraph (16) of regulation C1 (meaning of pensionable pay), insert—

“(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;

(1) S.S.I. 2011/117; as amended by S.S.I. 2011/173, S.S.I. 2011/364, S.S.I. 2012/69, S.S.I. 2013/70 and S.S.I. 2013/109.
(2) S.S.I. 2013/174.

- (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.”.

Amendment of regulation D1

6. For the table in paragraph (2A) of regulation D1 (contributions by members), substitute—

“Scheme Year 2014-15

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable Pay Band</i>	<i>Contribution Percentage Rate</i>
Up to £15,828	5%
£15,829 to £21,601	5.6%
£21,602 to £27,089	7.1%
£27,090 to £49,967	9.3%
£49,968 to £71,337	12.5%
£71,338 to £111,376	13.5%
£111,377 to any higher amount	14.5%”.

New regulation D3

7. After regulation D2, insert—

“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(3) 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—

- (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.

(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—

$$(pensionable\ pay / number\ of\ days\ pensionable\ employment) \times 365;$$

- (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.”.

Amendment of regulation E7

8. In paragraph (2)(b)(ii) of regulation E7 (early retirement pension), for “him” substitute “the member”.

Amendment of regulation F2

9. In paragraph (6) of regulation F2 (lump sum when member dies after pension becomes payable), for “him” substitute “the member”.

Amendment of regulation R7

10. In paragraph (4) of regulation R7 (former members of health service schemes), omit “within 1 year after joining this Section of the scheme”.

Amendment of regulation T3

- 11.** In regulation T3 (deduction of tax: further provision)—
- (a) in paragraph (4), for “transitional” substitute “fixed”;
 - (b) in paragraph (5A)—
 - (i) for “transitional” substitute “fixed”;
 - (ii) after “Act 2011”, insert “or paragraph 1 of Schedule 22 to the Finance Act 2013(4)”; and
 - (iii) after “Regulations 2011”, insert “or the Registered Pension Schemes and Relieved Non-UK Pension Schemes (Lifetime Allowance Transitional Protection) (Notification) Regulations 2013(5)”;
 - (c) after paragraph (5A), insert—

(4) 2013 c.29.

(5) S.I. 2013/1741.

“(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 Schedule 1 to the Finance Act 2014, that person must give to the scheme administrator—

- (a) the reference number issued by the Commissioners under the Registered Pension Schemes and Relieved Non-UK Pension Schemes (Lifetime Allowance Transitional Protection) (Notification) Regulations 2014 in respect of that entitlement; and
- (b) the information referred to in paragraph (4).”;
- (d) in paragraph (6), after “paragraph (5)” insert “, (5A) or (5B)”; and
- (e) in paragraph (7), after “paragraph (5)” insert “, (5A) or (5B)”.

New regulation T11

12. After regulation T10, insert—

“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;
- (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.”.

Substitution of regulation U3

13. For regulation U3, substitute—

“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.

(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.”.

Amendment of Schedule 1

14. In Schedule 1 (medical and dental practitioners)—
- (a) in paragraph 8 (meaning of “pensionable earnings” in relation to other practitioners)—
 - (i) in sub-paragraph (1)(a), omit “or for overtime”; and
 - (ii) in sub-paragraph (2), omit “payment for overtime or”;
 - (b) in paragraph 10(3) (limit on pensionable earnings – dental practitioners), for “him” substitute “the practitioner”; and
 - (c) for Table 3 in sub-paragraph (2) of paragraph 14 (contributions to this Section of the scheme), substitute—

“Table 3: Scheme Year 2014-15

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable Earnings Band</i>	<i>Contribution Percentage Rate</i>
Up to £15,828	5%
£15,829 to £21,601	5.6%
£21,602 to £27,089	7.1%
£27,090 to £49,967	9.3%
£49,968 to £71,337	12.5%
£71,338 to £111,376	13.5%
£111,377 to any higher amount	14.5%”.