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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 95**

**The National Health Service Pension Scheme (Transitional and Consequential Provisions) (Scotland) Regulations 2015**

**PART 1**

**Introductory**

**Citation, commencement and extent**

**1.** These Regulations—

- (a) may be cited as the National Health Service Pension Scheme (Transitional and Consequential Provisions) (Scotland) Regulations 2015;
- (b) come into force on 1st April 2015; and
- (c) extend to Scotland.

**Interpretation**

**2.** In these Regulations—

- “1995 officer transition member” means a person who is an officer transition member by virtue of having pensionable service in the 1995 Section;
- “1995 Section” means the Section of the National Health Service Pension Scheme for Scotland set out in the 2011 Regulations;
- “2008 officer transition member” means a person who is an officer transition member by virtue of having pensionable service in the 2008 Section;
- “2008 Section” means the Section of the National Health Service Pension Scheme for Scotland set out in the 2013 Regulations;
- “2011 Regulations” means the National Health Service Superannuation Scheme (Scotland) Regulations 2011<sup>(1)</sup>;
- “2013 Act” means the Public Service Pensions Act 2013;
- “2013 Regulations” means the National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013<sup>(2)</sup>;
- “2015 Regulations” means the National Health Service Pension Scheme (Scotland) Regulations 2015<sup>(3)</sup>;
- “new scheme” means the scheme set out in the 2015 Regulations;
- “NHS employment”, in relation to the old scheme and the new scheme, has the meaning given in the respective Regulations;

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(1) S.S.I. 2011/117.  
(2) S.S.I. 2013/174.  
(3) S.S.I. 2015/94.

“officer transition member” means a person who is both a member of—

- (a) the old scheme by virtue of having pensionable service in that scheme to which paragraph 1(2)(i) and (ii) or paragraph 2(2)(i) and (ii) of Schedule 7 (final salary link) to the 2013 Act applies; and
- (b) the new scheme by virtue of having pensionable service in that scheme that would have been treated as officer service for the purposes of the old scheme had it been service in the old scheme;

“old scheme” means the National Health Service Pension Scheme for Scotland as set out in the 2011 Regulations and the 2013 Regulations;

“practitioner transition member” means a person—

- (a) who is both a member of—
  - (i) the old scheme by virtue of having pensionable service to which Schedule 1 to the 2011 Regulations or Part 3 of the 2013 Regulations applies;
  - (ii) the new scheme by virtue of having pensionable service in that scheme that would have been treated as practitioner service for the purposes of the old scheme had it been service in the old scheme; and
- (b) whose pensionable service for the old scheme and pensionable service for the new scheme are continuous, where—
  - (i) paragraphs 3 and 4 of Schedule 7 to the 2013 Act (continuity of employment etc.) apply as they apply for the purposes of paragraphs 1(2) and 2(2) of that Schedule; and
  - (ii) the person’s pensionable service for the old scheme and pensionable service for the new scheme are not continuous if scheme regulations made pursuant to section 8A(4)(b) of the Pensions (Increase) Act 1971<sup>(4)</sup> (references to “service”: relevant old scheme pension in payment) apply to the person;

“transition member” means a person who is either an officer transition member or a practitioner transition member.

## PART 2

### Transitional provisions

#### CHAPTER 1

##### Eligibility

#### **Eligibility of pensioners**

3. Schedule 1 (eligibility of pensioners) has effect.

#### CHAPTER 2

##### Notices and elections

#### **Carry-forward of old scheme opt-out**

4. Where, on the date a person becomes eligible to join the new scheme, that person has—
- (a) opted out of membership of the old scheme pursuant to—

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(4) 1971 c. 56. Section 8A was inserted by paragraph 4 of Schedule 8 to the 2013 Act.

- (i) regulation B4 of the 2011 Regulations; or
- (ii) regulation 2.B.6 or 3.B.6 of the 2013 Regulations; or
- (b) provided their employer with a valid opt-out notice for the purposes of regulation 9 or 15 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010<sup>(5)</sup> (“the 2010 Regulations”),

that person is to be treated as having also opted out under paragraph 1 of Schedule 4 to the 2015 Regulations or given notice for the purposes of the 2010 Regulations in relation to the new scheme.

**Nominations, notices and declarations**

5.—(1) Paragraph (2) applies where—

- (a) a nomination, notice or declaration of the type specified in column 1 of the table has been accepted in respect of benefits to be paid on the death of a person who is a member of the 1995 Section or the 2008 Section of the old scheme; and
- (b) on the day that the member becomes an active member of the 2015 Scheme, the member has not revoked that nomination, notice or declaration.

**Table**

<i>Column 1</i>	<i>Column 2</i>
<i>Nomination, notice or declaration in the 1995 Section or 2008 Section</i>	<i>Corresponding notice or declaration in the 2015 Scheme</i>
A nomination made in accordance with regulation F5 of the 2011 Regulations (payment of lump sum) in favour of one or more persons in respect of any lump sum that becomes payable under regulations F1 to F4 of the 2011 Regulations (which deal with lump sum payments on the death of a 1995 Section member in different circumstances).	A notice given in accordance with paragraph 9 (payment of lump sums on death) of Schedule 12 (lump sum on death) to the 2015 Regulations in favour of one or more persons in respect of any lump sums that become payable under regulation 111 of the 2015 Regulations.
A notice given in accordance with regulation 2.E.22 or 3.E.22 of the 2013 Regulations (payment of lump sums or pensions on death) in favour of one or more persons in respect of any lump sums or pensions that become payable under regulation 2.E.16 or 3.E.16 of the 2013 Regulations (which deal with lump sum or pension payments on the death of a 2008 Section member in different circumstances).	
A notice given for the purpose of paragraph (3) (a) of regulation F5 of the 2011 Regulations that the member’s surviving partner (within the meaning of that regulation) is not to receive payment of any lump sum that becomes	A notice given in accordance with paragraph 9 (payment of lump sums on death) of Schedule 12 (lump sum on death) to the 2015 Regulations specifying that the member’s executors are to receive any lump sum on

(5) [S.I. 2010/772](#). Regulation 9 has been amended by [S.I. 2013/2556](#).

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

<i>Column 1</i>	<i>Column 2</i>
<i>Nomination, notice or declaration in the 1995 Section or 2008 Section</i>	<i>Corresponding notice or declaration in the 2015 Scheme</i>
payable under regulations F1 to F4 of the 2011 Regulations.	the death of the member payable under regulation 111 of the 2015 Regulations.
A notice given for the purposes of regulation G14 of the 2011 Regulations (surviving nominated partner's pension) nominating a partner to receive a nominated partner pension.	A declaration made for the purpose of regulation 113 of the 2015 Regulations (surviving nominated partner) for the purposes of entitlement to a surviving nominated partner's pension.
A declaration made for the purpose of regulation 2.E.2 or 3.E.2 of the 2013 Regulations (meaning of "surviving nominated partner") for the purposes of entitlement to a surviving nominated partner's pension.	

(2) Where this paragraph applies, for the purposes of the 2015 Scheme the nomination, notice or declaration mentioned is to be treated as if it had been accepted by the scheme manager as the corresponding notice or declaration in column 2 of the table in paragraph (1).

(3) The revocation of—

- (a) a nomination, notice or declaration of the type specified in column 1 of the table in paragraph (1) will also revoke the corresponding notice or declaration in column 2 of that table without more;
- (b) a notice or declaration of the type specified in column 2 of the table in paragraph (1) will also revoke the corresponding nomination, notice or declaration in column 1 of that table without more.

(4) The—

- (a) making of a new a nomination or declaration, or giving of a new notice, of the type specified in column 1 of the table in paragraph (1) is also to be treated by the scheme manager as the giving of the corresponding notice or making of the corresponding declaration in column 2 of that table without more;
- (b) giving of a new a notice or making of a new declaration of the type specified in column 2 of the table in paragraph (1) is also to be treated by the Scottish Ministers as the making of the corresponding nomination or declaration, or giving of the corresponding notice, of the type specified in column 1 of that table without more.

## CHAPTER 3

### Membership status and breaks in service

#### Active member status preservation

6. Unless otherwise provided in these Regulations, a person who is an active member of the new scheme is to be treated, for the purposes of the old scheme, as though he or she continues to be an active member of the old scheme notwithstanding the operation of section 18(1) of the 2013 Act.

#### Qualifying service

7.—(1) In determining whether a transition member who is in pensionable service under the new scheme qualifies for retirement benefits (other than ill-health pension) under the old scheme,

the member's pensionable service under the old scheme terminates when the member's pensionable service under the new scheme terminates.

(2) Unless a transition member becomes a deferred member of the new scheme, the member does not become—

- (a) a member with a preserved pension in the 1995 Section; or
- (b) a deferred member of the 2008 Section.

(3) Where a transition member with more than two years of qualifying service opts out of membership of the new scheme pursuant to regulation 15 of the 2015 Regulations, the member becomes—

- (a) a member with a preserved pension under the 1995 Section; or
- (b) a deferred member of the 2008 Section,

in relation to service in that Section.

(4) Where a transition member has re-entered pensionable service under the new scheme, that member ceases to be—

- (a) a member with a preserved pension in the 1995 Section; or
- (b) a deferred member of the 2008 Section.

(5) In determining whether a member qualifies for benefits under the old scheme, the period of the member's qualifying service under regulation 22 of the new scheme applies in place of the period calculated pursuant to regulation—

- (a) regulation C3 of the 2011 Regulations; or
- (b) regulation 2.A.5 or 3.A.5 of the 2013 Regulations.

#### **Members on authorised unpaid leave**

**8.** Where, on the date a person becomes eligible to join the new scheme, that person is on a leave of absence during which the person is paying contributions pursuant to regulation P3 of the 2011 Regulations or regulation 2.A.5(3) or 3.A.4(3) of the 2013 Regulations—

- (a) regulation 21 of the 2015 Regulations applies to that person; and
- (b) for the purposes of determining whether and for how long that person may continue to pay contributions under the 2015 Regulations, the contributions paid and the period of absence under the old scheme must be taken into account.

#### **Casual staff and locums not working on eligibility date**

**9.** Paragraph (2) applies where, on the date a person becomes eligible to join the new scheme, that person—

- (a) is—
  - (i) employed on a casual basis and has ceased to pay contributions under regulation C3(5) of the 2011 Regulations or regulation 2.A.6(2) of the 2013 Regulations; or
  - (ii) a locum practitioner and has ceased to pay contributions under paragraph 12 of Schedule 1 to the 2011 Regulations or regulation 3.A.5(2) of the 2013 Regulations; and
- (b) has ceased to pay those contributions because of a break which, on the date the person becomes eligible to join the new scheme, is a break not exceeding a period of three months (“a relevant break”),

(2) Regulation 22(5) and (6) of the 2015 Regulations applies as though the member's relevant break had commenced whilst the member was an active member of the new scheme.

### **Disqualifying breaks in service**

- 10.**—(1) Paragraph (3) applies to a member with pensionable service in the old scheme who—
- (a) on 1st April 2015—
    - (i) is on a break in NHS employment; or
    - (ii) has opted out of the old scheme pursuant to—
      - (aa) regulation B4 of the 2011 Regulations; or
      - (bb) regulation 2.B.6 or 3.B.6 of the 2013 Regulations;
  - (b) was not—
    - (i) entitled to a preserved pension under regulation E12 of the 2011 Regulations; or
    - (ii) a deferred member of the 2008 Section in respect of that service, when that service ceased; and
  - (c) subsequently becomes an active member of the new scheme.
- (2) Paragraph (4) applies to a member with pensionable service in the old scheme who—
- (a) subsequently becomes an active member of the new scheme;
  - (b) has a break in pensionable service in the new scheme commencing on or after 2nd April 2015; and
  - (c) is not qualified for retirement benefits pursuant to regulation 71 of the 2015 Regulations on ceasing pensionable service in the new scheme.
- (3) Where a member's break between pensionable service in the old scheme and pensionable service in the new scheme is less than one year—
- (a) the contributions in respect of old scheme service are not refundable to the member under—
    - (i) regulation E15 of the 2011 Regulations; or
    - (ii) regulation 2.C.18 or 3.C.16 of the 2013 Regulations; and
  - (b) if a refund under those regulations was paid in respect of the member's old scheme service during the break, the member may repay that refund (including any interest on those contributions which was paid to the member) under—
    - (i) regulation L1(5) of the 2011 Regulations; or
    - (ii) regulation 2.A.5(9) or 3.A.4(9) of the 2013 Regulations, within six months of joining the new scheme.
- (4) Where a member's break in pensionable service in the new scheme is five years or less—
- (a) the contributions in respect of old scheme service are not repayable to the member under—
    - (i) regulation L2 of the 2011 Regulations; or
    - (ii) regulation 2.C.18 or 3.C.16 of the 2013 Regulations; and
  - (b) if a refund under those regulations was paid in respect of the member's old scheme service during the break, the member may repay that refund (including any interest on those contributions which was paid to the member) under—
    - (i) regulation L1(5) of the 2011 Regulations; or
    - (ii) regulation 2.A.5(9) or 3.A.4(9) of the 2013 Regulations,

within six months of joining the new scheme.

## CHAPTER 4

### Contributions and final pay

#### **Contribution rate setting : Groups A to C**

**11.**—(1) This regulation applies to a transition member who belongs to Group A, B, or C in regulation 27(1) of the 2015 Regulations and who on 31st March 2015 was—

- (a) a member in pensionable employment in the 1995 Section; or
- (b) an active member of the 2008 Section.

(2) Where this regulation applies, for the purposes of setting a contribution rate for the scheme year commencing on 1st April 2015—

- (a) paragraph 2 of Schedule 9 to the 2015 Regulations applies as though the member was in pensionable service with the same employing authority on both—
  - (i) the last day of the previous scheme year, and
  - (ii) the first day of the current scheme year;
- (b) in determining which of the cases the member falls into pursuant to sub-paragraph (2) of that paragraph, the member is to be assessed as if during the scheme year 1st April 2014 to 31st March 2015—
  - (i) that member’s pensionable employment (within the meaning of the 1995 Section) or active service (within the meaning of the 2008 Section) was actually pensionable employment under the 2015 Regulations; and
  - (ii) the percentage rate of contributions paid by the member during that year in the relevant Section was actually the percentage rate of contributions paid during the previous scheme year under the 2015 Regulations.

#### **Contribution rate setting : Group D**

**12.**—(1) This regulation applies to a transition member who belongs to Group D in regulation 27(1) of the 2015 Regulations and who on 31st March 2015 was—

- (a) a member in pensionable employment in the 1995 Section; or
- (b) an active member of the 2008 Section.

(2) Where this regulation applies, for the purposes of setting a contribution rate for the scheme year commencing on 1st April 2015, in regulation 37(4)(b) of the 2015 Regulations the member’s most recent certified or final pensionable earnings are to be the member’s certified earnings or final pensionable earnings derived from the member’s—

- (a) pensionable employment in the 1995 Section, in accordance with paragraph 31 of Schedule 1 to the 2011 Regulations; or
- (b) active service in the 2008 Section, in accordance with regulation 3.J.14 of the 2013 Regulations.

#### **Taper protection for contribution tiering**

**13.**—(1) This regulation applies to —

- (a) a member who—

- (i) is in pensionable employment in the 1995 Section on the day before he or she reaches his or her eligibility cessation date (determined in accordance with regulation B3(16) or (17) of the 2011 Regulations); and
  - (ii) becomes an active member of the 2015 Scheme on that eligibility cessation date; and
- (b) a member who—
- (i) is an active member of the 2008 Section on the day before he or she reaches his or her eligibility cessation date (determined in accordance with regulation 2.B.3(1F) or 3.B.3(1F) of the 2013 Regulations); and
  - (ii) becomes an active member of the 2015 Scheme on that eligibility cessation date.
- (2) Where this regulation applies—
- (a) the member must pay contributions during the scheme year within which that person’s eligibility cessation date falls at the percentage rate that applied to the person on the day before his or her eligibility cessation date is reached under—
    - (i) regulation D1 of, or paragraph 14 of Schedule 1 to, the 2011 Regulations; or
    - (ii) regulation 2.C.1 or 3.C.1 of the 2013 Regulations;
  - (b) in the case of a member who belongs to Group A, B, or C in regulation 27(1) of the 2015 Regulations, the member must pay that rate for the remainder of the scheme year unless there is a change to the member’s employment or rate of pensionable earnings during that scheme year pursuant to paragraph 3 of Schedule 9 to the 2015 Regulations (in which case the rate of the member’s percentage contribution rate for the remainder of the scheme year must be re-assessed in accordance with that paragraph);
  - (c) in the case of a member who belongs to Group D in regulation 27(1) of the 2015 Regulations, the member must pay that rate for the remainder of the scheme year unless—
    - (i) a contracting Health Board (or someone appointed to act on its behalf) adjusts the member’s contribution rates pursuant to regulation 37(6) or 38(3) of the 2015 Regulations; or
    - (ii) paragraph (2)(a) or (b) of regulation 37 of the 2015 Regulations is subsequently satisfied in respect of the member (in which case the member must pay the rate determined in accordance with paragraph (3) of that regulation).

#### **Determination of pensionable pay, final pensionable pay and reckonable pay**

**14.**—(1) For any purpose of the old scheme including the calculation of benefits payable under that scheme to or in respect of a 1995 officer transition member, the member’s pensionable pay and final year’s pensionable pay are to be determined by reference to the 2011 Regulations (see in particular Part C of those Regulations).

(2) For any purpose of the old scheme including the calculation of benefits payable under that scheme to or in respect of a 2008 officer transition member, the member’s pensionable pay and reckonable pay are to be determined by reference to the 2013 Regulations (see in particular Chapter 2.A of Part 2 of those Regulations).

#### **No refund of contributions in cases of inordinate pay**

**15.** Where the Scottish Ministers determine the amount of a 1995 officer transition member’s final year’s pensionable pay pursuant to paragraph (17) of regulation C1 of the 2011 Regulations, no refund of contributions is payable under paragraphs (19)(b) and (c) of that regulation.



### **Cessation of final salary link on payment of benefits**

16. Where an officer transition member's benefits under the old scheme calculated by reference to Schedule 7 to the 2013 Act have been put into payment, those benefits cannot be recalculated by reference to that Schedule where there is a subsequent period of pensionable public service within the meaning of paragraph 3 of that Schedule.

### **Final salary link : mental health officers**

17.—(1) This regulation applies to a 1995 officer transition member—

- (a) to whom regulation R3(1) of the 2011 Regulations applied on the member's last day of pensionable service in the 1995 Section;
- (b) to whom regulation R3(11) or (12) of the 2011 Regulations applied on the member's last day of pensionable service in the 1995 Section; and
- (c) who has at least one day of pensionable service in the new scheme ("notional mental health officer service") which, had it been served in the 1995 Section, would have—
  - (i) satisfied the definition of "mental health officer" in regulation R3(16) of the 2011 Regulations, and
  - (ii) been service to which regulation R3(1) of those Regulations would have applied.

(2) Where this regulation applies, the final year's pay to be used in the calculation of the member's benefits under regulation R3(11) or (12) of the 2011 Regulations will be that derived from the member's notional mental health officer service.

### **Up-rating of old scheme practitioner earnings**

18. In relation to a practitioner transition member, as regards the period after 31st March 2015—

- (a) paragraph 15(2)(b) of Schedule 1 to the 2011 Regulations; and
- (b) regulation 3.D.1(4) of the 2013 Regulations,

apply as though the words "the annual increase due under the provisions of the Pensions (Increase) Act 1971 and section 59 of the Social Security Pensions Act 1975, plus" were omitted.

### **Flexibility earnings credit : calculation**

19.—(1) This regulation and regulations 20 and 21 apply to a transition member who—

- (a) has pensionable service as a practitioner in either the old scheme or the new scheme; and
- (b) has pensionable service in the old scheme as an officer.

(2) Where this regulation applies, the member is entitled to a flexibility earnings credit equal to—

$$\frac{(F - P)}{A}$$

where—

F is the total amount of the member's pension in the old scheme as at the last day of pensionable service in that scheme;

P is the amount of the member's pension in the old scheme arising solely from service as a practitioner as at the last day of pensionable service in that scheme;

A is—

- (i) 1.4% if the 1995 Section applies to the member;
- (ii) 1.87% if the 2008 Section applies to the member,

and the amounts of pension for the purposes of this calculation are amounts before any actuarial reduction is applied by reason of payment before normal pension age for the relevant Section.

#### **Flexibility earnings credit : uprating**

**20.**—(1) The amount of a flexibility earnings credit calculated under regulation 19(2) is to be increased at the rate specified in paragraph (2) for each year or part year from the day after the last day of pensionable service in the old scheme until the earlier of—

- (a) the claiming of pension benefits under the old scheme;
- (b) the member’s last day of pensionable employment under the 2015 Regulations; or
- (c) where the member has one or more breaks of service under the 2015 Regulations that exceeds or exceed five years, the last day of pensionable service following which the earliest such break commenced,

in order to generate an uprated flexibility earnings credit.

(2) The annual rate of increase of a flexibility earnings credit is the rate set for that year by the Scottish Ministers after having taken the advice of the scheme actuary for the purpose.

#### **Flexibility earnings credit : adjustment of pension payable**

**21.**—(1) Where pension benefits are payable under the old scheme, the amount payable is adjusted as follows.

(2) As regards the element of pension payable under the old scheme in respect of service as an officer, the member is entitled only to the higher of—

- (a) the amount of pension actually payable under the old scheme in respect of service as an officer;
- (b) the amount of pension payable under the old scheme—
  - (i) as if the member’s period of pensionable service as an officer were treated as pensionable service as a practitioner, and
  - (ii) as though the uprated flexibility earnings credit were treated as pensionable earnings as a practitioner for that period,

and the provisions of paragraphs 11 and 19 of Schedule 1 to the 2011 Regulations and Part 4 of the 2008 Section do not apply.

### CHAPTER 5

#### Additional contributions

#### **Existing additional service and unreduced lump sum contracts**

**22.**—(1) This regulation applies to a member of the new scheme who—

- (a) on the member’s last day of pensionable service in the 1995 Section was paying for additional service or an unreduced retirement lump sum by regular additional contributions pursuant to regulation Q6 of the 2011 Regulations;
- (b) does not have a break between the last day of pensionable service in the 1995 Section and the first day of pensionable service in the new scheme lasting for 12 months or more.

(2) Where this regulation applies, the provisions of—

- (a) regulations Q1 to Q6 of the 2011 Regulations continue to apply to the member as though the member continues in pensionable service under the 1995 Section until the earliest of—
  - (i) the chosen date (as defined in regulation Q5 of the 2011 Regulations);

- (ii) if the member has a break in pensionable service under the new scheme lasting for 12 months or more, the last day of pensionable service that preceded that break;
  - (iii) the day preceding the day on which the member stops paying additional contributions; or
  - (iv) retirement from pensionable employment under the new scheme; and
- (b) regulation Q7 of the 2011 Regulations continues to apply if the member who is paying for additional service or an unreduced retirement lump sum by regular additional contributions stops paying before the chosen date under regulation Q5 of the 2011 Regulations, and the member's pensionable earnings in the new scheme are to be treated as the member's pensionable pay in the 1995 Section for the purpose of determining the amount of any additional contributions due.

### **Existing additional pension contracts**

- 23.**—(1) This regulation applies to a member of the new scheme who—
- (a) on the member's last day of pensionable service in the old scheme was paying for additional pension by additional periodical contributions pursuant to regulation—
    - (i) regulation Q8 of the 2011 Regulations; or
    - (ii) regulation 2.C.8 or 3.C.6 of the 2013 Regulations;
  - (b) does not have a break between the last day of pensionable service in the old scheme and the first day of pensionable service in the new scheme lasting for 12 months or more.
- (2) Where this regulation applies, the provisions of—
- (a) the relevant regulations continue to apply to the member as though the member continues in pensionable service under the old scheme until the earliest of—
    - (i) the end of the contribution option period (as defined in the old scheme);
    - (ii) if the member has a break in pensionable service under the new scheme lasting for more than five years, the last day of pensionable service that preceded that break;
    - (iii) the day preceding the day on which the member stops paying periodical contributions; or
    - (iv) retirement from pensionable employment under the new scheme; and
  - (b) regulation—
    - (i) Q16 of the 2011 Regulations, or
    - (ii) 2.C.16 or 3.C.14 of the 2013 Regulations,continues to apply if the member who is paying for additional pension by additional periodical contributions stops paying before the end of the contribution option period.
- (3) In paragraph (2), "relevant regulations" means—
- (a) in the case of a member whose old scheme service was in the 1995 Section, regulations Q8 to Q15 and Q17 of the 2011 Regulations; and
  - (b) in the case of a member whose old scheme service was in the 2008 Section—
    - (i) regulations 2.C.8 to 2.C.15 and 2.C.17 to 2.C.18; or
    - (ii) regulations 3.C.6 to 3.C.13 and 3.C.15 to 3.C.16,of the 2013 Regulations.

### **Additional contributions : ill-health**

24. Where regulation 22 or 23 applies, references to—

- (a) regulation E2 and E3 in regulations Q7 and Q15 of the 1995 Section;
- (b) regulation 2.D.8 in regulation 2.C.15 of the 2008 Section; and
- (c) regulation 3.D.7 in regulation 3.C.13 of the 2008 Section,

are to be read as references to an ill-health pension under regulation 89 of the 2015 Regulations in accordance with regulations 28 and 29 of these Regulations.

### **Decoupling of benefits derived from additional contributions**

25.—(1) This regulation applies to a transition member who has accrued entitlements in the 1995 Section from the payment of additional contributions under Part Q of the 2011 Regulations.

(2) Where this regulation applies, the member may elect that the part of a pension payable under regulation E1 of the 2011 Regulations derived solely from the payment of additional contributions under Part Q of those Regulations should be payable from—

- (a) the member's chosen date (as defined in regulation Q5, except as provided for in paragraph (10) below), in the case of purchase of additional service or an unreduced retirement lump sum;
- (b) the member's chosen birthday (as defined in regulation Q8, except as provided for in paragraph (10) below), in the case of purchase of additional pension,

notwithstanding the fact that the member continues in pensionable service under the new scheme (and for the purposes of any calculation, the member is to be taken to have retired from pensionable service on the member's chosen date or the member's chosen birthday (as applicable)).

(3) Paragraph (4) applies where the member has—

- (a) made more than one election under regulation Q4 or Q6 of the 2011 Regulations;
- (b) exercised the option under regulation Q8 or Q10 of the 2011 Regulations more than once; or
- (c) made one or more elections under regulation Q6 of the 2011 Regulations and exercised the option under regulation Q8 of the 1995 Regulations once or more.

(4) Any election under paragraph (2)—

- (a) must—
  - (i) where it relates to an election under regulation Q4 or Q6 of the 2011 Regulations, be made in relation to every election under those regulations; and
  - (ii) where it relates to an option under regulation Q8 or Q10 of the 2011 Regulations, be made in relation to every election under those regulations;

which has the same date as the member's chosen date or chosen birthday (as applicable); and

- (b) may be made on a second or subsequent occasion in respect of elections under regulation Q4 or Q6 of the 2011 Regulations and options under regulation Q8 or Q10 of the 2011 Regulations which have as the member's chosen date or chosen birthday (as applicable) a date different from any date in respect of which an election has previously been made under paragraph (2).

(5) Regulations E13 and E17 of the 2011 Regulations (where relevant) apply in relation to a payment made pursuant to this regulation.

(6) An election for the purposes of paragraph (2) must be given in writing to the scheme manager, containing such information as the scheme manager requires, no later than one month before the member's chosen date or the member's chosen birthday (as applicable).

(7) Where payment of part of a pension is made pursuant to paragraph (2) in respect of additional service resulting from an election under regulation Q4 or Q6 of the 2011 Regulations—

- (a) regulations F2, G3 and H4 of the 2011 Regulations apply to that part of a pension as though it was the member's pension for the purpose of those regulations;
- (b) the 2011 Regulations apply to the member's remaining entitlements under those Regulations as though no additional contributions had been made under Part Q; and
- (c) no further pension in respect of the additional contributions actually paid under Part Q of the 2011 Regulations is payable under those Regulations.

(8) Where payment of part of a pension is made pursuant to paragraph (2) in respect of additional pension resulting from an option under regulation Q8 or Q10 of the 2011 Regulations—

- (a) regulation Q14(4) to (8) of the 2011 Regulations applies;
- (b) the 2011 Regulations apply to the member's remaining entitlements under those Regulations as though no additional contributions had been made under Part Q; and
- (c) no further pension in respect of the additional contributions actually paid under Part Q of the 2011 Regulations is payable under those Regulations.

(9) The scheme manager must notify the member in writing of the right to make an election under this regulation at least six months before the member's chosen date or the member's chosen birthday (as applicable), specifying—

- (a) the date on which any pension payable pursuant to this regulation would come into payment were an election to be made;
- (b) the amount of any pension payable under this regulation (before any option to commute part of the pension into a lump sum); and
- (c) the date by which the election under this regulation must be received by the scheme manager pursuant to paragraph (4).

(10) In paragraph (2)—

- (a) the "chosen date" for an election under regulation Q4 is the date of the member's 60th birthday; and
- (b) the "chosen birthday" for an election under regulation Q10 is the member's 60th birthday.

## CHAPTER 6

### Bulk Transfers

#### Acceptance of bulk transfers

**26.**—(1) If, in circumstances where regulation 147 of the 2015 Regulations applies, the special terms agreed for the acceptance of transfer payments require such part of a transfer value payment as relates to a member's final salary benefits to be paid into the 1995 Section or the 2008 Section, that part of the transfer value must be paid into that Section.

(2) In this regulation, "final salary benefits" means—

- (a) benefit accrued under a final salary scheme; and
- (b) where only part of the pension entitlement payable under a final salary scheme to or in respect of a person which is based on the pensionable service of that person is or may be determined by reference to the person's final salary, the benefit in respect of which the pension entitlement is so determined.

## CHAPTER 7

### Retirement benefits

#### Ill health benefits : continuity of existing applications

- 27.—(1) This regulation applies to a member—
- (a) who, apart from the operation of this regulation—
    - (i) is prevented from contributing to or accruing further service in the 1995 Section or being an active member of the 2008 Section—
      - (aa) on or after 1st April 2015; or
      - (bb) after the member’s eligibility cessation date has been reached (see regulation B3(4) to (18) of the 2011 Regulations and regulation 2.B.3(1A) to (1L) or 3.B.3(1A) to (1L) of the 2013 Regulations); and
    - (ii) becomes eligible to join the new scheme on either 1st April 2015 or the day after the member’s eligibility cessation date (the member’s “transition date”);
  - (b) who submitted an application in such form as the Scottish Ministers accepted (together with supporting medical evidence if not included in the form) for the purposes of regulation E3 of the 1995 Section or regulation 2.D.8 or 3.D.7 of the 2008 Section before the transition date;
  - (c) whose application and supporting medical evidence was received by the Scottish Ministers before the transition date; and
  - (d) whose ill-health pension has not become payable under the 1995 Section or the 2008 Section before the transition date.
- (2) Where this regulation applies and the member is not entitled to immediate payment of ill-health pension under either the 1995 Section or the 2008 Section, the member does not become eligible to be a member of the new scheme until the day after—
- (a) the member withdraws the application for ill-health pension; or
  - (b) the Scottish Ministers determine that there is no entitlement to ill-health pension under the 1995 Section or the 2008 Section (as applicable) and that determination has become final and binding.
- (3) In paragraph (2), “final and binding” means—
- (a) the determination may not be the subject of further challenge by the member—
    - (i) pursuant to dispute resolution arrangements made and implemented under section 50 of the Pensions Act 1995<sup>(6)</sup>;
    - (ii) by way of a complaint to the Pensions Ombudsman pursuant to Part X of the Pension Schemes Act 1993<sup>(7)</sup>; or
    - (iii) by way of an action before the courts; or
  - (b) that the member has indicated in writing that—
    - (i) the application for ill-health pension is withdrawn; or
    - (ii) the determination is accepted by the member as being final and binding and any right to further challenge is waived.

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<sup>(6)</sup> 1995 c.26.

<sup>(7)</sup> 1993 c.48.

(4) Where the Scottish Ministers determine that, with the exception of the cessation condition, entitlement to ill-health pension under the 1995 Section or the 2008 Section (as applicable) has been established, the member—

- (a) must satisfy the cessation condition before the period of one year after the transition date; or
- (b) on expiry of that period, may be deemed by the Scottish Ministers to have withdrawn the application for ill-health pension.

(5) Where, by virtue of paragraph (4), the member is deemed to have withdrawn the application for ill-health pension, the member becomes eligible to be a member of the new scheme on the expiry of the period mentioned in that paragraph.

(6) In paragraph (4), “the cessation condition” is that the member—

- (a) in relation to the 1995 Section, retires from pensionable employment; and
- (b) in relation to the 2008 Section, ceases to be employed in NHS employment, within the meaning of the respective Section.

### **Ill health benefits : members below old scheme normal pension age**

**28.**—(1) This regulation applies in relation to a transition member who—

- (a) becomes entitled to an ill-health pension under the new scheme; and
- (b) has not reached the old scheme normal pension age.

(2) If this regulation applies—

- (a) an ill-health pension and lump sum are not payable under the old scheme;
- (b) an ill health pension is payable under the new scheme in accordance with this regulation; and
- (c) the member becomes a deferred member of the old scheme (but no entitlement to a pension arises under—
  - (i) regulation E12(3) of the 2011 Regulations; or
  - (ii) regulations 2.D.4, 2.D.10, 3.D.4 and 3.D.9 of the 2013 Regulations,

by virtue of becoming a deferred member pursuant to this regulation).

(3) If the member meets the Lower Tier conditions set out in regulation 89 (entitlement to ill-health pension) of the 2015 Regulations—

- (a) the annual rate of ill-health pension payable under the new scheme is the sum of—
  - (i) the annual rate of a Lower Tier ill-health pension payable under the new scheme; and
  - (ii) the annual rate of earned pension that would, if the member was entitled to payment of an ill-health pension under the old scheme, be payable to the member at the old scheme normal pension age; and
- (b) the member is entitled to payment of the lump sum of the amount of the lump sum (if any) that would, had the member been entitled to a payment of an ill-health pension under the old scheme, be payable to the member under—
  - (i) regulation E13 (lump sum on retirement) of the 2011 Regulations;
  - (ii) regulation 2.K.12 (amount of pension and lump sum to be paid to a 2008 Section Optant) of the 2013 Regulations; or
  - (iii) regulation 3.K.10 (amount of pension and lump sum to be paid to a 2008 Section Optant) of the 2013 Regulations.

(4) If the member meets the Upper Tier conditions set out in regulation 89 (entitlement to ill-health pension) of the 2015 Regulations, the annual rate of ill-health pension payable under the new scheme is the sum of—

- (a) the amounts specified at paragraph (3); and
- (b) the annual rate of an Upper Tier addition payable under the new scheme.

(5) If, after the ill-health pension becomes payable under this regulation, a transfer payment is made from the old scheme in respect of the member's rights under that scheme, the scheme manager must deduct from the amount of ill-health pension payable under this regulation in respect of service in the old scheme an amount which is equal to the value of the pension and lump sum represented by that transfer payment.

(6) The amount of pension payable under this regulation which represents the amount that would have been payable under the old scheme is subject to the same conditions, and ceases to be payable in the same circumstances, as the pension to which the member would have been entitled under the old scheme in accordance with whichever of the 2011 Regulations or the 2013 Regulations are applicable.

(7) In this regulation and regulation 29—

- (a) a reference to the annual rate of earned pension payable under the old scheme means the annual pension payable under the following provisions—
  - (i) if the member was an active member of the 1995 Section before becoming an active member of the new scheme, regulation E1 of that Section;
  - (ii) if the member was an active member of the 2008 Section before becoming an active member of the new scheme, regulation 2.D.1 or 3.D.1 of that Section;
- (b) a reference to an ill-health pension payable under the old scheme means a pension payable under the following provisions—
  - (i) if the member was an active member of the 1995 Section before becoming an active member of the new scheme, regulation E3 of that Section;
  - (ii) if the member was an active member of the 2008 Section before becoming an active member of the new scheme, regulation 2.D.8 or 3.D.7 of that Section;
- (c) a reference to an ill-health pension payable under the new scheme means an ill-health pension payable under regulation 89 of the 2015 Regulations;
- (d) a reference to the old scheme normal pension age means—
  - (i) as regards the 1995 Section, normal benefit age under the 2011 Regulations; or
  - (ii) as regards the 2008 Section, the age specified in regulation 2.D.1 or 3.D.1 (normal retirement pensions) of the 2013 Regulations.

### **Ill health benefits : members above old scheme normal pension age**

**29.**—(1) This regulation applies in relation to a transition member who is receiving payment of an ill-health pension in accordance with regulation 28.

(2) When the member reaches the old scheme normal pension age—

- (a) the benefits payable under regulation 28 in respect of service in the old scheme cease to be payable under the new scheme;
- (b) the member becomes entitled to the immediate payment of the annual rate of earned pension payable under the old scheme in accordance with the Regulations of the applicable Section; and
- (c) no lump sum is payable to the member under those Regulations.



(3) In calculating the annual rate of earned pension payable under the old scheme for the purposes of paragraph (2)(b), the following are subtracted—

- (a) the amount of pension amount (if any) converted to lump sum under regulation 76 of the 2015 Regulations to the extent that it relates to the pension payable under regulation 28(3)(a)(ii); and
- (b) an amount equal to any transfer payment made to another scheme before the member reached the old scheme normal pension age.

(4) Before the amounts in paragraph (3)(a) and (b) are subtracted, they must be increased by the amount by which the annual rate of pension of that amount would have been increased under the Pensions (Increase) Act 1971(8) if—

- (a) that pension was eligible to be so increased; and
- (b) the beginning date for that pension was the date that ill-health pension became payable under the new scheme.

#### **Age retirement of mental health officers, nurses, physiotherapists, midwives and health visitors**

**30.**—(1) In regulation R2 of the 2011 Regulations, references to “pensionable employment” in paragraphs (1)(b) and (2) includes employment that qualified the 1995 officer transition member for benefits under the 2015 Regulations.

(2) In regulation R3 of the 2011 Regulations—

- (a) the reference to “pensionable employment” in paragraph (2) includes employment that qualified the member for benefits under the 2015 Regulations; and
- (b) references to “pensionable service” in paragraph (5)(a) include service that qualified the member for benefits under the 2015 Regulations.

#### **Partial retirement**

**31.**—(1) Where a transition member elects to claim a specified percentage of that member’s pension pursuant to regulation 83 of the 2015 Regulations, that election is to be treated as also being an option for the purposes of partial retirement pension pursuant to whichever of regulations 2.D.5 or 3.D.5 of the 2013 Regulations applies to the member.

(2) A transition member does not become entitled to a specified percentage of a pension under regulation 83 of the 2015 Regulations until the member has become entitled to and claimed all benefits in the 2008 Section.

(3) For the purposes of regulation 2.D.5(6) and 3.D.5(5) of the 2013 Regulations and regulation 83(5) of the 2015 Regulations—

- (a) the pension (other than additional pension) to which the member becomes entitled as a result of the option or election (before converting pension to lump sum) is not to be less than the amount of pension payable by reference to 20% of the aggregate of the member’s pensionable service under the 2013 Regulations and the 2015 Regulations at the end of the option day; and
- (b) the percentage of pension (other than additional pension) for which the member does not require immediate payment is not to be less than the amount of the pension payable by reference to 20% of the aggregate of the member’s pensionable service under the 2013 Regulations and the 2015 Regulations at the end of the option day.

### **Redundancy retirement**

**32.**—(1) This regulation applies where an officer transition member other than one to whom regulation 33 applies—

- (a) becomes entitled to payment of a premature retirement pension pursuant to regulation 81 of the 2015 Regulations;
- (b) claims that pension; and
- (c) is under—
  - (i) age 60, in the case of a member of the 1995 Section; or
  - (ii) age 65, in the case of a member of the 2008 Section.

(2) Where this regulation applies, the member also becomes entitled to payment of a pension in respect of relevant pensionable service in the old scheme in consideration of the termination of that member’s employment by reason of redundancy pursuant to—

- (a) regulation E6 of the 2011 Regulations; or
- (b) regulation 2.D.11 of the 2013 Regulations.

(3) In this regulation, “relevant pensionable service” does not include—

- (a) service from an employment that commenced when the member was eligible to be an active member of the old scheme and is a continuing employment in respect of which the member has elected to continue to accrue rights pursuant to regulation 99(5) of the 2015 Regulations;
- (b) if regulation 99(9) of the 2015 Regulations applies to the member—
  - (i) service to which Schedule 1 to the 2011 Regulations applies; or
  - (ii) service to which Part 3 of the 2013 Regulations applies.

### **Premature retirement : special classes**

**33.**—(1) This regulation applies where a 1995 officer transition member to whom regulation R2 or R3 of the 2011 Regulations applies in respect of service in that Section—

- (a) becomes entitled to payment of a premature retirement pension—
  - (i) pursuant to regulation 80 of the 2015 Regulations; or
  - (ii) on grounds of redundancy pursuant to regulation 81 of the 2015 Regulations; and
- (b) claims that pension.

(2) Where this regulation applies, for the purposes of regulation E9(2) and (3) of the 2011 Regulations—

- (a) the member is to be treated as having claimed payment of a pension under regulation E1 of those Regulations; and
- (b) in the case of a member to who regulation R2(4)(b) of the 2011 Regulations applies, the member is also entitled to a pension under regulation E11 of the 2011 Regulations if that member makes a claim for it.

### **Interests of efficiency of the service**

**34.** Where an officer transition member other than one entitled to a pension pursuant to regulation R2 or R3 of the 2011 Regulations in respect of service in that Section becomes entitled to payment of a premature retirement pension pursuant to regulation 80 of the 2015 Regulations and claims that pension—

- (a) the member at the same time becomes eligible to a pension under whichever of regulation E7 of the 2011 Regulations or regulation 2.D.11 of the 2013 Regulations applies to the member in relation to the termination of that member's employment in the interests of efficiency of the service in which the member is employed; and
- (b) the member's employing authority must make a contribution to the Scottish Ministers in respect of the cost of that pension in accordance with regulation D2 of the 2011 Regulations or 2.C.6 of the 2013 Regulations.

### **Variations to lump sums for 1995 and 2008 pensioners joining new scheme**

**35.**—(1) This regulation applies to persons falling in Groups 1 to 4 and 6 in the table at paragraph 1 of Schedule 1 and Groups 1 to 4 in the table at paragraph 2 of that Schedule.

(2) Where this regulation applies, a lump sum equal to five times the rate of the relevant pension is to be paid in place of the lump sum payable to active members under regulation 111(a) and paragraph 2 of Schedule 12 to the 2015 Regulations.

(3) In this regulation, the "relevant pension" means—

- (a) where the member has not taken partial retirement from the new scheme pursuant to regulation 83 of the 2015 Regulations, an amount equal to—
  - (i) if the member dies before reaching normal pension age in the new scheme, an Upper Tier IHP within the meaning of regulation 89 of the 2015 Regulations;
  - (ii) if the member dies on or after reaching normal pension age in the new scheme, a pension under regulation 72 of the 2015 Regulations;
- (b) where the member has taken partial retirement from the new scheme pursuant to regulation 83 of the 2015 Regulations, an amount determined by the scheme manager after taking advice from the scheme actuary.

### **Abatement**

**36.**—(1) This regulation applies to an officer transition member who is—

- (a) a pensioner member of the new scheme to whom regulation 100(1) of the 2015 Regulations applies in respect of a pension under regulation 80 of those Regulations; and
- (b) a pensioner member of—
  - (i) the 1995 Section to whom regulation S2 of the 2011 Regulations applies in respect of a relevant pension referred to at paragraph (2)(b)(ii) of that regulation; or
  - (ii) the 2008 Section to whom regulation 2.H.1 applies in respect of a pension referred to at paragraph (1)(c)(iii) of that regulation.

(2) In respect of a member to whom paragraph (1)(b)(i) applies, for the purposes of—

- (a) establishing whether the pensioner's relevant income for a scheme year exceeds their previous earnings for the purposes of regulation 102 of the 2015 Regulations; and
- (b) finding amount B in paragraph (8) of regulation S2 of the 2011 Regulations,

the enhancement amount for the purposes of regulation 103(2) of the 2015 Regulations is the aggregate of the amounts found under regulation 107 of the 2015 Regulations and amount B found under regulation S2(8) of the 2011 Regulations.

(3) For the purposes of paragraph (2), the amount B found under regulation S2(8) of the 2011 Regulations is the aggregate of the amount found under that paragraph and the amount found under regulation 103(2) of the 2015 Regulations.

(4) Where the pensioner's relevant income exceeds previous pay or earnings, the amount of any reduction that is to apply to the pensions payable under each of the 2011 Regulations and 2015 Regulations is equal to the same proportion of the excess as the amount of pension for the scheme year before the reduction bears to the sum of those pensions for that year before the reduction.

(5) For the purposes of paragraph (4), the excess in the 1995 Section is equal to amount B found under regulation S2(8) of the 2011 Regulations.

(6) In respect of a member to whom paragraph (1)(b)(ii) applies, for the purposes of—

- (a) establishing whether the pensioner's relevant income for a scheme year exceeds their previous earnings for the purposes of regulation 102 of the 2015 Regulations; and
- (b) establishing whether the pensioner's relevant income for a financial year exceeds their previous pay for the purposes of regulation 2.H.3 of the 2013 Regulations,

the enhancement amount for the purposes of regulation 2.H.4(2) of the 2013 Regulations and regulation 103(2) of the 2015 Regulations is the aggregate of the amounts found under each of those regulations.

(7) Where the pensioner's relevant income exceeds previous pay or earnings, the amount of any reduction that is to apply to the pensions payable under each of the 2013 Regulations and 2015 Regulations is equal to the same proportion of the excess as the amount of pension for the scheme year before the reduction bears to the sum of those pensions for that year before the reduction.

#### **Abatement : special classes**

**37.—**(1) This regulation applies to a 1995 officer transition member who is—

- (a) a pensioner member of the new scheme to whom regulation 100(1) of the 2015 Regulations applies in respect of a pension under regulation 80 of those Regulations; and
- (b) a pensioner member of the 1995 Section to whom regulation S2 of the 1995 Regulations applies in respect of a relevant pension referred to in paragraph (2)(c)(i) of that regulation.

(2) Where this regulation applies, the pensions mentioned in paragraph (1)(a) and (b) must be reduced by the relevant amount.

(3) The "relevant amount" in paragraph (2) is the amount determined by multiplying the relevant proportion by amount E determined under paragraph (5).

(4) The "relevant proportion" in paragraph (3) is—

(a)

in respect of the pension at paragraph (1)(a), represented by the fraction  $\frac{A}{A+B}$ ; and

(b)

in respect of the pension at paragraph (1)(b), represented by the fraction  $\frac{B}{A+B}$ ,

where A and B have the meanings given in paragraph (5).

(5) Amount E is the amount by which the sum of amounts A, B and C exceeds amount D, where amount—

"A" is the amount of the enhancement under regulation 103(2) of the 2015 Regulations;

"B" is the amount of the member's relevant pension from the 1995 Section (including in that amount any amount by which that pension has been reduced pursuant to an option under regulation E17 of the 2011 Regulations);

"C" is the amount of earnings received by the employed person during the year from the new employment in accordance with regulation 103(1)(a) of the 2015 Regulations; and

“D” is the amount of the member’s previous earnings construed in accordance with regulation 104 of the 2015 Regulations.

## CHAPTER 8

### Death benefits

#### Death in service

**38.**—(1) As regards a transitional member, or a person who derives a benefit from the old scheme or new scheme in respect of a transitional member, the entitlement listed in column 1 of the table is disapplied and the corresponding entitlement in column 2 applies instead.

**Table**

<i>Column 1</i>	<i>Column 2</i>
<i>Original entitlement</i>	<i>Revised entitlement</i>
PART 1 Entitlements derived from the 1995 Section	
a lump sum on death under regulation F1.	a lump sum on death under regulation 111(a) of the 2015 Regulations.
an initial adult survivor pension under regulation G2(5) at the rate of the member’s pensionable pay for the first six months after the member’s death.	an initial pension at the rate of the member’s pensionable earnings under regulation 114(4) of the 2015 Regulations (and references in regulations G2(6), (7) and (8) and H3(7) and (8) of the 1995 Section to paragraph (5) of regulation G2 are to be taken to be a reference to a pension payable under regulation 114(4) of the 2015 Regulations).
an ongoing pension under regulation G2(6) based on one half of the member’s notional ill-health pension had the member become entitled to an Upper Tier pension under regulation E3 on the date of death.	(a) payable from the 1995 Section in respect of service in that Section, an ongoing adult survivor pension equal to the pension that would have been payable to the adult survivor under part G of the 1995 Section if the member had retired with a pension under regulation E1 of the 1995 Section on the date of death; and (b) payable from the new scheme in respect of service in that scheme, an ongoing survivor pension based on an Upper Tier IHP under regulation 114(5) of the 2015 Regulations.
a pension under regulation G4(3) equal to one half of the pension that would have been payable to the member had the member become entitled to an Upper Tier pension under regulation E3 on the day the member left pensionable employment.	(a) payable from the 1995 Section in respect of service in that Section, an ongoing adult survivor pension equal to the pension that would have been payable to the adult survivor under part G of the 1995 Section if the member had retired with a pension under regulation E1 of the 1995 Section on the date of death; and

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<i>Column 1</i>	<i>Column 2</i>
<i>Original entitlement</i>	<i>Revised entitlement</i>
	(b) payable from the new scheme in respect of service in that scheme, an ongoing survivor pension based on an Upper Tier IHP under regulation 116(2) of the 2015 Regulations.
a dependant child’s pension under regulation H3 equal to the rate of the member’s pensionable pay when the member died, payable for the first— (a) three months under paragraph (8); (b) six months under paragraph (9); (c) six months under paragraph (10).	an initial pension of the same amount and for the same duration under regulation 122(6) or (7) of the 2015 Regulations.
an ongoing pension under regulation H3(3) based on a proportion of the member’s notional ill-health pension had the member become entitled to an Upper Tier pension under regulation E3 on the date of death or, if greater, the amount that pension would have been had it been based on 10 years’ pensionable service.	(a) payable from the 1995 Section in respect of service in that Section, an ongoing pension equal to the relevant proportion of the pension that would have been payable to the member if the member had retired with a pension under regulation E1 of the 1995 Section on the date of death; and (b) payable from the new scheme in respect of service in that scheme, an ongoing pension based on the appropriate fraction of the basic death pension specified under regulation 122(3) and (4) of the 2015 Regulations.
a pension under regulation H5(2) equal to the relevant proportion of the pension described in regulation H3(3).	(a) payable from the 1995 Section in respect of service in that Section, a child’s pension equal to the relevant proportion of the pension that would have been payable to the member if the member had retired with a pension under regulation E1 of the 1995 Section on the date of death; and (b) payable from the new scheme in respect of service in that scheme, an ongoing pension based on the appropriate fraction of the basic death pension specified under regulation 124(3)(a) and (4) of the 2015 Regulations.
PART 2 Entitlements derived from the 2008 Section	
a lump sum on death under regulation 2.E.17 or 3.E.17.	a lump sum on death under regulation 111(a) of the 2015 Regulations.
a surviving adult dependent’s pension during the initial period of six months—	a pension payable during the initial period at the rate of the member’s pensionable

<i>Column 1</i>	<i>Column 2</i>
<i>Original entitlement</i>	<i>Revised entitlement</i>
<p>(a) under regulation 2.E.3(1)(a) equal to the rate of the member’s pensionable pay at the time of death; or</p> <p>(b) under regulation 3.E.3(2)(a) equal to the rate of the member’s pensionable earnings during the last complete quarter before the member’s death.</p>	<p>earnings under regulation 114(4) of the 2015 Regulations (and references in regulations 2.E.3(2), (3) and (4) and 3.E.3(2) (3) and (4) of the 2008 Section to “after the initial period” are to be taken to be a reference to the period for which the initial pension payable under regulation 114(4) of the 2015 Regulations is payable).</p>
<p>an ongoing pension after the initial period—</p> <p>(a) under regulation 2.E.3(2)(a) equal to 37.5% of the Upper Tier ill health pension under regulation 2.D.8 to which the member would have been entitled if, on the date of death, the member had become entitled to such a pension in respect of any period of pensionable service; or</p> <p>(b) under regulation 3.E.3(2)(a) equal to the appropriate proportion of the Upper Tier ill health pension under regulation 3.D.7 to which the member would have been entitled if, on the date of death, the member had become entitled to such a pension.</p>	<p>(a) payable from the 2008 Section in respect of service in that Section, an ongoing adult survivor pension after the initial period equal to—</p> <p>(i) 37.5% of the pension under regulation 2.D.1 to which the member would have been entitled if, on the date of death, the member had become entitled to such a pension in respect of any period of pensionable service that the member is entitled to count; or</p> <p>(ii) equal to the appropriate proportion of the pension under regulation 3.D.1 to which the member would have been entitled if, on the date of death, the member had become entitled to such a pension in respect of any period of pensionable service that the member is entitled to count; and</p> <p>(b) payable from the new scheme in respect of service in that scheme, an ongoing survivor pension based on an Upper Tier IHP under regulation 114(5) of the 2015 Regulations.</p>
<p>a pension under—</p> <p>(a) regulation 2.E.5(1)(a) equal to 37.5% of the Upper Tier ill health pension under regulation 2.D.8 to which the member would have been entitled if on the date the member’s pensionable service ceased the member had become entitled to such a pension; or</p> <p>(b) regulation 3.E.5(1)(a) equal to the appropriate proportion of the Upper Tier ill health pension under regulation 3.D.7 to which the member would have been entitled if on the date the member’s pensionable service ceased the member had become entitled to such a pension.</p>	<p>(a) payable from the 2008 Section in respect of service in that Section, an ongoing adult survivor pension equal to—</p> <p>(i) 37.5% of the pension under regulation 2.D.1 to which the member would have been entitled if, on the date the member’s pensionable service ceased, the member had become entitled to such a pension; or</p> <p>(ii) the appropriate proportion of the pension under regulation 3.D.1 to which the member would have been entitled if, on the date the member’s pensionable service ceased, the</p>

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<i>Column 1</i> <i>Original entitlement</i>	<i>Column 2</i> <i>Revised entitlement</i>
	<p>member had become entitled to such a pension; and</p> <p>(b) payable from the new scheme in respect of service in that scheme, an ongoing survivor pension based on an Upper Tier IHP under regulation 116(2) of the 2015 Regulations.</p>
<p>a dependant child’s pension under—</p> <p>(a) regulation 2.E.10 equal to the rate of the deceased’s pensionable pay at the date of death, payable for the first—</p> <p>(i) three months under paragraph (6)(b)(i);</p> <p>(ii) six months under paragraph (7)(a); or</p> <p>(b) regulation 3.E.10 equal to the average rate of the deceased’s pensionable earnings during the last complete quarter before the member died, payable for the first—</p> <p>(i) three months under paragraph (5)(b)(i);</p> <p>(ii) six months under paragraph (6)(a).</p>	<p>an initial pension of the same amount and for the same duration under regulation 122(6) or (7) of the 2015 Regulations.</p>
<p>an ongoing pension under regulation 2.E.10(3) or 3.E.10(3) equal to the appropriate fraction of the basic death pension.</p>	<p>(a) payable from the 2008 Section in respect of service in that Section, an ongoing pension equal to the appropriate fraction of the basic death pension payable under—</p> <p>(i) regulation 2.E.10(3) of the 2008 Section; or</p> <p>(ii) regulation 3.E.10(3) of the 2008 Section,</p> <p>where that pension is based on the pensionable service that the deceased was entitled to count at the date of death; and</p> <p>(b) payable from the new scheme in respect of service in that scheme, an ongoing pension based on the appropriate fraction of the basic death pension specified under regulation 122(3) and (4) of the 2015 Regulations.</p>
<p>a pension under regulation 2.E.12(3)(a) or 3.E.12(3)(a) equal to the appropriate fraction of the basic death pension for the purposes of regulation 2.E.10 or 3.E.10 if the deceased had died on the date the deceased ceased to be an active member.</p>	<p>(a) payable from the 2008 Section in respect of service in that Section, a pension equal to—</p> <p>(i) 37.5% of the pension under regulation 2.D.1 to which the member would have been entitled if, on the date the member’s</p>



<i>Column 1</i>	<i>Column 2</i>
<i>Original entitlement</i>	<i>Revised entitlement</i>
	<p>pensionable service ceased, the member had become entitled to such a pension; or</p> <p>(ii) the appropriate proportion of the pension under regulation 3.D.1 to which the member would have been entitled if, on the date the member's pensionable service ceased, the member had become entitled to such a pension; and</p> <p>(b) payable from the new scheme in respect of service in that scheme, an ongoing pension based on the appropriate fraction of the basic death pension specified under regulation 124(3) and (4) of the 2015 Regulations.</p>

(2) Save where expressly provided in the table, no entitlement in respect of the matters listed in column 1 is payable from both the 2015 Regulations and—

- (a) the 1995 Section; or
- (b) the 2008 Section,

and no entitlement in respect of the matters listed in column 1 of the table is payable twice (under the 2015 Regulations or those Regulations and either the 1995 Section or 2008 Section) in respect of the same period of service.

## CHAPTER 9

### Option to convert service

#### **Option for 1995 Section members to convert to 2008 Section membership**

**39.**—(1) This regulation applies to a person who on 31st March 2015 was in pensionable service for the purposes of the 2011 Regulations, but who on 1st April 2015 is not a person to whom the following provisions apply—

- (a) paragraphs (5), (6) and, where paragraph (11) or (12) applies, paragraph (9) of regulation B3 of those Regulations; or
- (b) regulation 27.

(2) A person to whom this regulation applies may give the Scottish Ministers a notice in writing electing that their pensionable service for the purposes of the 2011 Regulations be treated as if it were such service for the purposes of the 2013 Regulations.

(3) Paragraph (2) applies only to the extent that the person has not already received benefits under the 2011 Regulations in respect of the person's pensionable service for the purposes of those Regulations.

(4) For the purposes of this regulation, a notice—

- (a) includes any notice that a person may have given to the Scottish Ministers prior to 31st March 2015; and

- (b) has the same effect that a notice given pursuant to Chapter 2.K or, as the case may be, Chapter 3.K of the 2013 Regulations would have had prior to 31st March 2015.

## PART 3

### Amendments to the old scheme

#### Amendments to the old scheme

- 40.** Schedule 2 (amendments to the old scheme) has effect.

St Andrew's House,  
Edinburgh  
25th February 2015

*JOHN SWINNEY*  
A member of the Scottish Government

We consent

2nd March 2015

*DAVID EVENNETT*  
*JOHN PENROSE*  
Two of the Lords Commissioners of Her  
Majesty's Treasury