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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 96**

**The National Health Service Superannuation Scheme  
(Miscellaneous Amendments) (Scotland) Regulations 2015**

**PART 5**

**Amendment of the National Health Service Superannuation Scheme  
(Scotland) (Additional Voluntary Contributions) Regulations 1998**

**General**

**51.** The National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998(1) are amended in accordance with regulations 52 to 63.

**Amendment of regulation 2**

**52.** In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) insert the following definitions at the appropriate place in alphabetical order—

“the 2014 Act” means the Taxation of Pensions Act 2014(2);

“the 2015 Regulations” means the National Health Service Pension Scheme (Scotland) Regulations 2015;

“the 2009 Regulations” means the Registered Pension Schemes (Authorised Payments) Regulations 2009(3);

“civil partner” and “civil partnership” are to be construed in accordance with regulation 2A;

“marriage” does not include a reference to marriage of a same sex couple unless otherwise provided;

“widow” and “widower” do not include a reference to marriage of a same sex couple;”;

(ii) in the definition of “child”—

(aa) at the end of paragraph (a), omit “or”; and

(bb) after paragraph (b), insert—

“or

(c) a child’s pension under regulation 120 of the 2015 Regulations;”;

(iii) in the definition of “date of retirement”—

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(1) S.I. 1998/1451.  
(2) 2014 c.30.  
(3) S.I. 2009/1171.

- (aa) at the end of paragraph (a) omit “or”; and
- (bb) after paragraph (b), insert—
  - “(c) regulation 72, 78, 80, 81, 83, 89 or 93 of the 2015 Regulations;
  - (d) in the case of a benefit referred to in regulation 11(1)(d), a commencement date that the participator requests that is on, or after, the participator’s normal minimum pension age: for these purposes, normal minimum pension age has the meaning given in section 279(1) of the 2004 Act.”
- (iv) in the definition of “dependant”, in paragraph (c)—
  - (aa) at the end of sub-paragraph (i), omit “or”; and
  - (bb) after sub-paragraph (ii), insert—
    - “or
    - (iii) regulation 50 of the 2015 Regulations;”;
- (v) in the definition of “NHS Superannuation Scheme”, at the end, insert “or in the 2015 Regulations”;
- (vi) in the definition of “normal benefit age”, for paragraphs (a) and (b) substitute—
  - “(a) in the case of a person who was a member of the NHS Superannuation Scheme governed by the 2011 Regulations at the date on which the person’s election under regulation 3 took effect, the age of 60;
  - (b) in the case of a person whose pension arrangements are governed by the 2013 Regulations, the age of 65;
  - (c) in the case of a person whose pension arrangements are governed by the 2015 Regulations—
    - (i) the person’s state pension age; or
    - (ii) if higher, the age of 65”;
- (vii) in the definition of “participator”, in paragraph (a) for “11(3)” substitute “11”;
- (viii) in the definition of “pensionable employment”, after “1967” insert “or a determination under section 25(5) of the Public Service Pensions Act 2013”;
- (ix) in the definition of “pensionable service”, at the end insert—
  - “(c) regulation 20 of the 2015 Regulations;”;
- (x) in the definition of “retirement”, at the end insert—
  - “; or
  - (c) the 2015 Regulations”.
- (b) after paragraph (1), insert—
  - “(1A) A person is a nominated partner in relation to a contributor if the person and the contributor—
    - (a) have jointly made and signed a declaration in such form as the Scottish Ministers require;
    - (b) are living together in an exclusive relationship as if they were spouses or civil partners;
    - (c) are not prevented from marrying or forming a civil partnership.
  - (1B) A person is a surviving nominated partner in relation to a contributor if—

- (a) the person and the contributor jointly made and signed a declaration in such form as the Scottish Ministers require that remains effective at the member's death; and
  - (b) the person satisfies the Scottish Ministers that for a continuous period of 2 years ending with the member's death—
    - (i) the person and the member were living together in an exclusive relationship as if they were spouses or civil partners,
    - (ii) the person and the member were not prevented from marrying or forming a civil partnership, and
    - (iii) the person was financially dependent on the member or the person and the member were financially interdependent.
- (1C) A declaration for the purposes of paragraph (1A)(a) or (1B)(a) ceases to have effect if—
- (a) it is revoked by the contributor or other person by a signed notice in writing to the Scottish Ministers in such form as the Scottish Ministers may require or are willing to accept;
  - (b) the contributor makes a further declaration for the purpose of those paragraphs; or
  - (c) the contributor or the person marries or forms a civil partnership.”; and
- (c) in paragraph (2), for “or the 2013 Regulations” substitute “, 2013 Regulations or the 2015 Regulations”.

### **New regulation 2A**

**53.** After regulation 2, insert—

#### **“Civil partnerships and marriage of same sex couples**

**2A.—**(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 to 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.”.

### **Amendment of regulation 3**

**54.** In regulation 3 (making and acceptance of elections)—

- (a) in paragraph (1)—

- (i) for “an annuity or a pension commencement lump sum and an annuity payable on retirement”, substitute “one or more of the benefits referred to in regulation 11”; and
- (ii) omit “Paragraph (1)(a) is subject to regulation 11(1A).”;
- (b) omit sub-paragraph (b) of paragraph (3);
- (c) after paragraph (6A), insert—
  - “(6B) A person whose membership of the NHS Pension Scheme Scotland is governed by the 2015 Regulations and who is in pensionable employment may, upon attaining normal benefit age—
    - (a) where contributions have been paid for the purposes of paragraph (1)(b), elect for further contributions to be paid for 12 months beyond the attainment of normal benefit age birthday, and
    - (b) continue to elect annually for further contributions to be paid provided that person remains in pensionable employment.
  - (6C) Paragraph (6B) is subject to—
    - (a) an election referred to in that paragraph being permitted under the arrangement that the person has with an authorised provider;
    - (b) paragraph (5)(b);
    - (c) regulation 4(4).”;
- (d) in paragraph (7), for “paragraphs (1) and (6)” substitute “paragraph (1), (6), (6A) or (6B)”.

#### **Amendment of regulation 4**

- 55.** In regulation 4 (payment and amount of additional voluntary contributions)—
- (a) in paragraph (3)—
    - (i) omit sub-paragraph (a) and the word “and” immediately after it; and
    - (ii) in sub-paragraph (b), for “or the 2013 Regulations” substitute “, the 2013 Regulations or the 2015 Regulations”; and
  - (b) in paragraph (3A)—
    - (i) in each of the definitions of “employer” and “salary” for “or the 2013 Regulations” substitute “, the 2013 Regulations or the 2015 Regulations”; and
    - (ii) in the definition of “employer”, for “either” substitute “any”.

#### **Substitution of regulation 6**

- 56.** For regulation 6, substitute—

##### **“Circumstances in which elections cease to have effect**

- 6.—(1)** Subject to paragraphs (2) and (3), an election shall cease to have effect—
- (a) where a contributor leaves pensionable employment;
  - (b) where a contributor ceases to be in pensionable employment by virtue of an election under regulation B4 of the 2011 Regulations, regulation 2.B.6 or 3.B.6 of the 2013 Regulations or regulation 15(2) of the 2015 Regulations (all of which deal with opting-out of the scheme in question), as the case may be; or

- (c) in the case of a contributor who, at the time of making the election, was subject to the 2011, 2013 or (as the case may be) 2015 Regulations and who receives payment of all of their benefits under those particular Regulations.
- (3) A contributor whose election ceases in accordance with paragraph (1)(c) is not prevented from making a further election that complies with regulation 3.
- (4) Where a contributor gives written notice to the Scottish Ministers for the purposes specified in regulation 5(1)(c), an election—
  - (a) does not cease to have effect; and
  - (b) continues to be subject to the normal benefit age applicable at the time it was made.
- (5) This does not apply where sub-paragraph (a) or (c) of paragraph (1) apply.”.

### **Amendment of regulation 10**

**57.** In regulation 10 (outward transfers)—

(a) for paragraphs (4) and (4A), substitute—

“(4) If the Scottish Ministers are required under paragraph (1) to make a transfer payment in circumstances where such a payment in respect of an eligible person is also provided and used in accordance with regulation M1 of the 2011 Regulations (member’s right to transfer or buy-out), the Scottish Ministers must do so in accordance with the time limit specified in regulation M5 of those Regulations as if the reference in that regulation to an application were a reference to a notice referred to in paragraph (1).

(4A) If the Scottish Ministers are required under paragraph (1) to make a transfer payment in circumstances where such a payment in respect of an eligible person is also provided and used in accordance with regulation 2.F.1 or 3.F.1 of the 2013 Regulations (rights to transfer value payments), the Scottish Ministers must do so in accordance with the time limit specified in, as the case may be, regulation 2.F. 4 or 3.F.4 of those Regulations as if the reference in regulation 2.F.4 or (as the case may be) 3.F.4 to an application were a reference to a notice referred to in paragraph (1).

(4B) If the Scottish Ministers are required under paragraph (1) to make a transfer payment in circumstances where such a payment in respect of an eligible person is also provided and used in accordance with regulation 133 of the 2015 Regulations (rights to transfer value payment), the Scottish Ministers must do so in accordance with the time limit specified in regulation 136 of those Regulations as if the reference in that regulation to an application were a reference to a notice referred to in paragraph (1).” and

(b) in paragraph (8)(b)(ii), for “or regulation 2.F.14 or 3.F.14 of the 2013 Regulations” substitute “, regulation 2.F.14 or 3.F.14 of the 2013 Regulations or regulation 146 of the 2015 Regulations”.

### **Substitution of regulation 11**

**58.** For regulation 11, substitute—

#### **“Retirement and dependants’ benefits**

**11.—(1)** A participator may apply some or all of the proceeds of an investment made under regulation 7(1), 8(2) or 9(4) to arrange with an insurer—

- (a) payment of a lifetime annuity;
- (b) payment of a lifetime annuity and a pension commencement lump sum;

- (c) a lump sum commutation payment that—
  - (i) reflects the value of the benefits referred to in sub-paragraph (a) or (b), and
  - (ii) meets the requirements of regulations 11 and 12 of the 2009 Regulations;
- (d) as from 6th April 2015, any payment to the participator or a dependant of the participator that complies with the requirements of the 2014 Act.
- (2) Paragraph (1) is subject to paragraphs (11) to (14) and regulation 15(10) and (11).
- (3) Subject to paragraphs (4) and (5), an authorised provider selected by the Scottish Ministers must provide a participator with an option to receive benefits under paragraph (1) (a) to (c)
- (4) Any annuity payable in accordance with paragraph (1)(a) or (b) must—
  - (a) be incapable, in whole or in part, of surrender, assignation or commutation;
  - (b) commence not earlier than the participator’s date of retirement for the purposes of, as the case may be, the 2011, 2013 or 2015 Regulations;
  - (c) be payable to the participator for life.
- (5) Any dependant’s pension which is payable in respect of a participator is payable only on the death of the participator after the participator’s retirement and is payable to the dependant for life: this is subject to paragraph (7).
- (6) A lump sum commutation payment referred to in paragraph (1)(c) may be paid in respect of benefits payable under paragraph (1)(a), (b) or (d).
- (7) In the case of a person who is a child to whom—
  - (a) Part H of the 2011 Regulations (child allowance) applies;
  - (b) regulation 2.E.9 or 3.E.9 of the 2013 Regulations (meaning of dependant child) applies; or
  - (c) regulation 121 of the 2015 Regulations (eligible child) applies,
 a pension referred to in paragraph (5) ceases to be payable when that person ceases to be a dependant child within the meaning of whichever of those Regulations applies.
- (8) An authorised provider selected by the Scottish Ministers may, in addition to providing a participator with benefits options under paragraph (2), may from 6th April 2015 provide a participator or a participator’s dependant with alternative benefit options under paragraph (1)(d).
- (9) A participator must, not earlier than 3 months before the date from which the participator wishes those benefits under these Regulations to be provided, make a benefits election to the Scottish Ministers specifying—
  - (a) whether and which benefits are to be provided under paragraph (3) or, alternatively, paragraph (8);
  - (b) the authorised provider who is to provide each benefit;
  - (c) for whom, if anyone, a dependant’s benefit is to be provided;
  - (d) if more than one benefit is to be provided, either—
    - (i) the proportion of the amount secured by the total investments made under regulation 7(1), 8(2) or 9(4) that is to be applied to the purchase or arrangement of each of them; or
    - (ii) the dependants’ benefits to be provided expressed as a percentage of the participator’s benefits;
  - (e) in respect of every annuity to be provided—

- (i) the annual rate of the annuity;
  - (ii) whether it is to be payable for life or for a fixed period;
  - (iii) whether its rate is to be fixed or vary in accordance with the Index or increase yearly by a specified percentage or (if lower) increase by the increase in the Index for the year in question;
  - (iv) as from 6th April 2015, whether the rate may reduce;
- (f) in the case of a participator who chooses a life-time annuity referred to in paragraph (1)(a) or (b) and who dies within the period of 5 years beginning with the date on which the annuity commences, whether, if the annuity had continued at the rate in force at the time of the participator's death, a lump sum is to be paid in accordance with regulation 15(3): the lump sum referred to in this subparagraph is a lump sum equal to the balance that would have been payable during the remainder of that period.
- (10) More than one benefits election may be made under paragraph (9) and must—
- (a) be in writing, and
  - (b) contain such information as the Scottish Ministers request.
- (11) Upon receipt of a notice of election under paragraph (9), the Scottish Ministers must, as soon as reasonably practicable, realise the investments made under regulation 7(1), 8(2) or 9(4) and apply the proceeds in the manner specified in it.
- (12) Where a participator dies before retirement or after retirement but before the benefits under this regulation are paid, the investments made under regulation 7(1), 8(2) or 9(4) must be realised and are, subject to any limit imposed by regulation 13, payable as a lump sum in accordance with regulation 15(3).
- (13) The Scottish Ministers may realise the investments made under regulation 7(1), 8(2) or 9(4) and apply the proceeds to the purchase of benefits under these Regulations from an insurer in such form as appears to the Scottish Ministers to be suitable where the conditions in paragraph (14) are satisfied.
- (14) Those conditions are—
- (a) the participator's retirement date falls on or after 1st December 1999; and
  - (b) the participator has attained the age of 75 and has not given a notice of election under paragraph (9) before doing so.
- (15) Paragraph (13) applies notwithstanding that benefits are payable to the participator under—
- (a) Part E of the 2011 Regulations (benefits for members);
  - (b) regulation 2.D.1, 2.D.4, 2.D.5, 2.D.8, 2.D.10, 2.D.11, 3.D.1, 3.D.4, 3.D.5, 3.D.7, or 3.D.9 of the 2013 Regulations (normal retirement pensions, actuarially reduced pensions, ill health pensions and early retirement pensions); or
  - (c) regulation 72, 78, 80, 81, 83, 89 or 93 of the 2015 Regulations (age retirement, early retirement, premature retirement, partial retirement and ill-health pensions).”.

#### **Amendment of regulation 14**

- 59.** In paragraph (1)(b) of regulation 14 (repayment of investments in certain cases)—
- (a) at the end of paragraph (i), omit “or”; and
  - (b) at the end of paragraph (ii), insert—

“or

(iii) regulation 39 of the 2015 Regulations (eligibility for refund);”.

### **Amendment of regulation 15**

**60.** In regulation 15 (payments by the Scottish Ministers)—

(a) for paragraph (1), substitute—

“(1) Where an authorised provider or a selected authorised provider fails to pay a benefit referred to in regulation 11(1) or a lump sum benefit referred to in regulation 12, the Scottish Ministers are liable to pay that amount.”;

(b) in paragraph (3)—

(i) for “regulations 11(1B), 11(1C), 11(4), or under regulations 11(7) or 12 ” substitute “regulation 11(8)(f) and (11) and regulation 12”; and

(ii) for sub-paragraph (b) of paragraph (3), substitute—

“(b) to the deceased’s personal executors if—

(i) there is no spouse, nominated partner or civil partner; or

(ii) a notice has been given in accordance with any of the provisions referred to in paragraph (3A) that the spouse, nominated partner or civil partner is not to receive the payment.”;

(c) after paragraph (3), insert—

“(3A) The provisions referred to in paragraph (3)(b) are—

(a) regulation F5 of the 2011 Regulations (payment of lump sum);

(b) regulation 2.E.22 or 3.E.22 of the 2013 Regulations (payment of lump sum on death);

(c) regulation 111 of the 2015 Regulations (lump sum on death);

(d) paragraph 11 of Schedule 2.”;

(d) for paragraph (4), substitute—

“(4) Lump sums payable under regulation 11(1)(b),(c) and (d) and regulation 14(1) must be paid to the participator.”;

(e) in paragraph (9), for the words from “regulations E1” to “applies” substitute “the provisions referred to in paragraph (9A)”;

(f) after paragraph (9), insert—

“(9A) Those provisions are—

(a) Part E of the 2011 Regulations (benefits for members and preserved pension);

(b) regulation 2.D.1, 2.D.4, 2.D.5, 2.D.8, 2.D.10, 2.D.11, 3.D.1, 3.D.4, 3.D.5, 3.D.7 or 3.D.9 of the 2013 Regulations (normal retirement pensions, actuarially reduced pensions, ill health pensions and early retirement pensions);

(c) regulation 72, 78, 80, 81, 83, 89 or 93 of the 2015 Regulations (age retirement, early retirement, partial retirement and ill-health pensions).”; and

(g) in paragraph (10)—

(i) at the end of sub-paragraph (a), omit “or”; and

(ii) after sub-paragraph (b) insert—

“or



- (c) regulation 108 of the 2015 Regulations (option for members in serious ill-health to exchange pension for lump sum),”.

#### **Amendment of regulation 19**

- 61. In regulation 19 (offset for crime, negligence or fraud)—
  - (a) for “or”, substitute “,”; and
  - (b) after “fraud”, insert “or paragraph 11 of Schedule 3 to the 2015 Regulations (offset of benefits)”.

#### **Substitution of regulation 20**

- 62. For regulation 20, substitute—

##### **“Loss of rights to benefits**

20.—(1) Where paragraph (2) applies, the Scottish Ministers may direct that all or any part of any rights to benefit a person has under these Regulations and which arise by virtue of an employer’s contributions paid on or after 13th July 1998 are to be forfeited.

- (2) This paragraph applies where on or after 13th July 1998—
  - (a) that person commits and is convicted of an offence referred to in—
    - (i) regulation T7 of the 2011 Regulations (loss of rights to benefits);
    - (ii) regulation 2.J.8 or 3.J.8 of the 2013 Regulations (forfeiture of rights to benefits), or
    - (iii) paragraph 12 of Schedule 3 to the 2015 Regulations (forfeiture of rights to benefits), and
  - (b) the circumstances are such that a direction may be made by the Scottish Ministers under whichever of those provisions applies.”.

#### **Amendment of Schedule 2**

- 63. In Schedule 2 (pension sharing on divorce or nullity of marriage or dissolution or nullity of civil partnership)—

- (a) in paragraph 1 (discharge of liability in respect of pension credit)—
  - (i) for paragraph (b) of sub-paragraph (5), substitute—
    - “(b) any dependant’s pension which is payable under it is payable only on the death of the pension credit member after that member has reached normal benefit age and is payable to the dependant for life: this is subject to paragraph (6);”;
  - (ii) after sub-paragraph (5), insert—
    - “(6) In the case of a person who is a child to whom—
      - (a) Part H of the 2011 Regulations (child allowance) applies;
      - (b) regulation 2.E.9 or 3.E.9 of the 2013 Regulations (meaning of dependant child) applies; or
      - (c) regulation 121 of the 2015 Regulations (eligible child) applies,

a pension referred to in paragraph (5)(b) ceases to be payable when that person ceases to be a dependant child within the meaning of whichever of those Regulations applies.

(7) Sub-paragraph (5) does not apply where, in accordance with sub-paragraph (5C) of paragraph 4, a pension credit member elects to be provided with alternative benefits referred to in sub-paragraph (5B) of that paragraph.”;

(b) in paragraph 4 (pension credit benefit)—

(i) in sub-paragraph (4), for “this paragraph” substitute “sub-paragraph (1) and any alternative benefit referred to in sub-paragraph (5A)”;

(ii) after sub-paragraph (5), insert—

“(5A) An authorised provider selected by the Scottish Ministers—

(a) must provide a pension credit member with an option to receive the benefits referred to in sub-paragraph (5)(a), (aa) and (b); and

(b) may, as from 6th April 2015, provide such a member with an option to receive the alternative benefits referred to in sub-paragraph (5B).

(5B) Those alternative benefits are benefits that are equal in value to the benefits referred to in sub-paragraph (5)(a), (aa) and (b) and which comply with the requirements of the 2014 Act.

(5C) A member who wishes to be provided with such alternative benefits must elect to do so by giving the Scottish Ministers notice in writing not earlier than 3 months before attaining normal benefit age.”;

(iii) in sub-paragraph (7)—

(aa) after “sub-paragraph (5)” insert “, or as the case may be sub-paragraph (5C),”;

(bb) after paragraph (b) insert—

“(c) where sub-paragraph (5C) applies, pay the alternative benefits the pension credit member has elected to be provided with,”; and

(iv) for sub-paragraphs (8) and (9), substitute—

“(8) Where the conditions in sub-paragraph (9) are satisfied, the Scottish Ministers may realise the investments made under paragraph 2 and apply the proceeds to the purchase of benefits under these Regulations from an insurer that the Scottish Ministers consider—

(a) suitable;

(b) will satisfy the requirements of regulations 12 to 14 of the Pension Sharing (Pension Credit Benefit) Regulations 2000(4);

(c) will comply with the requirements of the 2014 Act, and

(d) will fully discharge its liability for payment of benefits under these Regulations.

(9) Those conditions are that the pension credit member has—

(a) attained normal benefit age on or after 1st May 2001; and

(b) attained the age of 75 and not given notice of an election under sub-paragraph (5) before doing so.

- (10) Paragraph (8) applies notwithstanding that the benefits are payable to a pension credit member by virtue of that member being a member of the NHS Pension Scheme under—
- (a) Part E of the 2011 Regulations (benefits for members and preserved pension);
  - (b) regulation 2.D.1, 2.D.4, 2.D.5, 2.D.8, 2.D.10, 2.D.11, 3.D.1, 3.D.4, 3.D.5, 3.D.7, or 3.D.9 of the 2013 Regulations (normal retirement pensions, actuarially reduced pensions, ill health pensions and early retirement pensions), or
  - (c) regulation 72, 78, 80, 81, 83, 89 or 93 of the 2015 Regulations (age retirement, early retirement, partial retirement and ill-health pensions).”;
- (c) for paragraph (b) of sub-paragraph (2) of paragraph 7 (commutation of the whole of pension credit benefit at normal benefit age), substitute—
- “(b) the total benefits payable meet the requirements of regulation 12 of the 2009 Regulations.”;
- (d) for paragraph 13, substitute—

**“Offset for crime, negligence or fraud**

**13.—**(1) This paragraph applies in relation to pension credit benefit which arises by virtue of pension credit rights which are derived from an employer’s contributions paid on or after 13th July 1998 in respect of the relevant participator.

(2) Where paragraph (3) applies, the Scottish Ministers may reduce the amount of any pension credit benefit payable to or in respect of a pension credit member under this Schedule to the extent set out, and subject to the conditions specified, in whichever of the regulations referred to in that paragraph applies.

(3) This paragraph applies where on or after 13th July 1998—

- (a) in respect of a relevant pension credit member, the circumstances set out in whichever of the following regulations applies have occurred—
  - (i) regulation T6 of the 2011 Regulations (offset for crime, negligence or fraud);
  - (ii) regulation 2.J.7 or 3.J.7 of the 2013 Regulations (reduction in benefits in cases where loss caused by member’s crime, negligence or fraud);
  - (iii) paragraph 11 of Schedule 3 to the 2015 Regulations (offset of benefits), and
- (b) there has been a loss to public funds.

(4) In this paragraph—

“relevant pension credit member” means a pension credit member who is also a member of the NHS Pension Scheme;

“relevant participator” means the participator in relation to whose rights under the AVC scheme the pension sharing order or provision, which gave the pension credit member in question entitlement to a pension credit, was made.”; and

- (e) for paragraph 14, substitute—

**“Loss of rights to benefits**

14.—(1) Where paragraph (2) applies, the Scottish Ministers may direct that all or any part of any rights to pension credit benefit a pension credit member has under this Schedule and which arise by virtue of an employer’s contributions paid on or after 13th July 1998 in respect of a relevant participator are to be forfeited.

(2) This paragraph applies where on or after 13th July 1998—

(a) that pension credit member commits and is convicted of an offence referred to in—

- (i) regulation T7 of the 2011 Regulations (loss of rights to benefits);
- (ii) regulation 2.J.8 or 3.J.8 of the 2013 Regulations (forfeiture of rights to benefits), or
- (iii) paragraph 12 of Schedule 3 to the 2015 Regulations (forfeiture of rights to benefits), and

(b) the circumstances are such that a direction may be made by the Scottish Ministers under whichever of those provisions applies.

(3) In this paragraph, “relevant participator” means the participator in relation to whose rights under the AVC scheme the pension sharing order or provision, which gave the pension credit member in question entitlement to a pension credit, was made.”.