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SCOTTISH STATUTORY INSTRUMENTS

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**2014 No. 154**

**NATIONAL HEALTH SERVICE**

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

<i>Made</i>	- - - -	<i>16th May 2014</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>30th May 2014</i>
<i>Coming into force</i>	- -	<i>28th June 2014</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 10 of, and Schedule 3 to, the Superannuation Act 1972<sup>(1)</sup> and of all other powers enabling them to do so.

In accordance with section 10(1) of that Act, these Regulations are made with the consent of the Treasury<sup>(2)</sup>

In accordance with section 10(4) of that Act, the Scottish Ministers have consulted with such representatives of persons likely to be affected by these Regulations as appear to them to be appropriate.

**PART 1**

**General**

**Citation, commencement and effect**

**1.** (1) These Regulations may be cited as the National Health Service Superannuation Scheme (Scotland) (Miscellaneous Amendments) Regulations 2014.

(2) These Regulations come into force on 28th June 2014 but—

(a) regulations 4, 6, 14(c) 19 to 21, 23 and 27 have effect from 1st April 2014; and

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(1) 1972 c.11. Section 10 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c.7) sections 4(2), 8(5) and (6), the Pension Schemes Act 1993 (c.48), Schedule 8, paragraph 7 and the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001/3649), article 108. The functions of the Secretary of State, in or as regards Scotland, were transferred to Scottish Ministers by virtue of article 2 of and Schedule 1 to the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750).

(2) See the Superannuation Act 1972, section 10(1). This function was transferred to the Treasury by virtue of the Transfer of Functions (minister for the Civil Service and Treasury) Order 1981 (S.I. 1981/1670), article 2 and is still exercisable by virtue of S.I. 1999/1750, article 2 and Schedule 1.

(b) regulations 11 and 16 have effect from 6th April 2014.

## PART 2

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

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

2. The National Health Service Superannuation Scheme (Scotland) Regulations 2011<sup>(3)</sup> are amended in accordance with this Part.

#### **Amendment of regulation A2**

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

#### **Amendment of regulation B4**

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

#### **Amendment of regulation C1**

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

“(17) Where, having regard to the matters referred to in paragraph (18), the Scottish Ministers consider that the amount which would, but for their determination under this paragraph, constitute the member’s final year’s pensionable pay is inordinate, they may for the purposes of this regulation determine—

- (a) what the amount of that pensionable pay is to be; and
- (b) the date from which any change in the amount of that pay as a result of that determination is to take effect

(18) Those matters are—

- (a) any variations in the level of the member’s pay during a period not exceeding ten years and ending with the later of the date the member ceases to be in pensionable employment or the date the member dies;
- (b) the general level of pensionable pay pertaining in NHS employment for members of the same or an equivalent grade or post during the period under consideration for the purposes of sub-paragraph (a);
- (c) promotion and re-grading prospects pertaining in NHS employment for members of the same or an equivalent grade or post;
- (d) any other matters the Scottish Ministers consider relevant.

(19) Where the Scottish Ministers determine the amount of a member’s pensionable pay pursuant to paragraph (17)—

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

(4) S.S.I. 2013/174.

- (a) the difference between the amount which would, but for the determination pursuant to paragraph (17), be the member’s pensionable pay and the amount so determined pursuant to that paragraph, is to be ignored for the purposes of this regulation (“the ignored amount”);
- (b) any contributions referable to the ignored amount and paid by the member pursuant to regulation D1 or Q6, or paragraph 14 or 31 of Schedule 1 are, net of any tax payable, to be refunded to that member;
- (c) any contributions referable to the ignored amount and paid by the employing authority pursuant to regulation D2 or paragraph 14 or 31 of Schedule 1, are to be refunded to that employing authority;
- (d) the amount so determined is not be regarded as an “excessive pay increase” for the purposes of regulation D3.”.

**Amendment of regulation D1**

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

**“Scheme Year 2014-15**

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

**New regulation D3**

7. After regulation D2, insert—

**“Further contributions by employing authorities in respect of excessive pay increases**

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

(2) For the purposes of this regulation—

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

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

- (a) the member’s pensionable pay for Year 1, and

- (b) the allowable amount for Year 2 increased by the lower of—
  - (i) the aggregate of 4.5% and the percentage increase in the consumer prices index over the preceding twelve months, and
  - (ii) the percentage increase in the member’s pensionable pay Year 1 compared with Year 2.
- (4) The allowable amount in respect of Year 2 is the lower of—
  - (a) the member’s pensionable pay for Year 2, and
  - (b) the allowable amount for Year 3 increased by the lower of—
    - (i) the aggregate of 4.5% and the percentage increase in the consumer prices index over the preceding twelve months, and
    - (ii) the percentage increase in the member’s pensionable pay Year 2 compared with Year 3.
- (5) The allowable amount for Year 3 is the lower of—
  - (a) the member’s pensionable pay for Year 3, and
  - (b) the member’s pensionable pay for the year immediately preceding Year 3 increased by the aggregate of 4.5% and the percentage increase in the consumer prices index over the preceding twelve months.
- (6) An excess employer contribution is determined as follows—
 

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

Step 2: calculate Amount B, which is the amount of the pension payable to the member as if the member’s final year’s pensionable pay consisted only of Amount A increased by an amount equal to any increases that would be due under the Pensions (Increase) Act 1971(5) on a pension of that amount

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

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

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

Step 6: add together—

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

to find the amount of the excess employer contribution.
- (7) Where the member’s final year’s pensionable pay exceeds the allowable amount by reason only of it including an amount in respect of a national award recommended by the Scottish Advisory Committee on Distinction Awards (“the Committee”), the body responsible for the funding of that award must pay the excess employer contribution.
- (8) Paragraphs (9) and (10) apply where Amount A found under Step 1 of paragraph (6) includes both—
  - (a) an increased pay award from the member’s employing authority, and

(b) a national award recommended by the Committee.

(9) Where—

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

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

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

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

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

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

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

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

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

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

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

- (a) the amount of the excess employer contribution that is unpaid;

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

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

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

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

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

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

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

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

(21) For the purposes of this regulation—

- (a) a "payer" is the person who is liable to pay all or part of an excess employer contribution to the Scottish Ministers in accordance with this regulation;
- (b) the pensionable pay to be taken into account by the Scottish Ministers for a year or part of a year referred to in paragraph (2) will be derived from the pensionable pay for that period recorded in scheme year pension records provided to the Scottish Ministers in accordance with paragraph (5) of regulation U3;
- (c) where the member is in pensionable employment for less than 12 months, pensionable pay for that year means—
  - (*pensionable pay / number of days pensionable employment*) × 365;
- (d) no account is to be taken of increases in pensionable pay prior to 1st April 2014 or more than 1095 days prior to the member's last day of pensionable employment;
- (e) the applicable factor is to be determined from time to time by the Scottish Ministers, having considered the advice of the Scheme Actuary and having obtained the Treasury's consent;
- (f) if the percentage increase in the consumer prices index referred to in paragraphs (3), (4) and (5) is less than zero, it will be regarded as a percentage increase of 0% for the purposes of this regulation;
- (g) a benefit referred to in paragraph (1) means—

- (i) in the case of regulation E3, a benefit including the effects of any increase in pensionable service referred to in paragraph (4) of that regulation;

- (ii) in the case of regulation E5, a benefit including the effects of any reduction referred to in paragraph (2) of that regulation; and
- (h) for the purposes of making any payment it is liable to pay under this regulation, the body responsible for the funding of awards recommended by the Committee shall have the same liabilities and duties as an employing authority under these Regulations in respect of that payment.”.

#### **Amendment of regulation E7**

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

#### **Amendment of regulation F2**

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

#### **Amendment of regulation R7**

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

#### **Amendment of regulation T3**

**11.** In regulation T3 (deduction of tax: further provision)—

- (a) in paragraph (4), for “transitional” substitute “fixed”;
- (b) in paragraph (5A)—
  - (i) for “transitional” substitute “fixed”;
  - (ii) after “Act 2011”, insert “or paragraph 1 of Schedule 22 to the Finance Act 2013(6)”; and
  - (iii) after “Regulations 2011”, insert “or the Registered Pension Schemes and Relieved Non-UK Pension Schemes (Lifetime Allowance Transitional Protection) (Notification) Regulations 2013(7)”;
- (c) after paragraph (5A), insert—

“(5B) If a person claiming a benefit under these Regulations intends to rely on entitlement to individual protection against a lifetime allowance charge in accordance with paragraph 1 of Schedule 1 to the Finance Act 2014, that person must give to the scheme administrator—

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

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(6) 2013 c.29.

(7) S.I. 2013/1741.

## New regulation T11

12. After regulation T10, insert—

### **“Interest and administration charges: late paid contributions**

**T11.** (1) For the purposes of this regulation, there is a “chargeable event” where an employing authority fails to pay, by the dates therein specified, the full amount of contributions it is required to pay under any of the following provisions—

- (a) regulations D1, D2, D3, Q3, Q4, Q5, Q8, Q10 and Q11;
- (b) paragraph 14 or 23 of Schedule 1.

(2) Where there is a chargeable event, the amount of contributions that should have been paid under a provision referred to in paragraph (1) is to be determined by the Scottish Ministers having regard to—

- (a) the amount of contributions historically paid pursuant to the provision in question by that employing authority;
- (b) any reasons or explanation provided by the employing authority for the change in the amount of contributions (if any) it has paid pursuant to that provision;
- (c) any other factors that the Scottish Ministers consider relevant.

(3) Where there is a chargeable event, the employing authority is liable to pay standard rate interest on the amount of unpaid contributions determined under paragraph (2) and an administration charge in respect of each such event.

(4) Where the Scottish Ministers become aware of a chargeable event, the Scottish Ministers must give the employing authority a written notice specifying—

- (a) the date of that event;
- (b) the amount of unpaid contributions determined under paragraph (2);
- (c) the amount of standard rate interest payable in respect of that event;
- (d) the amount of administration charge payable in respect of it;
- (e) that payment of the amounts referred to in sub-paragraphs (c) and (d) is to be made within 1 month of the date of the notice and that failure to do so incurs further interest and administration charges.

(5) Any amount payable by way of interest or payable by way of an administration charge is to be paid as a single lump sum unless the Scottish Ministers consider the case to be exceptional and consider it appropriate for that amount to be paid over a period, and by a number of instalments, determined by the Scottish Ministers.

(6) Where the Scottish Ministers consider the case to be exceptional, nothing in the preceding paragraphs prevents the Scottish Ministers from waiving all or any part of the amount of interest, or all or any administration charges, payable.

(7) The standard rate of interest is the Superannuation Contributions Adjusted for Past Experience discount rate set by the Treasury.

(8) In respect of arrears relating to the scheme year 2014-15 and subsequent years, the administration charge is £75.

(9) In any particular case the Scottish Ministers may direct that, for the purposes of this regulation, “employing authority” includes a successor, transmittee or assignee of all or part of an employing authority’s business or functions.”.



### **Substitution of regulation U3**

13. For regulation U3, substitute—

#### **“Accounts and actuarial reports**

**U3.** (1) The Scottish Ministers are to keep accounts of the scheme in a form approved by the Treasury.

(2) The accounts are to be open to examination by the Auditor General for Scotland.

(3) In respect of a member, an employing authority must keep a record of all—

- (a) contributions paid under regulations D1, Q5 and Q8;
- (b) contributions due under regulations D1, Q5 and Q8, but unpaid;
- (c) contributions paid under regulation D2(1);
- (d) contributions due under regulation D2(1), but unpaid;
- (e) hours, half-days or sessions constituting part-time pensionable employment for the purposes of regulation C4;
- (f) pensionable pay;
- (g) absences from work referred to in regulations P1, P2 and P3;
- (h) commencement and termination of pensionable employment;
- (i) reason for termination of pensionable employment.

(4) That record is to be kept in a manner approved by the Scottish Ministers.

(5) Except where the Scottish Ministers waive such a requirement, an employing authority must within 2 calendar months of the end of each scheme year provide to the Scottish Ministers a statement in respect of the matters referred to in paragraph (3) in respect of all scheme members.

(6) Where an employing authority has provided the information in accordance with paragraph (5) and there is then a change to any of the information provided, that employing authority must, within 1 month of the change, provide the Scottish Ministers with the revised information.

(7) In respect of each scheme year an employing authority must, within 2 months of a request and in a manner specified by the Scottish Ministers, provide them with a statement of the total contributions paid for all scheme members under regulations D1, D2(1), Q5 and Q8.

(8) Where an employing authority has provided a statement under paragraph (7) and there is a revision to the total contributions paid, that employing authority must, within 1 month of the change, provide the Scottish Ministers with the revised total.”.

### **Amendment of Schedule 1**

14. In Schedule 1 (medical and dental practitioners)—

(a) in paragraph 8 (meaning of “pensionable earnings” in relation to other practitioners)—

- (i) in sub-paragraph (1)(a), omit “or for overtime”; and
- (ii) in sub-paragraph (2), omit “payment for overtime or”;

(b) in paragraph 10(3) (limit on pensionable earnings – dental practitioners), for “him” substitute “the practitioner”; and

(c) for Table 3 in sub-paragraph (2) of paragraph 14 (contributions to this Section of the scheme), substitute—

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**“Table 3: Scheme Year 2014-15**

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

### PART 3

#### Amendment of the National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013

##### **Amendment of the National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013**

**15.** The National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013<sup>(8)</sup> are amended in accordance with this Part.

##### **Amendment of regulation 1.B.2**

**16.** In regulation 1.B.2 (provision of information for tax purposes)—

(a) in paragraph (4)—

- (i) for “transitional”, substitute “fixed”;
- (ii) after “Act 2011”, insert “or paragraph 1 of Schedule 22 to the Finance Act 2013”; and
- (iii) after “Regulations 2011”, insert “or the Registered Pension Schemes and Relieved Non-UK Pension Schemes (Lifetime Allowance Transitional Protection) (Notification) Regulations 2013”; and

(b) after paragraph (4), insert—

“(4A) If a person applying for a benefit under this Section of the Scheme intends to rely on entitlement to individual protection against a lifetime allowance in accordance with paragraph 1 of Schedule 1 to the Finance Act 2014, that person must give to the scheme administrator the reference number issued by the Commissioners under the Registered Pension Schemes and Relieved Non-UK Pension Schemes (Lifetime Allowance Transitional Protection) (Notification) Regulations 2014 in respect of that entitlement.”.

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(8) S.S.I. 2013/174.

### **New regulation 2.A.13A**

17. After regulation 2.A.13, insert—

#### **“Restriction of reckonable pay where the Scottish Ministers consider the amount is inordinate**

**2.A.13A.** (1) Where, having regard to the matters referred to in paragraph (2), the Scottish Ministers consider that the amount which would otherwise constitute the member’s interim reckonable pay for the purposes of regulation 2.A.11 is inordinate, the Scottish Ministers may, for the purposes of this regulation, determine what the amount of a member’s interim reckonable pay is to be.

(2) Those matters are—

- (a) any variations in the level of the member’s pay during a period not exceeding ten years and ending with the later of the date the member ceases to be in pensionable employment or the date the member dies;
- (b) the general level of pensionable pay pertaining in NHS employment for members of the same or an equivalent grade or post during the period under consideration for the purposes of sub-paragraph (a);
- (c) promotion and re-grading prospects pertaining in NHS employment for members of the same or an equivalent grade or post;
- (d) any other matters the Scottish Ministers consider relevant.

(3) Where the Scottish Ministers determine the amount of a member’s pensionable pay pursuant to paragraph (1)—

- (a) the difference between the amount which would, but for the determination pursuant to paragraph (1), be the member’s interim reckonable pay and the amount so determined pursuant to that paragraph and adjusted for the purposes of regulation 2.A.12, is to be ignored for the purposes of this regulation (“the ignored amount”);
- (b) any contributions referable to the ignored amount and paid by the member pursuant to regulation 2.C.1 are, net of any tax payable, to be refunded to that member;
- (c) any contributions referable to the ignored amount and paid by the employing authority pursuant to regulation 2.C.5 are to be refunded to that employing authority.”.

### **Amendment of regulation 2.B.1**

18. In paragraph (3) of regulation 2.B.1 (eligibility: general), for sub-paragraph (b) substitute—

- “(b) “(b) entered NHS employment before that date and whether or not that person was, on that date, an active member of the 1995 Section in that employment or any other NHS employment,”.

### **Amendment of regulation 2.B.6**

19. In paragraph (4) of regulation 2.B.6 (opting out of this Section of the scheme), for “one month” substitute “three months”.

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### Amendment of regulation 2.C.2

20. For the table in paragraph (3) of regulation 2.C.2 (contribution rate for members other than non-GP providers), substitute—

**“Scheme Year 2014-15**

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

### Amendment of regulation 2.C.4

21. For Table 3 in paragraph (15) of regulation 2.C.4 (contribution rate and determination of pensionable earnings for non-GP providers), substitute—

**“Scheme year 2014-15**

**Table 3**

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

### Amendment of regulation 2.D.6

22. In paragraph (1)(b)(ii) of regulation 2.D.6 (increase in pensionable pay following exercise of option under regulation 2.D.5)—

- (a) omit “less than”; and
- (b) after “pay”, insert “or less”.

### **New regulation 2.J.10A**

23. After regulation 2.J.10, insert—

#### **“Interest and administration charges: late paid contributions**

**2.J.10A.** (1) For the purposes of this regulation, where an employing authority fails to pay, by the dates therein specified, contributions it is required to pay under any or all of regulations 2.C.1, 2.C.5, 2.C.6, 2.C.8, 2.C.10 and 2.C.11, there is a chargeable event.

(2) Where there is a chargeable event, the Scottish Ministers may determine what amount of contributions are unpaid having regard to—

- (a) the amount of contributions historically paid at a chargeable event by that employing authority;
- (b) any reasons or explanation provided by the employing authority for the change in the amount of contributions it has paid at such an event;
- (c) any other factors that the Scottish Ministers consider relevant.

(3) Where there is a chargeable event, the employing authority is liable to pay standard rate interest on the amount of unpaid contributions constituting that event and an administration charge in respect of each such event.

(4) Where the Scottish Ministers become aware of a chargeable event, the Scottish Ministers must give the employing authority a written notice specifying—

- (a) the date of the chargeable event;
- (b) the amount of unpaid contributions determined under paragraph (2);
- (c) the amount of interest at the standard rate payable in respect of that event;
- (d) the amount of administration charge payable in respect of it;
- (e) that payment of the amounts referred to in sub-paragraphs (c) and (d) is to be made within 1 month of the date of the notice and that failure to do so incurs further interest and administration charges.

(5) Any amount payable by way of interest or payable by way of an administration charge is to be paid as a single lump sum unless the Scottish Ministers consider the case to be exceptional and consider it appropriate for all, or part, of such an amount to be paid over a period and by a number of instalments determined by the Scottish Ministers.

(6) Where the Scottish Ministers consider the case to be exceptional, nothing in the preceding paragraphs prevents the Scottish Ministers from waiving all or any part of the amount of interest, or all or any administration charges, payable.

(7) The standard rate of interest is the Superannuation Contributions Adjusted for Past Experience discount rate set by the Treasury.

(8) The administration charge in respect of arrears relating to the Scheme Year 2014-2015 and subsequent years is £75.

(9) In any particular case the Scottish Ministers may direct that, for the purposes of this regulation, “employing authority” includes a successor, transmittee or assignee of an employing authority’s business or functions.”.

### **Amendment of regulation 2.J.14**

24. In regulation 2.J.14 (employing authority and certain member record keeping and contribution estimates)—

- (a) in paragraph (3), after “zero” insert “and no contributions paid in respect of that scheme year are to be refunded”; and
- (b) for paragraphs (6) to (9), substitute—
- “(6) An employing authority must, in respect of a person, keep a record of all—
- (a) contributions paid under regulation 2.C.1, 2.C.8 or 2.C.10;
  - (b) contributions due under regulation 2.C.1, 2.C.8 or 2.C.10, but unpaid;
  - (c) contributions paid under regulation 2.C.5;
  - (d) contributions due under regulation 2.C.5, but unpaid;
  - (e) hours or sessions referred to in regulation 2.A.3;
  - (f) pensionable pay or, in the case of a non-GP Provider, pensionable earnings ;
  - (g) absences from work referred to in regulation 2.A.5;
  - (h) commencement and termination of pensionable employment;
  - (i) reasons for termination of pensionable employment.
- (7) That record is to be kept in a manner approved by the Scottish Ministers.
- (8) Except where the Scottish Ministers waive such requirement, an employing authority must provide a composite statement in respect of the matters referred to in paragraph (6) in respect of all scheme members to the Scottish Ministers within 2 calendar months of the end of each scheme year.
- (9) Where an employing authority has provided the information in accordance with paragraph (8) and there is then a change to any of the information provided, that employing authority must, within 1 month of the change, provide the Scottish Ministers with the revised information.
- (10) In respect of each scheme year an employing authority must, within 2 months of a request and in a manner specified by the Scottish Ministers, provide the Scottish Ministers with details of the total contributions paid for all scheme members under regulations 2.C.1, 2.C.5 and 2.C.8.
- (11) Where an employing authority has provided the information requested pursuant to paragraph (10) and there is a revision to the total contributions paid, that employing authority must, within 1 month of the change, provide the Scottish Ministers with the revised total.
- (12) In respect of each scheme year an employing authority must, 1 month before the beginning of that scheme year and in a manner specified by the Scottish Ministers, provide them and, in the case of a non-GP Provider, the host Board with a statement of estimated total contributions due under regulations 2.C.1, 2.C.5 and 2.C.8.”.

### **Amendment of regulation 3.B.1**

- 25.** In paragraph (3) of regulation 3.B.1 (eligibility: general), for sub-paragraph (b) substitute—
- “(b) “(b) entered NHS employment before that date and whether or not that person was, on that date, an active member of the 1995 Section in that employment or any other NHS employment,”.

### **Amendment of regulation 3.B.6**

- 26.** In paragraph (4) of regulation 3.B.6 (opting out of this Section of the scheme), for “one month” substitute “three months”.

### Amendment of regulation 3.C.2

27. For Table 3 in paragraph (13) of regulation 3.C.2 (members' contributions), substitute—

**“Scheme year 2014-15**

**Table 3**

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

### Amendment of regulation 3.D.6

28. In paragraph (1)(b)(ii) of regulation 3.D.6 (increase in level of engagement following exercise of option under regulation 3.D.5)—

- (a) omit “less than”; and
- (b) at the end, insert “or less”.

### New regulation 3.J.10A

29. After regulation 3.J.10, insert—

**“Interest and administration charges: late paid contributions**

**3.J.10A.** (1) For the purposes of this regulation, where an employing authority fails to pay, by the dates therein specified, contributions it is required to pay under any or all of regulations 3.C.1, 3.C.3, 3.C.5, 3.C.6, 3.C.8, or 3.C.9, there is a chargeable event.

(2) Where there is a chargeable event, the Scottish Ministers may determine what amount of contributions are unpaid having regard to—

- (a) the amount of contributions historically paid at a chargeable event by that employing authority;
- (b) any reasons or explanation provided by the employing authority for the change in the amount of contributions if any it has paid at such an event;
- (c) any other factors that the Scottish Ministers consider relevant.

(3) Where there is a chargeable event, the employing authority is liable to pay standard rate interest on the amount of unpaid contributions constituting that event and an administration charge in respect of each such event.

(4) Where the Scottish Ministers become aware of a chargeable event, they must give the employing authority a written notice specifying—

- (a) the date of each chargeable event;
  - (b) the amount of unpaid contributions determined under paragraph (2) constituting each such chargeable event;
  - (c) the amount of interest at the standard rate payable in respect of each of those events;
  - (d) the amount of administration charge payable in respect that event;
  - (e) that payment of the amounts referred to in sub-paragraphs (c) and (d) is to be made within 1 month of the date of the notice and that failure to do so incurs further interest and administration charges.
- (5) Any amount payable by way of interest or payable by way of an administration charge is to be paid as a single lump sum unless the Scottish Ministers consider the case to be exceptional and consider it appropriate for all, or part, of such an amount to be paid over a period, and by a number of instalments, determined by the Scottish Ministers.
- (6) Where the Scottish Ministers consider the case to be exceptional, nothing in the preceding paragraphs prevents them from waiving all or any part of the amount of interest, or all or any administration charges, payable.
- (7) The standard rate of interest is the Superannuation Contributions Adjusted for Past Experience discount rate set by the Treasury.
- (8) The administration charge in respect of arrears relating to the scheme year 2014-2015 and subsequent years is £75.
- (9) In any particular case the Scottish Ministers may direct that, for the purposes of this regulation, “employing authority” includes a successor, transmittee or assignee of all or part of an employing authority’s business or functions.”.

## PART 4

### Amendment of the National Health Service (Scotland) (Injury Benefits) Regulations 1998

#### **Amendment of the National Health Service (Scotland) (Injury Benefits) Regulations 1998**

**30.** The National Health Service (Scotland) (Injury Benefits) Regulations 1998<sup>(9)</sup> are amended in accordance with this Part.

#### **Amendment of regulation 2**

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

- (a) omit the definition of “2008 Regulations”;
- (b) after the definition of “the 2011 Regulations”, insert—
  - ““the 2013 Regulations” means the National Health Service (2008 Section) (Scotland) Regulations 2013”;
- (c) in the definition of “average remuneration”—
  - (i) in paragraph(a)(ii), for “2008 “ substitute “2013”; and

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(9) [S.I. 1998/1594](#).



- (ii) in paragraph (b)(ii), for “2.A.10 (meaning of “reckonable pay”: general) of the 2008 Regulations” substitute “2.A.11 (meaning of “reckonable pay”: general) of the 2013 Regulations”;
- (d) in the definition of “GP Performer”, for “2008” substitute “2013”;
- (e) in the definition of “GMS contract”, for “2008” substitute “2013”;
- (f) in the definition of “HBPMS contract”, for “2008” substitute “2013”;
- (g) for the definition of “NHS employment”, substitute—
  - “NHS employment” has the same meaning as in the National Health Service Superannuation Scheme (Scotland) Regulations 2011 and the National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013;”;
- (h) in the definition of “OOH Provider”, for “2008” substitute “2013”;
- (i) in the definition of “practitioner”, for “2008” substitute “2013”; and
- (j) in the definition of “the Scheme”, for “2008” substitute “2013”.

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

**32.** In regulation 4 (scale of benefits)—

- (a) in paragraph (6)—
  - (i) in sub-paragraph (a)(i), for the words from “regulation 2.J.6” to the end substitute “regulation 2.J.7, 2.J.8, 3.J.7 or 3.J.8 (reduction in benefits in cases where loss caused by a member’s crime, negligence or fraud and forfeiture of rights to benefits) of the 2013 Regulations”;
  - (ii) in sub-paragraph (a)(ii), for “2008” substitute “2013”; and
  - (iii) in sub-paragraph (a)(iv), for “2.J.8 or 3.J.8 of the 2008 Regulations” substitute “2.J.9 or 3.J.9 of the 2013 Regulations”; and
- (b) in paragraph (10)(b), for “2008” substitute “2013”.

#### **Amendment of regulation 8**

**33.** In paragraph (6) of regulation 8, for “2008” substitute “2013”.

## **PART 5**

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

#### **Amendments to the National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998**

**34.** The National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998(10)are amended in accordance with this Part.

#### **Amendment of regulation 2**

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

- (a) in paragraph (1)—
  - (i) omit the definition of “the 2008 Regulations”;
  - (ii) after the definition of “the 2011 Regulations”, insert—
    - ““the 2013 Regulations” means the National Health Service Superannuation Scheme (2008 Section)(Scotland) Regulations 2013;”;
  - (iii) in the definition of “child”, for “2008” substitute “2013”;
  - (iv) in the definition of “date of retirement”, for “2008” substitute “2013”;
  - (v) in the definition of “dependent”, for “2.D.18 or 3.D.14 (election to allocate pension) of the 2008” and substitute “2.D.17 or 3.D.13 (election to allocate pension) of the 2013”;
  - (vi) in the definition of “NHS Superannuation Scheme”, for “2008 Regulations” substitute “2013 Regulations”;
  - (vii) for paragraph (b) in the definition of “pensionable service”, substitute—
    - “(b) “(b) regulation 2.A.3 (meaning of “pensionable service”), 2.A.4 (meaning of “pensionable service”: part-time service) or 3.A.3 (meaning of “pensionable service”) of the 2013 Regulations;”;
  - (viii) in paragraph (b) in the definition of “retirement”, for “2008” substitute “2013”; and
- (b) in paragraph (2), for “2008” substitute “2013”.

### **Amendment of regulation 3**

- 36.** In regulation 3 (making and acceptance of elections)—
  - (a) in paragraph (3)(b), for “2008” substitute “2013”; and
  - (b) in paragraph (6A), for “2008” substitute “2013”.

### **Amendment of regulation 4**

- 37.** In regulation 4 (payment and amount of additional voluntary contributions)—
  - (a) in paragraph (3), for “2008” substitute “2013”; and
  - (b) in paragraph (3A), for “2008” substitute “2013”.

### **Amendment of regulation 6**

- 38.** In paragraph (1) of regulation 6 (circumstances in which elections cease to have effect)—
  - (a) in sub-paragraph (aa), for “2008” substitute “2013”;
  - (b) in sub-paragraph (c), for “2.B.5 (opting out of the scheme) or 3.B.5 (opting out of the scheme) of the 2008” substitute “2.B.6 (opting out of the scheme) or 3.B.6 (opting out of the scheme) of the 2013”; and
  - (c) in sub-paragraph (d), for “2008” substitute “2013”.

### **Amendment of regulation 10**

- 39.** In regulation 10 (outward transfers)—
  - (a) in sub-paragraph (4), for “2008” substitute “2013”;
  - (b) in sub-paragraph (4A), for “2008” substitute “2013”; and
  - (c) in sub-paragraph (8), for “2008” substitute “2013”.

#### **Amendment of regulation 11**

- 40.** In regulation 11 (retirement and dependants' pensions)—
- (a) in paragraph (2), for “2008” substitute “2013”; and
  - (b) in paragraph (6), for “2008” substitute “2013”.

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

**41.** In paragraph (1)(b) of regulation 14 (repayment of investments in certain cases) for “2008” substitute “2013”.

#### **Amendment of regulation 15**

- 42.** In regulation 15 (payments by Scottish Ministers)—
- (a) in paragraph (3)(b)(ii)(bb), for “2.E.21 or 3.E.21 of the 2008” substitute “2.E.22 or 3.E.22 of the 2013”;
  - (b) in paragraph (9), for “2008” substitute “2013”; and
  - (c) in paragraph (10)(b), for “2008” substitute “2013”.

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

**43.** In regulation 19 (offset for crime, negligence or fraud), for “2.J.6 or 3.J.6 of the 2008” substitute “2.J.7 or 3.J.7 of the 2013”.

#### **Amendment of regulation 20**

**44.** In regulation 20 (loss of rights to benefit), for “2.J.7 or 3.J.7 of the 2008” substitute “2.J.8 or 3.J.8 of the 2013”.

## **PART 6**

### **Miscellaneous**

#### **Option to persons detrimentally affected by these Regulations**

**45.** (1) This regulation applies in relation to any benefit which is being paid, or may become payable, under the Regulations amended by these Regulations (“the amended Regulations”) to or in respect of a person who having served in an employment or office which qualified the person to participate in the benefits provided under the amended Regulations, ceased to serve in that office or employment before these Regulations came into force.

(2) Where, in a case to which this regulation applies, any provision of these Regulations would operate in relation to any person so as to place that person in a worse position than that person would have been in if that provision had not applied, that person may elect that the provision is not to apply by giving notice in accordance with paragraph (3).

(3) A notice given pursuant to paragraph (2) must be in writing and must be delivered to the Scottish Ministers within 6 months of the coming into force of these Regulations or such longer period as the Scottish Ministers may allow.

(4) An election pursuant to paragraph (2) has effect in relation to the benefit referred to in paragraph (1) only to the extent that such benefit has accrued by virtue of periods of service rendered before the cessation referred to in paragraph (1) (or, if there has been more than one such cessation,

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the last of them before the coming into force of these Regulations) and in determining entitlement to, and the amount of, the benefit to that extent, the person is to be treated as if he or she had never recommenced service at any time after that cessation (or, as the case may be, the last such cessation).

St Andrew's House, Edinburgh  
14th May 2014

*JOHN SWINNEY*  
A member of the Scottish Government

We consent

16th May 2014

*SAM GYIMAH*  
*ANNE MILTON*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

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## EXPLANATORY NOTE

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

Part 2 of these Regulations (regulations 2 to 14) amends the National Health Service Superannuation Scheme (Scotland) Regulations 2011. Part 3 of these Regulations (regulations 15 to 29) amends the National Health Service Superannuation Scheme(2008 Section) (Scotland) Regulations 2013. Part 4 of these Regulations (regulations 30 to 33) makes consequential amendments to the National Health Service (Scotland) (Injury Benefits) Regulations 1998 and Part 5 of these Regulations (regulations 34 to 44) makes consequential amendments to the of the National Health Service Superannuation (Scotland) (Additional Voluntary Contributions) Regulations 1998. These consequential amendments are because from 1 July 2013 The NHS Pension Scheme (Scotland) Regulations 2008 ([SSI 2008/224](#)) and twelve amending instruments were consolidated into one new set of regulations “The NHS Superannuation Scheme (2008 Section) (Scotland Regulations 2013 ([SSI 2013/174](#))”. As a consequence of this references to the 2008 section in the other scheme regulations are updated.

The following are the main changes made by these Regulation:

Amendment to employee contribution pay bands

Changes are made to the employee contribution pay bands to reflect the NHS Scotland 2014 pay uplift. (regulations 6, 14(c), 20, 21 and 27)

Amendment to the time scale for the refund of contributions where a member opts out of the scheme.

Following auto enrolment, it was recognised that the process for employers to turn around contributions to Scottish Public Pensions Agency (“SPPA”) within the current scheme timescale of one month was proving problematic. Following stake holder discussion it was agreed that the opt out period in which employees are treated as never having joined should be extended to three months. This allows NHS employers more time to deal with those employees who wish to opt out of the scheme and enable them to make refunds of contributions locally and more timely, rather than the member having to contact SPPA directly to apply for their refund of employee contributions. These administrative changes were recently implemented and now require to be embedded in the scheme regulations. (regulations 4, 19 and 26)

*Scottish Minister’s right to determine final pay for benefits*

Amendments extend the facility to set final pensionable pay, currently available for part-time members, to full time members of the 1995/2008 sections. Where the final pay appears to be inordinate the Regulations allow for a corrected determined pensionable pay to be applied to the calculation of the member’s benefit. Where the determined pay is lower than the original figure a refund of contributions is made. (regulations 5 and 17).

*New charges for NHS employers in respect of large pay rises for members prior to retirement.*

In order to protect the scheme from those employers which might seek to manipulate final salary for pension purposes a new restriction is introduced. For members of the 1995 section final salary arrangement only, employers will be charged for the cost of pension benefits (but not death benefits) calculated on any pay increases they make, which are greater than a new ‘cap’ equal to the level of the consumer prices index (CPI) + 4.5%. The employer charge will apply to ‘over cap’ increases in one or more of the final 3 years prior to retirement. The members benefits will still be calculated on the pensionable pay submitted but the employer will cover the cost of the pension arising from the pensionable pay in excess of the cap through the capital charge. (regulation 7)

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*Scheme changes to reflect tax changes*

The Finance Act 2013 amended the Finance Act 2004 to reduce the Lifetime Allowance Limit (LTA) from the current £1.5m level to £1.25m with effect from 6 April 2014. Transitional measures include two new protection facilities for individuals who would be affected by the new lower limit. These are 'Fixed Protection 2014' and 'Individual Protection 2014' which work in a similar fashion to existing protections. The fixed protection is currently available and the Individual Protection facility will be introduced by the 2014 Finance Act. These Regulations reflect these changes: (regulations 11 and 16)

*Interest and administration charges on delayed payment of contributions*

Most employers pay over scheme contributions by the due date but where this does not happen it can cause extra work for the scheme administrators. A number of small additions to the regulations have therefore been made to clarify existing payment responsibilities and due dates. Changes have also been made to allow SPPA to impose an administration charge and to charge interest to the employer in the case of late payment of contributions. This replicates what is already in the Scottish teacher's scheme. (regulations 12 and 23)

*Pension information required by employers/miscellaneous changes*

Other changes clarify pension information required from employers and make other miscellaneous changes to correct previous errors.