

**2015 No. 96**

**NATIONAL HEALTH SERVICE**

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

<i>Made</i>	- - - -	<i>2nd March 2015</i>
<i>Laid before the Scottish Parliament</i>		<i>3rd March 2015</i>
<i>Coming into force</i>	- -	<i>1st April 2015</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 10(1) and (2), 12(1), (2) and (4) and 24 of, and Schedule 3 to, the Superannuation Act 1972(a) and all other powers enabling them in that behalf.

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 the Scottish Ministers to be appropriate.

In accordance with section 10(1) of that Act, these Regulations are made with the consent of the Treasury.

**PART 1**

**Introductory**

**Citation, commencement and effect**

1.—(1) These Regulations may be cited as the National Health Service Superannuation Scheme (Miscellaneous Amendments) (Scotland) Regulations 2015.

(2) These Regulations come into force on 1st April 2015 and, save as provided for in paragraphs (3) to (8), have effect from that date.

(3) Regulations 3, 4, 10 to 13, 21, 22, 36, 37, 47(a), 48(2), 52(a)(i), 53, 65 and 66 have effect from 16th December 2014.

(4) Regulations 5 and 23 have effect from 1st April 2014.

(5) Regulation 9 has effect from 5th December 2005.

(6) Regulation 19 has effect from 13th March 2014.

(7) Regulations 24 and 38 have effect from 1st October 2008.

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(a) 1972 c.11. Section 10(1) was amended by sections 57 and 58 of, and Schedule 5 to, the National Health Service Reorganisation Act 1973 (c.32) and section 4(2) of the Pensions (Miscellaneous Provisions) Act 1990 (c.7) (“the 1990 Act”). Section 12(2) was amended by section 10(1) of the 1990 Act. The functions of the Secretary of State, in or as regards Scotland, were transferred to the Scottish Ministers by virtue of S.I. 1999/1750, article 2 and Schedule 1.

(8) Regulation 30 has effect from 1st April 2008.

## PART 2

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

#### General

2. The National Health Service Superannuation Scheme (Scotland) Regulations 2011(a) are amended in accordance with regulations 3 to 17.

#### Amendment of regulation A2

3. In the table in paragraph (4) of regulation A2 (interpretation), at the appropriate place in alphabetical order insert—

<i>“Expression</i>	<i>Meaning</i>
“the 2013 Act”	The Public Service Pensions Act 2013(b);
“the 2015 Scheme”	The scheme set out in the National Health Service Pension Scheme (Scotland) Regulations 2015(c);
“civil partner” and “civil partnership”	Are to be construed in accordance with regulation A4;
“marriage” and “married”	Do not include a reference to marriage of a same sex couple unless otherwise provided;
“registered medical practitioner”	A fully registered medical practitioner within the meaning given in section 55 of the Medical Act 1983(d);
“widow” and “widower”	Do not include a reference to marriage of a same sex couple;”.

#### Insertion of new regulation A4

4. After regulation A3, insert—

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

A4.—(1) In these Regulations, a reference to—

- (a) civil partnership is to be read as including a reference to marriage of a same sex couple and a reference to civil partners and a person who is in a civil partnership is to be construed accordingly;
- (b) a person who is living with another person as if they were in a civil partnership is to be read as including a reference to a person who is living with another person of the same sex as if they were married.

(2) Where paragraph (1) requires a reference to be read in a particular way, any related reference (such as a reference to a civil partnership that has ended, a reference to a person whose civil partnership has ended, or a reference to persons formerly living together as civil partners) is to be read accordingly.

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(a) S.S.I. 2011/117.  
(b) 2013 c.25.  
(c) S.S.I. 2015/94.  
(d) 1983 c.54.

(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(a).

(5) Where—

(a) a deceased member of this Scheme was a woman by virtue of a full gender recognition certificate having been issued under the Gender Recognition Act 2004(b), and

(b) at the time of the member’s death, the member was married to a woman and that marriage subsisted before the time when the certificate was issued,

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

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

5. In paragraph (1)(a) of regulation C1 (meaning of “pensionable pay”), after “bonuses” insert “pay awards and pay increases that are expressed by the Scottish Ministers to be non-consolidated.”.

#### **Amendment of regulation D1**

6. In paragraph (2) of regulation D1 (contributions by members)—

(a) for “2014-2015”, substitute “2015-16”; and

(b) for the table, substitute—

#### **“Scheme Year 2015-2016**

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

#### **Amendment of regulation D2**

7. In paragraph (4) of regulation D2 (contributions by employing authorities), for “13.5” substitute “14.9”.

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

8. In regulation E7 (early retirement pension (redundancy etc. new starters and post-transition)—

(a) in paragraph (4), for “A person” insert “Subject to paragraph (4A), a person”; and

(b) after paragraph (4), insert—

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(a) 2004 c.33.

(b) 2004 c.7.

“(4A) A member who satisfies the conditions in paragraph (2) is not entitled to a pension under this regulation if the Scottish Ministers, after consultation with the scheme actuary, decide that the amount of the pension would be less than the amount of the guaranteed minimum pension to which the member is entitled.”.

#### **Amendment of regulation G1**

9. For paragraphs (8) and (9) of regulation G1 (widow’s pension), substitute—

“(8) If the Scottish Ministers are satisfied that the widow will otherwise suffer severe financial hardship, the Scottish Ministers may pay a pension to a widow who—

- (a) has remarried;
- (b) has formed a civil partnership;
- (c) is living together as husband and wife with a man to whom the widow is not married;
- (d) is living together as if in a civil partnership with a woman who is not the widow’s civil partner.

(9) If the Scottish Ministers are satisfied that the widow will otherwise suffer hardship, the Scottish Ministers may pay a pension to a widow who has—

- (a) remarried and that later marriage has come to an end,
- (b) formed a civil partnership which has come to an end.”.

#### **Amendment of Regulation G9**

10. In paragraph (4) of regulation G9 (increased widower’s pension), omit sub-paragraph (a) and the word “and” immediately following it.

#### **Amendment of regulation G13**

11. In paragraph (6) of regulation G13 (increased surviving civil partner’s pension), omit sub-paragraph (a) and the word “and” immediately following it.

#### **Amendment of regulation G16**

12. In paragraph (3) of regulation G16 (purchase of surviving partner’s pension in respect of service before 6th April 1988), for sub-paragraph (a) substitute—

- “(a) must be made—
- (i) during the period beginning on 28th June 2008 and ending on 27th September 2009; or
  - (ii) during the period beginning on 16th December 2014 and ending on 31st December 2015;”.

#### **Amendment of regulation G17**

13. In regulation G17 (increased surviving partner’s pension)—

- (a) in paragraph (1), for “elects on or before the date determined in accordance with”, substitute “makes a valid election pursuant to”; and
- (b) in paragraph (5), for the words from “no later” to the end substitute “during either of the periods specified in regulation G16(3)(a)”.

#### **Amendment of regulation M1**

14. In paragraph (9) of regulation M1 (member’s right to a transfer or buy-out), before sub-paragraph (a) insert—

“(za) a member may require the cash equivalent to be used to acquire rights in one or more of the ways permitted under section 101AE of the 1993 Act;”.

#### **Amendment of regulation M7**

15. In paragraph (3)(c) of regulation M7 (member’s right to transfer a preserved pension to the 2008 Section), after “Section” insert “ on or before 31st March 2015 and”.

#### **New regulation M7A**

16. After regulation M7, insert—

##### **“Member’s right to transfer a preserved pension to the 2015 Scheme**

**M7A.**—(1) An active member of the 2015 Scheme, who meets both condition A and one of either condition B or condition C, may require the Scottish Ministers to use the cash equivalent of the member’s rights under this Section of the scheme to acquire rights in the 2015 Scheme: this is subject to the following provisions of this regulation.

(2) Condition A is that the member—

- (a) is entitled to a deferred benefit under regulation E12,
- (b) has not been a member of the 2008 Section, and
- (c) became an active member of the 2015 Scheme before attaining the age of 60.

(3) Condition B is that the member has a break in pensionable employment for any one period of more than five years beginning with the day immediately following the cessation of the pensionable employment in respect of which that person is entitled to the pension referred to in paragraph (2)(a), and ending on the day immediately before the person became an active member of the 2015 Scheme in accordance with paragraph (2)(c).

(4) Condition C is that the member—

- (a) has a break in active membership of the 2015 Scheme for any one period of more than five years which is the first break of such a period since that membership commenced, and
- (b) has not previously had a break in pensionable employment before becoming an active member of the 2015 Scheme which would satisfy condition B.

(5) For the purposes of paragraphs (3) and (4), any break in pensionable employment where the member was in pensionable public service as defined in paragraph 3(2) of Schedule 7 to the 2013 Act is to be disregarded.

(6) The Scottish Ministers must provide a member to whom this regulation applies with a statement of the amount of the cash equivalent of the member’s benefits accrued in accordance with these Regulations at the guarantee date (“a statement of entitlement”).

(7) In this regulation, “the guarantee date” means any date that falls within the required period and is—

- (a) chosen by the Scottish Ministers,
- (b) specified in the statement of entitlement, and
- (c) within the period of 10 days ending with the date on which the member is provided with the statement of entitlement.

(8) In counting the period of 10 days referred to in paragraph (7)(c), Saturdays, Sundays, Christmas Day, New Year’s Day and Good Friday are excluded.

(9) In paragraph (7), “the required period” means—

- (a) the period of three months beginning with the date that the Scottish Ministers receive notification from the member’s employing authority that the member has joined the 2015 Scheme; or

- (b) such longer period beginning with that date (but not exceeding six months) as may be reasonably required if, for reasons beyond the control of the Scottish Ministers, the requisite information cannot be obtained to calculate the amount of the cash equivalent.

(10) Subject to paragraphs (11) to (13), the member's guaranteed cash equivalent shall be equal to the capitalised value of all of the member's rights to benefits accrued under these Regulations and any associated rights under Part 1 of the Pensions (Increase) Act 1971.

(11) The Scottish Ministers shall—

- (a) take advice from the scheme actuary before determining the factors to be used in the calculation of the member's guaranteed cash equivalent, and
- (b) calculate and verify the amount of the guaranteed cash equivalent in accordance with the Occupational Pension Schemes (Transfer Values) Regulations 1996(a).

(12) Except in the case of a transfer payment accepted under regulation N5, a member's cash equivalent will be at least equal to the amount of any transfer payments accepted in respect of the member under regulation N1(5), plus the amount of the member's contributions to this Section of the scheme.

(13) A member who has received a statement of entitlement in accordance with paragraph (6) may apply to the Scottish Ministers for the cash equivalent of the member's rights under this Section of the scheme to be used to acquire rights under the 2015 Scheme.

(14) An application under this regulation must be made in respect of each and every portion of the cash equivalent and is—

- (a) to be made in writing on the form provided for this purpose by the Scottish Ministers;
- (b) to be made before the end of the period of three months beginning with the guarantee date;
- (c) irrevocable.

(15) On the making of such an application—

- (a) a member becomes entitled to be credited with an increase to the member's pensionable earnings and a period of pensionable service in the 2015 Scheme in respect of the cash equivalent value of the member's benefits under this Section of the scheme calculated in accordance with regulation 144 of the 2015 Scheme, and
- (b) the member's rights under this Section of the scheme are extinguished on the day that the member is credited with an increase to the member's pensionable earnings and a period of pensionable service in accordance with regulation 144 of the 2015 Scheme.

(16) A member's right to require the Scottish Ministers to use the cash equivalent of the member's rights in the way referred to in paragraph (1) may only be exercised once.”.

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(a) S.I. 1996/1847.

## Amendment of Schedule 1

17. In Schedule 1 (medical and dental practitioners), for sub-paragraph (2) of paragraph 14 (contributions to this Section of the scheme) substitute—

“(2) For the purposes of this paragraph, the “relevant table” means—

- (a) in respect of the 2014-2015 scheme year, table 1;
- (b) in respect of the 2015-2016 scheme year, table 2.

**Table 1: Scheme Year 2014-2015**

<i>Column 1</i> <i>Pensionable earnings band</i>	<i>Column 2</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%

**Table 2: Scheme Year 2015-2016**

<i>Column 1</i> <i>Pensionable Earnings Band</i>	<i>Column 2</i> <i>Contribution percentage rate 2015/2016</i>
Up to £15,828	5.2%
£15,829 - £21,601	5.8%
£21,602 - £27,089	7.3%
£27,090 - £49,967	9.5%
£49,968 - £71,337	12.7%
£71,338 - £111,376	13.7%
£111,377 to any higher amount	14.7%”.

## PART 3

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

#### General

18. The National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013(a) are amended in accordance with regulations 19 to 45.

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

### **Substitution of regulation 1.B.1**

**19.** For regulation 1.B.1, substitute—

#### **“Actuarial reports and accounts**

**1.B.1.**—(1) The following paragraphs apply to the National Health Service Pension Scheme as set out in these Regulations and the National Health Service Superannuation Scheme (Scotland) Regulations 2011.

(2) The Scottish Ministers shall keep accounts of all income and expenditure of the scheme in a form approved by the Treasury.

(3) The accounts shall be open to examination by the Auditor General for Scotland.

(4) The scheme actuary must prepare an actuarial report of the scheme at 31st March 2012.

(5) The scheme actuary must send a copy of the actuarial report of the scheme to the Scottish Ministers and the Treasury.

(6) Where the Scottish Ministers indicate to the scheme actuary that the actuarial report referred to in paragraph (4) is also to be used for the purposes of establishing the 2015 scheme, the scheme actuary must prepare the report taking account of any Treasury directions given from time to time pursuant to sections 11(2) and 12(3) of the 2013 Act (including any specific requirements in those directions relating to a preliminary valuation undertaken for the purposes of setting the employer cost cap for the proposed new scheme).”.

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

**20.** In paragraph (4A) of regulation 1.B.2 (provision of information for tax purposes)(a), for “Schedule 1” substitute “Schedule 6”.

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

**21.** In regulation 2.A.1 (interpretation of Part 2: general), at the appropriate place in alphabetical order insert—

““the 2013 Act” means the Public Service Pensions Act 2013;

“the 2015 Scheme” means the scheme set out in the National Health Service Pension Scheme (Scotland) Regulations 2015;

“civil partner” and “civil partnership” are to be construed in accordance with regulation 2.A.1A;

“marriage” and “married” do 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;

“registered medical practitioner” means a fully registered medical practitioner within the meaning given in section 55 of the Medical Act 1983;”.

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(a) Paragraph (4A) was inserted by S.S.I. 2014/154.



## **New regulation 2.A.1A**

22. After regulation 2.A.1, insert—

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

**2.A.1A.**—(1) In this Part, a reference to—

- (a) civil partnership is to be read as including a reference to marriage of a same sex couple and a reference to civil partners and a person who is in a civil partnership is to be construed accordingly;
- (b) a person who is living with another person as if they were in a civil partnership is to be read as including a reference to a person who is living with another person of the same sex as if they were married.

(2) Where paragraph (1) requires a reference to be read in a particular way, any related reference (such as a reference to a civil partnership that has ended, a reference to a person whose civil partnership has ended, or a reference to persons formerly living together as civil partners) is to be read accordingly.

(3) For the purposes of paragraphs (1) and (2), it does not matter how a reference is expressed.

(4) In this regulation, “civil partnership” and “civil partners” have the meanings given by section 1 of the Civil Partnership Act 2004.”.

## **Amendment of regulation 2.A.9**

23. In paragraph (3) of regulation 2.A.9 (meaning of “pensionable pay”), after sub-paragraph (a) insert—

- “(aa) pay awards and pay increases that are expressed by the Scottish Ministers to be non-consolidated;”.

## **Amendment of regulation 2.B.3**

24. In sub-paragraph (b) of paragraph (2) of regulation 2.B.3 (restrictions on eligibility: general), after “person” insert “or that person became an active member of this Section of the scheme before reaching normal benefit age for the purposes of the 1995 Section”.

## **Amendment of regulation 2.C.2**

25. In regulation 2.C.2 (contribution rate for members other than non-GP providers)—

- (a) in paragraph (2), after “contribution rate” insert “for the scheme year 2015-16”;
- (b) for the Table, substitute—

### **“Scheme Year 2015-2016**

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

- (c) omit paragraphs (3) and (4).

**Amendment of regulation 2.C.3**

26. In paragraphs (16), (17)(a) and (21)(b) of regulation 2.C.3 (determination of pensionable pay for the purposes of setting a contribution rate for members other than non-GP providers), for “regulation 2.C.2(3)” substitute “regulation 2.C.2(2)”.

**Amendment of regulation 2.C.4**

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

“(15) For the purposes of this paragraph, the “relevant table” means—

- (a) in respect of the 2014-2015 scheme year, table 1;
- (b) in respect of the 2015-2016 scheme years, table 2.

**Table 1**

**Scheme Year 2014-2015**

<i>Column 1 Pensionable earnings band</i>	<i>Column 2 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%

**Table 2**

**Scheme Year 2015-2016**

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

**Amendment of regulation 2.C.5**

28. In paragraph (4) of regulation 2.C.5 (contributions by employing authorities: general), for “13.5” substitute “14.9”.

### **Amendment of 2.D.11**

**29.**—(1) In regulation 2.D.11 (early retirement on termination of employment by employing authority)—

- (a) in paragraph (3), for “A pension” substitute “Subject to paragraph (3A), a pension”; and
- (b) after paragraph (3), insert—

“(3A) A member who satisfies the conditions of this regulation is not entitled to a pension under this regulation if the Scottish Ministers, after consultation with the scheme actuary, decide that the amount of the pension would be less than the amount of the guaranteed minimum pension to which the member is entitled.”.

### **Amendment of regulation 2.E.5**

**30.** In paragraph (2) of regulation 2.E.5 (amount of surviving adult’s pension: deferred members), omit the words from “whose” to “last day of pensionable service”.

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

**31.** In sub-paragraph (a) of paragraph (3) of regulation 2.F.1 (introduction: rights to transfer value payment), for “section 93(1)(a)” substitute “section 93”.

### **Amendment of regulation 2.F.4**

**32.** In paragraph (6) of regulation 2.F.4 (applications for transfer value payments: time limits), for “does not fall within regulation 2.D.1(2) (normal retirement pensions)” substitute “falls within regulation 2.F.1(4)”.

### **Amendment of regulation 2.F.5**

**33.**—(1) In regulation 2.F.5 (ways in which transfer value payments may be applied)—

- (a) in paragraph (1), for “A member” substitute “If Chapter 4 of Part 4 of the 1993 Act applies to a member, that member”; and
- (b) for paragraph (2), substitute—

“(2) In any other case, a member may only require the Scottish Ministers to apply the guaranteed equivalent transfer value payment in one or more of the ways permitted under section 101AE of the 1993 Act.”.

### **Amendment of regulation 2.F.10**

**34.** In paragraph (6)(a) of regulation 2.F.10 (acceptance of transfer value payments), omit “or the member’s spouse’s”.

### **New regulation 2.F.18**

**35.** After regulation 2.F.17, insert—

#### **“Right to transfer a deferred pension to the 2015 Scheme**

**2.F.18.**—(1) An active member of the 2015 Scheme, who meets both condition A and one of either condition B or condition C, may require the Scottish Ministers to use the cash equivalent of the member’s rights under this Section of the scheme to acquire rights in the 2015 Scheme: this is subject to the following provisions of this regulation.

(2) Condition A is that the member—

- (a) is a deferred member of this Section of the scheme; and

(b) became an active member of the 2015 Scheme before attaining the age of 65.

(3) Condition B is that the member has a break in pensionable employment for any one period of more than five years beginning with the day immediately following the cessation of the pensionable service in respect of which that person is a deferred member of this Section of the scheme and ending on the day immediately before the person became an active member of the 2015 Scheme in accordance with paragraph (2)(b).

(4) Condition C is that the member—

(a) has a break in active membership of the 2015 Scheme for any one period of more than five years which is the first break of such a period since that membership commenced; and

(b) has not previously had a break in pensionable employment before becoming an active member of the 2015 Scheme which would satisfy condition B.

(5) For the purposes of paragraphs (3) and (4), any break in active membership of this Section of the scheme where the member was in pensionable public service as defined in paragraph 3(2) of Schedule 7 to the 2013 Act is to be disregarded.

(6) The Scottish Ministers must provide a member to whom this regulation applies with a statement of the amount of the cash equivalent of the member's benefits accrued in accordance with these Regulations at the guarantee date ("a statement of entitlement").

(7) In this regulation, "the guarantee date" means any date that falls within the required period and is—

(a) chosen by the Scottish Ministers;

(b) specified in the statement of entitlement; and

(c) within the period of 10 days ending with the date on which the member is provided with the statement of entitlement.

(8) In counting the period of 10 days referred to in paragraph (7)(c), Saturdays, Sundays, Christmas Day, New Year's Day and Good Friday are excluded.

(9) In paragraph (7), "the required period" means—

(a) the period of three months beginning with the date that the Scottish Ministers receive notification from the member's employing authority that the member has joined the 2015 Scheme; or

(b) such longer period beginning with that date (but not exceeding six months) as may be reasonably required if, for reasons beyond the control of the Scottish Ministers, the requisite information cannot be obtained to calculate the amount of the cash equivalent.

(10) Subject to paragraphs (11) to (13), the member's guaranteed cash equivalent shall be equal to the capitalised value of all of the member's rights to benefits accrued under these Regulations and any associated rights under Part 1 of the Pensions (Increase) Act 1971.

(11) The Scottish Ministers must—

(a) take advice from the scheme actuary before determining the factors to be used in the calculation of the member's guaranteed cash equivalent; and

(b) calculate and verify the amount of the guaranteed cash equivalent in accordance with the Occupational Pension Schemes (Transfer Values) Regulations 1996.

(12) A member's cash equivalent will be at least equal to the amount of any transfer payments accepted in respect of the member under regulation 2.F.10 (which deals with the crediting of additional service upon transfer), plus the amount of the member's contributions to this Section of the Scheme.

(13) A member who has received a statement of entitlement in accordance with paragraph (6) may apply to the Scottish Ministers for the cash equivalent of the member's rights under this Section of the scheme to be used to acquire rights under the 2015 Scheme.

(14) An application under this regulation must be made in respect of each and every portion of the cash equivalent and shall be—

- (a) made in writing on the form provided for this purpose by the Scottish Ministers;
- (b) made before the end of the period of three months beginning with the guarantee date;
- (c) irrevocable.

(15) On the making of such an application—

- (a) a member becomes entitled to be credited with an increase to the member's pensionable earnings and a period of pensionable service in the 2015 Scheme in respect of the cash equivalent value of the member's benefits under this Section of the scheme calculated in accordance with regulation 144 of the 2015 Scheme; and
- (b) the member's rights under this Section of the scheme are extinguished on the day that the member is credited with an increase to the member's pensionable earnings and a period of pensionable service in accordance with regulation 144 of the 2015 Scheme.

(16) A member's right to require the Scottish Ministers to use the cash equivalent of the member's rights in the way referred to in paragraph (1) may only be exercised once.”.

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

**36.** In regulation 3.A.1 (interpretation of Part 3: general), at the appropriate place in alphabetical order insert—

““the 2013 Act” means the Public Service Pensions Act 2013;

“the 2015 Scheme” means the scheme set out in the National Health Service Pension Scheme (Scotland) Regulations 2015;

“civil partner” and “civil partnership” are to be construed in accordance with regulation 3.A.1A;

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

“registered medical practitioner” means a fully registered medical practitioner within the meaning given in section 55 of the Medical Act 1983;

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

### **New regulation 3.A.1A**

**37.** After regulation 3.A.1, insert—

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

**3.A.1A.**—(1) In this Part, a reference to—

- (a) civil partnership is to be read as including a reference to marriage of a same sex couple and a reference to civil partners and a person who is in a civil partnership is to be construed accordingly;
- (b) a person who is living with another person as if they were in a civil partnership is to be read as including a reference to a person who is living with another person of the same sex as if they were married.

(2) Where paragraph (1) requires a reference to be read in a particular way, any related reference (such as a reference to a civil partnership that has ended, a reference to a person whose civil partnership has ended, or a reference to persons formerly living together as civil partners) is to be read accordingly.

(3) For the purposes of paragraphs (1) and (2), it does not matter how a reference is expressed.

(4) In this regulation, “civil partnership” and “civil partners” have the meanings given by section 1 of the Civil Partnership Act 2004.”.

**Amendment of regulation 3.B.3**

38. In sub-paragraph (b) of paragraph (2) of regulation 3.B.3 (restrictions on eligibility: general) after “person” insert “or that person became an active member of this Section of the scheme before reaching normal benefit age for the purposes of the 1995 Section”.

**Amendment of regulation 3.C.2**

39. For paragraph (13) of regulation 3.C.2 (members’ contribution rate), substitute —

“(13) In this regulation, the “relevant table” means—

- (a) in respect of the 2014-2015 scheme year, table 1;
- (b) in respect of the 2015-2016 scheme years table 2.

**Table 1**

**Scheme Year 2014-2015**

<i>Column 1 Pensionable earnings band</i>	<i>Column 2 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%

**Table 2**

**Scheme Year 2015-2016**

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

**Amendment of regulation 3.C.3**

40. In paragraph (4) of regulation 3.C.3 (contributions by employing authorities: general), for “13.5” substitute “14.9”.

**Amendment of regulation 3.F.1**

41. In paragraph (3)(a) of regulation 3.F.1 (introduction: rights to transfer value payment), for “section 93(1)(a)” substitute “section 93”.

#### **Amendment of regulation 3.F.4**

42. In paragraph (6) of regulation 3.F.4 (applications for transfer value payments: time limits), for “does not fall within regulation 3.D.1(2) (normal retirement pensions)” substitute “falls within regulation 3.F.1(4)”.

#### **Amendment of regulation 3.F.5**

43. In regulation 3.F.5 (ways in which transfer value payments may be applied)—

(a) in paragraph (1), for “A member” substitute “If Chapter 4 of Part 4 of the 1993 Act applies to a member, that member”; and

(b) for paragraph (2), substitute—

“(2) In any other case, a member may only require the Scottish Ministers to apply the guaranteed equivalent transfer value payment in one or more of the ways permitted under section 101AE of the 1993 Act.”.

#### **Amendment of regulation 3.F.10**

44. In paragraph (9)(a) of regulation 3.F.10 (acceptance of transfer value payments), omit “or the member’s spouse’s”.

#### **New regulation 3.F.18**

45. After regulation 3.F.17, insert—

##### **“Right to transfer a deferred pension to the 2015 Scheme**

**3.F.18.**—(1) An active member of the 2015 Scheme, who meets both condition A and one of either condition B or condition C, may require the Scottish Ministers to use the cash equivalent of the member’s rights under this Section of the scheme to acquire rights in the 2015 Scheme: this is subject to the following provisions of this regulation.

(2) Condition A is that the member—

(a) is a deferred member of this Section of the scheme; and

(b) became an active member of the 2015 Scheme before attaining the age of 65.

(3) Condition B is that the member has a break in pensionable employment for any one period of more than five years beginning with the day immediately following the cessation of the pensionable service in respect of which that person is a deferred member of this Section of the scheme and ending on the day immediately before the person became an active member of the 2015 Scheme in accordance with paragraph (2)(b).

(4) Condition C is that the member—

(a) has a break in active membership of the 2015 Scheme for any one period of more than five years which is the first break of such a period since that membership commenced; and

(b) has not previously had a break in pensionable employment before becoming an active member of the 2015 Scheme which would satisfy condition B.

(5) For the purposes of paragraphs (3) and (4), any break in active membership of this Section of the scheme where the member was in pensionable public service as defined in paragraph 3(2) of Schedule 7 to the 2013 Act is to be disregarded.

(6) The Scottish Ministers must provide a member to whom this regulation applies with a statement of the amount of the cash equivalent of the member’s benefits accrued in accordance with these Regulations at the guarantee date (“a statement of entitlement”).

(7) In this regulation, “the guarantee date” means any date that falls within the required period and is—

- (a) chosen by the Scottish Ministers;
- (b) specified in the statement of entitlement; and
- (c) within the period of 10 days ending with the date on which the member is provided with the statement of entitlement.

(8) In counting the period of 10 days referred to in paragraph (7)(c), Saturdays, Sundays, Christmas Day, New Year’s Day and Good Friday are excluded.

(9) In paragraph (7), “the required period” means—

- (a) the period of three months beginning with the date on which the Scottish Ministers receive notification from the member’s employing authority that the member has joined the 2015 Scheme; or
- (b) such longer period beginning with that date (but not exceeding six months) as may be reasonably required if, for reasons beyond the control of the Scottish Ministers, the requisite information cannot be obtained to calculate the amount of the cash equivalent.

(10) Subject to paragraphs (11) to (13), the member’s guaranteed cash equivalent shall be equal to the capitalised value of all of the member’s rights to benefits accrued under these Regulations and any associated rights under Part I of the Pensions (Increase) Act 1971(a).

(11) The Scottish Ministers must—

- (a) take advice from the scheme actuary before determining the factors to be used in the calculation of the member’s guaranteed cash equivalent; and
- (b) calculate and verify the amount of the guaranteed cash equivalent in accordance with the Occupational Pension Schemes (Transfer Values) Regulations 1996(b).

(12) A member’s cash equivalent will be at least equal to the amount of any transfer payments accepted in respect of the member under regulation 3.F.10 (which deals with the crediting of additional service upon transfer), plus the amount of the member’s contributions to this Section of the scheme.

(13) A member who has received a statement of entitlement in accordance with paragraph (6) may apply to the Scottish Ministers for the cash equivalent of the member’s rights under this Section of the scheme to be used to acquire rights under the 2015 Scheme.

(14) An application under this regulation must be made in respect of each and every portion of the cash equivalent and is—

- (a) to be made in writing on the form provided for this purpose by the Scottish Ministers;
- (b) to be made before the end of the period of three months beginning with the guarantee date;
- (c) irrevocable.

(15) On the making of such an application—

- (a) a member becomes entitled to be credited with an increase to the member’s pensionable earnings and a period of pensionable service in the 2015 Scheme in respect of the cash equivalent value of the member’s benefits under this Section of the scheme calculated in accordance with regulation 144 of the 2015 Scheme, and
- (b) the member’s rights under this Section of the scheme are extinguished on the day that the member is credited with an increase to the member’s pensionable earnings and a period of pensionable service in accordance with regulation 144 of the 2015 Scheme.

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(a) 1971 c.56.

(b) S.I. 1996/1847.



(16) A member’s right to require the Scottish Ministers to use the cash equivalent of the member’s rights in the way referred to in paragraph (1) may only be exercised once.”.

## PART 4

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

#### General

46. The National Health Service (Scotland) (Injury Benefits) Regulations 1998(a) are amended in accordance with regulations 47 to 50.

#### Amendment of regulation 2

47. regulation 2(1) (interpretation)—

- (a) insert at the appropriate place in alphabetical order—
  - “the 2015 Regulations” means the National Health Service Pension Scheme (Scotland) Regulations 2015;
  - “civil partner” and “civil partnership” are to be construed in accordance with regulation 2B;
  - “marriage” and “married” do 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;”;
- (b) omit the definition of “average remuneration”;
- (c) for the definition of “NHS employment”, substitute—
  - ““NHS employment” has the same meaning as in the 2011 Regulations, the 2013 Regulations or the 2015 Regulations, as the case may be;”;
- (d) in the definition of “practitioner”—
  - (i) for “or 2013 Regulations”, substitute “, the 2013 Regulations or the 2015 Regulations”; and
  - (ii) after paragraph (ii), insert—
    - “(iii) who is referred to in Part 2 or 3 of Schedule 5 to the 2015 Regulations;”;
- (e) in the definition of “the Scheme”, for “or the 2013 Regulations” substitute “, the 2013 Regulations or the 2015 Regulations”.

#### New regulations 2A and 2B

48.—(1) After regulation 2, insert—

##### “Meaning of “average remuneration”

2A.—(1) In these Regulations, “average remuneration” means—

- (a) in relation to a practitioner to whom the 2011 Regulations apply, the yearly average of such amount as would be, or would have been, that practitioner’s uprated earnings in accordance with paragraph 11 of Schedule 2 to those Regulations;

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(a) S.I. 1998/1594.

- (b) in relation to a practitioner to whom the 2013 Regulations apply, the yearly average of such amount as would be, or would have been, that practitioner's uprated earnings in accordance with regulation 3.D.1(4)(b) of those Regulations;
- (c) in relation to a practitioner whom the 2015 Regulations apply, that person's yearly average earnings;
- (d) in relation to a person other than a practitioner to whom the 2011 Regulations apply, such amount as would be or would have been (as the case may be) that person's final year's pensionable pay under regulation C1(6) of those Regulations, (assuming, in the case of a person to whom regulation 3(1)(c) applies, that the person was in receipt of the pensionable pay which would, in the opinion of the Scottish Ministers, have been payable if the person were employed whole-time by an employing authority on similar duties);
- (e) in relation to a person other than a practitioner to whom the 2013 Regulations apply, such amount as would be, or would have been, that person's reckonable pay under regulation 2.A.11 of those Regulations;
- (f) in relation to a person other than a practitioner to whom the 2015 Regulations apply, such amount as would be, or would have been, that person's yearly average earnings.

(2) The yearly average, final year's pensionable pay and reckonable pay referred to in paragraph (1) are to be calculated as if the person to whom regulation 3(1) applies had retired—

- (a) in the case of a person eligible for an allowance under regulation 4(3A) or (3D), on the date on which that person ceased to be employed as a person to whom regulation 3(1) applies;
- (b) in the case of a person eligible for an allowance under regulation 4(4), (4B), (5) or (5C), on the date on which that person's emoluments were reduced;
- (c) in the case of any other person, on the date on which by reason of the injury or disease that person's employment ceased.

This is subject to paragraphs (3) and (4).

(3) This paragraph applies to a person to whom regulation 3(1)(a) applies who was employed as a senior registrar, registrar, specialist registrar, senior house officer or house officer immediately before—

- (a) ceasing to be employed by reason of the injury or disease or as a person to whom that regulation applies; or
- (b) the date on which that person's emoluments were reduced.

(4) In the case of a person to whom paragraph (3) applies, average remuneration shall be increased to the amount which in the opinion of the Scottish Ministers represents the average remuneration of a general medical practitioner or, as the case may be, a general dental practitioner.

(5) In the case of a person to whom the 2015 Regulations apply and who is not a practitioner, that person's yearly average earnings are the greater of—

- (a) the optimum re-valued pensionable earnings in that person's NHS employment; and
- (b) the annual rate of pay for that employment at the time it ceased.

(6) In the case of a person to whom the 2015 Regulations apply and who is a practitioner, that person's yearly average earnings are the average of the annual amounts that would be, or would have been, the person's re-valued pensionable earnings in respect of practitioner service or service which is treated as practitioner service.

(7) The optimum re-valued pensionable earnings is the re-valued pensionable earnings for the scheme year in the earnings reference period for which the person has the greatest amount of re-valued pensionable earnings.

- (8) The annual rate of pay is the sum of—
- (a) the annual rate of so much of what was or would have been the person’s pensionable earnings immediately before any pension became payable or would have become payable as consisted of salary, wages, or other regular payments of a fixed nature; and
  - (b) so much of any fees and other regular payments not of a fixed nature as—
    - (i) was payable to the person during the period of 12 months ending with the day the employment ceased; and
    - (ii) formed, or would have formed, part of the person’s pensionable earnings.”.
- (2) After regulation 2A (inserted by paragraph (1) above), insert—

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

**2B.**—(1) In these Regulations, a reference to—

- (a) civil partnership is to be read as including a reference to marriage of a same sex couple and a reference to civil partners and a person who is in a civil partnership is to be construed accordingly;
- (b) a person who is living with another person as if they were in a civil partnership is to be read as including a reference to a person who is living with another person of the same sex as if they were married.

(2) Where paragraph (1) requires a reference to be read in a particular way, any related reference (such as a reference to a civil partnership that has ended, a reference to a person whose civil partnership has ended, or a reference to persons formerly living together as civil partners) is to be read accordingly.

(3) For the purposes of paragraphs (1) and (2), it does not matter how a reference is expressed.”.

**Amendment of regulation 4**

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

- (a) in paragraph (6)(a)—
  - (i) for paragraphs (i) and (ii), substitute—
    - “(i) reduction in the amount of that pension under regulation T6 or T7 of the 2011 Regulations, regulation 2.J.7, 2.J.8, 3.J.7 or 3.J.8 of the 2013 Regulations or paragraph 11 or 12 of Schedule 3 to the 2015 Regulations (all of which deal with offset and loss of rights to benefits);
    - (ii) reduction in the amount of that pension under regulation E3(7), E12(7) or E17 of the 2011 Regulations, regulation 2.D.14, 2.D.15, 3.D.10 or 3.D.11 of the 2013 Regulations or regulation 76 or 108 of the 2015 Regulations (all of which deal with exchanging a pension for a lump sum in cases of serious ill health);”; and
  - (ii) for paragraph (iv), substitute—
    - “(iv) reduction in the amount of that pension under regulation T3(14)(b) of the 2011 Regulations, regulation 2.J.9(10)(b) or 3.J.9(10)(b) of the 2013 Regulations or paragraph 16 of Schedule 3 to the 2015 Regulations (all of which deal deduction of tax);”; and
- (b) after sub-paragraph (b) of paragraph (10), insert—
  - “(c) in respect of a person who is or is eligible to be a member of the scheme set out in the 2015 Regulations—
    - (i) the person’s state pension age; or
    - (ii) 65, if that is higher.”.

## **Amendment of regulation 8**

**50.** In regulation 8(6) (child’s allowance), for “or the 2013 Regulations” substitute “, the 2013 Regulations or the 2015 Regulations”.

## **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(a) 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(b);

“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(c);

“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”—

(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

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(a) S.I. 1998/1451.

(b) 2014 c.30.

(c) S.I. 2009/1171.

- (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).”; and
- (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 sub-paragraph 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);”; and
  - (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(a);

(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);

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(a) S.I. 2000/1054.

- (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.”.

## PART 6

### Amendment of the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003

#### General

**64.** The National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003(a) are amended in accordance with regulations 65 and 66.

#### Amendment of regulation 2

**65.** In regulation 2(1) (interpretation), at the appropriate place in alphabetical order insert—  
““civil partner” and “civil partnership” are to be construed in accordance with regulation 2A;  
“widow” and “widower” do not include a reference to marriage of a same sex couple.”.

#### New regulation 2A

**66.** 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 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.”.

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(a) S.S.I. 2003/344.

## PART 7

### Miscellaneous

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

**67.**—(1) This regulation applies in relation to any benefit which is being paid or may become payable under the regulations amended by these Regulations to or in respect of a person who, having served in an employment or office, service in which qualified the person to participate in the benefits provided under the regulations amended by these Regulations, ceased to serve therein 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 if that provision had not applied, that person may elect that the provision shall not apply by giving notice in accordance with paragraph (3).

(3) A notice given pursuant to paragraph (2) shall be in writing and shall be delivered to the Scottish Ministers within six 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) shall have 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 prior to the cessation referred to in paragraph (1) (or, if there has been more than one such cessation, the last of them before the coming into force of these Regulations) and in determining entitlement to, and the amount of, the benefit to that extent, such person shall be treated as if that person had never recommenced service at any time after that cessation (or, as the case may be, the last such cessation).

*JOHN SWINNEY*

A member of the Scottish Government

St Andrew's House,  
Edinburgh  
25th February 2015

We consent

*DAVID EVENNETT*

*JOHN PENROSE*

Two of the Lords Commissioners of Her Majesty's Treasury

2nd March 2015

## EXPLANATORY NOTE

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

These Regulations amend the National Health Service Superannuation Scheme (Scotland) Regulations 2011 (S.S.I. 2011/117) (“the 2011 Regulations”), the National Health Service Superannuation Scheme (Scotland) (2008 Section) Regulations 2013 (S.S.I. 2013/174) (“the 2013 Regulations”), the National Health Service (Scotland) (Injury Benefits) Regulations 1998 (S.I. 1998/1594) (“the IB Regulations”), the National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998 (S.I. 1998/1451) (“the AVC Regulations”) and the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003 (S.S.I. 2003/344) (“the Compensation Regulations”).

The Regulations are divided into seven Parts. Part 1 is introductory, Parts 2 and 3 amend the 2011 Regulations and the 2013 Regulations respectively, Part 4 makes consequential amendments to the IB Regulations, Part 5 makes consequential amendments to the AVC Regulations, Part 6 makes changes to the Compensation Regulations and Part 7 provides that certain persons detrimentally affected by these Regulations may elect for relevant provisions not to apply to them.

In addition to the provisions referred to below, each of Parts 2 to 6 also includes provisions consequential on changes in the law relating to same sex marriage in Scotland which took effect in December 2014.

Part 1 provides for citation, commencement and effect, including that certain provisions of these Regulations take effect before the date they come into force (see section 12(1) of the Superannuation Act 1972 for the relevant power).

Parts 2 and 3 make similar amendments in respect of both the 2011 Regulations and the 2013 Regulations. They also introduce amendments specific to either the 2011 Regulations or the 2013 Regulations.

The changes dealing with similar issues in Parts 2 and 3—

- introduce new definitions relevant to those Regulations (regulations 3, 21 and 36)
- amend the regulations specifying what constitutes pensionable pay and pensionable earnings (regulations 5 and 23)
- amend the provisions relating to the rate of contributions payable for the scheme year 2015-2016) (regulations 6, 17, 25, 27 and 39)
- amend the regulations in respect of contributions payable by employers (regulations 7 and 28)
- amend provisions relating to transfers (regulations 14, 31 to 33 and 41 to 43)
- insert new provisions (regulation M7A of the 2011 Regulations and regulations 2.F.18 and 3.F.18 of the 2013 Regulations) dealing with a member’s right to transfer a preserved or deferred pension to the 2015 Scheme (regulations 16, 35 and 45).

Amendments specific to the 2011 Regulations

- make amendments to the provisions governing the payments of pensions to widows in the case of hardship (regulation 9)
- make minor technical amendments to regulation M7 of those Regulations which deals with the right to transfer a preserved pension from the 1995 to the 2008 Section of the scheme (regulation 15).

Amendments specific to the 2013 Regulations

- substitute a new regulation 1.B.1 which provides for the scheme actuary to undertake a valuation of the scheme as at 31st March 2012 and to take account of any Treasury directions given pursuant to sections 11(2) and 12(3) of the Public Service Pensions Act 2013 where the valuation is to be used for the purposes of setting the employer cost cap for the new pension scheme under that Act for health service workers in Scotland (“the 2015 Scheme”). This valuation applies in respect of both the Section of the scheme



governed by the 2013 Regulations and the Section of the scheme governed by the 2011 Regulations (regulation 19)

- make technical correcting amendments to the provisions relating to the determination of pensionable pay (regulation 26)
- amend regulation 2.E.5 to omit unnecessary words (regulation 30)

Part 4 makes amendments to the IB Regulations to reflect the coming into force of the 2015 Scheme. The amendments to the IB Regulations insert appropriate cross-references to the applicable provisions of the 2015 Scheme to ensure that when calculating benefits under those Regulations the provisions of the 2015 Scheme apply as necessary. The definition of “average remuneration” in the IB Regulations is also amended (regulation 48(1)).

Part 5 makes amendments to the AVC Regulations to reflect the coming into force of the 2015 Scheme. The amendments to the AVC Regulations insert appropriate cross-references to the applicable provisions of the 2015 Scheme in relation to, *inter alia*, the making and acceptance of elections, payment of additional voluntary contributions, transfers, pensions provision repayment of investments, payments by the Scottish Ministers, offsetting and forfeiture of benefits. The amendments also provide greater flexibility when members take their AVC benefits.

Part 7 provides that deferred members, or members in receipt of a relevant benefit, who are detrimentally affected by these Regulations may elect for relevant provisions not to apply to them by giving notice within six months of the coming into force of these Regulations (regulation 66).

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