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SCOTTISH STATUTORY INSTRUMENTS

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**2006 No. 307**

**NATIONAL HEALTH SERVICE**

**The National Health Service (Superannuation  
Scheme and Additional Voluntary Contributions)  
(Scotland) Amendment Regulations 2006**

<i>Made</i>	- - - -	<i>5th June 2006</i>
<i>Laid before Parliament</i>		<i>7th June 2006</i>
<i>Coming into force</i>	- -	<i>30th June 2006</i>

The Scottish Ministers, in exercise of the powers conferred by sections 10 and 12 of, and Schedule 3 to, the Superannuation Act 1972(1), and all other powers enabling them in that behalf, after consulting 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(4) of that Act, and with the consent of the Treasury(2), hereby make the following Regulations:

**Citation, commencement, effect, interpretation and extent**

1.—(1) These Regulations may be cited as the National Health Service (Superannuation Scheme and Additional Voluntary Contributions) (Scotland) Amendment Regulations 2006.

(2) These Regulations shall come into force on 30th June 2006 but regulations 2 to 29 shall have effect from 6th April 2006.

(3) In these Regulations—

“the Additional Voluntary Contributions Regulations” means the National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998(3); and

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- (1) 1972 c. 11. Section 10 was amended by the National Health Service (Scotland) Act 1972 (c. 58), Schedule 7, Part II, the Pensions (Miscellaneous Provisions) Act 1990 (c. 7) (“the 1990 Act”), sections 4(2) and 8(5), 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. Section 12 was amended by the 1990 Act, section 10. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750), article 2 and Schedule 1.
- (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.
- (3) S.I. 1998/1451, amended by S.I. 2001/3649 and S.S.I.2001/465, 2004/62 and 2005/544.

*Status: This is the original version (as it was originally made). Scottish Statutory Instruments are not carried in their revised form on this site.*

“the Superannuation Scheme Regulations” means the National Health Service Superannuation Scheme (Scotland) Regulations 1995(4).

(4) These Regulations extend to Scotland only.

### **Amendment of regulation A2 of the Superannuation Scheme Regulations**

2.—(1) Regulation A2(4) of the Superannuation Scheme Regulations(5)(interpretation) is amended as follows.

(2) Insert the following definitions in alphabetical order in the appropriate places—

““the 2004 Act”	The Finance Act 2004(6);”;
““lifetime allowance”	Shall be construed in accordance with Part 4 of the 2004 Act (pension schemes etc.);”;
““lump sum rule”	The meaning given in section 166 of the 2004 Act;”;
““lump sum death benefit rule”	The meaning given in section 168 of the 2004 Act;”;
““normal minimum pension age”	The meaning given in section 279 of the 2004 Act;”;
““protected pension age”	The pension age provided for in Part 3 of Schedule 36 to the 2004 Act for the purposes of that Part (which deals with pre-commencement benefit rights and the right to take benefit before normal minimum pension age) where the conditions specified in that Part are satisfied;”.

(3) For the definitions of “occupational pension scheme” and “personal pension scheme”, substitute the relevant following definitions—

““occupational pension scheme”	An occupational pension scheme within the meaning of section 1 of the Pension Schemes Act 1993 (categories of pension schemes) which— (a) in the case of such a scheme established on, or after, 6th April 2006, is a registered pension scheme for the purposes of the 2004 Act and which the Scottish Ministers agree to recognise as a
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(4) S.I. 1995/365, amended by S.I. 1997/1434 and 1916, 1998/1593, 1999/443, 2001/3649 and 2005/2011 and S.S.I. 2001/437 and 465, 2003/55, 270 and 517 and 2005/512 and 544.

(5) Regulation A2(4) was relevantly amended by S.I. 1998/1593 which amended the definition of “occupational pension scheme”.

(6) 2004 c. 12, relevantly amended by the Finance Act 2005 (c. 7), section 101 and Schedule 10.

- transferring scheme for the purposes of Parts M and N of these Regulations; and
- (b) in the case of such a scheme established before that date, was—
- (i) approved by the Commissioners for Her Majesty’s Revenue and Customs<sup>(7)</sup> for the purposes of Chapter I of Part XIV of the Taxes Act (retirement benefits schemes) or whose application for approval under that Chapter was under consideration;
  - (ii) a statutory scheme as defined in section 612(1) of the Taxes Act (interpretation); or
  - (iii) a scheme to which section 608 of the Taxes Act applied (superannuation funds approved before 6th April 1980), and on 6th April 2006 became a registered pension scheme for the purposes of the 2004 Act;” and

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““personal pension scheme”

- A personal pension scheme which—
- (a) in the case of such a scheme established on, or after, 6th April 2006 is a registered pension scheme for the purposes of the 2004 Act and which the Scottish Ministers agree to recognise as a transferring scheme for the purposes of Parts M and N of these Regulations; and
  - (b) in the case of such a scheme established before that date, was—
    - (i) approved by the Commissioners for Her Majesty’s Revenue and Customs for the purposes of Chapter IV of Part XIV of the Taxes Act (personal pension schemes); and
    - (ii) on the 6th April 2006 became a registered pension scheme for the purpose of the 2004 Act;”.

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### **Amendment of regulation B6 of the Superannuation Scheme Regulations**

**3.** In regulation B6(4) of the Superannuation Scheme Regulations<sup>(8)</sup>(opting into the scheme: mis-sold pensions), at the end of the definition of “personal pension scheme”, insert—

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(7) The functions of the Commissioners for Inland Revenue were transferred to the Commissioners for Her Majesty’s Revenue and Customs by the Commissioners for Revenue and Customs Act 2005 (c. 11), section 5.

(8) Regulation B6 was inserted by S.I. 1997/1434, regulation 4.

- “(d) a scheme referred to in (a), (b) or (c) that obtained relevant approval under the Taxes Act before 6th April 2006 and on that date became a registered scheme for the purpose of the 2004 Act; and
- (e) a scheme established on, or after, 6th April 2006 as a registered scheme for the purposes of the 2004 Act and which the Scottish Ministers agree to recognise as a transferring scheme for the purposes of Parts M and N of these Regulations.”.

#### **Amendment of regulation E2 of the Superannuation Scheme Regulations**

4.—(1) Regulation E2 of the Superannuation Scheme Regulations<sup>(9)</sup>(early retirement pension (ill-health)) is amended as follows.

(2) For paragraph (7), substitute—

“(7) Subject to paragraph (8), where a member becomes entitled to a pension under paragraph (1), the Scottish Ministers may discharge their liability for that pension by the payment of a lump sum of an amount consistent—

- (a) with the contracting-out and preservation requirements of the 1993 Act; and
- (b) the lump sum rule.”.

(3) For paragraph (10), substitute—

“(10) The amount of the lump sum payable under paragraph (7)—

- (a) will be equal to 5 times the yearly rate of the member’s incapacity pension (calculated in accordance with this regulation); and
- (b) shall be payable in addition to the lump sum on retirement payable under regulation E7 (which shall not be subject to any reduction under regulation E8 (deductions from lump sum)).”.

#### **Amendment of regulation E3 of the Superannuation Scheme Regulations**

5. In regulation E3(1)(a) of the Superannuation Scheme Regulations (early retirement pension (redundancy etc.)), for “age 50” substitute “normal minimum pension age or, where relevant, protected pension age”.

#### **Amendment of regulation E4 of the Superannuation Scheme Regulations**

6. In regulation E4(1) of the Superannuation Scheme Regulations (early retirement pension (employer’s consent)), for “age 50” substitute “normal minimum pension age or, where relevant, protected pension age”.

#### **Amendment of regulation E5 of the Superannuation Scheme Regulations**

7. In regulation E5(1) of the Superannuation Scheme Regulations (early retirement pension (with actuarial reduction)), for “age 50” substitute “normal minimum pension age or, where relevant, protected pension age”.

#### **Amendment of regulation E6 of the Superannuation Scheme Regulations**

8. In regulation E6(3)(d)(ii) of the Superannuation Scheme Regulations<sup>(10)</sup>(preserved pension), for “age 50” substitute “normal minimum pension age or, where relevant, protected pension age”.

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<sup>(9)</sup> Regulation E2(10) was amended by S.I. 1998/1593, regulation 4.

<sup>(10)</sup> Sub-paragraph (d) was inserted by S.S.I. 2001/437, regulation 10.

### **Amendment of regulation E7 of the Superannuation Scheme Regulations**

9.—(1) Regulation E7 of the Superannuation Scheme Regulations (lump sum on retirement) is amended as follows.

(2) In paragraph (1), for “Each member”, substitute “Subject to paragraph (3), each member”.

(3) After paragraph (2), insert—

“(3) Where a member entitled to a lump sum under this regulation has attained the age of 75—

- (a) the member shall cease to be entitled to a lump sum; and
- (b) shall instead be entitled to have his pension increased by such amount as the Scottish Ministers may, after taking advice from the Government Actuary, determine.”.

### **Amendment of regulation E9 of the Superannuation Scheme Regulations**

10. For regulation E9(1) of the Superannuation Scheme Regulations (early leavers' entitlement to refund of contributions), substitute—

“(1) A member who leaves pensionable employment without becoming entitled to an immediate pension or a preserved pension shall, subject to regulation R4(9), be entitled to receive a lump sum refund of his contributions, less tax at—

- (a) 20% (or at such other rate as applies under the 2004 Act) in respect of so much of the lump sum as does not exceed £10,800 (or such other amount as applies under the 2004 Act); and
- (b) 40% (or at such other rate as applies under the 2004 Act) in respect of so much (if any) of it as exceeds that limit.”.

### **Amendment of regulation F2 of the Superannuation Scheme Regulations**

11. After regulation F2(2) of the Superannuation Scheme Regulations (lump sum when member dies after pension becomes payable), insert—

“(3) A person who retires from pensionable employment on, or after, 6th April 2006 may give notice to the scheme administrator in accordance with paragraph (4) below that any lump sum payable under this regulation is to be treated as a pension protection lump sum death benefit in accordance with paragraph 14 of Part 2 of Schedule 29 to the 2004 Act.

(4) Such a notice—

- (a) shall be given in writing; and
- (b) may be revoked in writing at any time.

(5) A lump sum paid under this regulation in respect of a member who became entitled to a pension under regulations E1 to E6 before 6th April 2006, shall be treated as a pension protection lump sum death benefit but regulation T2A(7) shall not apply.”.

### **Amendment of regulation H1 of the Superannuation Scheme Regulations**

12.—(1) Regulation H1 of the Superannuation Scheme Regulations (dependent child) is amended as follows.

(2) In paragraphs (3)(b), (c) and (d), after “age 17 or over” insert “but has not reached the age of 23”.

(3) After paragraph 3(e), insert—

“(f) age 17 or over but has not reached the age of 23 and is incapable of earning a living because of permanent physical or mental infirmity from which he started to suffer whilst qualifying as a dependent child; but such a person will only be treated as a dependent child for so much of the period commencing with the day on which he or she attains the age of 17 and ending immediately before the day on which he attains the age of 23, during which he remains incapable of earning a living.”.

(4) In paragraph (6), omit “or from which he started to suffer whilst qualifying as a dependent child”.

(5) After paragraph (6), insert—

“(7) Where—

- (a) a dependent child became entitled to a child allowance under regulation H2 (payment of dependent child’s allowance) before 6th April 2006; or
- (b) the dependency of a child born on, or before, 5th April 2007 is to be assessed in respect of a person who became entitled to a pension under regulations E1 to E6 on, or before, 6th April 2006,

paragraphs (3)(b),(c) and (d) shall be read as if they did not include the words “but has not reached the age of 23”, paragraph (3)(f) shall not apply and paragraph (6) shall be read as if it included the words “or from which he started to suffer whilst qualifying as a dependent child” after the words “member died.”.

#### **Amendment of regulation J1 of the Superannuation Scheme Regulations**

**13.** In regulation J1(4)(a) of the Superannuation Scheme Regulations (allocation of pension by member for benefit of dependent), for “on, or within one month after” substitute “before”.

#### **Amendment of regulation N1 of the Superannuation Scheme Regulations**

**14.** For regulation N1(1) of the Superannuation Scheme Regulations(**11**)(member’s right to transfer accrued rights to benefits to the scheme), substitute—

“(1) Within 12 months after joining the scheme, a member in pensionable employment may, in writing, request the Scottish Ministers to accept a transfer payment in respect of the member’s rights under another occupational pension scheme, a personal pension scheme, or a buy– out policy but not in respect of rights under a free-standing AVC scheme—

- (a) established on, or after, 6th April 2006 as a registered free-standing AVC scheme for the purposes of the 2004 Act; or
- (b) which on 6th April 2006 became a registered free-standing AVC scheme for the purposes of the 2004 Act and which immediately before that date was approved by the Commissioners for Her Majesty’s Revenue and Customs by virtue of section 591(2)(h) of the Taxes Act (free– standing AVC schemes).”.

#### **New regulation T2A of the Superannuation Scheme Regulations**

**15.** After regulation T2 of the Superannuation Scheme Regulations (deduction of tax), insert—

##### **“Deduction of tax: further provisions**

**T2A.—**(1) For the purposes of these Regulations and the 2004 Act, the scheme administrator shall be the Scottish Ministers.

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(11) Regulation N1(1) was amended by S.S.I. [2003/55](#), regulation 10.

- (2) Where a person's entitlement to a benefit under these Regulations—
- (a) constitutes a benefit crystallisation event in accordance with section 216 of the 2004 Act (benefit crystallisation events and amounts crystallised); and
  - (b) a lifetime allowance charge under that Act is payable in respect of that event,
- that charge shall be paid by the scheme administrator.
- (3) Where a person is entitled to a benefit under these Regulations he shall (whether or not he intends to rely on entitlement to an enhanced lifetime allowance, or to enhanced protection) give to the scheme administrator such information as will enable the scheme administrator to determine—
- (a) whether any lifetime allowance is payable in respect of the benefit and, if so,
  - (b) the amount of that charge.
- (4) If a person applying for a benefit under these Regulations intends to rely on entitlement to an enhanced lifetime allowance by virtue of any of the provisions listed in section 256(1) of the 2004 Act (enhanced lifetime allowance regulations), he shall give to the scheme administrator—
- (a) the reference number issued by the Commissioners for Her Majesty's Revenue and Customs under the Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006(12) in respect of that entitlement; and
  - (b) the information referred to in paragraph (7).
- (5) The information referred to in paragraph (7) or, as the case may be, paragraph (8) shall be given to the scheme administrator—
- (a) at the time the person makes a claim for a benefit; or
  - (b) where that information has not been provided at the time of making the claim, within such time as the scheme administrator specifies in writing.
- (6) Where the person fails to provide all, or part of, the information referred to in paragraph (7) or, as the case may be, paragraph (8) within the time limits specified by the scheme administrator where relevant, the scheme administrator may treat the whole of the benefit as a chargeable benefit and pay the charge on that basis.
- (7) Subject to regulation F2(4), where—
- (a) a member has given notice to the scheme administrator in accordance with regulation F2(3) that a lump sum payable under that regulation is to be treated as a pension protection lump sum death benefit in accordance with paragraph 14 of Part 2 of Schedule 29 to the 2004 Act; and
  - (b) has not revoked that notice,
- the scheme administrator shall deduct tax at 35% (or such other rate as applies under the 2004 Act) from the lump sum payable in accordance with section 206 of the 2004 Act (special lump sum death benefits charge).
- (8) For the purposes of this regulation, “enhanced lifetime allowance” and “enhanced protection” are to be construed in accordance with Schedule 36 to the 2004 Act.”.

### **Amendment of regulation T7 of the Superannuation Scheme Regulations**

**16.**—(1) Regulation T7 of the Superannuation Scheme Regulations (commutation of trivial pensions) is amended as follows.

- (2) For paragraph (3), substitute—

“(3) A pension may be treated as trivial only if all benefits payable to the person concerned under the scheme are of an amount consistent with–

- (a) the contracting-out and preservation requirements of the 1993 Act; and
- (b) the lump sum rule and lump sum death benefit rule.”.

(3) Omit paragraph (4).

#### **Amendment of regulation W15 of the Superannuation Scheme Regulations**

**17.** For regulation W15(2) of the Superannuation Scheme Regulations(**13**)(commutation: small pensions) substitute–

“(2) A pension may be treated as “trivial” under regulation T7 in respect of the retirement pension payable to a pension credit member in respect of a pension credit providing that the total benefit payable to the pension credit member, including any pension credit benefit, is of an amount that complies with the provisions of paragraphs 7 to 9 of Part 1 of Schedule 29 to the 2004 Act (lump sum rule: trivial commutation lump sum) at normal benefit age.”.

#### **Amendment of regulation 2 of the Additional Voluntary Contributions Regulations**

**18.**—(1) Regulation 2 of the Additional Voluntary Contributions Regulations (interpretation) is amended as follows.

(2) Omit the definitions of “approved scheme”, “free-standing additional voluntary contributions scheme”, “personal pension scheme” and “retirement benefits scheme”.

(3) For the definition of “the Taxes Act”, substitute

““the 2004 Act” means the Finance Act 2004(**14**);”.

(4) After that definition, insert the following definitions in alphabetical order in the appropriate places–

““lifetime allowance” shall be construed in accordance with Part 4 of the 2004 Act (pension schemes etc.);” and

““registered pension scheme” has the meaning given by section 150(2) of the 2004 Act;”.

#### **Amendment of regulation 3 of the Additional Voluntary Contributions Regulations**

**19.** In regulation 3(3)(b) of the Additional Voluntary Contributions Regulations (making and acceptance of elections), for “section 594(1) of the Taxes Act (exempt statutory schemes)” substitute “section 190 of the 2004 Act (annual limit for relief)”.

#### **Amendment of regulation 6 of the Additional Voluntary Contributions Regulations**

**20.** In regulation 6(1)(d) of the Additional Voluntary Contributions Regulations(**15**)(circumstances in which elections cease to have effect) for “section 594(1) of the Taxes Act (exempt statutory schemes)”, substitute “ section 190 of the 2004 Act (annual limit for relief)”.

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(13) Regulation W15 was inserted by S.S.I. [2001/465](#), Schedule 1, paragraph 3.

(14) [2004 c. 12](#).

(15) Regulation 6 was amended by S.S.I. [2004/62](#), regulation 6.

### **Amendment of regulation 8 of the Additional Voluntary Contributions Regulations**

**21.** For regulation 8(1) of the Additional Voluntary Contributions Regulations(**16**)(inward transfers), substitute—

“(1) Where a person who enters pensionable employment has paid contributions to a another additional voluntary contribution which is a registered pension scheme for the purposes of the 2004 Act, that person, whether or not he becomes a contributor within the meaning of these Regulations, may, within—

(a) 12 months of entering pensionable employment; or

(b) such longer period as the Scottish Ministers may in any particular case allow, give written notice to the Scottish Ministers that he wishes the Scottish Ministers to accept from the trustees or managers of that scheme a transfer value representing at least the value of the investments derived from his contributions.”.

### **Amendment of regulation 10 of the Additional Voluntary Contributions Regulations**

**22.**—(1) Regulation 10 of the Additional Voluntary Contributions Regulations(**17**)(outward transfers) is amended as follows.

(2) For paragraph (1)(a), substitute—

“(a) where that person has left pensionable employment, to any other registered pension scheme in which the person may be participating; or”.

(3) Omit paragraph (2).

(4) For paragraph (3), substitute—

“(3) The scheme specified in this paragraph is an additional voluntary contribution which is a registered pension scheme for the purposes of the 2004 Act.”.

### **Amendment of regulation 12 of the Additional Voluntary Contributions Regulations**

**23.** For regulation 12(2) of the Additional Voluntary Contributions Regulations(**18**)(lump sums on death), substitute—

“(2) Any lump sum payable under paragraph (1) shall not exceed the amount permitted in accordance with Part 2 of Schedule 29 to the 2004 Act.”.

### **Amendment of regulation 13 of the Additional Voluntary Contributions Regulations**

**24.** For regulation 13 of the Additional Voluntary Contributions Regulations(**19**)(benefit limits), substitute—

“**13.** Benefits that may be paid under these Regulations shall be limited by reference to a person’s lifetime allowance.”.

### **Amendment of regulation 14 of the Additional Voluntary Contributions Regulations**

**25.**—(1) Regulation 14 of the Additional Voluntary Contributions Regulations(**20**)(repayment of investments in certain cases) is amended as follows.

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(16) Regulation 8(1) was amended by S.S.I. 2004/62, regulation 7.

(17) Regulation 10 was inserted by S.S.I. 2004/62, regulation 8.

(18) Regulation 12(2) was amended by S.S.I. 2004/62, regulation 10.

(19) Regulation 13 was amended by S.S.I. 2001/465, Schedule 2, paragraph 3.

(20) Regulation 14 was amended by S.S.I. 2004/62, regulation 11.

(2) In paragraph (1), for “section 598 of the Taxes Act (charge to tax: repayment of employee’s contributions)”, substitute “the 2004 Act”.

(3) In paragraph (2), for “section 601 of the Taxes Act (charge to tax: payment to employers)”, substitute “the 2004 Act”.

#### **Amendment of regulation 15 of the Additional Voluntary Contributions Regulations**

**26.**—(1) Regulation 15 of the Additional Voluntary Contributions Regulations (payments by Secretary of State) is amended as follows.

(2) Omit paragraphs (5) to (8).

(3) In paragraph (10) omit “less any charge to tax under section 599 of the Taxes Act”.

#### **Amendment of regulation 16 of the Additional Voluntary Contributions Regulations**

**27.** In regulation 16 of the Additional Voluntary Contributions Regulations(21)(information) after paragraph (2), insert—

“(3) Where a person is entitled to a benefit under these Regulations he shall (whether or not he intends to rely on entitlement to an enhanced lifetime allowance, or to enhanced protection) give to the authorised provider such information as will enable the authorised provider to determine—

(a) whether any lifetime allowance is payable in respect of the benefit and, if so,

(b) the amount of that charge.

(4) If a person applying for a benefit under these Regulations intends to rely on entitlement to an enhanced lifetime allowance by virtue of any of the provisions listed in section 256(1) of the 2004 Act (enhanced lifetime allowance regulations), he shall give to the authorised provider—

(a) the reference number issued by the Commissioners for Her Majesty’s Revenue and Customs under the Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006(22)in respect of that entitlement;

(b) the information referred to in paragraph (3).

(5) The information referred to in paragraph (3) or, as the case may be, paragraph (4) shall be given to the authorised provider—

(a) at the time the person makes a claim for a benefit; or

(b) where that information has not been provided at the time of making the claim, within such time as the authorised provider specifies in writing.

(6) Where the person fails to provide all, or part of, the information referred to in paragraph (3) or, as the case may be, paragraph (4) within the time limits specified by the authorised provider where relevant, the authorised provider may treat the whole of the benefit as a chargeable benefit and the charge may be paid on that basis.”.

#### **New regulation 22 of the Additional Voluntary Contributions Regulations**

**28.** After regulation 21 of the Additional Voluntary Contributions Regulations (determination of questions), insert—

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(21) Regulation 16 was amended by S.S.I. 2004/62, regulation 13.

(22) S.I. 2006/131.

**“Tax**

**22.** Benefits payable under these Regulations shall be paid net of any tax due under the 2004 Act.”.

**Revocation of Schedule 1 to the Additional Voluntary Contributions Regulations**

**29.** Omit Schedule 1 to the Additional Voluntary Contributions Regulations (benefit limits).

**Additional amendment of regulation 2 of the Additional Voluntary Contributions Regulations**

**30.** After the definition of “participator” in regulation 2 of the Additional Voluntary Contributions Regulations (interpretation), insert—

““pension commencement lump sum” means a lump sum for the purposes of Part I of Schedule 29 to the 2004 Act not exceeding 25 per cent of the proceeds of any investment made under regulation 7(1), 8(2) or 9(4);”.

**Additional amendment of regulation 3 of the Additional Voluntary Contributions Regulations**

**31.** In regulation 3(1)(a) of the Additional Voluntary Contributions Regulations (making and acceptance of elections), for “an annuity payable on retirement”, substitute “an annuity or a pension commencement lump sum and an annuity payable on retirement”;

**Amendment of regulation 4 of the Additional Voluntary Contributions Regulations**

**32.—**(1) Regulation 4 of the Additional Voluntary Contributions Regulations (payment and amount of additional voluntary contributions) is amended as follows.

(2) For paragraph (3) substitute—

“(3) In any period of 12 months beginning on 6th April in any year the total contributions payable by the contributor shall not exceed 100 per cent of the amount which represents the contributor’s salary from NHS employment less the total of any contributions paid by the contributor in respect of that year—

- (a) to another registered pension scheme; and
- (b) under the 1995 Regulations.”.

(3) Omit paragraph (4)(**23**).

**Amendment of regulation 11 of the Additional Voluntary Contributions Regulations**

**33.—**(1) Regulation 11 of the Additional Voluntary Contributions Regulations (retirement and dependants' pensions) is amended as follows.

(2) For paragraph (1), substitute—

“(1) Subject to paragraph (7) and regulations 15(9) and (10), the proceeds of any investment made under regulation 7(1), 8(2) or 9(4) may be—

- (a) taken partially as a pension commencement lump sum with the remainder being used to purchase from an insurer an annuity which complies with the requirements of paragraph (2); or

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(23) Paragraph (4) of regulation 4 was amended by S.S.I. 2004/62, regulation 5.

- (b) used solely for the purchase from an insurer of an annuity which complies with the requirements of that paragraph, and not otherwise.”.
- (3) After paragraph (3)(a), insert–  
“(aa) whether a pension commencement lump sum and retirement pension is to be provided;”.
- (4) For paragraph (5), substitute–  
“(5) Upon receipt of a notice of election under paragraph (3), the Scottish Ministers shall, as soon as reasonably practicable, realise the investments made under regulation 7(1), 8(2) or 9(4) and–
  - (a) where paragraph 3(aa) does not apply, apply the proceeds to the purchase of an annuity from the authorised provider specified in the notice of election; and
  - (b) where paragraph 3(aa) does apply–
    - (i) pay the percentage of the proceeds specified in the notice of election as a pension commencement lump sum; and
    - (ii) apply the balance of those proceeds to the purchase of an annuity from the authorised provider specified in that notice.”.

#### **Additional amendment of regulation 15 of the Additional Voluntary Contributions Regulations**

**34.** In regulation 15(1) of the Additional Voluntary Contributions Regulations (payments by Secretary of State), for “annuity or lump sum death benefit” substitute “annuity, pension commencement lump sum or lump sum death benefit”.

#### **Amendment of Schedule 2 to the Additional Voluntary Contributions Regulations**

**35.** In Paragraph 4 of Schedule 2 to the Additional Voluntary Contributions Regulations (pension credit benefit)(**24**)–

- (a) at the end of sub-paragraph (1), insert “(including, where appropriate, a pension commencement lump sum)”;
- (b) after sub-paragraph (5)(a), insert–  
“(aa) whether a pension commencement lump sum and a pension payable for life is to be provided;”;
- (c) for sub-paragraph (7), substitute–  
“(7) Upon receipt of a notice of election under sub-paragraph (5) the Scottish Ministers shall, as soon as reasonably practicable, realise the investments made under paragraph 2 and–
  - (a) where paragraph 5(aa) does not apply, apply the proceeds to the purchase of an annuity from the authorised provider specified in the notice of election;
  - (b) where paragraph 5(aa) does apply–
    - (i) pay the percentage of the proceeds specified in the notice of election as a pension commencement lump sum; and
    - (ii) apply the balance of those proceeds to the purchase of an annuity from the authorised provider specified in that notice, and not otherwise.”.

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(24) Schedule 2 was inserted by S.S.I. [2001/465](#), Schedule 2, paragraph 6.

St Andrew's House, Edinburgh  
24th May 2006

*GEORGE LYON*  
Authorised to sign by the Scottish Ministers

We consent,

5th June 2006

*DAVE WATTS*  
*ALAN CAMPBELL*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

## EXPLANATORY NOTE

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

These Regulations further amend the National Health Service Superannuation Scheme (Scotland) Regulations 1995 (S.I.1995/365) (“the Superannuation Scheme Regulations”) and the National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998 (S.I. 1998/1451) (“the AVC Regulations”).

These Regulations make amendments to the Superannuation Scheme Regulations and the AVC Regulations following the coming into force of the Finance Act 2004 (c. 12). That Act makes new provision from 6th April 2006 on the tax treatment of occupational pension schemes. The provisions of regulations 2 to 29 of these Regulations have retrospective effect from 6th April 2006 as authorised by section 12 of the Superannuation Act 1972 (c. 11).

Regulation 1 provides for citation, commencement, effect, interpretation and extent.

Regulation 2 amends regulation A2 of the Superannuation Scheme Regulations (interpretation) by inserting definitions which are needed to give effect to the provisions of the Finance Act 2004.

Regulation 3 amends regulation B6 of the Superannuation Scheme Regulations (opting into the scheme: mis-sold pensions) by amending the definition of “personal pension scheme” to take account of the change in status of such schemes to “registered schemes” for the purposes of the Finance Act 2004.

Regulation 4 amends regulation E2 of the Superannuation Scheme Regulations (early retirement pension (ill-health)) so that any lump sum payment is consistent with the Pension Schemes Act 1993 (c. 48) provisions relating to contracting-out and preservation of benefits and the new lump sum rule from the Finance Act 2004. It also amends that regulation so as to provide for the calculation of such a lump sum.

Regulations 5, 6, 7 and 8 respectively amend regulations E3 (early retirement pension (redundancy etc.)), E4 (early retirement pension (employer’s consent)), E5 (early retirement pension (with actuarial reduction)) and E6 (preserved pension) of the Superannuation Scheme Regulations so as to refer to those who are to have the normal minimum pension age of 55 or, where provided for under the Finance Act 2004, a lower protected pension age.

Regulation 9 amends regulation E7 of the Superannuation Scheme Regulations (lump sum on retirement) so as to provide that where a member of the scheme has attained the age of 75, he shall no longer be entitled to a lump sum but shall instead have his pension increased in lieu of that lump sum.

Regulation 10 amends regulation E9 of the Superannuation Scheme Regulations (early leavers’ entitlement to refund of contributions) so as to provide that a member who becomes entitled to a refund of his contributions shall receive a lump sum less tax at 20 per cent on such part of that sum which does not exceed £10,800 and at 40 per cent on such part of that sum which exceeds that limit.

Regulation 11 amends regulation F2 of the Superannuation Scheme Regulations (lump sum when member dies after pension becomes payable) so as to provide that a member may notify the scheme administrator that he wants a lump sum payable under the regulation to be treated as a pension protection lump sum death benefit in accordance with the provisions of the Finance Act 2004.

Regulation 12 amends regulation H1 of the Superannuation Scheme Regulations (dependent child) so that it refers to a child aged 17 or over but who has not reached the age of 23. It also makes transitional provision for children who may become entitled to a child allowance on or before 6th

April 2006 or whose dependency is to be assessed in relation to a person who became entitled to a pension on or before that date.

Regulation 13 amends regulation J1 of the Superannuation Scheme Regulations (allocation of pension by member for benefit of dependent) so as to provide that a member who wishes to allocate part of his pension to another person must do so before the date on which that pension becomes payable to him.

Regulation 14 amends regulation N1 of the Superannuation Scheme Regulations (member's right to transfer accrued rights to benefits to the scheme) so as to provide that a member may, within 12 months of joining the scheme, request the Scottish Ministers to accept a transfer payment in respect of his or her rights under certain other schemes except rights under a free-standing AVC scheme which was established on, or after, 6th April 2006 or which existed prior to that date and became a free-standing AVC scheme for the purposes of the Finance Act 2004.

Regulation 15 inserts a new regulation (regulation T2A (deduction of tax: further provisions)) to the Superannuation Scheme Regulations. New regulation T2A provides, amongst other things, for any lifetime charge under the Finance Act 2004 to be paid by the scheme administrator (to be the Scottish Ministers), and for such a person to notify the scheme administrator of certain matters if he or she wishes to rely on protections provided for under the Finance Act 2004 (i.e. enhanced lifetime allowance protection).

Regulation 16 amends regulation T7 of the Superannuation Scheme Regulations (commutation of trivial pensions) so as to provide that any commutation must be consistent not only with the contracting-out and preservation requirements of the Pension Schemes Act 1993 but also the lump sum and lump sum death benefit rules provided for in the Finance Act 2004.

Regulation 17 amends regulation W15 of the Superannuation Scheme Regulations (commutations: small pensions) so as to provide that any pension credit benefit which is to be commuted has to satisfy the requirements of the Finance Act 2004 in respect of trivial commutation of lump sums.

Regulation 18 amends regulation 2 of the AVC Regulations (interpretation) by inserting definitions of the Finance Act 2004, "lifetime allowance" and "registered pension scheme" so as to give effect in the remainder of the AVC Regulations to the provisions of the Finance Act 2004.

Regulations 19 and 20 respectively amend regulations 3 (making and acceptance of elections) and 6 (circumstances when elections cease to have effect) of the AVC Regulations so as to refer to the correct section of the Finance Act 2004.

Regulation 21 amends regulation 8 of the AVC Regulations (inward transfers) so as to provide that a person who has paid contributions to a registered AVC scheme for the purposes of the Finance Act 2004 can give notice to the Scottish Ministers saying that they wish the Scottish Ministers to accept a transfer from that scheme.

Regulation 22 amends regulation 10 of the AVC Regulations (outward transfers) to omit obsolete references to the Income and Corporation Taxes Act 1988 (c. 1) and so that the regulation correctly refers to the Finance Act 2004.

Regulation 23 amends regulation 12 of the AVC Regulations (lump sums on death) so as to provide that a lump sum payable on death cannot exceed the limits set down in the Finance Act 2004.

Regulation 24 amends regulation 13 of the AVC Regulations (benefit limits) to make it clear that any benefits paid under the Regulations are limited by reference to the person's lifetime allowance under the Finance Act 2004.

Regulation 25 amends regulation 14 of the AVC Regulations (repayment of investments in certain cases) so that the regulation refers to the relevant provisions of the Finance Act 2004.

Regulation 26 amends regulation 15 of the AVC Regulations (payments by Secretary of State) to remove outdated references to limits on death benefits applying prior to the Finance Act 2004 and to remove an obsolete statutory reference.

Regulation 27 amends regulation 16 of the AVC Regulations (information) to impose an obligation on a person who wishes to take advantage of an entitlement to an enhanced lifetime allowance in accordance with the Finance Act 2004 to provide the AVC provider with certain information.

Regulation 28 inserts a new regulation (regulation 22: tax) in the AVC Regulations making it clear that benefits payable under the Regulations are paid net of tax due under the Finance Act 2004.

Regulation 29 deletes Schedule 1 to the AVC Regulations (benefit limits) to reflect the fact that the benefit limits are now subject to the Finance Act 2004 (see new regulation 22) and not the limits previously set out in Schedule 1 to the AVC Regulations.

Regulations 30 to 35 have effect from 30th June 2006. Regulation 30 further amends regulation 2 of the AVC Regulations (interpretation) by inserting a definition of “pension commencement lump sum”.

Regulation 31 further amends regulation 3 of the AVC Regulations (making and acceptance of elections) so as to provide that an AVC scheme may provide either for an annuity or for both a pension commencement lump sum and an annuity on retirement.

Regulation 32 amends regulation 4 of the AVC Regulations (payment of an amount of additional voluntary contributions) so as to enable a person to make contributions to an AVC scheme which do not exceed 100 per cent of their salary (subject to certain exceptions).

Regulation 33 amends regulation 11 of the AVC Regulations (retirement and dependants' pensions) so as to reflect the fact that investments made under a scheme may be realised to provide not just an annuity but also a pension commencement lump sum and an annuity on retirement.

Regulation 34 further amends regulation 15 of the AVC Regulations (payments by Secretary of State) to provide that AVC investments may be realised and used to purchase either an annuity or a pension commencement lump sum or lump sum death benefit.

Regulation 35 amends Schedule 2 to the AVC Regulations (pension sharing on divorce or nullity of marriage or dissolution or nullity of civil partnership) to provide that an AVC investment may be realised so as to provide a pension commencement lump sum, and to allow for a percentage of the proceeds of any investment specified in a notice of election to be used in that manner.

A regulatory impact assessment has not been produced for these Regulations as they have no additional impact on business, charities, voluntary bodies or any public bodies distinct from that of the Finance Act 2004 itself. A regulatory impact assessment in respect of the provisions of Part 4 of the Finance Act 2004 and subordinate legislation under it was published by the Board of Inland Revenue on 8th April 2004, and is available on the website of Her Majesty's Revenue and Customs at <http://www.hmrc.gov.uk/ria/simplifying-pensions.pdf> or (for hard copies) by writing to the Ministerial Correspondence Unit, Capital and Savings 1st Floor Ferrers House, PO Box 38, Castle Meadow Road, Nottingham, NG2 1BB.