
SCOTTISH STATUTORY INSTRUMENTS

2009 No. 19

The National Health Service (Superannuation Scheme, Pension Scheme and Injury Benefits) (Scotland) Amendment Regulations 2009

PART 2

Amendment of the National Health Service Pension Scheme (Scotland) Regulations 2008

Interpretation of Part 2

23. In this Part an alphanumerical reference to a regulation or a reference to a Schedule is a reference to a provision of the National Health Service Pension Scheme (Scotland) Regulations 2008⁽¹⁾ bearing that designation.

Amendment of regulation 2.A.1

- 24.**—(1) Regulation 2.A.1 (interpretation: general) is amended as follows.
- (2) At the appropriate place in alphabetical order insert—
- “the 2006 Act” means the National Health Service Act 2006⁽²⁾; and
- “the 2006 (Wales) Act” means the National Health Service (Wales) Act 2006⁽³⁾.”
- (3) In the definition of “commissioned services”, in sub-paragraph (b)(ii) delete “(3)”.
- (4) For the definition of “corresponding health service scheme” substitute—
- ““corresponding health service scheme” means—
- (a) a superannuation scheme provided under regulations made under section 10 of the Superannuation Act 1972⁽⁴⁾ and having effect in England and Wales;
- (b) a superannuation scheme provided under article 12 of the Superannuation (Northern Ireland) Order 1972⁽⁵⁾;
- (c) a scheme made under section 2 of the Superannuation Act 1984⁽⁶⁾ (an Act of Tynwald); or
- (d) any other occupational pension scheme approved for the purposes of this regulation by the Scottish Ministers;”.
- (5) After the definition of “corresponding health service scheme” insert—

(1) S.S.I. 2008/224.

(2) 2006 c. 41.

(3) 2006 c. 42.

(4) 1972 c. 11. Section 10 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7), sections 4(2), 8(5) and 10.

(5) S.I.1972/1073.

(6) 1984 c. 8 (Tynwald).

““corresponding 1995 scheme” means a corresponding health service scheme the provisions of which the Scottish Ministers have determined correspond to the NHS superannuation scheme for Scotland 1995;

““corresponding 2008 scheme” means a corresponding health service scheme the provisions of which the Scottish Ministers have determined correspond to the provisions of the scheme;”.

Amendment of regulation 2.A.2

25.—(1) Regulation 2.A.2 (meaning of “pensionable service”) is amended as follows.

(2) In paragraph (6), for “2.D.5(6)(a)” substitute “2.D.5(9)(a)”.

(3) After paragraph (7) insert—

“(8) Where a member is also a member of the NHS superannuation scheme for Scotland 1995, any reference in this Part to “45 years” shall be taken to be a reference to a shorter period determined by the formula—

$$SP = 45 \text{ years} - LPS$$

where—

SP is the shorter period, measured in years and days; and

LPS is the length of pensionable service (within the meaning of the 1995 Regulations), measured in years and days, giving rise to membership of the NHS superannuation scheme for Scotland 1995 and, in the case of a member of that scheme who has become entitled to a pension (including a preserved pension) under that scheme, including any period that was taken into account for the purpose of determining whether the member was entitled to that pension, or for the purpose of calculating the amount of that pension.”.

Amendment of regulation 2.A.4

26. In regulation 2.A.4 (pensionable service: breaks in service), for paragraph (3) substitute—

“(3) If a member is on leave of absence that does not fall within paragraph (1)(a) to (e), and contributes to the scheme under regulation 2.C.1 (contributions by members) by contributions made at the same intervals as those made by the member before the absence, the maximum period of such leave that can be counted as pensionable service under this paragraph is—

- (a) where the member contributes for a continuous period of 6 months commencing with the first day of the member’s leave of absence, 6 months; and
- (b) where the member contributes for a continuous period of less than 6 months commencing with the first day of the member’s leave of absence, the period in respect of which the member pays those contributions.

(3A) If, having paid contributions for the period mentioned in paragraph (3)(a) a member remains on a leave of absence that does not fall within paragraph (1)(a) to (e) and contributes to the scheme, both member contributions under regulation 2.C.1 and employer contributions under regulation 2.C.5 by contributions made at the same intervals as those made by the member before the absence, the maximum period of such leave that can be counted as pensionable service under this paragraph is—

- (a) where the member contributes for a continuous period of 18 months commencing immediately after the expiry of the period mentioned in paragraph (3)(a), 18 months; and
- (b) where the member contributes for a continuous period of less than 18 months commencing immediately after the expiry of the period mentioned in paragraph (3)(a), the period in respect of which the member pays those contributions.”.

Amendment of regulation 2.A.5

27. In regulation 2.A.5(1) (meaning of “qualifying service”)–

- (a) in sub-paragraph (b), after “pension arrangement” insert “(including the NHS superannuation scheme for Scotland 1995)”; and
- (b) after sub-paragraph (e) insert–
 - “(f) in the case of a person–
 - (i) who is eligible to join the scheme by virtue of regulation 2.B.1(5)(c); (eligibility: general); and
 - (ii) for whom the interval between leaving the NHS superannuation scheme for Scotland 1995 and joining the scheme is less than one month, a period equal to the period of qualifying service (within the meaning of the 1995 Regulations), measured in years and days, that the member was entitled to count under regulation C3 (meaning of “qualifying service”) of the 1995 Regulations when the member left that scheme.”.

Amendment of regulation 2.A.9

28.—(1) Regulation 2.A.9 (pensionable pay: breaks in service) is amended as follows.

- (2) In paragraph (2), for “paragraph (3)” substitute “paragraph (7) in the case of a non GP provider or paragraph (3) in the case of a member who is not a non GP provider”.
- (3) In paragraph (3), before “falling” insert “who is not a non GP provider”.
- (4) In paragraph (6), for “(up to 6” substitute “or (3A) (up to 24”.
- (5) In paragraph (7)(a), for “2.A.8(9)” substitute “2.A.8(8)”.
- (6) For paragraph (8), substitute–
 - “(8) If the earnings used to calculate a member’s pensionable pay cease during a period of absence to which this regulation applies–
 - (a) a non GP provider falling within paragraph (1)(a) is, subject to sub-paragraph (b), to be treated as having continued in pensionable employment for a period of 12 months from the date on which the member’s earnings ceased and the member will not be treated as having left pensionable employment until the end of that 12 month period;
 - (b) a non GP provider falling within paragraph (1)(b) to (e) who paid contributions on the basis of reduced earnings in accordance with paragraph (4)(b) will, subject to paragraph (9), continue to pay contributions at that rate, except that no refund of contributions or other benefit will be payable until the member actually leaves pensionable employment; and
 - (c) a member other than a non GP provider will, subject to paragraph (5), be treated as having left pensionable employment except that no refund of contributions

or other benefit will be payable until the member actually leaves pensionable employment.

(8A) For the purposes of paragraph (8)(a)–

- (a) during the 12 month period, the non GP provider’s pensionable earnings will be calculated as described in paragraph (7)(a) or (b) (whichever is applicable); and
- (b) at the end of the 12 month period, when the member is regarded as having left pensionable employment, no refund of contributions or other benefit will be payable until the member actually leaves employment.”.

(7) In paragraph (9), after “paragraph (8)” insert “(b)”.

(8) In paragraph (10), for “non GP provider” wherever it appears substitute “member”.

(9) In paragraph (11)–

- (a) for “non GP provider” where it twice appears substitute “member”;
- (b) for “paragraph (7) applies” substitute “this regulation applies”; and
- (c) for “(7)(a) or (8)” substitute “(8)(c), (8A)(b) or (10)”.

(10) In paragraph (12), for “non GP provider” wherever it appears substitute “member”.

Amendment of regulation 2.B.1

29. In regulation 2.B.1(5) (eligibility: general)–

(a) after sub-paragraph (d)(ii) (before the full out words) insert–

“(e) the person–

- (i) ceased to be an active member of the NHS superannuation scheme for Scotland 1995 on leaving NHS employment;
- (ii) became a deferred member of that scheme on leaving that employment and has not become a pensioner member of that scheme between the date of leaving that employment and joining the scheme; and
- (iii) re entered NHS employment on or after 1st October 2008 and 5 or more years since last leaving NHS employment; or

(f) the person–

- (i) ceased to be an active member of the NHS superannuation scheme for Scotland 1995 before 1st April 2008 on leaving NHS employment;
- (ii) became a deferred member of that scheme on leaving that employment;
- (iii) re entered NHS employment on or after 1st October 2008 and 5 or more years since last leaving NHS employment; and
- (iv) before the person re entered such employment–

(aa) a transfer payment was made in respect of the person under Part M (transfer-out arrangements and buy-outs) of the 1995 Regulations; or

(bb) the person made an application under regulation M2 of those Regulations (exercising a right to transfer or buy out) from which the person may not withdraw.”; and

(b) in the full out words, for “sub-paragraph (d)” substitute “sub-paragraphs (d) to (f)”.

Amendment of regulation 2.B.2

30. In regulation 2.B.2 (restrictions on eligibility: general), for paragraph (2)(b) substitute–

- “(b) became a pensioner member of that scheme on or after that date; or
- (c) is a deferred member of that scheme, but is not a deferred member–
 - (i) to whom regulation 2.B.1(5)(e) or (f) applies; and
 - (ii) in respect of whom permission of the Scottish Ministers to rejoin the NHS superannuation scheme for Scotland 1995 has not been granted pursuant to regulation B2(3) (age limits and restrictions on memberships) of that scheme.”.

Amendment of regulation 2.C.2

31. In regulation 2.C.2(3) (members' contribution rate), after “may” insert “, with the consent of the Treasury,”.

Amendment of regulation 2.C.5

32. In regulation 2.C.5 (contributions by employing authorities: general)–

- (a) for paragraph (2), substitute–
 - “(2) In specifying such a rate, the Scottish Ministers must–
 - (a) obtain the consent of the Treasury; and
 - (b) take account of the advice of the scheme actuary and the cost of providing for any increase in pensions under the scheme as a result of orders made under the provisions of the Pensions (Increase) Act 1971(7) and section 59 of the Social Security Pensions Act 1975(8).”;
- (b) after paragraph (5), insert–
 - “(6) In any particular case the Scottish Ministers may direct that, for the purposes of this Chapter, “employing authority” includes one or more of–
 - (a) a successor, transmittee or assignee of an employing authority’s business or functions; or
 - (b) the last employing authority of a person to whom these regulations apply.”.

Amendment of regulation 2.D.7

33. In regulation 2.D.7(8)(b) (application of regulations 2.D.5 and 2.D.6) for “2.D.6(1)(c)” substitute “2.D.6(1)(b)(ii)”.

Amendment of regulation 2.D.9

34. In regulation 2.D.9 (re assessment of entitlement to an ill health pension determined under regulation 2.D.8) for paragraph 2(a), substitute–

- “(a) in the case of a member–
 - (i) who does not engage in further NHS employment during the period of 3 years referred to in paragraph (1)(b), the member makes the application in writing before the end of that period; or

(7) 1971 c. 56.

(8) 1975 c. 60.

- (ii) who does engage in further NHS employment during the period of 3 years referred to in paragraph (1)(b), the member makes the application in writing before the first anniversary of the day on which that employment commences or before the end of that period if sooner.”.

Amendment of regulation 2.D.10

35. In regulation 2.D.10(1)(a) (early retirement on ill health (deferred members)) before “incapable” insert “permanently”.

Insertion of new regulation 2.E.20A

36. After regulation 2.E.20 (amount of lump sum: pension credit members), insert–

“Pension payable when member dies on or after reaching age 75

2.E.20A

(1) If a pensioner member or a pension credit member dies–

- (a) on or after reaching age 75; and
- (b) before the fifth anniversary of the date on which the member’s pension became payable,

an annual pension, calculated in accordance with paragraph (2), may be payable from the day following the date of the member’s death until the anniversary referred to in sub-paragraph (b).

(2) The pension payable under paragraph (1) is determined by–

- (a) calculating the amount of the lump sum that would have been payable to the pensioner member or pension credit member under regulation 2.E.17(2) or, as the case may be, 2.E.20 as if on the day the member died the member had not reached the age of 75; and
- (b) converting any amount determined in sub-paragraph (a) to an annual pension payable for the period specified in paragraph (1), by reference to guidance and tables provide by the scheme actuary for the purpose.

(3) The “beginning date” of the pension calculated in paragraph (2) will, for the purposes of the Pensions (Increase) Act 1971(9), be the day immediately following the date of death of the pensioner member or pension credit member.

(4) The pension calculated under this regulation will be payable in accordance with regulation 2.E.21.”.

Amendment of regulation 2.E.21

37.—(1) Regulation 2.E.21 (payment of lump sums on death) is amended as follows.

(2) In the heading to that regulation, after “lump sums” insert “or pensions”.

(3) In paragraph (1), after “regulation 2.E.16” insert “or a pension payable under regulation 2.E.20A”.

(4) In paragraph (2)–

- (a) after “lump sum” insert “or pension”; and
- (b) for “under paragraph (4) or (6)” substitute “or body under paragraph (4), (6) or (10)”.

(5) In paragraphs (3), (4), (6) and (7), after “lump sum” wherever it occurs insert “or pension”.

(6) After paragraph (9), insert–

“(10) The member’s personal representatives may, as part of the distribution of the member’s estate, give irrevocable notice to the Scottish Ministers–

(a) specifying–

(i) one or more individuals; or

(ii) one incorporated or unincorporated body,

to whom the benefit of the pension under regulation 2.E.20A, from the date of receipt of the notice by the Scottish Ministers, is to be assigned; and

(b) where two or more individuals are specified under sub-paragraph (a)(i), specifying the percentage of the pension payable to each of them,

and the pension (or, as the case may be, the percentage of it specified in respect of the person) may be paid to the person or body, unless paragraph (11) applies.

(11) This paragraph applies if–

(a) the person specified in the notice has died before the payment can be made;

(b) payment to that person is not, in the opinion of the Scottish Ministers, reasonably practicable; or

(c) the person to whom the pension (or a specified percentage of the pension) would otherwise be payable has been convicted of an offence specified in regulation 2.J.7(2) (forfeiture of rights to benefits) and the Scottish Ministers have directed, as a consequence of that conviction, that the person’s right to a payment in respect of the member’s death is forfeited.”.

Amendment of regulation 2.E.25

38. In regulation 2.E.25(5) (dual capacity membership: death benefits), after sub-paragraph (h) insert–

“(hh) regulation 2.E.20A (pension payable when member dies on or after reaching age 75); and”.

Amendment of regulation 2.F.6

39. For regulation 2.F.6(1) and (2) (calculating amounts of transfer value payments) substitute–

“(1) Subject to paragraphs (2), (3) and (5), the amount of the guaranteed cash equivalent transfer value payment is to be calculated and verified by the Scottish Ministers in accordance with the Occupational Pension Schemes (Transfer Values) Regulations 1996(10).

(2) Before determining the factors to be used in the calculation of the member’s guaranteed cash equivalent transfer value payment, the Scottish Ministers must take advice from the scheme actuary.”.

Amendment of regulation 2.F.8

40.—(1) Regulation 2.F.8 (right to apply for acceptance of transfer value payment from another scheme) is amended as follows.

(2) In paragraph (2)(a), after “scheme” insert “other than a corresponding health service scheme”.

- (3) For paragraph (2)(d) substitute—
- “(d) a corresponding 1995 scheme; and
- (e) a corresponding 2008 scheme.”.
- (4) After paragraph (2) insert—
- “(2A) A member who makes an application for a transfer value to be accepted by the Scottish Ministers in respect of his or her rights under a corresponding 2008 scheme may not also make an application for a transfer value to be accepted in respect of his or her rights under a corresponding 1995 scheme.”.
- (5) In paragraph (4)(a)(ii), for “purposes of that Act” substitute “purposes of the 2004 Act”.

Amendment of regulation 2.F.9

41. In regulation 2.F.9 (procedure for applications under regulation 2.F.8)—
- (a) in paragraph (1)(e)(ii), after “those arrangements” insert “(including a transfer of rights from a corresponding 1995 scheme)”; and
- (b) in paragraph (2), for “a such” substitute “such”.

Amendment of regulation 2.F.10

42. In regulation 2.F.10 (acceptance of transfer value payments), after paragraph (3) insert—
- “(3A) If the Scottish Ministers accept the payment from the member of a corresponding 1995 scheme, the relevant period of pensionable service shall count when determining whether or not the member has reached 45 years of pensionable service for the purposes of regulation 2.A.3 (meaning of “pensionable service”: part time service).
- (3B) In paragraph (3A) “the relevant period” means the period calculated in accordance with regulation 2.F.11.”.

Amendment of regulation 2.F.11

43. In regulation 2.F.11 (calculation of transferred in pensionable service)—
- (a) in paragraph (6), for “corresponding health service scheme” substitute “corresponding 2008 scheme”; and
- (b) omit paragraph (7).

Insertion of new regulation 2.F.17

44. After regulation 2.F.16 (EU and other overseas transfers), insert—

“Transfers across

Transfers across from the NHS superannuation scheme for Scotland 1995

2.F.17

(1) An active member who is entitled to have a cash equivalent value calculated in respect of the entirety of the member’s rights under the NHS superannuation scheme for Scotland 1995, or that section of a corresponding health service scheme pursuant to regulation M7 (waiver of transfer payments) of the 1995 Regulations, may apply to convert that cash equivalent value into rights under the scheme.

(2) An application under paragraph (1)—

- (a) must be made in writing using an application form provided for the purpose by the Scottish Ministers;
 - (b) may only be made before the end of the period of three months beginning with the guarantee date established under regulation M7 of the 1995 Regulations;
 - (c) may only be made if the member has first been furnished with a statement of the pensionable service that the member will be entitled to count under the scheme if the application is accepted by the Scottish Ministers;
 - (d) must meet such other conditions as the Scottish Ministers may require; and
 - (e) is irrevocable.
- (3) The statement mentioned in paragraph (2)(c) must–
- (a) inform the member of the amount of pensionable service that will count under the scheme, and must be calculated in accordance with any guidance, tables and other relevant factors provided by the scheme actuary for that purpose;
 - (b) inform the member of the amount of pensionable service that will count under this scheme when determining whether or not the member has reached 45 years of pensionable service for the purposes of regulation 2.A.3; and
 - (c) be calculated in accordance with any guidance and other relevant factors provided by the scheme actuary for that purpose.
- (4) If the Scottish Ministers accept an application under paragraph (1)–
- (a) the member is entitled to count the period of pensionable service mentioned in paragraphs (3)(a) and (b) for the purposes of calculating benefits payable to or in respect of the member under the scheme; and
 - (b) that period of pensionable service shall be credited to the member on the day that the Scottish Ministers received the member’s application.”.

Replacement of regulation 2.H.2

45. For regulation 2.H.2 (information), substitute–

“Information

2.H.2

- (1) A person who becomes an employed pensioner must–
- (a) inform the person’s employer in the new employment and any other person that the Scottish Ministers may specify that the old service pension is payable; and
 - (b) where requested, provide any information about his or her relevant income in the new employment to the Scottish Ministers or to any other person that the Scottish Ministers may specify.
- (2) A person who ceases to be an employed pensioner in one new employment and becomes an employed pensioner in another new employment must–
- (a) inform the person’s employer in the other new employment, and any other person that the Scottish Ministers may specify, that the old service pension is payable; and
 - (b) where requested, provide any information about his or her relevant income in the other new employment to the Scottish Ministers or to any person that the Scottish Ministers may specify.
- (3) For the meaning of “relevant income” see regulation 2.H.4.”.

Amendment of regulation 2.H.5

46. In regulation 2.H.5(1) (meaning of “previous pay”: general), for “regulation 2.H.6” substitute “regulations 2.H.6 and 2.H.7”.

Amendment of regulation 2.H.7

47. In regulation 2.H.7 (application of this chapter to part time employment), for paragraph (2) substitute—

“(2) The amount of the employed pensioner’s reckonable pay for the purposes of the old service pension, as referred to in regulation 2.H.5(1)(a), shall be determined without reference to regulation 2.A.13 or 2.A.14 (reckonable pay for concurrent and non concurrent part time workers).”.

Replacement of regulation 2.J.2

48. For regulation 2.J.2 (claims for benefits), substitute—

“Claims for benefits

2.J.2

(1) A person claiming to be entitled to benefits under this Part (“the claimant”) must make a claim in writing to the Scottish Ministers.

(2) Pursuant to such a claim, the claimant and, where appropriate, the member’s employing authority (including any previous employing authority of the member) must provide such—

- (a) evidence of entitlement;
- (b) information required in order to deal with the claim; and
- (c) authority or permission as may be necessary for the release by third parties of information in their possession relating to the claimant or member,

as the Scottish Ministers may from time to time require for the purposes of this Part.

(3) A claim referred to in paragraph (1) may be made by a person or persons other than the claimant where the Scottish Ministers so provide.

(4) Any claim for benefit required in writing under this Part, and any evidence, information, authority or permission given in connection with that claim, may be made or given by means of an electronic communication where such method of communication is approved by the Scottish Ministers from time to time.

(5) In this regulation, “electronic communication” has the same meaning as in section 15(1) of the Electronic Communications Act 2000⁽¹¹⁾.”.

Amendment of regulation 2.J.7

49. In regulation 2.J.7(5)(c) (forfeiture of rights to benefits), for “lump sums” substitute “lump sums or pensions”.

Amendment of regulation 2.J.9

50.—(1) Regulation 2.J.9(5) (interest on late payment of benefits and refunds of contributions) is amended as follows.

(11) 2000 c. 7. Section 15 was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c. 21).

(2) In sub-paragraph (b), after “member’s death” insert “, other than a pension payable under regulation 2.E.20A (pension payable when member dies on or after reaching age 75),”.

(3) After sub-paragraph (e) insert—

“(f) in the case of an amount in respect of a pension under regulation 2.E.20A that is payable to—

(i) the member’s personal representatives, the date on which any document that is by law sufficient evidence of the grant of confirmation as executor of the member, was produced to the Scottish Ministers;

(ii) any person or body to whom the pension has been assigned by the member’s personal representatives, the date on which the notice under regulation 2.E.21(10) was received by the Scottish Ministers; and

(iii) any person or body other than those referred to in head (i) and (ii), the day immediately following the day of the member’s death.”.

Amendment of regulation 2.J.10

51.—(1) Regulation 2.J.10 (determination of questions) is amended as follows.

(2) For paragraph (3) substitute—

“(3) In relation to decisions within paragraph (4), the Scottish Ministers may require any person entitled, or claiming to be entitled, to a benefit under this Part to submit to a medical examination by a registered medical practitioner selected by the Scottish Ministers and in that event, the Scottish Ministers must also offer the person an opportunity of submitting a report from the person’s own medical adviser as a result of an examination by that medical adviser, and the Scottish Ministers must take that report into consideration together with the report of the medical practitioner selected by the Scottish Ministers.”.

(3) After paragraph (4)(c) insert—

“(cc) regulation 2.D.15(1) (option for members in serious ill health to exchange pension for lump sum);”.

Amendment of regulation 2.J.13

52. In the heading to regulation 2.J.13 (employing authority record keeping and contribution estimates), after “employing authority” insert “and certain member”.

Amendment of regulation 3.A.1

53.—(1) Regulation 3.A.1 (interpretation: general) is amended as follows.

(2) In the definition of “active member” delete “3.D.5(9)” and substitute “3.D.5(8)”.

(3) For the definition of “corresponding health service scheme” substitute—

““corresponding health service scheme” means—

(a) a superannuation scheme provided under regulations made under section 10 of the Superannuation Act 1972(12) and having effect in England and Wales;

(b) a superannuation scheme provided under Article 12 of the Superannuation (Northern Ireland) Order 1972(13);

(12) 1972 c. 11.

(13) S.I. 1972/1073.

- (c) a scheme made under section 2 of the Superannuation Act 1984(14) (an Act of Tynwald) applies; or
 - (d) any other occupational pension scheme approved for the purposes of this regulation by the Scottish Ministers;”.
- (4) After the definition of “corresponding health service scheme” insert–
- ““corresponding 1995 scheme” means a corresponding health service scheme the provisions of which the Scottish Ministers have determined correspond to the NHS superannuation scheme for Scotland 1995;
- “corresponding 2008 scheme” means a corresponding health service scheme the provisions of which the Scottish Ministers have determined correspond to the provisions of the scheme;”;
- (5) For the definition of “contracting Health Board” substitute–
- ““contracting Health Board”, in respect of a person who is a registered medical practitioner or non GP provider who is–
- (a) a partner in a partnership–
 - (i) that is a GMS practice; or
 - (ii) that has entered into a section 17C agreement or is an HBPMS contractor that has entered into an HBPMS contract for the provision of primary medical services;
 - (b) a shareholder in a company limited by shares that is a GMS practice or a section 17C practice or an HBPMS contractor that has entered into section 17C agreement or HBPMS contract for the provision of primary medical services; or
 - (c) an individual who is a GMS practice, section 17C practice or an HBPMS contractor,
- means each Health Board with which that partnership (in the case of (a)), company (in the case of (b)) or practice or contractor (in the case of (c)) has entered into an agreement or contract referred to in those provisions and (in the case of a registered medical practitioner) the relevant Health Board on whose medical performers' list that practitioner’s name appears, and such a person shall be deemed to be employed by the appropriate Health Board for the purposes of this Part;”.
- (6) For the definition of “OOH services” substitute–
- ““OOH services” means services which are required to be provided in the out of hours period and which if provided during core hours by a GMS Practice, a section 17C Agreement provider or a HBPMS Contractor to patients to whom the practice or contractor is required to by its GMS contract, section 17C agreement or HBPMS contract to provide essential services, would be or would be similar to essential services;”.

Amendment of regulation 3.A.3

- 54.** In regulation 3.A.3 (meaning of “pensionable service”), for paragraph (9) substitute–

“(9) Where a member is also a member of the NHS superannuation scheme for Scotland 1995, any reference in this Part to “45 years” shall be taken to be a reference to a shorter period determined by the formula–

$$SP = 45 \text{ years} - LPS$$

where–

SP is the shorter period, measured in years and days; and

LPS is the length of pensionable service (within the meaning of the 1995 Regulations), measured in years and days, giving rise to membership of the NHS superannuation scheme for Scotland 1995 and, in the case of a member of that scheme who has become entitled to a pension (including a preserved pension) under that scheme, including any period that was taken into account for the purpose of determining whether the member was entitled to that pension, or for the purpose of calculating the amount of that pension.”.

Amendment of regulation 3.A.4

55.—(1) Regulation 3.A.4 (pensionable service: breaks in service) is amended as follows.

(2) In paragraph (2)—

- (a) for “Subject to paragraph (5), a” substitute “A”; and
- (b) for “scheme” substitute “scheme, under regulation 3.C.1 (contributions by members) in respect of the period of absence”.

(3) For paragraph (3) substitute—

“(3) If a member is on leave of absence that does not fall within paragraph (1)(a) to (e), and contributes to the scheme, under regulation 3.C.1 by contributions made at the same intervals as those made by the member before the absence, the maximum period of such leave that can be counted as pensionable service under this paragraph is—

- (a) where the member contributes for a continuous period of 6 months commencing with the first day of the member’s leave of absence, 6 months; and
- (b) where the member contributes for a continuous period of less than 6 months commencing with the first day of the member’s leave of absence, the period in respect of which the member pays those contributions.

(3A) If, having paid contributions for the period mentioned in paragraph (3)(a) a member remains on a leave of absence that does not fall within paragraph (1)(a) to (e) and contributes to the scheme both member contributions under regulation 3.C.1 and employer contributions under regulation 3.C.3 by contributions made at the same intervals as those made by the member before the absence, the maximum period of such leave that can be counted as pensionable service under this paragraph is—

- (a) where the member contributes for a continuous period of 18 months commencing immediately after the expiry of the period mentioned in paragraph (3)(a), 18 months; and
- (b) where the member contributes for a continuous period of less than 18 months commencing immediately after the expiry of the period mentioned in paragraph (3)(a), the period in respect of which the member pays those contributions.”.

Amendment of regulation 3.A.5

56. In regulation 3.A.5 (meaning of “qualifying service”)—

- (a) in paragraph (1)(b), after “pension arrangement” insert “(including the NHS superannuation scheme for Scotland 1995)”; and
- (b) after paragraph (1)(d) insert—
 - “(e) in the case of a person—

- (i) who is eligible to join the scheme by virtue of regulation 3.B.1(5)(c) (eligibility: general); and
 - (ii) for whom the interval between leaving the NHS superannuation scheme for Scotland 1995 and joining the scheme is less than one month, a period equal to the period of qualifying service (within the meaning of the 1995 Regulations), measured in years and days, that the member was entitled to count under regulation C3 (meaning of “qualifying service”) of the 1995 Regulations when the member left that scheme.”; and
- (c) after paragraph (3) insert–
- “(4) For the other rules applying where there is a short break in service, see regulation 3.A.6.”.

Amendment of regulation 3.A.7

57. In regulation 3.A.7(2)(a)(vii) (meaning of “pensionable earnings”), after “OOH provider” insert “or other employing authority providing OOH services”.

Amendment of regulation 3.A.8

- 58.** In regulation 3.A.8 (pensionable earnings: breaks in service)–
- (a) in paragraph (2)(a), for “regulation 3.C.1” substitute “regulations 3.C.1 (contributions by members) and 3.C.2 (members' contribution rate)”;
 - (b) in paragraph (8), for “(3)(a) or (4)” substitute “(5)(b) or (7)”;
 - (c) after paragraph (9) insert–
- “(10) For the purposes of making contributions to the scheme under regulations 3.C.1 and 3.C.3 (contributions by employing authorities: general), during any period of absence which counts as pensionable service under regulation 3.A.4(3) or (3A), amounts equal to the rate of the member’s pensionable earnings calculated as described in paragraph (3)(a) or (b) of this regulation are treated as pensionable earnings.”.

Amendment of regulation 3.B.1

- 59.** For regulation 3.B.1(5)(d) (eligibility: general) substitute–
- “(d) the person–
- (i) ceased to be an active member of the NHS superannuation scheme for Scotland 1995 on leaving NHS employment;
 - (ii) became a deferred member of that scheme on leaving that employment and has not become a pensioner member of that scheme between the date of leaving that employment and joining the scheme set out in this Part; and
 - (iii) re entered NHS employment on or after 1st October 2008 and 5 or more years since last leaving NHS employment; or
- (e) the person–
- (i) ceased to be an active member of the NHS superannuation scheme for Scotland 1995 before 1st April 2008 on leaving NHS employment;
 - (ii) became a deferred member of that scheme on leaving NHS employment;
 - (iii) re entered NHS employment on or after 1st October 2008 and 5 or more years since last leaving NHS employment; and

- (iv) before the person re entered such employment–
 - (aa) a transfer payment was made in respect of the person under Part M of that scheme; or
 - (bb) the person made an application under regulation M2 of that scheme (exercising a right to transfer or buy out) from which the person may not withdraw,but sub-paragraphs (d) to (e) will not apply if the Scottish Ministers have permitted such a person to rejoin the NHS superannuation scheme for Scotland 1995 in the circumstances described in regulation B3 (restrictions on future participation in the scheme) of the 1995 Regulations.”.

Amendment of regulation 3.B.2

- 60.** In regulation 3.B.2 (restrictions on eligibility: general), for paragraph (1)(b) substitute–
- “(b) became a pensioner member of that scheme on or after that date; or
 - (c) is a deferred member of that scheme, but is not a deferred member–
 - (i) to whom regulation 3.B.1(5)(e) or (f) applies; and
 - (ii) in respect of whom permission of the Scottish Ministers to rejoin the NHS superannuation scheme for Scotland 1995 has not been granted pursuant to regulation B2(3) of that scheme.”.

Amendment of regulation 3.B.5

- 61.** In regulation 3.B.5(7) (opting out of the scheme) before “may” insert “but”.

Amendment of regulation 3.C.2

- 62.** In regulation 3.C.2 (members' contribution rate)–
- (a) in paragraph (3), after “may” insert “, with the consent of the Treasury,”; and
 - (b) in the full out words of paragraph (8), for “paragraph (5) of this regulation in respect of the earlier service” substitute “regulation 2.C.2 (members' contribution rate) in respect of the earlier officer service”.

Amendment of regulation 3.C.3

- 63.** In regulation 3.C.3 (contributions by employing authorities: general), for paragraph (2) substitute–
- “(2) In specifying such a rate, the Scottish Ministers must–
 - (a) obtain the consent of the Treasury; and
 - (b) take account of the advice of the scheme actuary and the cost of providing for any increase in pensions under the scheme as a result of orders made under the provisions of the Pensions (Increase) Act 1971⁽¹⁵⁾ and section 59 of the Social Security Pensions Act 1975⁽¹⁶⁾.”.

⁽¹⁵⁾ 1971 c. 56.

⁽¹⁶⁾ 1975 c. 60.

Amendment of regulation 3.D.6

64. Regulation 3.D.6 (increase in pensionable earnings following exercise of option under regulation 3.D.5) is amended as follows–

- (a) in the heading for “pensionable earnings” substitute “level of engagement”; and
- (b) in paragraph (1)(b)(i) for “is increased” substitute “increasing”.

Amendment of regulation 3.D.8

65. In regulation 3.D.8 (re assessment of entitlement to an ill health pension determined under regulation 3.D.7) for paragraph (2)(a), substitute–

- “(a) in the case of a member who–
 - (i) does not engage in further NHS employment during the period of 3 years referred to in paragraph (1)(b), the member makes the application in writing before the end of that period; or
 - (ii) does engage in further NHS employment during the period of 3 years referred to in paragraph (1)(b), the member makes the application in writing before the first anniversary of the day on which that employment commences or before the end of that period if sooner;”.

Amendment of regulation 3.D.9

66. In regulation 3.D.9(1)(a) (early retirement on ill health (deferred members)), before “incapable” insert “permanently”.

Amendment of regulation 3.E.10

67. In regulation 3.E.10(2) (amount of children’s pension under regulation 3.E.8: deceased active members), for “paragraphs (6) and (7)” substitute “paragraphs (5) and (6)”.

Insertion of new regulation 3.E.20A

68. After regulation 3.E.20 (amount of lump sum: pension credit members), insert–

“Pension payable when member dies on or after reaching age 75

3.E.20A

- (1) If a pensioner member or a pension credit member dies–
 - (a) on or after reaching age 75; and
 - (b) before the fifth anniversary of the date on which the member’s pension became payable,

an annual pension, calculated in accordance with paragraph (2), may be payable from the day following the date of the member’s death until the anniversary referred to in subparagraph (b).

- (2) The pension payable under paragraph (1) is determined by–
 - (a) calculating the amount of the lump sum that would have been payable to the pensioner member or pension credit member under regulation 3.E.17(2) or, as the case may be, regulation 3.E.20, as if on the day the member died the member had not reached the age of 75; and

- (b) converting any amount determined in sub-paragraph (a) to an annual pension payable for the period specified in paragraph (1), by reference to guidance and tables provided by the scheme actuary for the purpose.
- (3) The “beginning date” of the pension calculated in paragraph (2) will, for the purposes of the Pensions (Increase) Act 1971(17), be the day immediately following the date of death of the pensioner member or pension credit member.
- (4) The pension calculated under this regulation will be payable in accordance with regulation 3.E.21.”.

Amendment of regulation 3.E.21

- 69.**—(1) Regulation 3.E.21 (payment of lump sums on death) is amended as follows.
- (2) In the heading after “lump sums” insert “or pensions”.
 - (3) In paragraph (1), after “regulation 3.E.16” insert “or a pension payable under regulation 3.E.20A”.
 - (4) In paragraph (2)—
 - (a) after “lump sum” insert “or pension”; and
 - (b) for “under paragraph (4) or (6)” substitute “or body under paragraph (4), (6) or (10)”.
 - (5) In paragraphs (3), (4), (6) and (7), after “lump sum” wherever it occurs insert “or pension”.
 - (6) After paragraph (9), insert—
 - “(10) The member’s personal representatives may, as part of the distribution of the member’s estate, give irrevocable notice to the Scottish Ministers—
 - (a) specifying—
 - (i) one or more individuals; or
 - (ii) one incorporated or unincorporated body,to whom the benefit of the pension under regulation 3.E.20A from the date of receipt of the notice by the Scottish Ministers is to be assigned; and
 - (b) where two or more individuals are specified, specifying the percentage of the pension payable to each of them,and the pension (or, as the case may be, the percentage of it specified in respect of the person) may be paid to the person or body, unless paragraph (11) applies.
 - (11) This paragraph applies if—
 - (a) the person specified in the notice has died before the payment can be made;
 - (b) payment to that person is not, in the opinion of the Scottish Ministers, reasonably practicable; or
 - (c) the person to whom the pension (or a specified percentage of the pension) would otherwise be payable has been convicted of an offence specified in regulation 3.J.7(2) (forfeiture of rights to benefit) and the Scottish Ministers have directed, as a consequence of that conviction, that the person’s right to a payment in respect of the member’s death is forfeited.”.

Amendment of regulation 3.E.25

- 70.** After regulation 3.E.25(5)(h) (dual capacity membership: death benefits), insert—

“(hh) regulation 3.E.20A (pension payable when member dies on or after age 75); and”.

Amendment of regulation 3.F.6

71. In regulation 3.F.6 (calculating amounts of transfer value payments), for paragraphs (1) and (2) substitute—

“(1) Subject to paragraphs (2), (3) and (5) the amount of the guaranteed cash equivalent transfer value payment is to be calculated and verified by the Scottish Ministers in accordance with the Occupational Pension Schemes (Transfer Values) Regulations 1996⁽¹⁸⁾.

(2) Before determining the factors to be used in the calculation of the member’s guaranteed cash equivalent, the Scottish Ministers must take advice from the scheme actuary.”.

Amendment of regulation 3.F.8

72.—(1) Regulation 3.F.8 (right to apply for acceptance of transfer value payment from another scheme) is amended as follows.

(2) In paragraph (2)(a), after “scheme” insert “other than a corresponding health service scheme”.

(3) For paragraph (2)(d) substitute—

“(d) a corresponding 1995 scheme; and

(e) a corresponding 2008 scheme.”.

(4) After paragraph (2) insert—

“(2A) A member who makes an application for a transfer value to be accepted by the Scottish Ministers in respect of his rights under a corresponding 2008 scheme may not also make an application for a transfer value to be accepted in respect of his rights under a corresponding 1995 scheme.”.

(5) In paragraph (4)(a)(ii), for “purposes of that Act” substitute “purposes of the 2004 Act”.

Amendment of regulation 3.F.9

73. In regulation 3.F.9 (procedure for applications under regulation 3.F.8)—

(a) in paragraph (1)(d)(ii), after “those arrangements” insert “(including a transfer of rights from a corresponding 1995 scheme)”; and

(b) after paragraph (2) insert—

“(3) A statement given to the member of a corresponding 1995 scheme in pursuance of such a request as is mentioned in paragraph (1)(d) must inform the member of the amount of pensionable service that will count under this scheme for the purposes of—

(a) calculating benefits payable to or in respect of the member, and

(b) determining whether or not the member has reached 45 years of pensionable service for the purposes of regulation 3.A.3 (meaning of “pensionable service”).”.

Amendment of regulation 3.F.10

74. In regulation 3.F.10 (acceptance of transfer value payments), after paragraph (3) insert—

“(3A) If the Scottish Ministers accept the payment from the member of a corresponding 1995 scheme, the relevant period of pensionable service shall count when determining whether or not the member has reached 45 years of pensionable service for the purposes of regulation 3.A.3.

(3B) In paragraph (3A) “the relevant period” means the period calculated in accordance with any guidance, tables and other relevant factors provided by the scheme actuary for that purpose, having regard to the period of employment that qualified the member for the rights in the corresponding 1995 scheme.”.

Amendment of regulation 3.F.11

75.—(1) Regulation 3.F.11 (calculation of transferred in pensionable service) is amended as follows.

(2) For paragraph (2) substitute—

“(2) Subject to paragraph (4), for the purposes of the calculation under paragraph (1), the benefits in respect of the transfer payment will be calculated by increasing the member’s pensionable earnings for—

(a) the financial year in which the member joined the scheme; or

(b) the financial year in which the transfer payment is received if the payment is received more than 12 months after the member joined the scheme.”.

(3) In paragraph (3)(b), for “final year’s pensionable” substitute “reckonable”.

(4) In paragraph (3)(c), for “final year’s pensionable” substitute “reckonable”.

(5) In paragraph (4), for “Paragraph (3)” substitute “Paragraph (2)(b)”.

(6) In paragraph (6), for “corresponding health service scheme” substitute “corresponding 2008 scheme”.

(7) Omit paragraph (7).

Insertion of new regulation 3.F.17

76. After regulation 3.F.16 (EU and other overseas transfers), insert—

“Transfers across

Transfers across from the NHS superannuation scheme for Scotland 1995

3.F.17

(1) An active member who is entitled to have a cash equivalent value calculated in respect of the entirety of the member’s rights under the NHS superannuation scheme for Scotland 1995, pursuant to regulation M7 (waiver of transfer payments) of the 1995 Regulations, may apply to convert that cash equivalent value into rights under this scheme.

(2) An application under paragraph (1)—

(a) must be made in writing using an application form provided for the purpose by the Scottish Ministers;

(b) may only be made before the end of the period of 3 months beginning with the guarantee date established under regulation M7 of the 1995 Regulations;

(c) may only be made if the member has first been furnished with a statement of the pensionable service and increase in pensionable earnings that the member will be

- entitled to count under this scheme if the application is accepted by the Scottish Ministers;
- (d) must meet such other conditions as the Scottish Ministers may require; and
- (e) is irrevocable.
- (3) The statement mentioned in paragraph (2)(c) must–
- (a) inform the member of the amount of pensionable service and increase in pensionable earnings that will count under this scheme for the purposes of calculating benefits payable in respect of the member; and
- (b) inform the member of the amount of pensionable service that will count under this scheme when determining whether or not the member has reached 45 years of pensionable service for the purposes of regulation 3.A.3 (meaning of “pensionable service”).
- (4) The amount of the increase in pensionable earnings mentioned in paragraph (3) is calculated by–
- (a) treating the member as entitled to a period of officer service equal to the period of employment that qualified the member for the rights in the NHS superannuation scheme for Scotland 1995;
- (b) calculating the reckonable pay that would have given rise to a cash equivalent in respect of officer service under regulation 2.F.6 (calculating amounts of transfer value payments); and
- (c) increasing the member’s pensionable earnings by an amount equal to the pensionable pay that the member would have received during that period of officer service if the member’s pensionable pay had been equal to the reckonable pay mentioned in paragraph (b) throughout that period.
- (5) The amount of pensionable service mentioned in paragraph (3) will be equal to the period of employment that qualified the member for the rights in the NHS superannuation scheme for Scotland 1995.
- (6) If the Scottish Ministers accept an application under paragraph (1)–
- (a) the member is entitled to count the period of pensionable service mentioned in paragraphs (3)(a) and (b) for the purposes specified therein;
- (b) those periods of pensionable service shall be credited to the member on the day that the Scottish Ministers received the member’s application;
- (c) the member is entitled to count the increase in pensionable earnings calculated under paragraph (4) for the purposes of calculating benefits payable to or in respect of the member under this scheme; and
- (d) that increase in pensionable earnings shall be credited to the member in the financial year during which the day that the Scottish Ministers received the member’s application falls.”.

Replacement of regulation 3.H.2

77. For regulation 3.H.2 (information), substitute–

“Information

3.H.2

- (1) A person who becomes an employed pensioner must–

- (a) inform the person’s employer in the new employment and any other person that the Scottish Ministers may specify that the old service pension is payable; and
 - (b) where requested, provide any information about their relevant income in the new employment to the Scottish Ministers or to any other person that the Scottish Ministers may specify.
- (2) A person who ceases to be an employed pensioner in one new employment and becomes an employed pensioner in another new employment must–
- (a) inform the person’s employer in the other new employment, and any other person that the Scottish Ministers may specify, that the old service pension is payable; and
 - (b) where requested, provide any information about their relevant income in the new employment to the Scottish Ministers or to any other person that the Scottish Ministers may specify.
- (3) For the meaning of “relevant income” see regulation 3.H.4.”.

Replacement of regulation 3.J.2

78. For regulation 3.J.2 (claims for benefits), substitute–

“Claims for benefits

3.J.2

(1) A person claiming to be entitled to benefits under this Part (“the claimant”) must make a claim in writing to the Scottish Ministers.

(2) Pursuant to such a claim, the claimant and, where appropriate, the member’s employing authority (including any previous employing authority of the member) must provide such–

- (a) evidence of entitlement;
- (b) information required in order to deal with the claim; and
- (c) authority or permission as may be necessary for the release by third parties of information in their possession relating to the claimant or member,

as the Scottish Ministers may from time to time require for the purposes of this Part.

(3) A claim referred to in paragraph (1) may be made by a person or persons other than the claimant where the Scottish Ministers so provide.

(4) Any claim for benefit required in writing under this Part, and any evidence, information, authority or permission given in connection with that claim, may be made or given by means of an electronic communication where such method of communication is approved by the Scottish Ministers.

(5) In this regulation, “electronic communication” has the same meaning as in section 15(1) of the Electronic Communications Act 2000(19).”.

Amendment of regulation 3.J.7

79. In regulation 3.J.7(5)(c) (forfeiture of rights to benefits), after “lump sums” insert “or pensions”.

Amendment of regulation 3.J.9

- 80.** In regulation 3.J.9(5) (interest on late payment of benefits and refunds of contributions)–
- (a) in sub-paragraph (b), after “member’s death” insert “, other than a pension payable under regulation 3.E.20A (pension payable when member dies on or after reaching age 75)”; and
 - (b) after sub-paragraph (e) insert–
 - “(f) in the case of an amount in respect of a pension under regulation 3.E.20A that is payable to–
 - (i) the member’s personal representatives, the date on which any document that is by law sufficient evidence of the grant of confirmation as executor of the member, was produced to the Scottish Ministers;
 - (ii) any person or body to whom the pension has been assigned by the member’s personal representatives, the date on which the notice under regulation 3.E.21(10) was received by the Scottish Ministers; or
 - (iii) any person or body other than those referred to in heads (i) and (ii), the day immediately following the day of the member’s death.”.

Amendment of regulation 3.J.10

- 81.** In regulation 3.J.10 (determination of questions)–
- (a) for paragraph (3) substitute–

“(3) In relation to decisions within paragraph (4), the Scottish Ministers may require any person entitled, or claiming to be entitled, to a benefit under this Part to submit to a medical examination by a registered medical practitioner selected by the Scottish Ministers and in that event, the Scottish Ministers must also offer the person an opportunity of submitting a report from the person’s own medical adviser as a result of an examination by that medical adviser, and the Scottish Ministers must take that report into consideration together with the report of the medical practitioner selected by the Scottish Ministers.”.
 - (b) after paragraph (4)(c) insert–

“(cc) regulation 3.D.11(1) (option for members in serious ill health to exchange pension for lump sum);”; and

Amendment of regulation 3.J.13

- 82.** Regulation 3.J.13 (employing authority record keeping and contribution estimates)–
- (a) for the title substitute “Employing authority and certain member record keeping and contribution estimates”; and
 - (b) for paragraph (1) substitute–

“(1) As regards a member who is a principal medical practitioner, in respect of each financial year–

 - (a) the member must provide each relevant contracting health board or someone acting on its behalf, with a certificate of their pensionable earnings based on–
 - (i) the accounts drawn up in accordance with generally accepted accounting practice by the practice of which the member is a member; and
 - (ii) the return that member has made to Her Majesty’s Revenue & Customs in respect of his or her earnings for that year,

no later than 1 month from the date on which that return was required to be submitted to Her Majesty’s Revenue & Customs; and

- (b) a contracting health board or someone acting on its behalf, must forward to the Scottish Ministers a copy of the records maintained under regulation 3.C.5(17) (b) within 1 month of the end of the financial year immediately following the financial year to which the return in paragraph (1)(a)(ii) relates.”.

Amendment of regulation 4.A.2

83. In regulation 4.A.2 (interpretation: general), for the definition of “principal practitioner” substitute—

““principal practitioner” has the same meaning as in Part 3;”.

Amendment of regulation 4.D.1

84. After regulation 4.D.1(4) (pensionable service limit), insert—

“(5) Where a member is also a member of the 1995 scheme, any reference in this Part to “45 years” shall be taken to be a reference to a shorter period determined by the formula—

$$SP = 45 \text{ years} - LPS$$

where—

SP is the shorter period, measured in years and days; and

LPS is the length of pensionable service (within the meaning of the 1995 Regulations), measured in years and days, giving rise to membership of the NHS superannuation scheme for Scotland 1995 and, in the case of a member of that scheme who has become entitled to a pension (including a preserved pension) under that scheme, including any period that was taken into account for the purpose of determining whether the member was entitled to that pension, or for the purpose of calculating the amount of that pension.”.

Amendment of regulation 4.D.2

85. In regulation 4.D.2 (applications, claims and notices), for the table substitute—

<i>“Column 1 Regulation in Part 2</i>	<i>Column 2 Regulation in Part 3</i>
2.D.1	3.D.1
2.D.8	3.D.7
2.D.10	3.D.9
2.D.14	3.D.10
2.D.15	3.D.11
2.D.18	3.D.14
2.E.2	3.E.2
2.E.21	3.E.21
2.F.2	3.F.2
2.F.3	3.F.3”

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