

---

SCOTTISH STATUTORY INSTRUMENTS

---

**2009 No. 208**

**The National Health Service (Superannuation Scheme, Pension Scheme and Injury Benefits) (Scotland) Amendment (No. 2) Regulations 2009**

**PART 3**

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

**Interpretation of Part 3**

**15.** In this Part an alphanumerical reference to a regulation is a reference to a provision of the National Health Service Pension Scheme (Scotland) Regulations 2008<sup>(1)</sup> bearing that designation.

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

**16.** In regulation 2.A.1 (interpretation: general)–

- (a) in the definition of “member” after “active member,”, insert “a non contributing member,”;
- (b) at the appropriate place in the alphabetical order, insert–
  - ““non contributing member” means a member who–
  - (a) is under the age of 75 and in NHS employment;
  - (b) is no longer required to make contributions to the Scheme in accordance with regulation 2.C.1(1); and
  - (c) will be entitled to a pension under these Regulations–
    - (i) on ceasing to be employed in NHS employment and making a claim for the pension; or
    - (ii) upon reaching age 75;”.

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

**17.** In regulation 2.A.9(7)(a) (pensionable pay: breaks in service) for “pay”, substitute “earnings”.

**Amendment of regulation 2.A.10**

**18.** In regulation 2.A.10 (meaning of “reckonable pay”: general)–

- (a) in paragraph (1)–
  - (i) at the end of sub paragraph (a), omit “or”; and

- (ii) at the end of sub paragraph (b), add–
  - “; or
  - (c) a non contributing member.”; and
- (b) in paragraph (5)–
  - (i) at the end of sub paragraph (a)(i), omit “and”; and
  - (ii) after sub paragraph (a)(ii), add–
    - “(iii) in a case within paragraph (1)(c), the member’s last day of pensionable service; and”.

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

- 19.** After regulation 2.B.2(5) (restrictions on eligibility: general), add–

“(6) Subject to paragraph (7), a person is not eligible to be an active member of the scheme in any future employment if the person–

- (a) ceases to be entitled to a lower tier ill health pension under regulation 2.D.8; and
- (b) becomes entitled to an upper tier ill health pension under that regulation on the date the Scottish Ministers make a determination under regulation 2.D.9(3).

(7) A person to whom paragraph (6) applies is eligible to be an active member of the scheme in any further employment after the first anniversary of that person’s first day of such employment following the date of the Scottish Ministers' determination under regulation 2.D.9.”.

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

- 20.** For regulation 2.C.2(2) (members' contribution rate), substitute–

“(2) Subject to paragraph (3), for the 2009 2010 scheme year and each subsequent scheme year, a member’s contribution rate for that period is the percentage specified in column 2 of the following table in respect of the corresponding pensionable pay range (where regulation 2.C.3 applies) or pensionable earnings range (where regulation 2.C.4 applies) specified in column 1 of the following table into which the member’s pensionable pay, or as the case may be, pensionable earnings falls.

**Table**

<i>Column 1</i>	<i>Column 2</i>
<i>Amount of pensionable pay/earnings</i>	<i>Contribution rate</i>
Up to £20,224	5%
£20,225 to £66,789	6.5%
£66,790 to £105,318	7.5%
£105,319 to any higher amount	8.5%”

### **Replacement of regulation 2.C.3**

- 21.** For regulation 2.C.3 (employees), substitute–

**“Employees**

**2.C.3.—**(1) For the purposes of this regulation—

- (a) “previous scheme year” means the scheme year immediately preceding the scheme year in respect of which contributions are payable in accordance with this Part (“the current scheme year”); and
- (b) if a member holds two or more pensionable employments at the same time—
  - (i) the determinations referred to in paragraphs (4) to (21) shall apply to each such employment separately; and
  - (ii) each such employment shall be treated separately for the purpose of paying contributions.

(2) Subject to paragraphs (16) and (17), for the purposes of determining the relevant annual contribution rate for the current scheme year paragraphs (3) to (15) apply to a member who is in pensionable employment with the same employing authority on both the last day of the previous scheme year and the first day of the current scheme year.

(3) For the purposes of paragraphs (4) to (15)—

- (a) a member shall be regarded as being in pensionable employment throughout the previous scheme year regardless of any period in that year during which the member continued to be employed by the same employer but did not make contributions to the scheme;
- (b) for the purposes of calculating the member’s pensionable pay—
  - (i) contributions for any period referred to in sub paragraph (a) shall be deemed to have been paid; and
  - (ii) any additional pensionable pay that the member is treated as having received during an absence from work in accordance with regulation 2.A.9 shall be included; and
- (c) the amount of pensionable pay determined in accordance with those paragraphs shall be rounded down to the nearest whole pound.

(4) If a member—

- (a) was in pensionable employment with an employing authority on a whole time basis throughout the previous scheme year;
- (b) paid contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member’s pensionable pay received during the previous scheme year.

(5) If a member—

- (a) was in pensionable employment with an employing authority on a part-time basis throughout the previous scheme year;
- (b) paid contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay

referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by reference to the amount the Scottish Ministers determine would have been paid in respect of a single comparable whole time employment during the previous scheme year.

(6) If a member—

- (a) was in pensionable employment with an employing authority on a combination of a whole time and part time basis throughout the previous scheme year;
- (b) paid contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the aggregate of—

- (i) the member's pensionable pay received during the previous scheme year in respect of the member's whole time employment; and
- (ii) the amount the Scottish Ministers determine would have been paid in respect of a single comparable whole time employment for that period in respect of the member's part time employment.

(7) If a member—

- (a) was in pensionable employment with an employing authority on a whole time basis throughout the previous scheme year;
- (b) did not pay contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula—

$$\frac{RPP}{NDPE} \times 365$$

where—

RPP is the pensionable pay received in respect of that employment for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year; and

NDPE is the number of days of pensionable employment with that employer commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(8) If a member—

- (a) was in pensionable employment with an employing authority on a part time basis throughout the previous scheme year;
- (b) did not pay contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula—

$$\frac{CWTE}{NDPE} \times 365$$

where—

CWTE is the amount the Scottish Ministers determine would have been paid in respect of a single comparable whole time employment in respect of the member's part time employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year; and

NDPE is the number of days of pensionable employment with that employer commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(9) If a member—

- (a) was in pensionable employment with an employing authority on a combination of a whole time and part time basis throughout the previous scheme year;
- (b) did not pay contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula—

$$\frac{(RPP + CWTE)}{NDPE} \times 365$$

where—

RPP is the pensionable pay received for the whole time employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

CWTE is the amount the Scottish Ministers determine would have been paid in respect of a single comparable whole time employment in respect of the member's part time employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year; and

NDPE is the number of days of pensionable employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(10) If a member—

- (a) commenced pensionable employment with an employing authority on a whole time basis during the previous scheme year;
- (b) paid contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

$$\frac{RPP}{NDPE} \times 365$$

where—

RPP is the pensionable pay received in respect of that employment during the previous scheme year; and

NDPE is the number of days of pensionable employment with that employer during the previous scheme year.

(11) If a member—

- (a) commenced pensionable employment with an employing authority on a part time basis during the previous scheme year;
- (b) paid contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

$$\frac{CWTE}{NDPE} \times 365$$

where—

CWTE is the amount the Scottish Ministers determine would have been paid for that employment during the previous scheme year in respect of a single comparable whole time employment; and

NDPE is the number of days of pensionable employment with that employer during the previous scheme year.

(12) If a member—

- (a) commenced pensionable employment with an employing authority during the previous scheme year and has since been employed on both a whole time and part time basis;

- (b) paid contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and

- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

$$\frac{(RPP + CWTE)}{NDPE} \times 365$$

where—

RPP is the pensionable pay received for the whole time employment with that employer during the previous scheme year;

CWTE is the amount the Scottish Ministers determine would have been paid in respect of a single comparable whole time employment in respect of the member's part time employment with that employer during the previous scheme year; and

NDPE is the number of days of pensionable employment with that employer during the previous scheme year.

- (13) If a member—

- (a) commenced pensionable employment with an employing authority on a whole time basis during the previous scheme year;

- (b) did not pay contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and

- (c) is employed by that authority on the first day of the current scheme year;

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

$$\frac{RPP}{NDPE} \times 365$$

where—

RPP is the pensionable pay received in respect of that employment for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year; and

NDPE is the number of days of pensionable employment with that employer commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

- (14) If a member—

- (a) commences pensionable employment with an employing authority on a part time basis during the previous scheme year;

- (b) did not pay contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

$$\frac{CWTE}{NDPE} \times 365$$

where—

CWTE is the amount the Scottish Ministers determine would have been paid in respect of a single comparable whole time employment in respect of the member's part time employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year; and

NDPE is the number of days of pensionable employment with that employer commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(15) If a member—

- (a) commenced pensionable employment with an employing authority during the previous scheme year and has since been employed on both a whole time and part time basis with that employing authority;
- (b) did not pay contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula—

$$\frac{(RPP + CWTE)}{NDPE} \times 365$$

where—

RPP is the pensionable pay received for the whole time employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

CWTE is the amount the Scottish Ministers determine would have been paid in respect of a single comparable whole time employment in respect of the member's part time employment with that employer for the period commencing on the date the member's



contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year; and

NDPE is the number of days of pensionable employment with that authority for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(16) If, at any time during the current scheme year, a member commences a new employment, the member shall pay contributions in respect of that employment at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (20).

(17) Subject to paragraph (18), if at any time during the current scheme year, a change is made to a member's annual rate of pensionable pay or pensionable allowances in respect of an existing employment the member shall pay contributions—

- (a) from the first day of the pay period in which the change is made at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (20); and
- (b) as if the member's employment had commenced on that date.

(18) Paragraph (17) does not apply to a change made to a member's annual rate of pensionable allowances in respect of an existing employment that is determined by that member's employer to have been made in respect of—

- (a) unplanned changes to that member's duties; or
- (b) changes to that member's duties that are unlikely to persist for at least 12 months.

(19) If the change to a member's pensionable pay referred to in paragraph (17) is made in respect of an existing part time employment, that paragraph shall not apply unless there is a corresponding change to the amount of pensionable pay that would be paid to that member in respect of a whole time comparable employment.

(20) Where paragraph (16) or (17) apply the Scottish Ministers shall determine the member's pensionable pay—

- (a) by applying the formula—

$$\frac{EPP}{NDPE} \times 365$$

where—

EPP is the estimated pensionable pay that the member's employing authority considers will be payable to the member in respect of that employment during the current scheme year; and

NDPE is the number of days of pensionable employment from the date employment commences to the end of the current scheme year; and

- (b) if the further employment is part time employment, by determining how much would be paid in respect of a whole time comparable employment,

with the amount determined under sub paragraph (a) being the member's pensionable pay for the purposes of this paragraph if the further employment is whole time employment and the amount determined under sub paragraph (b) being the member's pensionable pay for the purposes of this paragraph if the further employment is part time employment.

(21) If none of paragraphs (4) to (17) apply—

- (a) the Scottish Ministers must determine the amount of the member’s pensionable pay, and in doing so shall, in addition to the matters referred to in regulation 2.C.2(4), have regard to the pensionable pay attributable to pensionable employment comparable to the member’s employment, prevailing pay scales and prevailing rates of pensionable allowances; and
- (b) the member shall pay contributions at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member’s pensionable pay determined in accordance with paragraph (a).

(22) In any case where paragraph (16) applies and it is apparent at the time when the person becomes an active member in an employment under this Part the person’s pensionable pay in that employment includes any amount that is variable, that amount is to be taken as such amount as the employing authority consider appropriate for the 2008/09 scheme year and, in the case of a member who works part time, is the variable amount that would be paid in respect of a comparable whole time employment.

(23) If a transfer payment from a corresponding health service scheme is accepted in respect of a person, the person is treated for the purposes of this regulation as if—

- (a) the person was an active member of the scheme during any period during which the person was an active member of that scheme; and
- (b) the pay by reference to which the person’s benefits under that scheme were calculated was pensionable pay for the purposes of the scheme.”.

#### **Replacement of regulation 2.C.4**

22. For regulation 2.C.4 (part time employees), substitute—

##### **“Non-GP providers**

**2.C.4.—**(1) If, in respect of a scheme year, a member who is a non GP provider—

- (a) has certified his or her pensionable earnings in accordance with regulation 2.J.13 and forwarded a record of those earnings to the contracting Health board or someone who is appointed to act on their behalf; or
- (b) was not required to certify his or her earnings in accordance with that regulation but the contracting Health board or someone who is appointed to act on their behalf, has the figure that represents the non GP provider’s pensionable earnings for that scheme year,

contributions payable for that scheme year, shall be those specified in column 2 of the table in regulation 2.C.2(2), in respect of the amount of pensionable earnings referred to in column 1 of that table which corresponds to the certified or final pensionable earnings from all non GP provider sources and any additional pensionable earnings the non GP provider is treated as having received during a break in service in accordance with regulation 2.A.9.

(2) Subject to paragraph (3), if paragraph (1) does not apply to a non GP provider in respect of a scheme year, that non GP provider shall pay contributions at the rate in column 2 of the table in regulation 2.C.2(2), which—

- (a) has been agreed between the contracting Health board or someone who is appointed to act on their behalf on the one hand and the non GP provider on the other hand;

- (b) corresponds to the non GP provider’s most recent certified or final pensionable earnings referred to in paragraph (1); or
  - (c) corresponds to the contracting Health board or someone who is appointed to act on their behalf’s estimate of the non GP provider’s pensionable earnings from all non GP provider sources for that year.
- (3) If paragraph (2) applies to a non GP provider in respect of a scheme year and paragraph (1)(a) or (b) is subsequently satisfied in respect of that scheme year, that non GP provider shall pay contributions at the rate determined in accordance with paragraph (1).
- (4) A contracting Health board or someone who is appointed to act on their behalf, may adjust a non GP provider’s contribution rate for any scheme year determined in accordance with paragraph (2)–
- (a) by agreement between the contracting Health board or someone who is appointed to act on their behalf on the one hand and the non GP provider on the other hand; or
  - (b) without such agreement, if the contracting Health board or someone who is appointed to act on their behalf, is satisfied that pensionable earnings will exceed the amount used to determine the contribution rate in accordance with that paragraph.
- (5) If a member is in non GP provider service and concurrently in NHS employment in respect of which the member is liable to pay contributions in accordance with regulation 3.C.1, contributions payable in respect of the member’s non GP provider service shall be determined under this regulation and contributions payable in respect of the member’s NHS employment shall be determined under regulation 3.C.2.
- (6) In determining the contributions payable in accordance with this regulation, a contracting Health board or someone who is appointed to act on their behalf, must take account of pensionable earnings as a non GP provider from all non GP provider sources.
- (7) If, apart from this paragraph, the earnings for a scheme year in respect of a member’s non GP provider service would not be a whole number of pounds, those earnings must be rounded down to the nearest whole pound.”.

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

- 23.** For regulation 2.C.5(5) (contributions by employing authorities; general) substitute–  
“(5) The rate commencing 1 April 2009 is 13.5 per cent.”.

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

- 24.** In regulation 2.D.4(3)(b) (early payment of pensions with actuarial reduction) after “active member” insert “or a non contributing member”.

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

- 25.** In paragraphs (1) and (9)(b) of regulation 2.D.5 (partial retirement (members aged at least 55)) after “active member” wherever it occurs insert “or a non contributing member”.

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

- 26.** In paragraphs (3) and (5) of regulation 2.D.6 (increase in pensionable pay following exercise of option under regulation 2.D.5) after “active member” wherever it occurs insert “or a non contributing member”.

#### **Amendment of regulation 2.D.7**

27. In paragraph (1) of regulation 2.D.7 (application of regulations 2.D.5 and 2.D.6 where concurrent part time employments held) after “active member” insert “or a non contributing member”.

#### **Amendment of regulation 2.D.8**

28. In regulation 2.D.8 (early retirement on ill health (active members)) in–

- (a) the heading after “active members” insert “and non contributing members”; and
- (b) in paragraph (2) after “active member” insert “or a non contributing member”.

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

29. In regulation 2.D.9(2) (re assessment of entitlement to an ill health pension determined under regulation 2.D.8)–

- (a) at the end of sub paragraph (b)(ii) omit “and”;
- (b) after sub paragraph (c), add–
  - “; and
  - (d) the member has not become entitled to an upper tier ill health pension in respect of any later service under regulation 2.G.5.”.

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

30. In regulation 2.D.11(1)(a) (early retirement on termination of employment by employing authority) after “active member” insert “or a non contributing member”.

#### **Amendment of regulation 2.D.13**

31. In regulation 2.D.13(2)(a) (exceptions to requirement that NHS employment must have ceased) after “active member” insert “or a non contributing member”.

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

32. In regulation 2.D.14 (general option to exchange part of pension for lump sum)–

- (a) for paragraph (1) substitute–
  - “(1) A member may opt to exchange part of a pension to which the member would otherwise be entitled for a lump sum.”;
- (b) in paragraph (7) at the start, add “Subject to paragraphs (8) and (9),”; and
- (c) after paragraph (7), add–
  - “(8) If the pension is an ill health pension under regulation 2.D.8, the option under this regulation may only be exercised by giving notice in writing to the scheme administrator in such form as the Scottish Ministers require–
    - (a) where the member is awarded–
      - (i) a lower tier ill health pension under paragraph (2) of that regulation, at the time of claiming that lower tier ill health pension;
      - (ii) an upper tier ill health pension under paragraph (3) of that regulation, at the time of claiming that upper tier ill health pension; or
    - (b) before such later time as the Scottish Ministers specify in writing.

(9) If the pension is an upper tier ill health pension under regulation 2.D.9, in substitution for a lower tier ill health pension under regulation 2.D.8, the option under this regulation may only be exercised—

- (a) in relation to the difference between the lower tier ill health pension that ceases to be payable in accordance with paragraph (3) of regulation 2.D.9 and the upper tier ill health pension to which the member becomes entitled under that paragraph; and
- (b) by giving notice in writing to the Scottish Ministers in such form as the Scottish Ministers require—
  - (i) at the time of award of the upper tier ill health pension under that paragraph; or
  - (ii) before such later time as the Scottish Ministers specify in writing.”.

#### **Amendment of regulation 2.D.15**

**33.** In regulation 2.D.15 (option for members in serious ill health to exchange whole pension for lump sum)—

- (a) in paragraph (1) after “active member” insert “or a non contributing member”;
- (b) in paragraph (4) after “active member” insert “or a non contributing member”; and
- (c) in paragraph (6) after “active member” insert “or a non contributing member”.

#### **Amendment of regulation 2.D.17**

**34.** In regulation 2.D.17 (pension credit member’s rights) omit paragraphs (2) and (3).

#### **Amendment of regulation 2.D.21**

**35.** In paragraphs (2)(a) and (4)(b) of regulation 2.D.21 (dual capacity membership) after “active member” insert “or a non contributing member”.

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

**36.** In regulation 2.E.1(1) (surviving adult dependants' pensions) after “active member” insert “, a non contributing member”.

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

**37.** In regulation 2.E.3 (amount of pensions under regulation 2.E.1: active members)—

- (a) in the heading after “active ” insert “and non contributing”;
- (b) for paragraph (1), substitute—

“(1) In the case of an active member or a non contributing member, for the period of 6 months beginning with the day after the member’s death (“the initial period”) the rate of the pension payable under regulation 2.E.1 (if that amount is greater than the amount of the pension payable to the surviving adult under this Chapter apart from this paragraph), is equal to—

- (a) in the case of a deceased active member, the rate of the member’s pensionable pay at the time of death;
- (b) in the case of a deceased non contributing member, the rate of the deceased’s reckonable pay.”.

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

**38.** In regulation 2.E.4(3) (amount of pensions under regulation 2.E.1: pensioner members) for “paragraph (1)” substitute “paragraphs (1) and (2)”.

#### **Amendment of regulation 2.E.7**

**39.** In regulation 2.E.7(3) (re employed pensioners: adult survivor pensions in initial period) for sub paragraphs (a) and (b), substitute–

- “(a) in the case of–
  - (i) a deceased active member, the rate of the deceased’s pensionable pay at the time of death; and
  - (ii) a deceased non contributing member, the rate of the deceased’s reckonable pay on the deceased’s last day of pensionable service; and
- (b) the rate of the deceased member’s pension payable at the time of death after taking account of any reduction in the rate of the pension under Chapter 2.H (abatement).”.

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

**40.** In regulation 2.E.10 (amount of children’s pension under regulation 2.E.8: deceased active members)–

- (a) in the heading after “deceased active members” insert “and deceased non contributing members”;
- (b) in paragraph (1) after “active” insert “, or a non contributing member”;
- (c) for paragraph (4), substitute–
  - “(4) For this purpose “relevant service” means–
    - (a) in the case of an active member, the greater of–
      - (i) the pensionable service the deceased was entitled to count on the date of death, increased by the enhancement period (if any) that would have applied for the purposes of regulation 2.D.8(5) if the deceased had become entitled to an upper tier ill health pension on the date of death; and
      - (ii) 10 years' pensionable service;
    - (b) in the case of a non contributing member, the pensionable service that the deceased was entitled to count on the date of death.”;
- (d) in paragraph (6) for “equal to the rate of the deceased’s pensionable pay at the date of death.” substitute–
  - “equal to–
    - (i) in the case of a deceased active member, the rate of the deceased’s pensionable pay at the date of death; and
    - (ii) in the case of a deceased non contributing member, the rate of the deceased’s reckonable pay.”; and
- (e) in paragraph (7) for “equal to the rate of the deceased’s pensionable pay at the date of death.” substitute–
  - “equal to–
    - (i) in the case of a deceased active member, the rate of the deceased’s pensionable pay at the date of death; and

- (ii) in the case of a deceased non contributing member, the rate of the deceased's reckonable pay."

#### **Amendment of regulation 2.E.11**

**41.** In regulation 2.E.11(1) (amount of children's pension under regulation 2.E.8: deceased pensioner members) after "active member" insert "or a non contributing member".

#### **Amendment of regulation 2.E.12**

**42.** In paragraphs (1) and (3)(a) of regulation 2.E.12 (amount of children's pension under regulation 2.E.8: deceased deferred members) after "active member" insert "or a non contributing member".

#### **Amendment of regulation 2.E.13**

**43.** In regulation 2.E.13(3) (amount of children's pension under regulation 2.E.8: recent leavers) for sub paragraph (a) substitute—

- "(a) "the basic death pension" means 75 per cent of the pension to which the deceased would have been entitled if the deceased had become entitled to—
  - (i) a pension under regulation 2.D.8(5) on the date of death; or
  - (ii) if greater, the amount that the member's pension would have been if it had been based on 10 years' pensionable service (disregarding any additional pension); and"

#### **Amendment of regulation 2.E.15**

**44.** In regulation 2.E.15 (amount of children's pension under regulation 2.E.8: re employed pensioners)—

- (a) in paragraph (1) after "active member" insert "or a non contributing member";
- (b) for paragraph (2)(a) substitute—
  - "(a) in the case of—
    - (i) a deceased active member, the rate of the deceased's pensionable pay at the date of death; and
    - (ii) a deceased non contributing member, the rate of the deceased's reckonable pay, and"; and
- (c) in paragraph (5)—
  - (i) in sub paragraph (a) after "active member" insert "or a non contributing member"; and
  - (ii) in sub paragraph (b) after "active members" insert "or non contributing members".

#### **Amendment of regulation 2.E.17**

**45.** In regulation 2.E.17 (amount of lump sum: single capacity members and recent leavers (disregarding regulation 2.D.5 employments))—

- (a) in paragraph (1) after "active member" insert "or a non contributing member";
- (b) in paragraph (2)—
  - (i) after "active member" insert "or a non contributing member"; and

- (ii) at the start insert “Subject to regulations 2.E.20A and 2.E.21”;
- (c) in paragraph (3) for “is not an active member” substitute “was not an active member or a non contributing member”; and
- (d) in paragraph (8)(a) for “is an active member” substitute “was an active member or a non contributing member”.

#### **Amendment of regulation 2.E.18**

**46.** In regulation 2.E.18 (amount of lump sum: dual capacity members (disregarding regulation 2.D.5 employments))–

- (a) in paragraph (1) after “active member” insert “or a non contributing member”; and
- (b) in paragraph (2) for sub paragraph (a) substitute–
  - “(a) five times the annual rate of pension–
    - (i) payable under regulation 2.D.8(5) (upper tier ill health pension), if the deceased had not reached the age of 65;
    - (ii) payable under regulation 2.D.1 (normal retirement pensions), if the deceased had reached the age of 65,
  - to which the member would have been entitled–
    - (aa) in the case of a deceased active member, at the member’s date of death; and
    - (bb) in the case of a deceased non contributing member, on the last day of the member’s pensionable service; and”.

#### **Amendment of regulation 2.E.19**

**47.** In regulation 2.E.19 (amount of lump sum: dual capacity members: members with pensions under regulation 2.D.5)–

- (a) in paragraph (1)–
  - (i) in sub paragraph (a) for “is an active member” substitute “was an active member or a non contributing member”; and
  - (ii) in sub paragraph (b) for “is” substitute “was”;
- (b) in paragraph (2)(a) for “final pensionable pay” substitute “reckonable pay”; and
- (c) in paragraph (5), in the definition of “DPS” after “active member” insert “or a non contributing member”.

#### **Amendment of 2.E.25**

**48.** At the end of regulation 2.E.25 (5) (h) omit “and”.

#### **Amendment of 2.F.8**

**49.** At the end of regulation 2.F.8(2)(d) omit “and”.

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

**50.** In regulation 2.G.5 (re employed lower tier ill health pensioners)–

- (a) in paragraph (4) at the start insert “Subject to paragraph (5),”; and
- (b) after paragraph (4) add–



“(5) If the re employed member–

- (a) ceases to be entitled to a lower tier ill health pension in respect of the earlier service;
- (b) becomes entitled to an upper tier ill health pension in respect of that earlier service in accordance with regulation 2.D.9(3); and
- (c) on the termination of the later service, the member becomes entitled to a lower tier or, as the case may be, an upper tier ill health pension in respect of that later service,

the re employed member is entitled to the benefits set out in paragraph (6).

(6) The benefits mentioned in paragraph (5) are–

- (a) an upper tier ill health pension paid in accordance with regulation 2.D.9 in respect of the member’s earlier service; and
- (b) a lower tier ill health pension in respect of the member’s later service.”.

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

**51.** In regulation 2.J.5(2) (commutation of small pensions) omit sub paragraph (d).

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

**52.** In regulation 2.J.9 (interest on late payment of benefits and refunds of contributions)–

- (a) in paragraph (2) after “interim” insert “or substitute”;
- (b) for paragraph (3) substitute–
  - “(3) The Scottish Ministers must pay interest on the amount of a pension, lump sum, refund of contributions or an interim or substitute award which is unpaid (“the unpaid amount”) to the person to whom it should have been paid unless the Scottish Ministers are satisfied that the unpaid amount was not paid on the due date because of some act or omission on the part of the member or other person to whom it should have been paid.”;
- (c) in paragraph (5) after “unpaid amount” insert “(other than an unpaid amount in respect of an interim or substitute award)”;
- (d) for paragraph (6) substitute–

“(6) The due date for an unpaid amount–

- (a) referred to in paragraph (5) in respect of which the Scottish Ministers were not in possession of all the information necessary for the calculation of the amount of the pension, lump sum or refund of contributions referred to in that paragraph on the date which would, in accordance with paragraph (5), be the due date; and
- (b) in respect of an interim or substitute award,

shall be the first day on which the Scottish Ministers are in possession of all the information necessary to calculate that pension, lump sum, refund of contributions or interim or substitute award.”; and

- (e) in paragraph (7)–
  - (i) for “interim award” substitute “interim or substitute award”;
  - (ii) at the end of sub paragraph (a) omit “and”; and
  - (iii) at the end of sub paragraph (b) add–
    - “; and

- (c) any amount paid that increases the amount of an earlier payment due to the payment of an upper tier ill health pension under regulation 2.D.8 paid to a member in substitution for a lower tier ill health pension under that regulation following a determination by the Scottish Ministers under regulation 2.D.9.”.

### **Amendment of regulation 2.J.13**

**53.** For regulation 2.J.13 (employing authority and certain member record keeping contribution estimates) substitute—

**“Employing authority and certain member record keeping and contribution estimates**

**2.J.13.**—(1) As regards a member who is a non GP provider who derives practitioner income from the contracts, agreements or payments referred to in regulation 2.A.8(6), in respect of each scheme year, the member shall provide the contracting Health Board or someone appointed to act on their behalf with a certificate of his or her pensionable earnings based on—

- (a) the accounts drawn up in accordance with generally accepted accounting practice by the practice of which the member is a member; and
- (b) the return that member has made to Her Majesty’s Revenue & Customs in respect of their earnings for that year,

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

(2) As regards a GMS practice, a section 17C agreement provider or an HBPMS contractor, in respect of each scheme year, the practice or contractor shall provide the Scottish Ministers with a statement of estimated pensionable earnings in respect of any non GP provider that is a section 17C agreement provider or HBPMS contractor or who assists in the provisions of NHS services provided by that GMS practice, section 17C agreement provider or an HBPMS contractor, at least 1 month before the beginning of that scheme year.

(3) Subject to paragraphs (4) and (5) if, in respect of a scheme year, a non GP provider has failed to comply with the requirements of paragraph (1), the non GP provider’s pensionable earnings for that scheme year shall be zero.

(4) If, in respect of a scheme year—

- (a) a non GP provider has failed to comply with the requirements of paragraph (1);
- (b) a benefit is payable for, or in respect of his or her non GP provider service; and
- (c) the non GP provider’s employing authority is in possession of a figure representing all or part of the non GP provider’s pensionable earnings for that year,

the Scottish Ministers may treat that figure as the amount of the non GP provider’s pensionable earnings for that year.

(5) If, in respect of a scheme year, a non GP provider—

- (a) dies without complying with the requirements of paragraph (1); or
- (b) is, in the opinion of the Scottish Ministers, unable to look after his or her own affairs by reason of illness or mental disorder,

the Scottish Ministers may require that non GP provider’s personal representatives to provide the relevant certificate—

- (i) within the period referred to in paragraph (1); or
  - (ii) within such other period as the Scottish Ministers permit.
- (6) All employing authorities under this Part of the Regulations shall, for each scheme year–
- (a) provide the Scottish Ministers with a statement of estimated total contributions due to the scheme under regulation 2.C.1 (contributions by members) and 2.C.5 (contributions by employing authorities: general); and
  - (b) maintain records of contributions to the scheme made under regulations 2.C.1 and 2.C.5.
- (7) The statement referred to in paragraph (6)(a) shall be provided to the Scottish Ministers no later than 2 months after the end of each scheme year.
- (8) Except where the Scottish Ministers waive such requirement, an employing authority shall provide the Scottish Ministers with a statement of contributions to the scheme recorded in accordance with paragraph (6)(b) no later than 2 months after the end of each scheme year.
- (9) The certificates and statements referred to in this regulation–
- (a) shall be in such form as the Scottish Ministers may from time to time require;
  - (b) may be provided to the Scottish Ministers in such manner as the Scottish Ministers may from time to time permit.”.

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

- 54.** In regulation 3.A.1 (interpretation of Part 3 : general)–
- (a) in the definition of “active member” for “3.D.5(9)” substitute “3.D.5(8)”;
  - (b) in the definition of “member” after “active member,” insert “a non contributing member,”; and
  - (c) at the appropriate place in the alphabetical order insert–
    - ““non contributing member” means a member who–
    - (a) is under the age of 75 and in NHS employment;
    - (b) is no longer required to make contributions to the scheme in accordance with regulation 3.C.1(1); and
    - (c) will be entitled to a pension under these Regulations–
      - (i) on ceasing to be employed in NHS employment and making a claim for the pension; or
      - (ii) upon reaching age 75;”.

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

- 55.** In regulation 3.B.2 (restrictions on eligibility: general) after paragraph (5), add–
- “(6) Subject to paragraph (7), a person is not eligible to be an active member of the scheme in any future employment if the person–
- (a) ceases to be entitled to a lower tier ill health pension under regulation 3.D.7; and
  - (b) becomes entitled to an upper tier ill health pension under that regulation on the date the Scottish Ministers makes a determination under regulation 3.D.8(3).
- (7) A person to whom paragraph (6) applies is eligible to be an active member of the scheme in any further employment after the first anniversary of that person’s first

day of such employment following the date of the Scottish Ministers' determination under regulation 3.D.8.”.

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

**56.** In regulation 3.B.5(7) (opting out of the scheme) after the word “practitioner” (where it second occurs) omit the word “but”.

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

**57.** For regulation 3.C.2 (members' contribution rate) substitute—

##### **“Members' contribution rate**

**3.C.2.—**(1) Contributions under regulation 3.C.1(1) must be paid in accordance with the following paragraphs of this regulation.

(2) Subject to paragraph (3), for the 2009 2010 scheme year and each subsequent scheme year, a member’s contribution rate is the percentage specified in column 2 of the following table in respect of the corresponding pensionable earnings band specified in column 1 of the table into which the member’s earnings fall.

**Table**

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
Up to £20,709	5%
£20,710 to £68,392	6.5%
£68,393 to £107,846	7.5%
£107,847 to any higher amount	8.5%

(3) The Scottish Ministers may, with the consent of the Treasury, make a determination substituting any or all of the earnings bands or contribution percentage rates specified in the table in paragraph (2) with effect from a date specified in the determination.

(4) Before making a determination under paragraph (3), the Scottish Ministers must consider—

- (a) the advice of the scheme actuary; and
- (b) in accordance with regulation 1.B.2 (cost sharing), advice from such employee and employer representatives as the Scottish Ministers consider appropriate.

(5) If, in respect of a scheme year, a practitioner has—

- (a) certified their pensionable earnings in accordance with regulation 3.J.13 and forwarded a record of those earnings to the contracting Health Board or someone appointed to act on its behalf; or
- (b) was not required to certify their earnings in accordance with that regulation but the Contracting Health Board or someone appointed to act on its behalf or employing authority has the figure that represents the practitioner’s pensionable earnings for that scheme year,

contributions payable for that scheme year, shall be those specified in column 2 of the table in paragraph (2) in respect of the amount of pensionable earnings referred to in column 1 of that table which corresponds to aggregate of—

- (i) the certified or final pensionable earnings from all practitioner sources; and
- (ii) any additional pensionable earnings the practitioner is treated as having received during a break in service in accordance with regulation 3.A.8.

(6) Subject to paragraph (7), if paragraph (5) does not apply to a practitioner in respect of a scheme year, contributions are payable for that scheme year at the rate in column 2 of the table in paragraph (2), which—

- (a) have been agreed between the contracting Health Board or someone appointed on its behalf or employer, or employing authority on the one hand and the practitioner on the other hand;
- (b) corresponds to the practitioner's most recent certified or final pensionable earnings referred to in paragraph (5); or
- (c) corresponds to the estimate of the practitioner's pensionable earnings from all practitioner sources for that year.

(7) If paragraph (6) applies to a practitioner in respect of a scheme year and paragraph (5) (a) or (b) is subsequently satisfied in respect of that scheme year, that practitioner shall pay contributions at the rate determined in accordance with paragraph (5).

(8) A contracting Health Board or someone appointed on its behalf or employing authority may adjust a practitioner's contribution rate for any scheme year determined in accordance with paragraph (6) or (9)—

- (a) by agreement between the contracting Health Board or someone appointed on its behalf or employing authority, on the one hand and the practitioner on the other hand; or
- (b) without such agreement, if the contracting Health Board or someone appointed to act on its behalf or employing authority, is satisfied that pensionable earnings will exceed the amount used to determine the contribution rate in accordance with those paragraphs.

(9) If a member is in practitioner service and concurrently in NHS employment in respect of which the member is liable to pay contributions in accordance with regulation 3.C.1, contributions payable in respect of the member's practitioner service shall be determined under this Part and contributions payable in respect of the member's NHS employment shall be determined under Part 2.

(10) In determining the contributions payable in accordance with paragraph (2), a contracting Health Board or someone appointed to act on its behalf or the employing authority must take account of all pensionable earnings as a practitioner.

(11) If a principal practitioner provides services as a locum practitioner to a health board other than the contracting Health Board, or other employer, that health board or other employer must apply member contribution of 6.5 per cent.

(12) The contracting Health Board or someone appointed to act on its behalf must apply the correct member contribution rate in terms of paragraph (5) or (6) whichever is appropriate once in receipt of certified earnings for the scheme year from the member.

(13) If, apart from this paragraph, the earnings for a scheme year in respect of a member's practitioner service would not be a whole number of pounds, those earnings must be rounded down to the nearest whole pound.”.

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

58. For regulation 3.C.3(5) (payment by contribution authorities: general) substitute—  
“(5) The rate commencing 1 April 2009 is 13.5 per cent”.

**Amendment of regulation 3.D.4**

59. In regulation 3.D.4(3)(b) (early payment of pensions with actuarial reduction) after “active member” insert “or a non contributing member”.

**Amendment of regulation 3.D.5**

60. In regulation 3.D.5 (partial retirement (members aged at least 55))—
- (a) in paragraph (1) after “active member” wherever it occurs insert “or a non contributing member”;
  - (b) in paragraph (7)(b)(i) for the words from “latest GP certificate referred to in regulation 3.J.13” to the end, substitute “latest certificate referred to in regulation 3.J.13, or the latest scheme year’s final pensionable earnings referred to in regulation 3.C.2, and agreed with each relevant Health Board or someone appointed to act on its behalf or employer”; and
  - (c) in paragraph (8)(b) after “active member” wherever it occurs insert “or a non contributing member”.

**Amendment of regulation 3.D.6**

61. In regulation 3.D.6(4) (increase in pensionable earnings following exercise of option under regulation 3.D.5) after “active member” insert “or a non contributing member”.

**Amendment of regulation 3.D.7**

62. In regulation 3.D.7 (early retirement on ill health (active members)) in—
- (a) the heading after “active members” insert “and non contributing members”; and
  - (b) paragraph (2) after “active member” insert “or a non contributing member”.

**Amendment of regulation 3.D.8**

63. In regulation 3.D.8(2) (re assessment of entitlement to an ill health pension determined under regulation 3.D.7)—
- (a) at the end of sub paragraph (b)(ii) omit “and”; and
  - (b) after sub paragraph (c) add—  
“; and
  - (d) the member has not become entitled to an upper tier pension in respect of any later service under regulation 3.G.5.”.

**Amendment of regulation 3.D.10**

64. In regulation 3.D.10 (general option to exchange part of pension for lump sum)—
- (a) in paragraph (7) at the start, insert “Subject to paragraphs (8) and (9),”; and
  - (b) after paragraph (7), add—

“(8) If the pension is an ill health pension under regulation 3.D.7, the option under this regulation may only be exercised by giving notice in writing to the Scottish Ministers in such form as the Scottish Ministers require—

- (a) where the member is awarded—
  - (i) a lower tier ill health pension under paragraph (2) of that regulation, at the time of claiming that lower tier ill health pension;
  - (ii) an upper tier pension under paragraph (3) of that regulation, at the time of claiming that upper tier ill health pension; or
- (b) before such later time as the Scottish Ministers specifies in writing.

(9) If the pension is an upper tier ill health pension under regulation 3.D.8, in substitution for a lower tier ill health pension under regulation 3.D.7, the option under this regulation may only be exercised—

- (a) in relation to the difference between the lower tier ill health pension that ceases to be payable in accordance with paragraph (3) of regulation 3.D.8 and the upper tier ill health pension to which the member becomes entitled under that paragraph; and
- (b) by giving notice in writing to the Scottish Ministers in such form as the Scottish Ministers require—
  - (i) at the time of award of the upper tier ill health pension under that paragraph; or
  - (ii) before such later time as the Scottish Ministers specify in writing.”.

#### **Amendment of regulation 3.D.11**

**65.** In regulation 3.D.11 (option for members in serious ill health to exchange whole pension for lump sum)—

- (a) in paragraph (1) after “active member” insert “or a non contributing member”;
- (b) in paragraph (4) after “active member” insert “or a non contributing member”; and
- (c) in paragraph (6) after “active member” insert “or a non contributing member”.

#### **Amendment of regulation 3.D.13**

**66.** In regulation 3.D.13 (pension credit member’s rights) omit paragraphs (2) and (3).

#### **Amendment of regulation 3.D.17**

**67.** In paragraphs (2)(a) and (4)(b) of regulation 3.D.17 (dual capacity membership) after “active member” insert “or a non contributing member”.

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

**68.** In regulation 3.E.1 (surviving adult dependants' pensions)—

- (a) in paragraph (1) after “active member” insert “, a non contributing member”; and
- (b) in paragraph (3) for “3.C.14(4) and 3.C.16(3)” substitute “3.C.12(4) and 3.C.14(3)”.

#### **Amendment of regulation 3.E.3**

**69.** In regulation 3.E.3 (amount of pensions under regulation 3.E.1: active members)—

- (a) in the heading after “active ” insert “and non contributing”; and
- (b) for paragraph (1), substitute–

“(1) In the case of an active member or a non contributing member, for the period of 6 months beginning with the day after the member’s death (“the initial period”) the rate of the pension payable under regulation 3.E.1 (if that amount is greater than the amount of the pension payable to the surviving adult under this Chapter apart from this paragraph), is equal to–

- (a) in the case of a deceased active member, the rate of the member’s pensionable earnings during the last complete quarter before the member’s death;
- (b) in the case of a deceased non contributing member, the monthly average of the deceased’s uprated earnings on the member’s last day of pensionable service.”.

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

**70.** For regulation 3.E.4(3) (amount of pensions under regulation 3.E.1: pensioner members) substitute–

- “(3) Any reduction made in the rate of the pension–
- (a) under Chapter 3.H (abatement) is ignored for the purposes of paragraphs (1) and (2); and
  - (b) under regulation 3.D.4 (early payment of pensions with actuarial reduction) is ignored for the purposes of paragraph (2).”.

#### **Amendment of regulation 3.E.7**

**71.** In regulation 3.E.7(3) (re employed pensioners: adult survivor pensions in initial period) for sub paragraphs (a) and (b), substitute–

- “(a) in the case of–
- (i) a deceased active member, the rate of the deceased’s pensionable earnings during the last complete quarter before the member’s death; or
  - (ii) a deceased non contributing member, the rate of the monthly average of the deceased’s uprated earnings on the member’s last day of pensionable service; and
- (b) the rate of the deceased member’s pension (if any) payable at the time of death.”.

#### **Amendment of regulation 3.E.8**

**72.** In regulation 3.E.8(10) (surviving children’s pensions) for “3.C.14(4) and 3.C.16(3)”, substitute “3.C.12(4) and 3.C.14(3)”.

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

**73.** In regulation 3.E.10 (amount of children’s pension under regulation 3.E.8: deceased active members)–

- (a) in the heading after “deceased active members” insert “and deceased non contributing members”;
- (b) in paragraph (1) after “active” insert “, or a non contributing member”;
- (c) for paragraph (3) substitute–



“(3) In this regulation “the basic death pension” means twice the appropriate proportion of the deceased member’s pension under regulation 3.D.1 and–

- (a) in the case of an active member, that pension will include the greater of–
  - (i) any increase due to such enhancement period (if any) that would have applied for the purposes of regulation 3.D.7(5) if the deceased had become entitled to an upper tier ill health pension on the date of death; and
  - (ii) 10 years' pensionable service;
- (b) in the case of a non contributing member, will be based on the pensionable service that the deceased was entitled to count on the date of death;”;
- (d) in paragraph (5) for “equal to the average rate of the member’s pensionable earnings during the complete quarter before he died.” substitute–
  - “equal to–
    - (i) in the case of a deceased active member, the average rate of the deceased’s pensionable earnings during the last complete quarter before the member died; and
    - (ii) in the case of a deceased non contributing member, the rate of the monthly average of the deceased’s uprated earnings on the member’s last day of pensionable service.”; and
- (e) for paragraph (6) substitute
  - “(6) In a case within paragraph (4)(b) or (c), the rate of pension in respect of the dependant child or children for the period of 6 months beginning with the deceased’s death is equal to–
    - (a) in the case of a deceased active member, the average rate of the deceased’s pensionable earnings during the last complete quarter before the member died;
    - (b) in the case of a deceased non contributing member, the rate of the monthly average of the deceased’s uprated earnings on the member’s last day of pensionable service.”.

#### **Amendment of regulation 3.E.11**

74. In regulation 3.E.11(1) (amount of children’s pension under regulation 3.E.8: deceased pensioner members) after “active member” insert “or a non contributing member”.

#### **Amendment of regulation 3.E.12**

75. In paragraphs (1) and (3)(a) of regulation 3.E.12 (amount of children’s pension under regulation 3.E.8: deceased deferred members) after “active member” insert “or a non contributing member”.

#### **Amendment of regulation 3.E.13**

76. In regulation 3.E.13(3) (amount of children’s pension under regulation 2.E.8: recent leavers) for sub paragraph (a), substitute–

- “(a) “the basic death pension” means twice the appropriate proportion of the pension to which the deceased would be entitled to–
  - (i) if the deceased had become entitled to a pension under regulation 3.D.7(5); or

- (ii) if greater, the amount that the member's pension would have been if it had been based on 10 years' pensionable service (disregarding any additional pension); and".

#### **Amendment of regulation 3.E.15**

77. In regulation 3.E.15 (amount of children's pension under regulation 3.E.8: re employed pensioners)–

- (a) in paragraph (1) after "active member" insert "or a non contributing member";
- (b) for paragraph (2)(a) and (b) substitute–
  - "(a) in the case of–
    - (i) a deceased active member, the rate of the deceased's pensionable earnings during the last complete quarter before the member died; or
    - (ii) a deceased non contributing member, the rate of the monthly average of the deceased's uprated earnings on the last day of the member's pensionable service; and
  - (b) the rate of the pension being received by the deceased (if any) at the date of death.";
- (c) in paragraph (5)–
  - (i) in sub paragraph (a) after "active member" insert "or a non-contributing member"; and
  - (ii) in sub paragraph (b) after "active members" insert "or non contributing members"; and
- (d) for paragraph (6)(a) substitute–
  - "(a) the service taken into account (in regulation 3.E.10(3)) for the purposes of the calculation of the amount referred to in paragraph (5)(a); and".

#### **Amendment of regulation 3.E.17**

78. In regulation 3.E.17 (amount of lump sum: single capacity members and recent leavers (disregarding regulation 3.D.5 employments))–

- (a) for paragraph (1) substitute–
  - "(1) The lump sum payable on death of an active member or a non contributing member, who is not a deferred member or a pensioner member, is an amount equal to–
    - (a) in the case of a deceased active member, twice the annual average of the member's uprated earnings at the date of death; or
    - (b) in the case of a deceased non contributing member, twice the annual average of the member's uprated earnings on the member's last day of pensionable service.";
- (b) in paragraph (2)–
  - (i) at the start insert "Subject to regulations 3.E.20A and 3.E.21,";
  - (ii) after "active member" insert "or a non contributing member"; and
  - (iii) in sub paragraph (b) for "at the date of death" substitute "by which the pension was calculated";
- (c) in paragraph (3) for "is not an active member" substitute "was not an active member or a non contributing member"; and

- (d) in paragraph (8)(a) for “is an active member” substitute “was an active member or a non contributing member”.

#### **Amendment of regulation 3.E.18**

**79.** In regulation 3.E.18 (amount of lump sum: dual capacity members (disregarding regulation 3.D.5 employments))–

- (a) in paragraph (1)–
  - (i) in sub paragraph (a) for “is an active member” substitute “was an active member or a non contributing member”; and
  - (ii) in sub paragraph (b) for “is” substitute “was”; and
- (b) in paragraph (2) for sub paragraph (a) substitute–
  - “(a) five times the annual rate of pension–
    - (i) payable under regulation 3.D.7(5) (upper tier ill health pension), if the deceased had not reached the age of 65; or
    - (ii) payable under regulation 3.D.1 (normal retirement pensions), if the deceased had reached the age of 65,
  - to which the member would have been entitled–
    - (aa) in the case of a deceased active member, at the member’s date of death; or
    - (bb) in the case of a deceased non contributing member, on the last day of the member’s pensionable service; and”.

#### **Amendment of regulation 3.E.19**

**80.** In regulation 3.E.19 (amount of lump sum: dual capacity members: members with pensions under regulation 3.D.5)–

- (a) in paragraph (1)–
  - (i) in sub paragraph (a) for “is an active member” substitute “was an active member or a non contributing member”; and
  - (ii) in sub paragraph (b) for “is” substitute “was”;
- (b) for paragraph (2) substitute–
  - “(2) The lump sum is an amount–
    - (a) equal to the sum of–
      - (i) in the case of a deceased active member, twice the appropriate fraction of the annual average of the member’s uprated earnings at the date of death;
      - (ii) in the case of a deceased non contributing member, twice the appropriate fraction of the annual average of the member’s uprated earnings at the member’s last day of pensionable service; and”;
- (c) in paragraph (5) (in the definition of “DPS”) after “active member” insert “or a non contributing member”.

#### **Amendment of regulation 3.E.25**

**81.** At the end of regulation 3.E.25(5)(h) omit “and”.

### **Amendment of regulation 3.F.8**

**82.** At the end of regulation 3.F.8(2)(d omit “and”.

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

**83.** In regulation 3.G.5 (re employed lower tier ill health pensioners)–

- (a) in paragraph (4) at the start insert “Subject to paragraph (5),”; and
- (b) after paragraph (4) add–

“(5) If the re employed member–

- (a) ceases to be entitled to a lower tier ill health pension in respect of the earlier service;
- (b) becomes entitled to an upper tier ill health pension in respect of that earlier service in accordance with regulation 3.D.8(3); and
- (c) on the termination of the later service, the member becomes entitled to a lower tier or, as the case may be, upper tier ill health pension in respect of that later service,

the re employed member is entitled to the benefits set out in paragraph (6).

(6) The benefits mentioned in paragraph (5) are–

- (a) an upper tier ill health pension paid in accordance with regulation 3.D.7 in respect of the member’s earlier service; and
- (b) a lower tier ill health pension in respect of the member’s later service.”.

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

**84.** In regulation 3.J.5(2) (commutation of small pensions) omit sub paragraph (d).

### **Amendment of regulation 3.J.9**

**85.** In regulation 3.J.9 (interest on late payment of benefits and refunds of contributions)–

- (a) in paragraph (2) after “interim” insert “or substitute”;
- (b) for paragraph (3) substitute–

“(3) The Scottish Ministers must pay interest on the amount of a pension, lump sum, refund of contributions or an interim or substitute award which is unpaid (“the unpaid amount”) to the person to whom it should have been paid unless the Scottish Ministers are satisfied that the unpaid amount was not paid on the due date because of some act or omission on the part of the member or other person to whom it should have been paid.”;

- (c) in paragraph (5) after “unpaid amount” insert “(other than an unpaid amount in respect of an interim or substitute award)”;

(d) for paragraph (6) substitute–

“(6) The due date for an unpaid amount–

- (a) referred to in paragraph (5) in respect of which the Scottish Ministers were not in possession of all the information necessary for the calculation of the amount of the pension, lump sum or refund of contributions referred to in that paragraph on the date which would, in accordance with paragraph (5) be the due date;
- (b) in respect of an interim or substitute award,

shall be the first day on which the Scottish Ministers were in possession of all the information necessary to calculate that pension, lump sum, refund of contributions or interim or substitute award.”; and

- (e) in paragraph (7)–
  - (i) for “interim award” substitute “interim or substitute award”;
  - (ii) at the end of sub paragraph (a) omit “and”; and
  - (iii) at the end of sub paragraph (b) add–
    - “; and
    - (c) any amount paid that increases the amount of an earlier payment due to the payment of an upper tier ill health pension under regulation 3.D.7 paid to a member in substitution for a lower tier ill health pension under that regulation following a determination by the Scottish Ministers under regulation 3.D.8.”.

### **Amendment of regulation 3.J.13**

**86.** For regulation 3.J.13 (employing authority and certain member record keeping and contribution estimates) substitute–

#### **“Employing authority and certain member record keeping and contribution estimates**

**3.J.13.**—(1) As regards a principal medical practitioner, in respect of each scheme year, the member shall provide the contracting Health Board or someone appointed on its behalf with a certificate of their pensionable earnings based on–

- (a) the accounts drawn up in accordance with generally accepted accounting practice by the practice of which the member is a member; and
- (b) the return that member has made to Her Majesty’s Revenue & Customs in respect of their earnings for that year,

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

(2) As regards an assistant practitioner or salaried GP, in respect of each scheme year, the member shall provide each employing authority with a certificate of their pensionable earnings based on–

- (a) the payments they receive from all employing authorities for practitioner services; and
- (b) the return that member has made to Her Majesty’s Revenue & Customs in respect of their earnings for that year,

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

(3) In relation to a member who is an assistant practitioner or a salaried GP–

- (a) in respect of each scheme year, and in order that a correct contribution tier can be allocated to the member, the member will be required to provide each employer with a an estimate of pensionable practitioner earnings from all employments and to provide a copy of this information to the scheme administrator;
- (b) at the end of each scheme year, the member will be required to provide the Scottish Ministers with verification from each employer of actual pensionable practitioner

earnings from all employments and to provide a copy of this information to the scheme administrator; and

(c) the information required in sub paragraphs (a) and (b) shall be in such form as the Scottish Ministers require.

(4) All employing authorities shall, for each scheme year–

(a) provide the Scottish Ministers with a statement of estimated total contributions due to the Scheme under regulation 3.C.1 (contributions by members) and 3.C.3 (contributions by employing authorities: general); and

(b) maintain records of contributions to the scheme made under regulation 3.C.1 and regulation 3.C.3.

(5) The statement referred to in paragraph (4)(a) shall be provided to the Scottish Ministers no later than 2 months after the end of each scheme year.

(6) Except where the Scottish Ministers waive such requirement, an employing authority shall provide the Scottish Ministers with a statement of contributions to the scheme recorded in accordance with paragraph (4)(b) no later than 2 months after the end of each scheme year.

(7) Subject to paragraph (10), if, in respect of a scheme year, a member has failed to comply with the requirements of whichever of paragraphs (1) to (4) applies to that member, the member’s pensionable earnings for that scheme year shall be zero.

(8) If, in respect of a scheme year–

(a) a member has failed to comply with the requirements of whichever of paragraphs (1) to (4) applies to the member;

(b) a benefit is payable to, or in respect of that member, under this Part of these Regulations; and

(c) the member’s employing authority is in possession of a figure representing all or part of the member’s pensionable earnings for that year,

the Scottish Ministers may treat that figure as the amount of the member’s pensionable earnings for that year.

(9) If, in respect of a scheme year, a member–

(a) dies without complying with the requirements of whichever of paragraphs (1) to (4) applies to the member; or

(b) is, in the opinion of the Scottish Ministers, unable to look after the member’s own affairs by reason of illness or mental disorder,

the Scottish Ministers may require that member’s personal representatives to provide the relevant certificate–

(i) within the period referred to in whichever of paragraphs (1) to (4) was or is applicable to the member; or

(ii) within such other period as the Scottish Ministers permit.

(10) The certificates and statements referred to in this regulation–

(a) shall be in such form as the Scottish Ministers shall from time to time require;

(b) shall be provided to the Scottish Ministers in such manner as the Scottish Ministers may from time to time permit.”.