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SCOTTISH STATUTORY INSTRUMENTS

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**2013 No. 109**

**NATIONAL HEALTH SERVICE**

**The National Health Service Superannuation Scheme etc.  
(Miscellaneous Amendments) (Scotland) Regulations 2013**

<i>Made</i>	- - - -	<i>22nd March 2013</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>27th March 2013</i>
<i>Coming into force</i>	- -	<i>20th May 2013</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 10 and 12 of, and Schedule 3 to, the Superannuation Act 1972<sup>(1)</sup> and of all other powers enabling them to do so.

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

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

**PART 1**

**GENERAL**

**Citation, commencement and effect**

**1.—(1)** These Regulations may be cited as the National Health Service Superannuation Scheme etc. (Miscellaneous Amendments) (Scotland) Regulations 2013.

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(1) 1972 c.11. Section 10 was amended by Schedule 5 to the National Health Service Reorganisation Act 1973 (c.32), Schedule 7 to the National Health Service (Scotland) Act 1972 (c.58), sections 4(2) and 8(5) and (6) of the Pensions (Miscellaneous Provisions) Act 1990 (c.7), paragraph 7 of Schedule 8 to the Pension Schemes Act 1993 (c.48) and by S.I. 2001/3649. The function of the Minister to consent in section 10(1) was transferred to the Treasury by S.I. 1981/1670. Section 12 was amended by section 10 of the Pensions (Miscellaneous Provisions) Act 1990 (c.7). The functions conferred on the Secretary of State by sections 10 and 12, so far as exercisable in or as regards Scotland and subject to the requirement in section 10(1) for consent of the Treasury, were transferred to Scottish Ministers by article 2 of S.I. 1999/1750. By virtue of article 6 of S.I. 1999/1750 and paragraph 2 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10), regulations made by the Scottish Ministers under sections 10 and 12 are subject to the negative procedure.

- (2) These Regulations come into force on 20th May 2013 and, except as provided in paragraphs (3) to (8), have effect from that date<sup>(2)</sup>.
- (3) Regulations 30, 39, 40, 48, 49(c), 50, 57, 58 and 65 have effect from 1st April 2008.
- (4) Regulations 12, 13, 14, 20 and 21 have effect from 1st April 2011.
- (5) Regulation 15 has effect from 6th April 2012.
- (6) Regulations 3 to 8, 16, 17, 29, 31, 32, 49(a), (b), (d) and (e), 52 and 53 have effect from 1st January 2013.
- (7) Regulations 67 to 70 have effect from 31st March 2013.
- (8) Regulations 9, 10, 11, 23, 24, 25, 27, 28, 33, 34, 35, 38, 41 to 46, 54 and 59 to 63 have effect from 1st April 2013.

## PART 2

### AMENDMENT OF THE NATIONAL HEALTH SERVICE SUPERANNUATION SCHEME (SCOTLAND) REGULATIONS 2011

#### **Amendments to the National Health Service Superannuation Scheme (Scotland) Regulations 2011**

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

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

3. In regulation A2(4) (interpretation)—

(a) after “the 2004 Act” in column 1 and the corresponding meaning in column 2 insert—

“the 2008 Act”	The Pensions Act 2008 <sup>(4)</sup> ;
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(b) after “the 2008 Section” in column 1 and the corresponding meaning in column 2 insert—

“the 2010 Regulations”	The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 <sup>(5)</sup> ;
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(c) after “assistant practitioner” in column 1 and the corresponding meaning in column 2 insert—

“automatic enrolment date”	The date referred to in section 3(7) of the 2008 Act;
“automatic re-enrolment date”	The date determined in accordance with regulation 12 of the 2010 Regulations (as modified by regulation 14 of those Regulations <sup>(6)</sup> ); and

(d) for “pay period” in column 1 and the corresponding meaning in column 2 substitute—

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(2) Section 12(1) of the Superannuation Act 1972 provides that regulations may be framed so as to have retrospective effect.  
(3) S.S.I. 2011/117 as amended by S.S.I. 2011/173 and 364 and 2012/69 and 163.  
(4) 2008 c.30.  
(5) S.I. 2010/772.  
(6) Regulation 14 was substituted by regulations 17 and 22 of S.I. 2012/215.

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““pay period”	In relation to members who receive either salary, wages or other regular payments under a contract of employment or a contract for services, the period in respect of which each payment is made in accordance with the terms of that contract;”.
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#### **Amendment of regulation B1**

4. For regulation B1(2) (membership of this Section of the scheme) substitute—
- “(2) Subject to paragraph (3), each eligible person will be included in this Section of the scheme—
- (a) automatically on commencing NHS employment;
  - (b) subject to regulation B5(3), where the person has previously opted out of this Section of the scheme and has given notice in accordance with regulation B5(1), on the date determined under paragraph (2) of that regulation;
  - (c) subject to regulation B5(3), where the person has previously opted out of this Section of the scheme and is a person to whom section 3 or section 5 of the 2008 Act applies—
    - (i) on that person’s automatic enrolment date; or
    - (ii) on that person’s automatic re-enrolment date, except where the notice referred to in regulation B4(1) was given within the period of 12 months immediately preceding that date.”.

#### **Amendment of regulation B2**

5. In regulation B2(1) (age limits and restrictions on membership)—
- (a) in sub-paragraph (k)(ii), for “paragraphs (1) or (2)” substitute “paragraph (1)”;
  - (b) in sub-paragraphs (l)(ii), (m)(ii), (n)(ii) and (o)(ii), omit “or (2)”; and
  - (c) in sub-paragraph (l)(iii)(bb), for “(6)” substitute “(7)”.

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

6. In regulation B4 (opting out of this Section of the scheme)—
- (a) omit paragraphs (2) to (4);
  - (b) for paragraph (5) substitute—

“(5) A notice referred to in paragraph (1) takes effect—

    - (a) from the first day of the pay period immediately following its receipt by the employing authority; or
    - (b) where a later date is specified in the notice, from the first day of the pay period following the pay period in which the specified date falls.”;
  - (c) for paragraph (7) substitute—

“(7) A person who opts out of this Section of the scheme under paragraph (1) within one month of the date of commencing NHS employment is to be treated as never having been included in this Section of the scheme in respect of that opt out and, if applicable, any contributions made by, or on behalf of, that person before the opt out took effect must be refunded.”;

- (d) for paragraph (8) substitute—
- “(8) A notice under paragraph (1) ceases to have effect on the day immediately preceding, as the case may be, the person’s—
- (a) automatic enrolment date; or
- (b) automatic re-enrolment date: this does not apply where the notice was given within the period of 12 months immediately preceding that date.”; and
- (e) after paragraph (9) insert—
- “(10) This regulation and regulation B5 do not apply to a person to whom section 3, 5 or 8 of the 2008 Act(7) and regulation 9 or 15 of the 2010 Regulations(8) apply (that is, a person who is subject to automatic enrolment or automatic re-enrolment in this Section of the scheme as a qualifying scheme who does not wish to participate in it): this paragraph does not affect the rights of such a person who subsequently becomes a member of this Section of the scheme in circumstances where those provisions of the 2008 Act and 2010 Regulations do not apply.”.

#### **Amendment of regulation B5**

7. In regulation B5 (rejoining this Section of the scheme)—
- (a) in paragraph (1)—
- (i) for “paragraphs (3) and (4), a member” substitute “paragraph (3), a person”; and
- (ii) before “rejoin” insert “join or”;
- (b) in paragraph (2), for “member” substitute “person”;
- (c) for paragraphs (3) and (4) substitute—
- “(3) A person who has opted out may not rejoin this Section of the scheme during any period of absence from work for any reason.”; and
- (d) for the heading to the regulation substitute—

*“Joining or rejoining this Section of the scheme after opting out”.*

#### **Amendment of regulation B6**

8. In regulation B6 (opting into this Section of the scheme: mis-sold pensions)—
- (a) in paragraph (2), before “rejoin” insert “join or”; and
- (b) in paragraph (3), before “rejoin” insert “join or”.

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

9. For regulation D1(4) (contributions by members) substitute—
- “(4) Before determining those pensionable pay bands or contribution percentage rates under paragraph (3), the Scottish Ministers must consider the advice of the scheme actuary.”.

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(7) Section 3 makes provision for the automatic enrolment of a qualifying worker into a qualifying scheme like the NHS Superannuation Scheme for Scotland. Section 5 makes provision for the automatic re-enrolment of such a person into such a scheme who has previously opted out of it. Section 8 makes provision for the opting out of such a scheme, including the effect of such an opt out.

(8) Regulation 9 sets out the requirements for a valid opt out notice and the time period during which a person who has been automatically enrolled into a qualifying scheme may opt out of it. Regulation 15 applies the provisions of regulation 9 to a person who has been automatically re-enrolled into a qualifying scheme having previously opted out of it. Note that regulation 11 deals with the refund of contributions following an opt out.

### **Amendment of regulation D2**

**10.** In regulation D2 (contributions and other payments by employing authorities)—

- (a) in paragraph (7A), at the end insert (as full out words) “This is subject to paragraph (7B).”; and
- (b) after paragraph (7A) insert—

“(7B) Where the member leaves pensionable employment on or after 1st April 2013, any additional contributions that are due to the Scottish Ministers under paragraph (5) (a), in respect of a pension payable under regulation E7, and paragraph (5)(b), (d) and (e) may only be paid by a single payment of an amount determined by the Scottish Ministers on the advice of the scheme actuary: that payment must be made within one month of the date on which the pension under regulation E7 became payable.”.

### **Amendment of regulation E7**

**11.** For regulation E7(2) (early retirement pension (redundancy etc. new starters and post transition)) substitute—

“(2) Those conditions are that—

- (a) the member has two years’ qualifying service and has attained normal minimum pension age or, where relevant, protected pension age;
- (b) the member’s employing authority certifies—
  - (i) that the member has at least two years’ continuous employment determined in accordance with any terms and conditions applying to that employment; and
  - (ii) if the member’s employment is terminated by reason of redundancy, that the member is entitled to claim a pension under this regulation as an alternative to receiving the lump sum payment (in whole or in part) otherwise payable to him in accordance with those terms and conditions;
- (c) the member’s employing authority does not certify that the member has unreasonably refused to seek suitable alternative employment or accept an offer of such employment;
- (d) the Scottish Ministers certify—
  - (i) that the member’s employment is terminated by reason of redundancy; or
  - (ii) with the agreement of the employing authority, that the member’s employment is terminated in the interests of the efficiency of the service in which the member is employed; and
- (e) the member makes a claim for the pension referred to in this regulation.”.

### **Amendment of regulation G6**

**12.** After regulation G6(3) (widow’s pension when member marries after leaving pensionable employment) insert—

“(4) Where the nominated partner referred to in G14 (surviving nominated partner’s pension) becomes the member’s widow on the member’s death, the widow’s pension will, if it would be more beneficial to the widow, be equal to the nominated partner pension that would have been payable if the widow and the member had not been married to each other.”.

#### **Amendment of regulation G14**

13. In regulation G14(5) (surviving nominated partner's pension)—

- (a) after "other" insert "during any period of pensionable employment"; and
- (b) for "was not effective" substitute "becomes effective after all pensionable employment has ceased".

#### **Amendment of regulation H4**

14. For regulation H4(5) (child allowance when member dies after pension becomes payable) substitute—

"(5) If the member dies leaving a dependent child and there is no surviving parent (or spouse, civil partner or nominated partner of a parent) the allowance—

- (a) for the period of 6 months beginning with the member's death, will be the greater of—
  - (i) the amount of the member's pension calculated without regard to any reduction made under regulation S2 (reduction of pension on return to NHS employment); and
  - (ii) the amount of child allowance that would otherwise be payable under these Regulations; and
- (b) following the period referred to in sub-paragraph (a), will be equal to—
  - (i) one-third of the pension described in paragraph (2) if there is only one dependent child; and
  - (ii) two-thirds of the pension described in paragraph (2) if there are two or more dependent children."

#### **Amendment of regulation K6**

15. In regulation K6(1) (protected rights transferred to this Section of the scheme), after "Where" insert ", before 6th April 2012,".

#### **Amendment of regulation N1**

16. In regulation N1(3)(b) (member's right to transfer accrued rights to benefits to this Section of the scheme), for "(rejoining this Section of the scheme)" substitute "(joining or rejoining this Section of the scheme after opting out)".

#### **Amendment of regulation N5**

17. In the heading to regulation N5, for "rejoin this Section of the scheme" insert "join or rejoin this Section of the scheme after opting out".

#### **Amendment of regulation Q13**

18. In regulation Q13 (cancellation and cessation of options under regulation Q8)—

- (a) in paragraph (4), after "such an option" insert "in accordance with paragraph (3)"; and
- (b) after paragraph (4) insert—

"(5) If, after the exercise of the option under regulation Q8, the Scottish Ministers have reasonable grounds to believe that the member's health will prevent the member

from paying contributions for the whole contribution period, the Scottish Ministers may cancel the option by giving the member notice in writing.

(6) If the Scottish Ministers cancel such an option in accordance with paragraph (5), the additional periodical contributions cease to be payable for the first pay period beginning after the date specified in the notice and all subsequent pay periods and any periodical payments made before the date of cancellation must be returned to the member.”.

### **Amendment of regulation Q15**

**19.** In regulation Q15 (effect of death or early payment of pension after option exercised under regulation Q8, Q10 or Q11), in paragraphs (2) and (4), at the beginning insert “Subject to regulation Q13(5) and (6).”.

### **Amendment of regulation S1**

**20.** In regulation S1(5) (suspension of pension on return to NHS employment)—

- (a) at the end of sub-paragraph (b) omit “and”; and
- (b) after sub-paragraph (c) insert—

“(d) employment with an employer with whom an agreement has been made under section 235 of the National Health Service Act 2006(9); and

(e) employment with an employer in respect of whom a direction has been made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967(10).”

### **Amendment of regulation S2**

**21.** In regulation S2 (reduction of pension on return to NHS employment)—

- (a) in paragraph (9), for “Subject to paragraph (10), a” substitute “A”;
- (b) omit paragraph (10); and
- (c) in paragraph (12), after “paragraph (4)” insert “or (5)”.

### **New regulation T1A**

**22.** After regulation T1 (claims for benefits) insert—

#### **“Provision of information: continuing entitlement to benefit**

**T1A.**—(1) The Scottish Ministers may specify a date by which a person who is in receipt of a benefit under this Section of the scheme is to provide the Scottish Ministers with all or any of the following material—

- (a) evidence of the person’s identity;
- (b) the person’s contact details; and
- (c) evidence of the person’s continuing entitlement to the benefit.

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(9) 2006 c.41.

(10) 1967 c.28. Section 7 was amended by S.I. 1968/1699, section 10(5) of, and paragraph 66 of Schedule 6 and Schedule 8 to, the Superannuation Act 1972 (c.11), Schedule 5 to the National Health Service Reorganisation Act 1973 (c.32), paragraph 24 of Schedule 16 to the National Health Service (Scotland) Act 1978 (c.29) and paragraph 29 of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006 (c.43).

(2) Where a person fails to provide the material referred to in paragraph (1) in accordance with that paragraph the Scottish Ministers may withhold all, or any part of, any benefit payable to that person.”.

#### **Amendment of regulation U3**

23. Omit regulation U3(3) to (6) (accounts and actuarial reports) and, in the heading to that regulation, omit “and actuarial reports”.

#### **Revocation of regulation U4**

24. Omit regulation U4 (cost sharing).

#### **Amendment of Schedule 1**

25. In Schedule 1 (medical and dental practitioners), for paragraph 14(5) substitute—  
“(5) Before determining those pensionable earnings bands or contribution percentage rates, the Scottish Ministers must consider the advice of the scheme actuary.”.

## **PART 3**

### **AMENDMENT OF THE NATIONAL HEALTH SERVICE PENSION SCHEME (SCOTLAND) REGULATIONS 2008**

#### **Amendments to the National Health Service Pension Scheme (Scotland) Regulations 2008**

26. The National Health Service Pension Scheme (Scotland) Regulations 2008(11) are amended in accordance with this Part.

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

27. Omit regulation 1.B.1(4), (5) and (6) (actuarial reports and accounts), and in the heading to that regulation, for “Actuarial report and accounts” substitute “Accounts”.

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

28. Omit regulation 1.B.2 (cost sharing).

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

29. In regulation 2.A.1(1) (interpretation: general)—  
(a) after the definition of “the 2006 (Wales) Act” insert—  
    ““the 2008 Act” means the Pensions Act 2008(12);”;  
(b) after the definition of “the 2008 Section Optant” insert—  
    ““the 2010 Regulations” means the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010(13);”;

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(11) S.S.I. 2008/224 amended by S.S.I. 2009/19 and 208, 2010/22 and 369, 2011/53 and 364 and 2012/69 and 163 and S.I. 2010/234.

(12) 2008 c.30.

(13) S.I. 2010/772.



- (c) after the definition of “additional services” insert—
- ““automatic enrolment date” means the date referred to in section 3(7) (automatic enrolment) of the 2008 Act;
- “automatic re-enrolment date” means the date determined in accordance with regulation 12 (opting out) of the 2010 Regulations (as modified by regulation 14 (jobholders excluded from automatic re-enrolment) of those Regulations<sup>(14)</sup>);”;
- and
- (d) for the definition of “pay period” substitute—
- ““pay period” means, in relation to members who receive either salary, wages or other regular payments under a contract of employment or a contract for services, the period in respect of which each payment is made in accordance with the terms of that contract;”.

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

- 30.** In regulation 2.A.6(6) (qualifying service: disregard of breaks in service)—
- (a) for “Paragraphs (2), (4) and (5) do not apply if” substitute “Where”;
- (b) in sub-paragraph (a), after “the earlier period” insert “, paragraphs (4) and (5) do not apply”; and
- (c) in sub-paragraph (b), after “made” insert “, paragraphs (2), (4) and (5) do not apply”.

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

- 31.** In regulation 2.B.4 (joining this Section of the scheme)—
- (a) for paragraph (1) substitute—
- “(1) Subject to paragraph (3), a person in NHS employment who is eligible to be an active member of this Section of the scheme, becomes such a member, unless absent from work for any reason, on either—
- (a) the commencement of the person’s employment; or
- (b) where the person has previously opted out of this Section of the scheme under regulation 2.B.5(1) and is a person to whom section 3 or section 5 of the 2008 Act applies, on that person’s—
- (i) automatic enrolment date, or
- (ii) automatic re-enrolment date, except where the notice referred to in regulation 2.B.5(1) was given within the period of 12 months immediately preceding that date.”;
- (b) for paragraph (3) substitute—
- “(3) A person who has previously exercised an option to opt out of this Section of the scheme in accordance with regulation 2.B.5(1) in respect of an employment in which that person was an active member, and who remains eligible to be an active member in respect of that employment, may opt to join or re-join this Section of the scheme by giving notice in writing to the employing authority in such form as the Scottish Ministers require.”; and
- (c) omit paragraph (6).

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<sup>(14)</sup> Regulation 14 was substituted by regulations 17 and 22 of [S.I. 2012/215](#).

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

**32.** In regulation 2.B.5 (opting out of this Section of the scheme)—

- (a) in paragraph (1), after “scheme in any” insert “NHS”; and
- (b) for paragraphs (4) to (6) substitute—

“(4) A person to whom paragraph (1)(a) of regulation 2.B.4 applies in respect of an employment who gives notice in writing under paragraph (1) of this regulation within one month of the date of commencing that NHS employment, is to be treated as not having become an active member by virtue of that regulation.

(5) A notice under paragraph (1) ceases to have effect on the day immediately preceding, as the case may be, the person’s—

- (a) automatic enrolment date; or
- (b) automatic re-enrolment date: this does not apply where the notice was given within the period of 12 months immediately preceding that date.

(6) This regulation does not apply to a person to whom section 3, 5 or 8 of the 2008 Act<sup>(15)</sup> and regulation 9 or 15 of the 2010 Regulations<sup>(16)</sup> apply (that is, a person who is subject to automatic enrolment or automatic re-enrolment in this Section of the scheme as a qualifying scheme who does not wish to participate in it): this paragraph does not affect the rights of such a person who subsequently becomes a member of this Section of the scheme in circumstances where those provisions of the 2008 Act and 2010 Regulations do not apply.”.

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

**33.** For regulation 2.C.2(4) (contribution rate for members other than non-GP providers) substitute—

“(4) Before determining those pensionable pay bands or contribution percentage rates, the Scottish Ministers must consider the advice of the scheme actuary.”.

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

**34.** For regulation 2.C.4(4) (contribution rate and determination of pensionable earnings for non-GP providers) substitute—

“(4) Before determining those pensionable pay bands or contribution percentage rates, the Scottish Ministers must consider the advice of the scheme actuary.”.

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

**35.** After regulation 2.C.6(4) (contributions by employing authorities: members becoming entitled to pensions under regulation 2.D.11)<sup>(17)</sup> insert—

“(4A) Paragraph (4)(b) does not apply where the member leaves the employment in which the member was an active member on or after 1st April 2013.”.

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<sup>(15)</sup> Section 3 makes provision for the automatic enrolment of a qualifying worker into a qualifying scheme like the NHS Superannuation Scheme for Scotland. Section 5 makes provision for the automatic re-enrolment of such a person into such a scheme who has previously opted out of it. Section 8 makes provision for the opting out of such a scheme, including the effect of such an opt out.

<sup>(16)</sup> Regulation 9 sets out the requirements for a valid opt out notice and the time period during which a person who has been automatically enrolled into a qualifying scheme may opt out of it. Regulation 15 applies the provisions of regulation 9 to a person who has been automatically re-enrolled into a qualifying scheme having previously opted out of it. Note that regulation 11 deals with the refund of contributions following an opt out.

<sup>(17)</sup> Paragraph (4) was re-numbered by regulation 21 of *S.S.I. 2010/22*.

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

**36.** In regulation 2.C.13 (cancellation of options under regulation 2.C.8)—

- (a) in paragraph (4), after “such an option” insert “in accordance with paragraph (3)”; and
- (b) after paragraph (4) insert—

“(5) If, after the exercise of the option under regulation 2.C.8, the Scottish Ministers have reasonable grounds to believe that the member’s health will prevent the member from paying contributions for the whole contribution period, the Scottish Ministers may cancel the option by giving the member notice in writing.

(6) If the Scottish Ministers cancel such an option in accordance with paragraph (5), the additional periodical contributions cease to be payable for the first pay period beginning after the date specified in the notice and all subsequent pay periods and any periodical payments made before the date of cancellation must be returned to the member.”.

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

**37.** In regulation 2.C.15(4) (effect of death or early payment of pension after option exercised under regulation 2.C.8, 2.C.10 or 2.C.11), at the beginning, insert “Subject to regulation 2.C.13(5) and (6),”.

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

**38.** For regulation 2.D.11(1)(c) (early retirement on termination of employment by employing authority) substitute—

- “(c) the member’s employing authority certifies that the member—
  - (i) has at least two years’ continuous employment determined in accordance with any terms and conditions applying to the employment;
  - (ii) is entitled to claim a pension under this regulation if the member’s employment is terminated by reason of redundancy as an alternative to receiving the lump sum payment (in whole or in part) otherwise payable to the member in accordance with those terms and conditions; and
  - (iii) has not unreasonably refused to seek suitable alternative employment or accept an offer of such employment;”.

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

**39.** For regulation 2.E.11(6) (amount of children’s pension under regulation 2.E.8: deceased pensioner members) substitute—

“(6) In a case within paragraph (4)(b) or (c), the rate of the pension in respect of the dependent child or children for the period of 6 months beginning with the deceased’s death is equal to the greater of—

- (a) the rate of the member’s pension at the date of death disregarding any reduction made under Chapter 2.H (abatement) and any additional pension; and
- (b) the amount of children’s pension that would otherwise be payable under these Regulations.”.

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

**40.** Omit regulation 2.H.1(5) (application of Chapter 2.H).

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

41. In regulation 2.H.3 (reduction of pension)—

- (a) in paragraphs (1) and (2), for “scheme year” substitute “financial year”; and
- (b) for paragraphs (6) and (7) substitute—

“(6) For the purpose of calculating the reduction to be made under paragraph (1) in respect of any part of a financial year, the amount of the member’s previous pay will be reduced proportionately.”.

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

42. In regulation 2.H.4 (meaning of “relevant income”) for “scheme year”, in both places it occurs, substitute “financial year”.

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

43. In regulation 2.H.5 (meaning of “previous pay”: general) for “scheme year”, in each of the three places it occurs, substitute “financial year”.

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

44. In regulation 2.H.6 (meaning of “previous pay”: members with concurrent employments) for “scheme year”, in each of the four places it occurs, substitute “financial year”.

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

45. In regulation 2.H.8 (employed pensioners with more than one pension) for “scheme year”, in each of the four places it occurs, substitute “financial year”.

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

46. In regulation 2.H.9 (provisional reductions and later adjustments) for “scheme year”, in each of the eight places it occurs, substitute “financial year”.

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

47. After regulation 2.J.2 (claims for benefits) insert—

#### **“Provision of information: continuing entitlement to benefit**

**2.J.2A.**—(1) The Scottish Ministers may specify a date by which a person who is in receipt of a benefit under this Section of the scheme is to provide the Scottish Ministers with all or any of the following material—

- (a) evidence of the person’s identity;
- (b) the person’s contact details; and
- (c) evidence of the person’s continuing entitlement to the benefit.

(2) Where a person fails to provide the material referred to in paragraph (1) in accordance with that paragraph the Scottish Ministers may withhold all, or any part, of any benefit payable to that person.”.

### **Amendment of 2.J.11**

**48.** In regulation 2.J.11 (general prohibition on unauthorised payments), for “rules” substitute “Regulations”.

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

**49.** In regulation 3.A.1 (interpretation of Part 3: general)—

(a) after the definition of “the 2004 Act” insert—

““the 2008 Act” means the Pensions Act 2008<sup>(18)</sup>”;

(b) after the definition of “2008 Section Optant” insert—

““the 2010 Regulations” means the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010<sup>(19)</sup>”;

(c) for the definition of “appropriate proportion” substitute—

““appropriate proportion” means 70/187”;

(d) after the definition of “appropriate proportion” insert—

““automatic enrolment date” means the date referred to in section 3(7) (automatic enrolment) of the 2008 Act;

“automatic re-enrolment date” means the date determined in accordance with regulation 12 (opting out) of the 2010 Regulations (as modified by regulation 14 (jobholders excluded from automatic re-enrolment) of those Regulations<sup>(20)</sup>”;

and

(e) for the definition of “pay period” substitute—

““pay period” means, in relation to members who receive either salary, wages or other regular payments under a contract of employment or a contract for services, the period in respect of which each payment is made in accordance with the terms of that contract”.

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

**50.** In regulation 3.A.6 (qualifying service: disregard of breaks in service)—

(a) in paragraph (6)—

(i) for “Paragraphs (2), (4) and (5) do not apply if” substitute “Where”;

(ii) in sub-paragraph (a), after “the earlier period” insert “, paragraphs (4) and (5) do not apply”; and

(iii) in sub-paragraph (b), after “made” insert “, paragraphs (2), (4) and (5) do not apply”; and

(b) in paragraph (7), for “(6)(b)” substitute “(6)(a)”.

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

**51.** In regulation 3.A.8 (pensionable earnings: breaks in service), after paragraph (10) insert—

“(11) Before a calculation of a member’s pensionable earnings can be made in accordance with paragraph (3), written notice of the length of the period of absence to which this regulation applies must be given to the Scottish Ministers by—

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<sup>(18)</sup> 2008 c.30.

<sup>(19)</sup> S.I. 2010/772.

<sup>(20)</sup> Regulation 14 was substituted by regulations 17 and 22 of S.I. 2012/215.

- (a) the member, where the member is a principal practitioner or a non GP provider; or
- (b) in all other cases, the relevant Health Board or someone appointed to act on their behalf.

(12) The notice referred to in paragraph (11) must be provided to the Scottish Ministers in such form and manner as the Scottish Ministers may stipulate from time to time.”.

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

**52.** In regulation 3.B.4 (joining this Section of the scheme)—

(a) for paragraph (1) substitute—

“(1) Subject to paragraph (3), a person in NHS employment who is eligible to be an active member of this Section of the scheme becomes such a member, unless absent from work for any reason, on either—

- (a) the commencement of the person’s employment; or
- (b) in circumstances where the person has previously opted out of this Section of the scheme under regulation 3.B.5(1), on that person’s—
  - (i) automatic enrolment date; or
  - (ii) automatic re-enrolment date, except where the notice referred to in regulation 3.B.5(1) was given within the period of 12 months immediately preceding that date.”;

(b) for paragraph (3) substitute—

“(3) A person who previously exercised an option to opt out of this Section of the scheme in accordance with regulation 3.B.5(1) in respect of an employment in which that person was an active member, and who remains eligible to be such a member in respect of that employment, may opt to join or rejoin this Section of the scheme by giving notice in writing to the employing authority in such form as the Scottish Ministers require.”; and

(c) omit paragraph (6).

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

**53.** In regulation 3.B.5 (opting out of this Section of the scheme)—

(a) in paragraph (1), after “scheme in any” insert “NHS”;

(b) for paragraph (2) substitute—

“(2) A person who opts out under paragraph (1) ceases to be an active member of this Section of the scheme on the date the notice takes effect and, if applicable, any contributions made by or on behalf of the person for a period of membership after the date on which the notice was effective must be refunded.”;

(c) for paragraphs (4) and (5) substitute—

“(4) A person to whom paragraph (1)(a) of regulation 3.B.4 applies in respect of an employment who gives notice in writing under paragraph (1) of this regulation within one month of the date of commencing that NHS employment, is to be treated as not having become an active member by virtue of that regulation.

(5) A notice under paragraph (1) ceases to have effect on the day immediately preceding, as the case may be, the person’s—

- (a) automatic enrolment date; or

- (b) automatic re-enrolment date: this does not apply where the notice was given within the period of 12 months immediately preceding that date.”;
- (d) omit paragraph (6);
- (e) in paragraph (7), after “Part 2” insert “or as a locum practitioner”; and
- (f) after paragraph (7), insert—

“(8) This regulation does not apply to a person to whom section 3, 5 or 8 of the 2008 Act(21) and regulation 9 or 15 of the 2010 Regulations(22) apply (that is, a person who is subject to automatic enrolment or automatic re-enrolment in this Section of the scheme as a qualifying scheme who does not wish to participate in it): this paragraph does not affect the rights of such a person who subsequently becomes a member of this Section of the scheme in circumstances where those provisions of the 2008 Act and 2010 Regulations do not apply.”.

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

54. For regulation 3.C.2(4) (members’ contribution rate) substitute—

“(4) Before determining those pensionable earnings bands or contribution percentage rates, the Scottish Ministers must consider the advice of the scheme actuary.”.

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

55. In regulation 3.C.11 (cancellation of options under regulation 3.C.8)—

- (a) in paragraph (4), after “such an option” insert “in accordance with paragraph (3)”; and
- (b) after paragraph (4) insert—

“(5) If, after the exercise of the option under regulation 3.C.8, the Scottish Ministers have reasonable grounds to believe that the member’s health will prevent the member from paying contributions for the whole contribution period, the Scottish Ministers may cancel the option by giving the member notice in writing.

(6) If the Scottish Ministers cancel such an option in accordance with paragraph (5), the additional periodical contributions cease to be payable for the first pay period beginning after the date specified in the notice and all subsequent pay periods and any periodical payments made before the date of cancellation must be returned to the member.”.

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

56. In regulation 3.C.13(4) (effect of death or early payment of pension after option exercised under regulation 3.C.6, 3.C.8 or 3.C.9), at the beginning, insert “Subject to regulation 3.C.11(5) and (6),”.

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(21) Section 3 makes provision for the automatic enrolment of a qualifying worker into a qualifying scheme like the NHS Superannuation Scheme for Scotland. Section 5 makes provision for the automatic re-enrolment of such a person into such a scheme who has previously opted out of it. Section 8 makes provision for the opting out of such a scheme, including the effect of such an opt out.

(22) Regulation 9 sets out the requirements for a valid opt out notice and the time period during which a person who has been automatically enrolled into a qualifying scheme may opt out of it. Regulation 15 applies the provisions of regulation 9 to a person who has been automatically re-enrolled into a qualifying scheme having previously opted out of it. Note that regulation 11 deals with the refund of contributions following an opt out.

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

57. For regulation 3.E.11(6) (amount of children’s pension under regulation 3.E.8: deceased pensioner members) substitute—

“(6) In a case within paragraph (4)(b) or (c), the rate of the pension in respect of the dependent child or children for the period of 6 months beginning with the deceased’s death is equal to the greater of—

- (a) the rate of the member’s pension at the date of death disregarding any reduction made under Chapter 2.H (abatement) and any additional pension; and
- (b) the amount of children’s pension that would otherwise be payable under these Regulations.”.

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

58. Omit regulation 3.H.1(6) (application of Chapter 3.H).

### **Amendment of regulation 3.H.3**

59. In regulation 3.H.3 (reduction of pension)—

- (a) in paragraphs (1) and (2), for “scheme year” substitute “financial year”; and
- (b) for paragraphs (6) and (7) substitute—

“(6) For the purpose of calculating the reduction to be made under paragraph (1) in respect of any part of a financial year, the amount of the member’s previous pay will be reduced proportionately.”.

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

60. In regulation 3.H.4 (meaning of “relevant income”) for “scheme year”, in both places it occurs, substitute “financial year”.

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

61. In regulation 3.H.5 (meaning of “previous earnings”: general) for “scheme year”, in each of the three places it occurs, substitute “financial year”.

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

62. In regulation 3.H.6 (employed pensioners with more than one pension) for “scheme year”, in each of the four places it occurs, substitute “financial year”.

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

63. In regulation 3.H.7 (provisional reductions and later adjustments), for “scheme year”, in each of the eight places it occurs, substitute “financial year”.

### **New regulation 3.J.2A**

64. After regulation 3.J.2 (claims for benefits) insert—



**“Provision of information: continuing entitlement to benefit**

**3.J.2A.**—(1) The Scottish Ministers may specify a date by which a person who is in receipt of a benefit under this Section of the scheme is to provide the Scottish Ministers with all or any of the following material—

- (a) evidence of the person’s identity;
- (b) the person’s contact details; and
- (c) evidence of the person’s continuing entitlement to the benefit.

(2) Where a person fails to provide the material referred to in paragraph (1) in accordance with that paragraph the Scottish Ministers may withhold all, or any part, of any benefit payable to that person.”.

**Amendment of 3.J.11**

**65.** In regulation 3.J.11 (general prohibition on unauthorised payments), for “rules” substitute “Regulations”.

## PART 4

### AMENDMENT OF THE NATIONAL HEALTH SERVICE (SCOTLAND) (INJURY BENEFITS) REGULATIONS 1998

**Amendments to the National Health Service (Scotland) (Injury Benefits) Regulations 1998**

**66.** The National Health Service (Scotland) (Injury Benefits) Regulations 1998<sup>(23)</sup> are amended in accordance with this Part.

**Amendment of regulation 2**

- 67.** In regulation 2(1) (interpretation), in the definition of “average remuneration”<sup>(24)</sup>—
- (a) in paragraph (b)(aa), for “regulation 4(3)” substitute “regulation 4(3A) or (3D)”;
  - (b) in paragraph (b)(bb), for “regulation 4(4) or (5)”, substitute “regulation 4(4), (4B), (5) or (5B)”.

**Amendment of regulation 4**

- 68.** In regulation 4 (scale of benefits)—
- (a) in paragraph (2), after “earning ability is” insert “permanently”; and
  - (b) omit paragraph (6A)<sup>(25)</sup>.

**Amendment of regulation 18A**

- 69.** In regulation 18A (claims for benefits)<sup>(26)</sup>, after paragraph (1) insert—
- “(1A) No person shall be entitled to a benefit under these Regulations unless the person seeking the benefit makes a claim in accordance with this regulation and regulation 18B

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<sup>(23)</sup> [S.S.I. 1998/1594](#).

<sup>(24)</sup> The definition of “average remuneration” was substituted by regulation 3(2)(b) of [S.S.I. 2008/225](#). There are amendments to that definition that are not relevant for the purposes of these Regulations.

<sup>(25)</sup> Paragraph (6A) was inserted by regulation 4(11) of [S.S.I. 2013/52](#).

<sup>(26)</sup> Regulation 18A was substituted by regulation 6 of [S.S.I. 2013/52](#).

within a period of 6 months (or such longer period as the Scottish Ministers decide is reasonable) commencing with the day on which the person becomes aware (or, if earlier, the day on which the Scottish Ministers consider it is reasonable to expect the person to have become aware) that the person may be a person to whom regulation 3(1) applies.”

#### **Amendment of regulation 18B**

**70.** In regulation 18B (claims: additional matters)(27)—

- (a) in paragraph (1), for “, and within such period,” substitute “and manner”; and
- (b) in paragraph (3), for “notify that person” substitute “notify the person making the claim”.

## **PART 5**

### **MISCELLANEOUS**

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

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

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

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

(4) An election pursuant to paragraph (2) has effect in relation to the benefit referred to in paragraph (1) only to the extent that such benefit has accrued by virtue of periods of service rendered before the cessation referred to in paragraph (1) (or, if there has been more than one such cessation, the last of them before the coming into force of these Regulations) and in determining entitlement to, and the amount of, the benefit to that extent, such person is to be treated as if that person had never recommenced service at any time after that cessation (or, as the case may be, the last such cessation).

St Andrew’s House, Edinburgh  
19th March 2013

*JOHN SWINNEY*  
A member of the Scottish Government

We consent,

22nd March 2013

*DESMOND SWAYNE*  
*ROBERT GOODWILL*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

## EXPLANATORY NOTE

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

These Regulations amend the National Health Service Superannuation Scheme for Scotland (“the scheme”), the rules of which are set out in the National Health Service Superannuation Scheme (Scotland) Regulations 2011 (“the 1995 Section”) and the National Health Service Pension Scheme (Scotland) Regulations 2008 (“the 2008 Section”) (together “both Sections”).

Regulation 1 sets out when each change takes effect.

The following changes are made to both Sections—

- regulations 3, 4, 6, 29, 32, 49(a), (b), (d) and (e) and 53 provide that where a person has previously opted out this ceases to have effect on automatic enrolment or re-enrolment: but a person may, on automatic enrolment or re-enrolment, still opt out on each occasion;
- regulations 10 and 35 remove, from 1st April 2013, the option for employers to pay, in five annual instalments, certain additional contributions in relation to a redundancy pension;
- regulations 11 and 38 require an employer to certify entitlement to a redundancy pension;
- regulations 14, 39 and 57 provide that if the amount of the child allowance or pension for the first 6 month period is more than the member’s pension, it will be that higher amount;
- regulations 18, 19, 36, 37, 55 and 56 make further provision in relation to the cancellation of an option to pay additional contributions to purchase pension purchase;
- regulations 22, 47 and 64 empower the Scottish Ministers to require certain material (including evidence of entitlement) to be provided by a person in receipt of a benefit, and if the person fails to provide it, to withhold all or part of a benefit payable to that person;
- regulations 23 and 27 remove requirements to prepare actuarial reports; and
- regulations 24 and 28 remove provision in relation to cost sharing, and regulations 9, 25, 33, 34 and 54 remove (in effect) the associated requirements to consider advice.

The following additional changes are made to the 1995 Section—

- regulations 5, 7, 8, 16 and 17 are ancillary to the changes made in relation to opt outs: in particular, regulation 7 bars a person who has opted out from rejoining during a period of absence from work;
- regulations 12 and 13 ensure that the most beneficial pension is paid when a marriage to a nominated partner takes place post retirement;
- regulation 15 reflects the fact that protected rights were abolished by the Pensions Act 2008 with effect from 6th April 2012;
- regulation 20 add further categories of employment to the list in regulation S1(5); and
- regulation 21 clarifies provision for reduced pensions on return to NHS employment.

The following additional changes are made to the 2008 Section—

- regulations 30 and 50 clarify the circumstances in which qualifying service before and after a break in service of less than one month is to be treated as a continuous period;
- regulations 31 and 52 are supplementary to the changes made in relation to opt outs: in particular, these provisions enable an eligible person to opt back in;
- regulations 40 and 58 ensure that additional pension is taken into account;

regulations 41 to 46 and 59 to 63 replace references to “scheme year” with “financial year” for consistency with the 1995 Section, and clarify how abatement works when a member’s pension is in payment for only part of the year;

regulations 48 and 65 make minor changes to clarify a reference;

regulations 49(c) corrects an error so that “appropriate proportion” equates to 37.5%; and

regulation 51 provides for the length of a relevant absence to be notified to the Scottish Ministers for the purposes of calculating a member’s pensionable earnings under Part 3.

Part 4 (regulations 66 to 70) makes minor changes to the National Health Service (Scotland) (Injury Benefits) Regulations 1998 in connection with amendments made to those Regulations by the National Health Service (Scotland) (Injury Benefits) Amendment Regulations 2013 ([S.S.I. 2013/52](#)). In particular, regulation 69 specifies the period within which claims must be made.

Regulation 71 provides that certain persons who may be detrimentally affected by these Regulations may elect for the provisions not to apply to them.