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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 96**

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

**PART 3**

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

**General**

**18.** The National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013(1) are amended in accordance with regulations 19 to 45.

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

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

**“Actuarial reports and accounts**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**22.** After regulation 2.A.1, insert—

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

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

(a) civil partnership is to be read as including a reference to marriage of a same sex couple and a reference to civil partners and a person who is in a civil partnership is to be construed accordingly;

(b) a person who is living with another person as if they were in a civil partnership is to be read as including a reference to a person who is living with another person of the same sex as if they were married.

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

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

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

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

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

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

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(2) Paragraph (4A) was inserted by [S.S.I. 2014/154](#).

### Amendment of regulation 2.B.3

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

### Amendment of regulation 2.C.2

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

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

#### “Scheme Year 2015-2016

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

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

### Amendment of regulation 2.C.3

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

### Amendment of regulation 2.C.4

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

- “(15) For the purposes of this paragraph, the “relevant table” means—
- (a) in respect of the 2014-2015 scheme year, table 1;
  - (b) in respect of the 2015-2016 scheme years, table 2.

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

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
Up to £15,828	5%
£15,829 to £21,601	5.6%
£21,602 to £27,089	7.1%
£27,090 to £49,967	9.3%
£49,968 to £71,337	12.5%
£71,338 to £111,376	13.5%
£111,377 to any higher amount	14.5%

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

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

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

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

**Amendment of 2.D.11**

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

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

“(3A) A member who satisfies the conditions of this regulation is not entitled to a pension under this regulation if the Scottish Ministers, after consultation with the scheme

actuary, decide that the amount of the pension would be less than the amount of the guaranteed minimum pension to which the member is entitled.”.

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

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

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

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

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

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

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

- 33.—**(1) In regulation 2.F.5 (ways in which transfer value payments may be applied)—
- (a) in paragraph (1), for “A member” substitute “If Chapter 4 of Part 4 of the 1993 Act applies to a member, that member”; and
  - (b) for paragraph (2), substitute—

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

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

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

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

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

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

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

- (2) Condition A is that the member—
  - (a) is a deferred member of this Section of the scheme; and
  - (b) became an active member of the 2015 Scheme before attaining the age of 65.
- (3) Condition B is that the member has a break in pensionable employment for any one period of more than five years beginning with the day immediately following the cessation of the pensionable service in respect of which that person is a deferred member of this Section of the scheme and ending on the day immediately before the person became an active member of the 2015 Scheme in accordance with paragraph (2)(b).

- (4) Condition C is that the member—
- (a) has a break in active membership of the 2015 Scheme for any one period of more than five years which is the first break of such a period since that membership commenced; and
  - (b) has not previously had a break in pensionable employment before becoming an active member of the 2015 Scheme which would satisfy condition B.
- (5) For the purposes of paragraphs (3) and (4), any break in active membership of this Section of the scheme where the member was in pensionable public service as defined in paragraph 3(2) of Schedule 7 to the 2013 Act is to be disregarded.
- (6) The Scottish Ministers must provide a member to whom this regulation applies with a statement of the amount of the cash equivalent of the member's benefits accrued in accordance with these Regulations at the guarantee date ("a statement of entitlement").
- (7) In this regulation, "the guarantee date" means any date that falls within the required period and is—
- (a) chosen by the Scottish Ministers;
  - (b) specified in the statement of entitlement; and
  - (c) within the period of 10 days ending with the date on which the member is provided with the statement of entitlement.
- (8) In counting the period of 10 days referred to in paragraph (7)(c), Saturdays, Sundays, Christmas Day, New Year's Day and Good Friday are excluded.
- (9) In paragraph (7), "the required period" means—
- (a) the period of three months beginning with the date that the Scottish Ministers receive notification from the member's employing authority that the member has joined the 2015 Scheme; or
  - (b) such longer period beginning with that date (but not exceeding six months) as may be reasonably required if, for reasons beyond the control of the Scottish Ministers, the requisite information cannot be obtained to calculate the amount of the cash equivalent.
- (10) Subject to paragraphs (11) to (13), the member's guaranteed cash equivalent shall be equal to the capitalised value of all of the member's rights to benefits accrued under these Regulations and any associated rights under Part 1 of the Pensions (Increase) Act 1971.
- (11) The Scottish Ministers must—
- (a) take advice from the scheme actuary before determining the factors to be used in the calculation of the member's guaranteed cash equivalent; and
  - (b) calculate and verify the amount of the guaranteed cash equivalent in accordance with the Occupational Pension Schemes (Transfer Values) Regulations 1996.
- (12) A member's cash equivalent will be at least equal to the amount of any transfer payments accepted in respect of the member under regulation 2.F.10 (which deals with the crediting of additional service upon transfer), plus the amount of the member's contributions to this Section of the Scheme.
- (13) A member who has received a statement of entitlement in accordance with paragraph (6) may apply to the Scottish Ministers for the cash equivalent of the member's rights under this Section of the scheme to be used to acquire rights under the 2015 Scheme.
- (14) An application under this regulation must be made in respect of each and every portion of the cash equivalent and shall be—
- (a) made in writing on the form provided for this purpose by the Scottish Ministers;

- (b) made before the end of the period of three months beginning with the guarantee date;
  - (c) irrevocable.
- (15) On the making of such an application—
- (a) a member becomes entitled to be credited with an increase to the member’s pensionable earnings and a period of pensionable service in the 2015 Scheme in respect of the cash equivalent value of the member’s benefits under this Section of the scheme calculated in accordance with regulation 144 of the 2015 Scheme; and
  - (b) the member’s rights under this Section of the scheme are extinguished on the day that the member is credited with an increase to the member’s pensionable earnings and a period of pensionable service in accordance with regulation 144 of the 2015 Scheme.
- (16) A member’s right to require the Scottish Ministers to use the cash equivalent of the member’s rights in the way referred to in paragraph (1) may only be exercised once.”.

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

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

- ““the 2013 Act” means the Public Service Pensions Act 2013;
- “the 2015 Scheme” means the scheme set out in the National Health Service Pension Scheme (Scotland) Regulations 2015;
- “civil partner” and “civil partnership” are to be construed in accordance with regulation 3.A.1A;
- “marriage” and “married” do not include a reference to marriage of a same sex couple unless otherwise provided;
- “registered medical practitioner” means a fully registered medical practitioner within the meaning given in section 55 of the Medical Act 1983;
- “widow” and “widower” do not include a reference to marriage of a same sex couple;”.

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

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

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

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

- (a) civil partnership is to be read as including a reference to marriage of a same sex couple and a reference to civil partners and a person who is in a civil partnership is to be construed accordingly;
  - (b) a person who is living with another person as if they were in a civil partnership is to be read as including a reference to a person who is living with another person of the same sex as if they were married.
- (2) Where paragraph (1) requires a reference to be read in a particular way, any related reference (such as a reference to a civil partnership that has ended, a reference to a person whose civil partnership has ended, or a reference to persons formerly living together as civil partners) is to be read accordingly.

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

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

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

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

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

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

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

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

**Table 1**

#### **Scheme Year 2014-2015**

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
Up to £15,828	5%
£15,829 to £21,601	5.6%
£21,602 to £27,089	7.1%
£27,090 to £49,967	9.3%
£49,968 to £71,337	12.5%
£71,338 to £111,376	13.5%
£111,377 to any higher amount	14.5%

**Table 2**

#### **Scheme Year 2015-2016**

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



<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
£71,338 - £111,376	13.7%
£111,377 to any higher amount	14.7%”.

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

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

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

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

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

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

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

- 43.** In regulation 3.F.5 (ways in which transfer value payments may be applied)—
- (a) in paragraph (1), for “A member” substitute “If Chapter 4 of Part 4 of the 1993 Act applies to a member, that member”; and
  - (b) for paragraph (2), substitute—
    - “(2) In any other case, a member may only require the Scottish Ministers to apply the guaranteed equivalent transfer value payment in one or more of the ways permitted under section 101AE of the 1993 Act.”.

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

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

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

- 45.** After regulation 3.F.17, insert—

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

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

- (2) Condition A is that the member—
  - (a) is a deferred member of this Section of the scheme; and
  - (b) became an active member of the 2015 Scheme before attaining the age of 65.

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

(4) Condition C is that the member—

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

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

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

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

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

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

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

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

(10) Subject to paragraphs (11) to (13), the member's guaranteed cash equivalent shall be equal to the capitalised value of all of the member's rights to benefits accrued under these Regulations and any associated rights under Part I of the Pensions (Increase) Act 1971(3).

(11) The Scottish Ministers must—

- (a) take advice from the scheme actuary before determining the factors to be used in the calculation of the member's guaranteed cash equivalent; and
- (b) calculate and verify the amount of the guaranteed cash equivalent in accordance with the Occupational Pension Schemes (Transfer Values) Regulations 1996(4).

(12) A member's cash equivalent will be at least equal to the amount of any transfer payments accepted in respect of the member under regulation 3.F.10 (which deals with the

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(3) 1971 c.56.

(4) S.I. 1996/1847.

crediting of additional service upon transfer), plus the amount of the member's contributions to this Section of the scheme.

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

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

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

(15) On the making of such an application—

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

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