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SCOTTISH STATUTORY INSTRUMENTS

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**2017 No. 28**

**PUBLIC SERVICE PENSIONS**

**The National Health Service Pension Scheme (Scotland)  
(Miscellaneous Amendments) Regulations 2017**

*Made* - - - - *1st February 2017*  
*Laid before the Scottish*  
*Parliament* - - - - *3rd February 2017*  
*Coming into force* - - *13th March 2017*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 1(1) and (2)(e) and paragraph 5(b) of schedule 2 of the Public Service Pensions Act 2013<sup>(1)</sup> and all other powers enabling them to do so.

In accordance with section 22(2)(a) of that Act, the Scottish Ministers consulted the representatives of such persons as appeared to them likely to be affected by these Regulations.

In accordance with section 22(2)(b) of that Act, the Scottish Ministers laid before the Scottish Parliament a report concerning the changes to the members' contribution rates under the National Health Service Pension Scheme (Scotland) made by these Regulations.

In accordance with section 3(5) of that Act, these Regulations are made with the consent of the Treasury.

**PART 1**

**Introductory**

**Citation, commencement and effect**

1.—(1) These Regulations may be cited as the National Health Service Pension Scheme (Scotland) (Miscellaneous Amendments) Regulations 2017.

(2) These Regulations come into force on 13th March 2017 and, subject to paragraphs (3) to (6), have effect from that date.

(3) Regulations 7, 11, 12, 16, 17 and 31(a) have effect from 1st April 2015.

(4) Regulations 3, 4, 10 and 27 have effect from 5th April 2015.

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(1) 2013 c.25; section 3(3)(b) allows scheme regulations to have retrospective effect.

- (5) Regulations 5, 6, 8, 9, 19 to 21 and 26 have effect from 1st April 2016.  
 (6) Regulations 13, 14, 15(b) and 24(b) have effect from 6th April 2016.

## PART 2

### Amendment of the National Health Service Pension Scheme (Scotland) Regulations 2015

#### General

2. The National Health Service Pension Scheme (Scotland) Regulations 2015(2) are amended in accordance with regulations 3 to 27.

#### Regulation 21

3. In regulation 21 (absence from work), in paragraph (1)(e) after “leave” insert “or shared parental leave”.

#### Regulation 28

4. In regulation 28 (pensionable earnings: break in service), in paragraph (2)(e) after “leave” insert “or shared parental leave”.

#### Regulation 30

5. In regulation 30 (members’ contributions: employees), in paragraph (3)—
- (a) omit “and” following sub-paragraph (a);
  - (b) after sub-paragraph (b), insert—
    - “;
    - (c) for the scheme year 2017/18 is the percentage specified in column 2 of Table 3 below in respect of the corresponding pensionable earnings band specified in column 1 into which M’s pensionable earnings fall”; and
  - (c) after Table 2, insert—

“Table 3

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
Up to £16,528	5.2%
£16,529 to £22,217	5.8%
£22,218 to £27,634	7.3%
£27,635 to £50,971	9.5%
£50,972 to £72,770	12.7%
£72,771 to £113,625	13.7%

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
£113,626 and above	14.7%”

**Regulation 31**

6. In regulation 31 (members’ contributions: practitioners and non-GP providers)—
- (a) in paragraph (3)—
- (i) omit “and” following sub-paragraph (a); and
- (ii) after sub-paragraph (b), insert—
- “;
- (c) for the scheme year 2017/18 is the percentage specified in column 2 of Table 3 in paragraph (9) in respect of the corresponding pensionable earnings band specified in column 1 into which M’s pensionable earnings fall”; and
- (b) in paragraph (9), after Table 2 insert—

**“Table 3**

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
Up to £16,528	5.2%
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£22,218 to £27,634	7.3%
£27,635 to £50,971	9.5%
£50,972 to £72,770	12.7%
£72,771 to £113,625	13.7%
£113,626 and above	14.7%”

**Regulation 36**

7. In regulation 36 (members’ contributions: records and estimates), in paragraph (1)—
- (a) in sub-paragraph (c), after “regulation 32” insert “, 33 or 34”; and
- (b) in sub-paragraph (d), after “regulation 32” insert “, 33 or 34”.

**Regulation 39**

8. In regulation 39 (eligibility for refund), in paragraph (2)(a) for “Chapter 5 of Part 4” substitute “Chapter 2 of Part 4ZA”.

**Regulation 40**

9. In regulation 40 (amount of refund)—
- (a) in paragraph (1)(a), for “Chapter 5 of Part 4” substitute “Chapter 2 of Part 4ZA”; and

(b) in paragraph (6)(b), for “Chapter 5 of Part 4” substitute “Chapter 2 of Part 4ZA”.

#### **Regulation 67**

10. In regulation 67 (effect of being absent or leaving and rejoining scheme during contributions payment period), in paragraph (1)(e) after “leave” insert “or shared parental leave”.

#### **Regulation 91**

11. In regulation 91 (annual rate of ill-health pension), in paragraph (3) in the definition of “E” for “M’s” substitute “the day before M reaches”.

#### **Regulation 93**

12. In regulation 93 (early retirement on ill-health (deferred members)), in paragraph (2)(c)(i) for “paragraph (1)(b)” substitute “paragraph (1)”.

#### **Regulation 109**

13. In regulation 109 (guaranteed minimum pension etc.), in paragraph (10)(c) for “regulation 60 of the Occupational Pension Schemes (Contracting-out) Regulations 1996” substitute “regulation 25 of the Occupational Pension Schemes (Schemes that were Contracted-out) (No. 2) Regulations 2015(3)”.

#### **Regulation 114**

14. In regulation 114 (amount of pension: survivor of active member), for paragraph (8)(b) substitute—

- “(b) sub-paragraph (a) does not apply if—
- (i) the Scottish Ministers’ liability to provide a guaranteed minimum pension in respect of the surviving adult dependent is discharged by the payment of a contributions equivalent premium under section 55(2) of the 1993 Act; or
  - (ii) a surviving widow, widower or civil partner has been convicted of an offence specified in paragraph 12 of schedule 3 and the Scottish Ministers directed, as a consequence of that conviction, that the person’s rights to a payment in respect of the member’s death is forfeit.”

#### **Regulation 117**

15. In regulation 117 (recent leavers)—

(a) in paragraph (2), for “recent leaver’s” substitute “surviving spouse’s or surviving civil partner’s”; and

(b) for paragraph (3), substitute—

- “(3) Paragraph (2) does not apply if—
- (a) the Scottish Ministers liability to provide a guaranteed minimum pension in respect of the surviving spouse or civil partner is discharged by the payment of a contributions equivalent premium under section 55(2) of the 1993 Act; or
  - (b) a surviving widow, widower or surviving civil partner has been convicted of an offence specified in paragraph 12 of schedule 3 and the Scottish Ministers

directed, as a consequence of that conviction, that the person's rights to a payment in respect of the member's death is forfeit."

### **Regulation 122**

16. In regulation 122 (amount of child pension: deceased active member), in paragraph (3) in the definition of "B" after "day" insert "before".

### **Regulation 123**

17. In regulation 123 (amount of child pension: deceased pensioner member), in paragraph (3)(b) for "A is the deceased's annual pension" substitute "A is the deceased's annual pension not including any Upper Tier addition determined in accordance with regulation 91(3)".

### **Regulation 124**

18. In regulation 124 (amount of child pension: deceased deferred member), in paragraph (1)(b) omit "an active member or".

### **Regulation 130**

19. In regulation 130 (application of Part), in paragraph (1)—
- (a) in sub-paragraph (a), for "Chapter 4 of Part 4 of the 1993 Act (transfer values)" substitute "Chapter 1 of Part 4ZA of the 1993 Act (transfer rights: general)"; and
  - (b) in sub-paragraph (b), for "Chapter 5" substitute "Chapter 2".

### **Regulation 131**

20. In regulation 131 (interpretation of Part), in paragraph (b) of the definition of "transfer value payment" for "Chapter 4 of Part 4" substitute "Chapter 1 of Part 4ZA".

### **Regulation 133**

21. In regulation 133 (right to transfer value payment)—
- (a) in paragraph (2), for "Chapter 4 of Part 4" substitute "Chapter 1 of Part 4ZA"; and
  - (b) in paragraph (3), for "Chapter 5" substitute "Chapter 2".

### **Regulation 137**

22. In regulation 137 (how transfer value payments may be applied)—
- (a) for paragraph (1), substitute—

“(1) A deferred member (DM) may require the scheme manager to apply the guaranteed cash equivalent transfer value payment only in one of the ways permitted under section 95 of the 1993 Act.”;
  - (b) in paragraph (2), for "M" substitute "a member";
  - (c) in paragraph (4), for "M's" (twice) substitute "DM's"; and
  - (d) after paragraph (5), insert—

“(6) Paragraph (1) applies whether or not DM is entitled to a guaranteed cash equivalent transfer value payment under Chapter 1 of Part 4ZA of the 1993 Act.”.

### Regulation 140

23. In regulation 140 (right to apply for acceptance of transfer value payment), in paragraph (5) for “(extinguishment of liability of scheme for pensions secured by insurance policies or annuity contracts)” substitute “(discharge of liability where guaranteed minimum pensions secured by insurance policies or annuity contracts)”.

### Schedule 3

24. In schedule 3 (administrative matters)—

- (a) in paragraph 6(2)(a), after “requirements” insert “mentioned in section 9(2) of the 1993 Act”; and
- (b) in paragraph 12(6), after “sub-paragraph (2)(b)” insert “or if sub-paragraph (4) applies”.

### Schedule 4

25. In schedule 4 (opting out and re-joining), for paragraph 1(6) substitute—

“(6) If the person gives a notice mentioned in sub-paragraph (1), the notice must relate to all of the employments or engagements to which group D applies.

(7) Sub-paragraph (8) applies if a person—

- (a) belongs, or would belong, to groups A, B or C in regulation 27(1); and
- (b) has more than one employment to which those groups apply.

(8) Subject to regulation 29, the person may give a notice as mentioned in sub-paragraph(1) in respect of any, or all, of the employments to which group A, B or C applies.”.

### Schedule 9

26. In schedule 9 (determination of pensionable earnings: setting contribution rates), in paragraph 3—

- (a) in sub-paragraph (1), for “Table 2” substitute “Table 3”; and
- (b) in sub-paragraph (2)(a), for “Table 2” substitute “Table 3”.

### Schedule 13

27. In schedule 13 (definitions), after the definition of “Section 17C Agreement provider” insert

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“shared parental leave

regulation 3(1) of the Shared Parental Leave Regulations 2014(4)

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## PART 3

### Amendment of the National Health Service Pension Scheme (Transitional and Consequential Provisions) (Scotland) Regulations 2015

#### General

**28.** The National Health Service Pension Scheme (Transitional and Consequential Provisions) (Scotland) Regulations 2015<sup>(5)</sup> are amended in accordance with regulations 29 to 31.

#### New regulation 10A

**29.** After regulation 10, insert—

##### “Effect of recommencing service after break

**10A.**—(1) Paragraph (2) applies where—

- (a) on the date a person becomes eligible to join the new scheme that person is absent from work because of illness or injury and that person’s earnings have ceased either—
  - (i) in the circumstances described in regulation P1 of the 2011 Regulations; or
  - (ii) in the circumstances described in regulation 2.A.10(7) or 3.A.8(4) of the 2013 Regulations; and
- (b) on the date the person’s employment is terminated or the person dies (“the relevant date”)—
  - (i) that person’s earnings have not recommenced; and
  - (ii) for the purposes of the new scheme, that person’s pensionable earnings are zero.

(2) Where paragraph (1) is satisfied, if the earnings of a person referred to in that paragraph had recommenced at the relevant date the scheme manager may determine that the person would have become entitled to either—

- (a) the benefit set out at paragraph (4)(b) of regulation 28 (ill health benefits: members below normal pension age) where that person’s employment is terminated; or
- (b) one or more of the benefits set out at regulation 38 (death in service) where that person dies.

(3) Where the scheme manager does so determine, for the purposes of calculating the benefits referred to in paragraph (2)—

- (a) the person is treated as if they were in pensionable service on their last day of NHS employment, and
- (b) contributions in respect of that day are deemed to have been paid.”.

#### Regulation 31

**30.** In regulation 31 (partial retirement), in paragraph (3)—

- (a) omit “and” following sub-paragraph (a); and
- (b) after sub-paragraph (b), insert—

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(5) [S.S.I. 2015/95](#).

- “;
- (c) taken together with any increase to which the member has become entitled as a result of the option or election, the aggregate of the member’s pension under the 2013 Regulations and the 2015 Regulations is not less than 0.05% of the member’s lifetime allowance on the option day.”.

**Regulation 38**

- 31.** In regulation 38 (death in service), in paragraph (1)—
- (a) for “transitional member” (in both places), substitute “transition member”; and
  - (b) in Part 2 of the Table, in column 2 of the final entry for “37.5%” substitute “the appropriate proportion”.

St Andrew’s House,Edinburgh  
10th January 2017

*DEREK MACKAY*  
A member of the Scottish Government

We consent

1st February 2017

*GUTO BEBB*  
*ANDREW GRIFFITHS*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury



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## EXPLANATORY NOTE

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

These Regulations amend the National Health Service Pension Scheme (Scotland) Regulations 2015 (“the 2015 Regulations”) and the National Health Service Pension Scheme (Transitional and Consequential Provisions) (Scotland) Regulations 2015.

The amendments made to the 2015 Regulations include inserting new tables reflecting revised employee contribution rates for 2017/18 (regulations 5 and 6).