

**2017 No. 433**

**PUBLIC SERVICE PENSIONS**

**The National Health Service Pension Scheme (Scotland)  
(Miscellaneous Amendments) (No. 2) Regulations 2017**

*Made* - - - - *11th December 2017*

*Laid before the Scottish Parliament* *13th December 2017*

*Coming into force* - - *31st January 2018*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 1(1) and (2)(e), 2, 3 and paragraph 5(b) of schedule 2 of the Public Service Pensions Act 2013(a) 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 made by these Regulations to the members' contribution rates under the National Health Service Pension Scheme (Scotland) 2015.

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) (No. 2) Regulations 2017 and come into force on 31st January 2018.

(2) Regulations 6, 7, 12, 13, 14 and 17 have effect from 1st April 2015.

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

## PART 2

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

#### General

2. The National Health Service Pension Scheme (Scotland) Regulations 2015(a) are amended in accordance with regulations 3 to 14.

#### Regulation 30

3. In regulation 30 (members' contributions: employees), in paragraph (3)—

(a) after sub-paragraph (c), insert—

“;

(d) for the scheme year 2018/19 is the percentage specified in column 2 of Table 4 below in respect of the corresponding pensionable earnings band specified in column 1 into which M's pensionable earnings fall.”; and

(b) after Table 3, insert—

“Table 4

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
Up to £16,928	5.2%
£16,929 to £22,439	5.8%
£22,440 to £27,910	7.3%
£27,911 to £51,481	9.5%
£51,482 to £73,498	12.7%
£73,499 to £114,760	13.7%
£114,761 and above	14.7%”

#### Regulation 31

4. In regulation 31 (members' contributions: practitioners and non-GP providers)—

(a) in paragraph (3), after sub-paragraph (c), insert—

“;

(d) for the scheme year 2018/19 is the percentage specified in column 2 of Table 4 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 3 insert—

“Table 4

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
Up to £16,928	5.2%
£16,929 to £22,439	5.8%
£22,440 to £27,910	7.3%
£27,911 to £51,481	9.5%
£51,482 to £73,498	12.7%

(a) S.S.I. 2015/94, as amended by S.S.I. 2016/97 and S.S.I. 2017/28.

£73,499 to £114,760	13.7%
£114,761 and above	14.7%

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## **Regulation 42**

**5.**—(1) Regulation 42 (eligibility to make buy-out election) is amended as follows.

(2) In sub-paragraph (a) of paragraph (3), after “this scheme” insert “in accordance with paragraph (3A)”.

(3) After paragraph (3), insert—

“(3A) For the purposes of paragraph (3)(a), M is treated as entering pensionable service on each occasion that an active member’s account is established in respect of that service in accordance with regulation 24(1)(a).”.

(4) For paragraph (5), substitute—

“(5) M may make an election under this regulation on one occasion only during each period of pensionable service in respect of which an active member’s account is established in accordance with regulation 24(1)(a).”.

## **Amendment of regulation 57**

**6.** After paragraph (4) of regulation 57 (making an additional pension election), insert—

“(5) For the purposes of this Chapter—

- (a) a member is treated as having made an additional pension election on the date on which the employing authority receives the member’s notice under paragraph (1); and
- (b) an employing authority is treated as having made an additional pension election on the date on which the scheme manager receives the authority’s notice under paragraph (2).”.

## **Amendment of regulation 62**

**7.** For paragraph (2) of regulation 62 (refund of lump sum contribution), substitute—

“(3) If M dies before the end of the refund period—

- (a) the amount of the lump sum paid by M must be repaid to M’s executors;
- (b) the amount of lump sum paid by M’s employing authority pursuant to regulation 56 must be repaid to the authority; and
- (c) the additional pension account must be closed.

(4) If an ill-health pension becomes payable to M before the end of the refund period—

- (a) the amount of the lump sum paid by M must be repaid to M;
- (b) the amount of lump sum paid by M’s employing authority pursuant to regulation 56 must be repaid to the authority; and
- (c) the additional pension account must be closed.”.

## **Amendment of regulation 68**

**8.**—(1) Regulation 68 (death in service before end of contributions payment period) is amended as follows.

(2) For sub-paragraph (a) of paragraph (1), substitute—

“(a) whose additional pension election is for—

- (i) an additional (self only) pension; or
- (ii) an additional (self only) pension and an additional (survivor’s) pension;”.

(3) In paragraph (2), omit sub-paragraph (b).

#### **Amendment of regulation 69**

**9.**—(1) Regulation 69 (ill-health pension becomes payable before end of contributions payment period) is amended as follows.

(2) In paragraph (2), omit sub-paragraph (b).

(3) For paragraph (3), substitute—

“(4) If an ill-health pension becomes payable to M in consequence of a claim made after the end of the refund period—

(a) the periodic payments under the additional pension election are treated as being paid until the end of the contributions payment period for the election; and

(b) paragraph (4) applies.

(5) For the purpose of calculating the annual rate of ill-health pension—

(a) if, on consideration of the evidence available, the scheme manager believes that the declaration that accompanied the additional pension election was made in good faith, the amount of accrued additional pension is calculated under paragraph 28 of Schedule 7 as at the last day of pensionable service;

(b) if the scheme manager believes that the declaration was not made in good faith, paragraph (2)(a) to (c) applies.”.

#### **Amendment of regulation 89**

**10.** In subparagraph (2)(a) of regulation 89 (entitlement to ill-health pension), after “M” insert “is qualified for retirement benefits and”.

#### **Amendment of regulation 90**

**11.**—(1) Regulation 90 (member’s incapacity) is amended as follows.

(2) In the definition of “appropriate medical treatment”, in paragraph (6)—

(a) in sub-paragraph (b)(i), after “regulation 89” insert “before M reaches prospective normal pension age”;

(b) in sub-paragraph (b)(ii), after “that regulation” insert “before M reaches prospective normal pension age; or ”; and

(c) in sub-paragraph (c), after “reaches” insert “prospective”.

#### **Amendment of regulation 122**

**12.** In sub-paragraph (ii) of the definition of “A” in paragraph (3) of regulation 122 (amount of child pension: deceased active member), after “1971” insert “on L+1”.

#### **Amendment of Schedule 7**

**13.**—(1) Schedule 7 (pensions accounts) is amended as follows.

(2) In paragraph 3 (meaning of “leaver index adjustment”)—

(a) the second sub-paragraph (1) is renumbered “(2)” and sub-paragraph (2) is renumbered “(3)”;

(b) in sub-paragraph (1) and in sub-paragraph (2) as re-numbered in accordance with sub-paragraph (a), for “The” substitute “Subject to sub-paragraph (2A), the”;

(c) after sub-paragraph (2), insert—

“(2A) If the amount of the leaver index adjustment under sub-paragraphs (1) or (2) is an amount that is less than zero, the amount of the leaver index adjustment for the purposes of those paragraphs is zero.”.

(3) After paragraph 15 of Part 2 of schedule 7 (actuarial reduction buy-out), insert—

## “PART 2A

### Active member’s account for unqualified members

#### **Closure of an active member’s account**

**15A.** When an active member leaves all pensionable service but does not qualify for benefits under regulation 71 (in this Part “an unqualified member”) the active member’s account for that unqualified member must be closed.

#### **Active member’s account for unqualified member re-established after break not exceeding 5 years**

**15B.**—(1) This paragraph applies if—

- (a) an unqualified member re-enters pensionable service under this scheme after a break in service not exceeding 5 years; and
- (b) the rights of that member in respect of the service before the break have not been extinguished pursuant to regulation 41 (effect of refund) or regulation 139 (effect of transfer-out).

(2) When the unqualified member re-enters pensionable service under this scheme the active member’s account must be re-established.

(3) The active member’s account—

- (a) must specify the amount of accrued earned pension as at the beginning of the break in service; and
- (b) must be adjusted as if the member had continued as an active member during the break in service but had received no pensionable earnings.

#### **Active member’s account for unqualified member remains closed after break exceeding 5 years**

**15C.**—(1) This paragraph applies if an unqualified member re-enters pensionable service under this scheme after a break in service exceeding five years.

(2) When the unqualified member re-enters pensionable service under the scheme (“the further service”)—

- (a) the active member’s account in respect of the service before the break remains closed; and
- (b) a new active member’s account must be established in respect of the further service.”.

#### **Amendment of Schedule 12**

**14.**—(1) Schedule 12 (lump sum on death) is amended as follows.

(2) In sub-paragraph (1) of paragraph 3 (death of deferred member), after “deferred member” insert “who is not also an active member”.

(3) In sub-paragraph (3) of paragraph 7 (death of partial retirement pensioner), for the definition of “re-valued pensionable earnings” substitute—

““re-valued pensionable earnings” means, in relation to a scheme year, an amount equal to the actual pensionable earnings for the year increased by the same amount as that by which an annual pension equal to that amount would have been increased for the first time under the Pensions (Increase) Act 1971 at the relevant day if—

- (a) the pension was eligible to be so increased;
- (b) the beginning date for the pension was the first day of the following scheme year; and
- (c) the relevant day was the member’s last day of pensionable service.”.

## PART 3

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

#### General

**15.** The National Health Service Pension Scheme (Transitional and Consequential Provisions) (Scotland) Regulations 2015(a) are amended in accordance with regulations 16 to 18.

#### Amendment of regulation 18

**16.—**(1) Regulation 18 (uprating of old scheme practitioner earnings) is amended as follows.

(2) The existing words from “In relation to” to “31 March 2015” become regulation 18(1).

(3) For “In relation to” substitute “Subject to paragraphs (2) and (3), in relation to”.

(4) At the end, insert—

“(2) Paragraph (3) applies if a practitioner transition member is purchasing additional service pursuant to regulation 22 (existing additional service and unreduced lump sum contracts) of these Regulations.

(3) Paragraph (1) does not apply for the purposes of calculating that member’s uprated pensionable earnings in relation to that purchase for the purposes of sub-paragraph (5) of paragraph 26 (right to buy additional benefits) of schedule 1 of the 2011 Regulations.”.

#### Amendment of regulation 28

**17.** After paragraph (6) of regulation 28 (ill-health benefits: members below old scheme normal pension age), insert—

“(6A) Paragraphs (6B) and (6C) apply if a member receiving an ill-health pension under this regulation dies before reaching the old scheme normal pension age.

(6B) If a surviving adult dependant of the member is entitled to a pension in accordance with regulation 115 (amount of pension: survivor of pensioner member) of the 2015 Regulations the annual rate of the adult survivor pension payable under paragraph (4)(a) of that regulation is the sum of—

- (a) 33.75% of the pension to which the member was entitled at the date of death (disregarding any additional pension) under the new scheme; and

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(a) S.S.I. 2015/95 as amended by S.S.I. 2017/28.

- (b) if the member—
  - (i) was an active member of the 1995 Section before becoming an active member of the new scheme, 16.25% of the old scheme pension to which the member was entitled at the date of death in accordance with paragraph (3)(a)(ii) of this regulation; or
  - (ii) was an active member of the 2008 Section before becoming an active member of the new scheme, 3.75% of the old scheme pension to which the member was entitled at the date of death in accordance with paragraph (3)(a)(ii) of this regulation.

(6C) If a child's pension becomes payable in respect of an eligible child of the member in accordance with regulation 123 (amount of child pension: deceased pensioner member) of the 2015 Regulations the basic death pension for the purposes of paragraph (3)(a) of that regulation is the sum of—

- (a) 67.5% of the deceased member's annual pension (disregarding any additional pension) under the new scheme; and
- (b) if the member—
  - (i) was an active member of the 1995 Section before becoming an active member of the new scheme, 32.5% of the old scheme pension to which the member was entitled at the date of death in accordance with paragraph (3)(a)(ii) of this regulation; or
  - (ii) was an active member of the 2008 Section before becoming an active member of the new scheme, 7.5% of the old scheme pension to which the member was entitled at the date of death in accordance with paragraph (3)(a)(ii) of this regulation.”.

### **Amendment of regulation 38**

**18.** In the left hand column of Part 2 of the table in regulation 38 (death in service), after the heading “Entitlements derived from the 2008 section”, for “a lump sum on death under regulation 2.E.17 or 3.E.17” substitute “a lump sum on death under regulation 2.E.17(1) or 3.E.17(1)”.

St Andrew's House,  
Edinburgh  
28th November 2017

*DEREK MACKAY*  
A member of the Scottish Government

We consent

*HEATHER WHEELER*  
*ANDREW GRIFFITHS*  
Two of the Lords Commissioners of Her Majesty's Treasury

11th December 2017

## 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 2018/19 (regulations 3 and 4).

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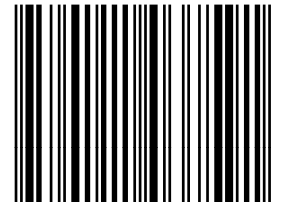
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