STATUTORY INSTRUMENTS

1998 No. 1451 (S.75)

NATIONAL HEALTH SERVICE, SCOTLAND

The National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998

Made - - - -	*1st June 1998*
Laid before Parliament	*22nd June 1998*
Coming into force - -	*13th July 1998*

The Secretary of State, in exercise of the powers conferred on him by sections 10 and 12 of, and Schedule 3 to, the Superannuation Act 1972(**1**) and of all other powers enabling him in that behalf, after consulting such representatives of persons likely to be affected by these Regulations as appear to him to be appropriate in accordance with section 10(4) of that Act, and with the consent of the Treasury(**2**), hereby makes the following Regulations:

PART I

Preliminary

Citation, commencement and retrospective effect

1.—(1) These Regulations may be cited as the National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998.

(2) These Regulations shall come into force on 13th July 1998 and shall have effect from 1st February 1991(**3**).

Interpretation

2.—(1) In these Regulations, except where the context otherwise requires–

(**1**) 1972 c. 11; section 10(1)(a) was amended by the National Health Service (Scotland) Act 1972 (c. 58), Part II of Schedule 7; sections 10(2A), (3A) and (6) and 12(4A) were inserted and sections 10(1), 12(2) and (4) amended by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7), sections 4(2), 8(5) and (6) and 10; section 10(6) was amended by the Pension Schemes Act 1993 (c. 48), Schedule 8, paragraph 7.

(**2**) *See* the Superannuation Act 1972, section 10(1), and the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I.1981/1670), article 2.

(**3**) *See* section 12(1) of the Superannuation Act 1972 which provides that regulations may be framed so as to have effect from a date earlier than that of their making.

"the 1995 Regulations" means the National Health Service Superannuation Scheme (Scotland) Regulations 1995((**4**)

"the Taxes Act" means the Income and Corporation Taxes Act 1988((**5**)

"approved scheme" means a retirement benefits scheme approved under Chapter I of Part XIV of the Taxes Act;

"authorised fund" means a fund managed by an authorised provider selected by the Secretary of State for the purposes of these Regulations;

"authorised provider" has the meaning given to it by section 10(6) of the Superannuation Act 1972;

"child" means a child who is entitled to a dependent child's allowance under regulation H2 of the 1995 Regulations;

"contributor" means a person in respect of whom an election under regulation 3(1) has effect;

"dependant" means either a surviving spouse (providing the marriage was not, prior to 1st April 1995, subject to a decree of separation) or any surviving child of a participator;

"dependant's pension" means a pension which becomes payable to a dependant on the death of a participator;

"free-standing additional voluntary contributions scheme" means an approved scheme which falls within section 591(2)(h) of the Taxes Act (discretionary approval);

"the Index" at any time means the Retail Price Index or any successor agreed as appropriate by the Board of Inland Revenue, for the calendar month three months prior to that time;

"insurance company" means a body authorised under section 3 or 4 of the Insurance Companies Act 1982(**6**) to carry on long term insurance business or an EC company as defined by section 2(6) of that Act(**7**) which carries on long term insurance business through a branch in the United Kingdom and in respect of which such of the requirements of Part I of Schedule 2F to that Act(**8**) as are applicable have been complied with;

"lump sum death benefit" means a lump sum which will become payable in the event of a person's death while paying contributions to provide for it;

"participator" means–

(a) a person in respect of whom investments have been made under regulation 7, 8(2) or 9(4) and who has not exercised any right to take a cash equivalent within the meaning of section 94 of the Pension Schemes Act 1993(**9**) or to be paid a lump sum under regulation 14; or

(b) a person who, while he was a participator in terms of paragraph (a) above, has made a benefits election under regulation 11(3) or has died.

"pensionable employment" means NHS employment in respect of which a person contributes to the NHS Superannuation Scheme for Scotland;

"pensionable service" is to be construed in accordance with regulation C2 of the 1995 Regulations;

"personal pension scheme" means a scheme approved under Chapter IV of Part XIV of the Taxes Act;

(**4**) S.I. 1995/365, amended by S.I. 1997/1434 and 1916.
(**5**) 1988 c. 1.
(**6**) 1982 c. 50.
(**7**) Subsection (6) was inserted by S.I. 1994/1696.
(**8**) Schedule 2F was inserted by S.I. 1994/1696.
(**9**) 1993 c. 48.

"retirement" is to be construed in accordance with the 1995 Regulations and "date of retirement" means the date on which benefits become payable to the participator under any of regulations E1 to E6 of those Regulations;

"retirement benefits scheme" has the meaning given in section 611 of the Taxes Act;

"salary" means all salary, wages, fees and other payments paid or made to a person as such for his own use in respect of his employment.

(2) Subject as aforesaid and except where the context otherwise requires, other expressions in these Regulations have the same meaning as in the 1995 Regulations.

PART II

Additional Voluntary Contributions

Making and acceptance of elections

3.—(1) Subject to paragraph (3), a person in pensionable employment may elect to pay contributions under these Regulations–

(a) for investment under regulation 7(1) to provide for an annuity payable on retirement;

(b) for investment under regulation 7(2) to provide for a lump sum death benefit.

(2) An election under paragraph (1) may relate to contributions to be paid by, or on behalf of, the contributor or contributions to be paid by the contributor's employer or both.

(3) An election under paragraph (1) shall not have effect if the person making it–

(a) is on leave of absence from work on the date on which the notice of such an election is received by the Secretary of State;

(b) is not receiving tax relief under section 594(1) of the Taxes Act (exempt statutory schemes) or otherwise in respect of contributions paid under regulation D1 of the 1995 Regulations.

(4) An election under paragraph (1) shall be made by giving written notice to the Secretary of State specifying–

(a) whether the election relates to paragraph (1)(a) or (b), or both;

(b) the amount of the contributions; and

(c) in relation to contributions for the purpose of investment under regulation 7(1), the authorised fund or funds in which the contributions are to be invested,

and, subject to paragraph (5), shall be accepted by him.

(5) The Secretary of State shall not accept an election under paragraph (1)–

(a) where any limit imposed by regulation 4(3), 4(4) or 13 (limits on contributions and benefits) would be exceeded; or

(b) in the case of an election under paragraph (1)(b) to provide for a lump sum on death, unless he is satisfied that the election is made in accordance with the requirements of regulation 16(2) and that at the time of making an election the person is in good health and that there is no reason why his health should prevent him from making contributions.

(6) Subject to paragraph 5(b) above and regulation 4(4), where contributions are paid until the contributor's 60th birthday and the contributor does not then cease to be in pensionable employment, an election may be made to pay further contributions up to the contributor's 61st birthday to provide for a lump sum death benefit; and so long as the contributor has not ceased to be in pensionable employment, further elections may be made annually in respect of subsequent years.

(7) For the purposes of paragraphs (1) and (6), an election shall have effect from the date when the election is accepted by the Secretary of State.

Payment and amount of additional voluntary contributions

4.—(1) Contributions under these Regulations may be made by way of weekly, monthly or quarterly payments or by way of a single payment.

(2) The contributor's employer may deduct any amount payable by the contributor from the contributor's salary, and such deductions shall commence to be made from the salary in respect of the first whole pay period falling after the date the employer receives authorisation to make those deductions and shall be remitted to the Secretary of State as soon as reasonably practicable but not later than 10 days following the pay period in which the contributions are deducted.

(3) Subject to paragraph (4), in any period of 12 months beginning on 6th April in any year the total contributions payable by the contributor must not exceed

the lesser of A and B

where–

A is 15 per cent of the contributor's salary less the total of any contributions in respect of that year paid by the contributor–

(i) to another approved scheme;

(ii) to a free standing additional voluntary contribution scheme;

(iii) under the 1995 Regulations;

B is the amount which would be likely to provide benefits of the largest amounts allowed by regulation 13.

(4) In the case of an election under regulation 3(1)(b) to provide for a lump sum death benefit, contributions payable by virtue of that election, or any election under regulation 3(6) or 5(2)(a), may not, at the date on which the Secretary of State accepts the election, be of such an amount as to provide for a lump sum death benefit in excess of the permitted amount under paragraph 15(4) of the Schedule.

Variation and cancellation of elections

5.—(1) A contributor who has elected under regulation 3(1)(a) to pay contributions for the purpose of investment under regulation 7(1) may at any time by giving written notice to the Secretary of State–

(a) subject to regulation 4(3), alter the amount of the contributions;

(b) require the whole or part of them to be invested in future in some other authorised fund;

(c) require the Secretary of State to realise the whole or part of any investments made and to reinvest the proceeds in some other authorised fund; or

(d) cancel the election.

(2) A contributor who has elected under regulation 3(1)(b) to pay contributions to provide a lump sum death benefit under regulation 7(2) may at any time by giving written notice to the Secretary of State–

(a) subject to regulation 4(3) and (4) and provided he is not absent from work or his health is such that the Secretary of State would not accept an election under regulation 3(1)(b), elect that a specified larger sum is to be secured and the contributions increased accordingly; or

(b) cancel the election.

(3) The Secretary of State shall give effect as soon as is reasonably practicable to the terms of any notice given under this regulation.

Circumstances in which elections cease to have effect

6. An election shall cease to have effect where a contributor–

(a) receives payment of benefits under any of regulations E1 to E6 of the 1995 Regulations except where the contributor is entitled to accrue further benefits in the circumstances described in regulation B3(2) of those Regulations;

(b) leaves pensionable employment;

(c) ceases to be in pensionable employment by virtue of an election under regulation B4 of the 1995 Regulations; or

(d) ceases to receive tax relief under section 594(1) of the Taxes Act (exempt statutory schemes) or otherwise in respect of contributions paid under regulation D1 of the 1995 Regulations.

Investment of additional voluntary contributions

7.—(1) Any contributions paid in respect of a contributor for investment under this paragraph shall be invested by the Secretary of State in accordance with any notice under regulation 3(4) or 5(1).

(2) Any contributions paid in respect of a contributor to provide for a lump sum death benefit under this paragraph shall be paid by the Secretary of State to an insurance company selected by him so as to secure the payment of a lump sum death benefit of the amount required by any notice under regulation 3(4) or 5(2).

Inward transfers

8.—(1) Where a person who enters pensionable employment has during any previous employment paid contributions to–

(a) a free-standing additional voluntary contributions scheme; or

(b) an approved scheme which provides additional benefits through additional voluntary contributions but does not fall within section 591(2)(h) of the Taxes Act (discretionary approval),

that person, whether or not he becomes a contributor within the meaning of these Regulations, may, within 12 months of entering pensionable employment, or such longer period as the Secretary of State may in any particular case allow, give written notice to the Secretary of State that he wishes him to accept from the trustees or managers of such a scheme a transfer value representing the value of the investments derived from his contributions.

(2) Where a transfer value is accepted by the Secretary of State it shall be invested by him, in accordance with the wishes of the person entering pensionable employment, in one or more of the authorised funds.

(3) Where a transfer value is invested under paragraph (2) the person may at any time, by giving written notice to the Secretary of State, require the Secretary of State to realise the whole or part of the sums so invested and to reinvest the proceeds in a different way.

Inward transfers: mis-sold pensions

9.—(1) This regulation shall apply to a person to whom regulation B6(**10**) of the 1995 Regulations (opting into the scheme: mis-sold pensions) applies in respect of whom a transfer payment within the meaning of regulation N3A(**11**) of those Regulations has been paid by a personal pension scheme to the Secretary of State.

(2) Subject to paragraph (3), where, at any time, a person to whom this regulation applies elects to rejoin the scheme under regulation B5 of the 1995 Regulations, that person, whether or not he becomes a contributor within the meaning of these Regulations, may, within 12 months of rejoining the scheme, or such longer period as the Secretary of State may in any particular case allow, give written notice to the Secretary of State that he wishes him to accept, for the purposes of these Regulations, a transfer value.

(3) For the purposes of paragraph (2), the transfer value shall be of an amount representing the difference between–

(a) the capitalised value of the accrued rights to benefit in the personal pension scheme from which the transfer value is paid which is attributable to contributions made to that scheme by the person referred to in paragraph (1) during his opted-out service; and

(b) the amount referred to in regulation N3A(2)(a) of the 1995 Regulations.

(4) Where a transfer value is accepted by the Secretary of State it shall be invested by him, in accordance with the wishes of the person referred to in paragraph (1), in one or more of the authorised funds.

(5) Where a transfer value is invested under paragraph (4) the person referred to in paragraph (1) may at any time, by giving written notice to the Secretary of State, require the Secretary of State to realise the whole or part of the sums so invested and to reinvest the proceeds in a different way.

(6) In this regulation–

"opted-out service" means the period of NHS employment in respect of which the Secretary of State has approved an additional period of pensionable service for the purposes of regulation N3A(2)(a) of the 1995 Regulations; and

"personal pension scheme" has the meaning given by regulation B6(4) of the 1995 Regulations.

Outward transfers

10.—(1) Subject to paragraph (2), the Secretary of State shall, in circumstances where a transfer payment in respect of a person is provided and used in accordance with regulation M1 of the 1995 Regulations, pay a transfer value representing the value of investments made under regulation 7(1), 8(2) or 9(4) at that person's option to one of the following schemes in which that person may be participating:–

(a) an approved scheme which provides additional benefits through additional voluntary contributions but does not fall within section 591(2)(h) of the Taxes Act (discretionary approval);

(b) a personal pension scheme; or

(c) any other arrangement which has been approved by the Board of Inland Revenue to accept transfer payments, provided that the transfer value shall not be used to purchase benefits in the form of a tax free lump sum.

(2) Where the Secretary of State is required to make a transfer payment he shall do so by whichever is the earlier of–

(**10**) Regulation B6 was inserted by S.I. 1997/1434.
(**11**) Regulation N3A was inserted by S.I. 1997/1434.

(a) the date being a date within six months of the guarantee date; or

(b) if the person in respect of whom the transfer payment is to be made–

(i) ceased to be subject to the 1995 Regulations on a date prior to his attaining the age of 59 years, and

(ii) made his application for a transfer payment within 6 months of that date,

the date on which he attains age 60.

(3) In this regulation "the guarantee date" has the meaning given to it in section 93A(2) of the Pension Schemes Act 1993(**12**).

PART III

Provision of Benefits

Retirement and dependants' pensions

11.—(1) Subject to paragraph (7) and regulation 15(9) and (10), the proceeds of any investment made under regulation 7(1), 8(2) or 9(4) may be used only for the purchase from an insurance company of an annuity which complies with the requirements of paragraph (2).

(2) An annuity complies with the requirements of this paragraph if–

(a) it provides a retirement pension which commences not earlier than the date of retirement and is payable to the participator for life;

(b) any dependant's pension which is payable under it is payable only on the death of the participator after his retirement and is payable for life, except that in the case of a dependant who is a child to whom Part H of the 1995 Regulations applies it shall cease to be payable when that person ceases to be a dependent child within the meaning of those Regulations;

(c) it is not capable in whole or in part of surrender or assignment or of commutation.

(3) Not earlier than three months before retirement, a participator, by giving written notice to the Secretary of State, shall make a benefits election which shall specify–

(a) whether only a retirement pension is to be provided;

(b) for whom, if anyone, a dependant's pension is to be provided;

(c) if more than one pension is to be provided, either–

(i) the proportion of the amount secured by the investments under regulation 7(1), 8(2) or 9(4) that is to be applied to the purchase of each of them; or

(ii) the dependants' pensions to be provided expressed as a percentage of the retirement pension;

(d) in respect of every pension to be provided, whether the annual rate of the pension–

(i) is to be fixed, or

(ii) is to vary in accordance with the Index, or

(iii) is to increase yearly by a specified percentage or, if lower than that percentage, by the increase in the Index for the year in question; and

(e) the authorised provider who is to provide each pension.

(4) In the case of a retirement pension, the benefits election under paragraph (3) may also specify that if the participator dies within the period of 5 years beginning on the date on which the retirement

(**12**) 1993 c. 48; section 93A was inserted by section 153 of the Pensions Act 1995 (c. 26).

pension commences, the balance that would have been payable during the remainder of that period, if the pension had continued at the rate in force at the time of the participator's death, is to be paid as a lump sum.

(5) Upon receipt of a notice of election under paragraph (3) the Secretary of State shall, as soon as reasonably practicable, realise the investments made under regulation 7(1), 8(2) or 9(4) and apply the proceeds to the purchase of an annuity from the authorised provider chosen by the participator to provide the benefits specified in the notice of election.

(6) Subject to paragraph (7) and regulation 15(9) and (10) where, on or after the date on which these Regulations come into force, no benefits election under paragraph (3) has been made six months after the date of retirement, the Secretary of State may realise the investments made under regulation 7(1), 8(2) or 9(4) and apply the proceeds to the purchase of a pension policy from the insurance company referred to in regulation 7 to provide such benefits as appear to him to be suitable.

(7) If the participator dies before retirement, or after retirement but before an annuity such as is mentioned in paragraph (5) is acquired, the investments made under regulation 7(1), 8(2) or 9(4) shall be realised and be payable as a lump sum, subject to any limit imposed by regulation 13 and paragraph 15 of the Schedule.

(8) If the benefits provided by the annuity, purchased in accordance with paragraph (5), when aggregated with the benefits payable under the 1995 Regulations arising from the participator's pensionable service, do not exceed any amount prescribed by regulations for the time being in force under section 21(1) of the Pension Schemes Act 1993(**13**), the authorised provider may discharge the liability for payment of the benefits under the annuity by payment of a lump sum representing their capital value.

Lump sums on death

12.—(1) Subject to paragraph (2), if a contributor who has elected under regulation 3(1)(b) to pay contributions to provide for a lump sum death benefit dies, the lump sum shall be payable.

(2) Any lump sum payable under paragraph (1) shall not exceed the permitted amount specified in paragraph 15(4) of the Schedule.

Benefit limits

13.—(1) The Schedule shall have effect for limiting the benefits that may be paid under these Regulations.

(2) The maximum annual rate of a retirement pension or dependent's pension ascertained from the Schedule may be increased–

(a) by 3 per cent for each completed year that has elapsed; or

(b) if a greater increase results, in proportion to the increase in the Index that has occurred,

since the date on which the pension became payable.

(3) The Secretary of State shall comply with the requirements of regulation 5 of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) Regulations 1993(**14**), and where, within the meaning of those Regulations, the scheme is the "leading scheme" in relation to a member, with the requirements of regulation 6 of those Regulations so far as they concern "main schemes" for the purposes of those Regulations.

(**13**) 1993 c. 48.
(**14**) S.I. 1993/3016.

PART IV

Miscellaneous Provisions

Repayment of investments in certain cases

14.—(1) In the case of a person who–

(a) ceases to be employed in pensionable employment;

(b) is entitled to receive a refund of contributions under regulation E9 of the 1995 Regulations; and

(c) has applied for and received such a refund of contributions,

the Secretary of State shall make arrangements for that person, subject to paragraph (2), to receive a lump sum representing the total realisable value of the investments made by the Secretary of State in respect of that person under regulation 7(1), 8(2) or 9(4) less the amount of tax chargeable under section 598 of the Taxes Act (charge to tax: repayment of employee's contributions).

(2) Where, in the circumstances mentioned in paragraph (1), contributions have been made by an employer, the Secretary of State shall make arrangements for that employer to receive a lump sum representing the total realisable value of the investments made by the Secretary of State in respect of contributions made by that employer under regulation 7(1) less the amount of tax chargeable under section 601 of the Taxes Act (charge to tax: payment to employers).

Payments by Secretary of State

15.—(1) Subject to paragraph (2), where an authorised provider fails to pay any amount due under an annuity or lump sum death benefit provided in accordance with these Regulations, the Secretary of State shall be liable to pay that amount.

(2) Where, on or after the date on which these Regulations come into force, a participator elects for benefits to be provided by an authorised provider other than the one selected by the Secretary of State, the Secretary of State shall not be liable under paragraph (1).

(3) Lump sums payable–

(a) as mentioned in regulation 11(4); or

(b) under regulation 11(7) or 12,

shall be paid to the deceased's spouse (provided no notice has been given under regulation F5(1) of the 1995 Regulations that the spouse is not to receive payment) or, if there is no spouse or such notice has been given, to the deceased's personal representatives.

(4) Lump sums payable under regulation 11(8) or 14(1) shall be paid to the participator.

(5) If when a participator dies a lump sum would have been payable under regulation 11(7) or 12, but the whole or part of that sum cannot be paid by reason of regulation 13 and paragraph 15 of the Schedule, any amount which cannot be paid under those provisions shall be used for the purchase of an annuity which complies with the provisions of regulation 11(2)(b) and (c) to provide a pension for–

(a) the deceased's spouse, but if none is living,

(b) any dependent child of the deceased;

provided that–

(i) any such person shall be subject to any limit imposed by regulation 13 and paragraph 14 of the Schedule, and

(ii) any amount remaining after the purchase of such a pension, or the whole amount if no such person as is mentioned in sub-paragraph (a) or (b) is living, less any amount of tax chargeable under section 599A of the Taxes Act(**15**) (charge to tax; payments out of surplus funds), shall be paid to the deceased's personal representatives.

(6) If, by reason of regulation 13 and paragraphs 7 to 14 inclusive of the Schedule, an annuity falling to be provided under regulation 11 is not payable in full, there shall, subject to paragraph (7), be paid to the participator the balance of the amount, or aggregate of amounts, not exceeding the prescribed amount as defined in paragraph (8), out of investments realised by virtue of regulation 11(5) which would otherwise have been applicable to the purchase of the annuity less the amount of any tax chargeable under section 599A of the Taxes Act.

(7) Where, in the circumstances mentioned in paragraph (6), contributions have been made by the employer, the balance (to the extent that it is attributable to contributions made by the employer) less the amount of any tax chargeable under section 601 of the Taxes Act, shall be paid to the employer.

(8) In paragraph (6) the reference to a prescribed amount is to an amount calculated in accordance with the method for the time being specified in regulations made for the purposes of section 591 of the Taxes Act (discretionary approval) as the method to be used for calculating the amount of any surplus funds.

(9) In the case of a participator to whom benefits become payable under any of regulations E1 to E6 of the 1995 Regulations (retirement), the Secretary of State may realise such part of the investments made under these Regulations as is derived from any contributions made by the participator's employer without purchasing an annuity and, in that event, the amount shall be payable to the participator as a lump sum.

(10) In the case of a participator to whom regulation E2(7) or E6(5) of the 1995 Regulations applies (early retirement on grounds of ill health), the Secretary of State may realise the investments made under these Regulations without purchasing an annuity and, in that event, the proceeds shall be payable as a lump sum less any charge to tax under section 599 of the Taxes Act.

Information

16.—(1) Persons making elections under these Regulations, and their employers, shall give the Secretary of State such information as he may reasonably require for the purposes of his functions under these Regulations.

(2) A person making–

(a) an election under regulation 3(1)(b) or (6) to provide a lump sum death benefit, or

(b) an election under regulation 5(2)(a),

shall, in particular, give the Secretary of State such information about his health as the Secretary of State may reasonably require.

Payments in respect of deceased persons

17.—(1) This regulation applies where a person dies and the total of–

(a) any sums that were due to him under these Regulations, and

(b) any sums payable under these Regulations to his personal representatives,

does not exceed the amount specified in any order for the time being in force for the purposes of section 1 of the Administration of Estates (Small Payments) Act 1965(**16**) and applying in relation to the death.

(**15**) Section 599A was inserted by section 75 of, and paragraph 12 of Schedule 6 to, the Finance Act 1989 (c. 26).
(**16**) 1965 c. 32; the amount specified in S.I. 1984/539 is £5,000.

(2) Where this regulation applies the Secretary of State may, without requiring the production of proof of title, pay any amount due under paragraph 1(a) and (b)–

(a) to the deceased's personal representatives, or

(b) to the person, or to or among any one or more of any persons, appearing to him to be beneficially entitled to the estate

and any person to whom such a payment is made, and not the Secretary of State, shall thereafter be liable to account for any amount so paid.

Benefits not assignable on bankruptcy

18.—(1) On the bankruptcy or sequestration of a person entitled to benefit under these Regulations, no part of the benefit shall be paid to any trustee or other person acting on behalf of creditors, except as provided for in paragraph (2).

(2) Where, following the bankruptcy or sequestration of any person entitled to benefit under these Regulations, the court makes an income payments order under section 32(2) and (4) of the Bankruptcy (Scotland) Act 1985(**17**) or under section 310 of the Insolvency Act 1986(**18**) that requires the Secretary of State to pay all or part of the benefit to the person's trustee in bankruptcy, the Secretary of State shall comply with that order.

Offset for crime, negligence or fraud

19. Where, in the circumstances set out in regulation T5 of the 1995 Regulations, there has been a loss to public funds, the Secretary of State may, in relation to benefits which arise by virtue of the employer's contributions, reduce the amount of any benefit payable to or in respect of a person under these Regulations, to the extent set out, and subject to the conditions specified, in that regulation.

Loss of rights to benefit

20. Where the circumstances are such that a direction may be made by the Secretary of State under regulation T6 of the 1995 Regulations, the Secretary of State may direct that all or part of any rights to benefit under these Regulations which arise by virtue of the employer's contributions be forfeited.

Determination of questions

21. Any question arising under these Regulations as to the rights or liabilities of any person shall be determined by the Secretary of State.

St Andrew's House,
Edinburgh
20th May 1998

Brian Wilson
Minister of State, Scottish Office

(**17**) 1985 c. 66.
(**18**) 1986 c. 45.

We consent,

Graham Allen
John McFall
Two of the Lords Commissioners of Her Majesty's Treasury

1st June 1998

SCHEDULE

Regulation 13

Benefit limits

PART I

Interpretation

1. Paragraphs 2 to 7 have effect for defining expressions used in this Schedule.

2. “Adjusted salary” means

$$A + B,$$

where–

A is the participator’s total taxable salary for the year in question less any fluctuating emoluments such as bonus payments and payments for overtime, and

B is the annual average of such fluctuating emoluments. For these purposes such emoluments shall be averaged–

(i) over a period of whole years, not being less than 3 consecutive years, ending on the last day of the year in question, or

(ii) in a case where such emoluments have been paid for a period of less than 3 years, over the period during which they have been paid.

3.—(1) “Final remuneration” means, subject to sub-paragraphs (2) and (3), the

$$\text{greater of C and D,}$$

where–

C is the participator’s highest year’s adjusted salary in respect of pensionable service during the period of 5 years ending on the material date, and

D is the average of the participator’s salary in respect of any period of 3 or more consecutive years ending no earlier than 10 years before the material date,

but, in respect of any year other than the one ending on the material date, the salary shall be taken to have been increased in proportion to any increase in the Index from the end of the year up to the material date.

(2) In respect of the tax year 1987/88 and following tax years, “final remuneration” shall not include any sums chargeable to tax under section 148 of the Taxes Act (payments on retirement or removal from office or employment) or chargeable under Schedule E to Part I of the Taxes Act and arising from the acquisition or disposal of shares, or an interest in shares, or from a right to acquire shares except where the shares or rights which give rise on or after 17 March 1987 to a Schedule E tax liability had been acquired before that date.

(3) Where the participator entered pensionable employment on or after 1st June 1989 and final remuneration, calculated under sub-paragraph (1), exceeds the permitted maximum under section 590C of the Taxes Act(**19**) (conditions for approval of retirement benefit schemes: earnings cap), then, for the purposes of calculating the participator’s final remuneration, no account shall be taken of the excess over that amount unless the participator is a person mentioned in regulation C1(3) of the 1995 Regulations.

(**19**) Section 590C was inserted by the Finance Act 1989 (c. 26), Schedule 6, paragraph 4.

(4) For the purposes of this paragraph, the Secretary of State shall select the years by reference to which the participator's final remuneration is to be calculated and the years selected shall be those which produce the most favourable result to the participator.

4. "Material date" means the earlier of–

(a) the participator's retirement date;

(b) the date on which the participator ceased to be in pensionable employment.

5.—(1) "Retained benefits" means the total of any pensions payable to the participator, in respect of employment before the participator entered pensionable employment, under–

(a) a retirement benefits scheme or under an annuity contract falling within section 431(4)(d) of the Taxes Act (interpretative provisions relating to insurance companies);

(b) a retirement annuity contract or trust scheme approved under Chapter III of Part XIV of the Taxes Act;

(c) a personal pension scheme approved under Chapter IV of Part XIV of the Taxes Act;

(d) a statutory scheme (as defined in section 612 of the Taxes Act); or

(e) an approved scheme.

(2) In this paragraph "pension" includes the actuarial equivalent as an annual pension, as determined by the Inland Revenue Pension Schemes Office, of any lump sum.

6. "Total retirement benefits" means the total of so much of–

(a) the annual rate of the participator's retirement pension under these Regulations;

(b) the annual rate of any pension payable under Part E of the 1995 Regulations;

(c) the actuarial equivalent as an annual pension, as determined by the Inland Revenue Pension Schemes Office, of any retirement lump sum under the 1995 Regulations;

(d) the annual rate of any pensions payable to the participator under any approved scheme;

(e) the actuarial equivalent as an annual pension, as determined by the Inland Revenue Pension Scheme Office of any retirement lump sum under an approved scheme;

as is attributable to contributions, including any contribution made by the employer, paid while in pensionable employment.

PART II

Retirement pensions

7. The annual rate of a participator's retirement pension under these Regulations must not be such as to cause the participator's total retirement benefits to exceed the permitted amount.

8.—(1) If the participator becomes entitled to a pension under regulation E1 of the 1995 Regulations on his 60th birthday, the permitted amount is the

greater of E and F,

where–

E is 1/60th of the participator's final remuneration for each of up to 40 years of pensionable service, and

F is the lesser of G and H.

(2) In sub-paragraph (1)–

(a) G is–

(i) in relation to a participator who entered pensionable employment before 17 March 1987, the fraction of final remuneration ascertained by reference to the number of years of pensionable service at age 60, from the Table below;

TABLE

Years of pensionable service at age 60	*Fraction*
not more than 5	1/60th for each year
6	8/60ths
7	16/60ths
8	24/60ths
9	32/60ths
10 or more	40/60ths

and

(ii) in any other case, is 1/30th of the participator's final remuneration for each of up to 20 years of pensionable service; and

(b) H is 2/3rd of the participator's final remuneration less any retained benefits.

9. If the participator becomes entitled to a pension under regulation E1 of the 1995 Regulations on a date later than his 60th birthday, the permitted amount is–

(a) where the participator first entered pensionable employment before 1st June 1989, the

greater of J, K and, where applicable L,

where–

J is an amount calculated in accordance with paragraph 8 as at the material date,

K is an amount calculated in accordance with paragraph 8 as at the participator's 60th birthday increased, up to the date of his retirement, in proportion to any increase in the Index during that period, and

L is, in the case of a participator with more than 40 years of pensionable service, 1/60th of his final remuneration for each of up to a maximum of 45 years of pensionable service, excluding any years before the participator's 60th birthday in excess of 40, and

(b) in any other case, is the lesser of the amounts calculated in accordance with paragraph 8(2)(a)(ii) and (2)(b).

10.—(1) If the participator becomes entitled to a pension under regulation E6 of the 1995 Regulations on or after his 60th birthday, the permitted amount is–

(a) where the participator first entered pensionable employment before 1st June 1989, the greater of

$$(M + R) \text{ and } (\frac{N \times Q}{P} + R)$$

where–

M is 1/60th of the participator's final remuneration for each of up to 40 years of pensionable service, N is the number of years on which M is calculated,

P is the number of years on which M would have been calculated if the participator had continued in pensionable employment up to his 60th birthday,

Q is the maximum amount calculated in accordance with paragraph 8 if the participator had continued in pensionable employment until age 60,

R is the appropriate increase; and

(b) in any other case, the lesser of the amounts calculated in accordance with paragraph 8(2)(a)(ii) and (2)(b).

(2) For the purpose of sub-paragraph (1) the appropriate increase is an increase in the amount in question in proportion to any increase in the Index from the cessation of pensionable employment to the date of payment of retiring allowances.

11. Paragraphs 8 to 10 inclusive in their application to persons who are special class officers for the purposes of regulations R2 and R3 of the 1995 Regulations shall have effect subject to the modification that 55th birthday shall be substituted for 60th birthday and age 55 shall be substituted for age 60.

12. If the participator becomes entitled to a pension under regulation E2 of the 1995 Regulations (early retirement pension on grounds of ill health), the permitted amount is that fraction of the participator’s final remuneration which, in accordance with paragraph 8 of this Schedule, he could have received had he remained in pensionable employment until his 60th birthday.

13. If the participator becomes entitled to a pension under regulation E3 (early retirement pension in respect of redundancy), E4 (early retirement pension with employer’s consent) or E5 (early retirement pension with actuarial reduction) of the 1995 Regulations, the permitted amount is–

(a) where the participator first entered pensionable employment before 1st June 1989, the greater of

$$M \text{ and } \left(\frac{N \times Q}{P}\right) \text{ and}$$

(b) in any other case, S, where–

M, N, P and Q have the same meaning as in paragraph 10, and

S is the lesser of the amounts calculated in accordance with paragraph 8(2)(a)(ii) and (2)(b).

PART III

Dependants' pensions

14.—(1) The annual rate of a dependant’s pension under these Regulations, or where more than one such pension is payable the total of their annual rates, must not be such as to cause the total of the annual rates of the relevant benefits to exceed the permitted amount.

(2) Where only one dependant’s pension is payable, the relevant benefits are–

(a) that pension;

(b) any similar pension payable to the dependant under the 1995 Regulations or under a free-standing additional voluntary contributions scheme to which contributions were paid while the participator was in pensionable employment;

and the permitted amount is 2/3rds of the maximum retirement pension.

(3) Where two or more dependants' pensions are payable, the relevant benefits are–

(a) those pensions;

(b) any similar pensions payable as mentioned in sub-paragraph (2)(b);

and the permitted amount is the annual rate of the maximum retirement pension:

Provided that for each dependant's pension the relevant benefits shall not exceed the permitted amount specified in sub-paragraph (2).

(4) Subject to sub-paragraph (5), the maximum retirement pension is the participator's permitted amount calculated in accordance with paragraphs 8 to 13 but disregarding any retained benefits.

(5) In calculating the maximum retirement pension–

(a) if the participator died in pensionable employment and had not attained the age of 60, it is to be assumed that he continued in pensionable employment at the same salary up to, and retired on, his 60th birthday, and

(b) if the participator died in pensionable employment and had attained the age of 60, it is to be assumed that he retired on the day before death.

PART IV

Lump sums on death

15.—(1) The lump sum payable under regulation 11(7) must not be such as to cause the total lump sums payable on death to exceed the total realisable value of the investments made by the Secretary of State under regulations 7(1), 8(2), or 9(4) in respect of contributions made by the participator.

(2) The total lump sums payable on death are the total of–

(a) any lump sum death benefit arising pursuant to an election under regulations 3(1)(b), 3(6) or 5(2)(a);

(b) any lump sum payable under regulation 11(7); and

(c) any lump sum death benefits totalling £2500 or more that are payable under relevant schemes.

(3) The relevant schemes are–

(a) approved schemes;

(b) schemes approved under Chapter IV of Part XIV of the Taxes Act;

(c) free-standing additional voluntary contribution schemes;

(d) retirement annuity contracts approved under Chapter III of Part XIV of the Taxes Act;

(e) the scheme constituted by the 1995 Regulations;

(f) "relevant statutory schemes" as defined by section 611A of the Taxes Act.

(4) The permitted amount for the purpose of regulations 4(4) and 12(2) is £5000 or, if greater, 4 times the participator's remuneration.

(5) The participator's remuneration is the

greater of T, U and V,

where–

T is what the participator's final remuneration would have been if the date of death had been the material date,

U is the participator's highest year's adjusted salary for the purpose of calculating T, and

V is the participator's total taxable earnings during any period of 12 months ending not more than 3 years immediately before the date of death, increased in proportion to any increase in the Index from the end of the year up to the material date as mentioned in paragraph 3(1).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the payment of additional voluntary contributions by persons who are members of the Superannuation Scheme constituted by the National Health Service Superannuation Scheme (Scotland) Regulations 1995 ("the NHS Superannuation Scheme" and "the 1995 Regulations"), or by their employers, in order to secure additional benefits financed by investment of those contributions. The Regulations have retrospective effect from 1st February 1991, as authorised by section 12(1) of the Superannuation Act 1972.

Regulation 3 provides for elections to pay periodical contributions so as to secure additional retirement and dependants' pensions and a lump sum death benefit in the event of death while paying such contributions and contains general provisions as to the making and acceptance of elections.

Regulation 4 deals with the payment of contributions and imposes a limit on their total amount.

Regulation 5 allows elections made under regulation 3 to be varied or cancelled.

Regulation 6 prescribes the circumstances under which an election ceases to have effect.

Regulation 7 makes provision in relation to the investment of contributions by the Secretary of State.

Regulation 8 makes provision relating to the acceptance of a transfer value from another scheme.

Regulation 9 makes special provision regarding the acceptance of a transfer value from a personal pension scheme in the case of persons who have opted out of the NHS Superannuation Scheme and suffered a loss as the result of a contravention which is actionable under section 62 of the Financial Services Act 1986 (mis-sold personal pensions). The transfer value will be the amount by which the accrued rights to benefit in the personal pension scheme exceeds the amount required under regulation N3(2)(a) of the 1995 Regulations to restore the person's service in the NHS Superannuation Scheme.

Regulation 10 makes provision regarding payment of a transfer value (representing the value of the investments) to another scheme.

Regulation 11 makes provision for the payment of retirement and dependant's pensions and for the making of elections relating thereto.

Regulation 12 provides for the payment of lump sum death benefits.

Regulation 13 and the Schedule impose limits on benefits payable under the Regulations.

Regulation 14 provides for the realisable value of investments to be repaid where contributions under the 1995 Regulations are repaid.

Regulation 15 makes provision in relation to the circumstances in which the Secretary of State will make any payments of benefits that an authorised provider fails to make. It also makes provision as to the persons to whom certain payments are to be made and as to the deduction of income tax.

Regulation 16 provides for the Secretary of State to be given information needed for the purposes of his functions under the Regulations.

Regulation 17 provides for any payments, up to a prescribed maximum (currently £5,000), payable to the personal representatives of deceased persons, to be made without proof of title.

Regulation 18 provides that on bankruptcy or sequestration benefits under the Regulations may be assigned to the person's trustee in bankruptcy, but only if the court makes an order to that effect. Benefits are otherwise not assignable by virtue of regulation 11(2)(c).

Regulation 19 provides for the offsetting of any benefits arising from the employer's contributions in circumstances of crime, negligence or fraud.

Regulation 20 provides for the forfeiture of rights to any benefits arising from the employer's contributions in certain circumstances.

Regulation 21 provides for the determination of questions by the Secretary of State.

These Regulations do not impose any costs on business.