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SCOTTISH STATUTORY INSTRUMENTS

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**2010 No. 369**

**The National Health Service (Superannuation Scheme, Pension Scheme, Injury Benefits and Additional Voluntary Contributions) (Scotland) Amendment (No. 2) Regulations 2010**

**PART 3**

**Amendment of the National Health Service Pension Scheme (Scotland) Regulations 2008**

**Amendment of the National Health Service Pension Scheme (Scotland) Regulations 2008**

**22.** The National Health Service Pension Scheme (Scotland) Regulations 2008<sup>(1)</sup> are amended as follows.

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

**23.**—(1) Regulation 1.B.1 (actuarial reports and accounts) shall be amended as follows.

(2) At the beginning of paragraph (4) insert “Subject to paragraph (5).”.

(3) After paragraph (4), insert—

“(5) The actuarial report referred to in paragraph (4) shall be based on actuarial assumptions determined by the Scottish Ministers with the consent of the Treasury.

(6) Before determining the assumptions referred to in paragraph (5), the Scottish Ministers may consult—

- (a) such representatives of employees and employing authorities as appear to the Scottish Ministers to be appropriate, and
- (b) the scheme actuary.”.

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

**24.** In regulation 2.A.1 (interpretation: general)—

(a) in the definition of “GMS practice”—

(i) in paragraph (a), after “registered medical practitioner” insert “who is a principal practitioner”; and

(ii) in paragraph (b), after “or more” insert “such”; and

(b) at the appropriate place in the alphabetical order, insert—

““GP Provider” has the meaning given in regulation 3.A.1;” and

““Waiting Period Joiner” has the meaning given in regulation 2.L.1;”.

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

25. For paragraph (3) of regulation 2.A.10 (meaning of “reckonable pay”: general), substitute—

“(3) A member’s “reckonable pay” is determined by the formula—

$$IRP \times (RPa / RPi)$$

Where—

IRP is the interim reckonable pay determined in paragraph (4), (6) or (7), as appropriate, before any adjustment for inflation in accordance with regulation 2.A.11 (adjustments for inflation in determining reckonable pay under regulation 2.A.10),

RPa is the annual rate of retirement pension the member would be entitled to if the reckonable pay used to calculate it was the interim reckonable pay, including any adjustment for inflation described in regulation 2.A.11, and

RPi is the annual rate of retirement pension the member would be entitled to if the reckonable pay used to calculate it was the interim reckonable pay, excluding any adjustment for inflation described in regulation 2.A.11, but instead including any increases that pay would attract if it was the annual rate of an official pension within the meaning of section 5(1) of the Pensions (Increase) Act 1971.”.

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

26. After paragraph (5)(f) of regulation 2.B.1 (eligibility: general), insert—

“(g) the person is a deferred member of the 1995 Section who has given notice for the purposes of paragraph (1) or (1A) of regulation B4 of the 1995 Regulations (opting out of the Scheme); and—

(i) as a result of that notice has been treated as ceasing to be an active member of that Section; and

(ii) pursuant to that notice remains opted-out of that Section for 5 years or more;

(h) the person is a deferred member of the 1995 Section who has given notice for the purposes of paragraph (1) or (1A) of regulation B4 of the 1995 Regulations and following that notice, has ceased to be an active member of that Section for any one period of five or more years comprising the aggregate of—

(i) any period during which the person leaves NHS employment; and

(ii) any period during which the person is treated as never having been an active member of that Section in accordance with paragraph (3) of regulation B4 of those Regulations in respect of one or more later periods of NHS employment entered into after having given the notice for the purposes of paragraph (1) or (1A) of that regulation;

(i) the person—

(i) has given notice for the purposes of regulation B4 of the 1995 Regulations and as a result of that notice all of that person’s NHS employments ceased to be pensionable employment for the purposes of those Regulations;

(ii) is not entitled to a pension (including a deferred pension) under those Regulations; and

(iii) has been treated as ceasing to be in pensionable employment under the 1995 Regulations for a period of 12 months or more;

(j) the person—

- (i) has given notice for the purposes of regulation B4 of the 1995 Regulations and as a result of that notice all of that person's NHS employments ceased to be pensionable employment for the purposes of those Regulations;
- (ii) is not entitled to a pension (including a deferred pension) under those Regulations; and
- (iii) has, in respect of the NHS employments referred to in (i), either received a repayment of contributions or exercised the right to a transfer payment under Part M of those Regulations.”.

### **Substitution of regulation 2.B.1A**

27. For regulation 2.B.1A (eligibility: transitional), substitute—

#### **“Eligibility: transitional**

**2.B.1A.**—(1) A person is eligible to be an active member of this Section of the Scheme if—

- (a) the person is not prevented from being so by regulation 2.B.2, 2.B.3 or 2.B.6; and
- (b) either—
  - (i) the Scottish Ministers have accepted that person's option to join this Section of the Scheme under Chapter 2.K; or
  - (ii) that person meets all of the requirements in paragraph (2).
- (2) Those requirements are that the person—
  - (a) is under age 75;
  - (b) was an active member of the 1995 Section on or after 1st April 2008;
  - (c) became a pensioner member of the 1995 Section on or before 1st October 2009;
  - (d) has either—
    - (i) returned to NHS employment, since becoming a pensioner member referred to in (c); or
    - (ii) commenced for the first time NHS employment; and
  - (e) is not eligible to be an active member of the 1995 Section in respect of the employment referred to in (d).

This is subject to the following paragraphs of this regulation.

(3) A person referred to in paragraph (2) is eligible to be an active member of this Section of the Scheme from the day immediately following the end of Waiting Period A, if that person is entitled to a pension under one of the following regulations of the 1995 Regulations—

- (a) E1 (normal retirement pension);
- (b) E2A(3)(a) (lower tier ill-health pension on early retirement);
- (c) E3A (early retirement pension (redundancy etc. new starters and post-transition)); or
- (d) E5 (early retirement pension (with actuarial reduction));

and that person shall be eligible to be an active member of this Section of the Scheme from the day immediately following the end of Waiting Period A.

(4) A person referred to in paragraph (2) shall be eligible to be an active member of this Section of the Scheme from the day immediately following the end of Waiting Period A and Waiting Period B, if that person is entitled to a pension under one of the following regulations of the 1995 Regulations—

- (a) E2 (early retirement pension (ill health)); or
- (b) E3 (early retirement pension (redundancy etc.)).

(5) If a person referred to in paragraph (2) is entitled to a pension under regulation E2A(3)(b) (upper tier ill-health pension on early retirement), that person shall be eligible to be an active member of this Section of the Scheme from the day immediately following whichever of the following occurs last—

- (a) the anniversary of that person entering NHS employment; or
- (b) the end of Waiting Period A.

(6) A person to whom paragraph (1)(b)(i) or (3)(b) applies and who is entitled to a lower tier ill health pension under regulation E2A(3)(a) of the 1995 Regulations, ceases to be eligible to be an active member of this Section of the Scheme from the date the Scottish Ministers make a determination that the person is entitled to an upper tier ill-health pension in place of that lower tier ill-health pension under regulation E2B(3) of those Regulations (re-assessment of ill health condition determined under regulation E2A).

(7) For the purposes of this paragraph—

- (a) “Waiting Period A” is a period of two calendar years beginning on the day the person becomes entitled to the pension under the 1995 Regulations;
- (b) “Waiting Period B” is a period beginning on the day the person becomes entitled to the pension under the 1995 Regulations equal to the calendar length of—
  - (i) any increase to the person’s pensionable service in the 1995 Section of the Scheme which has been applied in accordance with paragraph (3) of regulation E2 of the 1995 Regulations (early retirement pension (ill-health)); or
  - (ii) any additional service with which the person has been credited in accordance with regulation 5 of the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003<sup>(2)</sup>.

(8) This regulation applies to any person who has previously been an active member of a corresponding 1995 scheme as though any reference to—

- (a) the “1995 Section” includes a reference to that corresponding 1995 scheme;
- (b) the “1995 Regulations” includes a reference to any regulations, orders, rules or other instruments governing that corresponding 1995 scheme;
- (c) regulations “E1”, “E2”, “E2A”, “E2B(3)”, “E3”, “E3A”, “E3A(3)(a)”, “E3A(3)(b)”, or “E5” includes the equivalent of those regulations in a health service scheme the provisions of which correspond to the 1995 Regulations; and
- (d) “regulation 5 of the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003” includes the equivalent of that regulation as it applies to a member of a corresponding 1995 scheme.”.

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

**28.** For paragraph (2) of regulation 2.B.2 (restrictions on eligibility: general), substitute—

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(2) S.S.I. 2003/344 as amended by S.S.I. 2005/445, 512 and 544, 2006/561 and 2008/92 and 225.

“(2) A person is not eligible to be an active member of this Section of the Scheme if the person—

- (a) became a pensioner member of the 1995 Section or a corresponding 1995 scheme on, or before, 1st April 2008 (except if paragraph (1)(b)(i) of regulation 2.B.1A applies to that person); or
- (b) became a pensioner member of the 1995 Section or a corresponding 1995 scheme on, or after, that date (except if paragraph (1)(b)(i) or (ii) of regulation 2.B.1A applies to that person); or
- (c) is a deferred member of the 1995 Section or a corresponding 1995 scheme, but is not a deferred member—
  - (i) to whom regulation 2.B.1(5)(e), (f), (g) or (h) applies; and
  - (ii) in respect of whom permission of the Scottish Ministers to rejoin the 1995 Section has not been granted pursuant to regulation B2(3) of that Section (restrictions on membership).”.

### **Substitution of regulation 2.C.1**

29. For regulation 2.C.1 (contributions by members), substitute—

#### **“Contributions by members**

**2.C.1.—**(1) Each active member must make contributions to this Section of the Scheme (member contributions) in respect of—

- (a) the member’s pensionable pay in accordance with regulation 2.C.2 where the member is not a non-GP provider;
- (b) the member’s pensionable earnings in accordance with regulation 2.C.4 where the member is a non-GP provider.

(2) Member contributions must be made—

- (a) until the member completes 45 years’ pensionable service; or
- (b) where the notice required by regulation 2.A.2(3) has been properly received, until the member ceases officer service.

(3) In the case of a member who is not a non-GP provider, the member’s employing authority must deduct member contributions from the member’s pensionable pay and pay them to the Scottish Ministers not later than the 19th day of the month following the month in which the earnings were paid to the member.

(4) In the case of a member who is a non-GP provider, the contracting Health Board or someone appointed to act on their behalf must pay to the Scottish Ministers contributions under this regulation paid to it by the non-GP provider or paid to it by another employing authority not later than the 19th day of the month following the month in which the earnings were paid to the non-GP provider.

(5) Paragraph (6) applies where a member has failed to pay member contributions or an employing authority has failed to deduct such contributions in accordance with this regulation.

(6) The Scottish Ministers may recover any sum that remains due in respect of contributions referred to in paragraph (5) by deduction from any payment by way of benefits to, or in respect of, the member entitled to them if—

- (a) the member agrees to such a deduction; and
- (b) the deduction is to the member’s advantage.

(7) Paragraph (6) is without prejudice to any other method of recovery the Scottish Ministers may have.

(8) A member who is absent from service in circumstances within regulation 2.A.4(1) to (3) may make contributions to this Section of the Scheme in respect of the member's pensionable pay or, as the case may be, pensionable earnings in accordance with that regulation and whichever of regulations 2.C.2 or 2.C.4 applies to that member.

(9) If, apart from this paragraph, the pay or, as the case may be, earnings for a scheme year in respect of a member's service would not be a whole number of pounds, those earnings must be rounded down to the nearest whole pound.”.

### **Substitution of regulation 2.C.2**

**30.** For regulation 2.C.2 (members' contribution rate), substitute—

#### **“Contribution rate for members other than non-GP providers**

**2.C.2.—**(1) Contributions under regulation 2.C.1(1)(a) must be paid at the member's contribution rate for the scheme year in question.

(2) A member's contribution rate is the percentage specified in column 2 of the relevant table in respect of the corresponding pensionable pay band specified in column 1 of that table into which the member's pensionable pay falls.

(3) The Scottish Ministers shall, with the consent of the Treasury, determine the pensionable pay bands and percentage contribution rates specified in the relevant table in respect of each scheme year.

(4) Before determining those pensionable pay bands or percentage contribution rates, the Scottish Ministers must consider—

- (a) the advice of the scheme actuary; and
- (b) in accordance with regulation 1.B.2, advice from such employee and employer representatives as the Scottish Ministers consider appropriate.

(5) For the purposes of this regulation “the relevant table” means—

- (a) in respect of the 2010-2011 scheme year, table 1 where paragraph (2) of regulation 2.C.3 applies and table 2 if paragraph (16), (17) or (21) of that regulation applies;
- (b) in respect of the 2011-2012 scheme year, table 2.

**Table 1**

<i>Column 1</i> <i>Pay band</i>	<i>Column 2</i> <i>Contribution percentage rate</i>
Up to £20,709	5%
£20,710 to £68,392	6.5%
£68,393 to £107,846	7.5%
£107,847 to any higher amount	8.5%

**Table 2**

<i>Column 1</i> <i>Pay band</i>	<i>Column 2</i> <i>Contribution percentage rate</i>
Up to £21,175	5%
£21,176 to £69,931	6.5%
£69,932 to £110,273	7.5%
£110,274 to any higher amount	8.5%”

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

**31.**—(1) Regulation 2.C.3 (employees) is amended as follows.

(2) For the cross heading, substitute “**2.C.3 Determination of pensionable pay for the purposes of setting a contribution rate for members other than non-GP Providers**”.

(3) In paragraphs (4) to (17) and (21), for “the table in regulation 2.C.2(2)” substitute “the relevant table in regulation 2.C.2(5)”.

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

**32.** For regulation 2.C.4 (Non-GP Providers), substitute—

#### **“Contribution rate and determination of pensionable earnings for Non-GP providers**

**2.C.4.**—(1) Member contributions payable by a non-GP Provider under regulation 2.C.1(1)(b) must be paid at the member’s contribution rate for the scheme year in question.

(2) A member’s contribution rate is the percentage specified in column 2 of the relevant table in paragraph (15) in respect of the corresponding pensionable earnings band specified in column 1 of that table into which the member’s pensionable earnings falls.

(3) The Scottish Ministers shall, with the consent of the Treasury, determine the pensionable earnings bands and contribution rates specified in the relevant table in respect of each scheme year.

(4) Before determining those pensionable earnings bands or contribution rates, the Scottish Ministers must consider—

- (a) the advice of the scheme actuary; and
- (b) in accordance with regulation 1.B.2, advice from such employee and employer representatives as the Scottish Ministers consider appropriate.

(5) Paragraph (6) applies where, in respect of a scheme year, a non-GP provider—

- (a) has certified their pensionable earnings in accordance with regulation 2.J.13 and forwarded a record of those earnings to the contracting Health Board or someone appointed to act on their behalf; or
- (b) was not required to certify their earnings in accordance with that regulation but the contracting Health Board or someone appointed to act on their behalf has the figure that represents the non-GP provider’s pensionable earnings for that scheme year.

(6) In the circumstances referred to in paragraph (5), contributions payable for the scheme year in question shall be those specified in column 2 of the relevant table in

paragraph (15) in respect of the amount of pensionable earnings referred to in column 1 of that table which corresponds to the certified or final pensionable earnings from all non-GP provider sources and any additional pensionable earnings the non-GP provider is treated as having received during a break in service in accordance with regulation 2.A.9.

(7) Subject to paragraph (8), if paragraph (5) does not apply to a non-GP provider in respect of a scheme year, that non-GP provider shall pay contributions at the rate in column 2 of the relevant table in paragraph (15), on the basis of whichever of the following the contracting Health Board or someone appointed to act on their behalf considers the most appropriate in the circumstances—

- (a) an amount of the non-GP provider's earnings that has been agreed between the contracting Health Board, or someone appointed to act on their behalf, on the one hand and the non-GP provider on the other hand;
- (b) corresponds to that non-GP provider's most recent certified or final pensionable earnings referred to in paragraph (5); or
- (c) an amount of such earnings that corresponds to the estimate by the contracting Health Board, or someone appointed to act on their behalf, of the non-GP provider's pensionable earnings from all non-GP provider sources for that year.

(8) If paragraph (7) applies to a non-GP provider in respect of a scheme year and paragraph (5)(a) or (b) is subsequently satisfied in respect of that scheme year, that non-GP provider shall pay contributions at the rate determined in accordance with paragraph (6).

(9) The contracting Health Board or someone appointed to act on their behalf may adjust a non-GP provider's contribution rate for any scheme year determined in accordance with paragraph (7)—

- (a) by agreement between the contracting Health Board or someone appointed to act on their behalf on the one hand and the non-GP provider on the other hand; or
- (b) without such agreement, if the contracting Health Board or someone appointed to act on their behalf is satisfied that pensionable earnings will exceed the amount used to determine the contribution rate in accordance with that paragraph.

(10) If a member is in non-GP provider service and concurrently in practitioner service in respect of which the member is liable to pay contributions in accordance with regulation 3.C.1, contributions payable in respect of the member's non-GP provider service shall be determined under this regulation and contributions payable in respect of the member's practitioner service shall be determined under regulation 3.C.2.

(11) In determining member contributions payable in accordance with this regulation, the contracting Health Board or someone appointed to act on their behalf must take account of pensionable earnings from all non-GP provider sources, including any pensionable earnings as a non-GP provider determined by another contracting Health Board.

(12) An employing authority that is not the contracting Health Board or someone appointed to act on their behalf shall, in respect of any pensionable earnings the Health Board or person appointed pays to a non-GP provider, take advice from any other relevant contracting Health Board or person appointed in determining the contributions payable in accordance with this regulation.

(13) Where paragraph (14) does not apply, a non-GP provider shall pay member contributions to the contracting Health Board or someone appointed to act on their behalf.

(14) If a non-GP provider is engaged under a contract of service or for services by an employing authority or is a partner or shareholder in an employing authority that is not an OOH provider, that authority must—



- (a) deduct contributions under this regulation from any pensionable earnings the authority pays that person; and
  - (b) if it is not also the contracting Health Board, pay those contributions to that contracting Health Board or someone appointed to act on their behalf not later than the 7th day of the month following the month in which the earnings were paid.
- (15) For the purposes of this regulation “the relevant table” means—
- (a) in respect of the 2009-2010 scheme year, table 1;
  - (b) in respect of the 2010-2011 and any later scheme year, table 2

**Table 1**

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
Up to £20,709	5%
£20,710 to £68,392	6.5%
£68,393 to £107,846	7.5%
£107,847 to any higher amount	8.5%

**Table 2**

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earning band</i>	<i>Contribution percentage rate</i>
Up to £21,175	5%
£21,176 to £69,931	6.5%
£69,932 to £110,273	7.5%
£110,274 to any higher amount	8.5%”

**Substitution of regulation 2.C.5**

**33.** For regulation 2.C.5 (contributions by employing authorities: general), substitute—

**“Contributions by employing authorities: general**

**2.C.5.—(1)** The employing authority of a member who is an active member of this Section of the scheme under this Part must contribute to the scheme, in respect of the pensionable pay, or as the case may be, pensionable earnings of that member, at the rate determined by the Scottish Ministers and specified in paragraph (4) (“the employer’s standard rate”).

- (2) In specifying the employer’s standard rate, the Scottish Ministers must—
  - (a) obtain the consent of the Treasury; and
  - (b) take account of the advice of the scheme actuary and the cost of providing for any increase in pensions under the Scheme as a result of orders made under the provisions of the Pensions (Increase) Act 1971 and section 59 of the Social Security Pensions Act 1975.

(3) If for any period a person holds more than one employment (whether under a contract of service or for services) with an employing authority in respect of which the person is an active member of the Scheme, this regulation and regulation 2.C.6 apply in respect of each of those employments as if it were the only employment held.

(4) The employer's standard rate is 13.5%.

(5) In any particular case the Scottish Ministers may direct that, for the purposes of this Chapter, "employing authority" includes one or more of—

- (a) a successor, transmittee or assignee of an employing authority's business or functions; or
- (b) the last employing authority of a person to whom these regulations apply.

(6) Subject to paragraph (7), if a non-GP provider is—

- (a) an employing authority which is a GMS practice, a section 17C agreement provider or an HBPMS contractor, or
- (b) a shareholder or partner in such an employing authority,

that employing authority shall pay employer's standard rate contributions to the contracting Health Board, or someone appointed to act on their behalf, not later than the 7th day of the month following the month in which the earnings were paid.

(7) If a non-GP provider is a shareholder or partner in more than one employing authority referred to in paragraph (6), each employing authority must pay employer's standard rate contributions on any pensionable earnings it pays to the non-GP provider or, as the case may be, on the non-GP provider's share of the partnership profits, to the contracting Health Board, or someone appointed to act on their behalf, not later than the 7th day of the month following the month in which the earnings were paid.

(8) If paragraph (14) of regulation 2.C.4 applies (but paragraph (6) of this regulation does not) and the employing authority referred to in regulation 2.C.4(14)—

- (a) is not the contracting Health Board, that authority must pay employer's standard rate contributions under this regulation to the contracting Health Board, or someone appointed to act on their behalf, not later than the 7th day of the month following the month in which the earnings were paid;
- (b) is the contracting Health Board, that Health Board, or someone appointed to act on their behalf, must pay employer's standard rate contributions under this regulation to the Scottish Ministers in respect of any pensionable earnings it pays to the non-GP provider.

(9) Not later than the 19th day of the month following the month in which pensionable pay or, as the case may be, pensionable earnings are paid to a member, the employer's standard rate contributions under this regulation must be paid to Scottish Ministers—

- (a) in the case of a member other than a non-GP provider, by that member's employing authority;
- (b) in the case of a non-GP provider, by the contracting Health Board, or someone appointed to act on their behalf."

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

**34.** In regulation 2.C.6 (contributions by employing authorities: members becoming entitled to pensions under regulation 2.D.11)—

- (a) for paragraph (1)(a), substitute—

- “(a) the cost of providing the pension under that regulation for the period between the member leaving the employment in which the member was an active member and reaching age 65—
  - (i) before any part of that pension is exchanged for a lump sum under regulation 2.D.14; and
  - (ii) in the case of a 2008 Section Optant, after that pension is reduced in accordance with regulation 2.K.12”; and
- (b) after paragraph (1)(b), insert—
  - “; and
- (c) in the case of a 2008 Section Optant, the additional cost attributable to the early payment of the lump sum to be paid to such an Optant under regulation 2.K.12.”.

### **Substitution of regulation 2.C.17**

**35.** For regulation 2.C.17 (revaluation of increases bought under options: members’ pensions), substitute—

#### **“Revaluation of increases bought under options: members’ pensions**

**2.C.17.—**(1) Where an option under regulation 2.C.8, 2.C.10 or 2.C.11 has been exercised, the final amount of the increase in a member’s pension immediately before the beginning date for that pension shall be determined in accordance with this regulation.

(2) Where the increase in pension is in respect of an option that was exercised less than 2 months before the increase becomes payable, the final amount is calculated in accordance with paragraph (4).

(3) Where the increase in pension is in respect of an option that was exercised 2 or more months before the increase in pension becomes payable, the final amount is calculated in accordance with paragraph (5).

(4) The calculation referred to in paragraph (2) is as follows—

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Step 1 –	Calculate the basic amount of the increase in accordance with regulations 2.C.14 to 2.C.16, to find the Step 1 amount.
Step 2 –	Add to the Step 1 amount an amount that is equal to any increases that would be due under the Pensions (Increase) Act 1971(3) on a pension of the same amount as the Step 1 amount when it first falls into payment, to find the Step 2 amount.
Step 3 –	Divide the Step 2 amount by the Step 1 amount, to find the Step 3 factor.
Step 4 –	Divide the Step 1 amount by the Step 3 factor to find the final amount referred to in paragraph (1).

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(5) The calculation referred to in paragraph (3) is as follows—

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Step 1 –	Calculate the basic amount of the increase in accordance with regulations 2.C.14 to 2.C.16, to find the Step 1 amount.
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- Step 2 – Multiply the Step 1 amount by the retail prices index for the second month before the month in which the increase in pension will become payable, to find the Step 2 amount.
- Step 3 – Divide the Step 2 amount by the retail prices index for the month in which the option was exercised, to find the Step 3 amount.
- Step 4 – Take the greater of the Step 1 amount and Step 3 amount, to find the Step 4 amount.
- Step 5 – Add to the Step 4 amount an amount that is equal to any increases that would be due under the Pensions (Increase) Act 1971 on a pension of the same amount as the Step 4 amount when it first falls into payment, to find the Step 5 amount.
- Step 6 – Divide the Step 5 amount by the Step 4 amount, to find the Step 6 factor.
- Step 7 – Divide the Step 4 amount by the Step 6 factor to find the final amount referred to in paragraph (1).
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(6) In this regulation, “the beginning date”, in relation to a pension, means the date on which it is treated as beginning for the purposes of the Pensions (Increase) Act 1971 (see section 8(2) of that Act).”

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

**36.** In regulation 2.D.2 (pension credit members)—

- (a) at the beginning of paragraph (2), insert “Subject to paragraph (5),”; and
- (b) after paragraph (4), insert—

“(5) A pension credit member who has not reached the age of 65 is entitled to immediate payment of a reduced pension payable for life if the pension credit member has—

- (a) reached the age of 55; and
- (b) claimed payment of the pension.

(6) The amount of the annual pension under paragraph (5)—

- (a) is first calculated as mentioned in paragraph (3) of this regulation; and
- (b) then that amount is reduced by such amount as the Scottish Ministers determine, after consulting the scheme actuary, to be appropriate by reason of the payment of the pension before the member reaches 65.

(7) A claim under paragraph (5) must be made by notice in writing in such form as the Scottish Ministers require and takes effect from the date specified in the claim as the date on which the pension is to become payable.”

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

**37.** After paragraph (18) of regulation 2.D.8 (early retirement on ill-health (active members and non-contributing members)), insert—

“(19) In the case of a Waiting Period Joiner, this regulation is subject to regulation 2.L.3.”

#### **Amendment of regulation 2.D.14**

**38.** In regulation 2.D.14 (general option to exchange part of pension for lump sum), for paragraph (1) substitute—

“(1) A member (other than a pension credit member whose rights under the Scheme are attributable to a disqualifying pension credit for the purpose of paragraph 2 of Schedule 29 to the 2004 Act) may opt to exchange part of a pension to which the member would otherwise be entitled for a lump sum.”.

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

**39.** In regulation 2.D.15 (option for members in serious ill-health to exchange whole pension for lump sum) for paragraph (5), substitute—

“(5) A pension credit member who exercises the option is to be paid, as soon as reasonably practicable and before reaching the age of 75, an amount equal to the sum of—

- (a) the maximum lump sum (if any) to which the pension credit member could have become entitled on exercising the option under regulation 2.D.14 at the appropriate time; and
- (b) the total annual amount of the pension to which the pension credit member is entitled under regulation 2.D.2 after exercising that option, multiplied by 5.”.

#### **Omission of regulation 2.D.17**

**40.** Omit regulation 2.D.17 (pension credit member’s rights).

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

**41.** After paragraph (3) of regulation 2.E.2 (meaning of “surviving nominated partner”), insert—

“(4) In the case of a Waiting Period Joiner, this regulation is subject to regulation 2.L.2.”.

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

**42.—**(1) Regulation 2.E.3 (amount of pensions under regulation 2.E.1: active and non-contributing members) is amended as follows.

(2) At the end of paragraph (2), insert (as full out words) “Sub-paragraph (b) is subject to paragraph (7).”.

(3) At the beginning of paragraph (3), insert “Subject to paragraph (7).”.

(4) After paragraph (6), insert—

“(7) For the purposes of paragraphs (2)(b) and (3), no account is to be taken of any increase under—

- (a) regulation 2.D.3; or
- (b) regulation 2.K.21.”.

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

**43.** In paragraph (4) of regulation 2.E.10 (amount of children’s pension under regulation 2.E.8: deceased active members and deceased non contributing members), after “2.K.24 (children’s pensions payable on the death of a 2008 Section Optant who is in receipt of a lower tier ill health pension under regulation E2A of the 1995 Regulations)” (in the full out words) insert “and in the case of a Waiting Period Joiner, this is subject to regulation 2.L.5 (children’s pensions payable on the death of a Waiting Period Joiner).”.

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

44. In paragraph (3) of regulation 2.E.11 (amount of children’s pension under regulation 2.E.8: deceased pensioner members), after “2.K.24 (children’s pensions payable on the death of a 2008 Section Optant who is in receipt of a lower tier ill health pension under regulation E2A of the 1995 Regulations)” (in the full out words) insert “and in the case of a Waiting Period Joiner, this is subject to regulation 2.L.5 (children’s pensions payable on the death of a Waiting Period Joiner)”.

#### **Amendment of regulation 2.E.12**

45. In paragraph (3) of regulation 2.E.12 (amount of children’s pension under regulation 2.E.8: deceased deferred members), after “2.K.24 (children’s pensions payable on the death of a 2008 Section Optant who is in receipt of a lower tier ill health pension under regulation E2A of the 1995 Regulations)” (in the full out words) insert “and in the case of a Waiting Period Joiner, this is subject to regulation 2.L.5 (children’s pensions payable on the death of a Waiting Period Joiner)”.

#### **Amendment of regulation 2.E.17**

46. In paragraph (1) of regulation 2.E.17 (amount of lump sum: single capacity members and recent leavers (disregarding regulation 2.D.5 employments)), after “2.K.23 (children’s pensions payable on the death of a 2008 Section Optant who is in receipt of a lower tier ill health pension under regulation E2A of the 1995 Regulations)” insert “and in the case of a Waiting Period Joiner, this is subject to regulation 2.L.4 (lump sum payable on the death of a Waiting Period Joiner)”.

#### **Amendment of regulation 2.E.21**

47. After paragraph (12) of regulation 2.E.21 (payment of lump sums or pensions on death), insert—

“(13) In the case of a Waiting Period Joiner, this regulation is subject to regulation 2.L.2 (nominations and notices accepted by the Scottish Ministers under the 1995 Regulations and Chapter 2.E of these Regulations).”.

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

48. For paragraph (6) of regulation 2.H.4 (meaning of “relevant income”), substitute—

“(6) The resulting reduction in the pension is taken into account for the purposes of this regulation if the employed pensioner—

- (a) exercised the option under regulation 2.D.18 in relation to the old service pension; or
- (b) is a 2008 Section Optant who was entitled to a lump sum under regulation 2.K.12 in relation to the old service pension.”.

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

49. After paragraph (1)(b) of regulation 2.K.1 (application of Chapter 2.K), insert—

“(c) both—

- (i) became entitled to a pension under regulation E3 or E3A of the 1995 Regulations (which deal with an early retirement pension on the grounds of redundancy and an early retirement pension on termination of employment by employing authority, respectively) on leaving employment with one employing authority; and

- (ii) elected to continue to be an active member of the 1995 Section in respect of any other continuing pensionable employment in accordance with paragraph (6) of regulation R4 of those Regulations (members doing more than one job).”.

### **Amendment of regulation 2.K.2**

**50.** In regulation 2.K.2 (options for 1995 Section members to join the 2008 Section under Chapter 2.K)—

- (a) in paragraph (9), after “1995 Section if” insert “either paragraph (9A) applies to that person or that person satisfies all of the following”;
- (b) after paragraph (9), insert—
  - “(9A) This paragraph applies to a person who—
    - (a) has ceased to pay contributions in accordance with paragraph (3) or paragraph (4) of regulation D1 of the 1995 Regulations (contributions by members);
    - (b) is continuing in NHS employment; and
    - (c) exercises the option before the end of the four month period beginning with the comparative statement issue date.”;
  - (c) in paragraph (13), for “(4) and (9)” substitute “(4), (9) and (9A)”;
  - (d) for paragraph 14, substitute—

“(14) Where paragraph (13)(b) applies the person must have a period equal to at least four months ending on the date specified by the Scottish Ministers in accordance with paragraph (4)(a) in which to opt to join this Section of the scheme.

This is subject to paragraph (1)(a)(ii) and any extension of time in accordance with paragraph (8).”.

### **Amendment of regulation 2.K.12**

**51.** In paragraph (5)(a) of regulation 2.K.12 (amount of pension and lump sum to be paid to a 2008 Section Optant), for the formula substitute—

$$\frac{"3 x (Relevant Service x Reckonable Pay)"}{80}$$

### **New Chapter 2.L**

**52.** After Chapter 2.K (2008 Section Optants), insert—

#### **“Chapter 2.L**

#### **Waiting Period Joiners**

##### **2.L.1 Application of Chapter 2.L**

(1) This Chapter makes provision in relation to pensioner members of the 1995 Section who are eligible to be members of this Section of the Scheme in accordance with paragraph (1)(b)(ii) of regulation 2.B.1A (eligibility: transitional).

(2) In these Regulations a member of this Section of the Scheme to whom this Chapter applies is referred to as a “Waiting Period Joiner”.

## **2.L.2 Nominations and notices accepted by the Scottish Ministers under the 1995 Regulations and Chapter 2.E of these Regulations**

- (1) This regulation applies if—
- (a) on the day a Waiting Period Joiner becomes an active member of this Section of the Scheme—
    - (i) the Scottish Ministers have accepted any of the nominations or notices specified in paragraph (2) of this regulation in respect of the benefits to be paid on the death of that Joiner; and
    - (ii) that Joiner has not revoked that nomination or notice; or
  - (b) at any time after a Waiting Period Joiner becomes an active member of this Section of the Scheme, that Joiner gives a notice, nomination or declaration for the purposes of a regulation listed in the table at paragraph (4).
- (2) The nominations and notices referred to in paragraph (1)(a) are—
- (a) a nomination made in accordance with regulation F5 of the 1995 Regulations (payment of lump sum) in favour of one or more persons in respect of any lump sum that becomes payable under regulations F1 to F4 of the 1995 Regulations (which deal with lump sum payments on the death of a member in different circumstances);
  - (b) a notice provided for the purposes of paragraph (3)(a) of regulation F5 of the 1995 Regulations that the person’s surviving partner (within the meaning of that regulation) is not to receive the payment of any lump sum that becomes payable under regulations F1 to F4 of the 1995 Regulations;
  - (c) a notice provided for the purpose of regulation G14 of the 1995 Regulations (surviving nominated partner’s pension) nominating a partner to receive a surviving nominated partner pension.
- (3) For the purpose of this Section of the Scheme a nomination or notice referred to in paragraph (1)(a) shall be treated—
- (a) in the case of the nomination referred to in paragraph (2)(a), as if that nomination has been accepted by the Scottish Ministers as a notice for the purposes of regulation 2.E.21 (payment of lump sums or pensions on death);
  - (b) in the case of a notice referred to in paragraph (2)(b), as if that notice had been accepted by the Scottish Ministers as a notice for the purposes of regulation 2.E.21 specifying that the Waiting Period Joiner’s personal representatives are to receive any lump sum or pension on the death of that Joiner; and
  - (c) in the case of a notice referred to in paragraph (2)(c), as if that notice had been accepted by the Scottish Ministers as a declaration for the purposes of regulation 2.E.2 (meaning of “surviving nominated partner”).
- (4) A notice, nomination or declaration referred to in paragraph (1)(b) that is given by a Waiting Period Joiner for the purposes of a regulation listed in column 1 of the following table shall be treated as a notice, nomination or declaration given for the purposes of the corresponding regulation in column 2.

<b>Column 1 1995 Regulations</b>	<b>Column 2 2008 Regulations</b>
F5	2.E.21
G14	2.E.2



### **2.L.3 Waiting Period Joiners who are in receipt of a lower tier ill-health pension under Regulation E2A of the 1995 Regulations**

- (1) This regulation applies to a Waiting Period Joiner who—
  - (a) is entitled to a lower tier ill-health pension under regulation E2A of the 1995 Regulations (ill-health pension on early retirement) in respect of service in the 1995 Section (“the earlier 1995 Section service”); and
  - (b) becomes entitled to a lower tier ill health pension or, as the case may be, an upper tier ill-health pension under regulation 2.D.8 in respect of service in this Section of the Scheme (“the later 2008 Section service”).

(2) For the purposes of determining whether a Waiting Period Joiner can count 45 years of pensionable service for any purpose, the earlier 1995 Section service and the later 2008 Section service are aggregated.

(3) A Waiting Period Joiner is entitled to the benefits set out in paragraph (4) if, on the termination of the later 2008 Section service, that Joiner becomes entitled to a lower tier or an upper tier ill-health pension under regulation 2.D.8 (early retirement on ill health (active members and non contributing members)) in respect of that later service.

- (4) Those benefits are—
  - (a) a lower tier ill-health pension under regulation E2A of the 1995 Regulations in respect of the member’s earlier 1995 Section service; and
  - (b) a lower tier or, as the case may be, an upper tier ill-health pension in respect of the member’s later 2008 Section service.

This is subject to paragraph (5).

(5) A Waiting Period Joiner is entitled to the benefits set out in paragraph (6) where that Joiner—

- (a) ceases to be entitled to a lower tier ill-health pension in respect of the earlier 1995 Section service;
- (b) becomes entitled to an upper tier ill-health pension in respect of that earlier 1995 Section service in accordance with regulation E2B of the 1995 Regulations (re-assessment of ill health condition determined under regulation E2A); and
- (c) becomes entitled to a lower tier or, as the case may be, an upper tier ill-health pension in respect of the later 2008 Section service on the termination of that later service.

- (6) Those benefits are—
  - (a) an upper tier ill-health pension paid in accordance with regulation E2B of the 1995 Regulations in respect of the earlier 1995 Section service; and
  - (b) a lower tier ill-health pension in respect of the later 2008 Section service.

### **2.L.4 Lump sum payable on the death of a Waiting Period Joiner**

(1) This regulation applies to a Waiting Period Joiner who, on the date of that Joiner’s death, is an active or a non-contributing member in respect of service in this Section of the Scheme (“the later 2008 Section service”).

(2) The lump sum payable on the death of a Joiner referred to in paragraph (1) shall be calculated in accordance with whichever of paragraphs (3) to (6) applies to that Joiner, and shall be paid in place of the lump sum that, apart from this regulation, would otherwise be payable in respect of that Joiner’s later 2008 Section service under regulation 2.E.17.

(3) Where, at the date of the Waiting Period Joiner's death, that Joiner was an active member who had not reached age 65 and who exercised the option under regulation 2.D.5, the lump sum referred to in paragraph (2) is an amount equal to the annual rate of pension payable under regulation 2.D.8(5), to which that deceased Joiner would have been entitled at that date, multiplied by five.

(4) Where, at the date of a Waiting Period Joiner's death, that Joiner was an active member who had reached age 65 and who had not exercised the option under regulation 2.D.5, the lump sum referred to in paragraph (2)(a) is an amount equal to the annual rate of pension payable under regulation 2.D.1 to which the deceased Joiner would have been entitled at that date, multiplied by five.

(5) Where, at the date of a Waiting Period Joiner's death, that Joiner was a non-contributing member who had not exercised the option under regulation 2.D.5, the lump sum referred to in paragraph (2) is an amount equal to the annual rate of pension to which that Joiner would have been entitled under regulation 2.D.1 on the last day of that Joiner's pensionable service, multiplied by five.

(6) Where, at the Waiting Period Joiner's death, that Joiner was an active member or a non-contributing member who had exercised the option under regulation 2.D.5, the lump sum referred to in paragraph (2) shall be determined by the Scottish Ministers after taking advice from the Scheme actuary.

### **2.L.5 Children's pensions payable on the death of a Waiting Period Joiner**

(1) This regulation applies in respect of a Waiting Period Joiner's service in this Section of the Scheme, where at the date of that Joiner's death that Joiner was an active non-contributing pensioner or a deferred member, who was entitled to a pension under the 1995 Regulations in respect of service in the 1995 Section ("the earlier 1995 Section service").

(2) In the case of a deceased Waiting Period Joiner who at the date of the Joiner's death was an active or non-contributing member, "relevant service" for the purposes of paragraph (4) of regulation 2.E.10 shall have the meaning given in paragraph (3) of this regulation.

(3) "Relevant service" means—

(a) in the case of a deceased Waiting Period Joiner who, at the date of that Joiner's death, was an active member, the greater of—

(i) the pensionable service that Joiner was entitled to count at that date, increased by the enhancement period (if any) that would have applied for the purposes of regulation 2.D.8(5) if that Joiner had become entitled to an upper tier ill-health pension at that date; and

(ii) that Joiner's later 2008 Section service as an active member plus the difference between—

(aa) the aggregate of that Joiner's earlier 1995 Section service and the later 2008 Section service as an active member; and

(bb) 10 years pensionable service,

where the amount of service in (aa) is less than that specified in (bb);

(b) in the case of a deceased Waiting Period Joiner who at the date of that Joiner's death was a non-contributing member, the pensionable service that Joiner was entitled to count under this Section of the Scheme on the date of that Joiner's death.

(4) In the case of a deceased Waiting Period Joiner who at the date of that Joiner's death was a pensioner member, "the basic death pension" for the purposes of paragraph (3) of regulation 2.E.11 shall have the meaning in paragraph (5) of this regulation.

(5) The "basic death pension" means the greater of—

(a) 75% of the deceased Waiting Period Joiner's annual pension (disregarding any additional pension); and

(b) 75% of the annual pension to which that Joiner would have been entitled in respect of the aggregate of that Joiner's later 2008 Section service plus the difference between—

(i) the aggregate of that Joiner's earlier 1995 Section service and the later 2008 Section service; and

(ii) 10 years pensionable service,

where the amount of service in (i) is less than that specified in (ii).

(6) In the case of a deceased Waiting Period Joiner, who at the date of that Joiner's death was a deferred member, "the basic death pension" for the purposes of paragraph (3) of regulation 2.E.12 shall have the meaning given in paragraph (7) of this regulation.

(7) The "basic death pension" means—

(a) if the deceased Waiting Period Joiner died within 12 months after ceasing to be an active member or a non-contributing member, the amount that would be the basic death pension for the purposes of regulation 2.E.10 if that Joiner had died on the day of so ceasing (disregarding any additional pension); and

(b) if the deceased Waiting Period Joiner died more than 12 months after ceasing to be an active member or a non-contributing member, the greater of—

(i) 75% of the pension to which that Joiner would have been entitled if that Joiner had become entitled to a pension under regulation 2.D.1 on the date of death (disregarding any additional pension); and

(ii) 75% of the annual pension to which that Joiner would have been entitled in respect of the aggregate of that Joiner's later 2008 Section service that has been deferred plus the difference between—

(aa) the aggregate of that Joiner's earlier 1995 Section service and the later 2008 Section service that has been deferred; and

(bb) 10 years pensionable service,

where the amount of service in (aa) is less than that specified in (bb)."

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

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

(a) in the definition of "GMS practice"—

(i) in paragraph (a), after "registered medical practitioner" insert "who is a principal medical practitioner"; and

(ii) in paragraph (b), after "or more" insert "such"; and

(b) at the appropriate place in the alphabetical order, insert—

""Waiting Period Joiner" has the meaning given in regulation 3.L.1;".

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

54. After paragraph (5)(e) of regulation 3.B.1 (eligibility: general), insert—

- “(f) the person is a deferred member of the 1995 Section who has given notice for the purposes of paragraph (1) or (1A) of regulation B4 of the 1995 Regulations (opting out of the Scheme) and—
- (i) as a result of that notice has been treated as ceasing to be an active member of that Section; and
  - (ii) pursuant to that notice remains opted-out of that Section for 5 years or more;
- (g) the person is a deferred member of the 1995 Section who has given notice for the purposes of paragraph (1) or (1A) of regulation B4 of the 1995 Regulations and following that notice, has ceased to be an active member of that Section for any one period of five or more years comprising the aggregate of—
- (i) any period during which the person leaves NHS employment; and
  - (ii) any period during which the person is treated as never having been an active member of that Section in accordance with paragraph (3) of regulation B4 of those Regulations in respect of one or more later periods of NHS employment entered into after having given the notice for the purposes of paragraph (1) or (1A) of that regulation;
- (h) the person—
- (i) has given notice for the purposes of regulation B4 of the 1995 Regulations and as a result of that notice all of that person’s NHS employments ceased to be pensionable employment for the purposes of those Regulations;
  - (ii) is not entitled to a pension (including a deferred pension) under those Regulations; and
  - (iii) has been treated as ceasing to be in pensionable employment under the 1995 Regulations for a period of 12 months or more;
- (i) the person—
- (i) has given notice for the purposes of regulation B4 of the 1995 Regulations and as a result of that notice all of that person’s NHS employments ceased to be pensionable employment for the purposes of those Regulations;
  - (ii) is not entitled to a pension (including a deferred pension) under those Regulations; and
  - (iii) has, in respect of the NHS employments referred to in (i), either received a repayment of contributions or exercised the right to a transfer payment under Part M of those Regulations.”.

### **Substitution of regulation 3.B.1A**

55. For regulation 3.B.1A (eligibility: transitional), substitute—

#### **“Eligibility: transitional**

**3.B.1A.—**(1) A person is eligible to be an active member of this Section of the Scheme if—

- (a) the person is not prevented from being so by regulation 3.B.2, 3.B.3 or 3.B.6; and
- (b) either—

- (i) the Scottish Ministers have accepted that person's option to join this Section of the Scheme under Chapter 3.K; or
  - (ii) that person meets all of the requirements in paragraph (2).
- (2) Those requirements are that the person—
- (a) is under age 75;
  - (b) was an active member of the 1995 Section on or after 1st April 2008;
  - (c) became a pensioner member of the 1995 Section on or before 1st October 2009;
  - (d) has either—
    - (i) returned to NHS employment since becoming a pensioner member referred to in (c); or
    - (ii) commenced for the first time in NHS employment; and
  - (e) is not eligible to be an active member of the 1995 Section in respect of the employment referred to in (d).

This is subject to the following paragraphs of this regulation.

(3) A person referred to in paragraph (2) is eligible to be an active member of this Section of the Scheme from the day immediately following the end of Waiting Period A, if that person is entitled to a pension under one of the following regulations of the 1995 Regulations—

- (a) E1 (normal retirement pension);
- (b) E2A(3)(a) (lower tier ill-health pension on early retirement);
- (c) E3A (early retirement pension (redundancy etc. new starters and post-transition)); or
- (d) E5 (early retirement pension with actuarial reduction).

(4) A person referred to in paragraph (2) is eligible to be an active member of this Section of the Scheme from the day immediately following the longer of Waiting Period A and Waiting Period B if that person is entitled to a pension under one of the following regulations of the 1995 Regulations—

- (a) E2 (early retirement pension (ill health)); or
- (b) E3 (early retirement pension (redundancy etc.)).

(5) If a person referred to in paragraph (2) is entitled to a pension under regulation E2A(3)(b) (upper tier ill-health pension on early retirement), that person shall be eligible to be an active member of this Section of the Scheme from the day immediately following whichever of the following occurs last—

- (a) the anniversary of that person entering NHS employment; or
- (b) the end of Waiting Period A.

(6) A person referred to in paragraph (1)(b)(i) or (3)(b) and who is entitled to a lower tier ill health pension under regulation E2A(3)(a) of the 1995 Regulations, ceases to be eligible to be an active member of this Section of the Scheme from the date the Scottish Ministers make a determination that that person is entitled to an upper tier ill-health pension in place of that lower tier ill-health pension under regulation E2B(3) of those Regulations (re-assessment of ill-health condition determined under regulation E2A).

(7) For the purposes of this paragraph—

- (a) "Waiting Period A" is a period of two calendar years beginning on the day the person becomes entitled to the pension under the 1995 Regulations; and

- (b) “Waiting Period B” is a period beginning on the day the person becomes entitled to the pension under the 1995 Regulations equal to the calendar length of—
  - (i) any increase to the person’s pensionable service in the 1995 Section of the Scheme which has been applied in accordance with paragraph (3) of regulation E2 of the 1995 Regulations; or
  - (ii) any additional service with which the person has been credited in accordance with regulation 5 of the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003(4).
- (8) This regulation applies to any person who has previously been an active member of a corresponding 1995 scheme as though any reference to—
  - (a) the “1995 Section” includes a reference to that corresponding 1995 scheme;
  - (b) the “1995 Regulations” includes a reference to any regulations, orders, rules or other instruments governing that corresponding 1995 scheme;
  - (c) regulations “E1”, “E2”, “E2A”, “E2B(3)”, “E3”, “E3A”, “E3A(3)(a)”, “E3A(3)(b)” or “E5” includes the equivalent of those regulations in a health service scheme the provisions of which correspond to the 1995 Regulations; and
  - (d) “regulation 5 of the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003” includes the equivalent of that regulation as it applies to a member of a corresponding 1995 scheme.”.

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

**56.** For paragraph (1) of regulation 3.B.2 (restrictions on eligibility: general), substitute—

- “(1) A person is not eligible to be an active member of this Section of the Scheme if the person—
- (a) became a pensioner member of the 1995 Section or a corresponding 1995 scheme on, or before, 1st April 2008 (except if paragraph (1)(b)(i) of regulation 3.B.1A applies to that person); or
  - (b) became a pensioner member of the 1995 Section or a corresponding 1995 scheme on, or after, that date (except if paragraph (1)(b)(i) or (ii) of regulation 3.B.1A applies to that person); or
  - (c) is a deferred member of the 1995 Section or a corresponding 1995 scheme, but is not a deferred member—
    - (i) to whom regulation 3.B.1(5)(d), (e), (f) or (g) applies; and
    - (ii) in respect of whom permission of the Scottish Ministers to rejoin the 1995 Section has not been granted pursuant to regulation B2(3) of that Section.”.

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

**57.** In paragraph (1) of regulation 3.C.1 (contributions by members), after “scheme” insert “(“member contributions”)”.

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

**58.**—(1) Regulation 3.C.2 (members’ contribution rate) is amended as follows.

(2) For paragraphs (1) to (4), substitute—

“(1) Contributions under regulation 3.C.1(1) must be paid at the member’s contribution rate for the scheme year in question.

(2) A member’s contribution rate is the percentage specified in column 2 of the relevant table in paragraph (14) in respect of the corresponding pensionable earnings band specified in column 1 of that table into which the member’s pensionable earnings fall.

(3) The Scottish Ministers shall, with the consent of the Treasury, determine the pensionable earnings bands and contribution rates specified in the relevant table in respect of each scheme year.

(4) Before determining those pensionable earnings bands or contribution rates, the Scottish Ministers must consider—

- (a) the advice of the scheme actuary; and
- (b) in accordance with regulation 1.B.2 (cost sharing), advice from such employee and employer representatives as the Scottish Ministers consider appropriate.”.

(3) In paragraphs (5) and (6), for “the table in paragraph (2)” substitute “the relevant table in paragraph (14)”.

(4) After paragraph (13), insert—

“(14) For the purposes of this regulation “the relevant table” means—

- (a) in respect of the 2009-2010 scheme year, table 1;
- (b) in respect of the 2010-2011 and any later scheme year, table 2

**Table 1**

<i>Column 1</i> <i>Pensionable earnings band</i>	<i>Column 2</i> <i>Contribution percentage rate</i>
Up to £20,709	5%
£20,710 to £68,392	6.5%
£68,393 to £107,846	7.5%
£107,847 to any higher amount	8.5%

**Table 2**

<i>Column 1</i> <i>Pensionable earnings band</i>	<i>Column 2</i> <i>Contribution percentage rate</i>
Up to £21,175	5%
£21,176 to £69,931	6.5%
£69,932 to £110,273	7.5%
£110,274 to any higher amount	8.5%”

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

**59.**—(1) Regulation 3.C.3 (contributions by employing authorities: general) is amended as follows.

(2) For paragraph (1), substitute—

“(1) Each employing authority must contribute to the scheme, in respect of the pensionable earnings of each person who is an active member of the scheme in an employment with the authority, at the rate determined by the Scottish Ministers and specified in paragraph (5) (“the employer’s standard rate”).”.

### **Substitution of regulation 3.C.15**

**60.** For regulation 3.C.15 (revaluation of increases bought under options: members’ pensions), substitute—

#### **“Revaluation of increases bought under options: members’ pensions**

**3.C. 15.—**(1) Where an option under regulation 3.C.6, 3.C.8 or 3.C.9 has been exercised, the final amount of the increase in a member’s pension immediately before the beginning date for that pension shall be determined in accordance with this regulation.

(2) Where the increase in pension is in respect of an option that was exercised less than 2 months before the increase becomes payable, the final amount is calculated in accordance with paragraph (4).

(3) Where the increase in pension is in respect of an option that was exercised 2 or more months before the increase in pension becomes payable, the final amount is calculated in accordance with paragraph (5).

(4) The calculation referred to in paragraph (2) is as follows—

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Step 1 –	Calculate the basic amount of the increase in accordance with regulations 3.C.12 to 3.C.14, to find the Step 1 amount.
Step 2 –	Add to the Step 1 amount an amount that is equal to any increases that would be due under the Pensions (Increase) Act 1971 on a pension of the same amount as the Step 1 amount when it first falls into payment, to find the Step 2 amount.
Step 3 –	Divide the Step 2 amount by the Step 1 amount, to find the Step 3 factor.
Step 4 –	Divide the Step 1 amount by the Step 3 factor to find the final amount referred to in paragraph (1).

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(5) The calculation referred to in paragraph (3) is as follows—

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Step 1 –	Calculate the basic amount of the increase in accordance with regulations 3.C.12 to 3.C.14, to find the Step 1 amount.
Step 2 –	Multiply the Step 1 amount by the retail prices index for the second month before the month in which the increase in pension will become payable, to find the Step 2 amount.
Step 3 –	Divide the Step 2 amount by the retail prices index for the month in which the option was exercised, to find the Step 3 amount.
Step 4 –	Take the greater of the Step 1 amount and Step 3 amount, to find the Step 4 amount.
Step 5 –	Add to the Step 4 amount an amount that is equal to any increases that would be due under the Pensions (Increase) Act 1971 on a pension of the same amount as the Step 4 amount when it first falls into payment, to find the Step 5 amount.
Step 6 –	Divide the Step 5 amount by the Step 4 amount, to find the Step 6 factor.

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Step 7 – Divide the Step 4 amount by the Step 6 factor to find the final amount referred to in paragraph (1).

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(6) In this regulation, “the beginning date”, in relation to a pension, means the date on which it is treated as beginning for the purposes of the Pensions (Increase) Act 1971 (see section 8(2) of that Act).”.

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

**61.** In regulation 3.D.2 (pension credit members)—

- (a) in paragraph (2) at the start, add “Subject to paragraph (5),”;
- (b) after paragraph (4) insert—

“(5) A pension credit member who has not reached the age of 65 is entitled to immediate payment of a reduced pension payable for life if the pension credit member has—

- (a) reached the age of 55; and
- (b) claimed the payment of the pension.

(6) The amount of the annual pension under paragraph (5)—

- (a) is first calculated as mentioned in paragraph (3) of this regulation; and
- (b) then that amount is reduced by such amount as the Scottish Ministers determine, after consulting the scheme actuary, to be appropriate by reason of the payment of the pension before the member reaches 65.

(7) A claim under paragraph (5) must be made by notice in writing in such form as the Scottish Ministers require and takes effect from the date specified in the claim as the date on which the pension is to become payable.”.

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

**62.** After paragraph (18) of regulation 3.D.7 (early retirement on ill-health (active members and non-contributing members)), insert—

“(19) In the case of a Waiting Period Joiner, this regulation is subject to regulation 3.L.3 (waiting period joiners who are in receipt of a lower tier ill-health pension under Regulation E2A of the 1995 Regulations).”.

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

**63.** In regulation 3.D.10 (general option to exchange part of pension for lump sum), in paragraph (1) for “other than a pension credit member”, substitute “(other than a pension credit member whose rights under the Scheme are attributable to a disqualifying pension credit for the purpose of paragraph 2 of Schedule 29 to the 2004 Act)”.

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

**64.** In regulation 3.D.11 (option for members in serious ill-health to exchange whole pension for lump sum), for paragraph (5) substitute—

“(5) A pension credit member who exercises the option is to be paid, as soon as reasonably practicable and before reaching the age of 75, an amount equal to the sum of—

- (a) the maximum lump sum (if any) to which the pension credit member could have become entitled on exercising the option under regulation 3.D.10 at the appropriate time, and

- (b) the total annual amount of the pension to which the pension credit member is entitled under regulation 3.D.2 after exercising that option, multiplied by 5.”.

#### **Omission of regulation 3.D.13**

65. Omit regulation 3.D.13 (pension credit member’s rights).

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

66. After paragraph (3) of regulation 3.E.2 (meaning of “surviving nominated partner”), insert—  
“(4) In the case of a Waiting Period Joiner, this regulation is subject to regulation 3.L.2. (nominations and notices accepted by the Scottish Ministers under the 1995 Regulations and Chapter 3.E of these Regulations).”.

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

67. In paragraph (3) of regulation 3.E.10 (amount of children’s pension under regulation 3.E.8: deceased active members and deceased non-contributing members), after “3.K.23 (children’s pensions payable on the death of a 2008 Section Optant who is in receipt of a lower tier ill health pension under regulation E2A of the 1995 Section)” (in the full out words) insert “and in the case of a Waiting Period Joiner, this is subject to regulation 3.L.5. (children’s pensions payable on the death of a Waiting Period Joiner)”.

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

68. In paragraph (3) of regulation 3.E.11 (amount of children’s pension under regulation 3.E.8: deceased pensioner members), after “3.K.23” (in the full out words) insert “(children’s pensions payable on the death of a 2008 Section Optant who is in receipt of a lower tier ill health pension under regulation E2A of the 1995 Regulations) and, in the case of a Waiting Period Joiner, it is subject to regulation 3.L.5. (children’s pensions payable on the death of a Waiting Period Joiner).”.

#### **Amendment of regulation 3.E.12**

69. In paragraph (3A) of regulation 3.E.12 (amount of children’s pension under regulation 3.E.8: deceased deferred members) after “3.K.23” insert “(children’s pensions payable on the death of a 2008 Section Optant who is in receipt of a lower tier ill health pension under regulation E2A of the 1995 Regulations) and, in the case of a Waiting Period Joiner, it is subject to regulation 3.L.5 (children’s pensions payable on the death of a Waiting Period Joiner).”.

#### **Amendment of regulation 3.E.17**

70. In paragraph (1A) of regulation 3.E.17 (amount of lump sum: single capacity members and recent leavers (disregarding regulation 3.D.5 employments)) after “3.K.22 (lump sum payable on the death of a 2008 Section Optant who is in receipt of a lower tier ill health pension under regulation E2A of the 1995 Section)” insert “and in the case of a Waiting Period Joiner, paragraph (1) is subject to regulation 3.L.4. (lump sum payable on the death of a Waiting Period Joiner).”.

#### **Amendment of regulation 3.E.21**

71. After paragraph (12) of regulation 3.E.21 (payment of lump sums or pensions on death), insert—

“(13) In the case of a Waiting Period Joiner, this regulation is subject to regulation 3.L.2. (nominations and notices accepted by the Scottish Ministers under the 1995 Regulations and chapter 3.E. of these Regulations.”.

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

**72.** In regulation 3.H.4 (meaning of “relevant income”), after paragraph (5), insert—

“(5A) The resulting reduction in the pension is taken into account for the purposes of this regulation if the employed pensioner—

- (a) exercised the option under regulation 3.D.14 (election to allocate pension) in relation to the old service pension; or
- (b) is a 2008 Section Optant who was entitled to a lump sum under regulation 3.K.11 (amount of pension and lump sum to be paid to a 2008 Section Optant) in relation to the old service pension.”.

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

**73.** In paragraph (1) of regulation 3.K.1 (application of Chapter 3.K), after sub-paragraph (b), insert—

“(c) are pensioner members of the 1995 Section in respect of a pension payable under regulation E3 or E3A of the 1995 Regulations (which deal with an early retirement pension on the grounds of redundancy and an early retirement pension on termination of employment by employing authority, respectively).”.

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

**74.** In regulation 3.K.2 (options for 1995 Section members to join this Section under Chapter 3.K)

(a) in paragraph (9), after “1995 Section if” insert “either paragraph (9A) applies to that person or that person satisfies all of the following”;

(b) after paragraph (9), insert—

“(9A) This paragraph applies to a person who—

- (a) has ceased to pay contributions in accordance with paragraph (3) or paragraph (4) of regulation D1 of the 1995 Regulations (contributions by members);
- (b) is continuing in NHS employment; and
- (c) exercises the option before the end of the four month period beginning with the comparative statement issue date.”; and

(c) in paragraph (13), for “(4) and (9)” substitute “(4), (9) and (9A).”.

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

**75.** In paragraph 1 of regulation 3.K.8 (pension debit members), for “his” substitute “This”.

#### **New Chapter 3.L**

**76.** After Chapter 3.K (2008 Section Optants), insert—

## **“Chapter 3.L**

### **Waiting Period Joiners**

#### **3.L.1 Application of Chapter 3.L**

(1) This Chapter makes provision in relation to pensioner members of the 1995 Section of the Scheme who are eligible to be members of this Section of the Scheme in accordance with paragraph (1)(b)(ii) of regulation 3.B.1A (eligibility: transitional).

(2) A member of this Section of the Scheme to whom this Chapter applies is referred to as a “Waiting Period Joiner”.

#### **3.L.2 Nominations and notices accepted by the Scottish Ministers under the 1995 Regulations and Chapter 3.E of these Regulations**

(1) This regulation applies if—

- (a) on the day a Waiting Period Joiner becomes an active member of this Section of the Scheme—
  - (i) the Scottish Ministers have accepted any of the nominations or notices specified in paragraph (2) of this regulation in respect of the benefits to be paid on the death of that Waiting Period Joiner; and
  - (ii) that Waiting Period Joiner has not revoked that nomination or notice; or
- (b) at any time after a Waiting Period Joiner becomes an active member of this Section of the Scheme, that Waiting Period Joiner gives a notice, nomination or declaration for the purposes of a regulation listed in the table at paragraph (4).

(2) The nominations and notices referred to in paragraph (1)(a) are—

- (a) a nomination made in accordance with regulation F5 of the 1995 Regulations (payment of lump sum) in favour of one or more persons in respect of any lump sum that becomes payable under regulations F1 to F4 of the 1995 Regulations (which deal with lump sum payments on the death of a member in different circumstances);
- (b) a notice provided for the purposes of paragraph (3)(a) of regulation F5 of the 1995 Regulations that the person’s surviving partner (within the meaning of that regulation) is not to receive the payment of any lump sum that becomes payable under regulations F1 to F4 of the 1995 Regulations;
- (c) a notice provided for the purpose of regulation G14 of the 1995 Regulations (surviving nominated partner’s pension) nominating a partner to receive a surviving nominated partner pension.

(3) For the purpose of this Section of the Scheme a nomination or notice referred to in paragraph (1)(a) shall be treated—

- (a) in the case of the nomination referred to in paragraph (2)(a), as if that nomination has been accepted by the Scottish Ministers as a notice for the purposes of regulation 3.E.21;
- (b) in the case of a notice referred to in paragraph (2)(b), as if that notice had been accepted by the Scottish Ministers as a notice for the purposes of regulation 3.E.21 specifying that the Waiting Period Joiner’s personal representatives are to receive any lump sum or pension on the death of that Joiner; and

(c) in the case of a notice referred to in paragraph (2)(c), as if that notice had been accepted by the Scottish Ministers as a declaration for the purposes of regulation 3.E.2.

(4) A notice, nomination or declaration referred to in paragraph (1)(b) that is given by a Waiting Period Joiner for the purposes of a regulation listed in column 1 of the following table shall be treated as a notice, nomination or declaration given for the purposes of the corresponding regulation in column 2.

<i>Column 1</i> <i>1995 Regulations</i>	<i>Column 2</i> <i>2008 Regulations</i>
F5	2.E.21
G14	2.E.2

### **3.L.3 Waiting Period Joiners who are in receipt of a lower tier ill-health pension under Regulation E2A of the 1995 Regulations**

(1) This regulation applies to a Waiting Period Joiner who—

- (a) is entitled to a lower tier ill-health pension under regulation E2A of the 1995 Regulations (ill-health pension on early retirement) in respect of service in the 1995 Section (“the earlier 1995 Section service”); and
- (b) becomes entitled to a lower tier ill-health pension or, as the case may be, an upper tier ill health pension under regulation 3.D.7 in respect of service in this Section of the Scheme (“the later 2008 Section service”).

(2) For the purposes of determining whether a Waiting Period Joiner can count 45 years of pensionable service for any purpose, the earlier 1995 Section service and the later 2008 Section service are aggregated.

(3) A Waiting Period Joiner is entitled to the benefits set out in paragraph (4) if, on the termination of the later 2008 Section service, that Joiner becomes entitled to a lower tier or an upper tier ill-health pension, under regulation 3.D.7, in respect of that later 2008 Section service.

(4) Those benefits are—

- (a) a lower tier ill-health pension under regulation E2A of the 1995 Regulations in respect of the member’s earlier 1995 Section service; and
- (b) a lower tier or, as the case may be, an upper tier ill-health pension in respect of the member’s later 2008 Section service.

This is subject to paragraph (5).

(5) A Waiting Period Joiner is entitled to the benefits set out in paragraph (6) where that Joiner—

- (a) ceases to be entitled to a lower tier ill-health pension in respect of the earlier 1995 Section service;
- (b) becomes entitled to an upper tier ill-health pension in respect of that earlier 1995 Section service in accordance with regulation E2B of the 1995 Regulations (re-assessment of ill health condition determined under regulation E2A); and
- (c) becomes entitled to a lower tier or, as the case may be, an upper tier ill-health pension in respect of the later 2008 Section service on the termination of that later service.

(6) Those benefits are—

- (a) an upper tier ill-health pension paid in accordance with regulation E2B of the 1995 Regulations in respect of the earlier 1995 Section service; and
- (b) a lower tier ill-health pension in respect of the later 2008 Section service.

#### **3.L.4 Lump sum payable on the death of a Waiting Period Joiner**

(1) This regulation applies to a Waiting Period Joiner who, on the date of that Joiner's death, is an active or a non-contributing member in respect of service in this Section of the Scheme ("the later 2008 Section service").

(2) The lump sum payable on the death of a Joiner referred to in paragraph (1) shall be calculated in accordance with whichever of paragraphs (3) to (6) applies to that Joiner and shall be paid in place of the lump sum that, apart from this regulation, would otherwise be payable in respect of that Joiner's later 2008 Section service under regulation 3.E.17.

(3) Where, at the date of the Waiting Period Joiner's death, that Joiner was an active member who had not reached age 65 and who had not exercised the option under regulation 3.D.5, the lump sum referred to in paragraph (2) is an amount equal to the annual rate of pension payable under regulation 3.D.7(5) to which that deceased Joiner would have been entitled at that date multiplied by five.

(4) Where, at the date of the Waiting Period Joiner's death, that Joiner was an active member who had reached the age of 65, and who had not exercised the option under regulation 3.D.5, the lump sum referred to in paragraph (2) is an amount equal to the annual rate of pension payable under regulation 3.D.1 to which that deceased Joiner would have been entitled at that date multiplied by five.

(5) Where, at the date of a Waiting Period Joiner's death, that Joiner was a non-contributing member who had not exercised the option under regulation 3.D.5, the lump sum referred to in paragraph (2) is an amount equal to the annual rate of pension to which that Joiner would have been entitled under regulation 3.D.1 on the last day of that Joiner's pensionable service, multiplied by five.

(6) Where, at the date of a Waiting Period Joiner's death, that Joiner was an active member or a non-contributing member who had exercised the option under regulation 3.D.5, the lump sum referred to in paragraph (2)(a) shall be determined by the Scottish Ministers after taking advice from the scheme actuary.

#### **3.L.5 Children's pensions payable on the death of a Waiting Period Joiner**

(1) This regulation applies to a Waiting Period Joiner's service in this Section of the Scheme where at the date of that Joiner's death, that Joiner was an active non contributing pensioner or deferred member who was entitled to a pension under the 1995 Regulations in respect of service in the 1995 Section ("the earlier 1995 Section service").

(2) In the case of a deceased Waiting Period Joiner who, at the date of that Joiner's death, was an active or non-contributing member, "the basic death pension" for the purposes of paragraph (3) of regulation 3.E.10 shall have the meaning given in paragraph (3) of this regulation.

(3) The "basic death pension" means twice the appropriate proportion of the deceased member's pension under regulation 3.D.1 and—

- (a) in the case of a deceased Waiting Period Joiner who was, at the date of that Joiner's death, an active member that pension will include the greater of—
  - (i) any increase due to such enhancement period that would have applied for the purposes of regulation 3.D.7(5) if that Joiner had become entitled to an upper tier ill-health pension at that date; and

- (ii) that Joiner’s later 2008 Section service as an active member plus the difference between—
    - (aa) the aggregate of that Joiner’s earlier 1995 Section service and the later 2008 Section service as an active member; and
    - (bb) 10 years pensionable service,where the amount of service in (aa) is less than that specified in (bb);
  - (b) in the case of a deceased Waiting Period Joiner who was, at the date of that Joiner’s death a non-contributing member, the pensionable service that Joiner was entitled to count under this Section of the Scheme on the date of that Joiner’s death.
- (4) In the case of a deceased Waiting Period Joiner who was a pensioner member at the date of that Joiner’s death, “the basic death pension” for the purposes of paragraph (3) of regulation 3.E.11 shall have the meaning given in paragraph (5) of this regulation.
- (5) The “basic death pension” means the greater of—
- (a) twice the appropriate proportion of the deceased Waiting Period Joiner’s annual pension (disregarding any additional pension); and
  - (b) twice the appropriate proportion of the annual pension (disregarding any additional pension) to which that Joiner would have been entitled calculated as the aggregate of that Joiner’s later 2008 Section service plus the difference between—
    - (i) the aggregate of that Joiner’s earlier 1995 Section service and the later 2008 Section service; and
    - (ii) 10 years pensionable service,where the amount of service in (i) is less than that specified in (ii).
- (6) In the case of a deceased Waiting Period Joiner who was a deferred member at the time of that Joiner’s death, “the basic death pension” for the purposes of paragraph (3) of regulation 3.E.12 shall have the meaning given in paragraph (7) of this regulation.
- (7) The “basic death pension” means—
- (a) if the deceased Waiting Period Joiner died within 12 months of the day that Joiner ceased to be an active member or a non-contributing member (the cessation date), the amount that would be the basic death pension for the purposes of regulation 3.E.10 if that Joiner had died on the cessation date (disregarding any additional pension); and
  - (b) if the deceased Waiting Period Joiner died more than 12 months after ceasing to be an active member or a non-contributing member, the greater of—
    - (i) twice the appropriate proportion of the pension to which that Joiner would have been entitled if the deceased had become entitled to a pension under regulation 3.D.1 on the date of death (disregarding any additional pension); and
    - (ii) twice the appropriate proportion of the annual pension to which that Joiner would have been entitled in respect of the aggregate of that Joiner’s later 2008 Section service that has been deferred plus the difference between—
      - (aa) the aggregate of that Joiner’s earlier 1995 Section service and the later 2008 Section service that has been deferred; and
      - (bb) 10 years pensionable service,where the amount of service in (aa) is less than that specified in (bb).”

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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