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SCOTTISH STATUTORY INSTRUMENTS

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**2017 No. 27**

**NATIONAL HEALTH SERVICE**

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

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

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 10 and 12 and schedule 3 of the Superannuation Act 1972<sup>(1)</sup> and all other powers enabling them to do so.

In accordance with section 10(4) of that Act, the Scottish Ministers have consulted with such representatives of persons likely to be affected by these Regulations as appear to them to be appropriate.

In accordance with section 10(1) of that Act, these Regulations are made with the consent of the Treasury.

**PART 1**

**Introductory**

**Citation, commencement and effect**

**1.—**(1) These Regulations may be cited as the National Health Service Superannuation Scheme (Miscellaneous Amendments) (Scotland) Regulations 2017 and come into force on 13th March 2017.

(2) Provisions in these Regulations have effect as follows—

- (a) regulation 47 has effect from 1st April 2009;
- (b) regulations 3(d), 10, 17(c), 18, 19, 24, 32(d), 33, 34, 36 and 39 have effect from 31st December 2014;

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<sup>(1)</sup> [1972 c.11](#). Section 10 was amended by Part II of schedule 7 of the National Health Service (Scotland) Act [1972 \(c.58\)](#), sections 4(2) and 8(5) and (6) of the Pensions (Miscellaneous Provisions) Act [1990 \(c.7\)](#) (“the 1990 Act”), paragraph 7 of schedule 8 of the Pension Schemes Act [1993 \(c.48\)](#), paragraph 10 of schedule 8 of the Public Service Pensions Act [2013 \(c.25\)](#) and [S.I. 2001/3649](#). Section 12 was amended by section 10 of the 1990 Act. The functions of the Secretary of State, in or as regards Scotland, were transferred to the Scottish Ministers by virtue of [S.I. 1999/1750](#), article 2 and schedule 1.

- (c) regulation 12 has effect from 1st April 2015;
- (d) regulations 26 and 41 have effect from 6th April 2015;
- (e) regulations 5, 20 and 21 have effect from 1st April 2016;
- (f) regulations 3(c), 6 to 8, 11, 13, 14, 23, 25, 38 and 46 have effect from 6th April 2016.

## PART 2

### Amendment of the National Health Service Superannuation Scheme (Scotland) Regulations 2011

#### General

2. The National Health Service Superannuation Scheme (Scotland) Regulations 2011<sup>(2)</sup> are amended in accordance with regulations 3 to 15.

#### Amendment of regulation A2

3. In regulation A2 (interpretation), in paragraph (4)—
- (a) in column 2 of the entry for “buy-out policy”, at the end insert “: and “buy-out” is to be construed accordingly”;
  - (b) in column 2 of the entry for “cash equivalent”, for “Chapter IV of Part IV” insert “Chapter 1 (transfer rights: general) of Part 4ZA”;
  - (c) after the entry for “commissioned services”, insert—

““contracted-out employment”	the meaning given in section 8 of the 1993 Act;”
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- (d) after the entry for “shareable rights”, insert—

““shared parental leave”	the meaning given in regulation 3 of the Shared Parental Leave Regulations 2014 <sup>(3)</sup> ;
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#### Amendment of regulation B4

4. In regulation B4 (opting out of this Section of the scheme)—
- (a) in paragraph (6), for “and” substitute “to”; and
  - (b) for paragraph (7), substitute—
    - “(7) This paragraph applies if the person opts out of this Section of the scheme in relation to NHS pensionable employment—
      - (a) before the end of 3 months after that person’s first day of that pensionable employment (or within any longer period the scheme manager considers appropriate); or
      - (b) before the end of 3 months after that person’s automatic re-enrolment date (or within any longer period the scheme manager considers appropriate).

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(2) [S.S.I. 2011/117](#); relevant amending instruments are [S.S.I. 2012/163](#), [S.S.I. 2013/109](#), [S.S.I. 2014/43](#), [S.S.I. 2014/154](#), [S.S.I. 2015/96](#) and [S.S.I. 2016/98](#).

(3) [S.I. 2014/3050](#).

(7A) Where paragraph (7)(a) applies, the person is taken never to have been in pensionable service in this Section of the scheme.

(7B) Where sub-paragraph (b) of paragraph (7) applies, the person is taken never to have been in pensionable service in this Section of the scheme during the period referred to in that sub-paragraph.”.

#### **Amendment of regulation D1**

5. In regulation D1 (contributions by members)—

(a) in paragraph (2)—

(i) after sub-paragraph (b), insert—

“;

(c) for the scheme year 2017-18 is the percentage specified in column 2 of table 3 in respect of the corresponding pensionable pay band specified in column 1 of that table into which the member’s pensionable pay falls”; and

(ii) after Table 2, insert—

**“Table 3**

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable pay band</i>	<i>Contribution percentage rate</i>
Up to £16,528	5.2%
£16,529 - £22,217	5.8%
£22,218 - £27,634	7.3%
£27,635 - £50,971	9.5%
£50,972 - £72,770	12.7%
£72,771 - £113,625	13.7%
£113,626 to any higher amount	14.7%”

(b) in paragraph (2A)—

(i) for “2015-16”, substitute “2016-17”; and

(ii) for “table 2”, substitute “table 3”; and

(c) in each of paragraphs (20), (21)(a) and (25)(b), for “table 2” substitute “table 3”.

#### **Amendment of regulation K1**

6. In regulation K1 (contracting-out conditions to be overriding), in paragraph (2)(c) after “or (c)” insert “or (2)”.

#### **Amendment of regulation K4**

7. In regulation K4 (early leavers)—

(a) for paragraph (1), substitute—

“(1) Subject to paragraph (2), this paragraph applies if a member who is under guaranteed minimum pension age—

- (a) leaves contracted-out employment under this Section of the scheme before 6th April 2016; or
- (b) was in contracted-out employment under this Section of the scheme on 5th April 2016 but leaves pensionable employment on or after 6th April 2016.

(1A) Where paragraph (1) applies, the member’s guaranteed minimum pension at the date of leaving will be increased, when the member reaches guaranteed minimum pension age or dies (if earlier), by the appropriate percentage specified in relation to each relevant year in the last order under section 148 of the Social Security Administration Act 1992(4) (revaluation of earnings factors) to come into force before the tax year in which the member reaches guaranteed minimum pension age or dies (if earlier).”;

- (b) in paragraph (2), for “paragraph (1)” substitute “paragraph (1A)”; and
- (c) in paragraph (3)—
  - (i) for “returns to contracted-out”, substitute “to whom paragraph (1) applies returns to pensionable”; and
  - (ii) omit “contracted-out” where it second occurs.

#### **Amendment of regulation K5**

**8.** In regulation K5 (guaranteed minimum pensions transferred to this Section of the scheme), for paragraph (1) substitute—

“(1) This paragraph applies where a guaranteed minimum pension has been transferred to this Section of the scheme and the member—

- (a) subsequently leaves contracted-out employment under this Section of the scheme before 6th April 2016; or
- (b) was in contracted-out employment under this Section of the scheme on 5th April 2016 but leaves pensionable employment on or after 6th April 2016.

(1A) Where paragraph (1) applies, the guaranteed minimum pension transferred to this Section of the scheme will be increased for each complete tax year after the date of leaving under this Section of the scheme in which the transferred guaranteed minimum pension accrued, until the member reaches guaranteed minimum pension age or dies (if earlier).”.

#### **Amendment of regulation M1**

**9.** In regulation M1 (member’s right to a transfer or buy out)—

- (a) in paragraph (2)(a), at the end insert “which satisfies or satisfy the requirements set out in regulation 12(2) of the Occupational Pension Schemes (Transfer Values) Regulations 1996(5)”; and
- (b) in paragraph (2)(b), omit “that satisfies the requirements of Chapter IV of Part IV of the 1993 Act”; and
- (c) after paragraph (2), insert—

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(4) 1992 c.5; section 148 was amended by the Pension Schemes Act 1993 (c.48), schedule 8, paragraph 27 and by the Child Support and Social Security Act 2000 (c.19), section 37

(5) S.I. 1996/1847; regulation 12(2) was amended by S.I. 1997/786, S.I. 2006/744 and S.I. 2008/1050.

“(2A) Any use of the cash equivalent of a member’s rights under paragraph (2) must satisfy the requirements of Chapter 1 (transfer rights: general) of Part 4ZA of the 1993 Act.”.

#### **Amendment of regulation P1**

**10.** In regulation P1 (maternity, paternity and adoption absence), in each of paragraphs (1), (2) and (4) after “parental” insert “, shared parental”.

#### **Amendment of regulation Q1**

**11.** In regulation Q1 (right to buy additional service), in paragraph (16) for the words from “provided” to the end substitute “up to and including 5th April 2016 provided that the employment giving rise to that service was not contracted-out employment”.

#### **Amendment of regulation R7**

**12.** In regulation R7 (former members of health service schemes), in paragraph (8)(b) after “Act” insert “or paragraph 2 of schedule 7 of the Public Service Pensions Act (Northern Ireland) 2014(6)”.

#### **Amendment of regulation T7**

**13.** In regulation T7 (loss of rights to benefits), in paragraph (3) after “(c)” insert “or paragraph (2)”.

#### **Amendment of regulation T8**

**14.** In regulation T8 (commutation of trivial pensions), for paragraph (3)(a) substitute—  
“(a) the preservation requirements;”.

#### **Amendment of paragraph 14 of schedule 1**

**15.** In paragraph 14 (contributions to this Section of the scheme) of schedule 1 (medical and dental practitioners), in sub-paragraph (2)—

(a) after paragraph (c), insert—

“;

(d) in respect of the 2017-2018 scheme year, table 4”; and

(b) after table 3, insert—

**“Table 4: Scheme Year 2017-18**

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
Up to £16,528	5.2%
£16,529 - £22,217	5.8%
£22,218 - £27,634	7.3%
£27,635 - £50,971	9.5%

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
£50,972 - £72,770	12.7%
£72,771 - £113,625	13.7%
£113,626 to any higher amount	14.7%

## PART 3

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

#### General

**16.** The National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013(7) are amended in accordance with regulations 17 to 46.

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

**17.** In regulation 2.A.1 (interpretation of Part 2: general)—

- (a) in the definition of “buy-out policy”, after “Act” insert “and satisfies any requirement of Her Majesty’s Revenue and Customs”;
- (b) in the definition of “cash equivalent”, for “Chapter 4 (transfer values) of Part 4” substitute “Chapter 1 (transfer rights: general) of Part 4ZA”;
- (c) omit the definition of “safeguarded rights”; and
- (d) after the definition of “section 17C agreement provider”, insert—
 

““shared parental leave” has the meaning given in regulation 3 of the Shared Parental Leave Regulations 2014;”.

#### Amendment of regulation 2.A.5

**18.** In regulation 2.A.5 (pensionable service: breaks in service)—

- (a) in paragraph (1)(e), after “leave” insert “or shared parental leave”; and
- (b) in paragraph (8)(e), after “leave” insert “or shared parental leave”.

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

**19.** In regulation 2.A.10 (pensionable pay: breaks in service), in paragraph (1)(e) after “leave” insert “or shared parental leave”.

#### Amendment of regulation 2.C.2

**20.** In regulation 2.C.2 (contribution rate for members other than non-GP providers), in paragraph (2)—

- (a) after sub-paragraph (b), insert—

“;

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(7) [S.S.I. 2013/174](#); relevant amending instruments are [S.S.I. 2015/95](#), [S.S.I. 2015/96](#) and [S.S.I. 2016/98](#).

- (c) for the scheme year 2017-18 is the percentage specified in column 2 of table 3 in respect of the corresponding pensionable pay band specified in column 1 of that table into which the member’s pensionable pay falls”; and
- (b) after table 2, insert—

**“Table 3**

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable pay band</i>	<i>Contribution percentage rate</i>
Up to £16,528	5.2%
£16,529 - £22,217	5.8%
£22,218 - £27,634	7.3%
£27,635 - £50,971	9.5%
£50,972 - £72,770	12.7%
£72,771 - £113,625	13.7%
£113,626 to any higher amount	14.7%”

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

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

### **Amendment of regulation 2.C.18**

**22.** In regulation 2.C.18 (repayment of contributions)—

- (a) in paragraph (1)(b), for “Chapter 5 (early leavers: cash transfer sums and contribution refunds) of Part 4” substitute “Chapter 2 (early leavers: cash transfer sums and contribution refunds) of Part 4ZA”;
- (b) in paragraph (3), for Chapter 5 of Part 4” substitute “Chapter 2 of Part 4ZA”;
- (c) in paragraph (8), for “Chapter 5 (early leavers: cash transfer sums and contribution refunds) of Part 4” substitute “Chapter 2 of Part 4ZA”.

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

**23.** In regulation 2.D.21 (guaranteed minimum pensions etc.), in paragraph (9)(c) for “regulation 60 of the Occupational Pension Schemes (Contracting-out) Regulations 1996” substitute “regulation 25 of the Occupational Pension Schemes (Schemes that were Contracted-out) (No. 2) Regulations 2015(8)”.

### **Amendment of regulation 2.E.24**

**24.** In regulation 2.E.24 (death during period of absence), in paragraph (1)(d) for “or parental leave” substitute “, parental leave or shared parental leave”.

#### **Amendment of regulation 2.E.27**

**25.** In regulation 2.E.27 (guaranteed minimum pension for surviving spouses and civil partners), in paragraph (3) for the words after “forfeited” substitute—

“following a conviction for—

- (a) treason;
- (b) an offence under the Official Secrets Acts 1911 to 1989 referred to in regulation 2.J.8(2)(b); or
- (c) murder or culpable homicide or any other offence of unlawful killing referred to in regulation 2.J.8(4).”.

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

**26.** In regulation 2.F.1 (introduction: rights to transfer value payment)—

- (a) in paragraph (1), for the words from “Chapter 4” to the end substitute “Chapter 1 (transfer rights: general) of Part 4ZA of the 1993 Act”;
- (b) in paragraph (2), for the words from “Chapter 4” to the end substitute “that Chapter or Chapter 2 (early leavers: cash transfer sums and contribution refunds) of that Part”; and
- (c) in paragraph (3)—
  - (i) in sub-paragraph (a), for “Chapter 4” substitute “Chapter 1”; and
  - (ii) in sub-paragraph (b), for “Chapter 5” substitute “Chapter 2”.

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

**27.** In regulation 2.F.5 (ways in which transfer value payments may be applied)—

- (a) in paragraph (1), for “If Chapter 4 of Part 4 of the 1993 Act applies to a member, that member” substitute “A deferred member”; and
- (b) after paragraph (5), insert—
  - “(6) Paragraph (1) applies whether or not the deferred member is entitled to a guaranteed cash equivalent transfer value payment under Chapter 1 (transfer rights: general) of Part 4ZA of the 1993 Act.”.

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

**28.** In regulation 2.F.9 (procedure for applications under regulation 2.F.8), in paragraph (1)(c)(ii) after “2013 Act” insert “or paragraph 2 of schedule 7 of the Public Service Pensions Act (Northern Ireland) 2014”.

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

**29.** In regulation 2.J.6 (commutation of small pensions), omit paragraph (2)(a).

#### **Amendment of regulation 2.J.7**

**30.** In regulation 2.J.7 (reduction in benefits in cases where loss caused by member’s crime, negligence or fraud), in paragraph (2)(a) omit the words after “minimum pension”.

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

**31.** In regulation 2.J.8 (forfeiture of rights to benefits), in paragraph (6)—



- (a) omit “or safeguarded rights which are derived from rights to such pensions”; and
- (b) at the end, insert “or to which paragraph (4) applies”.

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

- 32.** In regulation 3.A.1 (interpretation of Part 3: general)—
- (a) in the definition of “buy-out policy”, after “Act” insert “and satisfies any requirement of Her Majesty’s Revenue and Customs”;
  - (b) in the definition of “cash equivalent”, for “Chapter 4 (transfer values) of Part 4” insert “Chapter 1 (transfer rights: general) of Part 4ZA”;
  - (c) omit the definition of “safeguarded rights”; and
  - (d) after the definition of “section 17C agreement provider”, insert—  
““shared parental leave” has the meaning given in regulation 3 of the Shared Parental Leave Regulations 2014(9);”.

**Amendment of regulation 3.A.4**

- 33.** In regulation 3.A.4 (pensionable service: breaks in service)—
- (a) in paragraph (1)(e), after “leave” insert “or shared parental leave”; and
  - (b) in paragraph (8)(e), after “leave” insert “or shared parental leave”.

**Amendment of regulation 3.A.8**

- 34.** In regulation 3.A.8 (pensionable earnings: breaks in service), in paragraph (1)(e) after “leave” insert “or shared parental leave”.

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

- 35.** In regulation 3.C.2 (members’ contribution rate), in paragraph (13)—
- (a) after sub-paragraph (c), insert—  
“;”;
  - (d) in respect of the 2017-18 scheme year, table 4”; and
  - (b) after Table 3, insert—

**“Table 4: Scheme Year 2017-18**

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

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
£72,771 - £113,625	13.7%
£113,626 to any higher amount	14.7%

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

**36.** In regulation 3.C.7 (effect of member being absent or leaving and rejoining this Section of the scheme during the contribution option period), in paragraph (1)(e) after “leave” insert “or shared parental leave”.

#### **Amendment of regulation 3.C.16**

**37.** In regulation 3.C.16—

- (a) in paragraph (1)(b), for “Chapter 5 (early leavers: cash transfer sums and contribution refunds) of Part 4” substitute “Chapter 2 (early leavers: cash transfer sums and contribution refunds) of Part 4ZA”;
- (b) in paragraph (3), for “Chapter 5 of Part 4” substitute “Chapter 2 of Part 4ZA”; and
- (c) in paragraph (8), for “Chapter 5 (early leavers: cash transfer sums and contribution refunds) of Part 4” substitute “Chapter 2 of Part 4ZA”.

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

**38.** In regulation 3.D.17 (guaranteed minimum pensions etc.), in paragraph (9)(c) for “regulation 60 of the Occupational Pension Schemes (Contacting-out) Regulations 1996” substitute “regulation 25 of the Occupational Pension Schemes (Schemes that were Contracted-out) (No. 2) Regulations 2015(10)”.

#### **Amendment of regulation 3.E.24**

**39.** In regulation 3.E.24 (death during period of absence), in paragraph (1)(d) for “or parental leave” substitute “, parental leave or shared parental leave”.

#### **Amendment of regulation 3.E.27**

**40.** In regulation 3.E.27 (guaranteed minimum pension for surviving spouses and civil partners), in paragraph (3) for the words after “forfeited” substitute—

“following a conviction for—

- (a) treason;
- (b) an offence under the Official Secrets Acts 1911 to 1989 referred to in regulation 3.J.8(2)(b); or
- (c) murder or culpable homicide or any other offence of unlawful killing referred to in regulation 3.J.8(4).”.

#### **Amendment 3.F.1**

**41.** In regulation 3.F.1 (introduction: rights to transfer value payment)—

- (a) in paragraph (1), for “Chapter 4 (transfer values) of Part 4 of the 1993 Act” substitute “Chapter 1 (transfer rights: general) of Part 4ZA of the 1993 Act”;
- (b) in paragraph (2), for the words from “Chapter 4” to the end substitute “that Chapter or Chapter 2 (early leavers: cash transfer sums and contribution refunds) of that Part”; and
- (c) in paragraph (3)—
  - (i) in sub-paragraph (a), for “Chapter 4” substitute “Chapter 1”; and
  - (ii) in sub-paragraph (b), for “Chapter 5” substitute “Chapter 2”.

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

- 42.** In regulation 3.F.5 (ways in which transfer value payments may be applied)—
- (a) in paragraph (1), for “If Chapter 4 of Part 4 of the 1993 Act applies to a member, that member” substitute “A deferred member”; and
  - (b) after paragraph (5), insert—
    - “(6) Paragraph (1) applies whether or not the deferred member is entitled to a guaranteed cash equivalent transfer value payment under Chapter 1 (transfer rights: general) of Part 4ZA of the 1993 Act.”.

#### **Amendment of regulation 3.F.9**

- 43.** In regulation 3.F.9 (procedure for applications under regulation 3.F.8), in paragraph (1)(c)(ii) after “2013 Act” insert “or paragraph 2 of schedule 7 of the Public Service Pensions Act (Northern Ireland) 2014(11)”.

#### **Amendment of regulation 3.J.6**

- 44.** In regulation 3.J.6 (commutation of small pensions), omit paragraph (2)(a).

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

- 45.** In regulation 3.J.7 (reduction in benefits in cases where loss caused by member’s crime, negligence or fraud), in paragraph (2)(a) omit the words after “minimum pension”.

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

- 46.** In regulation 3.J.8 (forfeiture of rights to benefits), in paragraph (6)—
- (a) omit “or safeguarded rights which are derived from rights to such pensions”; and
  - (b) at the end, insert “or to which paragraph (4) applies”.

## PART 4

### Amendment of the National Health Service (Scotland) (Injury Benefits) Regulations 1998

#### Amendment of regulation 4

**47.** In the National Health Service (Scotland) (Injury Benefits) Regulations 1998(12), in regulation 4 (scale of benefits)—

- (a) in paragraph (6)(b)(vi), at the end insert “: this is subject to paragraphs (6B) and (6C)”; and
- (b) after paragraph (6), insert—

“(6B) Paragraph (6C) applies where, immediately before receiving employment and support allowance referred to in paragraph (vi) of sub-paragraph (b) of paragraph (6) (the “replacement benefit”), a person was in receipt of a benefit referred to in paragraph (ii) or (iii) of that sub-paragraph (the “superseded benefit”).

(6C) Where the rate of the replacement benefit is greater than the rate of the superseded benefit, the rate of replacement benefit taken into account for the purpose of calculating a benefit in accordance with this regulation is to be the rate of the superseded benefit that was taken into account for that purpose immediately before the person received the replacement benefit.”.

## PART 5

### Amendment of the National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998

#### General

**48.** The National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998(13) are amended in accordance with regulations 49 to 52.

#### Amendment of regulation 3

**49.** In regulation 3 (making and acceptance of elections), in paragraph (5)(a) for “or 13 (limits on contributions and benefits)” substitute “(limits on contributions)”.

#### Amendment of regulation 11

**50.** In regulation 11 (retirement and dependants’ benefits)—

- (a) in paragraph (1), after sub-paragraph (d) insert—

“;

- (e) a lifetime allowance excess lump sum referred to in section 166(1)(g) of the 2004 Act”; and

- (b) in paragraph (12), omit “, subject to any limit imposed by regulation 13.”.

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(12) S.I. 1998/1594; relevant amending instruments are S.S.I. 2009/208, S.S.I. 2013/52 and S.S.I. 2013/109.

(13) S.I. 1998/1451; relevant amending instruments are S.S.I. 2001/465, S.S.I. 2005/544, S.S.I. 2006/307, S.S.I. 2008/225 and S.S.I. 2015/96.

### **Omission of regulation 13**

51. Omit regulation 13 (benefit limits).

### **Amendment of regulation 15**

52. In regulation 15 (payments by the Scottish Ministers), in paragraph (3) for “regulation 11(8) (f) and (11)” substitute “regulation 11(9)(f) and (12)”.

## **PART 6**

### **General**

#### **Option to persons detrimentally affected by these Regulations**

53.—(1) This regulation applies in relation to any benefit which is being paid or may become payable under the regulations amended by these Regulations to or in respect of a person who—

- (a) served in an employment or office which qualified the person to participate in the benefits provided under the regulations amended by these Regulations; and
- (b) ceased to serve in that employment or office before these Regulations came into force.

(2) Where, in a case to which this regulation applies, any provision of these Regulations would operate in relation to any person so as to place that person in a worse position than that person would have been in if that provision had not applied, that person may elect that the provision shall not apply by giving notice in accordance with paragraph (3).

(3) A notice given pursuant to paragraph (2) is to be in writing and to be delivered to the Scottish Ministers within six months of the coming into force of these Regulations or such longer period as the Scottish Ministers may allow.

(4) An election pursuant to paragraph (2) is to have effect in relation to the benefit referred to in paragraph (1) only to the extent that such benefit has accrued by virtue of periods of service rendered prior to the cessation referred to in paragraph (1) (or, if there has been more than one such cessation, the last of them before the coming into force of these Regulations) and in determining entitlement to, and the amount of, the benefit to that extent, a person is to be treated as if that person had never recommenced service at any time after that cessation (or, as the case may be, the last such cessation).

St Andrew’s House, Edinburgh  
10th January 2017

*DEREK MACKAY*  
A member of the Scottish Government

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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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We consent

1st February 2017

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

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## EXPLANATORY NOTE

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

These Regulations amend the National Health Service Superannuation Scheme (Scotland) Regulations 2011 (“the 2011 Regulations”), the National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013 (“the 2013 Regulations”), the National Health Service (Scotland) (Injury Benefits) Regulations 1998 (“the Injury Benefits Regulations”) and the National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998 (“the AVC Regulations”).

Similar amendments to the 2011 and 2013 Regulations are made dealing with the following matters:

- the abolition of contracting-out
- the insertion of updated employee contribution bands for the scheme year 2017 -2018
- the conversion of pension into a lump sum where the sums involved are trivial
- the insertion of references to shared parental leave
- the ban on the transfer of deferred benefits from unfunded public service pension schemes to schemes offering flexible benefits by closing an existing lacuna in the provisions of the Regulations
- miscellaneous technical amendments - (i) updating references to the Pension Schemes Act 1993 (ii) updating the definition of “buy-out” (iii) inserting a cross-reference to the Public Service Pensions Act (Northern Ireland) 2014

Amendments specific to the 2011 Regulations involve—

- making amendments to regulation M1 (transfers) to make clear that any buy-out policy purchased must satisfy the requirements of regulation 12(2) of the Occupational Pension Schemes (Transfer Values) Regulations 1996 and to prevent a deferred member transferring benefits to a Qualified Recognised Overseas Pension Scheme in certain cases
- amending regulation B4 to clarify that, if a member opts out within 3 months, he or she is treated as never having been in the scheme

The Injury Benefits Regulations are amended to ensure that a person in receipt of permanent injury benefit under those Regulations who was in receipt of certain social security benefits which were replaced by the social security benefit known as “employment support allowance” is not detrimentally affected by that replacement where the amount of employment and support allowance is greater than the amount of replaced social security benefits the person was receiving.

Amendments to the AVC Regulations enable a member’s money purchase additional voluntary contribution pension pot to be taken as a lifetime allowance excess lump sum.