
SCOTTISH STATUTORY INSTRUMENTS

2010 No. 22

The National Health Service (Superannuation Scheme, Pension Scheme, Injury Benefits and Additional Voluntary Contributions) (Scotland) Amendment Regulations 2010

PART 3

AMENDMENT OF THE NATIONAL HEALTH SERVICE
PENSION SCHEME (SCOTLAND) REGULATIONS 2008

Interpretation of Part 3

11. In this Part an alphanumerical reference to a regulation is a reference to a provision of the National Health Service Pension Scheme (Scotland) Regulations 2008⁽¹⁾ bearing that designation.

Amendment of regulation 1.B.3

12. In regulation 1.B.3(1) and (3) (provision of information for tax purposes) for “these Regulations” substitute “this section of the scheme”.

Amendment of regulation 2.A.1

13. Regulation 2.A.1 (interpretation: general) is amended as follows—

- (a) at the appropriate place in the alphabetical order insert—
 - (i) “2008 Section Optant” has the meaning given in regulation 2.K.1”;
 - (ii) “the 1995 Section” means the section of the National Health Service Pension scheme for Scotland set out in the National Health Service Superannuation scheme (Scotland) Regulations 1995;
- (b) omit the definition of “the NHS superannuation scheme for Scotland 1995”; and
- (c) for the definition of “the scheme” substitute—

““the scheme” means the National Health Service Pension Scheme for Scotland;”.

Amendment of regulation 2.A.2

14. In regulation 2.A.2(1) (meaning of “pensionable service”)—

- (a) at the end of sub-paragraph (b) omit “and”; and
- (b) after sub-paragraph (c) insert—

“; and

- (d) any period of pensionable service the member is entitled to count under Chapter 2.K.”.

Amendment of regulation 2.A.5

15. In regulation 2.A.5(1) (meaning of “qualifying service”) after sub-paragraph (f) insert—
“; and

- (g) in the case of a 2008 Section Optant any period of qualifying service the member is entitled to count under Chapter 2.K.”.

Amendment of regulation 2.A.10

16.—(1) Regulation 2.A.10 (meaning of “reckonable pay”: general) is amended as follows.

(2) In paragraph (2) after “2.A.14” insert, “2.K.7 and 2.K.9 to 2.K.11”.

(3) In paragraph (3) in the definition of “IRP” after “paragraph” insert “(4),”.

(4) After paragraph (11), insert—

“(12) For the purposes of this regulation pensionable service does not include—

- (a) any period of pensionable service that a member is entitled to count under Chapter 2.F (transfers) unless the transfer value payment in respect of that service is accepted from a corresponding 2008 section;
- (b) any period of pensionable service that a Section 2008 Optant is entitled to count under—
 - (i) regulation 2.K.3 (service credited from the 1995 section);
 - (ii) regulation 2.K.5 (treatment of additional service); or
 - (iii) 2.K.13 (transfers in: transitional provision).”.

Amendment of regulation 2.B.1

17. In regulation 2.B.1 (eligibility: general)—

(a) In paragraphs (3)(b), (5) and (6) for “the NHS superannuation scheme for Scotland 1995” where it appears substitute “the 1995 Section”; and

(b) for paragraph (5)(e)(ii) substitute—

“(ii) became a deferred member of that Section on leaving that employment and has not since become a pensioner member of that Section before the date of leaving that employment and joining this Section of the scheme; and”.

New Regulation 2.B.1A

18. After regulation 2.B.1 insert—

“Eligibility: transitional

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

- (a) the Scottish Ministers have accepted that person’s option to join this Section of the scheme under Chapter 2.K; and
- (b) that person is not prevented by regulation 2.B.2, 2.B.3 or 2.B.6 from doing so.

(2) If a person referred to in paragraph (1)—

- (a) is entitled to a lower tier ill health pension under regulation E2A(3)(a) of the 1995 Regulations; and
- (b) as a result of a determination made by the Scottish Ministers under regulation E2B(3) of those Regulations, (reassessment of ill health condition determined under regulation E2A) he or she is entitled to an upper tier ill health pension in place of that lower tier ill health pension,

that person shall cease to be eligible to be an active member of this Section of the scheme from the date on which the Scottish Ministers make that determination.”.

Amendment of regulation 2.C.3

- 19.** In regulation 2.C.3 (22) (employees) for “2008/09” substitute “current scheme year”

Amendment of regulation 2.C.5

- 20.** After regulation 2.C.5(6) (contributions by employing authorities: general) insert—

“(7) Subject to paragraph (8), if a non-GP provider is—

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

that non-GP provider must pay contributions under regulation 2.C.5 to the contracting Health Board or someone appointed to act on its behalf.

(8) If a non-GP provider is a shareholder or partner in one or more employing authorities referred to in paragraph (7), each employing authority must pay 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 its behalf.”.

Amendment of regulation 2.C.6

- 21.** In regulation 2.C.6 (contributions by employing authorities: members becoming entitled to pensions under regulation 2.D.11) paragraphs (6) to (10) are renumbered (1) to (5)

Amendment of regulation 2.C.8

- 22.** After regulation 2.C.8(8) (member’s option to pay additional periodical contributions to purchase additional pension) insert—

“(9) In the case of a 2008 Section Optant this regulation is subject to regulation 2.K.4.”.

Amendment of regulation 2.C.10

- 23.** After regulation 2.C.10(6) (member’s option to pay lump sum contribution to purchase additional pension) insert—

“(7) In the case of a 2008 Section Optant this regulation is subject to regulation 2.K.4.”.

Amendment of regulation 2.C.11

- 24.** After regulation 2.C.11(5) (payment of additional lump sum contributions by employing authority) insert—

“(6) In the case of a 2008 Section Optant this regulation is subject to regulation 2.K.4.”.

Amendment of regulation 2.C.14

25.—(1) Regulation 2.C.14 (effect of payment of additional contributions under this chapter) shall be amended as follows.

(2) In paragraph (3)—

(a) after “Chapter 2.D (member’s retirement benefits)” insert “or Chapter 2.K (2008 section Optants)”; and

(b) after “2.D.5 (partial retirement members at least age 55)” insert “and 2.K.21”.

(3) After paragraph (10) insert—

“(11) In the case of a 2008 Section Optant this regulation is subject to regulation 2.K.4.”.

Amendment of regulation 2.C.16

26. After regulation 2.C.16(5) (effect of part payment of periodical contributions) insert—

“(6) In the case of a 2008 Section Optant this regulation is subject to regulation 2.K.4.”.

Amendment of regulation 2.D.1

27. After regulation 2.D.1(7) (normal retirement pensions) insert—

“(8) In the case of 2008 Section Optant this regulation is subject to regulation 2.K.12.”.

Amendment of regulation 2.D.3

28. After regulation 2.D.3(4) (late payment of pension with actuarial increase) insert—

“(5) In the case of a 2008 Section Optant this regulation is subject to regulation 2.K.21.”.

Amendment of regulation 2.D.4

29. After regulation 2.D.4(4) (early payment of pensions with actuarial reduction) insert—

“(5) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.12.”.

Amendment of regulation 2.D.5

30. After regulation 2.D.5(9) (partial retirement (members aged at least 55)) insert—

“(10) In the case of a 2008 Section Optant this regulation is subject to regulation 2.K.12.”.

Amendment of regulation 2.D.8

31.—(1) Regulation 2.D.8 (early retirement on ill health (active members and non contributing members)) shall be amended as follows.

(2) For paragraph (5)(b) substitute—

“(b) is not increased by the enhancement period in the circumstances referred to in subparagraph (a) if—

(i) the member’s pensionable service before and after the break is treated separately under regulation 2.G.2; or

(ii) the member’s pensionable service in respect of an earlier service credit is treated separately under regulation 2.K.7.”.

(3) In paragraph (17) after the definition of “appropriate medical treatment” insert the following definition—

““permanently” means—

- (a) the period until age 65; and
- (b) in the case of a 2008 Section Optant who, before joining this Section, was assessed by a medical adviser as being—
 - (i) permanently incapable of efficiently discharging their duties for the purposes of regulation E2A(2)(b)(i) of the 1995 Regulations, that Optant shall be deemed to be permanently incapable of discharging the duties of the Optant’s employment efficiently for the purposes of paragraph (2)(a) of this regulation;
 - (ii) permanently incapable of regular employment of like duration for the purposes of regulation E2A(2)(b)(ii) of the 1995 Regulations, that Optant shall be deemed to be permanently incapable of engaging in regular employment of like duration for the purposes of paragraph (3)(a) of this regulation;”.

(4) In paragraph (17) in the definition of “regular employment of like duration”—

- (a) for “(d)” substitute “(a)”; and
- (b) for “(e)” substitute “(b)”.

(5) After paragraph (17), insert—

“(18) In the case of a 2008 Section Optant, this regulation is subject to regulations 2.K.12 and 2.K.14 to 2.K.18.”.

Amendment of regulation 2.D.9

32.—(1) Regulation 2.D.9 (re-assessment of entitlement to an ill health pension determined under regulation 2.D.8) shall be amended as follows.

(2) For paragraph (2) substitute—

“(2) A member to whom a notice under paragraph (1)(b) has been given may apply to the Scottish Ministers for a review of whether the member subsequently meets the condition in regulation 2.D.8(3)(a) if—

- (a) the member makes the application in writing—
 - (i) within three years of the date of issue of the notice; or
 - (ii) in the case of a member who engages in further NHS employment during the period of three years referred to in paragraph (1)(b), before the first anniversary of the day on which that employment commences or, if sooner, before the end of that period;
- (b) the application for a review is accompanied by further written medical evidence—
 - (i) relating to whether the condition in regulation 2.D.8(3)(a) is satisfied at the date of the Scottish Ministers’ review; and
 - (ii) that evidence relates to the same physical or mental impairment as a result of which the member met the condition in regulation 2.D.8(2)(a);
- (c) no previous application for a review has been made under this paragraph; and
- (d) the member has not become entitled to an upper tier ill health pension in respect of any later service under regulation 2.G.5.”.

(3) After paragraph (3) insert—

“(4) In the case of a 2008 Section Optant this regulation is subject to regulations 2.K.16 and 2.K.17.”.

Amendment of regulation 2.D.10

33. After regulation 2.D.10(9) (early retirement on ill health (deferred members)) insert—
“(10) In the case of a 2008 Section Optant this regulation is subject to regulation 2.K.12.”.

Amendment of regulation 2.D.11

34. After regulation 2.D.11(8) (early retirement on termination of employment by employing authority) insert—
“(9) In the case of a 2008 Section Optant this regulation is subject to regulation 2.K.12.”.

Amendment of regulation 2.D.14

35. After regulation 2.D.14(9) (general option to exchange part of pension for lump sum) insert—
“(10) In the case of a 2008 Section Optant this regulation is subject to regulation 2.K.8(4) and regulation 2.K.12.”.

Amendment of regulation 2.D.16

36. For regulation 2.D.16 (reduction in pension debit member’s benefits) substitute—

“Reduction in pension debit member’s benefits

2.D.16.—(1) The benefits to which a pension debit member is entitled under this Chapter are subject to the reduction to be made under section 31 (reduction of benefit) of the 1999 Act.

(2) In the case of a 2008 Section Optant this regulation is subject to regulation 2.K.8(2).”.

Amendment of regulation 2.E.2

37. After regulation 2.E.2(2) (meaning of “surviving nominated partner”) insert—
“(3) In the case of a 2008 Section Optant this regulation is subject to regulation 2.K.20.”.

Amendment of regulation 2.E.4

38.—(1) Regulation 2.E.4 (amount of pensions under regulation 2.E.1: pensioner members) shall be amended as follows.

(2) For paragraph (3) substitute—

“(3) For the purposes of paragraph (1) any reduction in the rate of the member’s pension under—

- (a) Chapter 2.H;
- (b) regulation 2.D.14; or
- (c) regulation 2.K.12,

shall be ignored.

(3A) For the purpose of paragraph (2)—

- (a) any reduction in the rate of the member’s pension under—
 - (i) regulation 2.D.4;
 - (ii) regulation 2.D.14; or

- (iii) regulation 2.K.12; and
- (b) any increase in the rate of the member’s pension under—
 - (i) regulation 2.D.3; or
 - (ii) regulation 2.K.21,shall be ignored.”.
- (3) Omit paragraph (8).

Amendment of regulation 2.E.10

39. At the end of regulation 2.E.10(4) (amount of children’s pension under regulation 2.E.8: deceased active members and deceased non-contributing members) insert as full out words, “in the case of a 2008 Section Optant this is subject to regulation 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).”.

Amendment of regulation 2.E.11

40.—(1) Regulation 2.E.11 (amount of children’s pension under regulation 2.E.8: deceased pensioner members) shall be amended as follows.

(2) At the end of paragraph (3) insert as full out words “, in the case of a 2008 Section Optant this is subject to regulation 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).”.

(3) For paragraph (8) substitute—

“(8) For the purposes of paragraphs (1) and (2) any reduction in the member’s pension under regulation 2.D.14 (general option to exchange part pension for lump sum) and regulation 2.K.12 (amount of pension and lump sum to be paid to a 2008 section Optant) shall be ignored.”.

Amendment of regulation 2.E.12

41. At the end of regulation 2.E.12(3) (amount of children’s pension under regulation 2.E.8: deceased deferred members) insert as full out words “, in the case of a 2008 Section Optant this is subject to regulation 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).”.

Amendment of regulation 2.E.17

42.—(1) Regulation 2.E.17 (amount of lump sum: single capacity members and recent leavers (disregarding regulation 2.D.5 employments)) shall be amended as follows.

(2) At the end of paragraph (1) insert at the end “in the case of a 2008 Section Optant this is subject to regulation 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).”.

(3) For paragraph (2)(b) substitute—

“(b) an amount equal to twice the member’s reckonable pay by reference to which the pension was calculated, less the aggregate of—

- (i) any lump sum paid to the member when the pension came into payment as a result of the member exercising the option under regulation 2.D.14 (general option to exchange part of pension for lump sum); and

(ii) in the case of a 2008 Section Optant the lump sum paid to the Optant under regulation 2.K.12 (amount of pension and lump sum to be paid to a 2008 Section Optant).”.

(4) For paragraph (6) substitute—

“(6) The reference in paragraph (2)(a) to the annual rate of the member’s pension is to the member’s pension after it has been reduced to take account of—

- (a) the exercise by the member of an option under regulation 2.D.14; and
- (b) in the case of a 2008 Section Optant, the lump sum paid to the Optant under regulation 2.K.12 (amount of pension and lump sum to be paid to a 2008 Section Optant).”.

Amendment of regulation 2.E.18

43.—(1) Regulation 2.E.18 (amount of lump sum: dual capacity members (disregarding regulation 2.D.5 employments)) shall be amended as follows.

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

(3) After paragraph (3) insert—

“(4) In the case of a 2008 Section Optant—

- (a) the reference to the annual rate of pension in paragraph (2)(b)(i) is to the annual rate of pension after it has been reduced to take account of the lump sum paid to the Optant under regulation 2.K.12 (amount of pension and lump sum paid to a 2008 Section Optant); and
- (b) the amount of the Optant’s reckonable pay for the purposes of paragraph (2)(b) (ii) shall be reduced by the aggregate of—
 - (i) the amount of the lump sum paid to the Optant under regulation 2.K.12; and
 - (ii) the lump sum under regulation 2.D.14 referred to in paragraph (2)(b)(ii).”.

Amendment of regulation 2.E.19

44.—(1) Regulation 2.E.19 (amount of lump sum: dual capacity members: members with pensions under regulation 2.D.5) shall be amended as follows.

(2) At the end of paragraph (2) insert as full out words “, in the case of a 2008 Section Optant this is subject to regulation 2.K.23 (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 Regulations).”.

(3) For paragraph (4) substitute—

“(4) The aggregate lump sum cap is equal to twice the appropriate fraction of the reckonable pay by reference to which the pension to which the member became entitled on last exercising the option under regulation 2.D.5 was calculated, less the total of any lump sums paid to the member—

- (a) in exchange for pensions under regulations 2.D.5 (partial retirement (members aged at least 55)) as a result of the member exercising the option under regulation 2.D.14 (general option to exchange part of pension for lump sum); and
- (b) in the case of a 2008 Section Optant, the lump sum paid to that Optant under regulation 2.K.12.”.

Amendment of regulation 2.E.21

45. After regulation 2.E.21(11) (payment of lump sums or pensions on death) insert—

“(12) In the case of a 2008 Section Optant this regulation is subject to regulation 2.K.20 (nominations and notices accepted by the Scottish Ministers under the 1995 Section to apply under Part E of these regulations).”.

Amendment of regulation 2.F.6

46.—(1) Regulation 2.F.6 (calculating amounts of transfer value payments) shall be amended as follows.

(2) For paragraph (4) substitute—

“(4) In paragraph (3) “minimum transfer value” means—

(a) in the case of a person other than a 2008 Section Optant the sum of—

(i) any transfer value payments that have been made to this Section of the scheme in respect of the person as a result of which the person is entitled to count any pensionable service under this Section of the scheme by reference to which the accrued rights subject to the transfer are calculated; and

(ii) any contributions paid by the person under Chapter 2.C (contributions) as a result of which the person is entitled to count such service;

(b) in the case of a 2008 Section Optant, the sum of—

(i) any transfer value payments that have been made to this Section of the scheme in respect of the person as a result of which the person is entitled to count any pensionable service under this Section of the scheme by reference to which the accrued rights subject to the transfer are calculated;

(ii) any contributions paid by the person under Chapter 2.C as a result of which the person is entitled to count such service; and

(iii) the aggregate of any—

(aa) transfer value payments that have been made to the 1995 Section in respect of the Optant;

(bb) any contributions paid by the Optant under regulation D1 (contributions by members) of the 1995 Regulations in respect of pensionable employment in that Section on or before 31 March 2008; and

(cc) any payments made by the Optant under regulation Q1 (right to buy additional service) of the 1995 Section for the purchase of additional service,

which entitle the Optant to count, under Chapter 2.K of this Section, any pensionable service by reference to which the accrued rights subject to the transfer are calculated.”.

(3) After paragraph (5) insert—

“(6) In the case of a 2008 Section Optant this regulation is subject to regulation 2.K.12.”.

Amendment of regulation 2.F.8

47. After regulation 2.F.8(4) (right to apply for acceptance of transfer value payment from another scheme) insert—

“(5) In the case of a 2008 Section Optant this regulation is subject to regulation 2.K.13.”.

Amendment of regulation 2.F.10

48. After regulation 2.F.10(6) (acceptance of transfer value payments) insert—
“(7) In the case of a 2008 Section Optant this regulation is subject to regulation 2.K.13.”.

Amendment of regulation 2.F.11

49. After regulation 2.F.11(6) (calculation of transferred-in pensionable service) insert—
“(7) In the case of a 2008 Section Optant this regulation is subject to regulation 2.K.13.”.

Amendment of regulation 2.F.12

50. . After regulation 2.F.12(4) (meaning of “capped transferred-in service”) insert—
“(5) In the case of a 2008 Section Optant this regulation is subject to regulation 2.K.13.”.

Amendment of regulation 2.J.9

51. In regulation 2.J.9(5)(a) (interest on late payment of benefits and refunds of contributions) after “Chapter 2D (members retirement benefits)” insert “or a lump sum under regulation 2.K.12”.

New Chapter 2.K

52. After Chapter 2.J (miscellaneous and supplementary provisions) insert—

“CHAPTER 2.K

2008 Section Optants

2.K.1 Application of Chapter 2.K

(1) This Chapter makes provision in relation to persons who are active members of the 1995 Section on or after 1st October 2009 and who opt to become members of this Section of the scheme on the basis set out in this Chapter, including persons who—

- (a) return to NHS employment in respect of which there is a liability to pay contributions to the scheme in accordance with regulation D1 of the 1995 Regulations within a period of less than 5 years beginning with the day on which they last left such employment (whether or not that period includes 1st October 2009);
- (b) become members of the 1995 Section (whether for the first time or for a second or subsequent time having previously been a member of that Section) in accordance with regulation B2(3) (age limits and restrictions on membership) of the 1995 Regulations.

(2) This Chapter does not apply to a person if—

- (a) that person is an active member of the 1995 Section by virtue of regulation E2(11) (early retirement pension (ill health) of the 1995 Regulations), or
- (b) that person is a former member of a corresponding 1995 scheme and the administrators of that scheme have confirmed that the person did not elect to join the relevant corresponding 2008 scheme when offered the opportunity to do so.

(3) In these Regulations a member of this Section to whom this Chapter applies is referred to as a “2008 Section Optant”.

2.K.2 Options for 1995 Section members to join the 2008 Section under Chapter 2.K

- (1) A person who by virtue of that person's employment—
 - (a) was an active member of the 1995 Section—
 - (i) on, or after, 1st October 2009; and
 - (ii) on the day that person's option to join this Section of the scheme was received by the Scottish Ministers; and
 - (b) would be eligible to join this Section of the scheme if that person met the condition in regulation 2.B.1(3)(a) (which requires that the person's employment began on or after 1st April 2008),

may join this Section of the scheme under the terms of this Chapter.

(2) A person who satisfies the conditions in paragraph (1) may only join this Section of the scheme if that person opts to do so.

(3) Subject to paragraphs (4) and (8) and regulation 2.K.19 (circumstances in which a 1995 Section member may defer making an option to join this Section of the scheme under regulation 2.K.2), the option may only be exercised by giving notice in writing to the scheme administrator—

- (a) in such form as the Scottish Ministers require; and
 - (b) before the date the Scottish Ministers specify for that purpose in the comparative statement of benefits under the 1995 Section and the 2008 Section of the scheme issued to that person (“the comparative statement”).
- (4) For the purpose of paragraph (3)—
- (a) the date specified by the Scottish Ministers in the comparative statement shall be a date that is at least 4 months later than the comparative statement issue date; and
 - (b) the notice shall be—
 - (i) irrevocable; and
 - (ii) treated as having been given on the date on which it is received by the scheme administrator.

(5) Subject to paragraph (12)—

- (a) the option shall be effective from the first day of the member's pensionable employment in the 1995 Section falling on or after 1st April 2008;
- (b) the person shall be treated as if that person had been a member of this Section of the scheme from that date; and
- (c) the member's service both for the purpose of ascertaining entitlement to, and calculation of, benefits under the 1995 Section shall count under this Section of the scheme only to the extent that it would have counted had the member been an active member of this Section of the scheme from that date.

(6) If contributions due from the member under Chapter 2.C (contributions) in respect of any periods beginning on or after 1st April 2008 are not made when they are due because of the time when the option is exercised, the amount overdue is to be paid by deduction from the member's pensionable pay in such manner and at such rate as the Scottish Ministers require.

(7) If, in a case where paragraph (6) applies, the member ceases to be an active member of this Section of the scheme before the amount overdue has been paid under that paragraph, the amount outstanding becomes payable immediately.

(8) The Scottish Ministers may extend the time limit in paragraph (3) if the Scottish Ministers consider that the person has not had a reasonable opportunity to consider whether to exercise the option.

(9) The Scottish Ministers may accept an option to join the 2008 Section that is received after the person ceases to be an active member of the 1995 Section if—

- (a) a comparative statement of benefits under the 1995 Section and the 2008 Section of the scheme was issued to the person whilst that person was an active member of the 1995 Section;
- (b) but for the exercise of the option the person would otherwise become entitled to the immediate payment of benefits under Part E of the 1995 Regulations;
- (c) the person has provided the Scottish Ministers with a notice in writing in such form as the Scottish Ministers may require that benefits are not to be paid from the 1995 Section and has not revoked that notice; and
- (d) the person exercises the option before the end of the four month period beginning with the comparative statement issue date.

(10) A person may revoke a notice given for the purposes of paragraph (9)(c)—

- (a) at any time;
- (b) in writing in such form as required by the Scottish Ministers for that purpose.

(11) A person who has revoked a notice in accordance with paragraph (10) may not provide a further notice under paragraph (9).

(12) A person exercising an option under this regulation who is entitled to a pension under regulation E2A of the 1995 Regulations may count as qualifying service for the purpose of this section of the scheme a period of service, measured in years and days, equal to the qualifying service that person was entitled to count under regulation C3 (meaning of “qualifying service”) of the 1995 Regulations in determining that person’s entitlement to that pension.

(13) For the purposes of paragraphs (4) and (9) the comparative statement issue date is the date on which the comparative statement of benefits under the 1995 Section and the 2008 Section of the scheme is sent (whether by electronic communication or otherwise)—

- (a) to the person; or
- (b) to the person’s employing authority.

(14) Where paragraph (1)(a)(ii) applies and any extension of time in accordance with paragraph (8), where paragraph (13)(b) applies the person must have a period equal to at least 3 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.

Transfer of service from the 1995 Section

2.K.3 Service credited from the 1995 Section

(1) A 2008 Section Optant who—

- (a) becomes a member of this Section of the scheme; and
- (b) is not entitled to a pension under regulation E2A (ill health pension on early retirement) of the 1995 Regulations,

is entitled to count the following service under this Section of the scheme.

(2) The member may count as qualifying service a period equal in length to the period of qualifying service up to, and including, 31st March 2008 which the member was entitled to count under the 1995 Section (but not exceeding 45 years).

(3) Subject to paragraph (6) and regulation 2.K.13, the period of pensionable service which a 2008 Section Optant who is under age 60 on 1st October 2009 may count under this Section is a period equal in length to the period of pensionable service up to, and including, 31st March 2008 which the Optant was entitled to count under regulation C2 (meaning of pensionable service) of the 1995 Regulations.

(4) Subject to paragraph (6) and regulation 2.K.13, the period of pensionable service which a 2008 Section Optant who is age 60 or over on 1st October 2009 may count under this Section is a period equal in length to the pensionable service up to, and including, 31st March 2008 which the Optant was entitled to count under regulation C2 of the 1995 Regulations calculated by multiplying that period of service (specified in days) by the factor specified in paragraph (5) applicable to that case.

(5) The factor referred to in paragraph (4) is the factor specified by the Scottish Ministers for that purpose.

(6) For the purposes of paragraphs (3) and (4) the pensionable service which the 2008 Section Optant is entitled to count under regulation C2 of the 1995 Regulations—

- (a) shall not include any pensionable service the Optant was entitled to count under regulation C2(1)(d) of the 1995 Regulations;
- (b) shall be calculated without regard to regulation R3(5) (mental health officers) of those Regulations; and
- (c) where the Optant is entitled to count any part-time pensionable service in the 1995 Section, shall be calculated in accordance with regulation C4 (part-time employment) of the 1995 Regulations.

(7) Where a 2008 Section Optant becomes a member of this Section under this Part all rights in respect of that Optant under the 1995 Section are extinguished.

2.K.4 Treatment of Additional Pension

(1) This regulation applies to a 2008 Section Optant who, whilst a member of the 1995 Section, had exercised an option to purchase additional pension (“an OPAP”) under regulation Q8 (option to pay additional periodical contributions to purchase additional pension) or Q10 or whose employing authority had done so under regulation Q11 of that Section (option to purchase additional pension) of the 1995 Regulations.

(2) Where paragraph (1) applies the amount of additional pension that will count under this Section shall be calculated in accordance with—

- (a) paragraph (3) when all the contributions required to be made under the OPAP have been made in accordance with regulation Q14 of the 1995 Regulations;
- (b) paragraph (4) when the OPAP has ceased or been cancelled in accordance with regulation Q13 of those Regulations.

(3) Where paragraph (2)(a) applies, the amount of additional pension that will count under regulation 2.C.14 shall be equal to the amount of additional pension—

- (a) purchased in the 1995 Section under regulation Q14 of the 1995 Regulations where the person’s chosen birthday under the OPAP was 65;
- (b) subject to paragraph (9), that would have been purchased in the 1995 Section under regulation Q14 of the 1995 Regulations if the person’s chosen birthday had been 65 and, in determining that amount, the Scottish Ministers shall have regard

to the advice of the scheme actuary, where the person's chosen birthday under the OPAP was 60.

(4) Where paragraph (2)(b) applies, the amount of additional pension that will count under regulation 2.C.16 shall be equal to the amount of additional pension—

- (a) that was purchased in the 1995 Section under regulation Q13 of the 1995 Regulations, where the person's chosen birthday under the OPAP was 65;
- (b) subject to paragraph (9) that would have been purchased in the 1995 Section under regulation Q13 of the 1995 Regulations if the person's chosen birthday had been 65 and, in determining that amount, the Scottish Ministers shall have regard to the advice of the scheme actuary, where the person's chosen birthday under the OPAP was 60.

(5) The additional pension referred to in paragraph (3) or (4) that counts in this Section of the scheme shall do so from the effective date specified in paragraph (5) of regulation 2.K.2.

(6) This paragraph applies—

- (a) to a person referred to in paragraph (1); and
- (b) where at the effective date specified in regulation 2.K.2(5)—

(i) that person—

- (aa) was making additional contributions in accordance with an OPAP exercised under regulation Q8 of the 1995 Regulations;
- (bb) had applied to make, but had not yet begun making, additional contributions under regulation Q8 of the 1995 Regulations; or
- (cc) had applied to make, but had not yet made, a single lump sum contribution in accordance with an OPAP exercised under regulation Q10 of the 1995 Regulations; or

(ii) that person's employing authority had applied to make, but had not yet made, a single lump sum contribution on the person's behalf, in accordance with an OPAP exercised under regulation Q11 of the 1995 Regulations.

(7) Where paragraph (6) applies and the person's chosen birthday referred to in regulation Q8 of the 1995 Section was 65, the OPAP referred to in that paragraph will apply in this Section as if the OPAP were an option to purchase additional pension in accordance with whichever of regulation 2.C.8, 2.C.10 or 2.C.11 would apply in that case.

(8) Subject to paragraph (9) where paragraph (6) applies and the person's chosen birthday referred to in regulation Q8 of the 1995 Section was 60, the OPAP referred to in that paragraph will apply in this Section—

- (a) as if the OPAP were an option to purchase additional pension in accordance with whichever of regulation 2.C.8, 2.C.10 or 2.C.11 would apply in that case; and
- (b) after adjustment, having regard to the advice of the scheme actuary, so that—
 - (i) the amount of the additional pension purchased in this Section is the same as that which would have been purchased in the 1995 Section; and
 - (ii) the additional periodical or lump sum contributions payable, regard being had to the normal retirement age of 65 applying in this Section, reduce or (where appropriate) cease to be payable.

(9) If paragraph (3)(b), (4)(b) or (8) applies and—

- (a) the amount of the additional pension calculated in accordance with paragraph (3) (b) or (4)(b) will exceed the limit on the total increase in the member's pension referred to, as the case may be, in regulation 2.C.8, 2.C.10 or 2.C.11; or

- (b) the limit on the total increase in the member's pension referred to in regulation 2.C.8 will be exceeded by the amount of additional pension that counts in this Section of the scheme in accordance with paragraph (8)(b)(i) of this regulation notwithstanding any reduction in, or cessation of, additional contributions payable in accordance paragraph (8)(b)(ii),

the total increase in the member's pension under this regulation, taken together with any other increase under regulations 2.C.8, 2.C.10 or 2.C.11 will be subject to the limit on the total increase in the member's pension described in regulation 2.C.8, 2.C.10 or 2.C.11;

- (10) The amount of additional pension that counts in this Section of the scheme in accordance with paragraphs (2) to (8) of this regulation that exceeds the limit in paragraph (9) will be converted to pensionable service for the purpose of regulation 2.A.2(1)(d), and in determining the amount of additional pension to be converted into pensionable service, the Scottish Ministers shall have regard to the advice of the scheme actuary.

2.K.5 Treatment of Additional Service

- (1) A 2008 Section Optant—

- (a) who becomes a member of this Section; and
- (b) is buying or has already bought a period of additional service that counts as pensionable service under regulation C2(1)(d) of the 1995 Regulations,

will be able to count as pensionable service in this Section the service referred to in whichever of paragraphs (5) or (6) apply to that Optant.

- (2) Subject to paragraphs (3) and (4) that additional service referred to in paragraph (1) is—

- (a) any additional service bought under regulation Q1 of the 1995 Regulations before the date that person's option to join this Section of the scheme was received by the Scottish Ministers in accordance with regulation 2.K.2; and
- (b) any additional service bought under regulations 27 or 28 of the National Health Service (Superannuation) (Scotland) Regulations 1980(2).

- (3) The additional service referred to at paragraph (2)(a) will be calculated in accordance with—

- (a) paragraph (4), and as the case may be paragraph (8), of regulation Q1 of the 1995 Regulations, in the case of an election that had ceased and was paid for in full by the date referred to in paragraph (2)(a);
- (b) paragraphs (1), (4) and (5) (but not (6)) of regulation Q7 of the 1995 Regulations, in the case of an election that had ceased but had only partially been paid for at that date; or
- (c) subject to paragraph (7), paragraph (1), (4) and (5) (but not (6)) of regulation Q7 of the 1995 Regulations, in the case of an election that remained in force immediately before that date.

- (4) The additional service referred to at paragraph (2)(b) will be calculated in accordance with whichever of—

- (a) regulation 27(3) or (4); or
- (b) regulation 28(1) or (3)(b),

(2) 1988 c.1. Section 590C was inserted by the Finance Act 1991 (c.31) and amended by the Finance Act 1993 (c.34); S.I. 1993/2950; 1995/3034; 1996/2951; 1998/758 and 1999/592.

of the National Health Service (Superannuation) (Scotland) Regulations 1980 applies to the Optant.

(5) The period of pensionable service which a 2008 Section Optant who is under age 60 on 1st October 2009 may count under this Section is a period equal in length to the period of additional service calculated in respect of that Optant in accordance whichever of paragraph (3) or (4) apply to the Optant.

(6) The period of pensionable service which a 2008 Section Optant who is age 60 or over on 1st October 2009 may count under this Section is the period found by—

- (a) first taking a period equal in length to the period of additional service (specified in days) calculated in respect of that Optant in accordance with whichever of paragraph (3) or (4) applies (“Period AS”); and
- (b) then multiplying Period AS by the factor specified by the Scottish Ministers for that purpose.

(7) Where a member was buying additional service by means of additional contributions immediately before the date referred to in paragraph (2)(a), the member’s—

- (a) election to buy additional service will cease from that date; and
- (b) any additional contributions due under the election that are unpaid at that date will be deducted from the member’s pensionable pay in accordance with regulation 2.K.2(6) and (7).

(8) Subject to regulation 2.K.18, for the purposes of calculating the Optant’s benefits under this Section of the scheme the pensionable service that the Optant is entitled to count under paragraph (5) or as the case may be paragraph (6) of this regulation will be added to the pensionable service the member is entitled to count under—

- (a) regulation 2.K.3(3), if the member is under age 60 on 1st October 2009; or
- (b) regulation 2.K.3(4), if the member is age 60 or over on that date.

2.K.6 Treatment of unreduced retirement lump sum

(1) This regulation applies to a 2008 Section Optant who becomes a member of this Section of the scheme and, at the date that person’s option to join this Section of the scheme was received by the Scottish Ministers in accordance with regulation 2.K.2 had an election under regulation Q2 of the 1995 Regulations to—

- (a) purchase an unreduced retirement lump sum for service before 25th March 1972; or
- (b) buy additional survivor’s pension for service before 6th April 1988,

which satisfies any of the conditions in paragraph (2).

(2) Those conditions are that the election—

- (a) was paid for in full by the date referred to in paragraph (1);
- (b) ceased before the date referred to in paragraph (1), but before completion of the additional contributions payable;
- (c) was payable by additional contributions and remained in force immediately before the date referred to in paragraph (1); or
- (d) was payable by deduction from the member’s retirement lump sum.

(3) If paragraph (1) applies, the election referred to in that paragraph will cease to be effective from 1st April 2008 and—

- (a) any additional contributions under the election that were due but not paid at that date will be deducted in accordance with regulations 2.K.2(6) and (7);
- (b) any liability to pay additional contributions under the election will cease from and including 1st April 2008; and
- (c) any requirement to pay for an unreduced retirement lump sum by the deduction referred to in paragraph (2)(d) will lapse.

2.K.7 Treatment of 2008 Section Optants to whom regulation L1(3) of the 1995 Section applied immediately before 1st April 2008

- (1) This regulation applies to a 2008 Section Optant—
 - (a) whose benefits on retirement or death would, but for this regulation, be calculated in accordance with Chapters 2.D and 2.E ; and
 - (b) who, but for joining this Section of the scheme, would otherwise have been entitled to have benefits on retirement or death calculated in accordance with regulation L1(3) of the 1995 Regulations (treatment of pensionable service of early leavers returning to pensionable employment).
- (2) Subject to paragraph (3) for the purpose of calculating the benefits on retirement or death of a 2008 Section Optant referred to in paragraph (1), the Optant may, where it would be more beneficial to the Optant be treated—
 - (a) as a deferred member of this Section of the scheme in respect of any period of pensionable service credited to that Optant under regulation 2.K.3 that relates to one or more periods of pensionable employment in the 1995 Section that occurred before a break of 12 months or more in such employment (“an earlier service credit”); and
 - (b) as if the Optant became an active member for the first time on the first day of any period of pensionable service credited to that Optant under regulation 2.K.3 that relates to a period of pensionable employment in the 1995 Section that occurred after a break of 12 months or more in such employment.
- (3) Subject to regulation 2.D.8(5)(b)(ii) the Optant’s benefits in respect of an earlier service credit mentioned in paragraph (2)(a) shall be calculated—
 - (a) separately; and
 - (b) by reference to the final year’s pensionable pay calculated in accordance with regulation C1 of the 1995 Regulations in respect of that particular period.

2.K.8 Pension debit members

- (1) This regulation applies where, on becoming a member of this Section of the scheme, a 2008 Section Optant is a pension debit member.
- (2) The amount of the reduction to be made to the Optant’s pension under this Section of the scheme shall be the amount of the reduction that applied to the Optant’s pension under the 1995 Section calculated in accordance with section 31 of the 1999 Act adjusted by the factor referred to in paragraph (3).
- (3) The factor referred to in paragraph (2) is the factor specified by the Scottish Ministers for that purpose.
- (4) The Scottish Ministers may, after taking advice from the scheme actuary, make such modifications to—
 - (a) the Optant’s rights; and

(b) the form of the Optant's benefits,
as the Scottish Ministers consider necessary for the purpose specified in paragraph (5).

(5) If in the opinion of the Scottish Ministers, it is necessary for the purpose of giving effect to the pension sharing order to which the Optant's rights are subject for some or all of the benefits under this Section of the scheme to be taken in a different form from that in which that Optant would otherwise be entitled to take them, the Scottish Ministers may modify those benefit as described in paragraph (4).

2.K.9 Treatment of 2008 Section Optants to whom regulation R8 of the 1995 Regulations applied immediately before 1st April 2008

(1) This regulation applies to a 2008 Section Optant—

- (a) whose earnings in respect of pensionable employment in the 1995 Section were reduced;
- (b) whose employer certified that the reduction in sub-paragraph (a) occurred in the circumstances described in regulation R8(2) (members whose earnings are reduced);
- (c) who, subject to the agreement of the Scottish Ministers, would, on retirement or death, have become entitled to have a preserved pension calculated and paid as described in regulation E6 (preserved pension) in respect of pensionable service in the 1995 Section before the Optant's earnings were reduced; and
- (d) whose benefits on retirement or death would, but for this regulation, be calculated in accordance with Parts 2.D and 2.E .

(2) Subject to paragraph (3) for the purpose of calculating the benefits on retirement or death of a 2008 Section Optant referred to in paragraph (1), the Optant may, where it would be more beneficial to the Optant be treated—

- (a) as a deferred member of this Section in respect of any period of pensionable service credited to that Optant under regulation 2.K.3 that relates to one or more periods of pensionable service in the 1995 Section before that Optant's earnings were reduced as described in paragraph (1) (“a protected service credit”); and
- (b) as if the Optant became an active member for the first time on the first day of any period of pensionable service credited to that Optant under regulation 2.K.3 that relates to a period of pensionable service in the 1995 Section after that Optant's earnings were reduced as described in paragraph (1).

(3) The Optant's benefits in respect of a protected service credit mentioned in paragraph (2)(a) shall be calculated—

- (a) separately; and
- (b) by reference to the final year's pensionable pay calculated in accordance with regulation C1 of the 1995 Regulations in respect of that particular period.

2.K.10 Restriction on pensionable pay used for calculating benefits in respect of capped Optant service

(1) This regulation applies for determining the amount of an Optant's pensionable pay for the purposes of calculating so much of any benefit under this Section as falls to be calculated by reference to capped Optant service.

(2) If an Optant's pensionable pay exceeds the permitted maximum, the excess is disregarded for the purposes of any such calculation as is mentioned in paragraph (1).

- (3) In this regulation “permitted maximum” means—
 - (a) in relation to the tax year 2009-10, £123,600; and
 - (b) in relation to any later tax year, the figure found for that year under paragraphs (4) and (5).
- (4) If the retail prices index for the month of September preceding the tax year 2010-11 or any later tax year is higher than it was for the previous September, the figure for that year is an amount arrived at by—
 - (a) increasing the figure for the previous tax year by the same percentage as the percentage increase in the retail prices index; and
 - (b) if the result is not a multiple of £600, rounding it up to the nearest amount which is such a multiple.
- (5) If the retail prices index for the month of September preceding the tax year 2010-11 or any later tax year is not higher than it was for the previous September, the figure for that year is the same as for the previous tax year.
- (6) In this regulation—
 - (a) “capped Optant service” has the meaning given by regulation 2.K.11; and
 - (b) “pensionable pay” has the meaning given by regulation 2.A.8.

2.K.11 Meaning of “capped Optant service”

- (1) This regulation applies if a 2008 Section Optant is entitled to count a period of service under this Section in accordance with—
 - (a) regulation 2.K.3 (service credited from the 1995 Section); or
 - (b) regulation 2. K.5 (treatment of Additional Service),in respect of service in the 1995 Section that was or included capped service.
- (2) For the purposes of this Part, the same proportion of the total service that the member is entitled to count under regulations 2.K.3 and 2.K.5 as the capped service bears to the whole of the Optant’s service in the 1995 Section up to and including 31st March 2008 is capped Optant service.
- (3) For the purposes of paragraph (1) the Optant’s service in the 1995 Section was capped service so far as—
 - (a) in the case of service before 6th April 2006, the Optant was an active member of the 1995 Section whose pension under that Section in respect of the service was to be calculated by reference to remuneration limited in each tax year to the permitted maximum for that year within the meaning of section 590C(2) of the Income and Corporation Taxes Act 1988(3); or
 - (b) in the case of service on or after 6th April 2006, the Optant was an active member of the 1995 Section whose pension under that Section, in respect of the service was to be calculated by reference to remuneration limited in each tax year to an amount calculated in the same manner as the permitted maximum under section 590C(2) of the Income and Corporation Taxes Act 1988, was calculated for tax years ending before that date.
- (4) For the purposes of paragraph (3), it does not matter whether, apart from the application of the limit, the Optant’s remuneration in any tax year would have exceeded the amount of the limit.

2.K.12 Amount of pension and lump sum to be to be paid to a 2008 Section Optant

- (1) This regulation applies to a 2008 Section Optant who—
- (a) is entitled to an annual pension under Chapter 2.D (members' retirement benefits); or
 - (b) is entitled to the payment of a transfer value under Chapter 2.F (transfers) in respect of the pension that has accrued to, or in respect of, that Optant under this section of the scheme.
- (2) In the case of a 2008 section Optant referred to in paragraph (1)(a)—
- (a) that Optant shall be entitled to the payment of a lump sum determined in accordance with whichever of the following paragraphs of this regulation that apply to that Optant; and
 - (b) the annual amount of pension referred to in paragraph (1)(a) to which the Optant is entitled shall be reduced by an amount equal to the amount of the lump sum referred to in sub-paragraph (a) divided by 12.
- (3) In the case of a 2008 section Optant referred to in paragraph (1)(b)—
- (a) the transfer value shall be calculated by reference to a lump sum determined under paragraph (5) of this regulation; and
 - (b) the pension by reference to which, apart from this regulation, the transfer value in respect of that Optant would otherwise be calculated shall be reduced by an amount equal to the amount of the lump sum referred to in paragraph (a) divided by 12.
- (4) Subject to paragraphs (13) and (15) except in the case of an Optant to whom paragraph (6), (8), (10) or (12) applies, the amount of the lump sum shall be determined as described in paragraph (5).
- (5) The amount of the lump sum shall be determined by—
- (a) applying the formula—

$$\frac{3 \times (\text{Relevant Services Reckonable Pay})}{80}$$

; and

- (b) rounding down the amount found under sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.

- (6) In the case of an Optant who—

- (a) becomes entitled to an annual amount of pension payable under regulation 2.D.4 (early payment of pensions with actuarial reduction); and
- (b) has not attained age 60 on the day of becoming entitled to that pension,

the amount of lump sum shall be determined as described in paragraph (7).

- (7) The amount of the lump sum that is to be paid to an Optant referred to in paragraph (6) shall be calculated by—

- (a) applying the formula—

$$\frac{3 \times (\text{Relevant Service} \times \text{Reckonable pay} \times \text{Reduction Factor})}{80}$$

; and

(b) rounding down the amount found under sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.

(8) In the case of an Optant who—

(a) becomes entitled to an annual amount of pension payable under regulation 2.D.5 (partial retirement (members aged at least 55)) for the first time; and

(b) has not attained age 60 on the day of becoming entitled to that pension,

the amount of lump sum shall be determined as described in paragraph (9).

(9) The amount of the lump sum that is to be paid to an Optant referred to in paragraph (8) shall be calculated by—

(a) applying the formula—

$$\frac{3 \times (\text{Specified Service} \times \text{Reckonable pay} \times \text{Reduction Factor})}{80}$$

; and

(b) rounding down the amount found under sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.

(10) In the case of an Optant who—

(a) becomes entitled to an annual amount of pension payable under regulation 2.D.5 for the first time; and

(b) has attained age 60 on the day of becoming entitled to that pension ,

the amount of lump sum shall be determined as described in paragraph (11).

(11) The amount of the lump sum that is to be paid to an Optant referred to in paragraph (10) shall be calculated by—

(a) applying the formula—

$$\frac{3 \times (\text{Specified Service} \times \text{Reckonable Pay})}{80}$$

; and

(b) rounding down the amount found under sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.

(12) In the case of an Optant—

(a) who is a pensioner member as respects a pension payable under regulation 2.D.5 (9)(a); and

(b) who—

(i) subsequently exercises an option under that regulation for the second or final time; or

(ii) becomes entitled to any other pension under Chapter 2.D of this Section in respect of pensionable service not taken into account for the purposes of calculating the pension payable under sub-paragraph (a),

the amount of lump sum payable under this regulation shall be determined by the Scottish Ministers after taking advice from the scheme actuary.

(13) If, on becoming a member of this Section of the scheme, a 2008 Section Optant is a pension debit member the amount of the lump sum determined under this regulation shall be reduced by the amount calculated under paragraph (14) (“the pension debit reduction”).

(14) The amount of the pension debit reduction referred to in paragraph (13) shall be calculated by—

(a) applying the formula—

$$3 \times (1995 \text{ Section Pension Debit} \times \text{Increase Factor})$$

; and

(b) rounding up the amount found in sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.

(15) If any part of an Optant's benefit under this Section falls to be calculated by reference to capped Optant service under regulation 2.K.10 the determinations in this regulation shall apply separately in respect of—

(a) the pension to which the Optant is entitled in respect of the service that falls to be calculated by reference to capped Optant service; and

(b) the pension to which the Optant is entitled in respect of the service that does not fall to be calculated by reference to capped Optant service.

(16) For the purposes of this regulation—

“1995 Section Pension Debit” is the amount by which the Optant's annual pension under the 1995 Regulations was to be reduced in accordance with section 31 of the 1999 Act;

“Annual amount” in relation to a pension, means the amount of the annual pension to which the member would be entitled under this Section of the scheme apart from this regulation, together with any increases payable under the Pensions (Increase) Act 1971, calculated as at the time payment would first be due;

“Increase Factor” is the factor that would have applied to the 1995 Section Pension Debit for the purposes of section 29 of the 1999 Act if the Optant had become entitled to a pension under the 1995 Regulations—

(a) on the date that the Optant becomes entitled to a pension referred to in paragraph (1)(a); or

(b) on the day after the Optant's last day of pensionable service if the Optant becomes entitled to the payment of a transfer value referred to in paragraph (1)(b);

“Reckonable Pay” is the Optant's reckonable pay calculated under Chapter 2.A of this section;

“Reduction Factor” is the reduction factor that the Scottish Ministers, after taking advice from the scheme actuary, determines would have applied to that Optant's lump sum retiring allowance under regulation E8(7)(b) of the 1995 Regulations if that Optant had become entitled to a pension calculated under regulation E5 (early retirement pension (with actuarial reduction)) of those Regulations on the day he became entitled to a pension under regulation 2.D.4 or as the case may be regulation 2.D.5;

“Relevant Service ” is a period (expressed in days), equal to the aggregate of—

(a) the period of pensionable service that the Optant is entitled to count under regulation 2.K.3 (service credited from the 1995 Section); and

(b) the period of pensionable service (if any) that the Optant is entitled to count under regulations 2.K.5 (treatment of Additional Service) and 2.K.18 (transitional provision: treatment of additional service in respect of Optants retiring on the grounds of ill Health under regulation 2.D.8);

“Specified percentage” is the percentage of the member’s pension in respect of which the member claims immediate payment under regulation 2.D.5(4)(a); and

“Specified Service” is the amount of the Optant’s Relevant Service (expressed in days) multiplied by the specified percentage.

(17) In the case of a 2008 Section Optant whose benefits are subject to the modification provided in Part 4, this regulation is subject to regulation 3.K.11(16).

Miscellaneous provisions

2.K.13 Transfers in: transitional provision

(1) This regulation applies to a 2008 Section Optant who—

- (a) commenced a period of pensionable employment in the 1995 Section on, or after, 1st April 2008; and
- (b) within one year of the commencement of that employment, makes an application to transfer accrued rights to benefits to the 1995 Section under regulation N1 of the 1995 Regulations (member’s right to transfer accrued rights to benefits to this Section of the scheme).

(2) If—

- (a) the Scottish Ministers accept the transfer payment in respect of the application referred to in paragraph (1) in accordance with regulation N1(4) of the 1995 Regulations; and
- (b) that payment is received by the Scottish Ministers before the day on which the person’s option to join this Section is received,

the period of pensionable service that the Optant is entitled to count in respect of that transfer payment for the purposes of calculating benefits payable to or in respect of the Optant under this Section will be calculated as described in paragraph (4).

(3) If the transfer payment in respect of an application referred to in paragraph (1) is received by the Scottish Ministers on, or after, the day on which the person’s option to join this Section is received—

- (a) the Scottish Ministers may accept that payment under this Section of the scheme—
 - (i) without requiring the Optant to make an application under regulation 2.F.8 (right to apply for acceptance of transfer value payment from another scheme); and
 - (ii) subject to such other conditions as the Scottish Ministers may require; and
- (b) if the Scottish Ministers accept the payment, the period of pensionable service that the Optant is entitled to count in respect of that payment for the purposes of calculating benefits payable to or in respect of the Optant under this Section will be calculated as described in paragraph (4).

(4) Subject to paragraph (5) the period of pensionable service that the Optant is entitled to count for the purposes of calculating benefits payable to, or in respect of, that Optant under this Section—

- (a) will be calculated in accordance with regulation 2.F.11 (calculation of transferred-in pensionable service); and
- (b) the starting day for the purposes of regulation 2.F.11(2) and (3) will be the day that the Optant’s pensionable employment referred to in paragraph (1) commenced.

(5) If the transfer value payment is accepted by the Scottish Ministers under the public sector transfer arrangements—

- (a) regulation 2.F.12 shall apply to the Optant in respect of the period of pensionable service that the Optant is entitled to count under this regulation; and
- (b) the reference in regulation 2.F.12(2) to the service that the member is entitled to count under regulation 2.F.10(2)(a) shall be read as a reference to the service the Optant is entitled to count under paragraph (4) of this regulation.

2.K.14 2008 Section Optants: Transitional Upper Tier ill health pension

(1) This regulation applies to a 2008 Section Optant who—

- (a) has submitted a form AW8 (or such other form as the Scottish Ministers are willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill health pension payable in accordance with regulation E2A of the 1995 Regulations; and
- (b) that form and supporting medical evidence was received by the Scottish Ministers before the date on which the Scottish Ministers received the Optant's option to join this Section of the scheme.

(2) Subject to paragraph (5) if the Optant referred to in paragraph (1) becomes entitled to a pension under regulation 2.D.8(3) (“an upper tier ill health pension”) within a period of one year beginning with the day on which that Optant's option to join this Section is received—

- (a) that Optant's service shall be increased by the enhancement period determined in accordance with paragraph (3) (“the transitional enhancement period”); and
- (b) the transitional enhancement period shall apply to that Optant's service in place of the enhancement period that, apart from this regulation, would otherwise apply to the Optant's service under regulation 2.D.8(6).

(3) Subject to paragraph (4) in this regulation—

- (a) “the transitional enhancement period” means two-thirds of the Optant's assumed pensionable service; and
- (b) “the Optant's assumed pensionable service” means the further pensionable service that the Optant could have counted if the Optant had continued in service until reaching the age of 60.

(4) If the transitional enhancement period determined under paragraph (3) is less than 4 years pensionable service, the transitional enhancement period by which the Optant's pensionable service is increased shall be the lesser of—

- (a) 4 years pensionable service; and
- (b) the pensionable service the Optant could have counted if the Optant had continued in service until reaching the age of 60.

(5) In the case of an Optant to whom this regulation applies, references to the “enhancement period” in regulation 2.D.8 are to be read as references to the “transitional enhancement period” determined under this regulation.

2.K.15 Treatment of ill health retirement applications made by 2008 Section Optants within one year of joining this Section

(1) This regulation applies to a 2008 Section Optant who—

- (a) submits a form AW8 (or such other form as the Scottish Ministers are willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill health pension payable in accordance with regulation 2.D.8 ; and
 - (b) that form and supporting medical evidence is received by the Scottish Ministers before the end of the period of one year commencing on the day on which the Scottish Ministers received the Optant’s option to join this Section of the scheme.
- (2) Subject to paragraph (3) if, following a consideration of the form and medical evidence referred to in paragraph (1) an Optant referred to in that paragraph becomes entitled to a pension under regulation 2.D.8(3) (“an upper tier ill health pension”)—
- (a) that Optant’s service shall be increased by the enhancement period determined in accordance with whichever of regulation 2.K.14(3) or (4) apply to the Optant; and
 - (b) the transitional enhancement period shall apply to that Optant’s service in place of the enhancement period that, apart from this regulation, would otherwise apply to the Optant’s service under regulation 2.D.8(6).
- (3) In the case of an Optant to whom this regulation applies, references to the “enhancement period” in regulation 2.D.8 are to be read as references to the “transitional enhancement period” determined under this regulation.

2.K.16 Application of regulation 2.D.9 where a 2008 Section Optant has submitted an application for ill health retirement under the 1995 Section

- (1) This regulation applies to a 2008 Section Optant who—
- (a) submitted a form AW8 (or such other form as the Scottish Ministers are willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill health pension payable in accordance with regulation E2A of the 1995 Regulations; and
 - (b) that form and supporting medical evidence was received by the Scottish Ministers before the date on which the Scottish Ministers received the Optant’s option to join this Section of the scheme.
- (2) If following a consideration of the form and medical evidence referred to in paragraph (1) an Optant referred to in that paragraph becomes entitled to a pension under regulation 2.D.8(2) (“a lower tier ill health pension”)—
- (a) within a period of one year beginning with the day on which that Optant’s option to join this Section of the scheme is received; and
 - (b) where immediately before joining this section the Optant was notified under regulation E2B (re-assessment of ill health condition determined under regulation E2A) of the 1995 Regulations that the Optant may ask the Scottish Ministers to consider whether that Optant subsequently meets the upper tier condition under that regulation,

that Optant shall be entitled to a re-assessment of entitlement to an ill health pension determined under regulation 2.D.9 in accordance with the following paragraphs of this regulation.

(3) For the purposes of assessing whether the Optant satisfies the condition in regulation 2.D.8(3)(a) at the date of the Scottish Ministers’ review, “permanently” shall mean until age 60.

(4) If, after considering the further medical evidence provided by the Optant under regulation 2.D.9 the Scottish Ministers determine that the Optant meets the condition in

regulation 2.D.8(3)(a), then as from the date on which that determination is made the Optant—

- (a) ceases to be entitled to a lower tier ill health pension; and
 - (b) becomes entitled to an upper tier ill health pension under regulation 2.D.8 but shall be calculated in accordance with paragraph (5).
- (5) Subject to paragraph (6), for the purpose of calculating the upper tier ill health pension referred to in paragraph (4)—
- (a) the Optant’s service shall be increased by the transitional enhancement period determined in accordance with whichever of regulation 2.K.14(3) or (4) apply to that Optant; and
 - (b) the transitional enhancement period shall apply to that Optant’s service in place of the enhancement period that, apart from this regulation, would otherwise apply to that Optant’s service under regulation 2.D.8(6).
- (6) In the case of an Optant to whom this regulation applies—
- (a) regulation 2.K.14 shall be read as if paragraph (3)(b) of that regulation included the words “from the date of the Scottish Ministers’ determination under regulation 2.D.9” after “continued in service”; and
 - (b) references to the “enhancement period” in regulation 2.D.8 are to be read as references to the “transitional enhancement period” determined under this regulation.

2.K.17 Application of regulation 2.D.9 where a 2008 Section Optant has submitted an application for ill health retirement under the 2008 Section within a year of joining the 2008 Section

- (1) This regulation applies to a 2008 Section Optant who—
- (a) submits a form AW8 (or such other form as the Scottish Ministers are willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill health pension payable in accordance with regulation 2.D.8;
 - (b) that form and supporting medical evidence was received by the Scottish Ministers before the end of the period of one year commencing on the day the Scottish Ministers received the Optant’s option to join this Section of the scheme; and
 - (c) following a consideration of the form and medical evidence referred to in subparagraph (a)—
 - (i) the Optant becomes entitled to a lower tier ill health pension under regulation 2.D.8 of this Section; and
 - (ii) at the time the Optant is awarded a pension under that regulation the Scottish Ministers gives the Optant notice in writing in accordance with regulation 2.D.9(1)(b) that the Optant’s case may be considered once within a period of three years commencing with the date of that award to determine whether the Optant meets the condition in regulation 2.D.8(3)(a) at the date of such a consideration.
- (2) If, after considering the further medical evidence provided by the Optant under regulation 2.D.9, the Scottish Ministers determine that the Optant meets the condition in 2.D.8(3)(a), then as from the date on which that determination is made the Optant—
- (a) ceases to be entitled to a lower tier ill health pension; and

- (b) becomes entitled to an upper tier ill health pension under regulation 2.D.8 but which shall be calculated in accordance with paragraph (3).
- (3) Subject to paragraph (4) for the purpose of calculating the upper tier ill health pension referred to in paragraph (2)—
 - (a) the Optant’s service shall be increased by the transitional enhancement period determined in accordance with whichever of paragraphs (3) or (4) of regulation 2.K.14(3) or (4) applies to that Optant; and
 - (b) the transitional enhancement period shall apply to that Optant’s service in place of the enhancement period that, apart from this regulation, would otherwise apply to that Optant’s service under regulation 2.D.8(6).
- (4) In the case of an Optant to whom this regulation applies—
 - (a) regulation 2.K.14 shall be read as if paragraph (3)(b) of that regulation included the words “from the date of the Scottish Ministers’ determination under regulation 2.D.9” after “continued in service”; and
 - (b) references to the “enhancement period” in regulation 2.D.8 are to be read as references to the “transitional enhancement period” determined under this regulation.

2.K.18 Transitional Provision: treatment of additional service in respect of Optants retiring on the grounds of ill health

(1) This regulation applies to a 2008 Section Optant who, apart from this regulation, would be entitled to count a period of pensionable service determined in accordance with regulation 2.K.5(3) (treatment of additional service).

(2) If—

- (a) an Optant referred to in paragraph (1) submitted a form AW8 (or such other form as the Scottish Ministers were willing to accept) together with supporting medical evidence (if not included on the form) pursuant to regulation E2A (ill health pension on early retirement) of the 1995 Regulations;
- (b) that form and supporting medical evidence was received by the Scottish Ministers before the end of a period of one year commencing on the date on which the Optant commenced payment for a period of additional service under regulation Q5 of the 1995 Regulations; and
- (c) following a consideration of the form and medical evidence referred to in subparagraph (a) that Optant becomes entitled to a lower tier ill health pension (paying by regular additional contributions) or upper tier ill health pension under regulation 2.D.8, within a period of one year beginning with the day on which the Optant’s option to join this Section is received,

that Optant will not be entitled to count a period of pensionable service under regulation 2.K.5 and—

- (i) an amount equal to the contributions (less any tax that may be payable) made by the Optant in respect that period of additional service shall be returned to the Optant in accordance with regulation Q7(2) of the 1995 Regulations; and
- (ii) regulation 2.K.5(7) will not apply.

(3) If—

- (a) an Optant referred to in paragraph (1) submitted a form AW8 (or such other form as the Scottish Ministers were willing to accept) together with supporting medical

evidence (if not included on the form) pursuant to regulation E2A of the 1995 Regulations;

- (b) that form and supporting medical evidence was received by the Scottish Ministers after a period of at least one year commencing on the date on which the Optant commenced payment for a period of additional service under regulation Q5 of the 1995 Regulations; and
- (c) following a consideration of the form and medical evidence referred to in (a) that Optant becomes entitled to a lower tier ill health pension or upper tier ill health pension under regulation 2.D.8, within a period of one year beginning with the day on which the Optant's option to join this Section of the scheme is received,

in addition to the pensionable service that Optant is entitled to count under regulation 2.K.5, that Optant shall also be entitled to count a period of pensionable service determined under paragraph (4).

(4) The period of pensionable service that an Optant is entitled to count under this regulation shall be a period of service equal to the difference between—

- (a) the period of service the Optant is entitled to count under regulation 2.K.5; and
- (b) the period of service the Optant elected to purchase under regulation Q1 (right to buy additional service) of the 1995 Regulations calculated in accordance with regulation Q7(3) of the 1995 Regulations and as if the member had become entitled to a pension under regulation E2A of those Regulations on the day the Scottish Ministers received that person's option to join this Section of the scheme.

(5) For the purposes of calculating the Optant's benefits under this section of the scheme, the pensionable service the Optant is entitled to count under paragraph (4) will be added to the service the member is entitled to count under regulation 2.K.3(3).

2.K.19 Circumstances in which a 1995 Section member may defer making an option to join this Section of the scheme under regulation 2.K.2

- (1) This regulation applies to a person—
 - (a) who on, or after, 1st October 2009—
 - (i) is an active member of the 1995 Section; or
 - (ii) is a member of that Section who is absent from work because of illness or injury and whose earnings have ceased in the circumstances described in regulation P2(3) of the 1995 Regulations (absence because of illness or injury);
 - (b) who has submitted a form AW8 (or such other form as the Scottish Ministers are willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill health pension payable in accordance with regulation E2A of the 1995 Regulations;
 - (c) where the form and supporting medical evidence submitted by that person was received by the Scottish Ministers—
 - (i) before the date on which a comparative statement of benefits under the 1995 Section and the 2008 Section of the scheme is sent to the person (whether by electronic communication or otherwise) in accordance with regulation 2.K.2; or
 - (ii) and such a statement has been issued to that person, before the date specified by the Scottish Ministers for the purposes of paragraph (3) of that regulation.

(2) A person to whom paragraph (1) applies may opt to join this Section of the scheme in accordance with paragraph (3).

(3) Subject to paragraph (4) the option under paragraph (2) may only be exercised if—

- (a) the person gives notice in writing to the scheme administrator in such form as the Scottish Ministers require; and
- (b) that notice is received by the scheme administrator within a period of four months starting with the day on which—
 - (i) that person is sent a written notification of the Scottish Ministers’ decision as to whether, in consideration of the form and medical evidence referred to in paragraph (1), that person has met the lower tier or the upper tier condition specified in regulation E2A of the 1995 Regulations (“the first decision”);
 - (ii) that person is sent a written notification of the Scottish Ministers’ decision in respect of the stage one dispute, (“stage one decision”);
 - (iii) that person is sent a written notification of the Scottish Ministers’ decision in respect of the stage two dispute, (“stage two decision”); or
 - (iv) that person is sent written notification of the final determination by the Pensions Ombudsman.

(4) Paragraph (3) shall cease to apply to any person if at any time that person—

- (a) returns to NHS employment; or
- (b) claims a pension under regulation E5 (early retirement pension (with actuarial reduction) or E6 (preserved pension) of the 1995 Regulations.

(5) For the purpose of this regulation—

“stage one dispute” means a request made to the Scottish Ministers for a review of the first decision under section 50 of the 1995 Act (resolution of disputes), that is received by the Scottish Ministers within a period of six months starting with the date on which that person was sent a written notification of the original decision;

“stage two dispute” means a request made to the Scottish Ministers to review the stage one decision under section 50 of the 1995 Act that is received by the Scottish Ministers within a period of six months starting with the day on which that person is sent a written notification of a stage one decision;

“the final determination by the Pensions Ombudsman” means a written determination under Part X of the 1993 Act made as the result of the investigation of a complaint by the person in respect of the stage two decision that was received by the Pensions Ombudsman within a period of three years starting with the day on which the person is sent written notification of the stage two decision.

2.K.20 Nominations and notices accepted by the Scottish Ministers under the 1995 regulations to apply under Chapter 2.E of these Regulations

(1) This regulation applies if—

- (a) the Scottish Ministers have accepted any of the nominations or notices specified in paragraph (2) in respect of the benefits to be paid on the death of a person who is a 1995 section member; and
- (b) on the day that the Scottish Ministers receive that person’s option to join this section, that person has not revoked that nomination or notice.

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

- (a) a nomination made in accordance with regulation F5 (payment of lump sum) of the 1995 Regulations 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;
 - (b) a notice provided for the purposes of regulation F5(3)(a) 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 (which deal with lump sum payments on the death of a member in different circumstances);
 - (c) a notice provided for the purpose of regulation G14 (surviving nominated partner's pension) of the 1995 Regulations nominating a partner to receive a surviving nominated partner pension.
- (3) For the purpose of this section a nomination or notice referred to in paragraph (1) shall be treated—
- (a) in the case of the nomination referred to in sub-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 sub-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 Optant's personal representatives are to receive any lump or pension on the death of the Optant; and
 - (c) in the case of a notice referred to in sub-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").

2.K.21 Late payment of pension with actuarial increase for a 2008 Optant

(1) This regulation applies if a 2008 Section Optant becomes entitled to immediate payment of a pension under regulation 2.D.1 after reaching the age of 65.

(2) Subject to paragraph (6) in the case of an Optant to whom paragraph (1) applies so much of the amount of the pension as is attributable to—

- (a) the pensionable service that Optant is entitled to count under—
 - (i) regulation 2.K.3 (service credited from the 1995 Section);
 - (ii) regulation 2.K.5 (treatment of additional service) (if any); and
 - (iii) this Section of the scheme on or after 1st April 2008 but before reaching the age of 65; and
- (b) any contributions paid under regulation 2.C.8, 2.C.10 or 2.C.11 before reaching that age,

shall be increased in accordance with paragraph (4).

(3) In paragraph (2) the reference to the amount of the pension is to the amount of pension—

- (a) before that pension had been reduced in accordance with regulation 2.K.12; and
- (b) before any commutation under regulation 2.D.14.

(4) The amount of the increase referred to in paragraph (2) must be calculated in accordance with guidance and tables provided by the scheme actuary to the Scottish Ministers for the purposes of this regulation.

(5) In preparing that guidance and those tables the scheme actuary must use such factors as the scheme actuary considers appropriate, having regard, in particular, to—

- (a) the period after reaching the age of 65 before the Optant becomes entitled to immediate payment of the pension; and
 - (b) the life expectancy of the Optant.
- (6) The increase shall apply to the Optant's pension in place of the actuarial increase that, apart from this regulation, would otherwise apply to the Optant's pension under regulation 2.D.3.

2.K.22 2008 Section Optants who are in receipt of a lower tier ill health pension under regulation E2A of the 1995 Regulations

- (1) This regulation applies to a 2008 Section Optant 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 an Optant can count 45 years of pensionable service for any purpose, the earlier 1995 Section service and the later 2008 Section service are aggregated.
- (3) If, on the termination of the later 2008 Section service the Optant becomes entitled, under regulation 2.D.8, to—
- (a) a lower tier ill health pension; or
 - (b) an upper tier ill health pension,
- in respect of the later 2008 Section service, the Optant is entitled to the benefits set out in paragraph (4).
- (4) Subject to paragraph (5) and regulations 2.K.14 to 2.K.18, the benefits mentioned in paragraph (3) are—
- (a) the member's 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.
- (5) If the Optant—
- (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; and
 - (c) becomes entitled to a lower tier or, as the case may be, an upper tier ill health pension in respect of later 2008 Section service on the termination of that later service,
- the Optant is entitled to the benefits set out in paragraph (6).
- (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.K.23 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 Regulations

(1) This regulation applies to a 2008 Section Optant who, on the date of that Optant's death—

- (a) is entitled to a lower tier ill health pension under regulation E2A of the 1995 Regulations in respect of service in the 1995 Section; and
- (b) 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 an Optant referred to in paragraph (1) shall be—

- (a) calculated in accordance with whichever of paragraphs (3),(4) or (5) applies to that Optant; and
- (b) paid in place of the lump sum that, apart from this regulation, would otherwise be payable in respect of that Optant's later 2008 Section service under regulation 2.E.17.

(3) If the deceased Optant was, at the date of the Optant's death, an active member who had not exercised the option under regulation 2.D.5 (partial retirement: members aged at least 55), the lump sum referred to in paragraph (2)(a) is an amount equal to five times the annual rate of pension—

- (a) payable under regulation 2.D.8(5) (upper tier ill health pension) if the deceased Optant had not reached the age of 65; or
- (b) payable under regulation 2.D.1 (normal retirement pensions) if the deceased Optant had reached the age of 65,

to which the deceased Optant would have been entitled at the date of the Optant's death.

(4) If the deceased Optant was a non-contributing member who had not exercised the option under regulation 2.D.5 (partial retirement: members aged at least 55), the lump sum referred to in paragraph (2)(a) is an amount equal to five times the annual rate of pension—

- (a) payable under regulation 2.D.8(5) (upper tier ill health pension) if the deceased Optant had not reached the age of 65; or
- (b) payable under regulation 2.D.1 (normal retirement pensions) if the deceased Optant had reached the age of 65,

to which the Optant would have been entitled on the last day of the Optant's pensionable service.

(5) If the Optant 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)(a) shall be determined by the Scottish Ministers after taking advice from the scheme actuary.

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.

(1) This regulation applies to a 2008 Section Optant (“a deceased Optant”) who, in respect of service in this Section of the scheme (“the later active 2008 section service”), was—

- (a) at the date of the Optant's death—
 - (i) an active member;

- (ii) a non-contributing member;
 - (iii) a pensioner member; or
 - (iv) a deferred member; and
- (b) on that date was entitled to a lower tier ill health pension under regulation E2A of the 1995 Regulations in respect of service in the 1995 Section (“the earlier 1995 section service”).
- (2) In the case of a deceased Optant referred to in paragraph (1)(a)(i) and (ii), “relevant service” for the purposes of regulation 2.E.10(3) (amount of children’s pension under regulation 2.E.8: deceased active members and deceased non-contributing members) means—
- (a) in the case of a deceased Optant who was, at the date of the Optant’s death, an active member the greater of—
 - (i) the pensionable service the deceased Optant 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 the deceased Optant had become entitled to an upper tier ill health pension at that date; and
 - (ii) the deceased Optant’s later 2008 Section service as an active member plus the difference between—
 - (aa) the aggregate of the Optant’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 head (aa) is less than that specified in head (bb);
 - (b) in the case of a deceased Optant referred to in paragraph (1)(a)(ii), the pensionable service that the deceased Optant was entitled to count under this Section of the scheme on the date of Optant’s death.
- (3) In the case of a deceased Optant referred to in paragraph (1)(a)(iii), “the basic death pension” for the purposes of regulation 2.E.11(3) (amount of children’s pension under regulation 2.E.8: deceased pensioner members) means the greater of—
- (a) 75% of the deceased’s annual pension (disregarding any additional pension); and
 - (b) 75% of the annual pension to which the deceased Optant would have been entitled in respect of the aggregate of the deceased Optant’s later 2008 Section service plus the difference between—
 - (i) the aggregate of the Optant’s earlier 1995 Section service and the later 2008 Section service; and
 - (ii) 10 years pensionable service,where the amount of service in paragraph (i) is less than that specified in paragraph (ii).
- (4) In the case of a deceased Optant referred to in paragraph (1)(a)(iv), “the basic death pension” for the purposes of regulation 2.E.12(3) (amount of children’s pension under regulation 2.E.8: deceased deferred members) means—
- (a) if the deceased 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 the deceased Optant had died on the day of so ceasing (disregarding any additional pension); and
 - (b) if the deceased 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 the deceased would have been entitled if the deceased 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 the deceased would have been entitled in respect of the aggregate of the deceased Optant's later 2008 Section service that has been deferred plus the difference between—
 - (aa) the aggregate of the Optant'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 head (aa) is less than that specified in head (bb).”

Amendment of regulation 3.A.1

- 53.**—(1) Regulation 3.A.1 (interpretation of Part 3: general) is amended as follows.
- (2) At the appropriate place in alphabetical order insert—
- ““2008 Section Optant” has the meaning given in regulation 3.K.1.”;
 - ““the 1995 Section” means the Section of the National Health Service Superannuation Scheme for Scotland set out in the National Health Service Superannuation Scheme (Scotland) Regulations 1995.”;
 - ““capped increase to pensionable earnings” must be read in accordance with regulation 3.F.12”;
 - and
 - ““pension debit member” means a member of this Section of the scheme whose benefits, or future benefits, under this scheme have been reduced under section 31 of the Welfare Reform and Pensions Act 1999 (reduction under pension sharing order following divorce or nullity of marriage), whether before or after he became a member of this Section of the scheme.”.
- (3) Omit the definitions of “capped transferred-in service” and “the NHS Superannuation Scheme for Scotland 1995”.
- (4) For the definition of “the scheme” substitute—
- ““the scheme” means the National Health Service Pension scheme for Scotland”.

Amendment of regulation 3.A.3

- 54.** In regulation 3.A.3(1) (meaning of “pensionable service”) after sub-paragraph (c), insert—
- “; and
 - (d) any period of pensionable service the member is entitled to count under Chapter 3.K (2008 Section Optants).”.

Amendment of regulation 3.A.5

- 55.** In regulation 3.A.5(1) (meaning of “qualifying service”)—
- (a) at the end of sub-paragraph (c) omit “and”; and
 - (b) after sub-paragraph (e) insert—
 - “; and
 - (f) in the case of a 2008 Section Optant, any period of qualifying service the member is entitled to count under Chapter 3.K (2008 Section Optants).”.

Amendment of regulation 3.A.7

56. After regulation 3.A.7(4) (meaning of “pensionable earnings”) insert—

“(5) The pensionable earnings of a principal practitioner include the amount of any pensionable earnings the practitioner is entitled to count under Chapter 3.K (2008 Section Optants).”.

Omission of regulation 3.A.11

57. Omit regulation 3.A.11 (restriction on pensionable earnings used for calculating benefits in respect of capped transferred-in service).

Amendment of regulation 3.A.12

58. After regulation 3.A.12(3) (meaning of pensionable earnings in relation to other practitioners), insert—

“(4) The pensionable earnings of an assistant practitioner or a locum practitioner, include the amount of any pensionable earnings the practitioner is entitled to count under Chapter 3.K (2008 Section Optants).”.

Amendment of regulation 3.B.1

59.—(1) Regulation 3.B.1 (eligibility: general) shall be amended as follows.

(2) In paragraph (3)—

(a) in sub-paragraph (a) omit “and meets any one of the other scheme conditions (see paragraph (5))”;

(b) after sub-paragraph (b) insert (as full out words)—

“and meets any one of the other scheme conditions (see paragraph (5)).”.

New regulation 3.B.1A

60. After regulation 3.B.1 (eligibility: general), insert—

“Eligibility: transitional

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

(a) the Scottish Ministers have accepted that person’s option to join this Section of the scheme under Chapter 3.K; and

(b) that person is not prevented by regulation 3.B.2 or 3.B.6 from doing so.

(2) If a person referred to in paragraph (1)—

(a) is entitled to a lower tier ill health pension under regulations E2A(3)(a) of the 1995 Regulations; and

(b) as a result of a determination made by the Scottish Ministers under regulation E2B(3) of those Regulations, that person becomes entitled to an upper tier ill health pension in place of that lower tier ill health pension,

that person shall cease to be eligible to be an active member of this Section of the scheme from the date the Scottish Ministers make that determination.”.

Amendment of regulation 3.C.6

61. After regulation 3.C.6(8) (member’s option to pay additional periodical contributions to purchase additional pension) insert—

“(9) In the case of a 2008 Section Optant this regulation is subject to regulation 3.K.4.”.

Amendment of regulation 3.C.8

62. After regulation 3.C.8(6) (member’s option to pay lump sum contribution to purchase additional pension) insert—

“(7) In the case of a 2008 Section Optant this regulation is subject to regulation 3.K.4.”.

Amendment of regulation 3.C.9

63. After regulation 3.C.9(5) (payment of additional lump sum contributions by employing authority) insert—

“(6) In the case of a 2008 Section Optant this regulation is subject to regulation 3.K.4.”.

Amendment of regulation 3.C.12

64.—(1) Regulation 3.C.12 (effect of payment of additional contributions under this Chapter) shall be amended as follows.

(2) In paragraph (3) after—

(a) “Chapter 3.D (members’ retirement benefits)” insert “or Chapter 3.K (Section 2008 Optants)”; and

(b) “3.D.5” insert “and 3.K.17”.

(3) After paragraph (10) insert—

“(11) In the case of a 2008 Section Optant this regulation is subject to regulation 3.K.4.”.

Amendment of regulation 3.C.14

65. After regulation 3.C.14(5) (effect of part payment of periodical contributions) insert—

“(6) In the case of 2008 Section Optant this regulation is subject to regulation 3.K.4.”.

Amendment of regulation 3.C.15

66. In regulation 3.C.15(2) (revaluation of increases bought under options: members’ pensions) for “3.C.14 to 3.C.16” substitute “3.C.12 to 3.C.14”.

Amendment of regulation 3.D.1

67. After regulation 3.D.1(7) (normal retirement pensions) insert—

“(8) In the case of 2008 Section Optant this regulation is subject to regulation 3.K.11.”.

Amendment of regulation 3.D.3

68. After regulation 3.D.3(4) (late payment of pension with actuarial increase) insert—

“(5) In the case of a 2008 Section Optant this regulation is subject to regulation 3.K.17.”.

Amendment of regulation 3.D.4

69. After regulation 3.D.4(4) (early payment of pension with actuarial reduction) insert—
“(5) In the case of 2008 Section Optant this regulation is subject to regulation 3.K.11.”.

Amendment of regulation 3.D.5

70. After regulation 3.D.5(8) (partial retirement: members aged at least 55) insert—
“(9) In the case of 2008 Section Optant this regulation is subject to regulation 3.K.11.”.

Amendment of regulation 3.D.7

71.—(1) Regulation 3.D.7 (early retirement on ill health (active members and non-contributing members)) shall be amended as follows.

- (2) For paragraph (5)(b) substitute—
“(b) is not increased by the enhancement period in the circumstances referred to in subparagraph (a) if—
(i) the member’s pensionable service before and after the break is treated separately under regulation 3.G.2; or
(ii) the member’s pensionable service in respect of an earlier service credit is treated separately under regulation 3.K.7.”.
- (3) In paragraph (17) for the definition of “permanently” substitute—
““permanently” means—
(a) the period until age 65; and
(b) in the case of a 2008 Section Optant who, before joining this Section, was assessed by a medical adviser as being—
(i) permanently incapable of efficiently discharging their duties for the purposes of regulation E2A(2)(b)(i) of the 1995 Regulations, that Optant shall be deemed to be permanently incapable of discharging the duties of the Optant’s employment efficiently for the purposes of paragraph (2)(a); or
(ii) permanently incapable of regular employment of like duration for the purposes of regulation E2A(2)(b)(ii) of the 1995 Regulations, that Optant shall be deemed to be permanently incapable of engaging in regular employment of like duration for the purposes of paragraph (3)(a);”.
- (4) After paragraph (17) insert—
“(18) In the case of a 2008 Section Optant this regulation is subject to regulations 3.K.11, 3.K.13 to 3.K.16 and 3.K.18.”.

Amendment of regulation 3.D.8

72.—(1) Regulation 3.D.8 (re-assessment of entitlement to an ill health pension determined under regulation 3.D.7) shall be amended as follows—

- (2) For paragraph (2) substitute—
“(2) A member to whom a notice under paragraph (1)(b) has been given may apply to the Scottish Ministers for a review of whether the member subsequently meets the condition in regulation 3.D.7(3)(a) if—
(a) the member makes the application in writing—
(i) within three years of the date of issue of the notice; or

- (ii) in the case of a member who engages in further NHS employment during the period of three years referred to in paragraph (1)(b), before the first anniversary of the day on which that employment commences or, if sooner, before the end of that period;
- (b) the application for a review is accompanied by further written medical evidence—
 - (i) relating to whether the condition in regulation 3.D.7(3)(a) is satisfied at the date of the Scottish Ministers’ review;
 - (ii) that evidence relates to the same physical or mental impairment as a result of which the member met the condition in regulation 3.D.7(2)(a);
 - (iii) no previous application for a review has been made under this paragraph; and
 - (iv) the member has not become entitled to an upper tier ill health pension in respect of any later service under regulation 3.G.5.”
- (3) After paragraph (3) insert—

“(4) In the case of a 2008 Section Optant this regulation is subject to regulations 3.K.15 and 3.K.16.”.

Amendment of regulation 3.D.9

73. After regulation 3.D.9(9) (early retirement on ill health (deferred members)) insert—

“(10) In the case of a 2008 Section Optant this regulation is subject to regulation 3.K.11.”.

Amendment of regulation 3.D.10

74. After paragraph (9) of regulation 3.D.10 (general option to exchange part of pension for lump sum) insert—

“(10) In the case of a 2008 Section Optant this regulation is subject to regulations 3.K.8(4) (pension debit members) and 3.K.11 (amount of pension and lump sum to be paid to a 2008 Section Optant).”.

Amendment of regulation 3.D.12

75. For regulation 3.D.12 (reduction in pension debit member’s benefits) substitute—

“Reduction in pension debit member’s benefits

3.D.12.—(1) The benefits to which a pension debit member is entitled under this Chapter are subject to the reduction to be made under section 31 of the 1999 Act (reduction under pension sharing order following divorce or nullity of marriage).

(2) In the case of a 2008 Section Optant this regulation is subject to regulation 3.K.8(2).”.

Amendment of regulation 3.E.2

76. After regulation 3.E.2(2) (meaning of “surviving nominated partner”) insert—

“(3) In the case of a 2008 Section Optant this regulation is subject to regulation 3.K.12 (nominations and notices accepted by the Scottish Ministers under the 1995 Section to apply under Chapter 3.E of that Section).”.

Amendment of regulation 3.E.3

77.—(1) Regulation 3.E.3 (amount of pensions under regulation 3.E.1: active and non-contributing members) shall be amended as follows.

(2) At the start of paragraph (2)(b) insert “Subject to paragraph (7).”.

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

(4) After paragraph (6) insert—

“(7) For the purposes of paragraphs (2)(b) and (3) any increase under—

(a) regulation 3.D.3; or

(b) regulation 3.K.17,

is ignored.”.

Amendment of regulation 3.E.4

78.—(1) Regulation 3.E.4 (amount of pensions under regulation 3.E.1: pensioner members) shall be amended as follows.

(2) For paragraph (3) substitute—

“(3) For the purpose of paragraph (1) any reduction in the rate of the member’s pension under—

(a) Chapter 3.H;

(b) regulation 3.D.10; or

(c) regulation 3.K.11,

is ignored.

(3A) For the purpose of paragraph (2)—

(a) any reduction in the rate of the member’s pension under—

(i) regulation 3.D.4;

(ii) regulation 3.D.10; or

(iii) regulation 3.K.11; and

(b) any increase in the rate of the member’s pension under—

(i) regulation 3.D.3; or

(ii) regulation 3.K.17,

is ignored.”.

(3) Omit paragraph (8).

Amendment of regulation 3.E.7

79. For regulation 3.E.7(3)(b) (re-employed pensioners: adult survivor pensions in initial period) substitute—

“(b) the rate of the deceased member’s pension payable at the time of death after taking account of any reduction in the rate of the pension under—

(i) Chapter 3.H;

(ii) regulation 3.D.10; and

(iii) regulation 3.K.11.”.

Amendment of regulation 3.E.10

80. In regulation 3.E.10 (amount of children’s pension under regulation 3.E.8: deceased active members and deceased non-contributing members) at the end of paragraph (3) insert (as full out words)—

“in the case of a 2008 Section Optant, this is subject to regulation 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).”.

Amendment of regulation 3.E.11

81.—(1) Regulation 3.E.11 (amount of children’s pension under regulation 3.E.8: deceased pensioner members) shall be amended as follows.

(2) At the end of paragraph (3) insert (as full out words)—

“in the case of a 2008 Section Optant, this is subject to regulation 3.K.23.”.

(3) For paragraph (8) substitute—

“(8) For the purposes of paragraphs (3), (5) and (6) any reduction in the member’s pension under regulation 3.D.10 (general option to exchange part pension for lump sum) and regulation 3.K.11 (amount of pension and lump sum to be paid to a 2008 Section Optant) will be ignored.”.

Amendment of regulation 3.E.12

82. After regulation 3.E.12(3) (amount of children’s pension under regulation 3.E.8: deceased deferred members) insert—

“(3A) In the case of a 2008 Section Optant paragraph (3) is subject to regulation 3.K.23.”.

Amendment of regulation 3.E.17

83.—(1) Regulation 3.E.17 (amount of lump sum: single capacity members and recent leavers (disregarding regulation 3.D.5 employments)) shall be amended as follows.

(2) After paragraph (1) insert—

“(1A) In the case of a 2008 Section Optant, paragraph (1) is subject to regulation 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).”.

(3) For paragraph (2)(b), substitute—

“(b) an amount equal to twice the annual average of the member’s uprated earnings by reference to which the pension was calculated, less the aggregate of—

(i) any lump sum paid to the member when the pension came into payment as a result of the member exercising the option under regulation 3.D.10 (general option to exchange part of pension for lump sum); and

(ii) in the case of a 2008 Section Optant, the lump sum paid to the Optant under regulation 3.K.11 (amount of pension and lump sum to be paid to a 2008 section Optant).”.

(4) For paragraph (6) substitute—

“(6) The reference in paragraph (2)(a) to the annual rate of the member’s pension is to the member’s pension after it has been reduced to take account of—

- (a) the exercise by the member of an option under regulation 3.D.10 (general option to exchange part of pension for lump sum); and
- (b) in the case of a 2008 Section Optant, the lump sum paid to the Optant under regulation 3.K.11 (amount of pension and lump sum to be paid to a 2008 section Optant).”.

Amendment of regulation 3.E.18

84.—(1) Regulation 3.E.18 (amount of lump sum; dual capacity members (disregarding regulation 3.D.5 employments)) shall be amended as follows.

- (2) At the start of paragraph (2) insert “Subject to paragraph (4).”.
- (3) After paragraph (3) insert—

“(4) In the case of a 2008 Section Optant—

- (a) the reference to the annual rate of pension in paragraph (2)(b)(i) is to the annual rate of pension after it has been reduced to take account of the lump sum paid to the Optant under regulation 3.K.11 (amount of pension and lump sum paid to a 2008 Section Optant); and
- (b) the amount of the Optant’s uprated earnings for the purposes of paragraph (2)(b)(ii) shall be reduced by the aggregate of—
 - (i) the amount of the lump sum paid to the Optant under regulation 3.K.11; and
 - (ii) the lump sum under regulation 3.D.10 referred to in paragraph (2)(b)(ii).”.

Amendment of regulation 3.E.19

85.—(1) Regulation 3.E.19 (amount of lump sum: dual capacity members with pensions under regulation 3.D.5) shall be amended as follows.

- (2) After paragraph (2)(a) insert—

- “(b) if the member had been entitled to any pensions under regulation 3.D.5 for less than 5 years, the lesser of—
 - (i) the total of the guarantee amounts for each of those pensions (see paragraph (3)); and
 - (ii) the aggregate lump sum cap (see paragraph (4)).”.

- (3) After paragraph (2) insert—

“(2A) In the case of a 2008 Section Optant paragraph (2) is subject to paragraph (4) and regulation 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 Regulations).”.

- (4) For paragraph (4) substitute—

“(4) The aggregate lump sum cap is equal to twice the appropriate fraction of the annual average of the member’s uprated earnings by reference to which the pension to which the member became entitled on last exercising the option under regulation 3.D.5 was calculated, less the total of any lump sums paid to the member—

- (a) in exchange for pensions under regulation 3.D.5 as a result of the member exercising the option under regulation 3.D.10 (general option to exchange part of pension for lump sum); and
- (b) in the case of a 2008 Section Optant the lump sum paid to that Optant under regulation 3.K.11.”.

Amendment of regulation 3.E.21

86. After paragraph (11) of regulation 3.E.21 (payment of lump sums or pensions on death) insert—

“(12) In the case of a 2008 Section Optant this regulation is subject to regulation 3.K.12 (nominations and notices accepted by the Scottish Ministers under the 1995 Section to apply under Chapter 3.E of these Regulations).”.

Amendment of regulation 3.F.6

87.—(1) Regulation 3.F.6 (calculating amounts of transfer value payments) shall be amended as follows.

(2) For paragraph (4) substitute—

“(4) In paragraph (3) “minimum transfer value” means—

(a) in the case of a person other than a 2008 Section Optant the sum of—

- (i) any transfer value payments that have been made to this Section of the scheme in respect of the person as a result of which the person is entitled to count any pensionable service under this Section of the scheme by reference to which the accrued rights subject to the transfer are calculated; and
- (ii) any contributions paid by the person under Chapter 3.C as a result of which the person is entitled to count such service;

(b) in the case of a 2008 Section Optant the sum of—

- (i) any transfer value payments that have been made to the 1995 Section in respect of the Optant;
- (ii) any contributions paid by the Optant under regulation D1 (contributions by members) of, as modified by paragraph 10 of Schedule 1 to the 1995 Regulations in respect of pensionable employment in that Section on or before 31st March 2008; and
- (iii) any payments made by the Optant under regulation Q1 (right to buy additional benefits) of, as modified by paragraph 19 of Schedule 1 to, the 1995 Regulations for the purchase of additional service,

which entitle the Optant to count, under Chapter 3.K of this Section, any pensionable service by reference to which the accrued rights subject to the transfer are calculated.”.

(3) At the end of paragraph (5)(b) insert—

“; and

(c) separately in respect of—

- (i) the aggregate of any amounts of pensionable earnings that the member is entitled to count for the purpose of calculating benefits payable to, or in respect of, the member that fall to be treated as—
 - (aa) a capped increase to pensionable earnings in accordance with regulation 3.F.12; or
 - (bb) an amount of capped Optant pensionable earnings in accordance with regulation 3.K.9; and
- (ii) any amount of pensionable earnings that do not fall to be so treated.”.

(4) After paragraph (5) insert—

“(6) In the case of a 2008 Section Optant this regulation is subject to regulation 3.K.11.”.

Amendment of regulation 3.F.8

88. After regulation 3.F.8(4) (right to apply for acceptance of transfer value payment from another scheme) insert—

“(5) In the case of a 2008 Section Optant this regulation is subject to regulation 3.K.10.”.

Amendment of regulation 3.F.9

89.—(1) Regulation 3.F.9 (procedure for applications under regulation 3.F.8), shall be amended as follows.

(2) In paragraph (1)(d) in—

(i) paragraph (i) after “of the” insert “increase to pensionable earnings and the”; and

(ii) paragraph (ii) after “of the” insert “increase to pensionable earnings and the”.

(3) In paragraph (2)(a) for “3.A.11 (restriction on pensionable earnings used for calculating benefits in respect of capped transferred-in service)” substitute “3.F.12 (meaning of “capped increase to pensionable earnings”)”.

(4) For paragraph (3) substitute—

“(3) A statement given to the member of a corresponding 1995 Section of the scheme in pursuance of such a request as is mentioned in paragraph (1)(d) must inform the member of the amount of—

(a) the increase to pensionable earnings that will count under this Section of the scheme for the purposes of calculating benefits payable to or in respect of the member; and

(b) the amount of pensionable service that will count for the purposes of determining whether or not the member has reached 45 years of pensionable service for the purposes of regulation 3.A.3.”.

Amendment of regulation 3.F.10

90. For regulation 3.F.10 (acceptance of transfer value payments) substitute—

“Acceptance of transfer value payments

3.F.10.—(1) Subject to paragraph (10) if an application is duly made by a member under regulation 3.F.8 the Scottish Ministers may accept the transfer value payment if such conditions as the Scottish Ministers may require are met.

(2) Subject to paragraph (8) if the Scottish Ministers accept the payment the member is entitled to count—

(a) the appropriate increase in the member’s pensionable earnings for the purposes of calculating benefits payable to, or in respect of, the member under this Section of the scheme; and

(b) the relevant period of pensionable service for the purpose of determining whether or not the member has reached 45 years of pensionable service for the purposes of regulation 3.A.3.

(3) In paragraph (2)(a) “the appropriate increase” means the increase calculated in accordance with regulation 3.F.11.

(4) In paragraph (2)(b) “the relevant period” means the period calculated by reference to whichever of paragraph (5), (6) or (7) apply in respect of the transfer payment.

(5) If the Scottish Ministers accept the payment in respect of a member of a corresponding 1995 Section of the scheme, “the relevant period” means the period calculated in accordance with any guidance, tables and other relevant factors provided by the scheme actuary for that purpose, having regard to the period of employment that qualified the member for the rights in the corresponding 1995 Section of the scheme.

(6) If the Scottish Ministers accept the payment under the public sector transfer arrangements “the relevant period” means the period of pensionable service the member is entitled to count calculated—

- (a) in accordance with those arrangements; and
- (b) by reference to the guidance and tables provided by the scheme actuary for the purposes of this paragraph, that are in use on the date that is used by the transferring scheme for calculating the transfer value payment.

(7) If the Scottish Ministers accept the payment from a scheme that does not participate in the public sector transfer arrangements “the relevant period” means a period equal to the period of employment that qualified the member for the rights in respect of which the transfer payment is being made.

(8) Any part of a member’s increase to pensionable earnings under paragraph (2)(a) that falls to be treated as a capped increase to pensionable earnings shall count as a capped increase to pensionable earnings for the purpose of regulation 3.F.6(5).

(9) For the meaning of “capped increase to pensionable earnings” see regulation 3.F.12.

(10) Subject to paragraph (11) the Scottish Ministers may not accept a transfer value payment if—

- (a) it would be applied in whole or in part in respect of the member’s or the member’s spouse’s entitlement to a guaranteed minimum pension; and
- (b) it is less than the amount required for that purpose, as calculated in accordance with guidance and tables prepared by the scheme actuary for the purposes of this paragraph.

(11) Paragraph (10) does not apply if the transfer would be paid under the public sector transfer arrangements.

(12) In the case of a 2008 Section Optant this regulation is subject to regulation 3.K.10.”.

Amendment of regulation 3.F.11

91.—(1) Regulation 3.F.11 (calculation of transferred-in pensionable service) shall be amended as follows.

(2) In the heading for “calculation of transferred-in pensionable service” substitute “calculation of increase to pensionable earnings as a result of a transfer-in”.

(3) For paragraph (2) substitute—

“(2) Subject to paragraph (4) for the purposes of the calculation under paragraph (1) the benefits in respect of the transfer payment will be calculated by increasing the member’s pensionable earnings for—

- (a) the financial year in which the member joined this Section of the scheme; or
- (b) the financial year in which the transfer payment is received if the payment is received more than 12 months after the day on which the member joined this Section of scheme (“the starting day”).”.

(4) In paragraph (3)(b) after “payments)” insert “equal to the amount of the transfer payment”.

(5) After paragraph (6) insert—

“(7) In the case of a 2008 Section Optant this regulation is subject to regulation 3.K.10.”.

Amendment of regulation 3.F.12

92.—(1) Regulation 3.F.12 “meaning of “capped transferred-in service” shall be amended as follows.

(2) In the heading, for “meaning of “capped transferred-in service”, substitute “meaning of capped increase to pensionable earnings”.

(3) For paragraph (2) substitute—

“(2) For the purposes of this Part—

- (a) any part of the increase to pensionable earnings that the member is entitled to count under regulation 3.F.10(2)(a); and
- (b) which is the result of capped service in employment to which the transferring scheme applied,

is a capped increase to pensionable earnings.”.

(4) After paragraph (4) insert—

“(5) In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.10.”.

Amendment of regulation 3.J.9

93. In regulation 3.J.9(5)(a) (interest on late payment of benefits and refunds of contributions) after “Chapter 3.D (members’ retirement benefits)” insert “or a lump sum under regulation 3.K.11 (amount of pension and lump sum to be paid to a 2008 Section Optant)”.

Insertion of Chapter 3.K

94. After Chapter 3.J (miscellaneous and supplementary provisions) insert—

“CHAPTER 3.K

2008 Section Optants

3.K.1 Application of Chapter 3.K

(1) This Chapter makes provision in relation to persons who are active members of the 1995 Section on or after 1st October 2009 and who opt to become members of this Section of the scheme on the basis set out in this Chapter, including persons who—

- (a) return to NHS practitioner service in respect of which there is a liability to pay contributions to the scheme in accordance with regulation D1 of the 1995 Regulations (as modified by paragraph 10 of Schedule 1 to those Regulations) within a period of less than 5 years beginning with the day on which they last left such service (whether or not that period includes 1st October 2009);
- (b) become members of the 1995 Section (whether for the first time or for a second or subsequent time having previously been a member of that Section) in accordance with regulation B2(3) of the 1995 Regulations.

(2) This Chapter does not apply to a person if—

- (a) that person is an active member of the 1995 Section by virtue of regulation E2(11) of the 1995 Regulations (early retirement pension (ill health)); or

(b) that person is a former member of a corresponding 1995 scheme and the administrators of that scheme have confirmed that the person did not elect to join the relevant corresponding 2008 scheme when offered the opportunity to do so.

(3) In these Regulations a member of this Section to whom this Chapter applies is referred to as a “2008 Section Optant”.

3.K.2 Options for 1995 Section members to join this Section under Chapter 3.K

(1) A person who by virtue of that person’s practitioner service—

- (a) was an active member of the 1995 Section—
 - (i) on, or after, 1st October 2009; and
 - (ii) on the day that person’s option to join this Section of the scheme was received by the Scottish Ministers; and
- (b) would be eligible to join this Section of the scheme if that person met the condition in regulation 3.B.1(3)(a) (which requires that the person’s practitioner service began on or after 1st April 2008),

may join this Section of the scheme under the terms of this Chapter.

(2) A person who satisfies the conditions in paragraph (1) may only join this Section of the scheme if that person opts to do so.

(3) Subject to paragraphs (4) and (8) and regulation 3.K.20 (circumstances in which a 1995 section member may defer making an option to join this section of the scheme under regulation 3.K.2) the option may only be exercised by giving notice in writing to the scheme administrator—

- (a) in such form as the Scottish Ministers require; and
- (b) before the date the Scottish Ministers specify for that purpose in the comparative statement of benefits under the 1995 Section and the 2008 Section of the scheme issued to that person (“the comparative statement”).

(4) For the purpose of paragraph (3)—

- (a) the date specified by the Scottish Ministers in the comparative statement shall be a date that is at least 4 months later than the comparative statement issue date; and
- (b) the notice shall be—
 - (i) irrevocable; and
 - (ii) treated as having been given on the date on which it is received by the scheme administrator.

(5) Subject to paragraph (12) the option shall be effective from the first day of the member’s pensionable service in the 1995 Section falling on or after 1st April 2008 and—

- (a) the person shall be treated as if that person had been a member of this Section of the scheme from that date;
- (b) the member’s service and pensionable earnings both for the purpose of ascertaining entitlement to, and calculation of, benefits under the 1995 Section shall count under this Section of the scheme only to the extent that it would have counted had the member been an active member of this Section of the scheme from that date.

(6) If contributions due from the member under Chapter 3.C in respect of any periods beginning on or after 1st April 2008 are not made when they are due because of the time when the option is exercised, the amount overdue is to be paid by deduction from the

member's pensionable earnings in such manner and at such rate as the Scottish Ministers require.

(7) If, in a case where paragraph (6) applies, the member ceases to be an active member of this Section of the scheme before the amount overdue has been paid under that paragraph, the amount outstanding becomes payable immediately.

(8) The Scottish Ministers may extend the time limit in paragraph (3) if the Scottish Ministers consider that the person has not had a reasonable opportunity to consider whether to exercise the option.

(9) The Scottish Ministers may accept an option to join the 2008 Section that is received after the person ceases to be an active member of the 1995 Section if—

- (a) a comparative statement of benefits under the 1995 Section and the 2008 Section of the scheme was issued to the person whilst that person was an active member of the 1995 Section;
- (b) but for the exercise of the option the person would otherwise become entitled to the immediate payment of benefits under Part E of the 1995 Section (as modified by paragraphs 11 and 12 of Schedule 1 to the 1995 Regulations);
- (c) the person has provided the Scottish Ministers with a notice in writing in such form as the Scottish Ministers may require that benefits are not to be paid from the 1995 Section and has not revoked that notice; and
- (d) the person exercises the option before the end of the four month period beginning with the comparative statement issue date.

(10) A person may revoke a notice given for the purposes of paragraph (9)(c)—

- (a) at any time;
- (b) in writing in such a form as required by the Scottish Ministers for that purpose.

(11) A person who has revoked a notice in accordance with paragraph (10) may not provide a further notice under paragraph (9).

(12) A person exercising an option under this regulation who is entitled to a pension under regulation E2A (ill health pension on early retirement) of the 1995 Regulations may count as qualifying service for the purpose of this section of the scheme a period of service measured in years and days equal to the qualifying service that person was entitled to count under regulation C3 of the 1995 Regulations (meaning of qualifying service) in determining their entitlement to that pension.

(13) For the purposes of paragraphs (4) and (9) the comparative statement issue date is the date on which the comparative statement of benefits under the 1995 and 2008 Sections of the scheme is sent (whether by electronic communication or otherwise)—

- (a) to the person; or
- (b) to the person's employing authority.

(14) Subject to paragraph (1)(a)(ii) and any extension of time in accordance with paragraph (8), where paragraph (13)(b) applies the person must have a period equal to at least three 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.

Transfer of service and pensionable earnings from the 1995 Section

3.K.3 Service and pensionable earnings credited from the 1995 Section

(1) A 2008 Section Optant who—

- (a) becomes a member of this Section of the scheme; and
- (b) is not entitled to a pension under regulation E2A of the 1995 Regulations (ill health pension on early retirement),

is entitled to count the following service under this Section of the scheme.

(2) The member may count as qualifying service a period equal in length to the period of qualifying service up to, and including, 31st March 2008 which the member was entitled to count under the 1995 Section (but not exceeding 45 years).

(3) Subject to paragraph (9) and regulation 3.K.11 the pensionable earnings and service which a 2008 Section Optant who is under age 60 on 1st October 2009 may count under this Section is an amount equal to the amount of pensionable earnings for practitioner service up to, and including, 31st March 2008 which the Optant was entitled to count under regulation C2 of the 1995 Regulations.

(4) Subject to paragraphs (5), (8), (9) and (10) and regulation 3.K.11 the pensionable earnings and service which a 2008 Section Optant who is age 60 or over on 1st October 2009 may count under this Section is an amount equal to the amount of pensionable earnings for practitioner service up to, and including, 31st March 2008 which the Optant was entitled to count under regulation C2 of the 1995 Regulations multiplied by the factor specified in paragraph (8) applicable to the case.

(5) Subject to paragraph (6) in determining the amounts of pensionable earnings up to, and including, 31st March 2008 in paragraph (3) or (4), the Scottish Ministers shall have regard to—

- (a) the pensionable earnings for any scheme year recorded by the Optant's contracting Health Board or someone appointed to act on their behalf;
- (b) the pensionable earnings for any scheme year certified by the Optant in accordance with paragraph 23 of Schedule 1 to the 1995 Regulations.

(6) Subject to paragraph (7) if, in respect of any particular scheme year, the pensionable earnings referred to in paragraph (5)(a) or (b) are not available, the Scottish Ministers shall determine the pensionable earnings for that scheme year and in doing so shall have regard to—

- (a) the contributions paid in accordance with regulation D1 of the 1995 Regulations or regulation 3.C.1; or
- (b) the figure supplied by the contracting Health Board or someone appointed to act on their behalf.

(7) If—

- (a) the Scottish Ministers have made a determination of pensionable earnings in accordance with paragraph (6); and
- (b) the pensionable earnings referred to in paragraph (5) that were not available to the Scottish Ministers at the time of that determination, subsequently become available,

the Scottish Ministers shall revise that determination accordingly.

(8) The factor referred to in paragraph (4) is the factor specified by the Scottish Ministers for that purpose.

(9) For the purposes of paragraphs (3) and (4) the pensionable earnings for practitioner service which the 2008 Section Optant was entitled to count under regulation C2 of the 1995 Regulations shall not include any pensionable service the Optant was entitled to count under regulation C2(1)(d) of that Section.

(10) When a 2008 Section Optant becomes a member of this Section under this Part all rights in respect of that Optant under the 1995 Section are extinguished.

3.K.4 Treatment of Additional Pension

(1) This regulation applies to a 2008 Optant who, whilst a member of the 1995 Section, had exercised an option to purchase additional pension under regulation Q8 or Q10 of the 1995 Regulations or whose employing authority had done so under regulation Q11 of those Regulations (“an OPAP” (option to purchase additional pension)).

(2) Where paragraph (1) applies, the amount of additional pension that will count under this Section shall be calculated in accordance with—

- (a) paragraph (3) when all the contributions required to be made under the OPAP have been made in accordance with regulation Q14 of the 1995 Regulations (effect of payment of additional contributions under this Part)
- (b) paragraph (4) when the OPAP has ceased or been cancelled in accordance with regulation Q13 of those Regulations (cancellation and cessation of options under regulation Q8).

(3) Where paragraph (2)(a) applies, the amount of additional pension that will count under regulation 3.C.12 shall be equal to the amount of additional pension—

- (a) purchased in the 1995 Section under regulation Q14 of the 1995 Regulations where the person’s chosen birthday under the OPAP was 65;
- (b) subject to paragraph (9), that would have been purchased in the 1995 Section under regulation Q14 of the 1995 Regulations if the person’s chosen birthday had been 65 and, in determining that amount, the Scottish Ministers shall have regard to the advice of the scheme actuary, where the person’s chosen birthday under the OPAP was 60.

(4) Where paragraph (2)(b) applies, the amount of additional pension that will count under regulation 3.C.14 shall be equal to the amount of additional pension—

- (a) purchased in the 1995 Section under regulation Q13 of the 1995 Regulations, where the person’s chosen birthday under the OPAP was 65;
- (b) subject to paragraph (9) that would have been purchased in the 1995 Section under regulation Q13 of the 1995 Regulations if the person’s chosen birthday had been 65 and, in determining that amount, the Scottish Ministers shall have regard to the advice of the scheme actuary, where the person’s chosen birthday under the OPAP was 60.

(5) The additional pension referred to in paragraph (3) or (4) that counts in this Section of the scheme shall do so from the effective date specified in regulation 3.K.2(5).

(6) This paragraph applies—

- (a) to a person referred to in paragraph (1); and
- (b) where at the effective date specified in regulation 3.K.2(5) of this Part—
 - (i) that person—
 - (aa) was making additional contributions in accordance with an OPAP exercised under regulation Q8 of the 1995 Regulations;
 - (bb) had applied to make, but had not yet begun making, additional contributions under regulation Q8 of the 1995 Regulations; or

- (cc) had applied to make, but had not yet made, a single lump sum contribution in accordance with an OPAP exercised under regulation Q10 of the 1995 Regulations; or
- (ii) that person's employing authority had applied to make, but had not yet made, a single lump sum contribution on the person's behalf, in accordance with an OPAP exercised under regulation Q11 of the 1995 Regulations.
- (7) Where paragraph (6) applies and the person's chosen birthday referred to in regulation Q8 of the 1995 Regulations was 65, the OPAP referred to in that paragraph will apply in this Section as if the OPAP were an option to purchase additional pension in accordance with whichever of regulation 3.C.6, 3.C.8 or 3.C.9 would apply in that case.
- (8) Subject to paragraph (9) where paragraph (6) applies and the person's chosen birthday referred to in regulation Q8 of the 1995 Regulations was 60, the OPAP referred to in that paragraph will apply in this Section—
- (a) as if the OPAP were an option to purchase additional pension in accordance with whichever of regulation 3.C.6, 3.C.8 or 3.C.9 would apply in that case; and
- (b) after adjustment, having regard to the advice of the scheme actuary, so that—
- (i) the amount of the additional pension purchased in this Section is the same as that which would have been purchased in the 1995 Section; but
- (ii) the additional periodical or lump sum contributions payable, regard being had to the normal retirement age of 65 applying in this Section, reduce or (where appropriate) cease to be payable.
- (9) If paragraph (3)(b), (4)(b) or paragraph (8) applies and—
- (a) the amount of the additional pension calculated in accordance with paragraph (3) (b) or (4)(b) will exceed the limit on the total increase in the member's pension referred to, as the case may be, in regulation 3.C.6, 3.C.8 or 3.C.9; or
- (b) the limit on the total increase in the member's pension referred to in regulation 3.C.6 will be exceeded by the amount of additional pension that counts in this Section in accordance with paragraph (8)(b)(i) of this regulation notwithstanding any reduction in, or cessation of, additional contributions payable in accordance with paragraph (8)(b)(ii),
- the total increase in the member's pension under this regulation, taken together with any other increase under regulations 3.C.6, 3.C.8 or 3.C.9, will—
- (i) be subject to the limit on the total increase in the member's pension described in regulation 3.C.6, 3.C.8 or 3.C.9; and
- (ii) the amount of additional pension that counts in this Section in accordance with paragraphs (2) to (8) that exceeds that limit will be converted to pensionable earnings under regulation 3.A.7(10), and in determining the amount of such additional pension to be converted into pensionable earnings, the Scottish Ministers shall have regard to the advice of the scheme actuary.

3.K.5 Treatment of Additional Service and pensionable earnings

- (1) A 2008 Section Optant—
- (a) who becomes a member of this Section; and
- (b) is buying or has already bought a period of additional service that counts as pensionable service under regulation C2(1)(d) of the 1995 Regulations,

will be able to count an additional amount of pensionable earnings for that pensionable service in this Section as described in whichever of paragraphs (5) or (6) apply to that Optant.

(2) Subject to paragraphs (3) and (4) the additional pensionable earnings referred to in paragraph (1) are—

- (a) any additional pensionable earnings bought under regulation Q1 of the 1995 Regulations, as modified by paragraph 19(2) of Schedule 1 to the 1995 Regulations before the date that person's option to join this Section of the scheme was received by the Scottish Ministers in accordance with regulation 3.K.2; and
- (b) any additional pensionable earnings bought under regulation 27 of the National Health Service (Scotland) (Superannuation) Regulations 1980.

(3) The additional pensionable earnings referred to at paragraph (2)(a) will be calculated in accordance with—

- (a) regulation Q1(4), as modified by paragraph 19(2) or, as the case may be, paragraph 19(4) of Schedule 1 to the 1995 Regulations in the case of an election that had ceased and was paid for in full by the date referred to paragraph (2)(a);
- (b) regulation Q1 as modified by paragraph 19(2) or, as the case may be, paragraph 19(4) of Schedule 1 to the 1995 Regulations and paragraphs (1), (4) and (5) of regulation Q7 of those Regulations, in the case of an election that had ceased but had only partially been paid for at that date; or
- (c) regulation Q1 of those Regulations as modified by paragraph 20(2) or, as the case may be, paragraph 19(4) of Schedule 1 those Regulations and regulation Q7 of those Regulations, in the case of an election that remained in force immediately before that date.

(4) The additional pensionable earnings referred to at paragraph (2)(b) will be calculated in accordance with whichever of paragraphs (3) or (4)(b) of regulation 27 of the National Health Service (Superannuation) (Scotland) Regulations 1980 applies to the Optant.

(5) The additional pensionable earnings which a 2008 Section Optant who is under age 60 on 1st October 2009 may count under this Section of the scheme is an amount equal to the amount of additional pensionable earnings calculated in respect of that Optant in accordance with whichever of paragraph (3) or paragraph (4) applies.

(6) The additional pensionable earnings which a 2008 Section Optant who is age 60 or over on 1st October 2009 may count under this Section is the pensionable earnings found by—

- (a) first taking the additional pensionable earnings calculated in respect of that Optant in accordance with whichever of paragraph (3) or (4) applies ("APE"); and
- (b) then multiplying APE by the factor specified by the Scottish Ministers for that purpose.

(7) Where a member was buying additional service by means of regular additional contributions immediately before the date referred to in paragraph (2)(a)—

- (a) the member's election to buy additional service will cease from that date; and
- (b) any additional contributions due under the election that are unpaid at that date will be deducted from the member's pensionable pay in accordance with regulation 3.K.2 (6) and (7).

(8) Subject to regulation 3.K.18, for the purposes of calculating the Optant's benefits under this Section of the scheme the additional pensionable earnings that the Optant is

entitled to count under paragraph (5), or as the case may be, paragraph (6) of this regulation will be added to the amount of pensionable earnings the member is entitled to count under—

- (a) regulation 3.K.3(3), if the member is under age 60 on 1st October 2009; or
- (b) regulation 3.K.3(4), if the member is age 60 or over on that date.

3.K.6 Treatment of unreduced retirement lump sum

(1) This regulation applies to a 2008 Section Optant who becomes a member of this Section of the scheme and, at the date that person's option to join this Section was received by the Scottish Ministers in accordance with regulation 3.K.2, elects under regulation Q2 (right to buy an unreduced retirement lump sum) of the 1995 Regulations to—

- (a) purchase an unreduced retirement lump sum for service before 25th March 1972; or
- (b) buy additional survivor's pension for service before 6th April 1988,

which satisfies any of the conditions in paragraph (2).

(2) Those conditions are that the election—

- (a) was paid for in full by the date referred to in paragraph (1);
- (b) ceased before the date referred to in paragraph (1), but before completion of the additional contributions payable;
- (c) was payable by additional contributions and remained in force immediately before the date referred to in paragraph (1); or
- (d) was payable by deduction from the member's retirement lump sum.

(3) If paragraph (1) applies, the election referred to in that paragraph will cease to be effective from 1st April 2008 and—

- (a) any additional contributions under the election that were due but not paid at that date will be deducted in accordance with regulations 3.K.2(6) and (7);
- (b) any liability to pay additional contributions will cease from, and including 1st April 2008; and
- (c) any requirement to pay for an unreduced retirement lump sum by the deduction referred to in paragraph (2)(d) will lapse.

3.K.7 Treatment of 2008 Section Optants to whom regulation L1(3) of the 1995 regulations applied immediately before 1st April 2008

(1) This regulation applies to a 2008 Section Optant—

- (a) whose benefits on retirement or death would, but for this regulation, be calculated in accordance with Chapters 3.D and 3.E; and
- (b) who, but for joining this Section of the scheme, would otherwise have been entitled to have benefits on retirement or death calculated in accordance with regulation L1(3) of the 1995 Regulations.

(2) Subject to paragraph (3), for the purpose of calculating the benefits on retirement or death of a 2008 Section Optant referred to in paragraph (1), the Optant may, where it would be more beneficial to the Optant, be treated—

- (a) as a deferred member of this Section in respect of any period of practitioner service and pensionable earnings credited to that Optant under regulation 3.K.3 that relates to one or more periods of practitioner service in the 1995 Section that

occurred before a break of 12 months or more in such service (“an earlier service credit”); and

- (b) as if the Optant became an active member for the first time on the first day of any period of practitioner service and pensionable earnings credited to that Optant under regulation 3.K.3 that relates to a period of pensionable service in the 1995 Section that occurred after a break of 12 months or more in such service.

(3) Subject to regulation 3.D.7(5)(b)(ii) the Optant’s benefits in respect of an earlier service credit mentioned in paragraph (2)(a) shall be calculated—

- (a) separately; and
- (b) by reference to the member’s uprated earnings calculated in accordance with paragraph 9 of Schedule 1 to the 1995 Regulations in respect of that particular period.

3.K.8 Pension debit members

(1) This regulation applies where, on becoming a member of this Section of the scheme, a 2008 Section Optant is a pension debit member.

(2) The amount of the reduction to be made to the Optant’s benefits under this Section shall be the amount of the reduction that applied to the Optant’s benefits under the 1995 Section calculated in accordance with section 31 of the 1999 Act (reduction under pension sharing order following divorce or nullity of marriage) adjusted by the factor referred to in paragraph (3).

(3) The factor referred to in paragraph (2) is the factor specified by the Scottish Ministers for that purpose.

(4) The Scottish Ministers may, after taking advice from the scheme actuary, make such modifications to—

- (a) the Optant’s rights; and
- (b) as to the form of the Optant’s benefits,

as the Scottish Ministers consider necessary for the purpose specified in paragraph (5).

(5) If in the opinion of the Scottish Ministers, it is necessary for the purpose of giving effect to the pension sharing order to which the Optant’s rights are subject for some or all of the benefits under this Section of the scheme to be taken in a different form from that in which that Optant would otherwise be entitled to take them, the Scottish Ministers may modify those benefits as described in paragraph (4).

3.K.9 Pensionable earnings credited under regulations 3.K.3 and 3.K.5 to be treated as capped Optant pensionable earnings

(1) This regulation applies for the purpose of determining the amount of an Optant’s pensionable earnings (if any) that fall to be treated as capped Optant pensionable earnings for the purposes of calculating benefits payable to, or in respect of, the Optant under this Part.

(2) In paragraph (1) “capped Optant pensionable earnings” means the amount of pensionable earnings that the Optant is entitled to count under regulations 3.K.3 and 3.K.5 in respect of an amount of capped pensionable earnings for service in the 1995 Section up to, and including, 31st March 2008.

(3) For the purposes of paragraph (2) the Optant’s pensionable earnings were capped pensionable earnings in respect of service in the 1995 Section so far as—

- (a) in the case of pensionable earnings in respect of service before 6th April 2006—
 - (i) the Optant was an active member of the 1995 Section; and
 - (ii) that Optant’s pension under that Section in respect of the service was to be calculated by reference to pensionable earnings limited in each tax year to the permitted maximum for that year within the meaning of section 590C(2) of the Income and Corporation Taxes Act 1988⁽²⁾; or
- (b) in the case of pensionable earnings in respect of service on or after 6th April 2006—
 - (i) the Optant was an active member of the 1995 Section; and
 - (ii) that Optant’s pension under that Section in respect of the service was to be calculated by reference to pensionable earnings limited in each tax year to an amount calculated in the same manner as the permitted maximum under Section 590C(2) of the Income and Corporation Taxes Act 1988 was calculated for tax years ending before that date.

(4) For the purposes of paragraph (3) it does not matter whether, apart from the application of the limit referred to in that paragraph, the Optant’s earnings in any tax year would have exceeded the amount of the limit.

(5) In this regulation “pensionable earnings” has the meaning given in regulation 3.A.7. Miscellaneous provisions

3.K.10 Transfers in: transitional provision

- (1) This regulation applies to a 2008 Section Optant who—
 - (a) commenced a period of pensionable service as a practitioner member in the 1995 Section on, or after, 1st April 2008; and
 - (b) within one year of the commencement of that service makes an application to transfer accrued rights to benefits to the 1995 Section under regulation N1 of the 1995 Regulations (member’s right to transfer accrued rights to benefits to this Section of the scheme).
- (2) If—
 - (a) the Scottish Ministers accept the transfer payment in respect of the application referred to in paragraph (1) in accordance with regulation N1(4) of the 1995 Regulations; and
 - (b) that payment is received by the Scottish Ministers before the day on which the person’s option to join this Section is received,

the increase to pensionable earnings that the Optant is entitled to count in respect of that transfer payment for the purposes of calculating benefits payable to or in respect of the Optant under this Section will be calculated as described in paragraph (4) and the period of pensionable service that Optant is entitled to count will be calculated as described in paragraph (5).

(3) If the transfer payment in respect of an application referred to in paragraph (1) is received by the Scottish Ministers on, or after, the day on which the person’s option to join this Section is received—

- (a) the Scottish Ministers may accept that payment under this Section of the scheme—

(2) 1988 c.1. Section 590C was inserted by the Finance Act 1991 (c.31) and amended by the Finance Act 1993 (c.34); S.I. 1993/2950; 1995/3034; 1996/2951; 1998/758 and 1999/592.

- (i) without requiring the Optant to make an application under regulation 3.F.8 (right to apply for acceptance of transfer value payment from another scheme); and
 - (ii) subject to such other conditions as the Scottish Ministers may require; and
 - (b) if the Scottish Ministers accept the payment, the increase to pensionable earnings that the Optant is entitled to count in respect of that payment for the purposes of calculating benefits payable to or in respect of that Optant under this Section will be calculated as described in paragraph (4) and the period of pensionable service that Optant is entitled to count will be calculated as described in paragraph (5).
- (4) Subject to paragraph (6) the increase to pensionable earnings that the Optant is entitled to count for the purposes of calculating benefits payable to, or in respect of, the Optant under this Section—
- (a) will be calculated in accordance with regulation 3.F.11 (calculation of increase to pensionable earnings as the result of a transfer-in);
 - (b) the financial year in which the member joined this Section of the scheme for the purposes of regulation 3.F.11(2)(a) will be the financial year in which the Optant's pensionable service referred to in paragraph (1) commenced;
 - (c) the starting day for the purpose of regulations 3.F.11(2)(b) and 3.F.11(4) will be the day that the member's pensionable service referred to in paragraph (1) commenced.
- (5) The period of pensionable service that the Optant is entitled to count for the purpose of determining whether or not the member has reached 45 years of pensionable service for the purposes of regulation 3.A.3 will be the relevant period calculated in accordance with regulation 3.F.10.
- (6) If the transfer value payment is accepted by the Scottish Ministers under the public sector transfer arrangements—
- (a) regulation 3.F.12 shall apply to the Optant in respect of the increase to pensionable earnings that the Optant is entitled to count under this regulation; and
 - (b) the reference in regulation 3.F.12(2) to the increase to pensionable earnings that the member is entitled to count under regulation 3.F.10(2)(a) shall be read as a reference to the increase to pensionable earnings the Optant is entitled to count under paragraph (4).

3.K.11 Amount of pension and lump sum to be paid to a 2008 Section Optant

- (1) This regulation applies to a 2008 Section Optant who—
 - (a) is entitled to an annual pension under Chapter 3.D; or
 - (b) is entitled to the payment of a transfer value under Chapter 3.F in respect of the pension that has accrued to or in respect of that Optant under this Section.
- (2) In the case of a 2008 Section Optant referred to in paragraph 1(a) that Optant shall be entitled to—
 - (a) the payment of a lump sum determined in accordance with whichever of the following paragraphs of this regulation that apply to that Optant; and
 - (b) the annual amount of pension referred to in paragraph 1(a) to which that Optant is entitled, shall be reduced by an amount equal to the amount of the lump sum referred to in sub-paragraph (a) divided by 12.
- (3) In the case of a 2008 Section Optant referred to in paragraph (1)(b)—

- (a) the transfer value shall be calculated by reference to a lump sum determined under paragraph (5); and
 - (b) the pension by reference to which, apart from this regulation, the transfer value in respect of that Optant would otherwise be calculated shall be reduced by an amount equal to the amount of the lump sum referred to in sub-paragraph (a) divided by 12.
- (4) Subject to paragraphs (13) and (15), except in a case to which paragraph (6), (8), (10) or (12) applies, the amount of the lump sum shall be determined as described in paragraph (5).
- (5) The amount of lump sum shall be determined by—
- (a) first applying the formula—

$$3 \times (1.4\% \text{ of the member's Relevant Uprated Earnings})$$
 ; and
 - (b) second, rounding down the amount found under sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.
- (6) In the case of an Optant—
- (a) who becomes entitled to an annual amount of pension payable under regulation 3.D.4 (early payment of pensions with actuarial reduction); and
 - (b) who on the day the Optant becomes entitled to that pension, has not attained age 60,

the amount of lump sum shall be determined as described in paragraph (7).

- (7) The amount of lump sum that is to be paid to an Optant referred to in paragraph (6) shall be calculated by—
- (a) first applying the formula—

$$3 \times (1.4\% \text{ of the member's Relevant Uprated Earnings} \times \text{Reduction Factor})$$
 ; and
 - (b) second rounding down the amount found under sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.
- (8) In the case of an Optant—
- (a) who becomes entitled to an annual amount of pension payable under regulation 3.D.5 (partial retirement (members aged at least 55)) for the first time; and
 - (b) on the day the Optant becomes entitled to that pension the Optant has not attained age 60,

the amount of lump sum shall be determined as described in paragraph (9).

- (9) The amount of lump sum that is to be paid to an Optant referred to in paragraph (8) shall be calculated by—
- (a) first applying the formula—

$$3 \times (1.4\% \text{ of the member's Specified Uprated Earnings} \times \text{Reduction Factor})$$
 ; and
 - (b) then rounding down the amount found under sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.
- (10) In the case of an Optant—

- (a) who becomes entitled to an annual amount of pension payable under regulation 3.D.5 (partial retirement (members aged at least 55) for the first time); and
 - (b) who on the day the Optant becomes entitled to that pension, has attained age 60,
- the amount of lump sum shall be determined as described in paragraph (11).

(11) The amount of lump sum that is to be paid to an Optant referred to in paragraph (10) shall be calculated by—

- (a) first applying the formula—

$$3 \times (1.4\% \text{ of the member's Specified Uprated Earnings})$$

; and

- (b) then rounding down the amount found under sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.

(12) In the case of an Optant—

- (a) who is a pensioner member as respects a pension payable under regulation 3.D.5 (partial retirement (members aged at least 55)) as described in paragraph (8)(a) of that regulation; and

- (b) who—

- (i) subsequently exercises an option under that regulation for the second or a final time; or

- (ii) becomes entitled to any other pension under Chapter 3.D in respect of pensionable service not taken into account for the purposes of calculating the pension payable under sub-paragraph (a),

the amount of lump sum shall be determined by the Scottish Ministers after taking advice from the scheme actuary.

(13) If, on becoming a member of this Section of the scheme, a 2008 Section Optant is a pension debit member the amount of the lump sum determined under this regulation shall be reduced by the amount calculated under paragraph (14) (“the pension debit reduction”).

(14) The amount of the pension debit reduction referred to in paragraph (13) shall be calculated by—

- (a) applying the formula—

$$3 \times (1995 \text{ Section Pension Debit} \times \text{Increase Factor})$$

- (b) rounding up the amount found in sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.

(15) If any part of an Optant’s benefit under this Section falls to be calculated by reference to capped Optant pensionable earnings under regulation 3.K.9 the determinations in this regulation shall apply separately in respect of—

- (a) the pension to which the Optant is entitled in respect of the pensionable earnings that fall to be calculated by reference to capped pensionable earnings; and

- (b) the pension to which the Optant is entitled in respect of the pensionable earnings that do not fall to be calculated by reference to capped pensionable earnings.

(16) If the benefits of an Optant to whom this regulation applies are subject to the modifications provided for in Part 4 (benefits in cases of mixed service)—

- (a) the amount of—

- (i) the lump sum referred to in paragraph (2)(a) and in regulation 2.K.12(2)(a); and
 - (ii) the reduction in the annual amounts of pension referred to in paragraph (2)(b) and in regulation 2.K.12(2)(b),
- will be calculated without regard to those modifications;
- (b) any pension included in the “reference amount” or, as the case may be, the “base amount” referred to in regulations 4.C.1(1) and 4.A.2 (respectively) and payable to a member under Part 4, will, on the member’s retirement, attract an immediate increase under the Pensions (Increase) Act 1971(3);
 - (c) the amount of any lump sum referred to in sub-paragraph (a)(i) that is based on a pension that will attract an immediate increase under the Pensions (Increase) Act 1971, will—
 - (i) be increased in like manner; and
 - (ii) give rise to a corresponding increase in the reduction to the corresponding annual amount of pension referred to in sub-paragraph (a)(ii); and
 - (d) the total of the amounts referred to in sub-paragraph (a)(i) and (a)(ii), together with any increases described in sub-paragraph (c), will apply to the “reference amount” or, as the case may be, the “base amount” referred to in regulations 4.C.1(1) and 4.A.2 (respectively) payable to a member under Part 4.
- (17) For the purposes of this regulation—
- “1995 Section Pension Debit” is the amount by which the Optant’s annual pension under the 1995 Regulations was to be reduced in accordance with section 31 of the 1999 Act;
- “Annual amount”, in relation to a pension, means the amount of the annual pension to which the member would be entitled under this Section apart from this regulation, together with any increases payable under the Pensions (Increase) Act 1971, calculated as at the time payment would first be due;
- “Increase Factor” is the factor that would have applied to the 1995 Section Pension Debit for the purposes of section 29 of the 1999 Act if the Optant had become entitled to a pension under the 1995 Regulations—
- (a) on the date that the Optant becomes entitled to a pension referred to in paragraph (1)(a); or
 - (b) on the day after the Optant’s last day of pensionable service if the Optant becomes entitled to the payment of a transfer value referred to in paragraph (1)(b);
- “Reduction Factor” is the reduction factor that the Scottish Ministers, after taking advice from the scheme actuary, determines would have applied to that Optant’s lump sum retiring allowance under regulation E8(7)(b) of the 1995 Regulations if that Optant had become entitled to a pension calculated under regulation E5 (early retirement pension (with actuarial reduction)) of those Regulations on the day he became entitled to a pension under regulation 3.D.4 or as the case may be regulation 3.D.5 of this Section;
- “Relevant Uprated Earnings” are the uprated earnings for the period of practitioner service (expressed in days) equal to the aggregate of—

- (a) the amount of uprated earnings for pensionable service that the Optant is entitled to count under regulation 3.K.3 (service and pensionable earnings credited from the 1995 section); and
- (b) the amount of additional pensionable earnings for additional service (if any) that the Optant is entitled to count under regulation 3.K.5 (treatment of additional service and pensionable earnings); and

“Specified Uprated Earnings” is the amount of the Optant’s Relevant Uprated Earnings multiplied by the percentage of the member’s pension in respect of which the member claims immediate payment under regulation 3.D.5(3)(a) (“the specified percentage”).

3.K.12 Nominations and notices accepted by the Scottish Ministers under the 1995 Regulations to apply under Chapter 3.E of these Regulations

- (1) This regulation applies if—
 - (a) the Scottish Ministers have accepted any of the nominations or notices specified in paragraph (2) in respect of the benefits to be paid on the death of a person who is a 1995 Section member; and
 - (b) on the day that the Scottish Ministers receive that person’s option to join this Section, that person has not revoked that nomination or notice.
- (2) The nominations and notices referred to in paragraph (1) are—
 - (a) a nomination made in accordance with regulation F5 (payment of lump sum) of the 1995 Regulations 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;
 - (b) a notice provided for the purposes of regulation F5(3)(a) 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 (surviving nominated partner’s pension) of the 1995 Regulations 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) 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 (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 3.E.21 specifying that the Optants personal representatives are to receive any lump or pension on the death of the Optant; 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 regulations 3.E.2 (meaning of “surviving nominated partner”).

3.K.13 2008 Section Optants: Transitional Upper Tier ill health pension

- (1) This regulation applies to a 2008 Section Optant who—

- (a) has submitted a form AW8 (or such other form as the Scottish Ministers were willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill health pension payable in accordance with regulation E2A of the 1995 Regulations ; and
 - (b) that form and supporting medical evidence was received by the Scottish Ministers before the date on which the Scottish Ministers received the Optant’s option to join this Section of the scheme.
- (2) Subject to paragraph (5) if the Optant referred to in paragraph (1) becomes entitled to a pension under regulation 3.D.7(3) of this Section (“an upper tier ill health pension”) within a period of one year beginning with the day on which that Optant’s option to join this Section of the scheme is received—
- (a) that Optant’s pensionable service shall be increased by the enhancement period determined in accordance with paragraph (3) (“the transitional enhancement period”); and
 - (b) the transitional enhancement period shall apply to that Optant’s service in place of the enhancement period that, apart from this regulation, would otherwise apply to the Optant’s service under regulation 3.D.7(6).
- (3) Subject to paragraph (4)—
- (a) “the transitional enhancement period” means two-thirds of the Optant’s assumed pensionable service; and
 - (b) “the Optant’s assumed pensionable service” means the further pensionable service that the Optant could have counted if the Optant had continued in service until reaching the age of 60.
- (4) If the transitional enhancement period determined under paragraph (3) of this regulation is less than 4 years pensionable service, the transitional enhancement period by which the Optant’s pensionable service is increased shall be the lesser of—
- (a) 4 years pensionable service; and
 - (b) the pensionable service the Optant could have counted if the Optant had continued in service until reaching the age of 60.
- (5) In the case of an Optant to whom this regulation applies, references to the “enhancement period” in regulation 3.D.7 are to be read as references to the “transitional enhancement period” determined under this regulation.

3.K.14 Treatment of ill health retirement applications made by 2008 Section Optants within one year of joining this Section

- (1) This regulation applies to a 2008 Section Optant who—
- (a) submits a form AW8 (or such other form as the Scottish Ministers are willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill health pension payable in accordance with regulation 3.D.7; and
 - (b) that form and supporting medical evidence is received by the Scottish Ministers before the end of the period of one year commencing on the day the Scottish Ministers received the Optant’s option to join this Section of the scheme.
- (2) Subject to paragraph (3) if, following a consideration of the form and medical evidence referred to in paragraph (1), an Optant referred to in that paragraph becomes entitled to a pension under regulation 3.D.7(3) (“an upper tier ill health pension”)—

- (a) that Optant's pensionable service shall be increased by the enhancement period determined in accordance with whichever of paragraph (3) or (4) regulation 3.K.13 apply to the Optant; and
 - (b) the transitional enhancement period shall apply to that Optant's service in place of the enhancement period that, apart from this regulation, would otherwise apply to the Optant's service under regulation 3.D.7(6).
- (3) In the case of an Optant to whom this regulation applies, references to the "enhancement period" in regulation 3.D.7 are to be read as references to the "transitional enhancement period" determined under this regulation.

3.K.15 Application of regulation 3.D.8 where a 2008 Section Optant has submitted an application for ill health retirement under the 1995 Section

- (1) This regulation applies to a 2008 Section Optant who—
- (a) submitted a form AW8 (or such other form as the Scottish Ministers were willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill health pension payable in accordance with regulation E2A of the 1995 Regulations; and
 - (b) that form and supporting medical evidence was received by the Scottish Ministers before the date on which the Scottish Ministers received the Optant's option to join this Section of the scheme.
- (2) If, following a consideration of the form and medical evidence referred to in paragraph (1), an Optant referred to in that paragraph becomes entitled to a pension under regulation 3.D.7(2) of this Section ("a lower tier ill health pension")—
- (a) within a period of one year beginning with the day on which that Optant's option to join this Section of the scheme is received; and
 - (b) immediately before joining this Section the Optant was notified under regulation E2B (re-assessment of ill health condition determined under regulation E2A) of the 1995 Regulations that the Optant may ask the Scottish Ministers to consider whether that Optant subsequently meets the upper tier condition under that regulation,

that Optant shall be entitled to a re-assessment of entitlement to an ill health pension determined under regulation 3.D.8 in accordance with the following paragraphs of this regulation.

(3) For the purposes of assessing whether the Optant satisfies the condition in regulation 3.D.7(3)(a) at the date of the Scottish Ministers' review, "permanently" shall mean until age 60.

(4) If, after considering the further medical evidence provided by the Optant under regulation 3.D.8, the Scottish Ministers determine that the Optant meets the condition in 3.D.7(3)(a), then as from the date on which that determination is made the Optant—

- (a) ceases to be entitled to a lower tier ill health pension; and
 - (b) becomes entitled to an upper tier ill health pension under regulation 3.D.7 but which shall be calculated in accordance in accordance with paragraph (5).
- (5) Subject to paragraph (6) for the purpose of calculating the upper tier ill health pension referred to in paragraph (4)—

- (a) the Optant's service shall be increased by the transitional enhancement period determined in accordance with whichever of paragraphs (3) or (4) of regulation 3.K.13 apply to that Optant; and

- (b) the transitional enhancement period shall apply to that Optant's service in place of the enhancement period that, apart from this regulation, would otherwise apply to that Optant's service under regulation 3.D.7(6).
- (6) In the case of an Optant to whom this regulation applies—
 - (a) regulation 3.K.13 shall be read as if paragraph (3)(b) of that regulation included the words “from the date of the Scottish Ministers’ determination under regulation 3.D.8” after “continued in service”; and
 - (b) references to the “enhancement period” in regulation 3.D.7 are to be read as references to the “transitional enhancement period” determined under this regulation.

3.K.16 Application of regulation 3.D.8 where a 2008 Section Optant has submitted an application for ill health retirement under the 2008 Section within a year of joining the 2008 Section

- (1) This regulation applies to a 2008 Section Optant who—
 - (a) submits a form AW8 (or such other form as the Scottish Ministers are willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill health pension payable in accordance with regulation 3.D.7 of this section;
 - (b) that form and supporting medical evidence was received by the Scottish Ministers before the end of the period of one year commencing on the day the Scottish Ministers received the Optant's option to join this Section of the scheme; and
 - (c) following a consideration of the form and medical evidence referred to in subparagraph (a)—
 - (i) the Optant becomes entitled to a lower tier ill health pension under regulation 3.D.7; and
 - (ii) at the time the Optant is awarded a pension under that regulation the Scottish Ministers give the Optant notice in writing in accordance with regulation 3.D.8(1)(b) that the Optant's case may be considered once within a period of three years commencing with the date of that award to determine whether the Optant meets the condition in regulation 3.D.7(3)(a) at the date of such a consideration.
- (2) If, after considering the further medical evidence provided by the Optant under regulation 3.D.8, the Scottish Ministers determine that the Optant meets the condition in 3.D.7(3)(a), then as from the date on which that determination is made the Optant—
 - (a) ceases to be entitled to a lower tier ill health pension; and
 - (b) becomes entitled to an upper tier ill health pension under regulation 3.D.7 but which shall be calculated in accordance with paragraph (3).
- (3) Subject to paragraph (4) for the purpose of calculating the upper tier ill health pension referred to in paragraph (2)—
 - (a) the Optant's service shall be increased by the transitional enhancement period determined in accordance with whichever of regulation 3.K.13 (3) or (4) apply to that Optant; and
 - (b) the transitional enhancement period shall apply to that Optant's service in place of the enhancement period that, apart from this regulation, would otherwise apply to that Optant's service under regulation 3.D.7(6).
- (4) In the case of an Optant to whom this regulation applies—

- (a) regulation 3.K.13 shall be read as if paragraph (3)(b) of that regulation included the words “from the date of the Scottish Ministers determination under regulation 3.D.8” after “continued in service”; and
- (b) references to the “enhancement period” in regulation 3.D.7 are to be read as references to the “transitional enhancement period” determined under this regulation.

3.K.17 Late payment of pension with actuarial increase for a 2008 Optant

(1) This regulation applies if a 2008 Section Optant becomes entitled to immediate payment of a pension under regulation 3.D.1 after reaching the age of 65.

(2) Subject to paragraph (6), in the case of an Optant to whom paragraph (1) applies so much of the amount of the pension as is attributable to—

- (a) the pensionable service that Optant is entitled to count under—
 - (i) regulation 3.K.3 (service and pensionable earnings credited from the 1995 Section);
 - (ii) regulation 3.K.5 (treatment of additional service and pensionable earnings) (if any); and
 - (iii) this Section of the scheme on or after 1st April 2008 but before reaching the age of 65; and
- (b) any contributions paid under regulation 3.C.6, 3.C.8 or 3.C.9 before reaching that age,

shall be increased in accordance with paragraph (4).

(3) In paragraph (2) the reference to the amount of the pension is to the amount of pension—

- (a) before that pension had been reduced in accordance with regulation 3.K.11; and
- (b) before any commutation under regulation 3.D.10.

(4) The amount of the increase referred to in paragraph (2) must be calculated in accordance with guidance and tables provided by the scheme actuary to the Scottish Ministers for the purposes of this regulation.

(5) In preparing that guidance and those tables the scheme actuary must use such factors as the scheme actuary considers appropriate, having regard, in particular, to—

- (a) the period after reaching the age of 65 before the Optant becomes entitled to immediate payment of the pension; and
- (b) the life expectancy of the Optant.

(6) The increase shall apply to the Optant’s pension in place of the actuarial increase that, apart from this regulation, would otherwise apply to the Optant’s pension under regulation 3.D.3.

3.K.18 Transitional Provision: Treatment of additional service and pensionable earnings in respect of Optants retiring on the grounds of ill health

(1) This regulation applies to a 2008 Section Optant who, apart from this regulation, would be entitled to count a period of pensionable service determined in accordance with regulation 3.K.5(3) (treatment of additional service and pensionable earnings).

(2) If—

- (a) an Optant referred to in paragraph (1) submitted a form AW8 (or such other form as the Scottish Ministers were willing to accept) together with supporting medical evidence if not included on the form pursuant to regulation E2A of the 1995 Regulations;
- (b) that form and supporting medical evidence was received by the Scottish Ministers before the end of a period of one year commencing on the date on which the Optant commenced payment for a period of additional service under regulation Q1 of the 1995 Regulations as modified by paragraph (19) of Schedule 1 to the 1995 Regulations ; and
- (c) following a consideration of the form and medical evidence referred to in subparagraph (a) that Optant becomes entitled to a lower tier or upper tier ill health pension under regulation 3.D.7, within a period of one year beginning with the day on which the Optant's option to join this section is received,

that Optant will not be entitled to count a period of pensionable service under regulation 3.K.5 and—

- (i) an amount equal to the contributions (less any tax that may be payable) made by the Optant in respect that period of additional service shall be returned to the Optant in accordance with regulation Q7(2) of the 1995 Regulations; and
- (ii) regulation 3.K.5(8) shall not apply.

(3) If—

- (a) an Optant referred to in paragraph (1) submitted a form AW8 (or such other form as the Scottish Ministers were willing to accept) together with supporting medical evidence if not included on the form pursuant to regulation E2A of the 1995 Regulations.
- (b) that form and supporting medical evidence were received by the Scottish Ministers after a period of at least one year commencing on the date on which the Optant commenced payment for a period of additional service under regulation Q6 of the 1995 Regulations; and
- (c) following a consideration of the form and medical evidence referred to in subparagraph (a) that Optant becomes entitled to a lower tier or upper tier ill health pension under regulation 3.D.7 within a period of one year beginning with the day on which the Optant's option to join this Section of the scheme is received,

in addition to the pensionable service that Optant is entitled to count under regulation 3.K.5, that Optant shall also be entitled to count a period of pensionable service determined under paragraph (4).

(4) The period of pensionable service that an Optant is entitled to count under this regulation shall be a period of service equal to the difference between—

- (a) the period of service the Optant is entitled to count under regulation 3.K.5; and
- (b) the period of service the Optant elected to purchase under regulation Q1 of the 1995 Regulations (as modified by paragraph 19 of Schedule 1 to the 1995 Regulations) calculated in accordance with regulation Q7(3) of the 1995 Regulations (as modified by paragraph 19 of Schedule 1 to the 1995 Regulations) and as if the member had become entitled to a pension under regulation E2A of those Regulations on the day the Scottish Ministers received that person's option to join this Section.

(5) For the purposes of calculating the Optant's benefits under this Section of the scheme, the pensionable service the Optant is entitled to count under paragraph (4) will be added to the service the member is entitled to count under regulation 3.K.3(3).

3.K.19 Treatment of service credited from the 1995 Section when benefits in cases of mixed service are payable

(1) This regulation applies if a 2008 Section Optant who becomes a member of this Section—

- (a) is entitled to benefits under this Part;
- (b) has a period, or periods, of officer service under Part 2 that entitles the Optant to have benefits considered under Part 4 (benefits in cases of mixed service); and
- (c) has transferred—
 - (i) service up to 31st March 2008 from the 1995 Section that counts under regulation 2.K.3; or
 - (ii) service and pensionable earnings up to 31st March 2008 from the 1995 Section that counts under regulation 3.K.3.

(2) Subject to paragraphs (4) and (5), if paragraph (1) applies—

- (a) pensionable service transferred from the 1995 Section under regulation 2.K.3(4) will count at the full length determined before application of the factor specified in that regulation, for the purpose of comparing benefits payable as calculated in accordance with regulations 4.B.2 to 4.B.7A;
- (b) pensionable service transferred from the 1995 Section under regulation 2.K.3(4) and pensionable earnings transferred from the 1995 Section under regulation 3.K.3(4) will count at the length or value determined after the application of the factor specified in those regulations for the purpose of calculating—
 - (i) any reference amount referred to regulations 4.B.2 to 4.B.7A; and
 - (ii) any top up amount referred to in regulation 4.C.1 or, as the case may be, 4.C.2.

(3) This paragraph applies if a 2008 Section Optant has—

- (a) officer service that counts under regulation 2.K.3(4); or
- (b) pensionable earnings in respect of practitioner service that counts under regulation 3.K.3(4); and
- (c) that officer service or those pensionable earnings comprise two or more periods (separated by at least one day) of such service or two or more periods (separated by at least one day) in respect of which such earnings were earned.

(4) Where paragraph (3) applies, each separate period of officer service or each separate period in respect of which pensionable earnings were earned, shall be calculated using the formula set out in paragraph (5) for the purposes of calculating—

- (a) any reference amount referred to in regulations 4.B.2 to 4.B.7A; and
- (b) any top up amount referred to in regulation 4.C.1 or, as the case may be, 4.C.2.

(5) That formula is—

- (a) where paragraph (3)(a) applies—

$$TNS \times \frac{PGS}{TGS}$$

where—

TNS is the total (net) service transferred to this Section in regulation 2.K.3(4), after multiplying by the factor applicable to the case;

PGS is any part (gross) period of service within the total transferred to this Section in regulation 2.K.3(4), before multiplying by the factor applicable to the case; and

TGS is the total (gross) service transferred to this Section in regulation 2.K.3(4);

(b) where paragraph (3)(b) applies—

$$TNE \times \frac{PGE}{TGE}$$

where—

TNE is the total (net) pensionable earnings transferred to this Section in regulation 3.K.3(4), after multiplying by the factor applicable to the case;

PGE is any part (gross) amount of pensionable earnings within the total transferred to this Section in regulation 3.K.3(4), before multiplying by the factor applicable to the case; and

TGE is the total (gross) amount of pensionable earnings transferred to this Section in regulation 3.K.3(4).

3.K.20 Circumstances in which a 1995 Section member may defer making an option to join this Section of the scheme under regulation 3.K.2

(1) This regulation applies to a person who—

(a) on, or after, 1 October 2009—

(i) is an active member of the 1995 Section; or

(ii) is a member of that Section who is absent from work because of illness or injury and whose earnings have ceased in the circumstances described in regulation P2(2)(a) of the 1995 Regulations (absence because of illness or injury);

(b) has submitted a form AW8 (or such other form as the Scottish Ministers were willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill health pension payable in accordance with regulation E2A of the 1995 Regulations;

(c) submitted the form under sub-paragraph (b) and that form and supporting medical evidence was received by the Scottish Ministers—

(i) before the date on which a comparative statement of benefits under the 1995 Section and the 2008 Section of the scheme is sent to the person (whether by electronic communication or otherwise) in accordance with regulation 3.K.2; or

(ii) if such a statement has been issued to that person, before the date specified by the Scottish Ministers for the purposes of paragraph (3) of that regulation.

(2) A person to whom paragraph (1) applies may opt to join this Section of the scheme in accordance with paragraph (3).

(3) Subject to paragraph (4) the option under paragraph (2) may only be exercised if—

- (a) the person gives notice in writing to the scheme administrator in such form as the Scottish Ministers require; and
- (b) that notice is received by the scheme administrator within a period of four months starting where —
 - (i) that person is sent a written notification of the Scottish Ministers’ decision as to whether, in consideration of the form and medical evidence referred to in paragraph (1), that person has met the lower tier or the upper tier condition specified in regulation E2A of the 1995 Regulations (“the first decision”), the date of that decision;
 - (ii) that person is sent a written notification of the Scottish Ministers’ decision in respect of the stage one dispute, (“stage one decision”), the date of that decision;
 - (iii) that person is sent a written notification of the Scottish Ministers’ decision in respect of the stage two dispute, (“stage two decision”) the date of that decision;
 - (iv) that person is sent written notification of the final determination by the Pensions Ombudsman.
- (4) Paragraph (3) shall cease to apply to any person if at any time that person—
 - (a) returns to practitioner service; or
 - (b) claims a pension under regulation E5 (early retirement pension (with actuarial reduction) or E6 (preserved pension) of the 1995 Regulations.
- (5) For the purpose of this regulation—
 - “stage one dispute” means a request made to the Scottish Ministers for a review of the first decision under section 50 of the 1995 Act (resolution of disputes), that is received by the Scottish Ministers within a period of six months starting with the date on which that person was sent written notification of the original decision;
 - “stage two dispute” means a request made to the Scottish Ministers to review the stage one decision under section 50 of the 1995 Act that is received by the Scottish Ministers within a period of six months starting with the day on which that person is sent a written notification of a stage one decision; and
 - “final determination by the Pensions Ombudsman” means a written determination under Part X of the 1993 Act made as the result of the investigation of a complaint by the person in respect of the stage two decision that was received by the Pensions Ombudsman within a period of three years starting with the day on which the person is sent written notification of the stage two decision.

3.K.21 2008 Section Optants who are in receipt of a lower tier ill health pension under Regulation E2A of the 1995 Regulations

- (1) This regulation applies to a 2008 Section Optant who—
 - (a) is entitled to a lower tier ill health pension under regulation E2A of the 1995 Regulations 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 an Optant can count 45 years of pensionable service for any purpose, the earlier 1995 Section service and the later 2008 Section service are aggregated.

(3) If, on the termination of the later 2008 Section service the Optant becomes entitled, under regulation 3.D.7, to—

- (a) a lower tier ill health pension; or
- (b) an upper tier ill health pension,

in respect of the later 2008 Section service, the Optant is entitled to the benefits set out in paragraph (4).

(4) Subject to paragraph (5) and regulations 3.K.13 to 3.K.16 and 3.K.18 the benefits mentioned in paragraph (3) are—

- (a) the member's 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.

(5) If the Optant—

- (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; and
- (c) becomes entitled to a lower tier ill health pension or, as the case may be, upper tier ill health pension in respect of later 2008 Section service on the termination of that later service,

the Optant is entitled to the benefits set out in paragraph (6).

(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.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

(1) This regulation applies to a 2008 Section Optant who, on the date of that Optant's death—

- (a) is entitled to a lower tier ill health pension under regulation E2A of the 1995 Regulations in respect of service in the 1995 Section; and
- (b) 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 an Optant referred to in paragraph (1) shall be—

- (a) calculated in accordance with whichever of paragraph (3),(4) or (5) applies to that Optant; and
- (b) paid in place of the lump sum that, apart from this regulation, would otherwise be payable in respect of that Optant's later 2008 Section service under regulation 2.E.17.

(3) If the deceased Optant was, at the date of the Optant's death, an active member who had not exercised the option under regulation 3.D.5 (partial retirement: members aged at least 55), the lump sum referred to in paragraph (2)(a) is an amount equal to five times the annual rate of pension—

- (a) payable under regulation 3.D.7(5) (upper tier ill health pension), if the deceased Optant had not reached the age of 65; or
- (b) payable under regulation 3.D.1 (normal retirement pensions), if the deceased Optant had reached the age of 65,

to which the deceased Optant would have been entitled at the date of the Optant's death.

(4) If the deceased Optant was a non-contributing member who had not exercised the option under regulation 3.D.5 (partial retirement: members aged at least 55), the lump sum referred to in paragraph (2)(a) is an amount equal to five times the annual rate of pension—

- (a) payable under regulation 3.D.7(5) (upper tier ill health pension), if the deceased Optant had not reached the age of 65; or
- (b) payable under regulation 3.D.1 (normal retirement pensions), if the deceased Optant had reached the age of 65,

to which the Optant would have been entitled on the last day of the Optant's pensionable service.

(5) If the Optant 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.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

(1) This regulation applies to a 2008 Section Optant ("a deceased Optant") who, in respect of service in this Section of the scheme ("the later active 2008 Section service"), was—

- (a) at the date of the Optant's death—
 - (i) an active member;
 - (ii) a non-contributing member;
 - (iii) a pensioner member; or
 - (iv) a deferred member; and
- (b) on that date was entitled to a lower tier ill health pension under regulation E2A of the 1995 Regulations in respect of service in the 1995 Section ("the earlier 1995 Section service").

(2) In the case of a deceased Optant referred to in paragraph (1)(a)(i) and (ii), "the basic death pension" for the purposes of 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) means twice the appropriate proportion of the deceased member's pension under regulation 3.D.1 and—

- (a) in the case of a deceased Optant who was, at the date of the Optant'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 the deceased Optant had become entitled to an upper tier ill health pension at that date; and

- (ii) the deceased Optant’s later 2008 Section service as an active member plus the difference between—
 - (aa) the aggregate of the deceased Optant’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 head (aa) is less than that specified in head (bb);
 - (b) in the case of a deceased Optant referred to in paragraph (1)(a)(ii) the pensionable service that the deceased Optant was entitled to count under this Section of the scheme on the date of Optant’s death.
- (3) In the case of a deceased Optant referred to in paragraph (1)(a)(iii) “the basic death pension” for the purposes of regulation 3.E.11(3) (amount of children’s pension under regulation 3.E.8: deceased pensioner members) means the greater of—
- (a) twice the appropriate proportion of the deceased Optant’s annual pension (disregarding any additional pension); and
 - (b) twice the appropriate proportion of the annual pension which the deceased would have been entitled calculated as the aggregate of the deceased Optant’s later 2008 Section service plus the difference between—
 - (i) the aggregate of the Optant’s earlier 1995 Section service and the later 2008 Section service; and
 - (ii) 10 years pensionable service,
 where the amount of service in head (aa) is less than that specified in head (bb).
- (4) In the case of a deceased Optant referred to in paragraph (1)(a)(iv), “the basic death pension” for the purposes of regulation 3.E.12(3) (amount of children’s pension under regulation 3.E.8: deceased deferred members) means—
- (a) if the deceased 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 3.E.10 if the deceased Optant had died on the day of so ceasing (disregarding any additional pension); and
 - (b) if the deceased 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 the deceased 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 the deceased would have been entitled in respect of the aggregate of the deceased Optant’s later 2008 Section service that has been deferred plus the difference between—
 - (aa) the aggregate of the Optant’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 head (aa) is less than that specified in head (bb).”.

Amendment of regulation 4.A.2

- 95.** In regulation 4.A.2 (interpretation: general)—

- (a) at the appropriate place in alphabetical order insert—
 - ““calculation method D” means the calculation method provided for in regulation 4.B.11;”; and
 - ““increment period” has the meaning given in regulation 4.B.11(2);”; and
- (b) omit the definition of “principal practitioner”.

Amendment of regulation 4.B.1

96. In regulation 4.B.1(2)(a) and (b) (application of Chapter 4.B) omit “principal”.

Amendment of regulation 4.B.2

97. In regulation 4.B.2(1) (cases with up to 10 years officer service) omit “principal”.

Amendment of regulation 4.B.3

98. In regulation 4.B.3 (cases with more than 10 years officer service) omit “principal”.

New regulation 4.B.7A

99. After regulation 4.B.7 (cases with one year or more of concurrent officer service), insert—

“Non-concurrent Officer and Practitioner Service

4.B.7A Cases with non-concurrent officer service between periods of practitioner service

Where a member who, before commencing the member’s final period of practitioner service, has service as an officer (whether that service as an officer consists of a separate period of such service or two or more such periods), and—

- (a) that officer service is preceded by an earlier period of practitioner service; and
- (b) some or all of the member’s officer service is not concurrent with practitioner service,

the reference amount in respect of such part of that officer service that is not concurrent with practitioner service shall be the better of—

- (i) the amount determined by calculation method D; and
- (ii) the base amount.”.

Amendment of regulation 4.B.8

- 100.—(1) Regulation 4.B.8 (calculation method A) shall be amended as follows.
- (2) Before “Calculation method A” insert paragraph number “(1)”.
- (3) After the newly numbered paragraph (1) insert—
- “(2) Where paragraph (1) applies—
 - (a) the member is entitled to count part of the period of officer service referred to in that paragraph as a result of a transfer-in under regulation 3.F.10; and
 - (b) the transfer-in is other than a transfer-in referred to in regulation 3.F.11(6),

for the purposes of any calculation under regulation 4.B.2(1)(a) or 4.B.3(a), the amount of the pensionable pay deemed to be received in respect of that part period of officer service will be calculated in accordance with regulation 3.F.11(2).”.

New regulation 4.B.11

101. After regulation 4.B.10 (calculation method C), insert—

“4.B.11 Calculation method D

(1) Calculation method D is the aggregate of the amounts payable under paragraphs (2), (3) and (4).

(2) Subject to paragraph (5), the amounts payable under this paragraph are the additional amount that would be payable under Part 2 for the member’s period, or periods, of non-concurrent officer service (described in regulation 4.B.7A) in respect of the member’s pension and any retirement lump sum payable—

- (a) as a result of the member exercising the option under regulation 3.D.10; and
- (b) in the case of a 2008 Section Optant, the lump sum paid to that Optant under regulation 3.K.11,

if those amounts were each subject to a 1.5% increase for each whole year or part of a year within the increment period.

(3) The amounts payable under this paragraph are the amounts that would be payable under Part 2 for the member’s period, or periods, of non-concurrent officer service (described in regulation 4.B.7A), were it not for the additional amounts calculated under paragraph (2).

(4) The amounts payable under this paragraph are the amounts payable under Chapter 3.D.

(5) For the purposes of paragraph (2)—

- (a) the increase referred to in that paragraph shall—
 - (i) be applied in like manner and at the same intervals as an increase applied to a pension under the Pensions (Increase) Act 1971(4); and
 - (ii) be effective immediately before the pension and lump sum become payable with the member’s benefits from practitioner service under Chapter 3.D; and
- (b) the increment period referred to in paragraph (2) shall—
 - (i) begin with the day immediately following the day on which the officer service referred to in paragraph (2) ceased for the last time; and
 - (ii) end with the day immediately before the pension and retirement lump sum become payable with the member’s benefits from practitioner service under Chapter 3.D.”.

Amendment of regulation 4.C.1

102.—(1) In regulation 4.C.1(1) (top-up where reference amount greater than base amount) for “4.B.7 (cases with more than one year of concurrent officer service)” substitute “4.B.7A (cases with non-concurrent officer service between periods of practitioner service)”.

(2) In regulation 4.C.1(2) for “4.B.7” substitute “4.B.7A”.

Schedule 2 to these Regulations

103. Schedule 2 to these Regulations shall have effect.