

2004 No. 62

NATIONAL HEALTH SERVICE

**The National Health Service Superannuation Scheme (Scotland)
(Additional Voluntary Contributions) Amendment
Regulations 2004**

Made - - - - *10th February 2004*

Laid before the Scottish Parliament *19th February 2004*

Coming into force - - *26th March 2004*

The Scottish Ministers, in exercise of the powers conferred by sections 10 and 12 of, and Schedule 3 to, the Superannuation Act 1972(a) and of all other powers enabling them in that behalf, after consulting such representatives of persons likely to be affected by these Regulations as appear to them to be appropriate in accordance with section 10(4) of that Act, and with the consent of the Treasury, hereby make the following Regulations:

Citation, commencement, effect and extent

1.—(1) These Regulations may be cited as the National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Amendment Regulations 2004 and shall come into force on 26th March 2004, but regulation 9(c) has effect from 1st November 1999(b).

(2) These Regulations extend to Scotland only.

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

2. The National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998(c) are amended in accordance with the following regulations.

Interpretation

3. In paragraph (1) of regulation 2(d)—

(a) for the definition of “dependant” substitute—

(a) 1972 c.11 (“the Act”); sections 10 and 12 of the Act were amended by the Pensions (Miscellaneous Provisions) Act 1990 (c.7) (“the 1990 Act”), sections 4(2), 8(5), 8(6) and 10 and the National Health Service Reorganisation Act 1973 (c.32) sections 57, 58 and Schedule 5; section 10(6) of the Act was inserted by the 1990 Act, section 8(6), and amended by the Pension Schemes Act 1993 (c.48), section 190 and Schedule 8, paragraph 7, and by S.I. 2001/3649 Part 3 Article 108. Functions under the Act as regards Scotland are transferred by S.I. 1999/1750, article 2 and schedule 1. The requirement for consent by the Minister for the Civil Service under section 10 of the Act was transferred to the Treasury by virtue of S.I. 1981/1670, and the consent of the Treasury is required in the exercise by the Scottish Ministers of the transferred functions by virtue of S.I. 1999/1750, schedule 1.

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

(c) S.I. 1998/1451, amended by S.S.I. 2001/465 and S.I. 2001/3649.

(d) Regulation 2 was amended by S.S.I. 2001/465 and S.I. 2001/3649.

- ““dependant” means a surviving spouse (providing the marriage was not, prior to 1st April 1995, subject to a decree of separation) or any surviving child of a participator or a person in whose favour a participator has made an election under regulation J1 of the 1995 Regulations (allocation of pension by member for benefit of dependant)(a)”;
- (b) for the definition of “insurance company” substitute–
- ““insurance company” means–
- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of long-term insurance; or
- (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule to effect or carry out contracts of long-term insurance as a result of satisfying the establishment conditions within the meaning of that Schedule;
- Provided that this definition must be read with–
- (i) section 22 (the classes of activity and categories of investment) of the Financial Services and Markets Act 2000;
- (ii) any relevant order under that section; and
- (iii) Schedule 2 to that Act.”;
- (c) after the definition of “normal benefit age”(b) insert–
- ““occupational pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993(c)”;
- (d) for the definition of “participator” substitute–
- ““participator” means–
- (a) a contributor who has made a benefits election under regulation 11(3);
- (b) a contributor who has died;
- (c) a person who has ceased to be a contributor but has not exercised any right to take a cash equivalent within the meaning of section 94 of the Pension Schemes Act 1993 or to be paid a lump sum under regulation 14; or
- (d) a person in respect of whom investments have been made under regulations 7(1), 8(2) or 9(4);”;
- (e) in the definition of “pensionable employment” after “Scotland” insert–
- “, or such other employment as the Scottish Ministers may approve for the purposes of a direction under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967(d).”;
- (f) omit paragraph (1A) of regulation 2(e).

Making and acceptance of elections

4. In regulation 3–

- (a) in paragraph (3)(a) after “absence from work” insert “due to ill-health”;
- (b) at the end of paragraph (3)(b) insert “on the date on which the notice of such an election is received by the Scottish Ministers”;

(a) S.I. 1995/365, amended by S.I. 1997/1434 and 1916, 1998/1593, 1999/443 and 2001/3649, and S.S.I. 2001/437, 2001/465, 2003/55, and 2003/270.

(b) The definition of “normal benefit age” was inserted by regulation 1 of S.S.I. 2001/465.

(c) 1993 c.48.

(d) 1967, c.28. Section 7 was amended by Articles 2 and 5(4)(a) of S.I. 1968/1699; Section 10(5), paragraph. 66(a) and (b) of Schedule 6, and Schedule 8 of the Act; the National Health Service Act 1977 (c.49), Schedule 15, paragraph 40; the National Health Service Reorganisation Act 1973 (c.32), Schedule 5; and the National Health Service (Scotland) Act 1978 (c.29), Schedule 16, paragraph 24.

(e) Paragraph (1A) of regulation 2 was inserted by S.I. 2001/3649.

(c) after paragraph (7) insert–

“(8) The Scottish Ministers shall notify in writing the person who has made an election under paragraph (1) of their acceptance of that election.”.

Payment and amount of additional voluntary contributions

5. In regulation 4–

(a) in paragraph (2)–

(i) after “authorisation” insert “from the authorised provider”; and

(ii) for “but not later than 10 days following the pay period in which the contributions are deducted.” substitute “but not later than 7 days after their deduction.”;

(b) in paragraph (4)–

(i) for “paragraph 15(4)” substitute “paragraph 19(4)”; and

(ii) for “Schedule” substitute “Schedule 1”.

Circumstances in which elections cease to have effect

6. In regulation 6–

(a) for “An” substitute “(1) Subject to paragraph (2), an”;

(b) after sub-paragraph (d) insert–

“(2) Where paragraph (1)(a) or (b) above applies, an election shall be treated as not having ceased to have effect if a contributor gives written notice to the Scottish Ministers for the purpose specified in regulation 5(1)(c).”.

Inward transfers

7. In regulation 8(1) omit “during any previous employment”.

Outward transfers

8. For regulation 10 substitute–

“Outward transfers

10.—(1) Subject to paragraphs (4) to (7), the Scottish Ministers shall as soon as is reasonably practicable after having received a notice in writing from an eligible person requesting a transfer of the value of that person’s investments made in relation to that person under regulation 7(1), 8(2) or 9(4), pay a transfer value representing the value of all such investments at that person’s option–

(a) where that person has left pensionable employment, to one of the schemes specified in paragraph (2) in which that person may be participating; or

(b) where that person remains in pensionable employment, to the scheme specified in paragraph (3).

(2) The schemes specified in this paragraph are–

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

(b) a personal pension scheme, including a personal pension scheme which is a stakeholder pension scheme under Part 1 of the Welfare Reform and Pensions Act 1999^(b) (stakeholder pension schemes);

^(a) 1988, c.1.
^(b) 1999 c.30.

(c) an occupational pension scheme which is a stakeholder pension scheme under Part 1 of the Welfare Reform and Pensions Act 1999; and

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

(3) The scheme specified in this paragraph is a free-standing additional voluntary contributions scheme.

(4) Where the Scottish Ministers are required under paragraph (1) above to make a transfer payment in circumstances where a transfer payment in respect of an eligible person is also provided and used in accordance with regulation M1 of the 1995 Regulations (member's right to transfer or buy-out), they shall do so by whichever is the earlier of–

(a) the end of the period of 6 months beginning with the guarantee date; or

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

(i) ceased to be subject to the NHS Superannuation Scheme on a date prior to his attaining the age of 59 years; and

(ii) made an application for a transfer payment within six months of that date, the date on which the person attains age 60.

(5) In any case where the Scottish Ministers have directed under regulation 20 (loss of rights to benefit) that all or part of any of an eligible person's rights to benefits under these Regulations are to be forfeited, the cash equivalent payable in respect of that person shall be reduced by the capitalised value of the rights which are to be forfeited.

(6) If disciplinary or court proceedings are commenced against the eligible person within 12 months after he leaves pensionable employment and it appears to the Scottish Ministers that the proceedings may lead to all or part of that person's rights to benefits being forfeited in accordance with regulation 20, the Scottish Ministers may defer doing what is required of them under this regulation to carry out the requirements of that eligible person until the date 3 months after the conclusion of those proceedings (including any proceedings on appeal) where that date is later than the date which would otherwise apply by virtue of paragraph (4) above.

(7) Where the Scottish Ministers have done what is required of them to carry out the requirements of the eligible person under this regulation, the Scottish Ministers shall be discharged from any obligation under regulation 15 (payments by the Scottish Ministers) to or in respect of that person.

(8) In this regulation "eligible person" means a person–

(a) who is a contributor; and

(b) either–

(i) has not attained the age of 60 years on or before the date the notice referred to in paragraph (1) above is received by the Scottish Ministers; or

(ii) to whom regulation M6(a) of the 1995 Regulations (special terms for transfers out (bulk transfers etc.)) applies.”.

Retirement and dependant's pensions

9. In Regulation 11–

(a) in paragraph (3) after “Not earlier than 3 months before” insert “ the date of”;

(b) at the end of paragraph (4) insert the words “in accordance with regulation 15(3)”;

(a) Regulation M6 was substituted by regulation 10 of S.S.I. 2003/55.

(c) for paragraph (6) substitute–

“(6) Notwithstanding whether benefits to which a participator may be entitled under Part E of the 1995 Regulations (benefits for members) are payable, where a participator’s date of retirement falls on or after 1st November 1999 and he or she has–

(a) reached the age of 75; and

(b) failed to give a notice of election under paragraph (3) on or before the date of his or her 75th birthday,

the Scottish Ministers may realise the investments made under regulation 7(1), 8(2) or 9(4) and apply the proceeds to the purchase of a pension policy from an insurance company in order to provide such benefits as appear to them to be suitable.”;

(d) in paragraph (7)–

(i) after “participator dies before” insert “the date of his or her”;

(ii) for “paragraph 15” substitute “paragraph 19”; and

(iii) for “Schedule” substitute “Schedule 1”;

(e) at the end of paragraph (8) insert “in accordance with regulation 15(4)”.

Lump sums on death

10. In regulation 12(2) for “paragraph 15(4) of the Schedule” substitute “paragraph 19(4) of Schedule 1”.

Repayment of investments in certain cases

11. At the end of regulation 14(1) insert “in accordance with regulation 15(4)”.

Payments by the Scottish Ministers

12. In regulation 15–

(a) in paragraph (5) for “paragraph 15 of the Schedule” substitute “paragraph 19 of Schedule 1” and in proviso (i), for “paragraph 14 of the Schedule” substitute “paragraph 18 of Schedule 1”;

(b) in paragraph (6) for “paragraphs 7 to 14 inclusive of the Schedule” substitute “paragraphs 11 to 18 inclusive of Schedule 1”; and

(c) in paragraph (10) after “payable” insert “to the participator”.

Information

13. In regulation 16(2) for “A” substitute “Without prejudice to the generality of paragraph (1), a”.

Schedule

14. For Schedule 1 substitute the following Schedule—

“SCHEDULE 1

Regulation 13

Benefit limits

PART I

Interpretation

1. Paragraphs 2 to 10 have effect for defining expressions used in this Schedule.

2. “Adjusted salary” means A + B, where—

- A is the participator’s total taxable earnings for the year in question less any fluctuating emoluments such as bonus payments and payments for overtime, and
- B is the annual average of such fluctuating emoluments. For these purposes such emoluments shall be averaged—
 - (i) in a case where such emoluments have been paid for a period of less than 3 years, over the period during which they have been paid, or
 - (ii) in any other case, over a period of whole years, not being less than 3 consecutive years ending on the last day of the year in question.

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

- C is the highest amount of adjusted salary earned by the participator in respect of pensionable service in any year during the period of five years ending on the material date, and
- D is the annual average of the participator’s adjusted salary in respect of any period of three or more consecutive years ending no earlier than 10 years before the material date,

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

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

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

^(a) Section 590C was inserted by section 75 and paragraph 4 of Schedule 6 of the Finance Act 1989 (c.26).

participator is a person mentioned in regulations C1(3) of the 1995 Regulations (meaning of “pensionable pay”)(a).

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

4. “Material date” means the earlier of–

- (a) the participator’s retirement date; and
- (b) the date on which the participator ceased to be in pensionable employment.

5. “Permitted amount” means–

- (a) in relation to a retirement pension, the amount determined in accordance with whichever of paragraphs 12 to 17 below is applicable in the case of the participator;
- (b) in relation to dependants’ pensions, the amount determined in accordance with whichever of paragraph 18(2) and (3) is applicable in the case of the participator; and
- (c) in relation to lump sum on death the amount determined in accordance with paragraph 19(4).

6.—(1) “Retained benefits” means the total of any pensions payable in respect of employment before the participator entered pensionable employment under–

- (a) a retirement benefits scheme falling within Chapter I of Part XIV of the Taxes Act (retirement benefit schemes, approval of schemes);
- (b) a retirement annuity contract or trust scheme approved under Chapter III of Part XIV of the Taxes Act (retirement annuities);
- (c) a personal pension scheme approved under Chapter IV of Part XIV of the Taxes Act (personal pension schemes);
- (d) a statutory scheme as defined in section 612(1) of the Taxes Act (other interpretative provisions, and regulations for purposes of this Chapter); or
- (e) an approved scheme.

(2) Where the participator joined the NHS Superannuation Scheme on or after 1st June 1989, retained benefits may be ignored if his salary during his first year of being employed by an employing authority does not exceed one quarter of the permitted maximum under section 590C of the Taxes Act (conditions for approval of retirement benefits schemes: earnings cap).

(3) Where the participator joined the NHS Superannuation Scheme before 1st June 1989, retained benefits may be ignored if his salary during the year in which he made an election under regulation 3 did not exceed one quarter of the permitted maximum under section 590C of the Taxes Act.

(4) In this paragraph–

- (a) “employing authority”(b) has the meaning given to that expression in regulation A2 of the 1995 Regulations (Interpretation); and
- (b) “pension” includes the actuarial equivalent as an annual pension, as determined by the Board of Inland Revenue, of any lump sum.

7. “Tax year” means the 12 months beginning with 6th April in any year.

8. “Total retirement benefits” means the total of so much of–

- (a) the annual rate of the participator’s retirement pension derived from an annuity purchased in accordance with these Regulations;

(a) Regulation C2 was amended by regulation 4 of S.I. 1997/1916.

(b) The definition of “employing authority” was amended by S.I. 1997/1916, 1998/1593 and S.S.I. 2001/437, 2003/55.

- (b) the annual rate of any pension payable under Part E of the 1995 Regulations (benefits for members);
- (c) the annual rate of any pensions payable to the participator under any approved scheme; and
- (d) the actuarial equivalent as an annual pension, as determined by the Board of Inland Revenue, of any retirement lump sum under—
 - (i) the 1995 Regulations; or
 - (ii) an approved scheme,

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

9. “Total taxable earnings” means all salary, wages, fees and other regular payments made to a participator in respect of pensionable employment which are chargeable to income tax under Schedule D or Schedule E to Part I of the Taxes Act.

10. “The year in question” means—

- (a) in the case of a practitioner—
 - (i) a 12 month period running from 1st April to 31st March; or
 - (ii) a 12 month period ending on the practitioner’s date of termination of employment,
 whichever is more favourable to the practitioner; or
- (b) in any other case, a 12 month period ending on the participator’s date of termination of employment.

PART II

Retirement Pensions

11. The annual rate of a participator’s retirement pension derived from an annuity purchased in accordance with these Regulations must not be such as to cause the participator’s total retirement benefits to exceed the permitted amount.

12.—(1) If the participator becomes entitled to a pension under regulation E1 of the 1995 Regulations (normal retirement pension) on his or her 60th birthday, the permitted amount is the greater of E and F, where—

- E is 1/60th of the participator’s final remuneration multiplied by the number of years of his pensionable service not exceeding 40 years;
- F is the lesser of G and H.

(2) For the purposes of sub-paragraph (1)—

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

TABLE

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

and

(ii) in any other case, is 1/30th of the participator's final remuneration multiplied by the number of years of pensionable service, not exceeding 20 years; and

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

13. If the participator becomes entitled to a pension under the 1995 Regulations on a date later than his 60th birthday, the permitted amount is the greater of J, K, KK and where applicable, L, where—

J is an amount calculated in accordance with paragraph 12 as at the material date;

K is an amount calculated in accordance with paragraph 12 as at the participator's 60th birthday increased, up to the date of his retirement, in proportion to any increase in the Index during that period;

KK is an amount calculated in accordance with paragraph 12 as at the participator's 60th birthday increased up to the date of retirement by such amount as the Government Actuary advises is appropriate having regard to the period of postponement of payment of the participator's pension after his 60th birthday; and

L is, in the case of a participator with more than 40 years of pensionable service, 1/60th of the participator's final remuneration multiplied by the number of years of pensionable service not exceeding 45 years, excluding any years before the participator's 60th birthday in excess of 40.

14.—(1) If the participator becomes entitled to a pension under regulation E6 (preserved pension) of the 1995 Regulations the permitted amount is—

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

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

where

M is 1/60th of the final remuneration, multiplied by the number of years of pensionable service not exceeding 40 years;

N is the number of years on which M is calculated;

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

Q is the maximum amount calculated in accordance with paragraph 12, if the participator had continued in pensionable employment until he or she attained the age of 60;

R is the appropriate increase; and

(b) in any other case, the amounts calculated in accordance with paragraph 12(1), (2)(a)(ii) and (2)(b), increased up to the date of his retirement in proportion to any increase in the Index during that period.

(2) For the purpose of sub-paragraph (1)(a), the “appropriate increase” is an increase in the amount in question in proportion to any increase in the Index during the period beginning with the cessation of pensionable employment and ending with the date of payment of the participator’s retirement pension.

15. In their application to persons who are special class officers for the purposes of regulations R2 (nurses, physiotherapists, midwives and health visitors) and R3 (mental health officers) of the 1995 Regulations, paragraphs 12 and 13 shall have effect subject to the modification that “55th birthday” shall be substituted for “60th birthday”, and “age of 55” shall be substituted for “age of 60”.

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

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

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

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

(b) in any other case, S.

(2) In sub-paragraph (1) above—

M, N, P and Q have the same meaning as in paragraph 14, and

S is the amount calculated in accordance with paragraph 12(1), (2)(a)(ii) and (2)(b).

PART III

Dependants’ pensions

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

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

(a) that pension; and
(b) any similar pension payable to the dependant under the 1995 Regulations or under a free-standing additional voluntary contributions scheme to which contributions were paid while the participator was in pensionable employment,
and the permitted amount is 2/3rds of the maximum retirement pension.

(3) Subject to sub-paragraph (4), where two or more dependants' pensions are payable, the relevant benefits are—

(a) those pensions; and
(b) any similar pensions payable as mentioned in sub-paragraph (2)(b),
and the permitted amount is the annual rate of the maximum retirement pension.

(4) The relevant benefits payable in respect of any one dependant shall not exceed the permitted amount calculated in accordance with sub-paragraph (2).

(5) Subject to sub-paragraph (6), the maximum retirement pension is the permitted amount calculated in accordance with paragraphs 12 to 17 in relation to the participator, but disregarding any retained benefits.

(6) In calculating the maximum retirement pension—

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

PART IV

Lump sums on death

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

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

- (a) any lump sum death benefit arising pursuant to an election under regulations 3(1)(b), 3(6) or 5(2)(a);
- (b) any lump sum payable under regulation 11(7); and
- (c) any lump sum death benefits which in total exceed £2,500 and are payable under relevant schemes.

(3) The relevant schemes are—

- (a) approved schemes;
- (b) schemes approved under Chapter IV of Part XIV of the Taxes Act (personal pension schemes);
- (c) free-standing additional voluntary contribution schemes;
- (d) retirement annuity contracts approved under Chapter III of Part XIV of the Taxes Act;
- (e) the scheme constituted by the 1995 Regulations; and
- (f) relevant statutory schemes as defined by section 611A(a) of the Taxes Act (definition of relevant statutory scheme).

(a) Section 611A was inserted by paragraphs 15 and 18(1) of Schedule 6 to the Finance Act 1989 (c.26), and amended by section 52(1) and paragraph 5(1) and (2) of Schedule 5 of the Finance Act 1999 (c.16).

(4) The permitted amount for the purpose of regulations 4(4) and 12(2) is £5,000 or, if greater, 4 times the participator's remuneration.

(5) The participator's remuneration is the greater of T, U and V, where—

- T is what the participator's final remuneration would have been if the date of death had been the material date;
- U is the participator's highest year's adjusted salary applicable under paragraph (3) for the purpose of calculating T; and
- V is the participator's total taxable earnings during any period of 12 months ending on a date not more than three years immediately before the date of his death, increased in proportion to any increase in the Index from the end of the year up to the material date as mentioned in paragraph 3(1)."

St Andrew's House,
Edinburgh
27th January 2004

ANDREW P KERR
A member of the Scottish Executive

We consent

NICK AINGER

10th February 2004

JOHN HEPPELL
Two of the Lords Commissioners of
Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make further amendments to the National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998 (“the AVC Regulations”). The AVC Regulations make provision for the payment of additional voluntary contributions by persons who are members of the NHS Superannuation Scheme (Scotland), or by their employers, in order to secure additional pension benefits. Certain provisions have retrospective effect as authorised by section 12 of the Superannuation Act 1972. Regulation 9(c), which substitutes a new Regulation 11(6) of the AVC Regulations, shall have effect from 1st November 1999.

Regulation 1 provides for citation, commencement, and extent.

Regulation 2 prescribes that the AVC Regulations will be amended in accordance with Regulations 3 to 14.

Regulation 3 amends the definition of “dependant” to clarify that the definition includes a person in whose favour an election has been made under regulation JI of the National Health Service Superannuation Scheme (Scotland) Regulations 1995 (allocation of pension by member for benefit of dependent); inserts a revised definition of “insurance company” in accordance with section 255 of the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (meaning of “insurance company”); inserts a definition of “occupational pension scheme”; substitutes a definition of “participator” which clarifies (but does not change) the existing definition; and inserts additional wording in the definition of “pensionable employment” to clarify that the Regulations cover employment approved for the purposes of a direction under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967.

Regulation 4 amends regulation 3 of the AVC Regulations (making and acceptance of elections) to clarify that “absence from work” means absence on ill health; provides that the member is not receiving tax relief under section 594(1) of the Taxes Act on the date on which the notice of such an election is received by the Scottish Ministers and confirms that the member will be notified in writing of the Scottish Ministers acceptance of an election.

Regulation 5 amends regulation 4 of the AVC Regulations (payment and amount of additional voluntary contributions) to reduce the number of days from 10 days to 7 days from the date of deduction for remittance of the members contributions to the Scottish Ministers, and amends a reference to a paragraph in Schedule 1 of the AVC Regulations.

Regulation 6 amends regulation 6 of the AVC Regulations (circumstances in which elections cease to have effect) to provide that an election shall be treated as not having ceased to have effect in circumstances where a contributor is in receipt of pension benefits under the 1995 Regulations, or where the member has left pensionable employment and wished to switch AVC investments or future contributions to another authorised fund.

Regulation 7 removes the restriction which limited inward transfers to contributions paid during any previous employment.

Regulation 8 substitutes a new regulation 10 of the AVC Regulations (outward transfers) and provides that a member who has left pensionable employment and a member continuing in pensionable employment may transfer the value of investments made under these Regulations to another form of pension arrangement, including a free standing additional voluntary contributions scheme (FSAVC), without also having to transfer the value of their pension rights under the 1995 Regulations. Those continuing in NHS employment may only transfer to a FSAVC.

Regulation 9 makes some minor clarifications to regulation 11 of the AVC Regulations (Retirement and dependants' pensions), and amends regulation 11(6) of the AVC Regulations so that, from 1st November 1999, the link between main scheme and AVC scheme benefits is broken, and members may leave their investments or take them at any time up to age 75. If the member fails to make an election on or before his 75th birthday, the Scottish Ministers may realise the investments in order to provide benefits.

Regulations 10 to 13 amend paragraph references to take account of the revised numbering in the new Schedule 1, and make minor technical changes.

Regulation 14 inserts a new Schedule 1 of the AVC Regulations, in which the paragraphs have been renumbered to include additional definitions, clarify the Inland Revenue relaxations in respect of retained benefits and raise the limit on retirement pensions in cases where the member retires after age 60 and is entitled to a greater pension because of its postponement.

Within the new Schedule 1:

Part I (Benefit limits) includes definitions for "permitted amount", "Tax year", "Total retirement benefits" and "the year in question". The definition of "retained benefits" has been adjusted to include the Inland Revenue relaxations which allow retained benefits to be ignored in certain circumstances.

Part II (Retirement pensions) incorporates in paragraph 13, a new provision KK, so as to raise the limit for retirement pensions in cases where the member retires after age 60 and is entitled to a greater pension because of its postponement, and to remove the provision which unintentionally prevented the benefits underpin of 40 years at age 60.

Parts III (Dependants' pensions) and IV (Lump sums on death) - paragraphs have been renumbered.

These Regulations impose no cost on business.

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NATIONAL HEALTH SERVICE

**The National Health Service Superannuation Scheme (Scotland)
(Additional Voluntary Contributions) Amendment
Regulations 2004**

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