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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 544**

The National Health Service (Superannuation Scheme, Injury Benefits, Additional Voluntary Contributions and Compensation for Premature Retirement) (Civil Partnership) (Scotland) Amendment Regulations 2005

PART II

AMENDMENT OF THE SUPERANNUATION SCHEME REGULATIONS

**Interpretation**

6. In regulation A2(4)(1)–  
(a) after the definition of “essential services” insert–

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““ex-civil partner”

A former civil partner to whom pension credit rights under the Scheme have been or are to be allocated following a pension sharing order;” and

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- (b) in the definition of “ex-spouse” for “An individual” substitute “A former spouse”.

**Contributions and other payments by employing authorities**

7. In regulation D2(3)(c)(2) for “widow, widower or dependants” substitute “widow, widower, surviving civil partner or dependants”.

**Early leavers' entitlement to refund of contributions**

8. In regulation E9(2) after “spouse” insert “or civil partner”.

**Payment of lump sum**

9. In regulation F5(3)(3) for “widow or widower” in each place where it occurs, substitute “widow, widower or surviving civil partner”.

**Part G**

10. In the heading to Part G for “WIDOWS AND WIDOWERS” substitute “WIDOWS, WIDOWERS AND SURVIVING CIVIL PARTNERS”.

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(1) Regulation A2(4) was relevantly amended by [S.S.I. 2001/465](#), regulation 3 and Schedule 1 which inserted the definition of “ex-spouse”.  
(2) The current regulation D2(3)(c) was substituted by [S.S.I. 2005/512](#), regulation 13.  
(3) Regulation F5(3) was amended by [S.S.I. 2003/517](#), regulation 4 and [2005/512](#), regulation 17.

## **Widow's pension**

### **11. In regulation G1 (Widow's pension)–**

#### **(a) after paragraph (2) insert–**

“(2A) Subject to paragraphs (3) to (5)–

- (a) no widow's pension shall be payable in respect of any period during which the widow and a woman who is not her civil partner are living together as if they were civil partners; and
- (b) the widow shall cease to be entitled to a widow's pension if she forms a civil partnership.

(2B) Paragraph (2A) shall not apply where the member dies before 5th December 2005.

(2C) For the purposes of this regulation, two people of the same sex are to be regarded as living together as if they were civil partners if they would be regarded as living together as husband and wife if they were not of the same sex.”;

#### **(b) in paragraph (3) after “paragraph (2)” insert “or (2A)”;**

#### **(c) in paragraph (4)–**

- (i) after “remarried” insert “or formed a civil partnership”; and
- (ii) after “married” insert “, or is living together with a woman as if they were civil partners”; and

#### **(d) in paragraph (5) for “remarried if the later marriage”, substitute “remarried or has formed a civil partnership if the later marriage or civil partnership”.**

## **Civil partner's pension**

### **12. After regulation G9 insert–**

#### **“Surviving civil partner's pension**

**G10.—**(1) Subject to the following provisions of this regulation, if a member who is in a civil partnership dies in the circumstances described in any of regulations G2 to G6 and leaves a surviving civil partner, the surviving civil partner shall be entitled to a pension as described in this regulation.

(2) Subject to paragraph (3), regulations G1 to G6 (pensions for widows) apply to the calculation and payment of pensions for surviving civil partners in like manner as they apply to pensions for widows.

(3) When calculating a surviving civil partner's pension, any part of the member's benefit that is based on pensionable service before 6th April 1988 will, subject to paragraphs (4) and (5), be disregarded.

(4) Where regulation G2(3) or G4(2) applies to the calculation of the surviving civil partner's pension on a member's death in pensionable employment or with a preserved pension–

- (a) the whole of the member's pensionable service will be taken into account when calculating whether and (if so) to what extent there would have been an increase, by virtue of regulation E2(3), in the pensionable service on which the member's pension under regulation E2 (early retirement pension on grounds of ill-health) would have been based; and
- (b) the whole period (if any) by which the member's pension would have been increased will be treated as pensionable service after 5th April 1988.

(5) Where regulation G3(2) applies to the calculation of the surviving civil partner's pension, so that the surviving civil partner's pension is equal to the member's pension for a limited period, the surviving civil partner's pension for that limited period will be equal to the whole of the member's pension (including any part of the member's pension that is based on pensionable service before 6th April 1988).

(6) Any reference in these Regulations to regulations G1 to G6 means, in relation to benefits in respect of a member who has formed a civil partnership, those regulations as applicable to the member's surviving civil partner (if any).

(7) For the purposes of this regulation, two people of the same sex are to be regarded as living together as if they were civil partners if they would be regarded as living together as husband and wife if they were not of the same sex.

### **Dependant surviving civil partner's pension**

**G11.**—(1) A member who has formed a civil partnership may, by giving notice in writing to the Scottish Ministers prior to leaving pensionable employment, nominate the other party to the civil partnership to receive a dependant surviving civil partner's pension on the member's death.

(2) The Scottish Ministers shall accept a member's nomination only if they are satisfied that the member's civil partner is permanently incapable of earning a living because of physical or mental infirmity and is wholly or mainly dependent on the member.

(3) If the Scottish Ministers have accepted a member's nomination and the member subsequently dies before the other party to the civil partnership, the dependent surviving civil partner shall be entitled to a dependant surviving civil partner's pension.

(4) The dependant surviving civil partner's pension shall be calculated in the same way as a widow's pension under regulations G1 to G6, but based only on the member's pensionable service before 6th April 1988.

(5) If the Scottish Ministers have accepted a member's nomination for a dependant surviving civil partner's pension and the member's pensionable service started before 6th April 1988 any lump sum payable to the member will be reduced by an amount equal to 1.4 times the yearly rate of the part of the member's pension that is based on pensionable service before 6th April 1988 (except to the extent that any reduction has been off-set under regulation Q2 (right to buy an unreduced retirement sum)).

(6) Where regulation E2(10) or regulation E6(8) applies to a member who has formed a civil partnership, any reference in those regulations to a lump sum payable on retirement shall mean, in relation to a member to whom paragraph (5) of this regulation refers, a lump sum which is not reduced as described in that paragraph.

### **Purchase of surviving civil partner's pension in respect of service prior to 6th April 1988**

**G12.**—(1) Subject to the following provisions of this regulation an officer or a practitioner, unless he is a person in respect of whom a pension has already become payable under regulation E2 (early retirement provision (ill health)) and to whom E2(11) applies, may, in respect of the whole or any part of his contributing service prior to 6th April 1988, elect to purchase an increase in the amount of any surviving civil partner's pension which may become payable by virtue of regulation G10 (surviving civil partner's pension).

(2) The purchase of an increase pursuant to paragraph (1) may be made only in respect of complete years of service unless the officer or practitioner wishes to purchase an increase in respect of all of his service before 6th April 1988 in which case the whole of the requisite

period may be purchased whether or not it constitutes a multiple of complete years of service.

(3) An election pursuant to paragraph (1)–

- (a) shall not be made later than 28th February 2007;
- (b) shall be made by giving notice in writing to the Scottish Ministers specifying the period in respect of which the election is made;
- (c) must be accompanied by a declaration in writing signed by the officer or practitioner that he is of sound health for his age; and
- (d) shall be irrevocable.

(4) Schedule 2, tables 2 and 4, multiplied by a factor of 0.7 shall have effect with regard to the cost of providing the increase provided pursuant to paragraph (1).

### **Increased surviving civil partner’s pension**

**G13.**—(1) If a member, who has formed a civil partnership, elects before 28th February 2007 to buy an increased surviving civil partner’s pension pursuant to regulation G12(1), the surviving civil partner’s pension described in regulation G10 (surviving civil partner’s pension) will be based on pensionable service after 5th April 1988 plus the period of pensionable service before that date that the member elected to buy for this purpose under regulation G12(1).

(2) Subject to paragraph (3) any retirement lump sum payable to a member under regulation E6 (lump sum on retirement), in respect of any period of pensionable service that the member elected to buy as described in paragraph (1), will be reduced by 1.4 times the yearly rate of the member’s pension plus the relevant daily portion of that rate for each additional day (except to the extent that any lump sum reduction has been set off under regulation Q2 (right to buy an unreduced retirement lump sum)).

(3) Where regulation E2(10) or regulation E6(8) applies to a member who has formed a civil partnership, any reference in those regulations to a lump sum payable on retirement shall mean, in relation to a member whom paragraph (2) of this regulation refers, a lump sum which is not reduced as described in that paragraph.

(4) Subject to paragraph (5), where by virtue of an election under regulation G12(1), the amount of the retirement lump sum would fall to be reduced by 1.4 times the yearly rate of the member’s pension plus the relevant daily proportion of that rate for each additional day, the member may, prior to 28th February 2007, make an election to purchase an unreduced lump sum under regulation Q2 (right to buy an unreduced retirement lump sum).

(5) A member who has purchased additional service in accordance with regulation Q1 (right to buy additional service) by way of a payment under regulation Q6 (paying for additional service or an unreduced retirement lump sum by regular additional contributions) may not make an election under paragraph (4) in respect of the purchase of an unreduced lump sum.”.

### **Dependent child**

**13.** In regulation H1(1)–

- (a) in sub-paragraph (b) after “marriage entered into” insert “or a civil partnership formed”; and
- (b) in-sub paragraph (c) after “spouse” insert “or civil partner”.

#### **Child allowance when member dies in pensionable employment**

14. In regulation H3 (child allowance when member dies in pensionable employment)–
- (a) after “spouse” in each place where it occurs, insert “or civil partner”;
  - (b) for “widow’s or widower’s” in each place where it occurs, substitute “widow’s, widower’s or surviving civil partner’s”; and
  - (c) for “widow or widower” in both places where it occurs, substitute “widow, widower or surviving civil partner”.

#### **Child allowance when member dies after pension becomes payable**

15. In regulation H4 (child allowance when member dies after pension becomes payable)–
- (a) after “spouse” in each place where it occurs, insert “or civil partner”;
  - (b) for “widow’s or widower’s” in each place where it occurs, substitute “widow’s, widower’s or surviving civil partner’s”; and
  - (c) for “widow or widower” in both places where it occurs, substitute “widow, widower or surviving civil partner”.

#### **Child allowance when member dies with preserved pension**

16. In regulation H5 (child allowance when member dies with preserved pension)–
- (a) for “or spouse of a parent” in each place where it occurs, substitute “or spouse or civil partner of the parent”; and
  - (b) in paragraph (6), for “widow or widower’s” substitute “widow’s, widower’s or surviving civil partner’s”.

#### **Increase of child allowance when child not dependent on surviving parent or spouse or civil partner of parent**

17. In regulation H7 (Increase of child allowance when child not dependent on surviving parent or spouse of parent)–
- (a) in the heading to the regulation, after “spouse” insert “or civil partner”; and
  - (b) for “(or spouse of a parent)” in each place where it occurs, substitute “(or spouse or civil partner of the parent)”.

#### **Allocation of pension by member for benefit of dependent**

18. In regulation J1 (allocation of pension by member for benefit of dependent)–
- (a) in paragraph (1) after “spouse” insert “, a civil partner”; and
  - (b) in paragraph (2)–
    - (i) after “spouse” insert “or a civil partner”; and
    - (ii) for “widow’s or widower’s” substitute “widow’s, widower’s or surviving civil partner’s”.

#### **Limits on allocation**

19. In regulation J2 (limits on allocation)–
- (a) in paragraph (1) after “spouse” insert “, a civil partner”;
  - (b) in paragraph (2) after “spouse’s pension” insert “, civil partner’s pension”; and

- (c) in paragraph (3) after “or spouse” insert “, civil partner”.

#### **Date on which allocation has effect**

20. In regulation J3(2)(b) for “or spouse” substitute “, spouse or civil partner”.

#### **Guaranteed minimum pensions**

21. In regulation K2 (guaranteed minimum pensions)–

- (a) after paragraph (4) insert–

“(4A) If the member is in a civil partnership and dies leaving a surviving civil partner, the weekly rate of the surviving civil partner’s pension will not be less than one-half of the part of the member’s guaranteed minimum that is attributable to earnings for the tax year 1988 – 1989 and subsequent tax years for any period mentioned in section 17(6) of the Pension Schemes Act 1993(4).”; and

- (b) in paragraph (6) for “widow’s or widower’s” substitute “widow’s, widower’s or surviving civil partner’s”.

#### **Protected rights transferred to the scheme**

22. In regulation K6 (protected rights transferred to the scheme) after “spouse” in both places where it occurs, insert “or civil partner”.

#### **State scheme premiums**

23. In regulation K7(2) for “widow or widower” in both places where it occurs, substitute “widow, widower or surviving civil partner”.

#### **Right to buy additional service**

24. After regulation Q1(5) insert–

“(5A) For the purposes of regulation G10 (surviving civil partner’s pension) if a civil partner exercised his right to buy additional service before 6th April 1988, the additional service bought as a result of the exercise of that right will be treated as service before 6th April 1988.”.

#### **Right to buy an unreduced retirement lump sum**

25. In regulation Q2(1) after “married” insert “or in a civil partnership”.

#### **Paying for unreduced retirement lump sum by single payment**

26. After regulation Q4(2) insert–

“(2A) A member who has formed a civil partnership who wishes to pay for an unreduced lump sum by a single payment must elect to do so within 12 months after nominating his or her civil partner to receive a dependant surviving civil partner’s pension under regulation G11 (dependant surviving civil partner’s pension).”.

#### **Mental health officers**

27. In regulation R3(8)(b)–

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(4) 1993 c. 48.

- (a) for “widow’s or widower’s” substitute “widow’s, widower’s or surviving civil partner’s”; and
- (b) after “(widower’s pension)” insert “or under regulation G11(4) (dependant surviving civil partner’s pension)”.

### **Pension sharing on divorce or nullity of marriage or dissolution or nullity of a civil partnership**

**28.** In the heading to regulation R14 (pension sharing on divorce or nullity of marriage)(5), after “marriage” insert “or dissolution or nullity of a civil partnership”.

### **Benefits on death in pensionable employment after pension becomes payable**

**29.** In regulation S4 (benefits on death in pensionable employment after pension becomes payable)–

- (a) after “spouse” in each place where it occurs, insert “or civil partner”; and
- (b) after “spouse’s” in each place where it occurs, insert “or civil partner’s”.

### **Loss of rights to benefits**

**30.** In regulation T6(1A)(a)(6) for “widow or widower” substitute “widow, widower or surviving civil partner”.

### **Part W**

**31.** In the heading to Part W(7), for “PENSION SHARING ON DIVORCE OR NULLITY OF MARRIAGE” substitute “PENSION SHARING ON DIVORCE OR NULLITY OF MARRIAGE OR ON DISSOLUTION OR NULLITY OF A CIVIL PARTNERSHIP”.

### **Discharge of pension credit liability**

**32.** In regulation W7 (discharge of pension credit liability) after “ex-spouse” in both places where it occurs, insert “or the ex-civil partner”.

### **“Implementation period” for discharge of pension credit**

**33.** In regulation W9 (“Implementation period” for discharge of pension credit)–

- (a) omit “matrimonial” in both places where it occurs; and
- (b) in paragraph (2)(b), for “divorce or annulment” substitute “divorce, annulment or dissolution”.

### **Failure to discharge liability in respect of pension credit within the implementation period – Death of ex-spouse or ex-civil partner within period**

**34.**—(1) In the heading to regulation W10 (failure to discharge liability in respect of pension credit within the implementation period – death of ex-spouse within period) after “ex-spouse” insert “or ex-civil partner.”

(2) In regulation W10(5) after “ex-spouse” insert “or ex-civil partner”.

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(5) Regulation R14 was inserted by [S.S.I. 2001/465](#), regulation 3 and Schedule 1, paragraph 2.

(6) Regulation T6(1A)(a) was inserted by [S.S.I. 2005/512](#), regulation 20.

(7) Part W was inserted by [S.S.I. 2001/465](#) regulation 3 and Schedule 1, paragraph 3.

### **Charges in respect of pension sharing costs**

35. In regulation W18(4) after “spouse” in both places where it occurs, insert “or civil partner”.

### **Medical and dental practitioners**

36. In Schedule 1 (medical and dental practitioners)–
- (a) in the heading to paragraph 15, for “Widow or widower's” substitute “Widow's, widower's or surviving civil partner's”; and
  - (b) after paragraph 16 insert–

#### **“Increased surviving civil partner's pension**

(16A) In the case of a civil partner who made a nomination under regulation G11 (dependant surviving civil partner's pension) or an election under G12 (purchase of surviving civil partner's pension in respect of service prior to 6th April 1988) those regulations are modified so that the lump sum payable on the member's retirement will be reduced by 1.96 per cent of uprated earnings for each complete year of practitioner service plus, the relevant daily proportion for each additional day.”.

### **Pension sharing on divorce or nullity of marriage or the dissolution or nullity of a civil partnership**

37. In Schedule 1A (pension sharing on divorce or nullity of marriage)(8)–
- (a) in the heading, after “MARRIAGE” insert “OR DISSOLUTION OR NULLITY OF A CIVIL PARTNERSHIP”;
  - (b) in the heading to paragraph 3 after “widows and widowers” insert “and surviving civil partners”; and
  - (c) in paragraph 3 for, “widows and widowers” substitute “widows, widowers and surviving civil partners”.

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(8) Schedule 1A was inserted by [S.S.I. 2001/465](#), regulation 3 and Schedule 1, paragraph 4.