

**2005 No. 544**

**NATIONAL HEALTH SERVICE**

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

<i>Made</i> - - - -	<i>31st October 2005</i>
<i>Laid before the Scottish Parliament</i>	<i>4th November 2005</i>
<i>Coming into force</i> - -	<i>5th December 2005</i>

The Scottish Ministers, in exercise of the powers conferred by sections 10, 12 and 24 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 the Scottish Ministers to be appropriate in accordance with section 10(4) of that Act, and with the consent of the Treasury(b), hereby make the following Regulations:

**PART I**  
**GENERAL**

**Citation, commencement, interpretation and extent**

1.—(1) These Regulations may be cited as the National Health Service (Superannuation Scheme, Injury Benefits, Additional Voluntary Contributions and Compensation for Premature Retirement) (Civil Partnership) (Scotland) Amendment Regulations 2005 and shall come into force on 5th December 2005.

(2) In these Regulations—

“the Additional Voluntary Contributions Regulations” means the National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998(c);

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(a) 1972 c.11. Section 10 was amended by the National Health Service (Scotland) Act 1972 (c.58), Schedule 7, Part II, the Pensions (Miscellaneous Provisions) Act 1990 (c.7) (“the 1990 Act”), sections 4(2) and 8(5), the Pension Schemes Act 1993 (c.48), Schedule 8, paragraph 7 and the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001/3649), article 108. Section 12 was amended by the 1990 Act, section 10. Section 24 was amended by the Police Pensions Act 1976 (c.35), Schedule 2, paragraph 10. The functions of the Secretary of State were transferred to Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750), article 2 and Schedule 1.

(b) See the Superannuation Act 1972, section 10(1). This function was transferred to the Treasury by virtue of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I. 1981/1670), article 2 and is still exercisable by virtue of S.I. 1999/1750, article 2 and Schedule 1.

(c) S.I. 1998/1451, amended by S.I. 2001/3649 and S.S.I. 2001/465 and 2004/62.

“the Compensation for Premature Retirement Regulations” means the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003(a);

“the Injury Benefits Regulations” means the National Health Service (Scotland) (Injury Benefits) Regulations 1998(b); and

“the Superannuation Scheme Regulations” means the National Health Service Superannuation Scheme (Scotland) Regulations 1995(c).

(3) These Regulations extend to Scotland only.

### **Amendment of the Superannuation Scheme Regulations**

2. The Superannuation Scheme Regulations shall be amended in accordance with regulations 6 to 37 below.

### **Amendment of the Injury Benefits Regulations**

3. The Injury Benefits Regulations shall be amended in accordance with regulations 38 to 43 below.

### **Amendment of the Additional Voluntary Contributions Regulations**

4. The Additional Voluntary Contributions Regulations shall be amended in accordance with regulations 44 to 47 below.

### **Amendment of the Compensation for Premature Retirement Regulations**

5. The Compensation for Premature Retirement Regulations shall be amended in accordance with regulations 48 to 50 below.

## **PART II**

### **AMENDMENT OF THE SUPERANNUATION SCHEME REGULATIONS**

#### **Interpretation**

6. In regulation A2(4)(d)–

(a) after the definition of “essential services” insert–

““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

(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)(e) for “widow, widower or dependants” substitute “widow, widower, surviving civil partner or dependants”.

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(a) S.S.I. 2003/344, amended by 2005/512.

(b) S.I. 1998/1594, amended by S.I. 1999/444 and S.S.I. 1999/195, 2001/437, 2004/212 and 2005/512.

(c) 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 and 465, 2003/55, 270 and 517 and 2005/512.

(d) Regulation A2(4) was relevantly amended by S.S.I. 2001/465, regulation 3 and Schedule 1 which inserted the definition of “ex-spouse”.

(e) The current regulation D2(3)(c) was substituted by S.S.I. 2005/512, regulation 13.

### **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)(a) 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".

### **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.

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(a) Regulation F5(3) was amended by S.S.I. 2003/517, regulation 4 and 2005/512, regulation 17.

(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 dependant 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(a).”; 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)–

(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)”.

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(a) 1993 c.48.

### **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)(a), 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)(b) for “widow or widower” substitute “widow, widower or surviving civil partner”.

### **Part W**

**31.** In the heading to Part W(c), 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”.

### **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

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

(b) Regulation T6(1A)(a) was inserted by S.S.I. 2005/512, regulation 20.

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



- (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)(a)–

- (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”.

## PART III

### AMENDMENT OF THE INJURY BENEFITS REGULATIONS

**Widow's, widower's or surviving civil partner’s allowance**

**38.** In regulation 7 (widow’s or widower’s allowance)–

- (a) in the heading to the regulation, for “Widow’s or widower’s allowance” substitute “Widow’s, widower’s or surviving civil partner’s allowance”;
- (b) in paragraphs (1) and (2), for “widow or widower” in each place where it occurs, substitute “widow, widower or surviving civil partner”; and
- (c) for paragraph (3) substitute–

“(3) A widow, widower or surviving civil partner shall not be entitled to receive an allowance–

- (a) if the marriage took place or the civil partnership was formed after–
  - (i) the deceased last ceased to be employed as a person to whom these Regulations apply; or
  - (ii) after the date on which his or her earning ability was permanently reduced as a result of the injury or disease,

whichever is the later;

- (b) if at the date of the deceased’s death such widow, widower or surviving civil partner and a man or, as the case may be, a woman to whom he or she is not married or with whom he or she is not in a civil partnership are living together as husband and wife or as civil partners; or
- (c) in respect of any period after such widow, widower or surviving civil partner–
  - (i) remarries or forms a civil partnership; or
  - (ii) starts to live together with another person as if she or he were married to or in a civil partnership with that other person,

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

so, however, that where such subsequent marriage or civil partnership has terminated, the Scottish Ministers may restore an allowance to a widow, widower or surviving civil partner if they are satisfied that such widow, widower or surviving civil partner is suffering hardship.

(3A) Paragraph (3) shall not apply where the person mentioned in regulation 6 dies before 5th December 2005.

(3B) 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.”.

### **Child’s allowance**

**39.** In regulation 8 (child’s allowance)–

- (a) in paragraph (2)(b) after “marriage” insert “or civil partnership”; and
- (b) in paragraph (2)(c) after “spouse” insert “or civil partner”.

### **Dependent relative’s allowance**

**40.** In regulation 9 (dependent relative’s allowance)–

- (a) in paragraph (1)(a) after “spouse’s” insert “or civil partner’s”;
- (b) in paragraph (2)–
  - (i) for “widow or widower” substitute “widow, widower or surviving civil partner”; and
  - (ii) after “spouse” in both places where it occurs, insert “or civil partner”;
- (c) in paragraph (4) after sub paragraph (a) insert–

“(aa) if he or she subsequently forms a civil partnership or lives together with another person as if they were civil partners of each other; or”; and

- (d) after paragraph (4) insert–

“(4A) Paragraph (4)(aa) shall not apply where the event which qualified a person to participate in benefits occurred before 5th December 2005.

(4B) 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.”.

### **Lump sum payment on death**

**41.** In regulation 11(1)–

- (a) in sub-paragraph (a) for “widow or widower” substitute “widow, widower or surviving civil partner”; and
- (b) in sub-paragraph (b) after “spouse” insert “or civil partner”.

### **Incidental provisions**

**42.** In regulation 12(3) for “the widow’s or the widower’s pension” substitute “the widow’s, the widower’s or the surviving civil partner’s pension”.

### **Determination of questions**

**43.** In regulation 22 (determination of questions) for “widow or widower” substitute “widow, widower or surviving civil partner”.

**PART IV**  
**AMENDMENT OF THE ADDITIONAL VOLUNTARY CONTRIBUTIONS**  
**REGULATIONS**

**Interpretation**

**44.** In regulation 2(1)(a), in the definition of “dependant” after “decree of separation)” insert “, a surviving civil partner”.

**Payments by the Scottish Ministers**

**45.** In regulation 15 (payments by Secretary of State)(b), after “spouse” in each place where it occurs, insert “or civil partner”.

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

**46.** In the heading to regulation 17A (pension sharing on divorce or nullity of marriage) after “marriage”, insert “or dissolution or nullity of civil partnership”.

**Schedule 2**

**47.** In Schedule 2 (pension sharing on divorce or nullity of marriage)(c)–

- (a) in the heading to the Schedule, after “MARRIAGE” insert “OR DISSOLUTION OR NULLITY OF CIVIL PARTNERSHIP”; and
- (b) in paragraph 11(2) for “widow or widower”, in each place where it occurs, substitute “widow, widower or surviving civil partner”.

**PART V**  
**AMENDMENT OF THE COMPENSATION FOR PREMATURE RETIREMENT**  
**REGULATIONS**

**Partial surrender of annual allowance**

**48.** In regulation 7 (partial surrender of annual allowance) after “spouse” insert “or civil partner”.

**Compensation payable to widow, widower, surviving civil partner or dependants**

**49.** In regulation 8 (compensation payable to widow, widower or dependants)–

- (a) in the heading preceding it, after “widower” insert “, surviving civil partner”; and
- (b) after “widower” in each place where it occurs, insert “, surviving civil partner”.

**Compensation where lump sum on death becomes payable**

**50.** In regulation 9(1), after “widower” in both places where it occurs, insert “, surviving civil partner”.

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(a) The current definition of “dependant” in regulation 2(1) was substituted by S.S.I. 2004/62, regulation 3.  
(b) Regulation 15 was amended by S.S.I. 2004/62, regulation 12.  
(c) Schedule 2 was inserted by S.S.I. 2001/465, regulation 4 and Schedule 2, paragraph 6.

PART VI  
OPT OUT

**Right to opt out**

**51.**—(1) Where—

- (a) apart from this regulation, the amendments made by regulations 2 to 43 would place any relevant beneficiary in a worse position than that in which he or she would otherwise be; and
- (b) that relevant beneficiary so elects by notice in writing given to the Scottish Ministers before 5th June 2006,

then the Superannuation Scheme Regulations, or as the case may be, the Injury Benefits Regulations shall have effect in relation to him or her as if those amendments had never been made.

(2) For the purposes of paragraph (1), a relevant beneficiary is a person to whom any benefit is or may become payable being a benefit payable to or in respect of a person who—

- (a) ceased to hold an employment or office in respect of which he or she was a member or qualified to participate in benefits (whether or not he or she had subsequently recommenced any such employment or office); or
- (b) died while in such employment or office,

before the date on which these Regulations come into force.

*GEORGE LYON*  
Authorised to sign by the Scottish Ministers

St Andrew's House,  
Edinburgh  
26th October 2005

We consent

31st October 2005

*VERNON COAKER*  
*DAVE WATTS*  
Two of the Lords Commissioners of Her Majesty's Treasury

## EXPLANATORY NOTE

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

These Regulations, which come into force on 5<sup>th</sup> December 2005, make further amendments to the National Health Service Superannuation Scheme (Scotland) Regulations 1995 (“the Superannuation Scheme Regulations”), the National Health Service (Scotland) (Injury Benefits) Regulations 1998 (“the Injury Benefits Regulations”), the National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998 (“the Additional Voluntary Contributions Regulations”) and the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003 (“the Compensation for Premature Retirement Regulations”) (together “the principal Regulations”).

The amendments in these Regulations make provision following the introduction of the new status of civil partner by the Civil Partnership Act 2004 (c.33). The changes of substance to the principal Regulations made by these Regulations are described below.

Regulations 2 and 6 to 37 in Part II of these Regulations amend the Superannuation Scheme Regulations as follows:

Regulation 7 amends regulation D2(3)(c) to provide that employers will meet the cost of a surviving civil partner pension where a member’s pension has become payable under regulation E3 (early retirement pension (redundancy etc.)) or E4 (early retirement pension (employer’s consent)).

Regulation 8 amends regulation E9(2) to require a pension to be paid in certain circumstances to a surviving civil partner of a member who had a guaranteed minimum pension (within the meaning of the Pensions Schemes Act 1993 (c.48)).

Regulation 9 amends regulation F5(3) to require that a lump sum payable on death may be paid to the member’s surviving civil partner except where a member has given notice to the Scottish Ministers that the surviving civil partner is not to receive payment.

Regulation 11 inserts new paragraphs (2A), (2B) and (2C) into regulation G1 and amends regulations G1(4) and G1(5) to provide that widows widowed after 5<sup>th</sup> December 2005 are subject to regulations applying to cohabitation as civil partners or the formation of a new civil partnership.

Regulation 12 inserts new regulations G10 to G13. Regulation G10 provides for a pension to be payable to surviving civil partners of deceased scheme members. Regulation G11 allows scheme members to nominate the other party to their civil partnership to receive a dependant surviving civil partner’s pension on the member’s death. Regulation G12 allows any officer or a practitioner to purchase an increase in their surviving civil partner’s pension for service prior to 6th April 1988, providing they elect to do so before 28th February 2007. Regulation G13 makes further provisions applying to purchases of increase surviving civil partner’s pension for service prior to 6th April 1988.

Regulations 13 to 17 amend Part H of the Superannuation Scheme Regulations to provide for a dependant child allowance to be paid to children of those members who have formed civil partnerships. The circumstances in which such allowances are paid are the same as for dependant children from a marriage.

Regulations 18 to 20 amend Part J of the Superannuation Scheme Regulations to allow a member to elect to allocate part of their pension to a civil partner and to provide a pension for a dependant surviving civil partner.

Regulations 21 to 23 amend Part K of the Superannuation Scheme Regulations to clarify that the overriding contracting out requirements and rights in respect of guaranteed minimum pensions will also apply to civil partners.

Regulations 24 to 26 amend Part Q of the Superannuation Scheme Regulations to include members who have formed a civil partnership in those who have the right to buy additional service and an unreduced lump sum and who can elect to do so by a single payment.

Regulation 27 amends regulation R3(8) to provide that provisions for surviving civil partners of mental health officers are the same as for widows and widowers of mental health officers. The doubled service provision for mental health officers in regulation R3(5) is not applied in calculating a surviving civil partner's pension.

Regulation 29 amends regulation S4 so that provision is made for surviving civil partners of members to receive benefits on death where the member is in pensionable employment after their pension becomes payable.

Regulation 30 amends regulation T6 so that the existing forfeiture provisions also apply to surviving civil partners.

Regulation 6, regulations 32 to 35 and regulation 37 respectively amend the interpretation provisions, Part W and Schedule 1A of the Superannuation Scheme Regulations, to provide that pension sharing provisions will apply where civil partnerships are dissolved through a formal court process.

Regulation 36 amends Schedule 1 (medical and dental practitioners) to apply where appropriate to those scheme members who have formed a civil partnership. It also inserts a new paragraph 16A, which provides for the reduction of the retirement lump sum where the member who is in a civil partnership opts to purchase additional cover for a survivor.

Regulations 3 and 38 to 43 in Part III of these Regulations amend the Injury Benefits Regulations as follows:

Regulation 38 amends regulation 7 to provide the basis on which the payment of an annual allowance will be made to surviving civil partners.

Regulation 39 amends regulation 8 to provide that the provisions on dependent child's allowance also include the dependent children of a civil partnership.

Regulation 40 amends regulation 9 to provide the basis on which a payment of an allowance to a dependent relative of a civil partner will be made.

Regulation 41 amends regulation 11 to include provision for surviving civil partners of a person who qualifies under regulation 6 of receive a lump sum payment on the death of that person.

Regulations 4 and 44 to 47 in Part IV of these Regulations amend the Additional Voluntary Contributions Regulations as follows:

Regulation 44 amends regulation 2(1) to include a surviving civil partner in the definition of "dependant".

Regulation 45 amends regulation 15 to provide that lump sum payments made under regulations 11(4), 11(7) and 12 of the Additional Voluntary Contributions Regulations can also be paid to surviving civil partners.

Regulations 46 and 47 amend regulation 17A and Schedule 2 respectively to provide that pension sharing arrangements will apply to civil partnerships which are dissolved through a formal court process and to provide that payments of a lump sum on death to a surviving civil partner under regulation 11(2) will occur if the relevant criteria apply.

Regulations 5 and 48 to 50 in Part V of these Regulations amend the Compensation for Premature Retirement Regulations as follows:

Regulation 48 amends regulation 7 to include civil partners in pension allocation arrangements, so that the officer may surrender part of their annual compensation allowance to provide a pension for a surviving civil partner.

Regulations 49 and 50 amend regulations 8 and 9 respectively to allow compensation payments to be made to surviving civil partners.

Regulation 51 makes transitional provision for opting out where rights relating to former employees or officers or their dependants are adversely affected.

A Regulatory Impact Assessment has not been prepared for this Instrument as it has no impact on business, charities, voluntary bodies or any public bodies distinct from that of the Civil Partnership Act 2004 itself. An assessment of the impact on these bodies together with the cost implications to public sector pension schemes is included in the regulatory impact assessment published with the Civil Partnership Act 2004. The final Regulatory Impact Assessment for the Civil Partnership Act 2004 can be viewed at <http://www.dti.gov.uk/access/ria/index.htm#equality>.

**2005 No. 544**

**NATIONAL HEALTH SERVICE**

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

**£3.00**

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