
SCOTTISH STATUTORY INSTRUMENTS

2010 No. 369

The National Health Service (Superannuation Scheme, Pension Scheme, Injury Benefits and Additional Voluntary Contributions) (Scotland) Amendment (No. 2) Regulations 2010

PART 2

**Amendment of the National Health Service
Superannuation Scheme (Scotland) Regulations 1995**

Amendment of the National Health Service Superannuation Scheme (Scotland) Regulations 1995

2. The National Health Service Superannuation Scheme (Scotland) Regulations 1995⁽¹⁾ are amended as follows.

Amendment of regulation A2

3.—(1) Regulation A2 (interpretation) is amended as follows.

(2) In paragraph 2(b), omit “this Section of”.

(3) After paragraph (b), insert—

“(c) any reference to this Section of the scheme, except where the context otherwise requires, means these Regulations.”.

(4) In the definition of “GMS practice”—

(a) in paragraph (a), after “registered medical practitioner” insert “who is a principal practitioner”; and

(b) in paragraph (b), after “or more” insert “such”.

(5) At the appropriate place in the alphabetical order, insert—

““Waiting Period Joiner” has the meaning given in regulation 2.L.1, or as the case may be, 3.L.1 of the 2008 Section;”.

Amendment of regulation B2

4.—(1) Regulation B2 (age limits and restrictions on membership) is amended as follows.

(2) In paragraph (1)—

(a) for sub-paragraph (e) substitute—

⁽¹⁾ S.I. 1995/365 amended by S.I. 1997/1434 and 1916, 1998/1593, 1999/443, 2001/3649 and 2005/2011 and S.S.I. 2001/437 and 465, 2003/55, 270 and 517, 2005/512 and 544, 2006/307 and 561, 2008/92 and 226, 2009/19 and 208 and 2010/22.

- “(e) that person enters NHS employment for the first time on or after 1st April 2008 and has not previously been a member of this Section of the scheme or a health service scheme corresponding to this Section;”;
- (b) in sub-paragraph (f)—
 - (i) after “returns to” insert “or commences”;
 - (ii) after “last left” insert “pensionable”;
- (c) in sub-paragraph (g)(ii) after “returning to”, insert “or commencing”;
- (d) for sub-paragraph (h)(iii), substitute—
 - “(iii) returns to, or commences for the first time, NHS employment on or after 1st October 2008 and before that employment starts (whether it is employment that has been returned to or commenced for the first time) exercises the member’s right to transfer out all of that person’s benefits in accordance with regulation M1;”;
- (e) in sub-paragraph (i)(ii), after “returns to” insert “or commences”; and
- (f) after sub-paragraph (i), insert—
 - “(j) that person’s pension under a health service scheme is payable and in the opinion of the Scottish Ministers that person would not be eligible to—
 - (i) join this Section of the scheme, or
 - (ii) where appropriate, accrue further pensionable service under this Section of the scheme,
 if the pensionable employment to which that health service scheme applied, and in respect of which that pension is being paid, had been pensionable employment in this Section of the Scheme;
- (k) that person is a person who—
 - (i) is entitled to a preserved pension in accordance with regulation E6;
 - (ii) has given notice in accordance with paragraphs (1) or (1A) of regulation B4 that the person does not wish to, or no longer wishes to, participate in this Section of the Scheme;
 - (iii) as a result of that notice has been treated as having left pensionable employment; and
 - (iv) pursuant to that notice remains opted out of this Section of the scheme for any one period of five years or more beginning on the date that notice takes effect;
- (l) that person is a person who—
 - (i) is entitled to a preserved pension in accordance with regulation E6;
 - (ii) has given notice in accordance with paragraph (1) or (1A) of regulation B4 that the person does not wish to, or no longer wishes to, participate in this Section of the Scheme;
 - (iii) following that notice, has had a break in pensionable employment for any one period of five years or more, comprising the aggregate of—
 - (aa) any period during which the person leaves NHS employment, and
 - (bb) any period during which the person is treated as never having been included in this Section of the scheme in accordance with paragraph (3) of regulation B4 in respect of one or more later

periods of NHS employment entered into after having given the notice referred to in (ii);

- (m) that person is a person who—
 - (i) enters NHS employment before 1st April 2008;
 - (ii) has given notice in respect of that employment (and all other such employments with an employing authority) that that person does not wish to participate in the Scheme in accordance with paragraph (1) or (1A) of regulation B4; and
 - (iii) as a result of that notice on 1st April 2008 is treated as never having been in pensionable employment with any employing authority in accordance with paragraph (3) of regulation B4;
 - (n) that person is a person who—
 - (i) enters NHS employment before 1st April 2008;
 - (ii) has given notice in respect of that employment (and all other such employments with an employing authority) that that person does not wish to, or no longer wishes to, participate in the Scheme in accordance with paragraph (1) or (1A) of regulation B4;
 - (iii) as a result of that notice has been treated as having left pensionable employment with all employing authorities for a period of 12 months or more; and
 - (iv) is not entitled to a preserved pension in accordance with regulation E6; or
 - (o) that person is a person who—
 - (i) enters pensionable employment before 1st April 2008;
 - (ii) has given notice in respect of that employment (and all other such employments with an employing authority) that that person does not wish to, or no longer wishes to, participate in the Scheme in accordance with paragraph (1) or (1A) of regulation B4;
 - (iii) is not entitled to a preserved pension in accordance with regulation E6; and
 - (iv) has, in respect of that pensionable employment, either received a repayment of contributions or exercised the right to a transfer payment under Part M.”.
- (3) In paragraph (2)(b), for “regulations E6, E9” substitute “regulations E2, E2A, E6, E9, L1,”.

Amendment of regulation D1

- 5.—(1) Regulation D1 (contributions by members) is amended as follows.
- (2) For paragraph (1A), substitute—

“(1A) A member whose pensionable pay falls into a pay band specified in column 1 of the relevant table must contribute the percentage of the member’s pensionable pay specified in column 2 of that table in respect of that amount.”.
 - (3) For paragraph (2), substitute—

“(2) The Scottish Ministers shall, with the consent of the Treasury, determine the pensionable pay bands and contribution percentage rates specified in the relevant table in respect of each scheme year.”.
 - (4) In paragraph (2A), for “making a determination” substitute “determining those pensionable pay bands or contribution percentage rates”.
 - (5) After paragraph (2B)(b), insert—

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- “(c) “the relevant table” means—
- (i) in respect of the 2010-2011 scheme year, table 1 where paragraph (2C) applies and table 2 if paragraph (2Q), (2R) or (2V) applies;
 - (ii) in respect of the 2011-2012 scheme year, table 2.

Table 1

<i>Column 1</i> <i>Pay band</i>	<i>Column 2</i> <i>Contribution percentage rate</i>
Up to £20,709	5%
£20,710 to £68,392	6.5%
£68,393 to £107,846	7.5%
£107,847 to any higher amount	8.5%

Table 2

<i>Column 1</i> <i>Pay band</i>	<i>Column 2</i> <i>Contribution percentage rate</i>
Up to £21,175	5%
£21,176 to £69,931	6.5%
£69,932 to £110,273	7.5%
£110,274 to any higher amount	8.5%”

(6) In paragraphs (2E) to (2R) and (2V) for “the table in paragraph (1A)” substitute “the relevant table”.

Amendment of regulation D2

6. For paragraphs (1) and (2) of regulation D2 (contributions and other payments by employing authorities), substitute—

“(1) Each employing authority must contribute to the scheme, in respect of the pensionable pay of each member in pensionable employment with the authority, at the rate determined by the Scottish Ministers and specified in paragraph (2) (“the employer’s standard rate”).

(1A) The employer’s standard rate shall include the cost of providing any increases in pensions which are payable by virtue of Part 1 of the Pensions (Increase) Act 1971(2).

(1B) In determining the employer’s standard rate, the Scottish Ministers must take the advice of the Scheme Actuary and obtain the Treasury’s consent.

(2) The employer’s standard rate is 13.5 per cent”.

(2) 1971 c.56 (“the 1971 Act”). Section 2 has been replaced by section 59 of the Social Security Pensions Act 1975 (c.60) (“the 1975 Act”) but the 1975 Act provides that section 59 is to have effect as if contained in the 1971 Act.

Amendment of regulation E2B

7. For paragraph (2)(e) of regulation E2B (re-assessment of ill-health condition determined under regulation E2A), substitute—

- “(e) the member is not—
- (i) a 2008 Section Optant within the meaning of regulation 2.K.1 or 3.K.1 of the 2008 Section of the Scheme, or
 - (ii) a Waiting Period Joiner within the meaning of regulation 2.L.1 or 3.L.1 of the 2008 Section of the Scheme,
- who has become entitled to an upper tier ill-health pension under regulation 2.D.8 or 3.D.7 of that Section.”.

Amendment of regulation E5

8. In paragraph (2) of regulation E5 (early retirement pension (with actuarial reduction)), for “but” substitute “, and except for any pension in respect of service calculated as a result of exercising the right to buy additional service under regulation Q1 or the right to buy an unreduced retirement lump sum under regulation Q2,”.

Amendment of regulation E8

9. In paragraph (7)(b) of regulation E8 (deductions from lump sum), after “will” insert “, except for any lump sum in respect of service calculated as a result of exercising the right to buy additional service under regulation Q1 or the right to buy an unreduced retirement lump sum under regulation Q2,”.

Amendment of regulation F5

10. After paragraph (12) of regulation F5 (payment of lump sum), insert—

- “(13) In the case of a Waiting Period Joiner, a notice given by a member for the purposes of regulation 2.E.21 or 3.E.21 of the 2008 Section of the Scheme shall be treated as a nomination or notice given by the member for the purposes of this regulation.”.

Amendment of regulation G3

11. For paragraph (3)(a) of regulation G3 (widow’s pension when member dies after pension becomes payable), substitute—

- “(a) the member is—
- (i) a 2008 Section Optant within the meaning of regulation 2.K.1 or regulation 3.K.1 of the 2008 Section of the Scheme, or
 - (ii) a Waiting Period Joiner within the meaning of regulation 2.L.1 or 3.L.1 of that Section, and”.

Amendment of regulation G14

12. After paragraph (9) of regulation G14 (surviving nominated partner’s pension), insert—

- “(10) In the case of a Waiting Period Joiner, a declaration or notice given by a member for the purposes of regulation 2.E.2 or 3.E.2 of the 2008 Section of the Scheme shall be treated as a declaration or notice given by that member for the purposes of this regulation.”.

Amendment of regulation H4

13. In paragraph (2) of regulation H4 (child allowance when member dies after pension becomes payable)—

- (a) in sub-paragraph (b)(i), after “regulation 3.K.1 (application of chapter 3.K)” insert “or a Waiting Period Joiner within the meaning of regulation 2.L.1 or 3.L.1”;
- (b) in sub-paragraph (b)(ii), after “2008 Section Optant” insert “or Waiting Period Joiner”.

Amendment of Part K

14.—(1) Part K (contracting-out and guaranteed minimum pensions) is amended as follows.

(2) After paragraph (3)(c) of regulation K1 (contracting-out conditions to be overriding), add—

“(ca) “guaranteed minimum pension age” means age 65 in the case of a man or age 60 in the case of a woman”.

(3) For “state pension age” substitute “guaranteed minimum pension age”, in—

- (a) paragraphs (2) where it occurs twice and (6A)(a) of regulation K2 (guaranteed minimum pensions);
- (b) regulation K3 (late retirement);
- (c) paragraph (1) of regulation K4 (early leavers) where it occurs three times; and
- (d) paragraphs (1), (2) and (3) of regulation K5 (guaranteed minimum pensions transferred to this Section of the scheme).

Amendment of regulation M6A

15. In paragraph (3)(b) of regulation M6A (member’s right to transfer a preserved pension to the 2008 section), for “B2(1)(i)” substitute “B2(1)(i), (k) or (l)”.

Amendment of regulation Q7

16. For paragraph (6) of regulation Q7 (part payment for additional service or unreduced retirement lump sum), substitute—

“(6) If the member becomes entitled to receive benefits before the chosen date under regulation Q5(3), the proportion of additional service or unreduced retirement lump sum to be credited to the member will be—

- (a) calculated as described in paragraph (5), and
- (b) then reduced by reason of the payment of the pension and the lump sum by such amounts as the Scottish Ministers, after taking the advice of the Scheme Actuary, shall determine.”.

Substitution of regulation Q17

17. For regulation Q17 (revaluation of increases bought under options: members’ pensions), substitute—

“Q17—Revaluation of increases bought under options: members’ pensions

(1) Where an option under regulation Q8, Q10 or Q11 has been exercised, the final amount of the increase in a member’s pension immediately before the beginning date for that pension shall be determined in accordance with this regulation.

(2) Where the increase in pension is in respect of an option that was exercised less than 2 months before the increase becomes payable, the final amount is calculated in accordance with paragraph (4).

(3) Where the increase in pension is in respect of an option that was exercised 2 or more months before the increase in pension becomes payable, the final amount is calculated in accordance with paragraph (5).

(4) The calculation referred to in paragraph (2) is as follows—

Step 1 –	Calculate the basic amount of the increase in accordance with regulations Q14 to Q16, to find the Step 1 amount.
Step 2 –	Add to the Step 1 amount an amount that is equal to any increases that would be due under the Pensions (Increase) Act 1971(3) on a pension of the same amount as the Step 1 amount when it first falls into payment, to find the Step 2 amount.
Step 3 –	Divide the Step 2 amount by the Step 1 amount, to find the Step 3 factor.
Step 4 –	Divide the Step 1 amount by the Step 3 factor to find the final amount referred to in paragraph (1).

(5) The calculation referred to in paragraph (3) is as follows—

Step 1 –	Calculate the basic amount of the increase in accordance with regulations Q14 to Q16, to find the Step 1 amount.
Step 2 –	Multiply the Step 1 amount by the retail prices index for the second month before the month in which the increase in pension will become payable, to find the Step 2 amount.
Step 3 –	Divide the Step 2 amount by the retail prices index for the month in which the option was exercised, to find the Step 3 amount.
Step 4 –	Take the greater of the Step 1 amount and Step 3 amount, to find the Step 4 amount.
Step 5 –	Add to the Step 4 amount an amount that is equal to any increases that would be due under the Pensions (Increase) Act 1971 on a pension of the same amount as the Step 4 amount when it first falls into payment, to find the Step 5 amount.
Step 6 –	Divide the Step 5 amount by the Step 4 amount, to find the Step 6 factor.
Step 7 –	Divide the Step 4 amount by the Step 6 factor to find the final amount referred to in paragraph (1).

(6) In this regulation, “the beginning date”, in relation to a pension, means the date on which it is treated as beginning for the purposes of the Pensions (Increase) Act 1971(4) (see section 8(2) of that Act).”.

Amendment of regulation U3

18.—(1) Regulation U3 (accounts and actuarial reports) is amended as follows.

(2) In paragraph (3) before “The scheme actuary”, insert “Subject to paragraph (3A),”.

(3) After paragraph (3), insert—

(3) 1971 c.56.

(4) 1971 c.56.

“(3A) The actuarial report referred to in paragraph (3) shall be based on actuarial assumptions determined by the Scottish Ministers with the consent of the Treasury.

(3B) Before determining the assumptions referred to in paragraph (3A) the Scottish Ministers may consult—

- (a) such representatives of employees and employing authorities as appear to the Scottish Ministers to be appropriate, and
- (b) the scheme actuary.”.

Amendment of Part W

19. Part W (pension sharing on divorce or nullity of marriage or on dissolution or nullity of a civil partnership) is amended as follows—

- (a) in regulation W11 (“Appropriate rights”/“Pension credit benefits” under the Scheme) for paragraph (7) substitute—

“(7) A pension credit member is entitled to a lump sum calculated on the same basis as if the pension was a deferred pension under the Scheme.

(8) Except where the member opts to exchange part of his pension under paragraph (9) the lump sum shall be equal to three times the annual rate of pension except that no lump sum on retirement shall be paid to the credit member if the corresponding pension debit member has already received a lump sum on retirement from the Scheme before the date of the implementation of the pension sharing order.

(9) If a pension credit member opts to exchange part of a pension to which the pension credit member would otherwise be entitled for a lump sum, for every £1 by which the pension credit member’s annual pension is reduced, the pension credit member is to be paid a lump sum of £12.

(10) An option under paragraph (9) must relate to an annual amount of pension that is a whole number of pounds (and accordingly the lump sum will be exactly divisible by 12).

(11) In paragraph (10) “annual amount” in relation to a pension means the amount of the annual pension to which the pension credit member would be entitled under these Regulations apart from the option, together with any increases payable under the Pensions (Increase) Act 1971, calculated as at the time the payment would be first due.

(12) A pension credit member may not exchange pension for lump sum under this regulation to the extent that it would result in a scheme chargeable payment for the purposes of Part 4 of the 2004 Act.

(13) The option under paragraph (9) may only be exercised by giving notice in writing to the scheme administrator in the form required by the Scottish Ministers—

- (a) at the time of claiming the pension; or
- (b) before a later time specified in writing by the scheme administrator.”;

- (b) after regulation W11 insert—

“W11A. Pension credit benefit before attaining normal benefit age (with actuarial reduction)

(1) Subject to paragraph (2), a pension credit member shall be entitled to the payment of the pension credit benefit described in regulation W11 on or after attaining normal minimum pension age but before attaining normal benefit age.

(2) The pension and the lump sum (if any) described in regulation W11 paragraph (1) will be reduced by such amount as the Scottish Ministers, after taking the advice of the Scheme Actuary, may determine.”;

- (c) in regulation W12 (pension credit member dies after pension credit benefit becomes payable) for paragraph (3), substitute—

“(3) The maximum payment under this regulation shall not exceed an amount calculated in accordance with paragraph (3A) less the aggregate of—

- (a) the amount of any lump sum paid to the pension credit member in accordance with regulation W11 (8); and
- (b) the amount of any lump sum paid to the pension credit member in accordance with regulation W11(9).

(3A) An amount calculated in accordance with this sub-paragraph is an amount equal to twice the amount on the valuation day of the final year’s pensionable pay of the member from whose rights the pension credit is derived.”; and

- (d) in regulation W16 (commutation: exceptional ill-health), in paragraph (3), after “regulation W11(7)”, insert “, (8) and (9)”.

Amendment of Schedule 1

20.—(1) Paragraph 10 (contributions to this Section of the scheme) of Schedule 1 (medical and dental practitioners) is amended as follows.

- (2) After sub-paragraph (1) insert—

“(1A) For the purposes of this paragraph, “the relevant table” means—

- (a) in respect of the 2009-2010 scheme year, table 1;
- (b) in respect of the 2010-2011 and any later scheme year, table 2.

Table 1

<i>Column 1</i> <i>Pensionable earnings band</i>	<i>Column 2</i> <i>Contribution percentage rate</i>
Up to £20,709	5%
£20,710 to £68,392	6.5%
£68,393 to £107,846	7.5%
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Table 2

<i>Column 1</i> <i>Pensionable earnings band</i>	<i>Column 2</i> <i>Contribution percentage rate</i>
Up to £21,175	5%
£21,176 to £69,931	6.5%
£69,932 to £110,273	7.5%
£110,274 to any higher amount	8.5%”

- (3) For sub-paragraph (2) to (2B), substitute—

“(2) Subject to sub-paragraph (2A), a member whose pensionable earnings fall into a pensionable earnings band specified in column 1 of the relevant table must contribute the

percentage of the member's pensionable earnings specified in column 2 of that table in respect of that amount.

(2A) The Scottish Ministers shall, with the consent of the Treasury, determine the pensionable earnings bands and contribution rates specified in the relevant table in respect of each scheme year.

(2B) Before determining those pensionable earnings bands or contribution rates, the Scottish Ministers must consider—

- (a) the advice of the scheme actuary; and
- (b) in accordance with regulation U4, advice from such employee and employer representatives as the Scottish Ministers consider appropriate.”.

(4) In sub-paragraphs (2F) and (2G) for “the table in sub-paragraph (2)” substitute “the relevant table”.

(5) In sub-paragraph (8)(b), after “contributions” insert “payable under regulation D2(1)”.

(6) After sub-paragraph (17) insert—

“(18) For the purposes of this paragraph—

- (a) “contributions payable under regulation D1” means contributions payable under regulation D1 by a practitioner or, as the case may be, a non-GP provider under this Section of the scheme;
- (b) “contributions payable under regulation D2(1)” means contributions payable under regulation D2(1) by an employing authority in respect of a practitioner or, as the case may be, a non-GP provider.”.

Amendment of references to “2008 scheme” to “2008 section”

21. The amendments specified in the Schedule to these Regulations have effect.