

2013 No.

NATIONAL HEALTH SERVICE

**The National Health Service Superannuation Scheme etc.
(Miscellaneous Amendments) (Scotland) Regulations 2013**

<i>Made</i>	- - - -	2013
<i>Laid before the Scottish Parliament</i>		2013
<i>Coming into force</i>	- -	20th May 2013

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 10 and 12 of, and Schedule 3 to, the Superannuation Act 1972(a) and of all other powers enabling them to do so.

In accordance with section 10(1) of that Act, these Regulations are made with the consent of the Treasury.

In accordance with section 10(4) of that Act, the Scottish Ministers have consulted with such representatives of persons likely to be affected by these Regulations as appear to them to be appropriate.

**PART 1
GENERAL**

Citation, commencement and effect

1.—(1) These Regulations may be cited as the National Health Service Superannuation Scheme etc. (Miscellaneous Amendments) (Scotland) Regulations 2013.

(2) These Regulations come into force on 20th May 2013 and, except as provided in paragraphs (3) to (5), have effect from that date(b).

(3) Regulations 9, 10, 11, 25, 34, 35, 45, 51 and 52 have effect from 1st April 2008.

(4) Regulations 3, 4, 5, 24, 26, 27, 44, 46 and 47 have effect from 1st January 2013.

(a) 1972 c.11. Section 10 was amended by Schedule 5 to the National Health Service Reorganisation Act 1973 (c.32), Schedule 7 to the National Health Service (Scotland) Act 1972 (c.58), sections 4(2) and 8(5) and (6) of the Pensions (Miscellaneous Provisions) Act 1990 (c.7), paragraph 7 of Schedule 8 to the Pension Schemes Act 1993 (c.48) and by S.I. 2001/3649. The function of the Minister to consent in section 10(1) was transferred to the Treasury by S.I. 1981/1670. Section 12 was amended by section 10 of the Pensions (Miscellaneous Provisions) Act 1990 (c.7). The functions conferred on the Secretary of State by sections 10 and 12, so far as exercisable in or as regards Scotland and subject to the requirement in section 10(1) for consent of the Treasury, were transferred to Scottish Ministers by article 2 of S.I. 1999/1750. By virtue of article 6 of S.I. 1999/1750 and paragraph 2 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10), regulations made by the Scottish Ministers under sections 10 and 12 are subject to the negative procedure.

(b) Section 12(1) of the Superannuation Act 1972 provides that regulations may be framed so as to have retrospective effect.

(5) Regulations 6, 7, 8, 18, 19, 20, 22, 23, 28, 29, 30, 33, 36 to 41, 48 and 53 to 57 have effect from 1st April 2013.

PART 2

AMENDMENT OF THE NATIONAL HEALTH SERVICE SUPERANNUATION SCHEME (SCOTLAND) REGULATIONS 2011

Amendments to the National Health Service Superannuation Scheme (Scotland) Regulations 2011

2. The National Health Service Superannuation Scheme (Scotland) Regulations 2011(a) are amended in accordance with this Part.

Amendment of regulation A2

3. In regulation A2(4) (interpretation)—

(a) after “the 2004 Act” in column 1 and the corresponding meaning in column 2 insert—

““the 2008 Act” The Pensions Act 2008(b);”

; and

(b) after “the 2008 Section” in column 1 and the corresponding meaning in column 2 insert—

““the 2010 Regulations” The Occupational and Personal Pension Schemes
(Automatic Enrolment) Regulations 2010(c);”

Amendment of regulation B4

4. In regulation B4 (opting out of this Section of the scheme)—

(a) for paragraph (8) substitute—

“(8) A notice under paragraph (1) or (2) ceases to have effect on—

(a) the day immediately preceding the person’s automatic enrolment date; or

(b) where (a) does not apply, the day immediately preceding the person’s automatic re-enrolment date: this does not apply where the notice was given within the 12 months immediately preceding that date.

(8A) Where paragraph (8) applies, the person must be included in this Section of the scheme on, as the case may be, the person’s automatic enrolment date or automatic re-enrolment date.

This is subject to regulation B5(4) and to regulations B2 and B3.”; and

(b) after paragraph (9) insert—

“(10) In this regulation—

“automatic enrolment date” means the date referred to in section 3(7) (automatic enrolment) of the 2008 Act; and

“automatic re-enrolment date” means the date determined in accordance with regulation 12 (opting out) of the 2010 Regulations (as modified by regulation 14(d) (jobholders excluded from automatic re-enrolment) of those Regulations).”.

(a) S.S.I. 2011/117 as amended by S.S.I. 2011/173 and 364 and 2012/69 and 163.

(b) 2008 c.30.

(c) S.I. 2010/772.

(d) Regulation 14 was substituted by regulations 17 and 22 of S.I. 2012/215.

Amendment of regulation B5

5. For regulation B5(4) (rejoining this Section of the scheme) substitute—

“(4) A person who has opted out may not re-join this Section of the scheme during any period of absence from work for any reason.”.

Amendment of regulation D1

6. For regulation D1(4) (contributions by members) substitute—

“(4) Before determining those pensionable pay bands or contribution percentage rates under paragraph (3), the Scottish Ministers must consider the advice of the scheme actuary.”.

Amendment of regulation D2

7. In regulation D2 (contributions and other payments by employing authorities)—

(a) in paragraph (7A), at the end insert (as full out words) “This is subject to paragraph (7B).”; and

(b) after paragraph (7A) insert—

“(7B) Where the member leaves pensionable employment on or after 1st April 2013, any additional contributions that are due to the Scottish Ministers under paragraph (5)(a), in respect of a pension payable under regulation E7, and paragraph (5)(b), (d) and (e) may only be paid by a single payment of an amount determined by the Scottish Ministers on the advice of the scheme actuary: that payment must be made within one month of the date on which the pension under regulation E7 became payable.”.

Amendment of regulation E7

8. For regulation E7(2) (early retirement pension (redundancy etc. new starters and post transition)) substitute—

“(2) Those conditions are that—

(a) the member has two years’ qualifying service and has attained normal minimum pension age or, where relevant, protected pension age;

(b) the member’s employing authority certifies—

(i) that the member has at least two years’ continuous employment determined in accordance with any terms and conditions applying to that employment; and

(ii) if the member’s employment is terminated by reason of redundancy, the member is entitled to claim a pension under this regulation as an alternative to receiving the lump sum payment (in whole or in part) otherwise payable to him in accordance with those terms and conditions;

(c) the member’s employing authority does not certify that the member has unreasonably refused to seek suitable alternative employment or accept an offer of such employment;

(d) the Scottish Ministers certify—

(i) that the member’s employment is terminated by reason of redundancy; or

(ii) with the agreement of the employing authority, that the member’s employment is terminated in the interests of the efficiency of the service in which the member is employed; and

(e) the member makes a claim for the pension referred to in this regulation.”.

Amendment of regulation G6

9. After regulation G6(3) (widow's pension when member marries after leaving pensionable employment) insert—

“(4) Where the nominated partner referred to in G14 (surviving nominated partner's pension) becomes the member's widow on the member's death, the widow's pension will, if it would be more beneficial to the widow, be equal to the nominated partner pension that would have been payable if the widow and the member had not been married to each other.”.

Amendment of regulation G14

10. In regulation G14(5) (surviving nominated partner's pension)—

- (a) after “other” insert “during any period of pensionable employment”; and
- (b) for “was not effective” substitute “becomes effective after all pensionable employment has ceased”.

Amendment of regulation H4

11. For regulation H4(5) (child allowance when member dies after pension becomes payable) substitute—

“(5) If the member dies leaving a dependent child and there is no surviving parent (or spouse, civil partner or nominated partner of a parent) the allowance—

- (a) for the period of 6 months beginning with the member's death, will be the greater of—
 - (i) the amount of the member's pension calculated without regard to any reduction made under regulation S2 (reduction of pension on return to NHS employment); and
 - (ii) the amount of child allowance that would otherwise be payable under these Regulations; and
- (b) following the period referred to in (a), will be equal to—
 - (i) one-third of the pension described in paragraph (2) if there is only one dependent child; and
 - (ii) two-thirds of the pension described in paragraph (2) if there are two or more dependent children.”.

Amendment of regulation K6

12. In regulation K6(1) (protected rights transferred to this Section of the scheme), after “Where” insert “, before 6th April 2012,”.

Amendment of regulation Q13

13. In regulation Q13 (cancellation and cessation of options under regulation Q8)—

- (a) in paragraph (4), after “such an option” insert “in accordance with paragraph (3)”; and
- (b) after paragraph (4) insert—

“(5) If, after the exercise of the option under regulation Q8, the Scottish Ministers have reasonable grounds to believe that the member's health will prevent the member from paying contributions for the whole contribution period, the Scottish Ministers may cancel the option by giving the member notice in writing.

(6) If the Scottish Ministers cancel such an option in accordance with paragraph (5), the additional periodical contributions cease to be payable for the first pay period beginning

after the date specified in the notice and all subsequent pay periods and any periodical payments made before the date of cancellation must be returned to the member.”.

Amendment of regulation Q15

14. In regulation Q15 (effect of death or early payment of pension after option exercised under regulation Q8, Q10 or Q11), in paragraphs (2) and (4), at the beginning insert “Subject to regulation Q13(5) and (6),”.

Amendment of regulation S2

15. In regulation S2(12) (reduction of pension on return to NHS employment), after “paragraph (4)” insert “or (5)”.

New regulation T1A

16. After regulation T1 (claims for benefits) insert—

“Provision of information: continuing entitlement to benefit

T1A.—(1) The Scottish Ministers may specify a date by which a person who is in receipt of a benefit under this Section of the scheme is to provide the Scottish Ministers with all or any of the following material—

- (a) evidence of the person’s identity;
- (b) the person’s contact details; and
- (c) evidence of the person’s continuing entitlement to the benefit.

(2) Where a person fails to provide the material referred to in paragraph (1) in accordance with that paragraph the Scottish Ministers may withhold all, or any part of, any benefit payable to that person.”.

New regulation T3

17. After regulation T3 (deduction of tax: further provisions) insert—

“General prohibition on unauthorised payments

T3A. Nothing in these Regulations requires or authorises the making of any payment which, if made, would be an unauthorised payment for the purposes of Part 4 of the 2004 Act (see section 160(5) of that Act).”.

Amendment of regulation U3

18. Omit regulation U3(3) to (6) (accounts and actuarial reports) and, in the heading to that regulation, omit “and actuarial reports”.

Revocation of regulation U4

19. Omit regulation U4 (cost sharing).

Amendment of Schedule 1

20. In Schedule 1 (medical and dental practitioners), for paragraph 14(5) substitute—

“(5) Before determining those pensionable earnings bands or contribution percentage rates, the Scottish Ministers must consider the advice of the scheme actuary.”.

PART 3

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

Amendments to the National Health Service Pension Scheme (Scotland) Regulations 2008

21. The National Health Service Pension Scheme (Scotland) Regulations 2008(a) are amended in accordance with this Part.

Amendment of regulation 1.B.1

22. Omit regulation 1.B.1(4), (5) and (6) (actuarial reports and accounts), and in the heading to that regulation, for “Actuarial report and accounts” substitute “Accounts”.

Revocation of regulation 1.B.2

23. Omit regulation 1.B.2 (cost sharing).

Amendment of regulation 2.A.1

24. In regulation 2.A.1 (interpretation: general)—

- (a) after the definition of “the 2006 (Wales) Act” insert—
““the 2008 Act” means the Pensions Act 2008(b);”;
- (b) after the definition of “the 2008 Section Optant” insert—
““the 2010 Regulations” means the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010(c);” and
- (c) after the definition of “additional services” insert—
““automatic enrolment date” means the date referred to in section 3(7) (automatic enrolment) of the 2008 Act;
“automatic re-enrolment date” means the date determined in accordance with regulation 12 (opting out) of the 2010 Regulations (as modified by regulation 14(d) (jobholders excluded from automatic re-enrolment) of those Regulations);”.

Amendment of regulation 2.A.6

25. In regulation 2.A.6(6) (qualifying service: disregard of breaks in service)—

- (a) for “Paragraphs (2), (4) and (5) do not apply if” substitute “Where”;
- (b) in sub-paragraph (a), after “the earlier period” insert “, paragraphs (4) and (5) do not apply”; and
- (c) in sub-paragraph (b), after “made” insert “, paragraphs (2), (4) and (5) do not apply”.

Amendment of regulation 2.B.4

26. For regulation 2.B.4(3) (joining this Section of the scheme) substitute—

“(3) A person who previously exercised an option to opt out of this Section of the scheme in respect of an employment in which that person was an active a member and who remains

(a) S.S.I. 2008/224 amended by S.S.I. 2009/19 and 208, 2010/22 and 369, 2011/53 and 364 and 2012/69 and 163 and S.I. 2010/234.

(b) 2008 c.30.

(c) S.I. 2010/772.

(d) Regulation 14 was substituted by regulations 17 and 22 of S.I. 2012/215.

eligible to be such a member in respect of that employment, may opt to do so by giving notice in writing to the employing authority in such form as the Scottish Ministers require.”.

Amendment of regulation 2.B.5

27. For regulation 2.B.5(5) and (6) (opting out of this Section of the scheme) substitute—

“(5) A notice under paragraph (1) ceases to have effect on—

- (a) the day immediately preceding the person’s automatic enrolment date; or
- (b) where (a) does not apply, the day immediately preceding the person’s automatic re-enrolment date: this does not apply where the notice was given within the 12 months immediately preceding that date.

(6) Unless the person is absent from work for any reason, where paragraph (5) applies, the person is to be included in this Section of the scheme on, as the case may be, the person’s automatic enrolment date or automatic re-enrolment date.”.

Amendment of regulation 2.C.2

28. For regulation 2.C.2(4) (contribution rate for members other than non-GP providers) substitute—

“(4) Before determining those pensionable pay bands or contribution percentage rates, the Scottish Ministers must consider the advice of the scheme actuary.”.

Amendment of regulation 2.C.4

29. For regulation 2.C.4(4) (contribution rate and determination of pensionable earnings for non-GP providers) substitute—

“(4) Before determining those pensionable pay bands or contribution percentage rates, the Scottish Ministers must consider the advice of the scheme actuary.”.

Amendment of regulation 2.C.6

30. After regulation 2.C.6(4) (contributions by employing authorities: members becoming entitled to pension under regulation 2.D.11)(a) insert—

“(4A) Paragraph (4)(b) does not apply where the member leaves the employment in which the member was an active member on or after 1st April 2013.”.

Amendment of regulation 2.C.13

31. In regulation 2.C.13 (cancellation of options under regulation 2.C.8)—

- (a) in paragraph (4), after “such an option” insert “in accordance with paragraph (3)”; and
- (b) after paragraph (4) insert—

“(5) If, after the exercise of the option under regulation 2.C.8, the Scottish Ministers have reasonable grounds to believe that the member’s health will prevent the member from paying contributions for the whole contribution period, the Scottish Ministers may cancel the option by giving the member notice in writing.

(6) If the Scottish Ministers cancel such an option in accordance with paragraph (5), the additional periodical contributions cease to be payable for the first pay period beginning after the date specified in the notice and all subsequent pay periods and any periodical payments made before the date of cancellation must be returned to the member.”.

(a) Paragraph (4) re-numbered by regulation 21 of S.S.I. 2010/22.

Amendment of regulation 2.C.15

32. In regulation 2.C.15(4) (effect of death or early payment of pension after option exercised under regulation 2.C.8, 2.C.10 or 2.C.11), at the beginning, insert “Subject to regulation 2.C.13(5) and (6),”.

Amendment of regulation 2.D.11

33. For regulation 2.D.11(1)(c) (early retirement on termination of employment by employing authority) substitute—

- “(c) the member’s employing authority certifies that the member—
 - (i) has at least two years’ continuous employment determined in accordance with any terms and conditions applying to the employment;
 - (ii) is entitled to claim a pension under this regulation if the member’s employment is terminated by reason of redundancy as an alternative to receiving the lump sum payment (in whole or in part) otherwise payable to the member in accordance with those terms and conditions; and
 - (iii) has not unreasonably refused to seek suitable alternative employment or accept an offer of such employment;”.

Amendment of regulation 2.E.11

34. For regulation 2.E.11(6) (amount of children’s pension under regulation 2.E.8: deceased pensioner members) substitute—

- “(6) In a case within paragraph (4)(b) or (c), the rate of the pension in respect of the dependent child or children for the period of 6 months beginning with the deceased’s death is equal to the greater of—
 - (a) the rate of the member’s pension at the date of death disregarding any reduction made under Chapter 2.H (abatement) and any additional pension; and
 - (b) the amount of children’s pension that would otherwise be payable under these Regulations.”.

Amendment of regulation 2.H.1

35. Omit regulation 2.H.1(5) (application of Chapter 2.H).

Amendment of regulation 2.H.3

36. In regulation 2.H.3 (reduction of pension)—

- (a) in paragraphs (1) and (2), for “scheme year” substitute “financial year”; and
- (b) for paragraphs (6) and (7) substitute—

- “(6) For the purpose of calculating the reduction to be made under paragraph (1) in respect of any part of a financial year, the amount of the member’s previous pay will be reduced proportionately.”.

Amendment of regulation 2.H.4

37. In regulation 2.H.4 (meaning of “relevant income”) for “scheme year”, in both places it occurs, substitute “financial year”.

Amendment of regulation 2.H.5

38. In regulation 2.H.5 (meaning of “previous pay”: general) for “scheme year”, in each of the three places it occurs, substitute “financial year”.

Amendment of regulation 2.H.6

39. In regulation 2.H.6 (meaning of “previous pay”: members with concurrent employments) for “scheme year”, in each of the four places it occurs, substitute “financial year”.

Amendment of regulation 2.H.8

40. In regulation 2.H.8 (employed pensioners with more than one pension) for “scheme year”, in each of the four places it occurs, substitute “financial year”.

Amendment of regulation 2.H.9

41. In regulation 2.H.9 (provisional reductions and later adjustments) for “scheme year”, in each of the eight places it occurs, substitute “financial year”.

New regulation 2.J.2A

42. After regulation 2.J.2 (claims for benefits) insert—

“Provision of information: continuing entitlement to benefit

2.J.2A.—(1) The Scottish Ministers may specify a date by which a person who is in receipt of a benefit under this Section of the scheme is to provide the Scottish Ministers with all or any of the following material—

- (a) evidence of the person’s identity;
- (b) the person’s contact details; and
- (c) evidence of the person’s continuing entitlement to the benefit.

(2) Where a person fails to provide the material referred to in paragraph (1) in accordance with that paragraph the Scottish Ministers may withhold all, or any part of, any benefit payable to that person.”.

Amendment of 2.J.11

43. In regulation 2.J.11 (general prohibition on unauthorised payments), for “rules” substitute “Regulations”.

Amendment of regulation 3.A.1

44. In regulation 3.A.1 (interpretation of Part 3: general)—

- (a) after the definition of “the 2004 Act” insert—
““the 2008 Act” means the Pensions Act 2008(a);”;
- (b) after the definition of “2008 Section Optant” insert—
““the 2010 Regulations” means the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010(b);” and
- (c) after the definition of “appropriate proportion” insert—
““automatic enrolment date” means the date referred to in section 3(7) (automatic enrolment) of the 2008 Act;
“automatic re-enrolment date” means the date determined in accordance with regulation 12 (opting out) of the 2010 Regulations (as modified by regulation 14(c) (jobholders excluded from automatic re-enrolment) of those Regulations);”.

(a) 2008 c.30.

(b) S.I. 2010/772.

(c) Regulation 14 was substituted by regulations 17 and 22 of S.I. 2012/215.

Amendment of regulation 3.A.6

45. In regulation 3.A.6 (qualifying service: disregard of breaks in service)—

- (a) in paragraph (6)—
 - (i) for “Paragraphs (2), (4) and (5) do not apply if” substitute “Where”;
 - (ii) in sub-paragraph (a), after “the earlier period” insert “, paragraphs (4) and (5) do not apply”; and
 - (iii) in sub-paragraph (b), after “made” insert “, paragraphs (2), (4) and (5) do not apply”; and
- (b) in paragraph (7), for “(6)(b)” substitute “(6)(a)”.

Amendment of regulation 3.B.4

46. For regulation 3.B.4(3) (joining this Section of the scheme) substitute—

“(3) A person who previously exercised an option to opt out of this Section of the scheme in respect of an employment in which that person was an active a member and who remains eligible to be such a member in respect of that employment, may opt to do so by giving notice in writing to the employing authority in such form as the Scottish Ministers require.”.

Amendment of regulation 3.B.5

47. For regulation 3.B.5(5) and (6) (opting out of this Section of the scheme) substitute—

“(5) A notice under paragraph (1) ceases to have effect on—

- (a) the day immediately preceding the person’s automatic enrolment date; or
- (b) where (a) does not apply, the day immediately preceding the person’s automatic re-enrolment date: this does not apply where the notice was given within the 12 months immediately preceding that date.

(6) Unless the person is absent from work for any reason, where paragraph (5) applies, the person is to be included in this Section of the scheme on, as the case may be, the person’s automatic enrolment date or automatic re-enrolment date.”.

Amendment of regulation 3.C.2

48. For regulation 3.C.2(4) (members’ contribution rate) substitute—

“(4) Before determining those pensionable earnings bands or contribution percentage rates, the Scottish Ministers must consider the advice of the scheme actuary.”.

Amendment of regulation 3.C.11

49. In regulation 3.C.11 (cancellation of options under regulation 3.C.8)—

- (a) in paragraph (4), after “such an option” insert “in accordance with paragraph (3)”; and
- (b) after paragraph (4) insert—

“(5) If, after the exercise of the option under regulation 3.C.8, the Scottish Ministers have reasonable grounds to believe that the member’s health will prevent the member from paying contributions for the whole contribution period, the Scottish Ministers may cancel the option by giving the member notice in writing.

(6) If the Scottish Ministers cancel such an option in accordance with paragraph (5), the additional periodical contributions cease to be payable for the first pay period beginning after the date specified in the notice and all subsequent pay periods and any periodical payments made before the date of cancellation must be returned to the member.”.

Amendment of regulation 3.C.13

50. In regulation 3.C.13(4) (effect of death or early payment of pension after option exercised under regulation 3.C.6, 3.C.8 or 3.C.9), at the beginning, insert “Subject to regulation 3.C.11(5) and (6),”.

Amendment of regulation 3.E.11

51. For regulation 3.E.11(6) (amount of children’s pension under regulation 3.E.8: deceased pensioner members) substitute—

“(6) In a case within paragraph (4)(b) or (c), the rate of the pension in respect of the dependent child or children for the period of 6 months beginning with the deceased’s death is equal to the greater of—

- (a) the rate of the member’s pension at the date of death disregarding any reduction made under Chapter 2.H (abatement) and any additional pension; and
- (b) the amount of children’s pension that would otherwise be payable under these Regulations.”.

Amendment of regulation 3.H.1

52. Omit regulation 3.H.1(6) (application of Chapter 3.H).

Amendment of regulation 3.H.3

53. In regulation 3.H.3 (reduction of pension)—

- (a) in paragraphs (1) and (2), for “scheme year” substitute “financial year”; and
- (b) for paragraphs (6) and (7) substitute—

“(6) For the purpose of calculating the reduction to be made under paragraph (1) in respect of any part of a financial year, the amount of the member’s previous pay will be reduced proportionately.”.

Amendment of regulation 3.H.4

54. In regulation 3.H.4 (meaning of “relevant income”) for “scheme year”, in both places it occurs, substitute “financial year”.

Amendment of regulation 3.H.5

55. In regulation 3.H.5 (meaning of “previous earnings”: general) for “scheme year”, in each of the three places it occurs, substitute “financial year”.

Amendment of regulation 3.H.6

56. In regulation 3.H.6 (employed pensioners with more than one pension) for “scheme year”, in each of the four places it occurs, substitute “financial year”.

Amendment of regulation 3.H.7

57. In regulation 3.H.7 (provisional reductions and later adjustments), for “scheme year”, in each of the eight places it occurs, substitute “financial year”.

New regulation 3.J.2A

58. After regulation 3.J.2 (claims for benefits) insert—

“Provision of information: continuing entitlement to benefit

3.J.2A.—(1) The Scottish Ministers may specify a date by which a person who is in receipt of a benefit under this Section of the scheme is to provide the Scottish Ministers with all or any of the following material—

- (a) evidence of the person’s identity;
- (b) the person’s contact details; and
- (c) evidence of the person’s continuing entitlement to the benefit.

(2) Where a person fails to provide the material referred to in paragraph (1) in accordance with that paragraph the Scottish Ministers may withhold all, or any part of, any benefit payable to that person.”.

PART 4

MISCELLANEOUS

Option to persons detrimentally affected by these Regulations

59.—(1) This regulation applies in relation to any benefit which is being paid, or may become payable, under the regulations amended by these Regulations (“the amended regulations”) to or in respect of a person who having served in an employment or office which qualified the person to participate in the benefits provided under the amended regulations, ceased to serve in that office or employment before these Regulations came into force.

(2) Where, in a case to which this regulation applies, any provision of these Regulations would operate in relation to any person so as to place that person in a worse position than that person would have been if that provision had not applied, that person may elect that the provision is not apply by giving notice in accordance with paragraph (3).

(3) A notice given pursuant to paragraph (2) must be in writing and must be delivered to the Scottish Ministers within 6 months of the coming into force of these Regulations or such longer period as the Scottish Ministers may allow.

(4) An election pursuant to paragraph (2) has effect in relation to the benefit referred to in paragraph (1) only to the extent that such benefit has accrued by virtue of periods of service rendered before the cessation referred to in paragraph (1) (or, if there has been more than one such cessation, the last of them before the coming into force of these Regulations) and in determining entitlement to, and the amount of, the benefit to that extent, such person is to be treated as if that person had never recommenced service at any time after that cessation (or, as the case may be, the last such cessation).

A member of the Scottish Government

St Andrew's House,
Edinburgh

2013

We consent,

Two of the Lord's Commissioners of Her Majesty's Treasury

2013

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service Superannuation Scheme for Scotland (“the scheme”), the rules of which are set out in the National Health Service Superannuation Scheme (Scotland) Regulations 2011 (“the 1995 Section”) and the National Health Service Pension Scheme (Scotland) Regulations 2008 (“the 2008 Section”) (together “both Sections”).

Regulation 1 sets out when each change takes effect.

The following changes are made to both Sections—

- regulations 3, 4, 24, 27, 44 and 47 provide that where a person has previously opted out this ceases to have effect on automatic enrolment or re-enrolment: a person subject to enrolment or re-enrolment may, on each occasion, opt out by notice to the employer;
- regulations 8 and 33 requires an employer to certify entitlement to a redundancy pension;
- regulations 11, 34 and 51 provide that if the amount of the child allowance or pension for the first 6 month period is more than the member’s pension, it will be that higher amount;
- regulations 13, 14, 31, 32, 49 and 50 make further provision in relation to the cancellation of an option to pay additional contributions to purchase pension purchase;
- regulations 16, 42 and 58 empower the Scottish Ministers to require certain material (including evidence of entitlement) to be provided by a person in receipt of a benefit, and if the person fails to provide it, to withhold all or part of a benefit payable to that person;
- regulations 18 and 22 remove requirements to prepare actuarial reports; and
- regulations 19 and 23 remove provision in relation to cost sharing, and regulations 6, 20, 28, 29 and 48 remove (in effect) the associated requirements to consider advice.

The following further changes are made to the 1995 Section—

- regulation 5 is supplementary to the changes made in relation to opt outs: this provision bars a person who has opted out from rejoining during a period of absence from work;
- regulation 7 removes, from 1st April 2013, an option for employers to pay, in five annual instalments, certain additional contributions in relation to a redundancy pension;
- regulations 9 and 10 ensure that the most beneficial pension is paid when a marriage to a nominated partner takes place post retirement;
- regulation 12 reflects the fact that protected rights were abolished by the Pensions Act 2008 with effect from 6th April 2012;
- regulation 15 clarifies provision for reduced pensions on return to NHS employment; and
- regulation 17 ensures no unauthorised payments are made the purposes of the 2004 Act.

The following further changes are made to the 2008 Section—

- regulations 25 and 45 clarify the circumstances in which qualifying service before and after a break in service of less than one month is to be treated as a continuous period;
- regulations 26 and 46 are supplementary to the changes made in relation to opt outs: these provisions enable an eligible person to opt back in;
- regulations 35 and 52 ensure that additional pension is taken into account;
- regulations 36 to 41 and 53 to 57 replace references to “scheme year” with “financial year” for consistency with the 1995 Section, and clarify how abatement works when a member’s pension is in payment for only part of the year; and
- regulation 43 makes a minor change to clarify a reference.

Regulation 59 provides that certain persons who may be detrimentally affected by these regulations may elect for the provisions not to apply to them.