

# The National Health Service Superannuation Scheme Pension Scheme and Injury Benefits (Scotland) (Amendment) (No. 2) Regulations 2009

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## Regulations

### 1 & 2                      Sets the context for the amending regulations

Names the regulations as the “National Health Service (Superannuation, Pension Scheme and Injury Benefits (Scotland) (Amendment) (No. 2) Regulations 2009”

#### Part 1 of the draft Scottish Statutory Instrument (SSI)

Regulations 3 to 15 in Part 1 of the SSI amend the provisions of the NHS Superannuation Scheme (Scotland) Regulations 1995 with effect from 1 April 2009. There is one exception to this; regulation 14(3) applies retrospectively from 1 April 1995.

#### Part 2 of the draft Scottish Statutory Instrument

Regulations 17 to 84 in Part 2 of the SSI amend the NHS Pension Scheme (Scotland) Regulations 2008 with effect from 1 April 2009.

The exceptions to this; regulations 39, 41 ©, 44, 46, 47, 54(a), 67(a), 69, 72(c), 75 and 78(b) apply retrospectively from 1 April 2008.

#### Part 3 of the draft Scottish Statutory Instrument

Regulations 85 to 89 in Part 3 make amendments to the National Health Service (Injury Benefits)(Scotland) Regulations 1998 which apply from 1 April 2009.

#### Part 4 of the draft Statutory Instrument

Regulation 90 in Part 4 allows deferred members, or members in receipt of a relevant benefit, who are detrimentally affected by the amendments to elect for the provisions not to apply to them by giving notice within six months of the coming into force of the amending Scottish Statutory Instrument.

## Explanation: PART 1 Changes to the 1995 Scheme (Amending regulations 3 to 15)

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### Changes to Part B 'Membership of the Scheme'

**Regulation 3** Amends regulation B3 (restriction on further participation in the scheme) so that a re-employed pensioner must stop accruing any further service in their re-employment if the lower tier ill health pension in payment for their earlier service is converted to an upper tier ill health pension. (new paragraph (3) (a)).

New paragraph (3)(b) permits a member to restart contributions again if they are under age 50, and in NHS employment one year after their lower tier pension is replaced by a upper tier pension. At this point their replacement upper tier pension will have reverted to a lower tier pension.

These amendments are made to ensure that an upper tier pensioner may not accrue further service that runs concurrently with the enhancements of 2/3rds prospective service included in an upper tier pension.

### Changes to Part D 'Contributions'

**Regulation 4** Amends regulation D1 (contributions by members) to take account of changes to the way in which tiered contribution rates for members will operate from the Scheme Years 2009/10 onwards.

#### Setting a tiered contribution rate

1) Principles which are unchanged:

- A member is assessed for an appropriate contribution rate at the beginning of each scheme year (1 April each year) (Paragraph (1A))
- For members who are in pensionable employment on 31 March and 1 April of each year, the contribution rate will generally be set for the forthcoming scheme year based on pensionable pay received in the previous year (scaled up to a full year for members who started part-way through the previous year). (Paragraphs (2C), (2D) (2E), (2F), (2G) and paragraphs (2K), (2L) and (2M) (there is one change to this explained below under 'General Changes' at \*))
- For members who start a pensionable employment during the current scheme year, the contribution rate will be set according to estimated pensionable pay for that employment to the end of the current scheme year (scaled up to a full year) (Paragraph (2Q))
- Part-time member's pensionable pay (actual or estimated) will be scaled up to equivalent full time pay

## 2) General changes made are:

- D1 was drafted so as to cover the 2008/9 interim scheme year only. It is now framed in a way so that it can be applied to all scheme years from the scheme year commencing on 1 April 2009.(Paragraph (1A))
- The table has been updated with the current bandings (Paragraph (1A))
- A member's contribution tier may be re-assessed 'in year' if:
  - the member starts a new employment in year with the same or a new employer (Paragraph (2Q)), or
  - the member's pensionable pay changes in year for an existing employment. (Paragraph (2R)), This excludes changes to pensionable allowances which are due to

changes in duties which aren't planned or are unlikely to persist for at least 12 months. (Paragraph (2S))

- o In the case of a part time member, the change to pay or allowances will be ignored if the member's whole equivalent pay does not change. (Paragraph (2T))

\*<sup>1</sup>If a member's contribution rate changed in the previous scheme year (because of the circumstances explained at the above bullet point), when the contribution rate is set for the next year, this will be based on the pensionable pay received in the previous year from the date of the contribution change to the end of the year (uprated to 365 days). (Paragraphs (2H), (2I), (2J), (2N), (2O), (2P))

### 3) Provisions that have been removed

- the provisions that allowed some manual workers to pay contributions at a rate of 5% in the 1995 Section regardless of earnings have been removed. This means that from 1 April 2009 all members will pay the tiered contribution rate appropriate to their pensionable pay.
- The provisions that allowed a rate applicable to one employment to be carried forward into another have been removed. From 1 April 2009 the appropriate tiered rate will now apply to each employment separately according to the member's pensionable pay for that employment. (Paragraph (2B)(b))

### Changes to Part E 'Benefits for Members'

**Regulation 5** Amends regulation E2B (re-assessment of ill health condition determined under regulation E2A) If a re-employed ill health pensioner becomes entitled to an upper tier pension in respect of their *new* service, they will not be able to apply for any lower tier pension in

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<sup>1</sup> This will not apply during the 2009/10 scheme year because no changes were made to a contribution rate applicable to that year once it had been set.

payment for their earlier service to also be converted to a upper tier pension under a Scottish Ministers' review. This prevents a member from becoming entitled to two separate upper tier pensions both of which would attract enhancements of 2/3rds prospective service to age 60.

**Regulation 6** Amends regulation E6 (**preserved pension**) so that a technical change is made to ensure E6 is consistent with other regulations providing for commutation of benefits on terminal illness by including a reference to the requirements of the 'lump sum rule' in the Finance Act 2004.

**Regulation 7** Amends regulation E7 (**Lump Sum on retirement**) to clarify that where a lower tier pension is converted to an upper tier pension following a review by the Scottish Ministers, the fixed three times pension lump sum is only due for the difference between the lower tier and the upper tier ill health pension.

**Regulation 8** Amends regulation E11 (**general option to exchange pension for lump sum**) to clarify that where a lower tier pension is converted to a upper tier pension following a review by the Scottish Ministers, the member may exchange part of the additional pension (difference between the lower tier and the upper tier ill health pension) for lump sum.

#### **Changes to Part H 'Child Allowance'**

**Regulation 9** Amends regulation H4 (**member dies after pension becomes payable**) to include references to 'nominated partners' and 'surviving nominated partner's'.

#### **Changes to Part S 'Members who return to NHS employment after pension becomes payable'**

**Regulation 10** Amends regulation S3A (**benefits in respect of pensionable employment after pension becomes payable under regulation E2A**) so that a member whose lower tier ill- health pension (in payment) is converted to a upper tier pension, may only become entitled to a lower tier pension for their re-employed service (regardless of whether they meet the lower tier or the upper tier condition in respect of that service).

#### **Changes to Part T 'General rules about benefits'**

**Regulation 11** Amends regulation T9 (**interest**) so that interest will be due from the scheme if the difference between a lower tier ill health pension and an upper tier ill health pension is not made within one month of the date the Scottish Ministers was in possession of all the information needed to calculate the additional amounts due.

#### **Changes to Part U 'Administrative Matters'**

**Regulation 12** Amends regulation U2 (**determination of questions**) so that the Scheme's Medical Advisers are able to advise the Scottish Ministers as to whether a deferred member is entitled to commutation of their benefits because of terminal illness.

#### **Changes to Part W "Pension sharing on divorce or nullity of marriage, or nullity of civil partnership"**

**Regulation 13** Legislation to abolish 'safeguarded rights' is in the Pensions Bill and the draft Pension Sharing (Pension Credit Benefit) (Amendment) Regulations 2009 will make provisions effective from 1 April 2009 which will broadly align the general rules for the payment of pension credit benefit with other deferred pension rights held in occupational pension schemes.

As a consequence of these changes, amendments have been made to Regulation W and schedule 1A that will from 1 April 2009:

- 1) Allow early payment of a pension credit with an actuarial reduction from normal minimum pension age, (new Paragraph W 11A Pension credit benefit before attaining normal benefit age (with actuarial reduction))
  
- 2) Allow the pension credit to be paid early on health grounds as long as the pension credit member meets the ill health condition in the Finance Act 2004 and is permanently incapable of any regular

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<sup>2</sup> The part of a pension credit that relates to a members guaranteed minimum pension and currently subject to some limitations on how and when it can be paid to the former spouse/ civil partner.

employment because of ill health. (New Paragraph W16 Pension credit benefit before attaining normal benefit age (on grounds of ill health))

3) Allow pension credit members the same access to pension commencement lump sums as those enjoyed by other deferred scheme members (as long as the sharing order is pre-retirement). This will mean that in addition to the fixed lump sum in the 1995 section pension credit members will be able to exchange part of their pension credit for lump sum up to the limits provided for in the Finance Act 2004. (New sub paragraphs (7) to (12) of W11 Pension Credit benefit on attaining normal benefit age)

As a consequence of the above key amendments we have also made two further amendments.

Firstly, (in line with other members) a pension credit member who is terminally ill may commute the maximum amount of pension credit into lump sum before the pension is commuted.

Secondly, we have also amended the paragraphs dealing with the death benefit lump sum payable when a pension credit member who is receiving their benefit dies so that the maximum amount of any lump sum that may be paid will take account of the amount of pension that was commuted to lump sum. W12 "Pension credit member dies after pension credit benefit becomes payable"

#### Technical Changes

- References to 'safeguarded rights' are removed from paragraph 9 of schedule 1A (offset for crime, negligence or fraud) and W10 (b) (loss of rights to benefits),

**Regulation 14**                      **Amendment of Schedule 1 (Medical and Dental Practitioners)**

**Paragraph (2)**                      Amends paragraph 10 (contributions to the scheme) to take account of changes to the way in which tiered contribution rates for medical and dental practitioner and non-GP Provider (NGPP)

members will operate from the Scheme Years 2009/10 onwards.

## Setting a tiered contribution rate

### 1) Principles which are unchanged:

- Any employment as an Officer will be considered separately for tiering purposes (Sub-paragraph (2D))
- All of a member's NHS medical practitioner service, NGPP service or dental practitioner service will be taken into account when the tiered rate for the relevant service is set. (Sub-paragraph (2F))
- Part-time practitioner and NGPP service under the career average system will not be scaled to a full-year equivalent for tiering purposes

### 2) Provisions that have been removed:

- The arrangements that based the tiered rate for 2008/9 on an earlier year's certified earnings, and retained that tier regardless of actual 2008/9 earnings, will be removed.
- The provisions that allowed a rate applicable to one period of practitioner or NGPP period of service or an officer employment to be carried forward into another have also been removed.
- From 1 April 2009, the tiered rate and contributions for a practitioner or NGPP will take into account the aggregate of all practitioner or NGPP service in a scheme year. (Sub-paragraph (2F))

### 3) General changes for 2009/10 on are:

- Paragraph 10 was drafted so as to cover the 2008/9 interim scheme year only. It is now framed in such a way that it can be applied to all scheme years from the scheme year commencing on 1 April 2009 (Sub-paragraph (2))

- The pensionable earnings and contribution rate table has been updated with the current bandings (Sub-paragraph (2))
- With the objective of minimizing year-end adjustments, from 1 April 2009 (Sub-paragraph (2I) , a provisional in-year tiered rate and monthly contributions deduction will be based on:
  - a rate agreed between the contracting health board, PSD or employer as applicable and the Practitioner or Non GP Provider; or
  - the last available set of finalised earnings; or
  - the estimated level of earnings for the current year.
- The contracting health board, PSD, or employer as appropriate may adjust the tiering and deduction rate (Sub-paragraph (2G)) during the year, either:
  - in agreement with the GP or NGPP; or
  - if it becomes apparent that income will exceed that used to base the deduction tier on
  - any adjustments will be backdated to the start of the Scheme year.
- Employers of assistant practitioners and salaried GPs will be required to take account of their estimated certificate of earnings in order to allocate the correct tier.
- Following the close of each scheme year (after completion of their tax returns, for medical practitioners and NGPPs) the PSD, or employer as appropriate will compare the member's actual earnings for the year with the provisional in-year deductions, and make final adjustments to contributions, and if necessary the tiered rate. (Sub-paragraphs (2H) and (2I))

**Paragraph (3)** Amends the drafting of paragraph 14 (**Lump sum on member's death in pensionable employment or after pension becomes payable**) at sub-paragraphs (1) and (2) to ensure that the lump sums for deceased

non-contributing members and deceased pensioner members are based on the yearly average of their uprated earnings on their last day of pensionable service.

**Paragraph (4)** Amends paragraph 23 (**Accounts and Actuarial Reports**) to introduce a new end-of-year certificate of NHS Scheme pensionable earnings contributions, for completion by assistant medical practitioners and salaried GPs. The amendment introduces start-of-year statements of estimated practitioner earnings and contributions (NB the introduction of certificates for non principal locums may also be considered) Provisions are also included in the Regulations that where practitioners have failed to provide information within the required time limits the member's pensionable earnings for that period will be zero. Alternatively if the Scottish Ministers are in receipt of other information which they are satisfied represents all or part of the member's pensionable earnings for that year they may accept this as the practitioner's earnings for that year.

**Regulation 15** Amendment of Schedule A (**Pension Sharing on Divorce or Nullity of Marriage or, on the Dissolution or Nullity of a Civil Partnership**)

To see note under regulation 14

## Explanation: PART 2 Changes the 2008 Scheme (Amending regulations 17 to 84)

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### Changes to Chapter 2A 'Introduction'

**Regulation 17** 2.A.1 Interpretation: general

Amends the definition of "member" to include "non-contributing members", and inserts a new definition of "non-contributing member". The revised definitions support a number of mainly technical changes in Chapter 2.D Member's retirement benefits, and Chapter 2.E Death benefits; to cater properly for payment of personal and dependant's benefits when a member has:

- reached the 45 year pensionable service limit

- remains in NHS employment
- has ceased payment of contributions (and not applied to continue payment)
- remains entitled to pension benefits but is currently under age 75

The changes mirror similar changes made to the 1995 regulations from April 2008 and ensure that when 45 years service has been accrued, and pensionable service has ceased, the correct pay is used to calculate benefits.

**Regulation 18 2.A.9 Pensionable pay: breaks in service**

Puts right an incorrect reference to pensionable pay for non-GP providers.

**Regulation 19 2.A.10 Meaning of reckonable pay: general**

Amends 2.A.10 to cater for the introduction of 'non-contributing members' as described for amending regulation 17 above - Members who reach the scheme's 45 year service limit, cease to accrue pensionable service or pay contributions and so the 'relevant day' at 2.A.10 (5) will be the member's last day of pensionable service

**Changes to Chapter 2B 'Membership'**

**Regulation 20 2.B.2 Restrictions on eligibility: general**

Amends 2.B.2 at new paragraph 6, so that a re-employed pensioner must stop accruing any further service in their re-employment if the lower tier ill health pension in payment is converted to an upper tier ill health pension. New paragraph 7 permits a member to restart contributions again if they are in NHS employment one year after their lower tier pension is replaced by an upper tier pension. At this point their replacement upper tier pension will have reverted to a lower tier pension. These amendments are made to ensure that a upper tier pensioner may not accrue further service that runs concurrently with the enhancements of 2/3rds prospective service included in a upper tier pension.

**Changes to Chapter 2C 'Contributions'**

**Regulation 21 2.C.2 Members contribution rate**

Amends regulation 2.C.2 (**Members contribution rate**) to take account of changes to the way in which tiered contribution rates for members will operate from Scheme Year 2009/10 onwards.

## **Regulation 22 2.C.3 Employees**

Amends regulation 2.C.3 (**Employees**) to specify how the changes to tiered contributions under this Part will operate for Officer members (other than Non-GP Providers) from 1 April 2009 onwards. Tiered contribution arrangements for NGPP members have been removed from regulation 2.C.3 and are now set out at regulation 2.C.4 (see amendment regulation 23 below)

### **Setting a tiered contribution rate**

#### **1) Principles which are unchanged:**

- A member is assessed for an appropriate contribution rate at the beginning of each scheme year (1 April each year) (Paragraph (2) of regulation 2.C.2 above)
- For members who are in pensionable employment on 31 March and 1 April of each year, the contribution rate will generally be set for the forthcoming scheme year based on pensionable pay received in the previous year (scaled up to a full year for members who started part-way through the previous year). Regulation 2.C.3, paragraphs (2), (3), (4), (5) and paragraphs (10), (11) and (12) (there is one change to this explained below under 'General Changes' at 2\*)
- For members who start a pensionable employment during the current scheme year, the contribution rate will be set according to estimated pensionable pay for that employment to the end of the current scheme year (scaled up to a full year) (Paragraph 16)
- Part-time members pensionable pay (actual or estimated) will be scaled up to equivalent full time pay

#### **2) General changes made are:**

- 2.C.2 and 2.C.3 were drafted so as to cover the 2008/9 interim scheme year only. They are now framed in such a way that they

can be applied to all scheme years from the scheme year commencing on 1 April 2009. (Paragraph (2) of regulation 2.C.2 above)

- The pensionable pay/earnings table has been updated with the current bandings (Paragraph (2) of regulation 2.C.2 above)
- A members contribution tier may be re-assessed 'in year' if:
  - the member starts a new employment in year with the same or a new employer (Paragraph (16)), or the member's pensionable pay changes in year for an existing employment. This excludes changes to pensionable allowances which are due to changes in duties which aren't planned or are unlikely to persist for at least 12 months. (Paragraph (18))
  - In the case of a part-time member, the change to pay or allowances will be ignored if the member's whole-time equivalent pay does not change (Paragraph (19))
- <sup>\*3</sup>If a members contribution rate changed in the previous scheme year (because of the circumstances explained at the above bullet point) when the contribution rate is set for the next year, this will be based on the pensionable pay received in the previous year from the date of the contribution change to the end of the year (up rated to 365 days). (Paragraphs (7), (8), (9), (13), (14) and (15))

### 3) Provisions that have been removed

- The provisions that allowed a rate applicable to one employment to be carried forward into another have been removed. From 1 April 2009 the appropriate tiered rate will now apply to each employment separately according to the member's pensionable pay for that employment. (Paragraph 1 (b))

## Regulation 23 2.C.4 Non-GP Providers

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<sup>3</sup> This will not apply during the 2009/10 scheme year because no changes were made to a contribution rate applicable to that year once it had been set.

Re-names regulation 2.C.4 (Part-time employees) to 2.C.4 (Non-GP Providers). This takes account of changes to 2.C.3 that remove NGPPs from the general 'employee' regulation 2.C.3 and rely elsewhere for the part-time differences previously repeated in 2.C.4. Regulation 2.C.4 now specifies how the changes to tiered contributions under this Part will operate differently for non-GP Provider (NGPP) members from 1 April 2009 onwards.

## **Setting a tiered contribution rate**

### **1) Principles which are unchanged:**

- Any Officer employment the NGPP has under this Part will be considered separately for tiering purposes (Paragraph (5))
- All of a member's NGPP service will be taken into account when setting the tiered rate. (Paragraph (1))
- Part-time NGPP service will not be scaled to a full-year equivalent for tiering purposes
- Part-year NGPP service will not be scaled to a full-year equivalent for tiering purposes

### **2) Provisions that have been removed:**

- The arrangements that based the tiered rate for 2008/9 on an agreed estimate of the year's pensionable earnings, and retained that tier regardless of the member's actual earnings during 2008/9, are removed.
- The provisions that allowed a rate applicable to one period of NGPP service or Officer employment (other than NGPP) during 2008/9 to be carried forward into another period, are also removed.

### **3) General changes for 2009/10 on are:**

- Regulations 2.C.2 and 2.C.3 were drafted so as to cover the 2008/9 interim scheme year only. They are now framed in such a way that they can be applied to all scheme years from the

scheme year commencing on 1 April 2009 (Paragraph 2 of regulation 2.C.2 above)

- The pensionable earnings and contribution rate table has been updated with the current bandings (Paragraph 2 of regulation 2.C.2 above)
- From 1 April 2009, the tiered rate and contributions for a NGPP will take into account the aggregate of all NGPP service for a scheme year. (Paragraph (6))
- With the objective of minimising year-end adjustments; from 1 April 2009 (Paragraph (2)), a provisional in-year tiered rate and monthly contributions deduction will be based on:
  - a rate agreed between the Health Board or Practitioner Services and the NGPP; or
  - the last available set of finalised earnings; or
  - the estimated level of earnings for the current year.
- The Health Board or Practitioner Services may adjust the tiering and deduction rate (Paragraph (4)) during the year, either:
  - in agreement with the NGPP; or
  - if it becomes apparent that income will exceed that used to base the deduction tier on
  - any adjustments will be backdated to the start of the Scheme year.
- Following the close of each scheme year (after completion of their tax return) the Health Board or Practitioner Services will compare the NGPP's actual earnings for the year with the provisional in-year deductions, and make final adjustments to contributions, and if necessary the tiered rate. (Paragraph (1))

**Pension Sharing on Divorce or Nullity of Marriage or, on the Dissolution or Nullity of a Civil Partnership**

There is legislation to abolish '4safeguarded rights' in the Pensions Bill, and the draft Pension Sharing (Pension Credit Benefit) (Amendment) Regulations 2009 will make provisions effective from 1 April 2009 which will broadly align the general rules for the payment of pension credit benefit with other deferred pension rights held in occupational pension schemes.

As a consequence of these changes, amendments have been made to regulations 2.D.2, 14, 15 and 17, and to 2.J.5 and 11, that will, from 1 April 2009:

- 1) Allow early payment of a pension credit with an actuarial reduction from normal minimum pension age, (See 2.D.2 new paragraph (5))
- 2) Allow the pension credit to be paid early on health grounds as long as the pension credit member meets the ill health condition in the Finance Act 2004 and is permanently incapable of any regular employment because of ill health. (See 2.D.2 new paragraph (8))
- 3) Allow pension credit members the same access to pension commencement lump sums as those enjoyed by other deferred scheme members (as long as the sharing order is pre-retirement). This means that pension credit members will have the same rights as other scheme members to exchange some of their pension credit for lump sum, up to the limits provided for in the Finance Act 2004. Special arrangements are also made for members in receipt of ill health pensions. (See 2.D.14 replacement paragraph (1) and new paragraphs (8) and (9))

As a consequence of the above key amendments we have also made a further amendment.

In line with other members, a pension credit member who is terminally ill may commute the maximum amount of pension credit into lump sum

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<sup>4</sup> The part of a pension credit that relates to a members guaranteed minimum pension and currently subject to some limitations on how and when it can be paid to the former spouse/ civil partner.

before the pension is fully commuted on health grounds. (See 2.D.15, replacement paragraph (5))

#### Technical Changes

- Cross references to the Pension Sharing (Pension Credit Benefit) Regulations 2000 in regulation 2.J.5 (Commutation of small pensions) and also to 'Safeguarded Rights' in regulation 2.D.17 are deleted.
- A new sub-paragraph (za) in regulation 2.J.10 (Determinations of questions) is inserted so that Medical Advisers may make recommendations to Scottish Ministers on ill health applications and applications to commute benefits because of terminal illness from Pension Credit member.

#### Changes to Chapter 2D 'Member's retirement benefits'

##### **Regulation 24** 2.D.2 Pension credit members

Adds new paragraphs (5) to (10) to 2.D.2 so that a pension credit can now also:

- be paid from normal minimum pension age (55) with an actuarial reduction, and
- be paid early on health grounds, as long as the pension credit member meets the 'ill health condition in the Finance Act 2004 and the pension credit member is permanently incapable of regular employment

##### **Regulation 25** 2.D.4 Early payment of pension with actuarial reduction

Provides for the correct pay to be used when calculating benefits for non-contributing members, as described in amending regulation 17 above.

##### **Regulation 26** 2.D.5 Partial retirement (members aged at least 55)

Provides for the correct pay to be used when calculating benefits for non-contributing members, as described in amending regulation 17 above.

**Regulation 27**    **2.D.6 Increase in pensionable pay following exercise of option under regulation 2.D.5**

Provides for the correct pay to be used when calculating benefits for non-contributing members, as described in amending regulation 17 above.

**Regulation 28**    **2.D.7 Application of regulations 2.D.5 and 2.D.6 where concurrent employments held**

Provides for the correct pay to be used when calculating benefits for non-contributing members, as described in amending regulation 17 above.

**Regulation 29**    **2.D.8 Early retirement on ill health (active members)**

Provides for the correct pay to be used when calculating benefits for non-contributing members, as described in amending regulation 17 above.

**Regulation 30**    **2.D.9 Reassessment of entitlement to an ill health pension determined under regulation 2.D.8**

Amends regulation 2.D.9 so that a re-employed ill health pensioner who becomes entitled to a upper tier pension in respect of their *later* service, will not be able to apply for any lower tier pension in payment for their earlier service to also be converted to a upper tier pension under the Scottish Ministers' review. This prevents a member from becoming entitled to two separate upper tier pensions, both of which would attract enhancements of 2/3rds prospective service to age 65.

**Regulation 31**    **2.D.11 Early retirement on termination of employment by employing authority**

Provides for the correct pay to be used when calculating benefits for

non-contributing members, as described in amending regulation 17 above.

**Regulation 32**    **2.D.13 Exceptions to requirement that NHS employment must have ceased**

Provides for the correct pay to be used when calculating benefits for non-contributing members, as described in amending regulation 16 above.

**Regulation 33**    **2.D.14 General option to exchange part of pension for lump sum**

Amends paragraph (1) of 2.D.14 to allow pension credit members the same access to pension commencement lump sums as those enjoyed by other deferred scheme members (as long as the sharing order pre dates the member's 1<sup>st</sup> retirement). New paragraph (8) makes provision for member's in receipt of ill health pensions and paragraph (9) restricts the option to commute pension to lump sum to the **difference** in amount payable, where an upper tier pension replaces a lower tier pension.

**Regulation 34**    **2.D.15 Option for members in serious ill-health to exchange whole pension for lump sum**

Amends regulation 2.D.15 to extend to Pension Credit members the ability to commute the maximum amount of pension to lump sum where commuted benefits on terminal ill health are being paid.

**Regulation 35**    **2.D.17 Pension credit member's rights**

The cross references to the Pension Sharing (Pension Credit Benefit) Regulations 2000 and to 'Safeguarded Rights' are no longer required and regulation 2.D.17 is deleted.

**Regulation 36**    **2.D.21 Dual capacity membership**

Provides for the correct pay to be used when calculating benefits for non-contributing members, as described in amending regulation 16

above.

### **Changes to Chapter 2E 'Death benefits'**

**Regulation 37 2.E.1 Surviving adult dependant's pensions**

Provides for the correct pay to be used when calculating benefits for non-contributing members, as described in amending regulation 16 above.

**Regulation 38 2.E.3 Amount of pensions under regulation 2.E.1: active members**

Provides for non-contributing members as described in amendment regulation 17 above and replaces paragraph (1) so that the initial period pension for a deceased non-contributing member will be based on the member's reckonable pay as at their last day of pensionable service.

**Regulation 39 2.E.4 Amount of pensions under regulation 2.E.1: pensioner members**

Corrects the regulation to 'ignore' abatement under Chapter H of this Part in both the initial and ongoing pensions and to 'ignore' the actuarial reduction under regulation 2.D.4 for pensions payable after the initial period.

**Regulation 40 2.E.7 re employer pensioners: adult survivor pensions initial period**

Replaces sub-paragraphs (a) and (b) so that for re employed non-contributing members, the initial period pension for the member's later period of service will be based on their reckonable pay at their last day of pensionable service.

**Regulation 41 2.E.10 Amount of children's pensions under regulation 2.E.8: deceased active members**

Provides for non-contributing members as described in amendment regulation 17 above and revises paragraphs (6) and (7) so that the initial period pensions for a non-contributing member will be based on the member's reckonable pay at their last day of pensionable service .

The amendment also corrects the regulation at paragraph (4) to ensure that a minimum of 10 years pensionable service is taken into account when calculating a child pension for deceased active members. The 10 year under-pin is not required for deceased non-contributing members who will have reached the scheme's maximum service limit.

**Regulation 42 2.E.11 Amount of children's pensions under regulation 2.E.8: deceased pensioner members**

Provides for the correct pay to be used when calculating benefits for non-contributing members, as described in amending regulation 16 above.

**Regulation 43 2.E.12 Amount of children's pensions under regulation 2.E.8: deceased pensioner members**

Provides for the correct pay to be used when calculating benefits for non-contributing members, as described in amending regulation 16 above.

**Regulation 44 2.E.13 Amount of children's pensions under regulation 2.E.8: recent leavers**

Corrects the 'basic death pension' on which a child pension is based, in the case of a recent leaver, to a upper tier ill health pension under 2.D.8 (5).

**Regulation 45 2.E.15 Amount of children's pensions under regulation 2.E.8: re employed pensioners**

Provides for non-contributing members as described in amendment regulation 17 above and revises paragraph (2) (a) so that the initial period pension for a deceased non-contributing member will be based on the member's reckonable pay as at their last day of pensionable service

**Regulation 46 2.E.17 Amount of lump sum: single capacity member and recent leavers (disregarding regulation 2.D.5 employments)**

Provides for non-contributing members as described in amendment regulation 17 above and adds cross-references to regulations 2.E.20A and 2.E.21.

**Regulation 47 2.E.18 Amount of lump sum: dual capacity members (disregarding regulation 2.D.5 employments)**

Provides for non-contributing members as described in amendment regulation 17 above, and corrects paragraph (2) (a) so that the lump sum for the deceased member's later service will be based on a upper tier ill health pension under regulation 2.D.8 (5). In the case of a deceased non-contributing member, the service taken into account will be adjusted to the date of the member's last day of pensionable service.

**Regulation 48 2.E.19 Amount of lump sum: dual capacity members (members with pensions under regulation 2.D.5)**

Provides for non-contributing members as described in amendment regulation 17 above, and in paragraph 2 (a), corrects 'pensionable pay' to 'reckonable pay'.

**Changes to Chapter 2G 'Re-employment and re-joining the scheme'**

**Regulation 49 2.G.5 Re-employed lower tier ill health pensioners**

Amends regulation 2.G.5 so that where a member's lower tier ill-health pension (in payment) is converted to an upper tier pension, they may only become entitled to a lower tier pension for their re-employed service (regardless of whether they meet the lower tier or the upper tier condition in respect of that service).

**Changes to Chapter 2J 'Miscellaneous and supplementary provisions'**

**Regulation 50 2.J.5 Commutation of small pensions**

The cross reference to the Pension Sharing (Pension Credit Benefit) Regulations 2000 is no longer required.

**Regulation 51 2.J.9 Interest on late payment of benefits and refunds of contributions**

Amends 2.J.9 so that interest will be due from the scheme if the difference between a lower tier ill health pension and a upper tier ill health pension is not paid within one month of the date the Scottish Ministers was in possession of all the information needed to calculate the additional amounts due. The amendment also clarifies that the due date for an unpaid amount in respect of an interim award is the first day on which the Scottish Ministers in possession of all the necessary information for calculation of the amount.

**Regulation 52 2.J.10 determinations of questions**

Amends 2.J.10 so that a recommendation by a medical advisor can made by a medical practitioner to the Scottish Ministers where a pension credit member applies for early payment of benefits on ill health grounds under new 2.D.2 (8).

**Regulation 53 2.J.13 Employing authority and certain member record keeping and contribution estimates**

Amends 2.J.13 to introduce the new certificates and statements of pensionable earnings and contributions described at paragraph 23 (4) of amendment regulation 14, in Part 1 of these explanations.

**Part 3 'Benefits for Practitioners etc'**

**Changes to Chapter 3A 'Introduction'**

**Regulation 54 3.A.1 Interpretation: general**

Amends the definition of "member" to include "non-contributing members", and inserts a new definition of "non-contributing member". The revised definitions support a number of mainly technical changes in Chapter 3.D Member's retirement benefits, and Chapter 3E Death benefits; to cater properly for payment of personal and dependant's benefits when a member has:

- reached the 45 year pensionable service limit
- remains in NHS employment

- has ceased payment of contributions (and not applied to continue payment)
- remains entitled to pension benefits but is currently under age 75

The changes mirror similar changes made to the 1995 regulations from October 2008 and ensure that when 45 years service has been accrued and pensionable service has ceased, the correct pay is used to calculate benefits.

### Changes to Chapter 3B 'Membership'

#### Regulation 55 3.B.2 Restrictions on eligibility: general

Amends 3.B.2 at new paragraph 6, so that a re-employed pensioner must stop accruing any further service in their re-employment if the lower tier ill health pension in payment is converted to a upper tier ill health pension. paragraph 7 permits a member to restart contributions again if they are in NHS employment one year after their lower tier pension is replaced by a upper tier pension. At this point their replacement upper tier pension will have reverted to a lower tier pension. These amendments are made to ensure that a upper tier pensioner may not accrue further service that runs concurrently with the enhancements of 2/3rds prospective service included in a upper tier pension.

### Changes to Chapter 3C 'Contributions'

#### Regulation 56 3.C.2 Members contribution rate

Amends regulation 3.C.2 (Member's contribution rate) to take account of changes to the way in which tiered contribution rates for medical and dental practitioner members will operate from the Scheme Years 2009/10 onwards.

### Setting a tiered contribution rate

#### 1) Principles which are unchanged:

- Medical practitioner service will be considered separately from dental practitioner service, for tiering purposes (Paragraph (13))
- Any employment as an Officer will be considered separately for tiering purposes (Paragraph (12))
- All of a member's NHS medical practitioner service or dental practitioner service will be taken into account when the tiered rate for the relevant service is set. (Paragraph (14))
- Part-time medical practitioner service will not be scaled to a full-year equivalent for tiering purposes

## 2) Provisions that have been removed:

- The arrangements that based the tiered rate for 2008/9 on an agreed estimate of the year's pensionable earnings, and retained that tier regardless of the member's actual earnings during 2008/9, will be removed.
- The provisions that allowed a rate applicable to one period of practitioner service or Officer employment during 2008/9 to be carried forward into another, have also been removed.
- From 1 April 2009, the tiered rate and contributions for a practitioner will take into account the aggregate of all practitioner service in a scheme year. (Paragraph (14))

## 3) General changes for 2009/10 on are:

- Regulation 3.C.2 was drafted so as to cover the 2008/9 interim scheme year only. It is now framed in such a way that it can be applied to all scheme years from the scheme year commencing on 1 April 2009 (Paragraph (2))
- The pensionable earnings band and contribution rate table has been updated with the current bandings (Paragraph (2))
- With the objective of minimising year-end adjustments, from 1 April 2009 (Paragraphs (6) and (9)), a provisional in-year tiered rate and monthly contributions deduction will be based on:

- a rate agreed between the Health Board or Practitioner Services and the Practitioner; or
- the last available set of finalised earnings; or
- the estimated level of earnings for the current year.
- The Health Board or Practitioner Services may adjust the tiering and deduction rate (Paragraph (11)) during the year, either:
  - in agreement with the practitioner; or
  - if it becomes apparent that income will exceed that used to base the deduction tier on.
  - any adjustments will be backdated to the start of the Scheme year
- Following the close of each scheme year (around 6 months afterwards for dental practitioners, and after completion of their tax returns, for medical practitioners) The Health Board or Practitioner Services will compare the member's actual earnings for the year with the provisional in-year deductions, and make final adjustments to contributions, and if necessary the tiered rate. (Paragraphs (5) and (8))

### **Changes to Chapter 3D 'Members' retirement benefits**

#### **Pension Sharing on Divorce or Nullity of Marriage or, on the Dissolution or Nullity of a Civil Partnership**

The following amendments to regulations 3.D.2, 10, 11, and 13, and to 3.J.5 and 11, mirror those described in the introduction following immediately on from amendment regulation 22 above, made in response to the legislation to abolish<sup>5</sup> 'safeguarded rights' in the Pensions Bill, and the draft Pension Sharing (Pension Credit Benefit) (Amendment) Regulations 2009, which will broadly align the general rules for the payment of pension credit benefit with other deferred pension rights held in occupational pension schemes.

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<sup>5</sup> The part of a pension credit that relates to a members guaranteed minimum pension and currently subject to some limitations on how and when it can be paid to the former spouse/ civil partner.

<b>Regulation 57</b>	<p><b>3.D.2 Pension credit members</b></p> <p>Adds new paragraphs (5) to (10) to regulation 3.D.2 so that a pension credit can now also:</p> <ul style="list-style-type: none"> <li>• be paid from normal minimum pension age (55) with an actuarial reduction, and</li> <li>• be paid early on health grounds, as long as the pension credit meets the ill health condition in the Finance Act 2004 and the pension credit member is permanently incapable of regular employment</li> </ul>
<b>Regulation 58</b>	<p><b>3.D.4 Early payment of pensions with actuarial reduction</b></p> <p>Provides for the correct pay to be used when calculating benefits for non-contributing members, as described in amending regulation 54 above.</p>
<b>Regulation 59</b>	<p><b>3.D.5 Partial retirement (Members aged at least 55)</b></p> <p>Provides for the correct pay to be used when calculating benefits for non-contributing members, as described in amending regulation 54 above.</p>
<b>Regulation 60</b>	<p><b>3.D.6 Increase in level of engagement following exercise of option under regulation 3.D.5</b></p> <p>Provides for the correct pay to be used when calculating benefits for non-contributing members, as described in amending regulation 54 above.</p>
<b>Regulation 61</b>	<p><b>3.D.7 Early retirement on ill health (active members)</b></p> <p>Provides for the correct pay to be used when calculating benefits for non-contributing members, as described in amending regulation 54 above.</p>
<b>Regulation 62</b>	<p><b>3.D.8 Reassessment of entitlement to an ill health pension determined under regulation 3.D.7</b></p>

Amends regulation 3.D.8 so that a re-employed ill health pensioner who becomes entitled to a upper tier pension in respect of their *later* service, will not be able to apply for any lower tier pension in payment for their earlier service to also be converted to a upper tier pension under a Scottish Ministers' review. This prevents a member from becoming entitled to two separate upper tier pensions, both of which would attract enhancements of 2/3rds prospective service to age 65.

**Regulation 63**      **3.D.10 General option to exchange part of pension for lump sum**

Amends paragraph (1) of regulation 3.D.10 to allow pension credit members the same access to pension commencement lump sums as those enjoyed by other deferred scheme members (as long as the sharing order pre dates the member's 1<sup>st</sup> retirement). New paragraph (8) makes provision for members in receipt of ill health pensions and paragraph (9) restricts the option to commute pension to lump sum to the difference in amount payable, where a upper tier pension replaces a lower tier pension.

**Regulation 64**      **3.D.11 Option for members in serious ill-health to exchange whole pension for lump sum**

Amends regulation 3.D.11 to extend to Pension Credit Members the ability to commute the maximum amount of pension to lump sum when commuted benefits on terminal ill health are being paid.

**Regulation 65**      **3.D.13 Pension credit member's rights**

The cross references to the Pension Sharing (Pension Credit Benefit) Regulations 2000 and to 'Safeguarded Rights' are no longer required and regulation 3.D.13 is deleted.

**Regulation 66**      **3.D.17 Dual capacity membership**

Provides for the correct pay to be used when calculating benefits for non-contributing members, as described in amending regulation 54 above.

## Changes to Chapter 3E 'Death benefits'

- Regulation 67**      **3.E.1 Surviving adult dependants' pensions**
- Provides for the correct pay to be used when calculating benefits for non-contributing members, as described in amending regulation 54 above.
- Regulation 74**      **3.E.3 Amount of pensions under regulation 3.E.1: Active members**
- Provides for non-contributing members as described in amendment regulation 54 above and replaces paragraph (1) so that the initial period pension for a deceased non-contributing member will be based on the monthly average of the member's uprated earnings on their last day of pensionable service.
- Regulation 69.**      **3. E.4 Amount of pensions under regulation 3.E.1: Pensioner members**
- Corrects the regulation to 'ignore' abatement under Chapter H of this Part in both the initial and ongoing survivor pensions and to 'ignore' the actuarial reduction under regulation 3.D.4 for pensions payable after the initial period.
- Regulation 70**      **3.E.7 Re-employed pensioners: Adult survivor pensions in initial period**
- Replaces sub-paragraphs (a) and (b) so that for re-employed non-contributing members, the initial period pension for the member's later period of service will be based on the monthly average of the deceased's uprated earnings on their last day of pensionable service.
- Regulation 71**      **3.E.8 Surviving children's pensions**
- Corrects the cross references in paragraph (10).
- Regulation 72**      **3.E.10 Amount of children's pension under regulation 3.E.8: deceased active members**

Provides for non-contributing members as described in amendment regulation 54 above and replaces paragraph (3) and revises paragraphs (5) and (6), so that the initial period pensions for a non-contributing member will be based on the rate of the monthly average of the deceased's uprated earnings on the member's last day of pensionable service

The amendment also corrects the regulation at paragraph (3), to ensure that a minimum of 10 years pensionable service is taken into account when calculating a child pension for deceased active members. The 10 year under-pin is not required for deceased non-contributing members who will have reached the scheme's maximum service limit.

**Regulation 73**      **3.E.11 Amount of children's pension under regulation 3.E.8: deceased pensioner members**

Provides for the correct pay to be used when calculating benefits for non-contributing members, as described in amending regulation 54 above.

**Regulation 74**      **3.E.12 Amount of children's pension under regulation 3.E.8: deceased deferred members**

Provides for the correct pay to be used when calculating benefits for non-contributing members, as described in amending regulation 54 above.

**Regulation 75**      **3.E.13 Amount of children's pension under regulation 3.E.8: recent leavers**

Corrects the 'basic death pension' at paragraph (3) on which the child pension is based, in the case of a recent leaver, to a upper tier ill health pension under 3.D.7 (5).

**Regulation 76**      **3.E.15 Amount of children's pension under regulation 3.E.8: re-employed pensioners**

Provides for non-contributing members as described in amendment regulation 60 above. The amendment also replaces sub-paragraphs (a) and (b) of paragraph (2) so that the initial period pension for a

deceased non-contributing member will be based on the rate of the monthly average of the deceased's uprated earnings on the member's last day of pensionable service.

**Regulation 77**      **3.E.17 Amount of lump sum: single capacity members and recent leavers (disregarding regulation 3.D.5 employments)**

Provides for non-contributing members as described in amendment regulation 54 above. The amendment also replaces paragraph (1) to ensure that the lump sum for a deceased non-contributing member is based on the twice the annual average of the members uprated earnings on their last day of pensionable service. Finally the amendment clarifies that it is subject to regulations 3.E.20A and 3.E.21

**Regulation 78**      **3.E.18 Amount of lump sum: dual capacity members (disregarding regulation 3.D.5 employments)**

Provides for non-contributing members as described in amendment regulation 54 above. The amendment also corrects paragraph (2) (a) so that the lump sum for a deceased non-contributing member's later service will be based on a upper tier ill health pension under regulation 2. D.7 (5), adjusted to the date of the member's last day of pensionable service.

**Regulation 79**      **3.E.19 Amount of lump sum: dual capacity members (members with pensions under regulation 3.D.5)**

Provides for non-contributing members as described in amendment 60 above. The amendment also replaces paragraph (2) to ensure that the lump sum for a non-contributing member is based on twice the appropriate fraction of the annual average of the member's uprated earnings at the member's last day of pensionable service.

**Changes to Chapter 3G 'Re-employment and re-joining the scheme'**

**Regulation 80**      **3.G.5 Re-employed lower tier ill health pensioners**

Amends regulation 3.G.5 so that where a member's lower tier ill-health pension (in payment) is converted to a upper tier pension, they may only become entitled to a lower tier pension for their re-employed service (regardless of whether they meet the lower tier or the upper tier condition in respect of that service).

### **Changes to Chapter 3J 'Miscellaneous and Supplementary provisions'**

#### **Regulation 81      3.J.5 Commutation of small pensions**

The cross reference to the Pension Sharing (Pension Credit Benefit) Regulations 2000 is no longer required.

#### **Regulation 82      3.J.9 Interest on late payment of benefits and refunds of contributions**

Amends 3.J.9 so that interest will be due from the scheme if the difference between a lower tier ill health pension and an upper tier ill health pension is not paid within one month of the date the Scottish Ministers were in possession of all the information needed to calculate the additional amounts due. The amendment also clarifies that the due date for an unpaid amount in respect of an interim award is the first day on which the Scottish Ministers in possession of all the necessary information for calculation of the amount.

#### **Regulation 83      3.J.10 Determinations of questions**

Amends 3.J.10 so that a medical advisor can be appointed to make a recommendation to Scottish Ministers where a pension credit member applies for early payment of benefits on ill health grounds under new 3.D.2 (8).

**Regulation 84**      **3.J.13 Employing authority and certain member record keeping and contribution estimates**

Amends 3.J.13 to introduce the new certificates and statements of pensionable earnings and contributions described at paragraph 23 (4) of amendment regulation 14, in Part 1 of these explanations.

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**Explanation: PART 3 Changes to the National Health Service (Injury Benefits) (Scotland) Regulations 1998**

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**Regulation 86**      **2 (1) Interpretation**

Inserts a new definition of “ophthalmic provider” to clarify that the Injury Benefit regulations continue to apply to ophthalmic providers

**Regulation 87**      **4 Scale of benefits**

The amendment adds Employment and Support Allowance (ESA), payable under section 1 (2) (a) of the Welfare and Reform Act 2007, to the benefits listed at regulation 4 (6) (b) and taken into account when calculating the amount of an Injury Benefit. ESA replaces incapacity benefit and income support for new claimants with effect from 27<sup>th</sup> October 2008, and will be taken into account for Injury Benefit purposes at the rate payable during the ‘assessment phase’ and at any rate payable after that phase has ended.

**Regulation 88**      **13 Review and adjustment of allowance**

The amendment to regulation 13 will ensure that Injury Benefits in payment at 1 April 2009 (the amendment’s effective date) can be reviewed to take account of ESA, at either rate, awarded between 27 October 2008 (when ESA was introduced) and 1 April 2009. However any adjustment in the rate of Injury Benefit payable will be made only with effect from 1 April 2009.

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**Regulation 89** Regulation 95 amends regulation 18A to provide that injury benefit claims must be made in writing within 6 months of entitlement.

## Explanation: PART 4 Miscellaneous

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**Regulation 90** Option to persons detrimentally affected by these regulations

Amendment regulation 906 provides that deferred members, or members in receipt of a relevant benefit, who are detrimentally affected by these Regulations may elect for the provisions not to apply to them by giving notice within six months of the coming into force of these Regulations'.