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# **NHS Pension Scheme 1995 Section Informal Consolidation of amendments in force as at 1<sup>st</sup> April 2016**

## **National Health Service Pension Scheme Regulations 1995**

**SI 1995 No 300  
Coming into force - 6th March 1995**

Key: **Blue = 1<sup>st</sup> April 2016 amendments (S.I. 2016 No. 245)**

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## **A1 Citation and commencement**

- (1) These Regulations may be cited as the National Health Service Pension Scheme Regulations 1995.
- (2) These Regulations come into force on 6th March 1995.

## **A2 Interpretation**

In these Regulations--

"the previous regulations" means the National Health Service (Superannuation) Regulations 1980;

"1997 Act" means the National Health Service (Primary Care) Act 1997;

"the 1993 Act" means the Pension Schemes Act 1993;

"the 1999 Act" means the Welfare Reform and Pensions Act 1999;

"the 2004 Act" means the Finance Act 2004;

"the 2006 Act" means the National Health Service Act 2006;

"the 2006 (Wales) Act" means the National Health Service (Wales) Act 2006;

"the 2008 Act" means the Pensions Act 2008;

"the 2008 Section" means the provisions of the National Health Service Pension Scheme set out in the National Health Service Pension Scheme Regulations 2008;

"the 2010 Regulations" means the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010;

"the 2011 Act" means the Finance Act 2011;

"the 2013 Act" means the Public Service Pensions Act 2013;

"the 2015 Scheme" means the scheme set out in the National Health Service Pension Scheme Regulations 2015;

"additional contribution option" means an option in the terms and conditions of a member's employment that entitles the member to make an additional contribution towards the cost of paying a pension under regulation E3A if the lump sum payment otherwise payable to the member in accordance with those terms and conditions is insufficient to meet the cost of that pension in full;

"additional services", with regard to--

(a) a GMS practice--

(i) in relation to England, has the meaning given in regulation 2(1) of the GMS Contracts (England) Regulations (interpretation);

(ii) in relation to Wales, has the meaning given in regulation 2(1) of the GMS Contracts (Wales) Regulations (interpretation), or

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(b) any other performer or provider of primary medical services, means services which, if provided by a GMS practice, would be additional services within the meaning given in regulation 2(1) of those Regulations;

“APMS” are primary medical services provided under an APMS contract;

"APMS contract" means arrangements under, in the case of England, section 83(2) of the 2006 Act or in the case of Wales, section 41(2)(b) of the 2006 (Wales) Act (primary medical services) between the National Health Service Commissioning Board or Local Health Board and an APMS contractor;

"APMS contractor" means a person with whom the National Health Service Commissioning Board or Local Health Board has made arrangements under, in the case of England, section 83(2) of the 2006 Act or in the case of Wales, section 41(2)(b) of the 2006 (Wales) Act, but only if that person is also a person who has entered into, or would be eligible to enter into, a GMS contract or a PMS agreement for the provision of primary medical services;

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

“automatic re-enrolment date” means the date determined in accordance with regulation 12 of the 2010 Regulations (as modified by regulation 14 of those Regulations);

"bank holiday" means any day that is specified or proclaimed as a bank holiday, pursuant to section 1 of the Banking and Financial Dealings Act 1971;

~~"buy-out policy" means a policy of insurance or annuity contract that is appropriate for the purposes of section 19 of the Pension Schemes Act 1993 (extinguishment of liability of scheme for pensions secured by insurance policies or annuity contracts) and satisfies any requirements of the Inland Revenue and "buy-out" shall be construed accordingly;~~

**“buy-out policy” means a policy of insurance or annuity contract that is appropriate for the purposes of section 19 of the 1993 Act and satisfies any requirement of Her Majesty’s Revenue and Customs: and “buy-out” shall be construed accordingly;**

~~"cash equivalent" is to be construed in accordance with Chapter IV of Part IV of the Pension Schemes Act 1993;~~

**“cash equivalent” is to be construed in accordance with Chapter 1 of Part 4ZA of the 1993 Act;**

"CCT" means Certificate of Completion of Training awarded under article 8 of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, including any such certificate awarded in pursuance of the competent authority functions of the Postgraduate Medical Education and Training Board specified in article 20(3)(a) of that Order;

"certification services" means --

(a) in relation to England, services related to the provision of medical certificates listed in Schedule 4 to the GMS Contracts (England) Regulations (list of prescribed medical certificates);

(b) in relation to Wales, services related to the provision of medical certificates listed in Schedule 4 to the GMS Contracts (Wales) Regulations (list of prescribed medical certificates);

“civil partner” and “civil partnership” are to be construed in accordance with regulation A4;

“consumer prices index” means the all items consumer prices index published by the Statistics Board of the UK Statistics Authority;

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“contracted-out employment” has the meaning given in section 8 of the 1993 Act;

"contracting-out requirements" means the requirements mentioned in section 9(2) of the Pension Schemes Act 1993;

"core hours" means the period beginning at 8am and ending at 6:30pm on any day from Monday to Friday except Good Friday, Christmas Day or bank holidays;

"dental performers list" means a list of dental practitioners prepared in accordance with regulations made under, in the case of England, section 106 of the 2006 Act or, in the case of Wales, section 63 of the 2006 (Wales) Act (persons performing primary medical and dental services);

"dentist performer" means a dental practitioner whose name is included in a dental performers list and who performs primary dental services under--

- (a) a GDS contract;
- (b) a PDS agreement to which a PDS contractor is a party; or
- (c) a contract for services with a Local Health Board which relates to arrangements under which it provides primary dental services under--
  - (i) section 56(2) of the 2006 (Wales) Act (primary dental services), or
  - (ii) a PDS agreement to which a PDS contractor is not a party,

except that a foundation trainee who is undertaking foundation training and is in the first two months of that training need not have his name included in a dental performers list in order to be a dentist performer;

"dependent child" is to be construed in accordance with regulation H1;

"dispensing services" means the provision of drugs, medicines or appliances that may be provided as pharmaceutical services by a registered medical practitioner in accordance with arrangements made under regulation 20 of the National Health Service (Pharmaceutical Services) Regulations 1992 (arrangements for the provision of pharmaceutical services by doctors);

"electronic communication" has the meaning given in section 15(1) of the Electronic Communications Act 2000;

"employing authority" means--

- (za) .....
- (a) ...
- (aa) a Special Health Authority established under, in the case of England, section 28 of the 2006 Act or, in the case of Wales, section 22 of the 2006 (Wales) Act,
- (b) ...
- (bb) .....
- (bbb) a Local Health Board established under section 11 of the 2006 (Wales) Act,
- (c) a National Health Service trust established under, in the case of England, section 25 of the 2006 Act or, in the case of Wales, section 18 of the 2006 (Wales) Act, . .
- (cc) an NHS foundation trust within the meaning of section 30(1) of the 2006 Act,



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(d) any other body that is constituted under an Act relating to health services (in whole or in part) and which the Secretary of State agrees to treat as an employing authority for the purposes of this Section of the scheme ( . . . )

(e) . . .

(f) . . .

(g) an OOH provider,

(h) an APMS contractor,

(i) a GMS practice,

(j) a PMS practice;

(k) as regards a person who is subject to a direction made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967, and subject to such modifications to these Regulations as the Secretary of State may in any particular case direct, any employer of such a person that the Secretary of State agrees to treat as an employing authority for the purposes of these Regulations;

(l) as regards officers of a hospital of such classes as may be provided in an agreement to participate in benefits under these Regulations pursuant to section 235 of the 2006 Act (superannuation of officers of certain hospitals), and subject to such modifications to these Regulations as the Secretary of State may in any particular case direct, any employer of such a person that the Secretary of State agrees to treat as an employing authority for the purposes of these Regulations;

(m) the National Health Service Commissioning Board established under section 9 of the Health and Social Care Act 2012;

(n) a Clinical Commissioning Group established under section 10 of the Health and Social Care Act 2012

(o) an Independent Provider;.

“enhanced services, in relation to—

(a) a GMS practice, has the meaning given in regulation 2(1) of the GMS Contracts Regulations; or

(b) any other performer or provider of primary medical services, means services which, if provided by a GMS practice, would be enhanced services within the meaning given in regulation 2(1) of those Regulations,

and in each case, includes local enhanced services and public health local enhanced services which were, prior to 1st April 2013, commissioned by a Primary Care Trust under regulation 2(1) of the GMS Contracts Regulations as—

(i) local enhanced services, or

(ii) public health local enhanced services and transferred, on or after 1st April 2013, to a local authority by a transfer scheme made pursuant to section 300 of the Health and Social Care Act 2012;

"essential services" means the services described in regulation 15(3), (5), (6) and (8) of the GMS Contracts Regulations (whether provided by a GMS practice, a PMS practice or an APMS contractor);

"final year's pensionable pay" has the meaning given in regulation C1(6);



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“foundation trainee” means a dentist performer who is employed as a foundation trainee as a consequence of a placement arrangement made by a local postgraduate dental dean or a director of postgraduate dental education;

“GDS” are primary dental services provided under a GDS contract;

"GDS contract" means a general dental services contract under, in the case of England, section 100 of the 2006 Act or, in the case of Wales, section 57 of the 2006 (Wales) Act (general dental services contracts: introductory);

“GDS contractor” means a person who is a party to a GDS contract, other than the National Health Service Commissioning Board or a Local Health Board;

"general ophthalmic services" means--

- (a) as regards England, mandatory services and additional services as defined in regulation 2(1) of the General Ophthalmic Services Contracts Regulations 2008, and
- (b) as regards Wales, general ophthalmic services within the meaning of section 71(10) of the 2006 (Wales) Act;

"the GMS Contracts (England) Regulations" means the National Health Service (General Medical Services Contracts) Regulations 2004;

"the GMS Contracts (Wales) Regulations" means the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004;

“GMS” are primary medical services provided under a GMS contract;

"GMS contract" means--

- (a) in relation to England, a contract under section 84 of the 2006 Act or under article 13 of the General Medical Services Transitional and Consequential Provisions Order 2004 (entitlement to a contract under section 176(3) of the Health and Social Care (Community Health and Standards) Act 2003);
- (b) in relation to Wales, a contract under section 42 of the 2006 (Wales) Act or under article 13 of the General Medical Services Transitional and Consequential Provisions (Wales) Order 2004 (entitlement to a contract under section 176(3) of the Health and Social Care (Community Health and Standards) Act 2003);

"GMS practice" means--

- (a) a registered medical practitioner who is a type 1 medical practitioner,
- (b) two or more such individuals practising in partnership, or
- (c) a company limited by shares,

with whom the National Health Service Commissioning Board or Local Health Board has entered into a GMS contract;

"GOS contract" means a contract under section 117 of the 2006 Act (general ophthalmic services contracts) for the provision of mandatory services and additional services as defined in regulation 2(1) of the General Ophthalmic Services Contracts Regulations 2008;

"GP performer" means a registered medical practitioner, other than a specialist trainee in general practice or a locum practitioner, whose name is included in a medical performers list and who performs essential services, additional services, enhanced services, dispensing services, collaborative services, commissioned services, OOH services, certification services,

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Board and advisory work, health-related functions exercised under section 75 of the 2006 Act, NHS 111 services or pharmaceutical services (or a combination thereof)--

- (a) under a GMS contract, PMS agreement or APMS contract,
- (b) on behalf of an OOH provider, or
- (c) under a contract of service or for services with a Local Health Board which relates to arrangements under which it provides primary medical services--
  - (i) under section 41(2)(a) of the 2006 (Wales) Act (primary medical services),
  - (ii) under an agreement pursuant to section 50 arrangements;

"GP provider" means a GP performer who is--

- (a) a GMS practice, a PMS practice or an APMS contractor,
- (b) a partner in a partnership that is a GMS practice, a PMS practice or an APMS contractor, or
- (c) a shareholder in a company limited by shares that is a GMS practice, PMS practice or APMS contractor,

and who performs medical services as or on behalf of that practice or contractor;

"GP trainer" means a registered medical practitioner who is--

- (a) until the coming into force for all purposes of article 4(5)(d) of the General Specialist Medical Practice (Education, Training and Qualifications) Order 2003, approved as a GP Trainer by the Joint Committee on Postgraduate Training for General Practice under regulation 7 of the National Health Service (Vocational Training for General Medical Practice) Regulations 1997, or
- (b) from the coming into force for all purposes of that article, approved by the Postgraduate Medical Education and Training Board under article 4(5)(d) of the 2003 Order for the purposes of providing training to a GP Registrar under article 5(1)(c)(i);

"guaranteed minimum pension" means guaranteed minimum pension, or accrued rights to guaranteed minimum pension, under section 14 of the Pension Schemes Act 1993;

"the health service" has the meaning given in section 275 of the 2006 Act;

"health service scheme" has the meaning given in regulation R8(1);

"host Board"—

- (a) in respect of a non-GP provider who is a partner in a partnership that has entered into a PMS agreement for the provision of primary medical services, means the National Health Service Commissioning Board or each Local Health Board with whom that provider has entered into such an agreement;
- (b) in respect of a non-GP provider who is a partner in a partnership that has entered into a GMS contract for the provision of primary medical services, means the National Health Service Commissioning Board or each Local Health Board with which that partnership has entered into such an agreement;
- (c) in respect of a non-GP provider who is a partner in a partnership that is an APMS contractor which has entered into an APMS contract for the provision of primary medical services, means the National Health Service Commissioning Board or each Local Health Board with which that partnership has entered into such a contract;

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- (d) in respect of a non-GP provider who is a shareholder in a company limited by shares that—
  - (i) is a GMS practice or a PMS practice or an APMS contractor, and
  - (ii) has entered into a GMS contract, PMS agreement or APMS contract for the provision of primary medical services,means the National Health Service Commissioning Board or each Local Health Board with which that company has entered into such a contract or agreement;
- (e) in respect of a non-GP provider who is an individual who is a GMS practice or a PMS practice or an APMS contractor, means the National Health Service Commissioning Board or each Local Health Board with which that practice or contractor has entered into a PMS agreement or an APMS contract as such a practice or contractor;
- (f) in respect of a type 1 medical practitioner, means the National Health Service Commissioning Board or each Local Health Board with whom the practitioner has contracted, or entered into an agreement, to provide GMS, PMS or APMS;
- (g) in respect of a type 2 medical practitioner—
  - (i) in England, means National Health Service Commissioning Board in respect of GMS, PMS, APMS, OOHS and other primary medical services it has commissioned from a GMS practice, PMS practice, APMS contractor or OOH provider and which that practitioner performs for that practice, contractor or provider under a contract of service or for services;
  - (ii) in Wales, means the relevant Local Health Board in respect of GMS, PMS, APMS, OOHS and other primary medical services it has commissioned from a GMS practice, PMS practice, APMS contractor or OOH provider and which that practitioner performs for that practice, contractor or provider under a contract of service or for services;
- (h) in respect of a locum practitioner means the National Health Service Commissioning Board or each Local Health Board on whose medical performers list the practitioner's name appears;
- (i) in respect of a type 1 dental practitioner who holds a GDS contract or has entered into a PDS agreement, means the National Health Service Commissioning Board or each Local Health Board with whom that practitioner—
  - (i) is contracted to provide services under a GDS contract, or
  - (ii) has entered into an agreement to provide services under a PDS agreement;
- (j) in respect of a type 1 dental practitioner who performs GDS or PDS but is not a party to a GDS contract or PDS agreement—
  - (i) in England, means the National Health Service Commissioning Board in respect of GDS, or PDS it has commissioned from a GDS contractor or PDS contractor and which that practitioner performs for that contractor under a contract of service or for services with that contractor;
  - (ii) in Wales, means the relevant Local Health Board in respect of GDS, or PDS it has commissioned from a GDS or PDS contractor and which that practitioner performs for that contractor under a contract of service or for services;
- (k) in respect of a type 2 dental practitioner—

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- (i) in England, means the National Health Service Commissioning Board in respect of GDS or PDS it has commissioned from a GDS contractor or PDS contractor, and which that practitioner performs for that contractor under a contract of service or for services;
- (ii) in respect of Wales, means the relevant Local Health Board in respect of GDS or PDS it has commissioned from a GDS contractor or PDS contractor, and which that practitioner performs for that contractor under a contract of service or for services with that contractor or as a foundation trainee;

"Independent Provider" is to be construed in accordance with Schedule 2B;

"locum practitioner" has the meaning given in paragraph 1 of Schedule 2;

"lump sum rule" has the meaning given in section 166 of the 2004 Act;

"lump sum death benefit rule" has the meaning given in section 168 of the 2004 Act;

"marriage" and "married" do not include a reference to marriage of a same sex couple unless otherwise provided;

"medical performers list" means a list of registered medical practitioners prepared and published by the National Health Service Commissioning Board pursuant to regulation 3(1) of the National Health Service (Performers Lists) Regulations 2004 (performers lists) or by a Local Health Board pursuant to regulation 3(1) of the National Health Service (Performers Lists) (Wales) Regulations 2004 (performers lists);

"member", except where the context otherwise requires, means a person who is in pensionable service under this Section of the scheme or a person who has been in such service and in respect of whom benefits under this Section of the scheme are, or will become, payable;

"mental health officer" has the meaning given in regulation R3(14);

"NBSBPS" means the National Biological Standards Board Pension Scheme established on 1st July 1977;

"NHS employment" means employment with an employing authority;

"NHS standard contract" means the standard commissioning contract from time to time drafted by the National Health Service Commissioning Board pursuant to its powers under regulation 17 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) 2012;

"NHS standard sub-contract" means a sub-contract that complies with the Department of Health guidance "NHS Standard Sub-Contract for the Provision of Clinical Services 2015/16";

"non-GP provider" means--

- (a) a partner in a partnership that is a GMS practice who is not a GP provider and who demonstrates to the satisfaction of the Secretary of State that he assists in the provision of NHS services provided by that practice;
- (b) a partner in a partnership--
  - (i) all of whose members have entered into a PMS agreement for the provision of primary medical services, but

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- (ii) who is not a GP provider and who demonstrates to the satisfaction of the Secretary of State that he assists in the provision of NHS services provided by that partnership;
- (c) a partner in a partnership that is an APMS contractor--
  - (i) that has entered into an APMS contract for the provision of primary medical services, but
  - (ii) who is not a GP provider and who demonstrates to the satisfaction of the Secretary of State that he assists in the provision of NHS services provided by that partnership;
- (d) a shareholder in a company limited by shares that is--
  - (i) a GMS practice, or
  - (ii) a PMS practice or APMS contractor that has entered into a PMS agreement or APMS contract for the provision of primary medical services,but who is not a GP provider and who demonstrates to the satisfaction of the Secretary of State that he assists in the provision of NHS services provided by that company;
- (e) an individual who is a PMS practice or an APMS contractor but who is not a GP provider and who demonstrates to the satisfaction of the Secretary of State that he participates in the provision of NHS services;

"normal benefit age", in relation to this Section of the scheme, means the age of 60;

"normal minimum pension age" has the meaning given in section 279 of the 2004 Act;

"occupational pension scheme" means an occupational pension scheme within the meaning of section 1 of the Pension Schemes Act 1993 which--

- (a) in the case of such a scheme established on, or after, the 6th April 2006 is a registered pension scheme for the purposes of the 2004 Act and which the Secretary of State agrees to recognise as a transferring scheme for the purposes of regulations M and N;
- (b) in the case of such a scheme established before that date, was--
  - (i) approved by the Commissioners for Her Majesty's Revenue and Customs for the purposes of Chapter I of Part XIV of the Income and Corporation Taxes Act 1988 (retirement benefits schemes) or whose application for approval under that Chapter was under consideration,
  - (ii) a statutory scheme as defined in section 612(1) of the Income and Corporation Taxes Act 1988 (interpretation), or
  - (iii) a scheme to which section 608 of the Income and Corporation Taxes Act 1988 applied (superannuation funds approved before 6th April 1980),

and on 6th April 2006 became a registered pension scheme for the purposes of the 2004 Act;

"officer" means a person other than a GP performer employed by an employing authority;

"OOH provider" shall be construed in accordance with regulation A3;

"OOH services" means services which are required to be provided in the out of hours period and which, if provided during core hours by a GMS practice, PMS practice or an APMS contractor to patients to whom the practice or contractor is required by its contract or agreement to provide essential services, would be or would be similar to essential services;

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"ophthalmic provider" means a registered medical practitioner who is a type 1 medical practitioner and who --

(a) as regards England--

(i) is included in an ophthalmic performers list prepared and published by the National Health Service Commissioning Board pursuant to regulation 3(1) of the National Health Service (Performers Lists) Regulations 2004 (performers lists); and

(ii) holds a GOS contract; and

(b) as regards Wales, is included in an ophthalmic list kept and published by a Local Health Board pursuant to regulation 6(1) of the National Health Service (General Ophthalmic Services) Regulations 1986 (ophthalmic list);

"opting-out" and related expressions are to be construed in accordance with regulation B4;

"out of hours period" means--

(a) the period beginning at 6:30pm on any day from Monday to Thursday and ending at 8am the following day,

(b) the period between 6:30pm on Friday and 8am the following Monday, and

(c) Good Friday, Christmas Day and bank holidays;

"pay period" means, in relation to members who receive either salary, wages or other regular payments under a contract of employment or a contract for services, the period in respect of which each payment is made in accordance with the terms of that contract;

"PDS" are primary dental services provided under a PDS agreement;

"PDS agreement" means an agreement for the provision of primary dental services pursuant to section 64 arrangements or section 107 arrangements;

"PDS contractor" means a person who is a party to a PDS agreement who is neither the National Health Service Commissioning Board nor a Local Health Board;

"pensionable employment" means NHS employment in respect of which the member contributes to the scheme in accordance with this Section;

"pensionable pay" has the meaning given in regulation C1;

"pensionable service" has the meaning given in regulation C2;

"pension credit" means a credit under section 29(1)(b) of the 1999 Act and includes a credit under corresponding Northern Ireland legislation;

"pension credit benefit" has the meaning given by section 101B of the 1993 Act;

"pension credit member" has the meaning given by section 124(1) of the Pensions Act 1995;

"pension credit rights" has the meaning given by section 101B of the 1993 Act;

"pension sharing order or provision" means an order or provision which is mentioned in section 28(1) of the 1999 Act;

...

"personal pension scheme" means a personal pension scheme which--



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(a) in the case of such a scheme established on, or after, 6th April 2006 is a registered pension scheme for the purposes of the 2004 Act and which the Secretary of State agrees to recognise as a transferring scheme for the purposes of regulations M and N;

(b) in the case of a scheme established before that date, was--

(i) approved by the Commissioners for Her Majesty's Revenue and Customs for the purposes of Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988 (personal pension schemes), and

(ii) on the 6th April 2006 became a registered pension scheme for the purpose of the 2004 Act;

"PMS" are primary medical services provided under a PMS agreement;

"PMS agreement" means an agreement for the provision of primary medical services pursuant to section 50 arrangements or section 92 arrangements or a transitional agreement under Part 4 of the General Medical Services and Personal Medical Services Transitional and Consequential Provisions Order 2004;

"PMS practice" means--

(a) an individual,

(b) two or more individuals practising in partnership, or

(c) a company limited by shares,

with whom or with whose members the National Health Service Commissioning Board or Local Health Board has entered into a PMS agreement under which primary medical services are provided (otherwise than by the National Health Service Commissioning Board or Local Health Board);

~~"practice staff" means a person (other than a registered medical practitioner, a trainee practitioner or a non-GP provider) employed by a GMS practice, a PMS practice, an APMS contractor or an OOH provider to assist in the provision of the services it provides;~~

"practice staff" means a person who is not a registered medical practitioner, a GP registrar or a non-GP provider and who is employed by a GMS practice, a PMS practice, an APMS contractor or an OOH Provider to assist in the provision of any of the following—

(a) OOH services or services that practice or provider provides pursuant to a GMS contract, PMS agreement or an APMS contract;

(b) services pursuant to an NHS standard contract;

(c) services pursuant to an NHS standard sub-contract;

(d) clinical health care services for the NHS commissioned by an employing authority that is not a GMS practice, a PMS practice, an APMS contractor, an OOH provider or an Independent Provider;

"practitioner" means--

(a) a registered medical practitioner, other than a specialist trainee in general practice, who is a locum practitioner, a GP provider or a GP performer;

(b) a dentist performer; or

(c) an ophthalmic provider;



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"preservation requirements" means the requirements of Chapter I of Part IV of the Pension Schemes Act 1993 relating to the preservation of benefits under occupational pension schemes;

"primary dental services" are to be construed in accordance with section 99 of the 2006 Act;

"primary medical services" are to be construed in accordance with section 83 of the 2006 Act;

...

"protected pension age" means the pension age provided for in Part 3 of Schedule 36 to the 2004 Act for the purposes of that Part (which deals with pre-commencement benefit rights and the right to take benefit before normal minimum pension age) where the conditions specified in that Part are satisfied;

"Public Sector Transfer Arrangements" means the arrangements applying to certain public sector and other schemes under which a common basis for transfer payments is applied by the scheme and those other participating schemes;

"qualifying contract" means a contract between a relevant commissioning party and an Independent Provider the primary purpose of which is the provision of clinical health care services for the NHS and which is—

- (a) an NHS standard contract;
- (b) an APMS contract, or
- (c) a contract entered into by a local authority pursuant to its functions under the 2006 Act relating to the improvement and protection of public health and which the Secretary of State agrees to treat as a qualifying contract for these purposes;

"qualifying service" has the meaning given in regulation C3;

"quarter" means a 3 month period ending on the last day of March, June, September or December;

...

"registered medical practitioner" means a fully registered medical practitioner within the meaning given in section 55 of the Medical Act 1983;

"relevant daily proportion" means 1/365th of the amount that would apply in respect of one year;

"remuneration" is defined, for the purposes of Tables 1 and 2 of Schedule 1, in regulations Q4(4) and (5) (paying for additional service by single payment) and Q5(4) and (5) (paying for unreduced retirement lump sum by single payment);

~~"safeguarded percentage" has the meaning given by section 68A(3) of the 1993 Act;~~

~~"safeguarded rights" has the meaning given by section 68A(1) of the 1993 Act;~~

"Scheme Actuary" means the actuary appointed from time to time by the Secretary of State to provide advice in connection with the scheme;

"scheme", except where the context otherwise requires, means the National Health Service Pension Scheme for England and Wales, the rules of which are set out in these Regulations and the National Health Service Pension Scheme Regulations 2008;

"scheme year" means a period of one year beginning with 1st April and ending with 31st March;

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"section 9(2B) rights" has the same meaning as it has in the Occupational Pension Schemes (Contracting-out) Regulations 1996;

...

"section 50 arrangements" has the meaning given by the 2006 (Wales) Act;

"section 64 arrangements" has the meaning given by the 2006 (Wales) Act;

"section 92 arrangements" has the meaning given by the 2006 Act;

"section 107 arrangements" has the meaning given by the 2006 Act;

"shared parental leave" has the meaning given in regulation 3(1) of the Shared Parental Leave Regulations 2014;

"special class officer" means a member to whom regulation R2 (special provision for certain nurses, physiotherapists, midwives and health visitors) applies or to whom regulation R3 (special provision for certain mental health officers) applies;

"specialist" means a consultant, other than a nurse consultant, or a, senior hospital medical officer or senior hospital dental officer;

"specialist trainee in general practice" means a GP Registrar and "GP Registrar" means a medical practitioner who is being trained in general practice by a general medical practitioner who is approved under section 34I(1)(c) of the Medical Act 1983 for the purpose of providing training under that Act;

"State pension age" means age 65 for a man and age 60 for a woman;

"tax year" means any year beginning on 6th April and ending on 5th April the following year;

"temporary additional session" has the meaning given in regulation R7(3) and (4);

.....

"type 1 dental practitioner" means a dentist performer who is not a type 2 dental practitioner;

"type 1 medical practitioner" means an ophthalmic provider or a GP provider who is not a type 2 medical practitioner;

"type 1 practitioner" means a type 1 dental practitioner or a type 1 medical practitioner;

"type 2 dental practitioner" means--

- (a) a foundation trainee who is employed by a GDS or PDS contractor; or
- (b) a dentist performer with a contract for services with the National Health Service Commissioning Board or Local Health Board which relates to arrangements under which the Board provides primary dental services under--
  - (i) in the case of Wales, section 56(2) of the 2006 (Wales) Act, or
  - (ii) a PDS agreement to which a PDS contractor is not a party;

"type 2 medical practitioner" means a GP performer who--

- (a) is not a GP provider, and--
  - (i) is employed (whether under a contract of service or for services) by a GMS practice, a PMS practice, an APMS contractor, an OOH provider, or a Local Health Board, and

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(ii) in that employment is engaged wholly or mainly in assisting his employer in the discharge of the employer's duties as a GMS practice, a PMS practice, an APMS contractor, an OOH provider, or a Local Health Board; or

(b) is participating in a Doctors' Retainer Scheme;

"type 2 practitioner" means a type 2 dental practitioner or a type 2 medical practitioner;

"valuation day" means the day referred to in section 29(7) of the 1999 Act;

.....

"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

"widow" and "widower" do not include a reference to marriage of a same sex couple; .

### **A3 Approved Out of Hours providers**

(1) For the purposes of these Regulations, an "OOH provider" is--

(a) a company limited by guarantee (which is not otherwise an employing authority)--

(i) in which all the members of the company are registered medical practitioners, APMS contractors, GMS practices or PMS practices, and the majority of those members are--

(aa) APMS contractors, GMS practices or PMS practices whose APMS contracts, GMS contracts or PMS agreements require them to provide OOH services, or

(bb) registered medical practitioners who are partners or shareholders in an APMS contractor, a GMS practice or a PMS practice which is a partnership or a company limited by shares and which is required to provide OOH services under its GMS contract, PMS agreement or APMS contract,

(ii) which has a contract with a Clinical Commissioning Group, the National Health Service Commissioning Board, a Local Health Board, an APMS contractor or a GMS or PMS practice for the provision of OOH services, and

(iii) in respect of which a Clinical Commissioning Group, the National Health Service Commissioning Board or Local Health Board appointed by the Secretary of State or the National Assembly of Wales to act on his or its behalf--

(aa) is satisfied that the provision of OOH services by the company is wholly or mainly a mutual trading activity,

(bb) is satisfied that the company has met all the conditions for being an OOH provider in this regulation; and

(cc) has, pursuant to a written application made by the company to it for that purpose, approved the company as an employing authority; or

(b) some other body corporate (which is not otherwise an employing authority) which--

(i) operates in the interests of those who are the recipients of the primary medical services it provides or of the general public,

(ii) operates on a not-for-profit basis,

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- (iii) is not an associated company in relation to another person,
  - (iv) has memorandum or articles or rules that--
    - (aa) prohibit the payment of dividends to its members,
    - (bb) require its profits (if any) or other income to be applied to promoting its objects, and
    - (cc) require all the assets which would otherwise be available to its members generally to be transferred on its winding up either to another body which operates on a not-for-profit basis and whose purpose is to provide health or social care for the benefit of the community or to another body the objects of which are the promotion of charity and anything incidental or conducive thereto,
  - (v) has at least one member who is--
    - (aa) an APMS contractor, a GMS practice or a PMS practice,
    - (bb) a partner in a partnership that is an APMS contractor, a GMS practice or a PMS practice, or
    - (cc) a shareholder in a company limited by shares that is an APMS contractor, a GMS practice or a PMS practice,
  - (vi) has a contract with a Clinical Commissioning Group, the National Health Service Commissioning Board or Local Health Board, an APMS contractor, a GMS practice or a PMS practice, for the provision of OOH services, and
  - (vii) is approved as an employing authority by a Clinical Commissioning Group, the National Health Service Commissioning Board or Local Health Board appointed by the Secretary of State to act on his behalf--
    - (aa) pursuant to a written application made by the body to it for that purpose, and
    - (bb) that Group or Board being satisfied that the body has met all the conditions for being an OOH provider in this regulation.
- (2) For the purposes of paragraph (1)(b)(iii), a body corporate is to be treated as another person's "associated company" if that person has control of it, except where that person is an employing authority; and for these purposes a person shall be taken to have control of a body corporate if he exercises, or is able to exercise, or is entitled to acquire, direct or indirect, control over its affairs.
- (3) A company limited by guarantee or other body corporate which provides or is to provide OOH services and which wishes to be approved as an employing authority shall make a written application to a Clinical Commissioning Group, the National Health Service Commissioning Board or Local Health Board appointed by the Secretary of State to act on his behalf ("the appointed Group or Board").
- (4) An application referred to in paragraph (3) may specify the date from which approval by the appointed Group or Board (if given) shall have effect ("the nominated date").
- (5) Where, before 30th June 2005--
  - (a) a company limited by guarantee or other body corporate makes an application which contains a nominated date earlier than the date on which approval is subsequently given ("the approval date"); and

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(b) the appointed Group or Board is satisfied that, throughout the period beginning with the nominated date and ending with the approval date, the company or other body corporate has satisfied the conditions for approval,

that approval shall be treated as having been given on the nominated date.

(6) Where, before 30th June 2005--

(a) a company limited by guarantee or other body corporate makes an application which contains a nominated date later than the approval date; and

(b) the appointed Group or Board is satisfied that the company or other body corporate will satisfy the conditions for approval at that later date,

that approval shall take effect on the nominated date.

(7) Where, on or after 30th June 2005, a company limited by guarantee or other body corporate makes an application and--

(a) the appointed Group or Board is satisfied that the company or other body corporate meets the conditions for approval or will do so at any nominated date which is later than the approval date; and

(b) it approves that application,

that approval shall take effect on the later of the nominated date and the approval date.

(8) Where--

(a) paragraph (5) or (6) applies, NHS employment shall be treated as commencing on the nominated date;

(b) paragraph (7) applies, it shall be treated as commencing on the later of the nominated date (if any) and the approval date.

(9) For the purposes of this regulation--

(a) the conditions for approval are those referred to in paragraph (1)(a) or (b) as the case may be; and

(b) the "nominated date" cannot be a date earlier than 1st April 2004.

(10) The appointed Group or Board may give an OOH provider a notice in writing terminating its participation in this Section of the scheme where that provider--

(a) does not have in force a guarantee, indemnity or bond as required by the Secretary of State in accordance with regulation D2(9);

(b) has ceased to satisfy the conditions for approval;

(c) has notified the Group or Board that any one of the following events has occurred in respect of it--

(i) a proposal for a voluntary arrangement has been made or approved under Part I of the Insolvency Act 1986 ("the 1986 Act"),

(ii) an administration application has been made, or a notice of intention to appoint an administrator has been filed with the court, or an administrator has been appointed under Schedule B1 to the 1986 Act,

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- (iii) a receiver, manager, or administrative receiver has been appointed under Part III of the 1986 Act,
  - (iv) a winding-up petition has been presented, a winding-up order has been made or a resolution for voluntary winding-up has been passed under Part IV or Part V of the 1986 Act or an instrument of dissolution has been drawn up in accordance with section 58 of the Industrial and Provident Societies Act 1965, or
  - (v) notice has been received by it that it may be struck off the register of companies, or an application to strike it off has been made, under Part XX of the Companies Act 1985.
- (11) An OOH provider--
- (a) shall give the appointed Group or Board notice in writing upon the occurrence of any of the events referred to in (10)(c) and shall give such notice on the same day as that event;
  - (b) that wishes to cease to participate in this Section of the scheme shall give the appointed Group or Board and its employees not less than 3 months notice in writing (to commence with the date of the notice) of that fact.
- (12) An OOH provider shall cease to participate in this Section of the scheme on--
- (a) such date as the appointed Group or Board may specify in a notice under paragraph (10);
  - (b) the day upon which the period referred to in paragraph (11)(b) expires where a notice under that sub-paragraph (b) has been given.

#### **A4 Civil partnerships and marriage of same sex couples**

- (1) In these Regulations, except as provided in paragraph (5), a reference to—
- (a) civil partnership is to be read as including a reference to marriage of a same sex couple and a reference to civil partners and a person who is in a civil partnership is to be construed accordingly;
  - (b) a person who is living with another person as if they were in a civil partnership is to be read as including a reference to a person who is living with another person of the same sex as if they were married.
- (2) Where paragraph (1) requires a reference to be read in a particular way, any related reference (such as a reference to a civil partnership that has ended, a reference to a person whose civil partnership has ended, or a reference to persons formerly living together as civil partners) is to be read accordingly.
- (3) For the purposes of paragraphs (1) and (2) it does not matter how a reference is expressed.
- (4) The application of the Marriage (Same Sex Couples) Act 2013 in relation to these Regulations is modified so that—
- (a) section 11(1) and (2) has effect subject to paragraphs (1) to (3); and
  - (b) Schedule 3 does not apply to the interpretation of these Regulations.
- (5) In this regulation, “civil partnership” and “civil partners” have the meanings given by section 1 of the Civil Partnership Act 2004.
- (6) Where—
- (a) a deceased member of this Section of the scheme was a woman by virtue of a full gender



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recognition certificate having been issued under the Gender Recognition Act 2004, and  
(b) at the time of the member's death, she was married to a woman and that marriage subsisted before the time when the certificate was issued,  
the member's widow is to be treated for the purposes of Parts G and K of these Regulations as if the certificate had not been issued.

## **Part B Membership**

### **B1 Membership of this Section of the scheme**

(1) Subject to regulation B2 (restrictions on membership) and B3 (restriction on further participation in this section of the scheme), the following persons are eligible to join this Section of the scheme--

- (a) officers; and
- (b) medical and dental practitioners and specialist trainees in general practice.

(2) Subject to paragraph (3), each eligible person will be included in this Section of the scheme—

- (a) automatically on commencing NHS employment;
- (b) where the person has previously opted out of this Section of the scheme, on the date determined under paragraph (5) of regulation B4 where that paragraph applies: this is subject to regulation B4(6);
- (c) subject to regulation B4(6), where the person has previously opted out of this Section of the scheme and is a person to whom section 3 or section 5 of the 2008 Act applies—
  - (i) on that person's automatic enrolment date, or
  - (ii) on that person's automatic re-enrolment date, except where the notice referred to in regulation B4(1) was given within the 12 months immediately preceding that date.

(3) A person who, on the coming into force of these Regulations, is not included in this Section of the scheme will not be included in this Section of the scheme automatically, but, if eligible, may join this Section of the scheme by applying on a form provided by the employing authority.

(3A) A person who was a member of the NBSBPS (including a pensioner or deferred member) on 31st August 2007 may, if the Secretary of State considers it appropriate and regulation R8A applies, be a member of this Section of the scheme.

(3B) A person—

- (a) who—
  - (i) was in pensionable employment on 31 March 2012 but ceased to be so after that date, or
  - (ii) ceased NHS employment before 1 April 2012,
  - (iii) is not the subject of a direction made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967,



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- (b) who would, if paragraph (a) did not apply, fall within regulation B3(8G) to ~~(8V)~~ (8U), and
- (c) to whom the Treasury's guidance "Fair Deal for staff pensions: staff transfer from central government" applies,

may, if the Secretary of State considers it appropriate and makes a direction under 7 of the Superannuation (Miscellaneous Provisions) Act 1967, be a member of this Section of the scheme.

(4) A person who is included in this Section of the scheme may opt-out at any time in accordance with regulation B4 (opting-out of this Section of the scheme).

### **B2 Restrictions on membership**

- (1) A person may not join this Section of the scheme if--
  - (a) that person is--
    - (i) under the age of 16; or
    - (ii) over the age of 75; or
    - (iii) over the age of 70 on or before 31st March 2008;
  - (b) that person is a special class officer over the age of 65;
  - (c) that person is eligible to be an active member of a superannuation scheme established under section 1 or 9 of the Superannuation Act 1972 in respect of service in that scheme and is such a member;
  - (d) that person holds an honorary appointment and does not at the same time hold any other employment which entitles that person to join this Section of the scheme;
  - (e) that person is not a practitioner and is employed by a GDS or PDS contractor;
  - (f) 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;
  - (g) that person, on or after 1st April 2008, returns to or commences NHS employment and was entitled to a refund of contributions under regulation L2 when that person last left pensionable employment, unless paragraph (4), but not paragraph (5), of regulation L4 (early leavers returning to pensionable employment) applies to that person;
  - (h) that person is a person who--
    - (i) leaves pensionable employment on, or after, 1st April 2008; and
    - (ii) before returning to or commencing NHS employment, exercises the member's right to transfer out all of that person's benefits in this Section of the scheme in accordance with regulation M1 or M2;
  - (i) that person is a person who has been a member of the 2008 Section;
  - (j) that person is a person who--
    - (i) ceased to be in pensionable employment on or before 31st March 2008,
    - (ii) on so ceasing was entitled to a preserved pension in accordance with regulation L1,
    - (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

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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,

(iv) has had a break in pensionable employment for any one period of five years or more beginning with the day immediately following the cessation of employment referred to in paragraph (i) and ending on the day immediately before the employment referred to in paragraph (iii) commences, ;

(k) that person is a person who--

(i) is entitled to a preserved pension in accordance with regulation L1,

(ii) returns to or commences NHS employment on or after 1st October 2008,

(iii) has had a break in pensionable employment for any one period of five years or more beginning with the day immediately following the cessation of the pensionable employment in respect of which that person is entitled to the pension referred to in paragraph (i) and ending on the day immediately before the employment referred to in paragraph (ii) commences, .

(l) that person's pension under a health service scheme is payable and in the opinion of the Secretary of State 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;

(m) that person is a person who—

(i) is entitled to a preserved pension in accordance with regulation L1,

(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) as a result of that notice, has been treated as having left all pensionable employments, 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;

(n) that person is a person who—

(i) is entitled to a preserved pension in accordance with regulation L1,

(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

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regulation B4 in respect of one or more later periods of NHS employment entered into after having given the notice referred to in (ii);

- (o) 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;
  - (p) 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 L1;
  - (q) 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 L1, and
    - (iv) has, in respect of that pensionable employment, either received a repayment of contributions under regulation L2 or exercised the right to a transfer payment under Part M
- (2) In paragraph (1)--
- (a) "2008 Section" includes a corresponding health service scheme;
  - (b) "pensionable employment" includes employment that qualified the member for a benefit under a health service scheme;
  - (c) a reference to regulations E2, E2A, L1, L2, L4, M1 and M2 includes the equivalent of those regulations in a health service scheme the provisions of which correspond to the provisions of the NHS Pension Scheme for England and Wales as set out in these Regulations
  - (d) for the purposes of sub-paragraphs (k) and (n)(iii)(aa), any break in pensionable employment where the member was in pensionable service in an existing scheme (within the meaning of Schedule 5 to the 2013 Act) is to be disregarded.
- (3) The Secretary of State may permit a person who would otherwise not be permitted to join this Section of the scheme in accordance with sub-paragraphs (1)(f), (g), (h) or (k) to do so if--
- (a) that person's NHS employment was transferred to another employer by virtue of--

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- (i) a transfer of undertakings or arrangements equivalent to a transfer of undertakings, and
- (ii) at no time since that transfer (or the last of them if more than one) has the person had a break in pensionable employment for any one period of five years or more, or
- (b) that person's employment is transferred to an employing authority by virtue of--
  - (i) a transfer of undertakings, or
  - (ii) arrangements equivalent to a transfer of undertakings,(whether or not the transferring employer is in the public sector provided that person's employment was originally transferred out of the public sector); and
- (c) the employment from which the member is transferred--
  - (i) qualified the member for benefits under an occupational pension scheme, and
  - (ii) the rules of that scheme (in the opinion of the Secretary of State) entitle the member to receive benefits on retirement upon, or prior to, attaining the age of 60 years.
- (4) The reference in paragraph (3) to arrangements equivalent to a transfer of undertakings is to arrangements--
  - (a) which the Secretary of State considers to be equivalent to the transfer of an undertaking, and
  - (b) under which the parties to the arrangements have agreed that the rights of the persons whose employments are being transferred should as far as practicable be treated in the same way as they would have been under a transfer of an undertaking.
- (5) For the purposes of paragraph (3)(c)(ii) a person is not to be treated as being entitled under the rules of a pension scheme to receive benefits upon, or prior to, attaining the age of 60 years, where such entitlement arises by virtue of any scheme rule making special provision--
  - (a) as to early retirement on the grounds of ill health, redundancy or otherwise, or
  - (b) for benefits to be reduced for early payment.
- (6) Before permitting a person referred to in paragraph (3) to join this Section of the scheme the Secretary of State shall take advice from the Scheme Actuary.

### **B3 Restriction on further participation in this Section of the scheme**

- (1) Persons who cease to satisfy the conditions for eligibility for membership specified in regulation B1(1) may not contribute to or accrue further pensionable service under this Section of the scheme.
- (2) Persons whose pensions under this Section of the scheme are payable may not contribute to or accrue further pensionable service under this Section of the scheme, except in the cases referred to in--
  - (a) regulation E2(11);
  - (b) regulation E2A(11) but subject to paragraph (3);
  - (c) regulation R4(6).
- (3) Persons to whom--

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- (a) regulation E2B(3)(a) applies may not (except where paragraph (b) applies) contribute to or accrue further pensionable service under this Section of the scheme from the date the Secretary of State makes a determination under that regulation;
  - (b) paragraph (a) applies may contribute to or accrue further pensionable service under this Section of the scheme from the day after the first anniversary of that person's NHS employment following the date of the Secretary of State's determination under regulation E2B if that person is under the age of 50 on that day.
- (4) Subject to paragraph (7), a person who satisfies Condition A or Condition B may not contribute to or accrue pensionable service under this Section of the scheme in respect of any period of NHS employment on or after 1st July 2009 ("the relevant employment") with effect from the later of--
- (a) that date, and
  - (b) the date on which Condition A or Condition B is met.
- (5) Condition A is that on or after 13th January 2009--
- (a) that person is employed by an employing authority,
  - (b) the relevant employment commences in accordance with an arrangement under which it is the intention of the employing authority to retain that person as an employee following that person's objection to that person's transfer to another body (which is not an employing authority) ("a retention arrangement"), and
  - (c) but for that retention arrangement--
    - (i) the transfer of that person's employment would be a relevant transfer for the purposes of the TUPE Regulations, or
    - (ii) that person's employment would, in the Secretary of State's opinion, transfer from the employing authority to another employer in the public sector by virtue of an arrangement broadly equivalent to a TUPE transfer.
- (6) Condition B is that on or after 13th January 2009--
- (a) that person--
    - (i) is seconded from an employing authority to another body (which is not an employing authority), but
    - (ii) remains an employee of that employing authority during that secondment, and
  - (b) the purpose of that secondment is, in the opinion of the Secretary of State, for that person to assist that other body in the discharge of any functions which have previously transferred to that other body from that employing authority.
- (7) A person referred to in paragraph (4) may contribute to or accrue pensionable service under this Section of the scheme in respect of the relevant employment referred to in that paragraph if the Secretary of State considers it appropriate, having regard to the nature of that employment and the circumstances under which it takes place, to accept that person as a member of this Section of the scheme.
- (8) The reference in paragraph (5)(c)(ii) to an arrangement broadly equivalent to a TUPE transfer is to an arrangement--

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(a) which, having regard to the purpose of the arrangement and its effect on the functions of the employing authority, the Secretary of State considers has that equivalence, and

(b) under which the Secretary of State requires the parties to agree that the rights of the person whose employment is being transferred should, as far as practicable, be treated no less favourably than they would have been under a TUPE transfer.

(8A) For the purposes of paragraphs (8B) to (8F), a retention arrangement is one under which—

(a) a person is seconded from an employing authority (“the sending employing authority”) to another body which is not an employing authority (“the other body”), and

(b) that person, pursuant to an intention of the sending employing authority, remains an employee of that authority in circumstances where that person’s performance of services pursuant to a qualifying contract for the other body counts as pensionable service only by reason of that retention arrangement.

(8B) A person who, on 2nd April 2014, and pursuant to a retention arrangement which was entered into before that date, remains engaged by the other body to perform services pursuant to a qualifying contract, may not, from 1st April 2017 contribute to or accrue pensionable service under this Section of the scheme in respect of the performance of those services.

This is subject to paragraph (8E).

(8C) A person who, pursuant to the retention arrangement referred to in paragraph (8B) is, on 2nd April 2014 engaged by the other body to perform services pursuant to the qualifying contract referred to in that paragraph, may not, from that date contribute to or accrue pensionable service under this Section of the scheme in respect of the performance of any services under that contract.

This is subject to paragraph (8E).

(8D) A person who on, or after, 2nd April 2014 and pursuant to a retention arrangement (other than the one referred to in paragraph (8B)) is engaged by the other body to perform services pursuant to a qualifying contract, may not contribute to or accrue pensionable service under this Section of the scheme in respect of the performance of any services under that contract.

This is subject to paragraph (8E).

(8E) The Secretary of State may exceptionally allow a person referred to in paragraph (8B), (8C) or (8D) to contribute to or accrue pensionable service under this Section of the scheme if the Secretary of State considers that appropriate having regard to the nature of the person’s employment and the circumstances under which it takes place.

(8F) Nothing in this regulation prevents the other body referred to in paragraph (8B), (8C) or (8D) from applying for approval as an employing authority pursuant to Schedule 2B.

(8G) A person who on 1st April 2012 has not attained the age of 41 years and 7 months may not contribute to or accrue further pensionable service under this Section of the scheme in respect of service in NHS employment on, or after, 1st April 2015.

(8H) A person who on 1st April 2012 has attained the age of 50 may not contribute to or accrue further pensionable service under this Section of the scheme unless that person either—

~~(a) is in pensionable employment on the 31st March 2015, or~~

~~(b) returns to pensionable employment on or after 1st April 2015 in circumstances where the provisions of regulation B2 do not apply.~~

(a) is in pensionable employment on 31st March 2015,

(b) returns to pensionable employment on or after 1st April 2015 in circumstances where the provisions of regulation B2 do not apply, or



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(c) is permitted to join this Section of the scheme by virtue of regulation B2(3).

(8I) A person who on 1st April 2012 has attained the age of 45 but not the age of 46 years and 7 months may not contribute to or accrue further pensionable service under this Section of the scheme unless either paragraph (8J) or (8K) applies to that person and that person—

- (a) is in pensionable employment on 31st March 2015, or
- (b) returns to pensionable employment on or after 1st April 2015 in circumstances where the provisions of regulation B2 do not apply.

(8J) This paragraph applies to a person who was, on 1st April 2012, in pensionable employment as a special class officer either—

- (a) under regulation R2, or
- (b) under regulation R3 and would, if that employment were to continue until that person attained the age of 60 years, be able to count in excess of 20 years' pensionable service as a mental health officer for the purposes of paragraphs (5) and (6) of that regulation.

(8K) This paragraph applies to a person who was, on 31st March 2015, in pensionable employment as a special class officer either—

- (a) under regulation R2, or
- (b) under regulation R3 and would, if that employment were to continue until that person attained the age of 60 years, be able to count in excess of 20 years' pensionable service as a mental health officer for the purposes of paragraphs (5) and (6) of that regulation.

~~(8L) A person who, on 1st April 2012, has attained the age of 46 years and 7 months but has not attained the age of 50, may not contribute to or accrue further pensionable service under this Section of the scheme unless one of paragraphs (8J), (8M), (8N) or (8N) applies to that person and that person—~~

- ~~(a) is in pensionable employment on 31st March 2015, or~~
- ~~(b) returns to pensionable employment on or after 1st April 2015 in circumstances where the provisions of regulation B2 do not apply.~~

(8L) A person who, on 1st April 2012, has attained the age of 46 years and 7 months but has not attained the age of 50, may not contribute to or accrue further pensionable service under this Section of the scheme unless one of paragraphs (8J), (8M) or (8N) applies to that person and that person—

- (a) is in pensionable employment on 31st March 2015,
- (b) returns to pensionable employment on or after 1st April 2015 in circumstances where the provisions of regulation B2 do not apply, or
- (c) is permitted to join this Section of the scheme by virtue of regulation B2(3).

(8M) This paragraph applies to a person whose eligibility cessation date calculated in accordance with paragraph (8R) has not been reached.

(8N) This paragraph applies to a person if on the day before that person's eligibility cessation date calculated in accordance with paragraph (8M), that person is in pensionable employment as a special class officer either—



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- (a) under regulation R2, or
- (b) under regulation R3 and would, if that employment were to continue until that person attained the age of 60 years, be able to count 20 years or more pensionable service as a mental health officer for the purposes of paragraphs (5) and (6) of that regulation.

(8O) A person who, on 1st April 2012 has attained the age of 41 years and 7 months but has not attained the age of 45, may not contribute to or accrue further pensionable service under this Section of the scheme unless either paragraph (8P) or (8Q) applies to that person and that person—

- (a) is in pensionable employment on 31st March 2015, or
- (b) returns to pensionable employment on or after 1st April 2015 in circumstances where the provisions of regulation B2 do not apply.

(8P) This paragraph applies to a person if that person was, on 1st April 2012, in pensionable employment as a special class officer—

- (a) either under—
  - (i) regulation R2, or
  - (ii) regulation R3 and would, if that employment were to continue until that person attained the age of 60 years, be able to count 20 years or more pensionable service as a mental health officer for the purposes of paragraphs (5) and (6) of that regulation, and
- (b) that person's eligibility cessation date calculated in accordance with paragraph (8S) has not been reached.

(8Q) This paragraph applies to a person if that person was, on 31st March 2015, in pensionable employment as a special class officer—

- (a) either under—
  - (i) regulation R2, or
  - (ii) under regulation R3 and would, if that employment were to continue until that person attained the age of 60 years, be able to count 20 years or more pensionable service as a mental health officer for the purposes of paragraphs (5) and (6) of that regulation, and
- (b) that person's eligibility cessation date calculated in accordance with paragraph (8S) has not been reached.

(8R) For the purposes of paragraphs (8M) and (8N), the "eligibility cessation date" in relation to a person is to be determined according to the formula—

$$A - 2 \times M$$

where—

A is 1st April 2022

M is the number of months (rounded up to the nearest whole month) by which the person's age on 1st April 2012 is less than 50.

(8S) For the purposes of paragraphs (8P) and (8Q), the "eligibility cessation date" in relation to a person is to be determined according to the formula—

$$A - (2 \times N)$$

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A is 1st April 2022

N is the number of months (rounded up to the nearest whole month) by which the person's age on 1st April 2012 is less than 45.

(8T) Paragraph (8U) applies to a person who in the opinion of the Secretary of State—

- (a) was previously an active member of a health service scheme corresponding to this Section of the scheme,
- (b) the regulations governing that corresponding scheme include provisions pursuant to subsection (5) of section 18 of the 2013 Act that provide for exceptions to subsection (1) of that section, and
- (c) pursuant to those provisions, the member would have been eligible to re-join that corresponding scheme if the member had returned to NHS employment for the purposes of that scheme on the day the member commenced NHS employment within the meaning of these Regulations.

(8U) The Secretary of State may permit a person referred to in paragraph (8T) to join this Section of the scheme and, for the purposes of paragraphs (8H) to (8S), the member's previous pensionable employment under the corresponding health service scheme referred to in paragraph (8T) will be treated as if it were previous pensionable employment under this Section of the scheme.

(9) In this regulation--

"the TUPE Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

"a TUPE transfer" means a transfer of an undertaking to which the TUPE Regulations apply.

#### **B4 Opting-out of this Section of the scheme**

(1) A person who does not wish to, or who no longer wishes to, participate in this Section of the scheme may opt-out of this Section of the scheme at any time by giving notice in writing to his employing authority and such person will be treated as having left pensionable employment on the date the notice takes effect.

(2) A notice referred to in paragraph (1) shall take effect—

- (a) from the first day of the pay period immediately following its receipt by the employing authority; or
- (b) where a later date is specified in the notice, from the first day of the pay period following the pay period in which the specified date falls.

(3) A person who opts out of this Section of the scheme under paragraph (1) within one month of the date of commencing NHS employment shall be treated as never having been included in this Section of the scheme in respect of that opt out and, if applicable, any contributions made by, or on behalf of, that person for the period before the opt out took effect must be refunded.

(4) A notice under paragraph (1) shall cease to have effect on the day immediately preceding, as the case may be, the person's—

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

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(5) Subject to paragraph (6), a person who has opted-out of this Section of the scheme in accordance with paragraph (1) may, if eligible to do so, join or rejoin this Section of the scheme by giving notice in writing to the employing authority and on so doing will be included in this Section of the scheme on the first day of the first pay period after the notice is received or such later date (which must be the first day of a pay period) as is specified in the notice.

.....  
(6) A person who has opted out may not become a member of this Section of the scheme during any period of absence from work for any reason.

(7) A person shall not be treated as having retired from pensionable employment by reason only of having opted-out of this Section of the scheme.

(8) This regulation does not apply to a person to whom sections 3, 5 or 8 of the 2008 Act and regulations 9 or 15 of the 2010 Regulations applies (that is, a person who is subject to automatic enrolment or automatic re-enrolment in this Section of the scheme as a qualifying scheme who does not wish to participate in it): this paragraph does not affect the rights of such a person who subsequently becomes a member of this Section of the scheme in circumstances where those provisions of the 2008 Act and 2010 Regulations do not apply.

#### **B5 Opting into this Section of the scheme: mis-sold pensions**

(1) This regulation shall apply to a person who, during any period--

(a) was eligible to be an active member of this Section of the scheme;

(b) opted out of this Section of the scheme under regulation B4(1) and made contributions to a personal pension scheme; and

(c) has suffered loss as the result of a contravention which is actionable under section 62 of the Financial Services Act 1986 or section 150 of the Financial Services and Markets Act 2000.

(2) Where, at any time, a person to whom this regulation applies elects to join or rejoin this Section of the scheme under regulation B4(5), there shall, if the Secretary of State so determines, be counted as pensionable service in respect of that person a period equal to the aggregate of--

(a) his additional period of pensionable service as approved by the Secretary of State for the purposes of regulation N3A(2)(i); and

(b) his "transferred-out service", if any, within the meaning of regulation N3A(5),

provided there has been paid to the Secretary of State in respect of that person a transfer payment calculated in accordance with regulation N3A.

(3) Where, at any time, a person to whom this regulation applies elects to join or rejoin this Section of the scheme under regulation B4(5) but dies in pensionable employment or becomes entitled to benefits under Part E of these Regulations before the transfer payment referred to in paragraph (2) has been paid to the Secretary of State in respect of him, paragraph (2) shall continue to apply in the case of that person.

(4) In this regulation--

"active member" means a person who is in pensionable employment under this Section of the scheme; and

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"personal pension scheme" has the meaning given by section 1 of the Pension Schemes Act 1993 and includes--

- (i) a retirement annuity contract approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988;
- (ii) a personal pension scheme approved under Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988;
- (iii) a retirement benefits scheme approved under section 591(2)(g) of the Income and Corporation Taxes Act 1988;
- (iv) a scheme referred to in (i), (ii) or (iii) that obtained relevant approval under the Income and Corporation Taxes Act 1988 before 6th April 2006 and on that date became a registered scheme for the purpose of the 2004 Act;
- (v) a scheme established on, or after, 6th April 2006 as a registered scheme for the purpose of the 2004 Act and which the Secretary of State agrees to recognise as a transferring scheme for the purposes of regulations M and N.

## **Part C**

### **C1 Meaning of "pensionable pay" and "final year's pensionable pay"**

- (1) In these Regulations, "pensionable pay" means, subject to the provisions of this regulation--
  - (a) all salary, wages, fees and other regular payments made to a member in respect of pensionable employment as an officer, but does not include bonuses, pay awards and pay increases that are expressed by the Secretary of State to be non-consolidated, payments made to cover expenses or payments for overtime;
  - (b) pensionable earnings calculated in accordance with paragraph 3, or as the case may be, paragraph 4 of Schedule 2 in the case of a non-GP provider who does not receive any of the payments referred to above in respect of his pensionable employment as an officer by virtue of the application of these Regulations to him as if he were such an officer under regulation R1.
- (1A) Paragraphs (2) to (4) and (5) to (7) apply in respect of pensionable employment before 1st April 2008.
- (2) Subject to paragraph (3), any amount by which a member's pensionable pay exceeds the permitted maximum will be ignored when calculating the amount of any contributions or benefits payable under these Regulations.
- (3) In the case of a member who--
  - (a) joined this Section of the scheme before 1st June 1989 and has a break in pensionable employment on or after that date--
    - (i) any pensionable pay earned preceding the break in that employment in excess of the permitted maximum will not be ignored;
    - (ii) any pensionable pay earned after the break in that employment in excess of the permitted maximum will be ignored;

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(b) joined this Section of the scheme before 1st June 1989 and to whom sub-paragraph (a) does not apply, pensionable pay in excess of the permitted maximum will not be ignored.

(3A) Where a member who was eligible to be a member before 1st June 1989 joins this Section of the scheme on or after that date by virtue of being a person to whom regulation B5 applies, any amount by which that member's pensionable pay exceeds the permitted maximum will not be ignored when calculating the amount of any contributions or benefits payable under these Regulations except in relation to a period following a break in pensionable employment on or after that date.

(4) For the purposes of paragraphs (3) and (3A), no account shall be taken of a break in pensionable employment if--

(a) the member returns to pensionable employment within 12 months after leaving;

(b) the break is due to the member's secondment or posting to another employer and, at the time of the secondment or posting, the member has a definite expectation of returning to pensionable employment when the period of secondment or posting ends;

(c) the break is due to the member being engaged in other employment which is approved for this purpose by the Secretary of State;

(d) the break is due to the member's unpaid absence from work and the member returns to pensionable employment within one month after returning to work; or

(e) the break corresponds to the member's absence from work wholly or partly because of pregnancy or confinement and the member returns to work after the break in exercise of her right under Section 39(1) of the Employment Protection (Consolidation) Act 1978 and returns to pensionable employment no later than one month after returning to work;

(f) the break is due to the member opting out of this Section of the scheme as the result of a contravention which is actionable under section 62 of the Financial Services Act 1986 or section 150 of the Financial Services and Markets Act 2000.

(4A) Paragraphs (4B) to (7) apply in respect of pensionable employment on, or after, 1st April 2008.

(4B) Subject to paragraph (4C), pensionable pay in excess of the permitted maximum will not be ignored.

(4C) Pensionable pay in excess of the permitted maximum will be ignored in respect of additional service being bought under regulation Q1 and an unreduced lump sum being brought under regulation Q2 if--

(a) the member elected to make such a purchase under regulation Q6(3) from a birthday falling before 1st April 2008; and

(b) the member's pensionable pay was restricted under paragraph (2) of this regulation before that date; or

(c) the member's pensionable pay would have been restricted under that paragraph if it had exceeded the permitted maximum.

(5) This regulation applies to a member in respect of whom a transfer payment has been accepted from a health service scheme in the same way as if the period of employment that qualified the member for benefits under the health service scheme had been pensionable employment.

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(6) Subject to paragraph (6A), in these Regulations, "final year's pensionable pay" means pensionable pay in respect of the member's last year of pensionable employment, ending on the date the member ceases to be in such employment, or dies, whichever occurs first, except--

(a) if pensionable pay was greater in either or both of the 2 consecutive years immediately preceding the last year, "final year's pensionable pay" means pensionable pay in respect of the year immediately preceding the last year or, if greater, pensionable pay in respect of the first of those 2 consecutive years; and

(b) if the member was in pensionable employment for less than 12 months, "final year's pensionable pay" means--

(pensionable pay/number of days pensionable employment) x 365

(6A) If the pensionable pay of a member credited with a period of pensionable service under regulation N2 (transfers made under the Public Sector Transfer Arrangements) or regulation N4 (special terms for transfers in (bulk transfers etc)) has exceeded the permitted maximum and either--

(a) paragraph 20 of Schedule 6 to the Finance Act 1989 applied to the member without the modification made by regulation 5 of the Retirement Benefits Schemes (Continuation of Rights of Members of Approved Schemes) Regulations 1990 in respect of benefits derived from all or part of that service under another scheme; or

(b) any equivalent scheme provision applied to the member in respect of all or part of that service when that person was a member of the scheme from which the transfer was accepted,

that excess shall be ignored for the purposes of calculating the final year's pensionable pay under paragraph (6) in respect of the corresponding period of pensionable service credited under regulation N2 or N4.

(7) In this regulation, "permitted maximum" means--

(a) in relation to any tax year before the tax year 2006-07, the figure specified for that tax year in an order made under section 590C of the Income and Corporation Taxes Act 1988; or

(b) subject to paragraphs (8) and (9), the figure for any later year is £108,600.

(8) If the retail prices index for the month of September preceding the tax year 2007-08 or any later tax year is higher than it was for the previous September, the figure for that year shall be an amount arrived at by--

(a) increasing the figure for the previous tax year by the same percentage as the percentage increase in the retail prices index; and

(b) if the result is not a multiple of £600, rounding it up to the nearest amount which is such a multiple.

(9) If the retail prices index for the month of September preceding the tax year 2007-08 or the month of September preceding any later tax year is not higher than it was for the previous September, the figure for that year shall be the same as for the previous tax year.

(10) Where, having regard to the matters referred to in paragraph (11), the Secretary of State considers that the amount which would, but for the Secretary of State's determination under this paragraph, constitute the member's final year's pensionable pay is inordinate, determine—

(a) what the amount of that pensionable pay is to be, and



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(b) the date from which any change in the amount of that pay as a result of that determination is to take effect.

(11) Those matters are—

(a) any variations in the level of the member's pensionable pay during a period not exceeding ten years and ending with the earlier of the date the member ceases to be in pensionable employment or the date the member dies;

(b) the general level of pensionable pay pertaining in NHS employment for members of the same or an equivalent grade or post during the period under consideration for the purposes of paragraph (a);

(c) promotion and re-grading prospects in NHS employment for members of the same or an equivalent grade or post during the period under consideration for the purposes of paragraph (a);

(d) any other matters the Secretary of State considers relevant.

(12) Where the Secretary of State determines the amount of a member's final year's pensionable pay pursuant to paragraph (10)—

(a) the difference between the amount which would, but for that determination, be the member's final year's pensionable pay and the amount so determined shall be ignored for the purposes of this regulation ("the ignored amount");

(b) any contributions referable to the ignored amount and paid by the member pursuant to regulation D1 or Q6, paragraph 10 or 23 of Schedule 2 or Schedule 2B, must, net of any tax payable, be refunded to that member;

(c) any contributions referable to the ignored amount and paid by the employing authority pursuant to regulation D2 or paragraph 10 or 23 of Schedule 2, or Schedule 2B, must be refunded to that employing authority;

(d) the amount so determined is not to be regarded as an "excessive pay increase" for the purposes of regulation D3.

## **C2 Meaning of "pensionable service"**

(1) In these Regulations, "pensionable service" is service which counts both for the purpose of ascertaining entitlement to benefits under these Regulations and for the purpose of calculating them and means, subject to paragraph (2), the aggregate of the following--

(a) any period of pensionable employment in respect of which the member contributes to this Section of the scheme under regulation D1 (contributions by members);

(b) any period that was reckonable under the previous regulations as a period of contributing service for the purpose of those regulations;

(c) any period of contributing service that is reckonable under regulation 3 of the National Health Service (Superannuation) (War Service etc) Regulations 1977 (reckoning war service as contributing service under the principal regulations);

(d) any period of pensionable service credited to the member under regulation N1(4) (transfers from other pension arrangements) or as a result of a transfer payment to this Section of the scheme under the previous regulations; and

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- (e) any period of additional service which the member has purchased under regulation Q1 or under regulations 25 or 26 of the previous regulations.
- (2) A member's pensionable service does not include--
- (a) any period of employment in respect of which the Secretary of State has paid contributions to another occupational pension scheme in respect of the member;
  - (b) in the case of a member who has become entitled to a pension (including a preserved pension) under this Section of the scheme, any period that was taken into account for the purpose of determining whether he was entitled to that pension, or for the purpose of calculating the amount of that pension;
  - (c) any period of employment in respect of a temporary additional session; or
  - (d) any period in respect of which the Secretary of State has discharged her liability to provide benefits under regulation K7 (state scheme premiums), L2 (refund of contributions) or M1 (transfers and buy-outs);
  - (e) in the case of a member who is not a special class officer, any period of pensionable service in excess of 40 years that relates to a period before--
    - (i) the member's 60th birthday; and
    - (ii) 1st April 2008.
- (3) Subject to paragraph (2), the benefits described in these regulations will be calculated by reference to a maximum of--
- (a) 45 years pensionable service in the case of a member who is not a special class officer;
  - (b) 45 years pensionable service (of which only 40 years may relate to the period before the member reaches age 55) in the case of a member who is a special class officer,
- and if the member's pensionable service exceeds these limits, the amount of the excess will be ignored.
- (4) Where the member has pensionable service in excess of the limits described in paragraph (3), the Secretary of State shall select the years by reference to which the benefits are to be calculated and the years selected shall be those which produce the most favourable result to the member.
- (5) If, when a member leaves pensionable employment or dies, a payment is made in respect of leave not taken--
- (a) the member's pensionable employment will be treated, subject to paragraph (3), as continuing for a period equal to the period of leave for which payment is made; and
  - (b) the payment will be treated as the member's pensionable pay for that period.
- (6) In order to calculate the length of a member's pensionable service, all periods of pensionable service will be added and each resulting period of 365 days (disregarding pensionable service on 29th February in a leap year) will be treated as one year.

### **C3 Meaning of "qualifying service"**

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(1) In these Regulations, "qualifying service" is service which counts for the purpose of ascertaining entitlement to benefits under these Regulations but not for the purpose of calculating them and means the aggregate of the following--

(a) pensionable service under these Regulations, except any period of pensionable service credited to the member under regulation N1(4) (transfers from other pension arrangements) or any period of additional service referred to in regulation Q1 (right to buy additional service);

(b) where a transfer payment has been accepted under regulation N1(4) in respect of the member's rights under another occupational pension scheme, a personal pension scheme, or a buy-out policy, the period of employment that qualified the member for those rights; and

(ba) in the case of a person who--

(i) has become a member on the transfer of his employment to a new employer as a result of a transfer of an undertaking to that employer, and

(ii) has rights under another occupational pension scheme to which he was eligible to belong in his former employment in respect of which no transfer payment has been accepted under regulation N1(4) or N4,

the period of employment that qualified the member for those rights;

(c) any period reckonable as "service" under the previous regulations.

(2) If a member leaves and subsequently returns to pensionable employment, paragraphs (3) and (4) will apply for the purpose of calculating the member's qualifying service.

(3) If the interval between leaving and rejoining pensionable employment does not exceed one month or is due to a trade dispute, the member's pensionable service before and after the break will be treated as continuous for the purpose of calculating the member's qualifying service after the break, (even if the member's pensionable service before and after the break is otherwise treated separately for the purpose of calculating the member's benefits) except that the interval will be excluded.

(4) If a member is entitled to a preserved pension under regulation L1 in respect of the earlier period of pensionable service (whether or not the pension has become payable), and the periods of pensionable service before and after the break are not treated as continuous under regulation L4, the period of pensionable service to which that pension relates will be treated as qualifying service in relation to the later period.

(4A) Where a member who is employed on a casual basis--

(a) ceases to pay contributions because of a break in his pensionable employment of a period not exceeding three months, and

(b) re-enters pensionable employment on the same basis after the break,

for the purposes of these Regulations he is treated as continuing to be in qualifying service (but not pensionable service) during the break, and as not being required to rejoin this Section of the scheme when he re-enters pensionable employment.

(5) If a pension becomes payable to a member under regulation R4(6) (members doing more than one job) and the member has elected to take a benefit only in respect of the employment that has ended, the pensionable service in respect of which that benefit is calculated will be treated as qualifying service in relation to the employment in respect of which rights to benefits continue to accrue.

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(6) If the member is a whole-time chaplain, any period of employment as a whole-time chaplain before joining this Section of the scheme will be treated as qualifying service.

## Part D Contributions

### D1 Contributions by members

(1) Each member in pensionable employment must contribute to this Section of the scheme in accordance with the following paragraphs of this regulation.

(1A) A member's contribution rate for each of the scheme years 2015-2016 to 2018- 2019 inclusive is the percentage specified in column 2 of the following table in respect of the corresponding pensionable pay band specified in column 1 of that table into which the member's pensionable pay falls.

**Table:**

**Scheme Years 2015-2016 to 2018-2019**

| <i>Column 1</i><br><i>Pensionable Pay Band</i> | <i>Column 2</i><br><i>Contribution Percentage Rate</i> |
|--|--|
| Up to £15,431                                  | 5%   |
| £15,432 to £21,477                             | 5.6%   |
| £21,478 to £26,823                             | 7.1%   |
| £26,824 to £47,845                             | 9.3%   |
| £47,846 to £70,630                             | 12.5%  |
| £70,631 to £111,376                            | 13.5%  |
| £111,377 to any higher amount                  | 14.5%  |

(2) The Secretary of State shall, with the consent of the Treasury, determine the pensionable pay bands and contribution percentage rates specified in the table in paragraph (1A) in respect of each scheme year.

(2A) Before determining those pensionable pay bands or contribution percentage rates under paragraph (2), the Secretary of State must consider the advice of the Scheme Actuary.

(2B) For the purposes of this regulation--

(a) "previous scheme year" means the scheme year immediately preceding the scheme year in respect of which contributions are payable in accordance with this regulation ("the current scheme year"); and

(b) if a member holds two or more pensionable employments at the same time--

(i) the determinations referred to in paragraphs (2E) to (2V) shall apply to each such employment separately; and

(ii) each such employment shall be treated separately for the purpose of paying contributions.

(2C) Subject to paragraphs (2Q) and (2R), for the purposes of determining the relevant annual contribution rate for the current scheme year paragraphs (2D) to (2P) apply to a member who is

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in pensionable employment with the same employing authority on both the last day of the previous scheme year and the first day of the current scheme year.

(2D) For the purposes of paragraphs (2E) to (2P)--

(a) a member shall be regarded as being in pensionable employment throughout the previous scheme year regardless of any period in that year during which the member continued to be employed by the same employer but did not make contributions to this Section of the scheme;

(b) for the purposes of calculating the member's pensionable pay--

(i) contributions for any period referred to in (a) shall be deemed to have been paid, and

(ii) any additional pensionable pay that the member is treated as having received during an absence from work in accordance with regulation P1 or P2 shall be included;

(c) the amount of pensionable pay determined in accordance with those paragraphs shall be rounded down to the nearest whole pound.

(2E) If a member--

(a) was in pensionable employment with an employing authority on a whole-time basis throughout the previous scheme year;

(b) paid contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and

(c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay received during the previous scheme year.

(2F) If a member--

(a) was in pensionable employment with an employing authority on a part-time basis throughout the previous scheme year;

(b) paid contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and

(c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by reference to the amount the Secretary of State determines would have been paid in respect of a single comparable whole-time employment during the previous scheme year.

(2G) If a member--

(a) was in pensionable employment with an employing authority on a combination of a whole-time and part-time basis throughout the previous scheme year;

(b) paid contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and

(c) is employed by that authority on the first day of the current scheme year,

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the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the aggregate of--

- (i) the member's pensionable pay received during the previous scheme year in respect of the member's whole-time employment, and
- (ii) the amount the Secretary of State determines would have been paid in respect of a single comparable whole-time employment for that period in respect of the member's part-time employment.

(2H) If a member--

- (a) was in pensionable employment with an employing authority on a whole-time basis throughout the previous scheme year;
- (b) did not pay contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula--

$$(RPP / NDPE) \times 365$$

where--

RPP is the pensionable pay received in respect of that employment for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

NDPE is the number of days of pensionable employment with that authority commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(2I) If a member--

- (a) was in pensionable employment with an employing authority on a part-time basis throughout the previous scheme year;
- (b) did not pay contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula--

$$(CWTE / NDPE) \times 365$$

where--

CWTE is the amount the Secretary of State determines would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment



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with that authority for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

NDPE is the number of days of pensionable employment with that authority commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(2J) If a member--

(a) was in pensionable employment with an employing authority on a combination of a whole-time and part-time basis throughout the previous scheme year;

(b) did not pay contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and

(c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula--

$$((RPP + CWTE) / NDPE) \times 365$$

where--

RPP is the pensionable pay received for the whole-time employment with that authority for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

CWTE is the amount the Secretary of State determines would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment with that authority for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

NDPE is the number of days of pensionable employment with that authority for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(2K) If a member--

(a) commenced pensionable employment with an employing authority on a whole-time basis during the previous scheme year;

(b) paid contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and

(c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula--

$$(RPP / NDPE) \times 365$$

where--

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RPP is the pensionable pay received in respect of that employment during the previous scheme year;

NDPE is the number of days of pensionable employment with that authority during the previous scheme year.

(2L) If a member--

(a) commenced pensionable employment with an employing authority on a part-time basis during the previous scheme year;

(b) paid contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and

(c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula--

$$(CWTE / NDPE) \times 365$$

where--

CWTE is the amount the Secretary of State determines would have been paid for that employment during the previous scheme year in respect of a single comparable whole-time employment;

NDPE is the number of days of pensionable employment with that authority during the previous scheme year.

(2M) If a member--

(a) commenced pensionable employment with an employing authority during the previous scheme year and has since been employed on both a whole-time and part-time basis;

(b) paid contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and

(c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula--

$$((RPP + CWTE) / NDPE) \times 365$$

where--

RPP is the pensionable pay received for the whole-time employment with that authority during the previous scheme year;

CWTE is the amount the Secretary of State determines would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment with that authority during the previous scheme year;

NDPE is the number of days of pensionable employment with that authority during the previous scheme year.

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(2N) If a member--

- (a) commenced pensionable employment with an employing authority on a whole-time basis during the previous scheme year;
- (b) did not pay contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula--

$$(RPP / NDPE) \times 365$$

where--

RPP is the pensionable pay received in respect of that employment for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

NDPE is the number of days of pensionable employment with that authority commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(2O) If a member--

- (a) commences pensionable employment with an employing authority on a part-time basis during the previous scheme year;
- (b) did not pay contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula--

$$(CWTE / NDPE) \times 365$$

where--

CWTE is the amount the Secretary of State determines would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment with that authority for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

NDPE is the number of days of pensionable employment with that authority commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(2P) If a member--

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- (a) commenced pensionable employment with an employing authority during the previous scheme year and has since been employed on both a whole-time and part-time basis with that employing authority;
- (b) did not pay contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula--

$$((RPP + CWTE) / NDPE) \times 365$$

where--

RPP is the pensionable pay received for the whole-time employment with that authority for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

CWTE is the amount the Secretary of State determines would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment with that authority for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

NDPE is the number of days of pensionable employment with that authority for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(2Q) If, at any time during the current scheme year, a member commences a new employment, the member shall pay contributions in respect of that employment at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (2U).

(2R) Subject to paragraph (2S), if at any time during the current scheme year, a change is made to a member's annual rate of pensionable pay or pensionable allowances in respect of an existing employment the member shall pay contributions--

- (a) from the first day of the next pay period immediately following the pay period in which the change is made at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (2U), and
- (b) as if the member's employment had commenced on that date.

(2S) Paragraph (2R) does not apply to a change made to a member's annual rate of pensionable allowances in respect of an existing employment that is determined by that member's employer to have been made in respect of--

- (a) unplanned changes to that member's duties, or
- (b) changes to that member's duties that are unlikely to persist for at least 12 months.

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(2T) If the change to a member's pensionable pay referred to in paragraph (2R) is made in respect of an existing part-time employment, that paragraph shall not apply unless there is a corresponding change to the amount of pensionable pay that would be paid to that member in respect of a whole-time comparable employment.

(2U) Where paragraph (2Q) or (2R) apply the Secretary of State shall determine the member's pensionable pay--

(a) by applying the formula--

$$(EPP / NDPE) \times 365$$

where--

EPP is the estimated pensionable pay that the member's employing authority estimates will be payable to the member in respect of the employment referred to in paragraph (2Q) or, as the case may be, paragraph (2R) during the current scheme year;

NDPE is the number of days of pensionable employment from the date employment commences to the end of the current scheme year, and

(b) if that employment is part-time employment, by determining how much would be paid in respect of a whole-time comparable employment,

with the amount determined under (a) being the member's pensionable pay for the purposes of this paragraph if that employment is whole-time employment and the amount determined under (b) being the member's pensionable pay for the purposes of this paragraph if the further employment is part-time employment.

(2V) If none of paragraphs (2E) to (2R) apply--

(a) the Secretary of State must determine the amount of the member's pensionable pay, and in doing so shall, in addition to the matters referred to in paragraph (2A), have regard to the pensionable pay attributable to pensionable employment comparable to the member's employment, prevailing pay scales and prevailing rates of pensionable allowances, and

(b) the member shall pay contributions at the rate specified in column 2 of the table in paragraph (1A) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (a).

(2W) If, during the current scheme year--

(a) a payment is made to a member in respect of work that was undertaken by that member--

(i) during an earlier scheme year, or

(ii) during a period before the percentage rate at which contributions are due from that member changed by virtue of paragraphs (2Q) or (2R) of this regulation, or

(iii) in part during this Section of the scheme year referred to in paragraph (i) and in part during the period referred to in paragraph (ii);

(b) that member is in pensionable employment with the employing authority making that payment on the day that it is made; and

(c) that payment does not exceed £150,

for all purposes other than for the purpose of calculating benefits under the scheme--

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(i) that payment shall be treated as if it has been made to the member in respect of work undertaken by that member in the current scheme year, and

(ii) contributions shall be payable in respect of that payment at the rate applicable to the member on the day that the payment is made.

(2X) If, during the current scheme year--

(a) a payment is made to a member in respect of work that was undertaken by that member--

(i) during an earlier scheme year, or

(ii) during a period before the percentage rate at which contributions are due from that member changed by virtue of paragraphs (2Q) or (2R) of this regulation, or

(iii) in part during this Section of the scheme year referred to in paragraph (i) and in part during the period referred to in paragraph (ii);

(b) that member is not in pensionable employment with the employing authority making that payment on the day that it is made; and

(c) that payment does not exceed £150,

for all purposes other than for the purpose of calculating benefits under the scheme--

(i) that payment shall be treated as if it has been made to the member in respect of work undertaken by that member in the scheme year in which the member's pensionable employment with that employing authority ceased, and

(ii) contributions shall be payable in respect of that payment at the rate applicable to the member on the day that the member's employment ceased.

(2Y) If, during the current scheme year--

(a) a payment is made to a member that is determined by that member's employing authority to have been made in respect of work done during unsocial hours;

(b) that payment is made in respect of work undertaken by that member during a period falling within the two calendar months immediately preceding the calendar month in which that payment is made; and

(c) on the day that payment is made that member is in pensionable employment with the employing authority by which that payment is made,

for all purposes other than for the purpose of calculating benefits under this Section of the scheme--

(i) that payment shall be treated as if it has been made to that member in respect of work undertaken by that member in the current scheme year, and

(ii) contributions shall be payable in respect of that payment at the rate applicable to the member on the day that the payment is made.

(2Z) If, during the current scheme year--

(a) a payment is made to a member that is determined by that member's employing authority to have been made in respect of work done during unsocial hours;



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(b) that payment is made in respect of work undertaken by that member during a period falling within the two calendar months immediately preceding the calendar month in which that payment is made; and

(c) on the day that payment is made that member is not in pensionable employment with the employing authority by which that payment is made,

for all purposes other than for the purpose of calculating benefits under this Section of the scheme--

(i) that payment shall be treated as if it has been made to that member in respect of work undertaken by that member in the current scheme year, and

(ii) contributions shall be payable in respect of that payment at the rate applicable to the member on the day the member's pensionable employment with that employing authority ceased as determined in accordance with this regulation.

(3) If the member is a special class officer, contributions must be paid until the member reaches age 65, or completes 45 years' pensionable service and reaches age 60.

(4) If the member is not a special class officer, contributions must be paid until the member reaches age 75, or completes 45 years' pensionable service.

(5) The employing authority shall deduct each member's contributions from the member's earnings and pay them to the Secretary of State not later than the 19th day of the month following the month in which the earnings were paid.

(6) Where an employing authority has failed to deduct contributions in accordance with paragraph (5), the Secretary of State may recover any sum that remains due in respect of those contributions by deduction from any payment by way of benefits to, or in respect of, the member provided the Secretary of State has notified the member of an intention to do so: this is without prejudice to any other method of recovery.

### **Members' contributions: redundancy**

**D1A.**—(1) This regulation applies if—

(a) a member's employment is terminated by reason of redundancy,

(b) the member becomes entitled to payment of a pension under regulation E3A where regulation E3AB applies,

(c) an additional contribution option applies to that member, and

(d) unless that member pays an additional contribution as mentioned in paragraph (2), the amount of the member's pension would be reduced pursuant to paragraphs (5) to (10) of regulation E3AB.

(2) The member may pay such additional contribution as the Secretary of State (having regard to the advice of the Scheme Actuary) determines will be sufficient to meet the cost of the pension insofar as that cost is not met by the contribution paid by the member's employing authority under regulation D2(3A).

(3) For the purposes of paragraph (2), the Secretary of State must provide the member's employing authority with such information as will enable the employing authority to notify the member as to the effect that paying contributions of any particular amount would have on the amount of the pension payable to the member.

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- (4) The amount of the additional contribution payable pursuant to paragraph (2) must be—
  - (a) not less than £500 (or such other figure as the Secretary of State thinks appropriate);
  - (b) a whole number of pounds divisible by £10.
- (5) For the purposes of paragraph (4)—
  - (a) if the insufficiency mentioned in paragraph (7)(b) of regulation E3AB is less than £500, sub-paragraph (a) is ignored;
  - (b) if it is necessary to do so to comply with sub-paragraph (b), the figure must be rounded down to the nearest whole number of pounds divisible by £10.
- (6) If the member decides to pay an additional contribution, the amount of the contribution must be paid to the member's employing authority in sufficient time to enable the authority to remit the payment to the Secretary of State at the same time as the authority pays the contribution it is required to pay pursuant to regulation D2(3A).

## **D2 Contributions by employing authorities**

(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 Secretary of State 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.

(1B) In determining the employer's standard rate, the Secretary of State must consider the advice of the Scheme Actuary and obtain the Treasury's consent.

(2) The employer's standard rate is 14.3%.

(3) In addition to the contributions payable under paragraph (1), where, on leaving pensionable employment, a pension becomes payable to a member under regulation E3 (early retirement on grounds of redundancy) or regulation E3A (early retirement pension (termination of employment by employing authority)) in circumstances where regulation E3AB does not apply, the employing authority must, subject to paragraph (8), make additional contributions to the Secretary of State in respect of--

- (a) the cost of providing the pension under regulation E3 (including any amount of pension that is exchanged for a lump sum under regulation E7) for the period between the member's leaving pensionable employment and reaching age 60 or, in the case of a member who is a special class officer, the age of 55;

- (b) the cost of providing the pension (including any amount of pension that is exchanged for a lump sum under regulation E7) under--

- (i) . . .

- (ii) regulation E3A for the period between the member's leaving pensionable employment and reaching age 60 or, in the case of a member to whom regulation R2 or R3 applies, age 55;

- (c) the cost of providing, under regulation R6 (members entitled to fees for domiciliary consultations), any benefit that supplements the pension referred to in sub-paragraph (a) or (b) above for the period referred to in those sub-paragraphs;

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(d) the cost of providing compensation under regulation 4(1) (payment of compensation), 8(1) (compensation payable to widow, widower, surviving civil partner or dependants) or 9 (compensation where lump sum on death becomes payable) of the National Health Service (Compensation for Premature Retirement) Regulations 2002;

(e) the cost of providing any increase under Part I of the Pensions (Increase) Act 1971 in the rate of the benefits referred to in sub-paragraphs (a) to (d) which have not been contributed pursuant to paragraph (1), but in the case of the benefits referred to in sub-paragraphs (a) to (c), only for the periods referred to in those sub-paragraphs; and

(f) the additional cost attributable to early payment of the lump sum on retirement under regulation E6, such cost being determined by the Secretary of State on the advice of the Scheme Actuary;

and where, on such a pension becoming payable, a pension also becomes payable to the member in respect of pensionable service with one or more other employing authorities, the employing authority in relation to whom the redundancy arose or by whom the consent to early retirement pension was given shall also be responsible for making additional contributions in accordance with this paragraph in respect of that other pension.

(3A) Where, on leaving pensionable employment, a pension becomes payable to a member under regulation E3A in circumstances where regulation E3AB applies, in addition to the contributions payable under paragraph (1), the employing authority must make a single lump sum contribution to the Secretary of State of the relevant amount not less than one month before the pension becomes payable.

(3B) The relevant amount is whichever is the lesser of—

(a) the amount the Secretary of State determines, having regard to the advice of the Scheme Actuary, is required to meet the cost of the pension under regulation E3A and the lump sum under regulation E6 in circumstances where regulation E3AB applies; and

(b) the amount the employing authority would otherwise be required to pay to the member in consequence of the member's redundancy.

(4) Any contributions that are payable under paragraph (1) shall be paid to the Secretary of State on the same day as the member's contributions under regulation D1(5).

(5) Any additional contributions that are payable to the Secretary of State under paragraph (3)(a), (c), (d), (e) and (f) shall be payable--

(a) quarterly, before the end of the quarter following that in respect of which the costs in question arose; or

(b) if the Secretary of State agrees, by--

(i) a single payment of an amount determined by the Secretary of State, on the advice of the Scheme Actuary, made within one month of the date on which the pension under regulation E3 became payable, or

(ii) not more than 5 equal annual instalments each of an amount determined by the Secretary of State, on the advice of the Scheme Actuary, the first of which to be made within one month of the date on which the pension under regulation E3 became payable and the others to be paid by the 31st October in each of the following 4 financial years.

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(6) An employing authority making quarterly additional contributions in accordance with paragraph (5)(a) may, if the Secretary of State agrees, discharge its liability under paragraph (3) by making--

(a) a single payment of an amount determined by the Secretary of State, on the advice of the Scheme Actuary, made within one month of the date on which notice of the Secretary of State's consent is given to the employing authority, or

(b) not more than 5 equal annual instalments each of an amount determined by the Secretary of State on the advice of the Scheme Actuary, the first of which to be made within one month of the date on which notice of the Secretary of State's consent is given to the employing authority and the others to be paid by the 31st October in each of the following 4 financial years.

(7) Any additional contributions that are due to the Secretary of State under paragraph (3)(b), (c), (e) and (f) shall be payable in whichever of the following ways the employing authority chooses--

(a) by a single payment of an amount determined by the Secretary of State, on the advice of the Scheme Actuary, made within one month of the date on which the pension under regulation E3A became payable, or

(b) by not more than 5 equal annual instalments each of an amount determined by the Secretary of State, on the advice of the Scheme Actuary, the first of which to be made within one month of the date on which the pension under regulation E3A became payable and the others to be paid by the 31st October in each of the following 4 financial years.

This is subject to paragraph (7A).

(7A) Where the member leaves pensionable employment on or after 1st April 2013, any additional contributions that are due to the Secretary of State under paragraph (3)(b), (c), (e) and (f) may only be paid by a single payment of an amount determined by the Secretary of State on the advice of the Scheme Actuary: that payment must be made within one month of the date on which the pension under regulation E3A became payable.

(7B) In the case of an employing authority which is an Independent Provider—

(a) any additional contributions that are due to the Secretary of State under paragraph (3)(b), (c), (e) and (f) must be paid within one month of the date on which that Provider is notified of that fact;

(b) where a Provider fails to make the payment in accordance with paragraph (a), any entitlement to benefits under regulation E3A ceases.

(8) For the ~~purposes of paragraph (3)~~ purposes of paragraph (3) or (3A), an employing authority shall not be responsible for meeting any costs in respect of the early payment of benefits to the extent that any such benefits are attributable to a period of additional service purchased by the member.

(9) Where an employing authority which is--

(a) a GMS practice;

(b) a PMS practice;

(c) an APMS contractor; or

(d) an OOH provider,

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fails to pay or remit, or has previously failed to pay or remit contributions in accordance with the provisions of this regulation, the Secretary of State may thereafter require that authority to have in force a guarantee, indemnity or bond in a form and amount, and provided by a person, approved by the Secretary of State, which provides for payment to the Secretary of State of all future liabilities of the employing authority under these Regulations or such liabilities as are specified by the Secretary of State under these Regulations or under the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000 should that authority fail to meet them.

(10) In any particular case the Secretary of State may direct that, for the purposes of this regulation, "employing authority" includes one or more of--

(a) the transferee under a transfer of staff order pursuant to--

(i) in the case of England, section 28(4)(b) of, or paragraph 29(3) of Schedule 4 to, the 2006 Act;

(ii) in the case of Wales, section 22(4)(b) of, or paragraph 8 of Schedule 3 to, the 2006 (Wales) Act;

(b) without limiting sub-paragraph (a), a successor, transmittee or assignee of an employing authority's business or functions; and

(c) the last employing authority of a person to whom these Regulations apply.

#### **Further contributions by employing authorities in respect of excessive pay increases**

**D3.**—(1) This regulation applies where a member becomes entitled to a benefit in accordance with regulation E1, E2A, E3A, E3C, E5 or L1 and the Secretary of State determines that the member's final year's pensionable pay determined under regulation C1(6) exceeds the allowable amount.

(2) For the purposes of this regulation—

(a) Year 1 is the year in which the member ceases to be in pensionable employment or dies, whichever occurs first;

(b) Year 2 is the year immediately preceding Year 1;

(c) Year 3 the year immediately preceding Year 2.

(3) The allowable amount in respect of Year 1 is the lower of—

(a) the member's pensionable pay for Year 1, and

(b) the allowable amount for Year 2 increased by the lower of—

(i) the aggregate of 4.5% and the percentage (if any) by which the consumer prices index for the February before the start of Year 1 is higher than it was for the previous February, and

(ii) the percentage increase in the member's pensionable pay for Year 1 compared with Year 2.

(4) The allowable amount in respect of Year 2 is the lower of—

(a) the member's pensionable pay for Year 2, and

(b) the allowable amount for Year 3 increased by the lower of—

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- (i) the aggregate of 4.5% and the percentage (if any) by which the consumer prices index for the February before the start of Year 2 is higher than it was for the previous February, and
  - (ii) the percentage increase in the member's pensionable pay for Year 2 compared with Year 3.
- (5) The allowable amount for Year 3 is the lower of—
  - (a) the member's pensionable pay for Year 3, and
  - (b) the member's pensionable pay for the year immediately preceding Year 3 increased by the aggregate of 4.5% and the percentage (if any) by which the consumer prices index for the February before the start of Year 3 is higher than it was for the previous February.
- (6) An excess employer contribution is determined as follows—
  - Step 1: find Amount A, which is the difference between the member's final year's pensionable pay and the allowable amount for that year
  - Step 2: calculate Amount B, which is the amount of the pension payable to the member as if the member's final year's pensionable pay consisted only of Amount A increased by an amount equal to any increases that would be due under the Pensions (Increase) Act 1971 on a pension of that amount
  - Step 3: calculate Amount C, which is the amount of the lump sum payable to the member as if the member's final year's pensionable pay consisted only of Amount A increased by an amount equal to any increases that would be due under the Pensions (Increase) Act 1971 on a lump sum of that amount
  - Step 4: multiply Amount B by the applicable factor to find Amount D
  - Step 5: in the case of a member who is entitled to a benefit under regulation L1, multiply Amount C by the applicable factor to find Amount E
  - Step 6: add together—
    - (a) Amount D and Amount E, in the case of a member entitled to a benefit under regulation L1;
    - (b) Amount C and Amount D, in all other cases,to find the amount of the excess employer contribution.
- (7) Where the member's final year's pensionable pay exceeds the allowable amount by reason only of it including an amount in respect of a national award recommended by the Advisory Committee on Clinical Excellence Awards, the body responsible for the funding of that award must pay the excess employer contribution.
- (8) Paragraphs (9) and (10) apply where Amount A found under Step 1 of paragraph (6) includes both—
  - (a) an increased pay award from the member's employing authority, and
  - (b) a national award recommended by the Advisory Committee on Clinical Excellence Awards.
- (9) Where—
  - (a) the inclusion of both of the awards referred to in paragraph (8) in the member's pensionable pay in Year 3, Year 2 or, as the case may be, Year 1 means that pay is the member's final year's pensionable pay in accordance with regulation C1(6), but



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- (b) the exclusion of the award referred to in paragraph (8)(b) from the member's pensionable pay in the year identified in sub-paragraph (a) would result in a different one of those years being so identified,

the Secretary of State, after consulting the Scheme Actuary, is to determine the proportion of the excess employer contribution determined in accordance with paragraph (6) to be paid by the member's employing authority and the body responsible for the funding of awards recommended by the Advisory Committee on Clinical Excellence Awards: the determination of the excess employer contribution is to take account of the award referred to in paragraph (8)(b).

(10) Where the inclusion of both of the awards referred to in paragraph (8) in the member's pensionable pay in Year 3, Year 2 or, as the case may be, Year 1 means that pay is the member's final year's pensionable pay in accordance with regulation C1(6), and the exclusion of the award referred to in paragraph (8)(b) would not result in a different one of those years being so identified, the amount of the excess employer contribution determined in accordance with paragraph (6) (and taking account of the amount referred to in paragraph (8)(b)) payable by the member's employing authority and the body responsible for the funding of awards recommended by the Advisory Committee on Clinical Excellence Awards is to be determined in accordance with paragraph (11).

(11) The amount of the excess employer contribution payable by the member's employing authority and the body responsible for the funding of awards recommended by the Advisory Committee on Clinical Excellence Awards is to be determined as follows—

Step 1: find Amount A in accordance with Step 1 of paragraph (6)

Step 2: find Amount F, which is the difference between—

- (a) the member's pensionable pay for the member's last year of pensionable employment as if that, and the member's pensionable pay in previous years, did not include the award referred to in paragraph (8)(b), and
- (b) the allowable amount for that year as if the member's pensionable pay for previous years had not included the award referred to in paragraph (8)(b)

Step 3: divide Amount F by Amount A and express the result as a percentage: that is the percentage of the excess employer contribution payable by the member's employing authority

Step 4: subtract the percentage found under Step 3 from 100% to find the percentage of the excess employer contribution payable by the body responsible for the funding of awards recommended by the Advisory Committee on Clinical Excellence Awards.

(12) The amount of an excess employer contribution must be paid to the Secretary of State within 1 month of the Secretary of State notifying the payer of its liability for that amount: but the Secretary of State may exceptionally specify that it is to be paid within some other period.

(13) Where a payer fails to pay all, or any part, of the excess employer contribution it is liable to pay, the Secretary of State is to give that payer a written notice ("a late payment notice") specifying all of the following—

- (a) the amount of the excess employer contribution that is unpaid;
- (b) the amount of any interest due on the amount referred to in paragraph (a);
- (c) the amount of the administration charge arising from the late payment of the excess employer contribution;

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(d) that the amounts in (a) to (c) are to be received by the Secretary of State within 1 month of the date of the notice.

(14) Where a payer fails to comply with a late payment notice, the Secretary of State may issue a further late payment notice amended to take account of that failure.

(15) Where a member has pensionable employment with more than one employing authority during the years referred to in paragraph (2), this regulation applies to each such employment separately.

(16) In the case of a member in part-time employment, this regulation is subject to regulation R5.

(17) For the purposes of this regulation an increase in pensionable pay during Year 3, Year 2 or, as the case may be, Year 1 is to be ignored where the Secretary of State is satisfied it arises as a result of—

- (a) the member taking up a new employment with a new employer: provided the Secretary of State is satisfied that the employer in question is a new employer;
- (b) the ending of a salary sacrifice arrangement made before 1st April 2014: for these purposes a salary sacrifice arrangement is one under which the member gives up the right to receive an amount of pensionable pay in return for the provision of a benefit in kind including, but not limited to, a benefit consisting of a motor car or other vehicle, meals, care or vouchers.

(18) If the Secretary of State is not satisfied that the employer in question is a new employer, that employer is to be treated as an employing authority liable for an excess employer contribution in accordance with this regulation.

(19) An increase in a member's pensionable pay due to the acceptance of a transfer payment in the circumstances described in regulation C1(5) shall be ignored for the purposes of this regulation.

(20) In any particular case the Secretary of State may direct that, for the purposes of this regulation, "employing authority" includes one or more of—

- (a) the transferee under a transfer of staff order pursuant to—
  - (i) in the case of England, section 28(4)(b) of, or paragraph 29(3) of Schedule 4 to, the 2006 Act;
  - (ii) in the case of Wales, section 22(4)(b) of, or paragraph 8 of Schedule 3 to, the 2006 (Wales) Act;
- (b) without limiting sub-paragraph (a), a successor, transmittee or assignee of an employing authority's business or functions.

(21) For the purposes of this regulation—

- (a) a "payer" is the person who is liable to pay all or part of an excess employer contribution to the Secretary of State in accordance with this regulation;
- (b) the pensionable pay to be taken into account by the Secretary of State for a year or part of a year referred to in paragraph (2) will be derived from the pensionable pay for that period recorded in scheme year pension records provided to the Secretary of State in accordance with paragraph (5) of regulation U3;
- (c) where the member is in pensionable employment for less than 12 months pensionable pay for that year means—  
$$(\text{pensionable pay}/\text{number of days pensionable employment}) \times 365$$

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- (d) no account is to be taken of increases in pensionable pay prior to 1st April 2014 or more than 1095 days prior to the member's last day of pensionable employment,
- (e) the applicable factor is to be determined from time to time by the Secretary of State having considered the advice of the Scheme Actuary and having obtained the Treasury's consent;
- (f) if the percentage increase in the consumer prices index referred to in paragraphs (3), (4) and (5) is less than zero, it will be regarded as a percentage increase of 0% for the purposes of this regulation;
- (g) a benefit referred to in paragraph (1) means—
  - (i) in the case of regulation E2A, a benefit including the effects of any increase in pensionable service referred to in paragraph (4) of that regulation;
  - (ii) in the case of regulation E5, a benefit including the effects of any reduction referred to in paragraph (2) of that regulation;
- (h) for the purposes of making any payment it is liable to pay under this regulation, the body responsible for the funding of awards recommended by the Advisory Committee on Clinical Excellence Awards shall have the same liabilities and duties as an employing authority under these Regulations in respect of that payment.

## **Part E Benefits for members**

### **E1 Normal retirement pension**

- (1) A member who retires from pensionable employment on or after attaining age 60 shall be entitled to a pension under this regulation.
- (2) The pension under this regulation shall be at a yearly rate of 1/80th of final year's pensionable pay for each complete year of pensionable service, plus the relevant daily proportion of that rate for each additional day of such service.
- (3) A member who stays in pensionable employment until age 75 shall be entitled to receive a pension under this regulation at that age even if he does not retire from such employment.
- (4) Subject to paragraph (5), where a member who leaves pensionable employment on or after 1st April 2008 becomes entitled to a pension under this regulation, the Secretary of State may discharge the Secretary of State's liability for that pension by the payment of a lump sum of an amount consistent--
  - (a) with the contracting-out and preservation requirements of the 1993 Act;
  - (b) with the lump sum rule.
- (5) A lump sum payment under paragraph (4) may be made only if the Secretary of State is satisfied that it is appropriate in all the circumstances having regard to the life expectancy of the member.
- (6) For the purposes of paragraph (5), the Secretary of State may require whatever medical evidence that the Secretary of State considers necessary.

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(7) The amount of the lump sum payable under paragraph (4)--

(a) will be equal to 5 times the yearly rate of the member's pension (calculated in accordance with this regulation); and

(b) shall be payable in addition to the lump sum on retirement payable under regulation E6 (which shall not be subject to any reduction under regulation E6(3)) and the lump sum in place of part of a pension payable under regulation E7.

(8) For the purposes of calculating the amount of the lump sum payable under paragraph (7), the member will be treated as if the member had made an election under regulation E7 to receive the maximum amount of a further lump sum payable under that regulation.

## **E2 Early retirement pension (ill-health)**

(A1) This regulation applies to a member who--

(a) retires from pensionable employment on or after 1st April 2008--

(i) who submitted Form AW33E (or such other form as the Secretary of State accepted) together with supporting medical evidence if not included in the form, and

(ii) that form was received by the Secretary of State before 1st April 2008; or

(b) returns to employment which attracts a pension in accordance with paragraph (11).

(1) A member to whom this regulation applies who retires from pensionable employment because of physical or mental infirmity that makes him permanently incapable of efficiently discharging the duties of that employment shall be entitled to a pension under this regulation if he has at least 2 years' qualifying service or qualifies for a pension under regulation E1 (normal retirement pension).

(2) Subject to paragraph (3), the pension under this regulation will be calculated as described in regulation E1.

(3) If the member retires from pensionable employment before reaching age 65 and satisfies the requirements of any of paragraphs (4) to (6), the pensionable service upon which the pension is based will, subject to regulation Q1(4) (cases in which additional service is not to count as pensionable service), be increased as described in whichever of those paragraphs is applicable or, if both of paragraphs (5) and (6) apply, as described in whichever of those paragraphs is more favourable to the member.

(4) If the member has at least 5 years' qualifying service but not more than 10 years' pensionable service, the pension will be based on the shorter of--

(a) twice the member's pensionable service; and

(b) the pensionable service the member could have completed if he had stayed in pensionable employment until age 65.

(5) If the member has more than 10 but not more than 20 years' pensionable service, the pension will be based on the shorter of--

(a) the pensionable service the member could have completed if he had stayed in pensionable employment until age 65; and

(b) 20 years' pensionable service.

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(6) If the member has more than 10 years' pensionable service and has not reached age 60, the pension will be based on the shortest of--

(a) the member's actual pensionable service increased by a period of 6 years and 243 days;

(b) the pensionable service the member could have completed if he had stayed in pensionable employment until age 60; and

(c) 40 years' pensionable service.

(7) Subject to paragraph (8), where a member becomes entitled to a pension under paragraph (1), the Secretary of State may discharge her liability for that pension by the payment of a lump sum of an amount consistent--

(a) with the contracting-out and preservation requirements of the 1993 Act; and

(b) the lump sum rule.

(8) A lump sum payment under paragraph (7) may be made only if the Secretary of State is satisfied that it is appropriate in all the circumstances having regard to the life expectancy of the member.

(9) For the purpose of paragraph (8), the Secretary of State may require whatever medical evidence that she considers necessary.

(10) The amount of the lump sum payable under paragraph (7)--

(a) will be equal to 5 times the yearly rate of the member's incapacity pension (calculated in accordance with this regulation); and

(b) shall be payable in addition to the lump sum on retirement payable under regulation E6 (which shall not be subject to any reduction under regulation E6(3)) and the lump sum in place of part of pension payable under regulation E7.

(11) The employment of a member to whom a pension is payable under this regulation may be pensionable under this Section of the scheme providing that the member is under the age of 50 at the date on which he returns to pensionable employment.

(12) For the purposes of calculating the amount of lump sum payable under paragraph (10), the member will be treated as if the member had made an election under regulation E7 to receive the maximum amount of further lump sum payable under that regulation.

### **E2A III health pension on early retirement**

(1) This regulation applies to a member who--

(a) retires from pensionable employment on or after 1st April 2008;

(b) did not submit Form AW33E (or such other form as the Secretary of State accepted) together with supporting medical evidence if not included in the form pursuant to regulation E2 which was received by the Secretary of State before 1st April 2008, and

(c) is not in receipt of a pension under regulation E2.

(2) A member to whom this regulation applies who retires from pensionable employment before normal benefit age shall be entitled to a pension under this regulation if--

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- (a) the member has at least 2 years qualifying service or qualifies for a pension under regulation E1; and
  - (b) the member's employment is terminated because of physical or mental infirmity as a result of which the member is--
    - (i) permanently incapable of efficiently discharging the duties of that employment (the "tier 1 condition"); or
    - (ii) permanently incapable of regular employment of like duration (the "tier 2 condition") in addition to meeting the tier 1 condition.
- (3) Subject to paragraph (4), the pension to which a member is entitled--
- (a) upon satisfaction of the tier 1 condition ("the tier 1 pension"), or
  - (b) upon satisfaction of the tier 2 condition in addition to meeting the tier 1 condition ("the tier 2 pension"),
- will be calculated as described in regulation E1.
- (4) Subject to paragraphs (5) and (6), if the member meets the tier 2 condition in addition to meeting the tier 1 condition, the pensionable service on which the pension is based will be increased by two-thirds of the pensionable service the member could have completed had he stayed in pensionable employment until normal benefit age.
- (5) If the member's employment is terminated on or before 31st March 2016, the minimum amount by which the member's pensionable service will be increased under paragraph (4) will be the lesser of--
- (a) 4 years pensionable service; and
  - (b) the pensionable service the member could have completed if the member had stayed in pensionable employment until normal benefit age.
- (6) To the extent that any increase under paragraph (4) or (5) would cause a member's pensionable service to exceed the limit provided for in regulation C2(3) (meaning of pensionable service), the amount of any excess will be reduced accordingly.
- (7) Subject to paragraph (8), where a member becomes entitled to a pension by virtue of meeting the tier 2 condition, the Secretary of State may discharge her liability for that pension by the payment of a lump sum of an amount consistent--
- (a) with the contracting-out and preservation requirements of the 1993 Act; and
  - (b) the lump sum rule.
- (8) A lump sum payment under paragraph (7) may be made only if the Secretary of State is satisfied that it is appropriate in all the circumstances having regard to the life expectancy of the member.
- (9) For the purpose of paragraph (8), the Secretary of State may require whatever medical evidence that the Secretary of State considers necessary.
- (10) The amount of the lump sum payable under paragraph (7)--
- (a) will be equal to 5 times the yearly rate of the member's pension (calculated in accordance with this regulation); and



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(b) shall be payable in addition to the lump sum on retirement payable under regulation E6 (which shall not be subject to any reduction under regulation E6(3)) and the lump sum in place of part of the pension payable under regulation E7.

(11) The employment of a member to whom a pension is payable under this regulation may be pensionable under this Section of the scheme if he is under age 50--

(a) on the date the member returns to NHS employment if the member became entitled to receive a pension under a tier 1 condition on the day the member retired from pensionable employment; or

(b) on the day after the protection period in regulation E2C(6)(b) ends if--

(i) the member became entitled to receive a pension under a tier 2 condition on the day the member retired from pensionable employment, and

(ii) the Secretary of State did not discharge her liability for that pension by the payment of a lump sum in accordance with paragraph (7) of this regulation; or

(c) on the day after the protection period in regulation E2C(6)(b) ends--

(i) the member became entitled to receive a pension under a tier 2 condition in place of a pension under a tier 1 condition on the date of the Secretary of State's determination under regulation E2B, and

(ii) the Secretary of State did not discharge her liability for that pension by the payment of a lump sum in accordance with paragraph (7) of this regulation.

(12) For the purposes of calculating the amount of the lump sum payable under paragraph (10), the member will be treated as if the member had made an election under regulation E7 to receive the maximum amount of a further lump sum payable under that regulation.

(13) For the purposes of determining whether a member is permanently incapable of efficiently discharging the duties of the member's employment under paragraph (2)(b)(i), the Secretary of State shall have regard to the factors in paragraph (15) (no one of which shall be decisive) and disregard the member's personal preferences for or against engaging in that employment.

(14) For the purposes of determining whether a member is permanently incapable of regular employment under paragraph (2)(b)(ii), the Secretary of State shall have regard to the factors in paragraph (16) (no one of which shall be decisive) and disregard the factors in paragraph (17).

(15) The factors to be taken into account for paragraph (13) are--

(a) whether the member has received appropriate medical treatment in respect of the incapacity;

(b) the member's--

(i) mental capacity; and

(ii) physical capacity;

(c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of the member's incapacity, irrespective of whether such rehabilitation is undergone; and

(d) any other matter which the Secretary of State considers appropriate.

(16) The factors to be taken into account for paragraph (14) are--

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- (a) whether the member has received appropriate medical treatment in respect of the incapacity; and
  - (b) such reasonable employment as the member would be capable of engaging in if due regard is given to the member's--
    - (i) mental capacity;
    - (ii) physical capacity;
    - (iii) previous training; and
    - (iv) previous practical, professional and vocational experience,irrespective of whether or not such employment is actually available to the member;
  - (c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of the member's incapacity (irrespective of whether such rehabilitation is undergone) having regard to the member's--
    - (i) mental capacity, and
    - (ii) physical capacity:
  - (d) such type and period of training which it would be reasonable for the member to undergo in respect of the member's incapacity (irrespective of whether such training is undergone) having regard to the member's--
    - (i) mental capacity,
    - (ii) physical capacity,
    - (iii) previous training, and
    - (iv) previous practical, professional and vocational experience, and
  - (e) any other matter which the Secretary of State considers appropriate.
- (17) The factors to be disregarded for paragraph (14) are--
- (a) the member's personal preference for or against engaging in any particular employment; and
  - (b) the geographical location of the member.
- (18) For the purpose of this regulation--
- "appropriate medical treatment" means such medical treatment as it would be normal to receive in respect of the incapacity, but does not include any treatment that the Secretary of State considers--
- (a) that it would be reasonable for the member to refuse,
  - (b) would provide no benefit to restoring the member's capacity for--
    - (i) efficiently discharging the duties of the member's employment under paragraph (2)(b)(i), or
    - (ii) regular employment of like duration under paragraph (2)(b)(ii),before the member reaches normal benefit age; and

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(c) that, through no fault on the part of the member, it is not possible for the member to receive before the member reaches normal benefit age;

"permanently" means the period until normal benefit age; and

"regular employment of like duration" means--

(a) in the case of a non-GP provider, such employment as the Secretary of State considers would involve a similar level of engagement to the member's current pensionable service as a non-GP provider; and

(b) in all other cases, where prior to retiring from employment that is pensionable the member was employed--

(i) on a whole-time basis, regular employment on a whole-time basis;

(ii) on a part-time basis, regular employment on a part-time basis,

regard being had to the number of hours, half-days and sessions the member worked in that employment.

## **E2B Re-assessment of ill health condition determined under regulation E2A**

(1) This regulation applies to a member in receipt of a tier 1 pension under regulation E2A.

(2) A member to whom this regulation applies may ask the Secretary of State to consider whether the member subsequently meets the tier 2 condition if--

(a) by notice in writing at the time of award of the pension, the Secretary of State informed the member that the member's case may be considered once within a period of three years commencing with the date of that award to determine whether the member satisfies the tier 2 condition at the date of such a consideration;

(b) the member provides further medical evidence to the Secretary of State relating to the satisfaction of the tier 2 condition at the date of the Secretary of State's consideration and that further medical evidence is provided--

(i) in the case of a member who does not engage in further NHS employment during the three year period referred to in (a), before the end of that period;

(ii) in the case of a member who does engage in further NHS employment during the three year period referred to in (a), before the first anniversary of the day on which that employment commences or before the end of that period if sooner,

(c) that further medical evidence relates to the same physical or mental infirmity that qualified the member for the member's tier 1 pension;

(d) the member has not become entitled to a tier 2 pension in respect of any later service under regulation S3A(6); and

(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,

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who has become entitled to a tier 2 ill-health pension under regulation 2.D.8 or 3.D.7 of that Section.

- (3) If, after considering the further medical evidence provided by a member, the Secretary of State determines that the member satisfies the tier 2 condition--
  - (a) the Secretary of State shall pay from the date of that determination a tier 2 pension under regulation E2A(2) in place of the tier 1 pension being paid to that member; and
  - (b) that pension shall be calculated in accordance with paragraph (4) of regulation E2A and as if that paragraph included the words "from the date of the Secretary of State's determination under regulation E2B" after "employment".
- (4) Only one consideration of a member's case may be undertaken under this regulation.

### **E2C Further employment after a benefit is paid under regulation E2A**

- (1) This regulation applies to a member who--
  - (a) is in receipt of a tier 2 pension under regulation E2A ("the original pension"); and
  - (b) enters into further employment.
- (2) Such a member shall be paid a tier 1 pension ("a substitute pension") in place of the original pension--
  - (a) from the next substitute pension payment date following the day on which the member's annual earnings from further employment (whether in the NHS or otherwise) in any tax year exceed the lower earnings limit for national insurance contributions applicable to that year; or
  - (b) in the case of a member who enters into further NHS employment, from the next substitute pension payment date following the first day on which the member is so employed which falls after the anniversary of the member's entry into the further NHS employment (whether or not that day is part of a continuous period of further NHS employment beginning with the member's entry into that employment),

if sooner.

- (3) A member who is in receipt of a substitute pension may ask the Secretary of State to consider reinstating the original pension if--
  - (a) the member is under normal benefit age;
  - (b) the member makes such a request in writing and provides supporting medical evidence to the Secretary of State before the end of the protection period; and
  - (c) the member's further employment is terminated before the end of the protection period.
- (4) If, after considering that evidence, the Secretary of State determines that the member again satisfies a tier 2 condition in respect of the member's earlier employment, the Secretary of State shall recommence paying, from the day after the date that the further employment is terminated, the original pension in place of the substitute pension.
- (5) A member to whom this regulation applies who is in receipt of a tier 2 pension must--
  - (a) notify the Secretary of State immediately and in writing if either of the following apply--
    - (i) the member's annual earnings in any tax year exceed the lower earnings limit for national insurance contributions applicable to that year;

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- (ii) the member is engaged in further NHS employment after the end of the protection period in paragraph (6)(b);
  - (b) provide any other information in connection with the member's earnings or further employment requested by the scheme administrator or any other person that the Secretary of State may specify.
- (6) In this regulation "the protection period" means--
- (a) a period of one year beginning with the day on which the member's annual earnings from further employment that is not NHS employment first exceed the lower earnings limit for national insurance contributions applicable to that year; or
  - (b) a period of one year beginning with the first day the member enters into further NHS employment.

### **E3 Early retirement pension (redundancy etc additional provisions)**

- (1) This regulation shall apply to a member--
- (a) who--
    - (i) was in pensionable employment on 1st December 2006, or
    - (ii) returns to such employment on, or after, that date and who is entitled to a preserved pension under regulation L1, or
    - (ia) returns to pensionable employment on or after that date that attracts a pension in accordance with regulation E2(11) or E2A(11);
    - (iii) returns to pensionable employment after that date having had a break in such employment which does not exceed 12 months but includes 1st December 2006 and who is not entitled to a preserved pension under regulation L1, or
    - (iv) is certified by his employing authority as having a period of continuous employment (determined in accordance with terms and conditions relevant to that employment and as they applied on 1st October 2006);
  - (b) whose employment is terminated by his employing authority before 1st October 2011; and
  - (c) who satisfies the conditions specified in paragraph (2).
- (2) Those conditions are that--
- (a) he has at least 5 years' qualifying service and has attained normal minimum pension age or, where relevant, protected pension age;
  - (b) the Secretary of State certifies--
    - (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 he is employed; and
  - (c) his employing authority does not certify that he has unreasonably refused to seek suitable alternative employment or accept an offer of such employment.

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(3) A member who satisfies the conditions in paragraph (2) shall be entitled to a pension calculated as described in regulation E1 (normal retirement pension).

(4) This regulation does not apply to--

- (a) practice staff;
- (b) practitioners; or
- (c) non-GP providers.

### **E3A Early retirement pension (termination of employment by employing authority)**

(1) This regulation applies to a member--

- (a) whose pensionable employment is terminated by his employing authority; and
- (b) who satisfies the conditions specified in paragraph (2).

(2) Those conditions are that—

- (a) the member has 2 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 2 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 (in whole or in part) the lump sum payment otherwise payable to the member 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;
- (ca) where the member's employing authority is an Independent Provider, that the Secretary of State has received the additional contributions referred to in regulation D2 in respect of that member;
- (cb) where sub-paragraph (b)(ii) applies, the member's employing authority states whether an additional contribution option applies to the member;
- (d) the Secretary of State certifies—
  - (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.

(3) A claim referred to in paragraph (2)(e) shall be--

- (a) in writing and addressed to the Secretary of State;
- (b) made within 6 months of the employment terminating; and
- (c) contain such information as the Secretary of State may from time to time require.



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(4) A member who satisfies the conditions in paragraph (2) shall be entitled to a pension calculated as described in regulation E1: this is subject to paragraph (4A).

(4A) A member who satisfies the conditions in paragraph (2) is not entitled to a pension under this regulation if the Secretary of State, after consultation with the Scheme Actuary, decides that the amount of the pension would be less than the amount of the guaranteed minimum pension to which the member is entitled.

(5) Where a person who claims a pension under this regulation--

(a) has received--

(i) a redundancy payment under the Employment Rights Act 1996,

(ii) a corresponding payment under the arrangements of the Whitley Councils for the Health Services of Great Britain, or

(iii) a payment made by virtue of any arrangement made pursuant to paragraph 17(2) of Schedule 2 to the National Health Service and Community Care Act 1990 (National Health Service Trusts--general powers),

in respect of the cessation of the employment; and

(b) the terms and conditions relevant to the employment require that payment or payments to be reduced to take account of the additional contributions the employing authority must make to the Secretary of State in accordance with regulation D2(3); but

(c) that payment or payments have not been so reduced,

the pension shall be reduced by an amount equal to the amount of that payment or payments and may be reduced to zero.

(6) This regulation does not apply to--

(a) practice staff;

(b) practitioners; or

(c) non-GP providers.

### **Early retirement pension: additional contribution option**

**E3AB.**—(1) This regulation applies to a member who satisfies the conditions in regulation E3A and has an additional contribution option.

(2) Where this regulation applies the payment of the member's pension under regulation E3A does not commence until the member's employing authority has—

(a) remitted to the Secretary of State the member's contribution paid to it pursuant to regulation D1A(6); and at the same time,

(b) paid the contribution under regulation D2(3A).

(3) Sub-paragraph (a) of paragraph (2) does not apply if—

(a) the member has chosen not to pay a contribution as mentioned in regulation D1A, and

(b) the employing authority gives confirmation of that in writing to the Secretary of State.

(4) Paragraph (5) applies if—

(a) the member has received a payment referred to in regulation E3A(5)(a),

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- (b) the terms and conditions of the employment require the payment to be reduced to take account of any contribution the employing authority is required to make to the Secretary of State pursuant to regulation D2, and
  - (c) the payment has not been reduced.
- (5) The amount of the payment (or all such payments) is deducted from the amount of the pension otherwise payable pursuant to regulation E3A.
- (6) Paragraph (7) applies both where the member has exercised an additional contribution option and where the member has not.
- (7) Paragraph (8) applies if—
- (a) the reason for the termination of the member's employment is redundancy, and
  - (b) the contribution paid by the employing authority under regulation D2 is insufficient to meet the cost of the pension payable pursuant to regulation E3A.
- (8) The amount of the pension is reduced by the appropriate amount.
- (9) The appropriate amount is the amount determined by the Secretary of State as being necessary to ensure that the cost does not exceed the payment unless and to the extent that a contribution paid by the member under regulation D1A makes up the deficiency.
- (10) The cost referred to in paragraph (9) is the amount which the Secretary of State determines is necessary to buy out the cost of the actuarial reduction that would apply if the pension and lump sum on retirement were calculated pursuant to regulations E5 and E6.
- (11) In determining the appropriate amount referred to in paragraph (8) and the amount referred to in paragraph (10), the Secretary of State must have regard to the advice of the Scheme Actuary.
- (12) The cost of the actuarial reduction referred to in paragraph (10) does not include the cost of early payment of an additional pension under regulation Q8 or Q10.

### **E3B Early retirement pension (redundancy etc notifications)**

- (1) This regulation applies to a member--
- (a) who satisfies the conditions specified in regulation E3 and E3A; and
  - (b) whose pensionable employment is terminated by his employing authority on, or after, 1st December 2006 but before 1st October 2011.
- (2) A member referred to in paragraph (1) may notify the Secretary of State as to which of those regulations he wishes to apply to him and such a notification shall be--
- (a) in writing (but the Secretary of State may, in his discretion, accept notification in another form);
  - (b) given within 6 months of the employment terminating; and
  - (c) irrevocable.
- (3) Where a member does not notify the Secretary of State within the period mentioned in paragraph (2)(b), regulation E3 shall apply.

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### **E3C Early retirement pension (special classes)**

- (1) This regulation applies to a member--
  - (a) who has attained the age of 55;
  - (b) to whom regulation R2 (nurses, physiotherapists, midwives and health visitors) or regulation R3 (mental health officers) applies, and
  - (c) whose employment is terminated on, or after, 1st October 2011, and either--
    - (i) the Secretary of State certifies that that employment is terminated by reason of redundancy, or
    - (ii) with the agreement of the employing authority, the Secretary of State certifies that that employment is terminated in the interests of the efficiency of the service in which he is employed.
- (2) A member referred to in paragraph (1) who would, if he made a claim for it, be entitled to a pension in accordance with regulation E3A--
  - (a) shall (for the purpose of this regulation) be treated as retiring from pensionable employment on the day on which his employment terminates; and
  - (b) shall be entitled to a pension under regulation E1 or E5 if he makes a claim for it.
- (3) A claim referred to in paragraph (2)(b) shall--
  - (a) be in writing and addressed to the Secretary of State;
  - (b) be made within 6 months of the employment terminating; and
  - (c) contain such information as the Secretary of State may from time to time require.

### **E3D Continuing entitlement to an E1 or E5 pension**

- (1) This regulation applies to a member--
  - (a) whose employment is certified by the Secretary of State to have terminated by reason of redundancy on, or after, 1st December 2006, and
  - (b) who has reached--
    - (i) normal minimum pension age, or, where relevant, protected pension age, or
    - (ii) age 60.
- (2) A member referred to in paragraph (1) who would, if made a claim for it, be entitled to a pension in accordance with regulation E3A--
  - (a) shall (for the purposes of this regulation) be treated as retiring from pensionable employment on the day on which his employment terminates; and
  - (b) shall be entitled to a pension under regulation E1 or E5 if--

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- (i) he satisfies the conditions set out in those regulations, and
  - (ii) he makes a claim for it.
- (3) A claim referred to in paragraph (2)(b) shall--
- (a) be in writing and addressed to the Secretary of State;
  - (b) be made within 6 months of employment terminating; and
  - (c) contain such information as the Secretary of State may from time to time require.

#### **E4 (revoked)**

#### **E5 Early retirement pension (with actuarial reduction)**

- (1) A member with at least 2 years' qualifying service, who retires from pensionable employment at any time after reaching normal minimum pension age or, where relevant, protected pension age, but before reaching age 60, shall be entitled, subject to paragraph (4), to a pension under this regulation.
- (2) The pension under this regulation will be calculated as described in regulation E1 (normal retirement pension) 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, it will then be reduced by such amount as the Secretary of State, after taking the advice of the Scheme Actuary, may determine.
- (3) Where a pension is payable under paragraph (1), any other amount payable under these Regulations which is paid early shall be reduced in like manner as described in paragraph (2).
- (4) A member shall not be entitled to a pension under this regulation if the Secretary of State determines, having taken advice from the Scheme Actuary, that the pension, as reduced under paragraph (2), would be insufficient to meet her liability to provide a guaranteed minimum pension.

#### **E6 Lump sum on retirement**

- (1) Subject to paragraph (8), each member shall, on becoming entitled to a pension under any of regulations E1 to E5, also become entitled to a lump sum.
- (2) Subject to paragraphs (2A), (3) and (7), the lump sum will be equal to 3 times that part of the yearly rate of the pension which is attributable to contributions paid under Part D.
- (2A) Where regulation E2B(3) applies, the lump sum payable shall be equal to the difference between--
- (a) three times the yearly rate of pension calculated in accordance with regulation E2A(3)(a), and
  - (b) three times the yearly rate of pension calculated in accordance with regulation E2B(3)(b).

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(3) In the case of a man whose pensionable service started before 25th March 1972 and who is or has been married, the lump sum will be reduced in accordance with whichever of paragraphs (4) to (6) is applicable (except to the extent that the reduction has been offset under regulation Q2 (right to buy unreduced retirement lump sum)).

(4) If the man is married, the reduction will be equal to 2 times the yearly rate of the part of the man's pension that is based on pensionable service before 25th March 1972.

(5) If the man's wife died, or the man was divorced from his wife, on or after 25th March 1972, the reduction will be equal to 2 times the yearly rate of the part of the man's pension that is based on pensionable service before 25th March 1972.

(6) If the man's wife died, or the man was divorced from his wife, before 25th March 1972, the reduction will be equal to 2 times the yearly rate of the part of the man's pension that is based on pensionable service up to and including the date of the death or divorce.

(7) In any case where regulation E5 applies (early retirement pension with actuarial reduction)--

(a) the pension referred to in paragraph (2) of this regulation means the pension before any reduction is made under regulation E5(2); and

(b) the lump sum as calculated under paragraph (2) of this regulation will, 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, be reduced by such amount as the Secretary of State, after taking advice from the Scheme Actuary, shall determine.

(8) Where a member entitled to a lump sum under this regulation attained the age of 75 on or before 5th April 2011--

(a) he shall cease to be entitled to a lump sum; and

(b) shall instead be entitled to have his pension increased by such amount as the Secretary of State may, after taking advice from the scheme actuary, determine.

## **E7 General option to exchange part of pension for lump sum**

(1) This regulation applies to a member whose pensionable employment ceases on or after 1st April 2008.

(2) A member may opt to exchange part of a pension to which the member would otherwise be entitled for a lump sum, which must be an evenly divisible multiple of £12.

(3) If a member so opts, for every £1 by which the member's annual pension is reduced, the member is to be paid a lump sum of £12.

(4) An option under paragraph (2) 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).

(5) In paragraph (4) "annual amount" in relation to a pension means the amount of the annual pension to which the 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.

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(6) A 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.

(7) If the member has a guaranteed minimum under section 14 of the 1993 Act in relation to the whole or part of a pension, paragraph (2) only applies to so much of the pension as exceeds that guaranteed minimum, multiplied by such factor as is indicated for a person of the member's description in tables provided by the Scheme Actuary.

(8) Subject to paragraphs (9) and (10), the option under this regulation may only be exercised by giving notice in writing to the scheme administrator in the form required by the Secretary of State--

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

(9) If the pension is an ill-health pension under regulation E2A, the option under this regulation may only be exercised by giving notice in writing to the scheme administrator in the form required by the Secretary of State--

- (a) where the member is awarded--
  - (i) a tier 1 pension under paragraph (3)(a) of that regulation, at the time of claiming that tier 1 pension,
  - (ii) a tier 2 pension under paragraph (3)(b) of that regulation, at the time of claiming that tier 2 pension; or
- (b) before such later time as the scheme administrator specifies in writing.

(10) If the pension is a tier 2 ill-health pension under regulation E2B to be paid in place of a tier 1 ill-health pension under regulation E2A, the option under this regulation may only be exercised--

- (a) in relation to the difference between the tier 1 pension that is replaced by the tier 2 pension in accordance with paragraph (3) of regulation E2B and the tier 2 pension to which the member becomes entitled under that paragraph, and
- (b) by giving notice in writing to the scheme administrator in the form required by the Secretary of State--
  - (i) at the time of award of the tier 2 pension under that paragraph, or
  - (ii) before such later time as the scheme administrator specifies in writing.

## **Part F Lump sum on death**

### **F1 Member dies in pensionable employment**

(1) If a member dies in pensionable employment before reaching age 75, a lump sum on death shall be payable in accordance with regulation F5.

(1A) A lump sum on death shall be payable in accordance with regulation F5 where, on the day they died, the member is--

- (a) under the age of 70;
- (b) in NHS employment;



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(c) no longer required to pay contributions from a date that falls before 1st April 2008 pursuant to regulation D1(3) or (4) (contributions by members); and

(d) except where regulations E2(11) or R4(6) apply, not in receipt of a pension under any of regulations E1 to E5.

(1B) A lump sum on death shall be payable in accordance with regulation F5 where, on the day the member died, the member is--

(a) under the age of 75 if not a special class officer or under the age of 70 if a special class officer;

(b) in NHS employment;

(c) no longer required to pay contributions from a date that falls on or after 1 April 2008 pursuant to regulation D1(3) or (4) (contributions by members), and

(d) except where regulations E2(11), E2A(11) or R4(6) apply, not in receipt of a pension under any of regulations E1 to E5.

(2) Subject to regulation S4 (benefits on death in pensionable employment after pension becomes payable), the lump sum on death will be equal to twice the member's final year's pensionable pay.

## **F2 Member dies after pension becomes payable**

(1) Subject to paragraph (7), if a member dies after his pension under this Section of the scheme becomes payable, a lump sum on death shall be payable in accordance with regulation F5.

(2) Subject to regulation S4, the lump sum on death will be equal to 5 times the yearly rate of the member's pension (less the amount of pension already paid) provided that the maximum payment under this paragraph shall not exceed an amount equal to twice the member's final year's pensionable pay less an amount equal to the aggregate of--

(a) the member's retirement lump sum paid under regulation E6 (lump sum on retirement), and

(b) any lump sum paid to the member under regulation E7 (general option to exchange part of pension for lump sum).

(3) A person who retires from pensionable employment on, or after, 6th April 2006 may give notice to the scheme administrator in accordance with paragraph (4) that any lump sum payable under this regulation is to be treated as a pension protection lump sum death benefit in accordance with paragraph 14 of Part 2 of Schedule 29 to the 2004 Act.

(4) Such a notice--

(a) shall be given in writing; and

(b) may be revoked in writing at any time.

(5) A lump sum paid under this regulation in respect of a member who became entitled to a pension under regulations E1 to E5 or L1 before 6th April 2006, shall be treated as a pension protection lump sum death benefit but regulation T2A (11) shall not apply.

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(6) If a member who was in receipt of a substitute tier 1 pension under regulation E2C dies before the end of the protection period that applies to him under regulation E2C(6)(a) or E2C(6)(b), the member's pension referred to in paragraph (2) means that member's original tier 2 pension.

(7) Where a member referred to in paragraph (1) dies on or before 5th April 2011 and had attained the age of 75 at the date of the member's death--

- (a) the lump sum referred to in that paragraph shall cease to be payable, and
- (b) shall instead be converted into an annual pension to be determined and paid in accordance with paragraph (8).

(8) The pension referred to in paragraph (7) shall be--

- (a) determined in accordance with guidance and tables provided by the Scheme Actuary for the purpose of converting the amount of the lump sum into an annual pension;
- (b) paid to the person who would otherwise be entitled to receive the lump sum in accordance with regulation F5; and
- (c) paid to that person from the day after the member's death until the fifth anniversary of the day the member's pension under this Section of the scheme became payable.

(9) If, in accordance with regulation F5, a member has given notice that more than one person is to receive a share of the lump sum, each such person shall receive the same percentage of the annual pension as was specified for that person in the member's notice.

(10) If, in accordance with regulation F5, the annual pension is to be paid to the member's personal representatives they may, as part of the distribution of the member's estate, give irrevocable notice to the Secretary of State--

- (a) specifying--
  - (i) one or more individuals, or
  - (ii) one incorporated or unincorporated body,

to whom the benefit of the pension under this regulation from the date of receipt of the notice by the Secretary of State is to be assigned, and

- (b) where two or more individuals are specified, specifying the percentage of the pension payable to each of them,

and the pension (or, as the case may be, the percentage of it specified in respect of the person) may be paid to the person or body, unless paragraph (11) applies.

(11) This paragraph applies if--

- (a) the person specified in the notice has died before payment can be made,
- (b) payment to the person or body specified in the notice is not, in the opinion of the Secretary of State, reasonably practicable, or
- (c) the person to whom the pension (or a specified percentage of the pension) would otherwise be payable has been convicted of an offence specified in regulation T6(1A) and the Secretary of State has directed, as a consequence of that conviction, that the person's right to a payment in respect of the member's death is forfeited.

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(12) The prohibition on assignment of benefits in regulation T3 (benefits not assignable) shall not apply to an assignment by personal representatives under this regulation.

### **F3 Member dies with preserved pension**

(1) If a member leaves pensionable employment with a preserved pension under regulation L1 and dies before his pension under this Section of the scheme becomes payable, a lump sum on death shall be payable in accordance with regulation F5.

(2) The lump sum will be equal to 3 times the yearly rate of the member's preserved pension, calculated as described in regulation L1.

### **F4 Member dies within 12 months after leaving pensionable employment without pension or preserved pension**

(1) This regulation applies if a member leaves pensionable employment without becoming entitled to a pension under any of regulations E1 to E5 or a preserved pension under regulation L1 and dies within 12 months after leaving.

(2) If the member dies before receiving a refund of contributions under regulation L2 or before a transfer payment is made under regulation M5 (early leaver without pension or preserved pension), a lump sum on death shall be payable in accordance with regulation F5.

(3) The lump sum on death will be calculated as described in regulation F3 (member dies with preserved pension) as if, on leaving pensionable employment, the member had become entitled to a preserved pension calculated as described in regulation L1.

### **F5 Payment of lump sum**

(1) A lump sum under any of regulations F1 to F4 shall be paid in accordance with the following paragraphs.

(2) If a member dies without leaving a surviving partner and without having made a nomination in favour of another person, the lump sum shall be paid to the member's personal representatives.

(3) If a member dies leaving a surviving partner and without having made a nomination in favour of another person, the lump sum shall be paid to that surviving partner unless--

(a) the member has given notice to the Secretary of State that the surviving partner is not to receive the payment and has not revoked that notice; or

(b) the surviving partner has been convicted of an offence specified in regulation T6(1A) and the Secretary of State has directed, as a consequence of that conviction, that the surviving partner's right to payment in respect of the member's death shall be forfeited; or

(c) payment to the surviving partner is not, in the opinion of the Secretary of State, reasonably practicable,

in which case the lump sum shall be paid to the member's personal representatives.

(4) If a member dies having made a nomination in favour of one nominee (whether or not he also leaves a surviving partner), the lump sum shall be paid to that nominee unless--

(a) the member has given notice to the Secretary of State revoking that nomination; or

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- (b) the nominee has died before the payment could be made; or
- (c) the nominee has been convicted of an offence specified in regulation T6(1A) and the Secretary of State has directed, as a consequence of that conviction, that the member's right to payment in respect of the member's death shall be forfeited; or
- (d) payment to the nominee is not, in the opinion of the Secretary of State, reasonably practicable,

in which case the lump sum shall be paid to the member's personal representatives.

(5) If a member dies having made a nomination in favour of two or more persons (whether or not he also leaves a surviving partner) and has not given notice to the Secretary of State revoking that notice, the lump sum shall be paid to those nominees, unless--

- (a) one or more of those nominees has--
  - (i) died before the payment could be made; or
  - (ii) been convicted of an offence specified in regulation T6(1A) and the Secretary of State has directed, as a consequence of that conviction, that the member's or the nominee or nominees' right to payment in respect of the member's death shall be forfeited; or
- (b) the Secretary of State is of the opinion that payment to one or more of the nominees is not reasonably practicable,

in which case the percentage of the lump sum due to that nominee, or as the case may be, those nominees shall be paid to the member's personal representatives.

(6) A nomination may only be made by a member--

- (a) who is in pensionable employment in this Section of the scheme at the time of making the nomination; or
- (b) whose pensionable employment in this Section of the scheme ceased on, or after, 1st April 2008.

(7) A nomination shall specify one or more persons who may be--

- (a) an individual;
- (b) a body corporate;
- (c) an unincorporated body; or
- (d) the member's personal representatives,

but is not entitled to specify one or more persons referred to in sub-paragraph (a) together with a body referred to in either of sub-paragraphs (b) or (c).

(8) A nomination or notice referred to in this regulation is only valid--

- (a) if addressed to the Secretary of State;
- (b) upon receipt by the Secretary of State;
- (c) if made (or revoked) in writing;
- (d) if it nominates the whole of the lump sum to a nominee and, in the case of a nomination specifying more than one individual, if it also specifies the percentage of the lump sum to be paid to each such individual.

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(9) A member who has any pensionable employment in this Section of the scheme on or after 1st April 2008 cannot give a notice referred to in paragraph (3)(a).

(10) If the lump sum on death does not exceed the specified amount, the Secretary of State may pay it to any person claiming to be the member's personal representative or to be entitled to a share of it, without requiring proof of the title of the person concerned.

(11) In paragraph (10), the specified amount means £5,000 or any higher amount specified in an order made under section 6(1) of the Administration of Estates (Small Payments) Act 1965 as the amount to be treated as substituted for references to £500 in section 1 of that Act.

(12) In this regulation "surviving partner" means a--

- (a) widow; or
- (b) widower; or
- (c) civil partner; or
- (d) nominated partner,

who survives the member

(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.

## **Part G Surviving Partner Pensions**

### **G1 Widow's pension**

(1) Subject to the following provisions of this regulation, if a male member dies in the circumstances described in any of regulations G2 to G6 and leaves a surviving widow, the widow shall be entitled to a pension as described in whichever of regulations G2 to G6 applies.

(1A) Paragraphs (2) to (7) apply if a member's pensionable employment ceases before 1st April 2008.

(2) Subject to paragraphs (3) to (5)--

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

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

(3) Nothing in paragraph (2) shall affect any entitlement to a widow's guaranteed minimum pension under this Section of the scheme.

(4) If the Secretary of State is satisfied that the widow will otherwise suffer severe financial hardship, the Secretary of State may pay a pension to a widow who—

- (a) has remarried,

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- (b) has formed a civil partnership,
- (c) is living together as husband and wife with a man to whom the widow is not married,
- (d) is living together as if in a civil partnership with a woman who is not the widow's civil partner.

(5) If the Secretary of State is satisfied that the widow will otherwise suffer hardship, the Secretary of State may pay a pension to a widow who has—

- (a) remarried and that later marriage has come to an end,
- (b) formed a civil partnership which has come to an end.

(6) The amount of any pension payable under paragraph (4) or (5) may, at the Secretary of State's discretion, be equal to, or less than, the original widow's pension and the Secretary of State may (subject to any widow's guaranteed minimum pension) vary the amount, or stop paying the pension, at any time.

(7) If a dependent child is born after the member's death, any entitlement to a widow's pension under regulation G2 (member dies in pensionable employment) or G3 (member dies after pension becomes payable) will be recalculated as if the child had been born before the member died.

## **G2 Member dies in pensionable employment**

(1) The widow's pension payable on a member's death in pensionable employment will be as described in this regulation.

(2) The widow's pension for the first 3 months after the member's death (6 months if the member leaves at least one dependent child who is dependent on the widow) will be equal to the rate of the member's pensionable pay when he died if that amount is greater than the amount of widow's pension and child allowance that would otherwise be payable under these Regulations.

(3) Except while the widow's pension is payable at the rate mentioned in paragraph (2), if the member dies with 2 years' or more qualifying service, the widow's pension will be equal to one-half of the pension that would have been payable to the member under this Section of the scheme if the member had retired through ill-health with a pension under regulation E2 (early retirement pension on grounds of ill-health) on the day he died.

(3A) Paragraphs (3B) to (5) apply if a member dies on or after 1st April 2008.

(3B) The widow's pension for the first 6 months after the member's death will be equal to the rate of the member's pensionable pay when the member died if that amount is greater than the amount of widow's pension that would otherwise be payable under these Regulations.

(3C) Except while the widow's pension is payable at the rate mentioned in paragraph (3B), if the member dies with 2 years or more qualifying service, the widow's pension will be equal to one-half of the pension to which the member would have been entitled if, on the date of death, the member had become entitled to a tier 2 pension under regulation E2A.

(4) Except while the widow's pension is payable at the rate mentioned in paragraph (2) or (3B), if the member dies with less than 2 years' qualifying service but after reaching age 60, the widow's pension will be equal to one-half of the pension that would have been payable to the member under this Section of the scheme if the member had retired with a pension under regulation E1 (normal retirement pension) on the day he died.



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(5) Except while the widow's pension is payable at the rate mentioned in paragraph (2) or (3B), if the member dies with less than 2 year's qualifying service and before reaching age 60, the widow will receive a pension equal to her guaranteed minimum pension under this Section of the scheme, unless the Secretary of State discharges her liability to provide such a pension by paying a contributions equivalent premium under section 55(2) of the Pension Schemes Act 1993.

(6) The widow's pension payable on a member's death if, on the day they died, the member is--

- (a) under the age of 70;
- (b) in NHS employment;
- (c) no longer required to pay contributions on or before 1st April 2008 pursuant to regulation D1(3) or (4) (contributions by members); and
- (d) except where regulation R4(6) applies, not in receipt of a pension under any of regulations E1 to E5,

will be as described in paragraph (2) and (3), but with the modifications set out in paragraph (7).

(7) The modifications referred to in paragraph (6) are--

- (a) in paragraph (2), for "member's pensionable pay when he died" substitute "member's final year's pensionable pay"; and
- (b) in paragraph (3), for "on the day he died" substitute "on his last day of pensionable employment".

(8) The widow's pension payable on a member's death if, on the day the member died, the member is--

- (a) under the age of 75 if not a special class officer or under the age of 70 if a special class officer;
- (b) in NHS employment;
- (c) no longer required to pay contributions on or after 2nd April 2008 pursuant to regulation D1(3) or (4) (contributions by members); and
- (d) except where regulation R4(6) (members doing more than one job) applies, not in receipt of a pension under any of regulations E1 to E5,

will be as described in paragraph (3B) and (3C), but with the modifications set out in paragraph (9).

(9) The modifications referred to in paragraph (8) are--

- (a) in paragraph (3B), for "member's pensionable pay when he died" substitute "member's final year's pensionable pay", and
- (b) in paragraph (3C), for "on the date of death" substitute "on the member's last day of pensionable employment".

### **G3 Member dies after pension becomes payable**

(1) Subject to regulation G6 (member marries after leaving pensionable employment) and regulation S4 (benefits on death in pensionable employment after pension becomes payable), the widow's pension payable on a member's death after a pension under this Section of the scheme becomes payable will be as described in this regulation.

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(2) Subject to paragraph (3), the widow's pension for the first 3 months after the member's death (6 months if the member leaves at least one dependent child who is dependent on the widow) will be equal to the member's pension if that amount is greater than the amount of widow's pension and child allowance that would otherwise be payable under these Regulations.

(3) For the purposes of paragraph (2), no account will be taken of any reduction to the member's pension under regulation S2 unless--

(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

(b) on the date of the member's death the member is an active or non-contributing member of that Section.

(4) Except while the widow's pension is payable at the rate mentioned in paragraph (2), the widow's pension will be equal to one-half of the member's pension.

(5) Where the member was in receipt of a pension payable under regulation E5 (early retirement pension with actuarial reduction), the member's pension referred to in paragraph (4) means the member's pension calculated without regard to any reduction made under regulation E5(2).

(6) If a member who was in receipt of a substitute tier 1 pension under regulation E2C dies before the end of the protection period that applies to him under regulation E2C(6)(a) or E2C(6)(b), the member's pension referred to in paragraph (2) means that member's original tier 2 pension.

(7) For the purposes of paragraphs (2) and (4), no account will be taken of any reduction to the member's pension under regulation E7 (general option to exchange part of pension for lump sum).

#### **G4 Member dies with preserved pension**

(1) Except where regulation G6 applies (member marries after leaving pensionable employment), the widow's pension payable on the death of a member with a preserved pension under regulation L1 (preserved pension) that had not become payable at the date of death will be as described in this regulation.

(2) If the member leaves pensionable employment before 1st April 2008 and dies within 12 months after leaving, the widow's pension will be equal to one-half of the pension that would have been payable to the member under this Section of the scheme if the member had retired through ill health with a pension under regulation E2 on the day the member left pensionable employment.

(2A) If the member leaves pensionable employment on or after 1st April 2008 and dies within 12 months after leaving, the widow's pension will be equal to one-half of the pension that would have been payable to the member under this Section of the scheme if the member had retired through ill health with a tier 2 pension under regulation E2A on the day the member left pensionable employment.

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(3) If the member dies 12 months or more after leaving pensionable employment, the widow's pension will be equal to one-half of the member's preserved pension.

#### **G5 Member dies within 12 months after leaving pensionable employment without pension or preserved pension**

(1) This regulation applies if a member leaves pensionable employment without becoming entitled to a pension under any of regulations E1 to E5 or a preserved pension under regulation L1 and dies within 12 months after leaving.

(2) If the member dies before receiving a refund of contributions under regulation L2 or before a transfer payment is made to which regulation M5 applies (early leaver without pension or preserved pension), the widow shall be entitled to a widow's guaranteed minimum pension unless the Secretary of State discharges her liability to provide such a pension by paying a contributions equivalent premium under section 55(2) of the Pension Schemes Act 1993.

#### **G6 Member marries after leaving pensionable employment**

(1) This regulation applies where the member and his wife were not married to each other during any period of pensionable employment.

(2) Subject to paragraph (3), the widow's pension will be equal to one-half of a pension calculated as described in regulation E1 (normal retirement pension) on the basis of the member's pensionable service after 5th April 1978.

(3) If the member dies after his pension under this Section of the scheme becomes payable, the widow's pension for the first 3 months after the member's death (6 months if the member dies leaving at least one dependent child dependent on the widow) will be equal to the amount of the pension that would have been payable under regulation G3 (member dies after pension becomes payable).

(4) Where the nominated partner referred to in regulation 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.

#### **G7 Widower's pension**

(1) Subject to the following provisions of this regulation, if a female member dies in the circumstances described in any of regulations G2 to G6 and leaves a surviving widower, the widower shall be entitled to a pension as described in this regulation.

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

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

(4) If regulation G2(3), G2(3C), G4(2) or G(4)(2A) applies to the calculation of the widower's pension on a member's death in pensionable employment or with a preserved pension--

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- (a) the whole of the member's pensionable service will be taken into account when calculating whether and (if so) to what extent there would have been an increase, by virtue of regulation E2(3) or E2A(4), in the pensionable service on which the member's pension under regulation E2 or E2A (ill health retirement pensions) would have been based; and
  - (b) the whole period (if any) by which the member's pension would have been increased will be treated as pensionable service after 5th April 1988.
- (5) Where regulation G3(2) applies to the calculation of the widower's pension, so that the widower's pension is equal to the member's pension for a limited period, the widower's pension for that limited period will be equal to the whole of the member's pension (including any part of the member's pension that is based on pensionable service before 6th April 1988).
- (6) Any reference in these Regulations to regulations G1 to G6 means, in relation to benefits in respect of a female member, those regulations as applicable to the member's widower (if any).

### **G8 Dependent widower's pension**

- (1) A female member may, by giving notice in writing to the Secretary of State prior to leaving pensionable employment, nominate her husband to receive a dependent widower's pension on her death.
- (2) The Secretary of State shall accept a member's nomination only if she is satisfied that the member's husband is permanently incapable of earning a living because of physical or mental infirmity and is wholly or mainly dependent on the member.
- (3) If the Secretary of State has accepted a member's nomination and the member subsequently dies before her husband, the dependent widower shall be entitled to a dependent widower's pension.
- (4) The dependent widower's pension will be calculated in the same way as a widow's pension under regulations G1 to G6 (pensions for widows), but based only on the member's pensionable service before 6th April 1988.
- (5) If the Secretary of State has accepted a member's nomination for a dependent widower's pension and the member's pensionable service started before 25th March 1972 any lump sum payable to the member under regulation E6 (lump sum on retirement) will be reduced by an amount equal to 2 times the yearly rate of the part of the member's pension that is based on pensionable service before 25th March 1972 (except to the extent that any reduction has been off-set under regulation Q2 (right to buy an unreduced retirement lump sum)).
- (6) Where regulation E2(10), regulation E2A(10) or regulation L1(8) applies to a female member, any reference in those regulations to a lump sum payable on retirement shall mean, in relation to a member to whom paragraph (5) of this regulation refers, a lump sum which is not reduced as described in that paragraph.

### **G9 Increased widower's pension**

- (1) If a female member elected before 1st July 1989 to buy an increased widower's pension, the widower's pension described in regulation G7 will be based on pensionable service after 5th April 1988 plus the period of pensionable service before that date that the member elected to

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buy for this purpose under regulation 18B of the previous regulations (purchase of increased widower's pension).

(2) Subject to paragraph (3), any retirement lump sum payable to a member under regulation E6 (lump sum on retirement), in respect of any period of pensionable service that the member elected to buy as described in paragraph (1), will be reduced by 2 times the yearly rate of the part of the member's pension that is based on pensionable service before 25th March 1972 and by the yearly rate of the part of the member's pension that is based on pensionable service after 24th March 1972 plus, in each case, the relevant daily proportion of that rate for each additional day.

(3) Where regulation E2(10), regulation E2A(10) or regulation L1(8) applies to a female member, any reference in those regulations to a lump sum payable on retirement shall mean, in relation to a member to whom paragraph (2) of this regulation refers, a lump sum which is not reduced as described in that paragraph.

(4) Where the member elected to buy an unreduced retiring allowance under paragraph 3 of Schedule 7A to the previous regulations, regulations Q2 (right to buy an unreduced retirement lump sum) and Q7 (part payment for additional service or unreduced retirement lump sum) will apply to such election as if it had been made under regulation Q2.

(5) If a female member who has made an election under this regulation--

~~(a)~~ omitted

(b) dies without leaving a widower but leaving a surviving civil partner or, as the case may be, a surviving nominated partner,

the widower's pension described in paragraph (1) shall be paid to that surviving partner.

### **G10 Surviving civil partner's pension**

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

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

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

(4) If regulation G2(3), G(2)(3C), G4(2) or G4(2A) applies to the calculation of the surviving civil partner's pension on a member's death in pensionable employment or with a preserved pension--

(a) the whole of the member's pensionable service will be taken into account when calculating whether and (if so) to what extent there would have been an increase, by virtue of regulation E2(3) or E2A(4), in the pensionable service on which the member's pension under regulation E2 or E2A (ill health retirement pensions) would have been based; and

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(b) the whole period (if any) by which the member's pension would have been increased will be treated as pensionable service after 5th April 1988.

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

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

### **G11 Dependent surviving civil partner's pension**

(1) A member who has formed a civil partnership may, by giving notice in writing to the Secretary of State prior to leaving pensionable employment, nominate the other party to the civil partnership to receive a dependent surviving civil partner's pension on the member's death.

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

(3) If the Secretary of State has accepted a member's nomination and the member subsequently dies before the other party to the civil partnership, the dependent surviving civil partner shall be entitled to a dependent surviving civil partner's pension.

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

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

(6) Where regulation E2(10), regulation E2A(10) or regulation L1(8) applies to a member who has formed a civil partnership, any reference in those regulations to a lump sum payable on retirement shall mean, in relation to a member to whom paragraph (5) of this regulation refers, a lump sum which is not reduced as described in that paragraph.

### **G12 Purchase of surviving civil partner's pension in respect of service prior to 6th April 1988**

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



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(2) The purchase of an increase pursuant to paragraph (1) may be made only in respect of complete years of service unless the officer or practitioner wishes to purchase an increase in respect of all of his service before 6th April 1988 in which case the whole of the requisite period may be purchased whether or not it constitutes a multiple of complete years of service.

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

(a) shall not be made later than 28th February 2007 by giving notice in writing to the Secretary of State specifying the period in respect of which the election is made;

(b) must be accompanied by a declaration in writing signed by the officer or practitioner that he is of sound health for his age; and

(c) shall be irrevocable.

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

### **G13 Increased surviving civil partner's pension**

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

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

(3) Where regulation E2(10), regulation E2A(10) or regulation L1(8) applies to a member who has formed a civil partnership, any reference in those regulations to a lump sum payable on retirement shall mean, in relation to a member to whom paragraph (2) of this regulation refers, a lump sum which is not reduced as described in that paragraph.

(4) Subject to paragraph (5) where by virtue of an election under regulation G12(1) the amount of the retirement lump sum would fall to be reduced by 1.4 times the yearly rate of the member's pension plus the relevant daily proportion of that rate for each additional day, he may make an election to purchase an unreduced lump sum under regulation Q2 (right to buy an unreduced retirement lump sum) provided that the election is made no later than 28th February 2007.

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

(6) If a member who has made an election under this regulation--

~~(a)~~—omitted

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- (b) dies without leaving a civil partner but leaving a surviving widower or, as the case may be, a surviving nominated partner,

the surviving civil partner's pension described in paragraph (1) shall be paid to that surviving widower, or as the case may be, that surviving nominated partner.

#### **G14 Surviving nominated partner's pension**

(1) A member whose pensionable employment ceases on or after 1st April 2008 may, by giving notice in writing to the Secretary of State, nominate a person ("the nominated partner") to receive a surviving nominated partner pension on the member's death and such a nomination shall be effective from the date the Secretary of State accepts it.

(2) The Secretary of State must accept a member's nomination if--

- (a) the member and the nominated partner have jointly made and signed a declaration in the form required by the Secretary of State that remains effective at the member's death; and

- (b) the nominated partner satisfies the Secretary of State that for a continuous period of at least two years ending with the member's death--

- (i) the member and the nominated partner were living together as if they were husband and wife or civil partners;

- (ii) the member and the nominated partner were not prevented from marrying or entering into a civil partnership;

- (iii) the member and the nominated partner were financially interdependent or the nominated partner was financially dependent on the member; and

- (iv) neither the member nor the nominated partner was living with a third person as if they were husband and wife or as if they were civil partners.

(3) A declaration under paragraph (2)(a) ceases to have effect if--

- (a) it is revoked by the member or the nominated partner by a signed notice in writing given to the Secretary of State in the required form (if any); or

- (b) the member makes a later declaration under paragraph (2)(a); or

- (c) the member or the nominated partner marries or enters into a civil partnership.

(4) If the Secretary of State has accepted a member's nomination and the member subsequently dies before the member's nominated partner in the circumstances described in any of regulations G2 to G6, the nominated partner is entitled to a pension as described in paragraphs (6) to (10) of this regulation.

(5) Subject to paragraph (6), regulations G1 to G6 apply to the calculation and payment of pensions for nominated partners in the same manner as they apply to pensions for widows and paragraph (1) of regulation G6 shall be read as if, for the words "where the member and his wife were not married to each other during any period of pensionable employment", it said "where a nomination for a surviving partner pension becomes effective after all pensionable employment has ceased".

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(6) When calculating a nominated partner's pension, any part of the member's benefit that is based on pensionable service before 6th April 1988 will, subject to paragraphs (7) and (8), be disregarded.

(7) If paragraphs (3) or (3C) of regulation G2 or paragraphs (2) or (2A) of regulation G4 apply to the calculation of the nominated partner's pension on a member's death in pensionable employment or with a preserved pension--

(a) the whole of the member's pensionable service will be taken into account when calculating whether and (if so) to what extent there would have been an increase, by virtue of regulation E2(3) or E2A(4) in the pensionable service on which the member's pension under regulation E2 or E2A would have been based; and

(b) the whole period (if any) by which the member's pension would have been increased will be treated as pensionable service after 5th April 1988.

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

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

(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.

### **G15 Dependent surviving nominated partner's pension**

(1) A member may, by giving notice in writing to the Secretary of State before leaving pensionable employment, apply for the member's nominated partner to receive a dependent surviving nominated partner's pension on the member's death.

(2) The Secretary of State must accept a member's application only if the Secretary of State is satisfied that the member's nominated partner is--

(a) permanently incapable of earning a living because of physical or mental infirmity; and

(b) wholly or mainly dependent on the member.

(3) If the Secretary of State has accepted a member's application and the member subsequently dies before the member's nominated partner, the dependent surviving nominated partner is entitled to a dependent surviving nominated partner's pension.

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

(5) If the Secretary of State has accepted a member's application for a dependent surviving nominated partner's pension and the member's pensionable service started before 6th April 1988 any lump sum payable to the member will be reduced by an amount equal to 1.4 times the

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yearly rate of the part of the member's pension that is based on pensionable service before 6th April 1988 (except to the extent that any reduction has been off-set under regulation Q2).

(6) If regulation E2(10), regulation E2A(10) or regulation L1(8) (ill health retirement pensions and preserved pension) applies to a member who has a nominated partner, any reference in those provisions to a lump sum payable on retirement means, in relation to a member to whom paragraph (5) of this regulation refers, a lump sum that is not reduced as described in that paragraph.

### **G16 Purchase of surviving partner's pension in respect of service before 6th April 1988**

(1) Subject to this regulation, an officer in respect of whom a pension has not already become payable under regulation E2 or E2A (ill health retirement pensions) may, in respect of the whole or any part of the member's contributing service before 6th April 1988, elect to purchase an increase in the amount of any survivor's pension that becomes payable under this Section of the scheme.

(2) The purchase of an increase under paragraph (1) may be made only in respect of complete years of service, unless the officer wishes to purchase an increase in respect of all of the member's service before 6th April 1988, in which case the whole of the requisite period may be purchased whether or not it constitutes a multiple of complete years of service.

(3) An election under paragraph (1)--

(a) must be made either—

(i) during the period beginning on 1st April 2008 and ending on 30th June 2009; or

(ii) during the period beginning on 13th March 2014 and ending on 31st March 2015;

(b) must be made by notice in writing, given to the Secretary of State;

(c) must specify the period in respect of which the election is made;

(d) must be accompanied by a declaration in writing signed by the officer that he is of sound health for the member's age;

(e) is irrevocable.

(4) Each figure in tables 2 and 4 of Schedule 1 is multiplied by a factor of 0.7 in respect of the cost of providing the increase provided under paragraph (1).

(5) In this regulation "survivor's pension" means a pension that becomes payable by virtue of--

(a) regulation G7; or

(b) regulation G10; or

(c) regulation G14.

### **G17 Increased surviving partner's pension**

(1) If a member makes a valid election pursuant to regulation G16(3)(a) to buy an increased surviving partner's pension under regulation G16(1), any survivor's pension that becomes payable in respect of that member will be based on pensionable service after 5th April

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1988 plus any period of pensionable service before that date that the member elected to buy for this purpose under regulation G16(1).

(2) Any survivor's pension payable in respect of the member shall be paid to (as the case may be) the member's surviving widower, civil partner or nominated partner regardless of whether that pension is payable by virtue of regulation G7, regulation G10 or regulation G14.

(3) Subject to paragraph (4), any retirement lump sum payable to a member under regulation E6, in respect of any period of pensionable service that the member elected to buy as described in paragraph (1), will be reduced by 1.4 times the yearly rate of the member's pension plus the relevant daily proportion of that rate for each additional day (except to the extent that any lump sum reduction has been off-set under regulation Q2) (right to buy an unreduced retirement lump sum).

(4) If regulation E2(10), regulation E2A(10) or regulation L1(8) (ill health retirement pensions and preserved pension) applies to a member to whom this regulation refers, any reference in those regulations to a lump sum payable on retirement must be taken to mean a lump sum that is not reduced as described in paragraph (2) of this regulation.

(5) Subject to paragraph (6) if, by virtue of an election under regulation G16(1), the amount of the retirement lump sum would fall to be reduced by 1.4 times the yearly rate of a member's pension plus the relevant daily proportion of that rate for each additional day, he may make an election to purchase an unreduced lump sum under regulation Q2 provided that the election is made during either of the periods specified in regulation G16(3)(a).

(6) A member who has purchased additional service in accordance with regulation Q1 by way of a payment under regulation Q6 is not entitled to make an election under paragraph (4) in respect of the purchase of an unreduced lump sum.

## **Part H Child Allowance**

### **H1 Dependent child**

(1) Subject to the provisions of this regulation, "dependent child" means any child who is--

(a) a child or grandchild of the member;

(b) a step-child of the member by a marriage entered into or a civil partnership formed before the date on which the member leaves pensionable employment or a child legally adopted by the member before that date;

(c) a brother or sister, or a child of a brother or sister, of the member or the member's spouse, civil partner or nominated partner (any half-brother or step-brother being treated as a brother, and any half-sister or step-sister being treated as a sister, for this purpose); or

(d) a child who, immediately before the member left pensionable employment, the member had intended to adopt, or a child who, at that time, had been dependent on the member for 2 years or (if less) half the child's life;

(e) a child of a member's nominated partner from a nominated partnership formed before the date on which the member leaves pensionable employment,

and who satisfies the requirements of paragraph (2).

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(2) The requirements of this paragraph are satisfied by any child described in paragraph (1) who is--

(a) born before the member leaves pensionable employment and who is dependent on the member when the member dies and, if the member dies after leaving pensionable employment, is also dependent on the member when the member leaves pensionable employment; or

(b) born one year or less after the member leaves pensionable employment and who either is dependent on the member both immediately after being born and when the member dies, or would have become dependent on the member if the member had not died before the child was born.

(2A) A child is a dependent child of a person whose pensionable employment ceases on or after 1st April 2008 for so long as that child is--

(a) under age 23; or

(b) aged 23 or over and incapable of earning a living because of permanent physical or mental infirmity from which that child was suffering at the time the member died.

(3) Subject to paragraphs (6) and (7), a child is a dependent child of a person whose pensionable employment ceases on or before 31st March 2008 for so long as he is--

(a) under age 17; or

(b) aged 17 or over but has not reached the age of 23 and continuing in full-time education; or

(c) aged 17 or over but has not reached the age of 23 and participating in full-time training for a trade, profession or vocation, for which he is not receiving remuneration in excess of the allowable maximum; or

(d) aged 17 or over but has not reached the age of 23 and taking a break in such full-time education or training providing the Secretary of State is satisfied that the child intends to return to some such education or training;

(e) aged 17 or over but has not reached the age of 23 and is incapable of earning a living because of permanent physical or mental infirmity from which he started to suffer whilst qualifying as a dependent child; but such a person will only be treated as a dependent child for so much of the period commencing with the day on which he attains the age of 17 and ending immediately before the day on which he attains the age of 23, during which he remains incapable of earning a living.

(4) A child who is aged 17 or over but has not reached the age of 23 and who has ceased to be a dependent child will be treated as a dependent child if he returns to full-time education, or to full-time training for a trade, profession or vocation for which he is not receiving remuneration in excess of the allowable maximum, before reaching age 21 and within 12 months after ceasing to be a dependent child.

(5) In this regulation, the "allowable maximum" means the amount to which a pension of £1702 a year beginning on 11th April 1994 would have been increased under Part I of the Pensions (Increase) Act 1971 at the date in question, plus the yearly amount of any expenses necessarily incurred for the purposes of the education or training.



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(6) A child who is incapable of earning a living because of permanent physical or mental infirmity from which he was suffering at the time the member died will be treated as a dependent child for so long as he remains incapable of earning a living.

(7) Where--

(a) a dependent child became entitled to a child allowance under regulation H2 before 6th April 2006; or

(b) the dependency of a child born on, or before, 5th April 2007 is to be assessed in respect of a person who became entitled to a pension under regulations E1 to E5 or L1 before 6th April 2006,

paragraphs (3)(b), (c) and (d) and (4) shall be read as if they did not include the words "but has not reached the age of 23", paragraph (3)(e) shall not apply and paragraph (6) shall be read as if it included the words "or from which he started to suffer whilst qualifying as a dependent child" after the words "member died".

## **H2 Payment of allowance**

(1) Subject to the following provisions of this regulation, if a member dies in the circumstances described in any of regulations H3 to H7 and leaves a dependent child, the dependent child shall be entitled to a child's allowance as described in this regulation and in whichever of regulations H3 to H7 is applicable.

(2) If a dependent child is born after the member's death, a child allowance shall be payable as if the child had been born before the member died.

(3) The child allowance will be paid to the child or, where the Secretary of State so decides to some other person for the child's benefit and, where there is more than one dependent child, the allowance will be shared between them in such shares as the Secretary of State may decide from time to time.

(4) Where a child is a dependent child by virtue of regulation H1(3)(d), the child allowance shall cease to be payable after 12 months if the child has not then returned to full-time education, or full-time training for a trade, profession or vocation, but will be reinstated if the child later returns to some such education or training and the Secretary of State is satisfied that the child intended to do so from the start of the break.

(5) No allowance shall be payable to, or for the benefit of, a child who is incapable of earning a living because of permanent physical or mental infirmity for any period exceeding one month during which the child is maintained out of money provided by Parliament in a hospital or other institution.

(6) Where a child is a dependent child in relation to 2 or more members, all of whom die, a child allowance shall be payable in respect of not more than 2 of those members and, if there are more than 2 such members, shall be equal to the sum of the 2 highest allowances.

(7) The child allowance shall cease to be payable when there is no remaining dependent child.

## **H3 Member dies in pensionable employment**

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(1) The child allowance payable in the case of a member who dies whilst in pensionable employment will be as described in this regulation.

(2) Subject to paragraph (3), if the member dies before 1st April 2008 the allowance will be calculated, as described in whichever of paragraphs (4) or (7) apply, as a proportion of the pension that would have been payable to the member under this Section of the scheme if the member had retired through ill-health with a pension under regulation E2 (early retirement pension on grounds of ill-health) on the day he died.

(2A) If the member died on or after 1st April 2008 the allowance will be calculated as described in whichever of paragraphs (4A) or (4D) apply--

(a) as a proportion of the pension that would have been payable to the member under this Section of the scheme if the member retired through ill health and had qualified for a tier 2 pension under regulation E2A on the day the member died; or

(b) if greater, the amount that pension would have been if it had been based on 10 years pensionable service.

(3) If the member dies with less than 5 years' pensionable service, the allowance will be calculated as if the pension described in paragraph (2) were based on the shorter of--

(a) 10 years' pensionable service, and

(b) the pensionable service the member could have completed if he had stayed in pensionable employment until age 65.

(4) Subject to paragraphs (5) to (8), if the member dies leaving a dependent child and there is a surviving parent (or spouse or civil partner of a parent), the allowance will be equal to one-quarter of the pension described in paragraph (2) if there is only one dependent child and one-half if there are two or more.

(4A) Subject to paragraphs (4B) to (4E), if the member dies leaving a dependent child and there is a surviving parent (or spouse, civil partner or nominated partner of a parent), the allowance will be equal to one-quarter of the pension described in paragraph (2A) if there is only one dependent child and one-half if there are two or more.

(4B) If a widow's, widower's, surviving civil partner's or nominated partner's pension is payable at the rate mentioned in regulation G2(3B), the allowance payable in respect of any dependent child who is dependent on that widow, widower, surviving civil partner or surviving nominated partner will be payable from the day following the member's death.

(4C) If a widow's, widower's, surviving civil partner's or nominated partner's pension is payable at the rate mentioned in regulation G2(3B) but there is a dependent child who is not dependent on that widow, widower, surviving civil partner or surviving nominated partner, the allowance in respect of that child for the first three months after the member's death will be equal to the rate of member's pensionable pay when the member died.

(4D) If a member dies leaving a dependent child and there is no surviving parent (or spouse, civil partner or nominated partner of a parent), the allowance will be equal to one-third of the pension described in paragraph (2A) if there is only one dependent child and two-thirds if there are two or more, except that the allowance for the first six months after the member's death will be equal to the rate of the member's pensionable pay when the member died.

(4E) If the member dies leaving a dependent child and there is a surviving parent (or spouse, civil partner or nominated partner of a parent) but there is no entitlement to a widow's, widower's

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or surviving civil partner's pension calculated under regulation G2 (member dies in pensionable employment), the allowance will be paid at the rates described in paragraph (4D).

(5) If a widow's, widower's or surviving civil partner's pension is payable at the rate mentioned in regulation G2(2), no allowance shall be payable in respect of any dependent child who is dependent on that widow, widower or surviving civil partner until the end of the first 6 months after the member's death.

(6) If a widow's, widower's or surviving civil partner's pension is payable at the rate mentioned in regulation G2(2) but there is a dependent child who is not dependent on that widow, widower or surviving civil partner, the allowance in respect of that child for the first 3 months after the member's death will be equal to the rate of the member's pensionable pay when he died.

(7) If the member dies leaving a dependent child and there is no surviving parent (or spouse or civil partner of a parent), the allowance will be equal to one-third of the pension described in paragraph (2) if there is only one dependent child and two-thirds if there are two or more, except that the allowance for the first 6 months after the member's death will be equal to the rate of the member's pensionable pay when he died.

(8) If the member dies leaving a dependent child and there is a surviving parent (or spouse or civil partner of a parent) but there is no entitlement to a widow's, widower's or surviving civil partner's pension calculated under regulation G2 (member dies in pensionable employment), the allowance will be paid at the rates described in paragraph (7).

(9) The child allowance payable on a member's death if, on the day they died, the member is--

- (a) under the age of 70;
- (b) in NHS employment;
- (c) no longer required to pay contributions on or before 1st April 2008 pursuant to regulation D1(3) or (4) (contributions by members); and
- (d) except where regulation R4(6) applies, not in receipt of a pension under any of regulations E1 to E5,

will be as described in paragraph (2), but with the modifications set out in paragraph (10).

(10) The modifications referred to in paragraph (9) are--

- (a) in paragraph (2), for "on the day he died" substitute "on his last day of pensionable employment"; and
- (b) in each of paragraphs (6) and (7), for "member's pensionable pay when he died" substitute "member's final year's pensionable pay".

(11) The child allowance payable on a member's death if, on the day the member died, the member is--

- (a) under the age of 75 if not a special class officer or under the age of 70 if a special class officer;
- (b) in NHS employment;
- (c) no longer required to pay contributions on or after 2nd April 2008 pursuant to regulation D1(3) or (4) (contributions by members); and
- (d) except where regulation R4(6) (members doing more than one job) applies, not in receipt of a pension under any of regulations E1 to E5,

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will be as described in paragraph (2A) but with the modifications set out in paragraph (12).

(12) The modifications referred to in paragraph (11) are--

(a) in paragraph (2A)(a) for "on the day he died" substitute "on the member's last day of pensionable employment"; and

(b) in both paragraph (4C) and (4D) for "member's pensionable pay when he died" substitute "member's final year's pensionable pay".

#### **H4 Member dies after pension becomes payable**

(1) The child allowance payable in the case of a member who dies after a pension under this Section of the scheme becomes payable will be as described in this regulation.

(2) Subject to paragraphs (2A) and (8)--

(a) the allowance will be calculated as described in whichever of paragraphs (3) or (4) apply, and

(b) where the member was, on the date of the member's death--

(i) not a 2008 Section Optant within the meaning of regulation 2.K.1 or regulation 3.K.1 or a Waiting Period Joiner within the meaning of regulation 2.L.1 or 3.L.1 of the 2008 Section of the Scheme (application of Chapter 2.K and Chapter 3.K, respectively), whose pensionable service--

(aa) equalled, or exceeded, 10 years, as a proportion of the amount of the member's pension based on that service;

(bb) was less than 10 years, as a proportion of the amount the member's pension would have been if it had been based on 10 years pensionable service;

(ii) such a 2008 Section Optant or Waiting Period Joiner, as a proportion of the amount of the member's pension.

(2A) If the member's pensionable employment ceased on or before 31st March 2008, the allowance will be calculated in whichever of paragraphs (3) or (4) apply, as a proportion of the amount of the member's pension or, if greater, the amount that the member's pension would have been if it had been based on the shorter of--

(a) 10 years pensionable service; and

(b) the pensionable service the member could have completed if the member had stayed in pensionable employment until age 65.

(3) If the member dies leaving a dependent child and there is a surviving parent (or spouse or civil partner or nominated partner of a parent), the allowance will, subject to paragraphs (5) to (7), be equal to one-quarter of the pension described in paragraph (2) if there is only one dependent child and one-half if there are two or more.

(4) If the member dies leaving a dependent child and there is no surviving parent or no surviving spouse or 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

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- (ii) the amount of child allowance that would otherwise be payable under these Regulations;
  - (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,
    - (ii) two-thirds of the pension described in paragraph (2) if there are two or more dependent children.
- (5) If the member dies leaving a dependent child and there is a surviving parent (or spouse or civil partner or nominated partner of a parent) but there is no entitlement to a widow's, widower's or surviving civil partner's or surviving nominated partner's pension calculated under regulation G3 (member dies after pension becomes payable), the allowance will be paid at the rates described in paragraph (4).
- (6) If a widow's, widower's or surviving civil partner's or surviving nominated partner's pension is payable at the rate mentioned in regulation G3(2), no allowance shall be payable in respect of any dependent child who is dependent on the widow, widower or surviving civil partner or surviving nominated partner until the end of the first 6 months after the member's death.
- (7) If a widow's, widower's or surviving civil partner's or surviving nominated partner's pension is payable at the rate mentioned in regulation G3(2) but there is a dependent child who is not dependent on that widow, widower or surviving civil partner or surviving nominated partner, the allowance in respect of that child for the first 3 months after the member's death will be equal to the rate of the member's pension.
- (8) Where the member was in receipt of a pension payable under regulation E5 (early retirement pension with actuarial reduction), the member's pension referred to in paragraph (2) means the member's pension calculated without regard to the reduction made under regulation E5(2).
- (9) If a member who was in receipt of a substitute tier 1 pension under regulation E2C (further employment after a benefit is paid under regulation E2A) dies before the end of the protection period that applies to him under regulation E2C(6)(a) or E2C(6)(b), the member's pension referred to in paragraph (2) means that member's original tier 2 pension.
- (10) For the purpose of paragraphs (2) and (7), no account will be taken of any reduction to the member's pension under regulation E7 (general option to exchange part of pension for lump sum).

#### **H5 Member dies with preserved pension**

- (1) The child allowance payable on the death of a member with a preserved pension under regulation L1 that has not become payable will be as described in this regulation.
- (2) Subject to paragraph (2A), if the member dies within 12 months after leaving pensionable employment, the allowance will be calculated, as described in whichever of paragraphs (4) or (5) apply, as a proportion of the amount of the pension described in regulation H3(2A) as if the member had died on the day he left pensionable employment.
- (2A) Subject to paragraph (2B), if the member's pensionable employment ceased on or before 31st March 2008 the allowance will be calculated, as described in whichever of paragraphs (4)

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or (5) apply, as a proportion of the pension that would have been payable to the member under this Section of the scheme if the member retired through ill health with a pension under regulation E2 on the day the member died.

(2B) If the member has less than 5 years' pensionable service, the allowance will be calculated as if the pension described in paragraph (2A) were based on the shorter of--

- (a) 10 years' pensionable service; and
- (b) the pensionable service the member could have completed if the member stayed in pensionable employment until age 65.

(3) Subject to paragraph (3A), if the member dies 12 months or more after leaving pensionable employment, the allowance will be calculated as described in whichever of paragraphs (4) or (5) apply, as a proportion of the amount of the member's preserved pension or, if greater, the amount that the preserved pension would have been if it had been based on 10 years' pensionable service.

(3A) If the member's pensionable employment ceased on or before 31st March 2008, the allowance will be calculated as described in whichever of paragraphs (4) or (5) apply, as a proportion of the amount of the member's preserved pension or, if greater, the amount of that the preserved pension would have been if it had been based on the shorter of--

- (a) 10 years' pensionable service; and
- (b) the pensionable service the member could have completed if the member stayed in pensionable employment until age 65.

(4) If the member dies leaving a dependent child and there is a surviving parent (or spouse or civil partner or nominated partner of a parent), the allowance will be equal to one-quarter of the pension described in paragraphs (2) to (3A) (whichever is applicable) if there is only one dependent child and one-half if there are two or more.

(5) If the member dies leaving a dependent child and there is no surviving parent (or spouse or civil partner or nominated partner of a parent), the allowance will be equal to one-third of the pension described in paragraphs (2) to (3A) (whichever is applicable) if there is only one dependent child and two-thirds if there are two or more.

(6) If the member dies leaving a dependent child and there is a surviving parent (or spouse or civil partner or nominated partner of a parent) but there is no entitlement to a widow's, widower's, surviving civil partner's or surviving nominated partner's pension calculated under regulation G4 (member dies with preserved pension), the allowance will be paid at the rate described in paragraph (5).

## **H6 Member dies within 12 months after leaving pensionable employment without pension or preserved pension**

(1) The child allowance payable in a case where a member leaves pensionable employment, without becoming entitled to a pension under any of regulations E1 to E5 or a preserved pension under regulation L1, and dies within 12 months after leaving and before receiving a refund of contributions under regulation L2, will be as described in this regulation.



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(2) The child allowance will be calculated as described in regulation H5 (member dies with preserved pension) as if, on leaving pensionable employment, the member had become entitled to a preserved pension calculated as described in regulation L1.

#### **H7 Dependent child not being maintained by surviving parent or spouse or civil partner or nominated partner of a parent**

(1) If a member dies leaving a dependent child and there is a surviving parent (or spouse or civil partner or nominated partner of a parent) but that dependent child is not being maintained by the surviving parent (or spouse or civil partner or nominated partner of a parent), the Secretary of State may increase the amount of the child allowance that would otherwise be payable under these Regulations.

(2) The allowance may, at the Secretary of State's discretion, be increased up to an amount equal to the amount that would have been payable if there were no surviving parent (or spouse or civil partner or nominated partner of a parent).

### **Part J Allocation to a spouse, civil partner or dependant**

#### **J1 Allocation of pension**

(1) Subject to the following provisions of this regulation, a member may elect to allocate part of his pension under this Section of the scheme so as to provide, following his death, a pension for a spouse, civil partner or a dependant.

(2) Any pension provided for a spouse or civil partner under this regulation shall be payable in addition to any other widow's, widower's or surviving civil partner's pension payable under these Regulations.

(3) Any pension provided under this regulation will be calculated in accordance with tables prepared by the Scheme Actuary.

(4) A member wishing to allocate part of his pension under this regulation may elect to do so--

(a) on making a claim for payment of his benefits under regulation T1 (claims for benefits), or at any time after making such a claim but before the date on which a pension payable to him under this Section of the scheme is put into payment; or

(b) if in pensionable employment--

(i) in the case of a member who is not a special class officer, at any time after completing 45 years pensionable service; or

(ii) in the case of a member who is a special class officer, at any time after reaching age 55 and completing 40 years pensionable service, or

(c) if in pensionable employment, at any time after reaching age 65 (60 for special class officers).

(5) A member wishing to allocate part of his pension as described in this regulation shall do so by giving notice in writing to the employing authority on the form provided, giving such information as the Secretary of State may require.

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(6) The Secretary of State shall not accept an election unless satisfied that the member is in good health.

(7) If a member allocates part of his pension as described in this regulation and then dies after the pension becomes payable, the amount of pension already paid to the member under this Section of the scheme will be treated, for the purpose of calculating the lump sum on death payable under regulation F2 (member dies after pension becomes payable), as including the amount of the additional pension that would have been paid to the member if the member had not allocated part of his pension.

## **J2 Limits on allocation of pension**

(1) A member may not allocate more than one-third of his pension to provide a pension on his death for a spouse, a civil partner or a dependant and must keep a pension at least equal to his guaranteed minimum pension.

(2) A member may not allocate so much pension as to provide a bigger dependant's pension, spouse's pension or civil partner's pension under regulation J1 than the pension he has kept for himself.

(3) The part of a member's pension that is allocated must be an exact number of pounds and must be sufficient to provide a pension for the dependent, spouse or civil partner of at least £260 a year or, if greater, of the minimum amount that cannot be treated as trivial for the purposes of regulation T7 (commutation of trivial pensions).

(4) If a member elects to allocate part of his pension in the circumstances described in regulation J1(4)(b) or (c) and then dies before his pension under this Section of the scheme becomes payable the member will be treated, for the purposes of paragraphs (1) to (3) above, as entitled to the pension he would have received if he had retired immediately before his death.

## **J3 Date on which allocation has effect**

(1) An election to allocate shall have effect, and may not be withdrawn or cancelled, once it has been accepted by the Secretary of State.

(2) The allocation will not take effect if--

(a) the member dies on or before the day on which the Secretary of State accepts the member's election;

(b) the dependant, spouse or civil partner dies before the member is told that the Secretary of State has accepted the election; or

(c) the member withdraws his application before it is accepted by the Secretary of State.

## **Part K Contracting-out**

### **K1 Contracting-out conditions to be overriding**

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- (1) This Section of the Scheme will be administered in conformity with the contracting-out conditions and, with the exception of the circumstances specified in paragraph (2), regulations K2 to K7 override any inconsistent provisions of these regulations.
- (2) The circumstances referred to in paragraph (1) are--
  - (a) if a trivial pension is commuted in accordance with regulation T7; or
  - (b) if a pension is commuted in accordance with regulations E2(10), E2A(10) or L1(5) (pensions on early retirement due to ill health and preserved pensions); or
  - ~~(c) if a pension is forfeited for the reasons specified in sub-paragraphs (b) or (c) of regulation T6(1).~~
  - (c) if a pension is forfeited for the reasons specified in paragraph (1)(b) or (c) or paragraph (1A) of regulation T6.
- (3) In this Part--
  - (a) "contracting-out conditions" means the conditions specified in sections 9(2A) and 9(2B) of the 1993 Act;
  - (b) "guaranteed minimum" means the guaranteed minimum as defined in sections 13 to 17 of the 1993 Act;
  - (c) "guaranteed minimum pension" is a pension calculated in accordance with the guaranteed minimum requirements;
  - (ca) "guaranteed minimum pension age" means age 65 in the case of a man or age 60 in the case of a woman;
  - (d) "protected rights" has the same meaning as in the 1993 Act.

## **K2 Guaranteed minimum pensions**

- (1) This regulation applies where the member has a guaranteed minimum, in relation to the pension provided for this Section of the member under the scheme, in accordance with section 13 of the 1993 Act.
- (2) The weekly rate of the member's pension from guaranteed minimum pension age will not be less than the member's guaranteed minimum, except that--
  - (a) payment may, at the discretion of the Secretary of State, be postponed for up to 5 years if the member remains in NHS employment, or for any period if the member consents; and
  - (b) payment may be reduced or suspended under regulation S1 or S2 (members who return to NHS employment after becoming entitled to a pension) if the member returns to NHS employment,in either of which cases the member's guaranteed minimum pension will be increased as described in regulation K3 (late retirement).
- (3) If the member is a man and dies leaving a widow, the weekly rate of the widow's pension will not be less than one-half of the member's guaranteed minimum.

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(4) If the member is a woman and dies leaving a widower, the weekly rate of the widower's pension will not be less than one-half of the part of the member's guaranteed minimum that is attributable to earnings for the tax years 1988-89 to 1996-97 inclusive.

(4A) If the member is in a civil partnership and dies leaving a surviving civil partner, the weekly rate of the surviving civil partner's pension will not be less than one-half of the part of the member's guaranteed minimum that is attributable to earnings for the tax years 1988-89 to 1996-97 inclusive.

(5) The part of any guaranteed minimum pension that is attributable to earnings for the tax years 1988-89 to 1996-97 inclusive and subsequent tax years will be increased each year by the percentage specified in any order made by the Secretary of State under section 109 of the Pension Schemes Act 1993 (annual increases of guaranteed minimum pensions).

(6) A member who on leaving pensionable employment--

- (a) becomes entitled to a refund of contributions under regulation L2; or
- (b) exercises a right to require a transfer or buy-out in accordance with regulation M2,

but, in either case, remains (as described in regulation L2(3)) entitled to a guaranteed minimum pension or section 9(2B) rights, shall be entitled to the benefits specified in paragraph (7).

(7) The benefits are--

- (a) a pension payable from the date on which the member reaches guaranteed minimum pension age at a weekly rate equal to the member's guaranteed minimum (if any); and
- (b) a pension and lump sum from the date the member reaches normal benefit age in respect of the member's section 9(2B) rights.

(8) On the death of a member to whom paragraph (6) applies, no benefit will be payable except for a widow's, widower's or surviving civil partner's pension equal to the aggregate of--

- (a) that described in paragraph (3) or, as the case may be, paragraph (4); and
- (b) half the member's pension in respect of section 9(2B) rights.

### **K3 Late retirement**

If a member's pension is postponed for more than 7 weeks after guaranteed minimum pension age, or is reduced or suspended after it becomes payable, the member's guaranteed minimum pension, as increased under section 109 of the Pension Schemes Act 1993 (annual increases of guaranteed minimum pensions), will be increased by 1/7th per cent for each complete 7 days of postponement.

### **K4 Early leavers**

~~(1) Subject to paragraph (2), if a member leaves contracted-out employment under this Section of the scheme before guaranteed minimum pension age, the member's guaranteed minimum pension at the date of leaving will be increased, when the member reaches guaranteed minimum pension age or dies (if earlier), by the appropriate percentage specified in relation to each relevant year in the last order under section 148 of the Social Security Administration Act 1992 (revaluation of earnings factors) to come into force before the tax year in which the member reaches guaranteed minimum pension age or dies (if earlier).~~

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(1) This paragraph applies if a member who is under guaranteed minimum pension age either—

- (a) leaves contracted-out employment under this Section of the scheme before 6th April 2016, or
- (b) was in contracted-out employment under this Section of the scheme on 5th April 2016 but leaves pensionable employment on, or after, 6th April 2016.

This is subject to paragraph (2).

(1A) Where paragraph (1) applies the member's guaranteed minimum pension at the date of leaving will be increased, when the member reaches guaranteed minimum pension age or dies (if earlier), by the appropriate percentage specified in relation to each relevant year in the last order under section 148 of the Social Security Administration Act 1992 (revaluation of earnings factors) to come into force before the tax year in which the member reaches guaranteed minimum pension age or dies (if earlier).

(2) If a guaranteed minimum pension is to be transferred to another scheme, or bought out by a buy-out policy, under which early leavers' guaranteed minimum pensions are increased by a method other than that described in paragraph (1), the Secretary of State may adopt that other method for the guaranteed minimum pension in question.

~~(3) If a member returns to contracted-out employment under this Section of the scheme within 6 months after leaving, the two periods of contracted-out~~ If a member to whom paragraph (1) applies returns to pensionable employment under this Section of the scheme within 6 months after leaving, the two periods of employment will be treated as continuous, unless the first period is covered by--

- (a) a state scheme premium under Chapter III of Part III of the Pension Schemes Act 1993,
- (b) a transfer to another occupational pension scheme or to a personal pension scheme, or
- (c) any guaranteed minimum pension being bought out under a buy-out policy.

## **K5 Guaranteed minimum pensions transferred to this Section of the scheme**

~~(1) Where a guaranteed minimum pension has been transferred to this Section of the scheme and the member subsequently leaves contracted-out employment under this Section of the scheme, the guaranteed minimum pension transferred to this Section of the scheme will be increased for each complete tax year after the date on which the member left contracted-out employment under this Section of the scheme in which the transferred guaranteed minimum pension accrued, until the member reaches guaranteed minimum pension age or dies (if earlier).~~

(1) This paragraph applies where a guaranteed minimum pension has been transferred to this Section of the scheme and the member—

- (a) subsequently leaves contracted-out employment under this Section of the scheme before 6 April 2016, or
- (b) was in contracted-out employment under this Section of the scheme on 5th April 2016 but leaves pensionable employment on, or after, 6th April 2016.

(1A) Where paragraph (1) applies, the guaranteed minimum pension transferred to this Section of the scheme will be increased for each complete tax year after the date of leaving under this Section of the scheme in which the transferred guaranteed minimum pension accrued, until the member reaches guaranteed minimum pension age or dies (if earlier).

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(2) If the transfer is from another occupational pension scheme, the guaranteed minimum pension will be increased by the appropriate percentage specified in relation to each relevant year in the last order under section 148 of the Social Security Administration Act 1992 (revaluation of earnings factors) to come into force before the tax year in which the member reaches guaranteed minimum pension age or dies (if earlier).

(3) If the transfer is from a buy-out policy, the guaranteed minimum pension will be increased by the same method as was in use under the policy or, if the Secretary of State so determines, by the appropriate percentage specified in relation to each relevant year in the last order under section 148 of the Social Security Administration Act 1992 (revaluation of earnings factors) to come into force before the tax year in which the member reaches guaranteed minimum pension age or dies (if earlier).

#### **K6 Protected rights transferred to this Section of the scheme**

(1) Where, prior to 6th April 2012, protected rights have been transferred to this Section of the scheme from another occupational pension scheme or a personal pension scheme, the protected rights will be used to provide guaranteed minimum pensions equal to those to which the member and the member's spouse or civil partner would have been treated as entitled under the transferring scheme had the transfer not been made.

(2) Any guaranteed minimum pensions to which a member and his spouse or civil partner are entitled by virtue of paragraph (1) will be revalued as described in regulation K5(2).

#### **K7 State scheme premiums**

(1) The Secretary of State may discharge her liability to provide any guaranteed minimum pension by paying a state scheme premium under Chapter III of Part III of the Pension Schemes Act 1993.

(2) Where a member, or a member's widow, widower or surviving civil partner, is entitled to a pension under this Section of the scheme in respect of a period for which a contributions equivalent premium has been paid under section 55(2) of the Pension Schemes Act 1993, the pension will be reduced by the amount of the guaranteed minimum pension that would have been payable under this Section of the scheme to the member, widow, widower or surviving civil partner, as the case may be, if the contributions equivalent premium had not been paid.

### **Part L Early leavers**

#### **L1 Preserved pension**

(1) Subject to paragraphs (3) and (4), a member who leaves pensionable employment before age 60 without becoming entitled to a pension under any of regulations E1 to E5 shall be entitled to receive a pension and retirement lump sum under this regulation from age 60 if--

(a) the member leaves with at least 2 years' qualifying service, or

(b) a transfer payment has been made to this Section of the scheme in respect of the member's rights under a personal pension scheme.



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- (2) The pension under this regulation will be calculated--
- (a) where it becomes payable by virtue of paragraph (3)(d) below, in accordance with paragraphs (2) to (4) of regulation E5, as if it were a pension under that regulation; and
  - (b) in any other case, as described in regulation E1 as if it were a pension under that regulation;

and the retirement lump sum will be calculated as described in regulation E6.

- (3) The member shall be entitled to receive the pension and retirement lump sum before age 60 if--

- (a) the member is in NHS employment and the Secretary of State is satisfied that the member is suffering from mental or physical infirmity that makes him permanently incapable of efficiently discharging the duties of that employment;
- (b) the Secretary of State is satisfied that the member is suffering from mental or physical infirmity that makes him permanently incapable of engaging in regular employment of like duration; or
- (c) some other pension becomes payable to the member under any of regulations E1 to E5;
- (d) the member--
  - (i) left pensionable employment after 30th March 2000,
  - (ii) has reached the normal minimum pension age or, where relevant, protected pension age, and
  - (iii) has applied to the Secretary of State for payment of the pension and retirement lump sum under this regulation.

- (4) Except in a case to which paragraph (4A) applies--

- (a) if the member is in NHS employment at the relevant time (whether with the same or another employing authority), the pension and lump sum on retirement will not become payable until the member leaves NHS employment or, if sooner--
  - (i) when the member attains the age of 70, if he attains that age on or before 31st March 2008; or
  - (ii) when the member attains the age of 75, if he attains the age of 70 on or after 1st April 2008;
- (b) the relevant time--
  - (i) in the case of a member to whom sub-paragraph (d) of paragraph (3) applies, is when he makes the application referred to in head (iii) of that sub-paragraph; or
  - (ii) in any other case, when the member attains the age of 60.

(4A) Paragraph (4) may not apply where the NHS employment which the member is in when he reaches age 60 is employment into which he has been transferred as a result of a transfer of an undertaking to the employer.

- (4B) Where a member receives a pension under paragraph (1) while being in the new employment to which paragraph (4A) applies--

- (a) his benefits in respect of any pensionable service in that new employment shall be calculated without regard to any pensionable service in any earlier employment;

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(b) for the purposes of regulation C2 (meaning of "pensionable service") and regulation D1(3) and (4) (contributions by members), his service in the earlier employment and in the new employment shall be aggregated.

(5) Subject to paragraph (6), where on or after the coming into force of these Regulations a member becomes entitled to a pension under paragraph (3)(a) or (b), the Secretary of State may discharge her liability for that pension by the payment of a lump sum of an amount consistent with--

- (a) the contracting-out and preservation requirements of the 1993 Act; and
- (b) the lump sum rule.

(6) A lump sum payment under paragraph (5) may be made only if the Secretary of State is satisfied that it is appropriate in all the circumstances having regard to the life expectancy of the member and the member was in pensionable employment on or after the coming into force of these Regulations.

(7) For the purpose of paragraph (6), the Secretary of State may require whatever medical evidence that she considers necessary.

(8) The amount of the lump sum payable under paragraph (5) will be equal to 5 times the difference between the yearly rate of the member's pension (calculated in accordance with this regulation) and the yearly rate of the member's guaranteed minimum pension and shall be payable in addition to the lump sum on retirement payable under this regulation, which shall not be subject to any reduction such as is described in regulation E6(3).

(9) For the purposes of determining whether a member is permanently incapable of efficiently discharging the duties of the member's employment under paragraph (3)(a), the Secretary of State shall have regard to the factors in paragraph (11) (no one of which shall be decisive) and disregard the member's personal preferences for or against engaging in that employment.

(10) For the purposes of determining whether a member is permanently incapable of regular employment under paragraph (3)(b), the Secretary of State shall have regard to the factors in paragraph (12) (no one of which shall be decisive) and disregard the factors in paragraph (13).

(11) The factors to be taken into account for paragraph (9) are--

- (a) whether the member has received appropriate medical treatment in respect of the incapacity;
- (b) the member's--
  - (i) mental capacity; and
  - (ii) physical capacity;
- (c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of the member's incapacity, irrespective of whether such rehabilitation is undergone; and
- (d) any other matter which the Secretary of State considers appropriate.

(12) The factors to be taken into account for paragraph (10) are--

- (a) whether the member has received appropriate medical treatment in respect of the incapacity; and

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(b) such reasonable employment as the member would be capable of engaging in if due regard is given to the member's--

- (i) mental capacity;
- (ii) physical capacity;
- (iii) previous training; and
- (iv) previous practical, professional and vocational experience,

irrespective of whether or not such employment is actually available to the member;

(c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of the member's incapacity (irrespective of whether such rehabilitation is undergone) having regard to the member's--

- (i) mental capacity, and
- (ii) physical capacity:

(d) such type and period of training which it would be reasonable for the member to undergo in respect of the member's incapacity (irrespective of whether such training is undergone) having regard to the member's--

- (i) mental capacity,
- (ii) physical capacity,
- (iii) previous training, and
- (iv) previous practical, professional and vocational experience, and

(e) any other matter which the Secretary of State considers appropriate.

(13) The factors to be disregarded for paragraph (10) are--

- (a) the member's personal preference for or against engaging in any particular employment; and
- (b) the geographical location of the member.

(14) For the purpose of this regulation--

"appropriate medical treatment" means such medical treatment as it would be normal to receive in respect of the incapacity, but does not include any treatment that the Secretary of State considers--

- (a) that it would be reasonable for the member to refuse,
- (b) would provide no benefit to restoring the member's capacity for--
  - (i) efficiently discharging the duties of the member's employment under paragraph (3)(a), or
  - (ii) regular employment of like duration under paragraph (3)(b),

before the member reaches normal benefit age; and

(c) that, through no fault on the part of the member, it is not possible for the member to receive before the member reaches normal benefit age;

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“NHS employment” does not include employment with an employing authority in respect of which a member is eligible to join—

- (a) the 2008 Section; or
- (b) the 2015 Scheme and that member’s service in this Section does not qualify as, or has ceased to be, pensionable service to which paragraphs 1(2)(i) and (ii) or paragraphs 2(i) and (ii) of Schedule 7 (final salary link) to the 2013 Act applies.

"permanently" means the period until normal benefit age; and

"regular employment of like duration" means--

- (a) in the case of a member who was a non-GP provider, such employment as the Secretary of State considers would involve a similar level of engagement to the member's pensionable service as a non-GP provider immediately before that service ceased; and
- (b) in all other cases, where prior to leaving employment that was pensionable the member was employed--
  - (i) on a whole-time basis, regular employment on a whole-time basis;
  - (ii) on a part-time basis, regular employment on a part-time basis,

regard being had to the number of hours, half-days and sessions the member worked in that employment.

## **L2 Refund of contributions**

(1) A member who leaves pensionable employment without becoming entitled to a pension under regulations E1 to E5 or a preserved pension under regulation L1 shall be entitled to receive a lump sum refund of his contributions, less tax at--

- (a) 20 per cent (or at such other rate as applies from time to time) in respect of so much of the lump sum as does not exceed £10,800 (or such other amount as applies from time to time); and
- (b) 40 per cent (or at such other rate as applies from time to time) in respect of so much (if any) of it as exceeds that limit.

(2) A member who wishes to take a refund of contributions must apply in writing to the Secretary of State.

(2A) An application in writing referred to in paragraph (2) may be--

- (a) made or given by means of an electronic communication that is approved by the Secretary of State for that purpose;
- (b) given to the Secretary of State by a person other than the member.

(3) If the member's employment was contracted-out by reference to this Section of the scheme, the member (and the member's spouse or civil partner, if any) will remain entitled to a guaranteed minimum pension and section 9(2B) rights under this Section of the scheme, unless the Secretary of State discharges her liability in respect of that entitlement by paying a contributions equivalent premium under section 55(2) of the 1993 Act.

(4) If a contributions equivalent premium is paid, the member's refund of contributions will be reduced by the amount recoverable under section 61 of the Pensions Schemes Act 1993 (deduction of contributions equivalent premium from refund of contributions).

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(5) If a contributions equivalent premium is not paid, the member's refund of contributions will be reduced by the amount that the Secretary of State estimates would have been recoverable under section 61 of the Pensions Schemes Act 1993 if the premium had been paid.

(6) A member shall not be entitled to a refund of contributions for any period of service in respect of which the Secretary of State has received a transfer payment in respect of his rights under a personal pension scheme.

(7) Where a refund of contributions is made, the Secretary of State shall be discharged from any obligation to provide benefits under this Section of the scheme except to any extent provided for under paragraph (3).

### **L3 Payment of interest with refund of contributions**

(1) Compound interest will be added to a refund of contributions under regulation L2, except where the employment was terminated by reason of misconduct or inefficiency or at the member's request.

(2) Subject to paragraph (3), where compound interest is added to a refund of contributions, it will be calculated at the rate of 2.5 per cent per year, for the period starting on the 1st April after the contributions were paid and ending on the day the member leaves pensionable employment.

(3) In the case of any contributions paid under another enactment or scheme and included in a transfer payment to this Section of the scheme, interest for the period before the transfer payment was accepted will be calculated as described in the enactment or scheme from which the transfer payment was received.

### **L4 Early leavers returning to pensionable employment**

(1) This regulation applies to any member who leaves pensionable employment without becoming entitled to a pension under any of regulations E1 to E5 and later returns to pensionable employment before becoming entitled to receive a pension under this Section of the scheme.

(2) If the member leaves pensionable employment with a preserved pension under regulation L1 and then returns to pensionable employment within 12 months after leaving, the member will cease to be entitled to the preserved pension under regulation L1 and the member's pensionable service before and after the break in pensionable employment will be treated as continuous.

(3) Subject to paragraph (5), if the member leaves pensionable employment with a preserved pension under regulation L1 and then returns to pensionable employment 12 months or more after leaving--

(a) the member's pensionable service before and after the break in pensionable employment will be treated separately unless, when the member becomes entitled to receive a pension or the member dies (whichever occurs first), it would be more favourable to the member, or the member's spouse or civil partner, to treat the member's pensionable service before and after the break, and all such other breaks (if any), as continuous; and

(b) if the member becomes entitled to receive a pension under regulation E2 or E2A, the pensionable service upon which that pension is based will be increased as described in paragraphs (4) to (6) of that regulation if the member's pensionable service before and after the break in pensionable employment is treated as continuous, but there will be no increase to

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any of the member's pensionable service if the member's pensionable service before and after the break is treated separately.

(4) Subject to paragraph (5), if the member leaves pensionable employment without becoming entitled to a preserved pension and then returns to pensionable employment within 12 months after leaving, the member's pensionable service before and after the break in pensionable employment will be treated as continuous.

(5) Where paragraph (4) applies and the member has received a refund of contributions under regulation L2 in respect of pensionable service before the break in pensionable employment, the member's pensionable service before and after the break will be treated as continuous only if, within 6 months after rejoining this Section of the scheme, the member pays to the Secretary of State an amount equal to the refund of contributions (including any interest added under regulation L3).

(6) If a member leaves pensionable employment with a preserved pension and, after returning, again leaves pensionable employment without becoming entitled to a pension under any of regulations E1 to E5, the member will be entitled to a preserved pension under regulation L1 in respect of the period after the break in pensionable employment whether or not he has 2 years' qualifying service in respect of that period.

(7) A member whose pensionable service before and after a break in pensionable employment is treated as continuous and who, before the break, was paying for additional benefits by regular additional contributions under regulation Q6 (paying for additional service or unreduced retirement lump sum by regular additional contributions) must continue to pay for those additional benefits after the break.

(7A) Practice staff who were employed by a registered medical practitioner on both 31st August 1997 and 1st September 1997 and who--

(a) had previously been compulsorily transferred from employment with a body referred to in paragraph (a), (b), (c) or (d) of the definition of "employing authority" in regulation A2, to employment with a registered medical practitioner referred to in paragraph (e) of that definition;

(b) were at the time of the transfer paying for additional benefits by regular additional contributions under regulation Q6; and

(c) rejoined this Section of the scheme with effect from 1st September 1997;

may resume payment of those additional contributions at such percentage rate, of current pensionable pay as applied prior to that transfer above, provided that payment of those contributions is resumed with effect from 1st September 1997.

(8) If a member's pensionable employment before and after a break in pensionable employment (the "pre-break period" and the "post-break period" respectively) is treated separately, the member's benefits in respect of such employment in the pre-break period and the post-break period shall be calculated--

(a) separately; and

(b) by reference to--

(i) the member's pensionable service comprising that pre-break or post-break period as the case may be; and

(ii) his final year's pensionable pay in respect of that particular period,



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as if that period had been his only period of pensionable employment.

## **Part M Transfers and buy-outs**

### **M1 Member's right to transfer or buy-out**

(1) A member who leaves pensionable employment with a preserved pension has the right to require the Secretary of State to transfer or buy-out the member's rights under this Section of the scheme as described in this regulation.

(2) Subject to the following provisions of this regulation, the member may require the Secretary of State to use the cash equivalent of the member's rights under this Section of the scheme-

~~(a) to purchase one or more buy-out policies from one or more insurance companies chosen by the member; or~~

~~(b) to acquire rights under--~~

~~(i) another occupational pension scheme; or~~

~~(ii) a personal pension scheme,~~

~~that satisfies the requirements of Chapter IV of Part IV of the 1993 Act;~~

(a) to purchase one or more buy-out policies from one or more insurance companies chosen by the member that satisfies the requirements set out in regulation 12(2) of the Occupational Pension Schemes (Transfer Values) Regulations 1996;

(b) to acquire rights under a personal pension scheme or another occupational pension scheme; or

(c) to acquire rights under an arrangement that is a qualifying recognised overseas pension scheme for the purposes of section 169(2) of the 2004 Act; or

(d) in any combination of the ways described in sub-paragraphs (a), (b) and (c).

(2A) Any use of the cash equivalent of a member's rights under paragraph (2) must satisfy the requirements of Chapter 1 of Part 4ZA of the 1993 Act.

(3) The member must exercise the member's right in relation to each and every portion of the cash equivalent unless paragraph (4) applies.

(4) The benefits attributable to--

(a) the member's accrued rights to a guaranteed minimum pension; or

(b) the member's accrued rights attributable to service in contracted-out employment on or after 6th April 1997,

may be excluded from the cash equivalent transfer value payment if section 96(2) of the 1993 Act applies (trustees or managers of certain receiving schemes or arrangements able and willing to accept a transfer payment only in respect of the member's other rights).

(5) A member who requires the cash equivalent to be used to acquire rights under another pension scheme in accordance with paragraph (2) may exercise the right--

(a) at any time before reaching age 60; or

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(b) at a later time if the member exercises the right to require a transfer on the transfer of the member's employment to a new employer as a result of a transfer of an undertaking to that employer.

(6) A member may require the Secretary of State to use the cash equivalent of the member's rights under this Section of the scheme to purchase one or more buy-out policies or to acquire rights under a personal pension scheme only--

(a) if the member leaves pensionable employment on or after 1st January 1986; and

(b) if those rights are to be transferred to a personal pension scheme, in relation to any period of service of 2 years or more falling before 6th April 1988, only if a period of not less than one month has elapsed between the date the member left NHS employment and the date of commencement of any further NHS employment.

(7) If a member--

(a) leaves pensionable employment by opting-out; and

(b) on so doing becomes entitled to a preserved pension under regulation L; and

(c) has at least 2 years' service before 6th April 1988,

the member's right to require a transfer or buy-out will be limited to the cash equivalent of the part of the member's rights that is attributable to service after 5th April 1988 and the member will acquire a right to the cash equivalent of the member's remaining rights only if the member actually leaves NHS employment before reaching age 60.

(8) A member who leaves pensionable employment before reaching age 60, without becoming entitled to a pension under any of regulations E1 to E5 or a preserved pension under regulation L1 will be treated, for the purposes of regulations M1 to M5, as if the member left pensionable employment with a preserved pension, except that--

(za) a member may require the cash equivalent to be used to acquire rights in one or more of the ways permitted under section 101AE of the 1993 Act;

(a) a member who requires the cash equivalent to be used to buy one or more buy-out policies must exercise the right to buy-out within 12 months after leaving pensionable employment; and

(b) a member who requires the cash equivalent to be used to acquire rights under another occupational pension scheme, a personal pension scheme or a qualifying recognised overseas pension scheme must join that other scheme within 12 months after leaving pensionable employment and exercise the right to transfer within 12 months after joining that other scheme.

## **M2 Exercising a right to a transfer or a buy out**

(1) A member who wishes to exercise the member's right to a transfer or a buy out must apply in writing to the Secretary of State for a statement of the amount of the cash equivalent of the member's accrued benefits under this Section of the Scheme at the guarantee date (a "statement of entitlement").

(2) In these Regulations, "the guarantee date" means any date that--

(a) falls within the required period; and

(b) is chosen by the Secretary of State; and

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- (c) is specified in the statement of entitlement; and
  - (d) is within the period of 10 days ending with the date on which the member is provided with the statement of entitlement.
- (3) In counting the period of 10 days referred to in sub-paragraph (d), Saturdays, Sundays, Christmas Day, New Year's Day and Good Friday are excluded.
- (4) In paragraph (2) "the required period" means--
- (a) the period of 3 months beginning with the date of the member's application for a statement of entitlement; or
  - (b) such longer period beginning with that date (but not exceeding six months) as may reasonably be required if, for reasons beyond the control of the Secretary of State, the requisite information cannot be obtained to calculate the amount of the cash equivalent.
- (5) The member may withdraw the application for a statement of entitlement by notice in writing at any time before the statement is provided.

### **M3 Amount of member's cash equivalent**

- (1) Subject to the following provisions of this regulation, the member's guaranteed cash equivalent will be equal to the capitalised value of all the member's accrued rights to benefits under this Section of the scheme and any associated rights under Part I of the Pensions (Increase) Act 1971.
- (1A) The Secretary of State shall--
- (a) take advice from the Scheme Actuary before determining the factors to be used in the calculation of the member's guaranteed cash equivalent, and
  - (b) calculate and verify the amount of the guaranteed cash equivalent in accordance with the Occupational Pension Schemes (Transfer Values) Regulations 1996.
- (2) Except in the case of a transfer payment accepted under regulation N3A (transfers in respect of members to whom regulation B5 applies who elect to join or rejoin this Section of the scheme), a member's cash equivalent will be at least equal to the amount of any transfer payments accepted in respect of the member under regulation N1(4) (member's right to transfer accrued benefits to this Section of the scheme), plus the amount of the member's contributions to this Section of the scheme.
- (3) If a member's cash equivalent is used to acquire rights under another occupational pension scheme, any part of the cash equivalent that relates to service before 29th January 1988 will be calculated as described in the previous Regulations as applicable immediately before that date, if this would be more favourable to the member.
- (4) If the transfer value payment is made under the public sector transfer arrangements, the amount of the transfer value payment is calculated--
- (a) in accordance with those arrangements rather than paragraphs (2) and (3); and
  - (b) by reference to the guidance and tables provided by the Scheme Actuary for the purposes of this paragraph that are in use on the date used for the calculation.
- (5) In any case where the Secretary of State has directed, under regulation T6, that part of a member's benefits under these Regulations shall be forfeited, the cash equivalent payable in re-

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spect of that member shall be reduced by the capitalised value of the forfeited part of those benefits.

#### **M4 Applications for transfer value payments: General**

(1) A member who has applied for and received a statement of entitlement under regulation M2 may apply in writing to the Secretary of State for a transfer value payment to be made.

(2) On making such an application a member becomes entitled to a payment of an amount equal, or amounts equal in aggregate, to the amount specified in the statement of entitlement (or such other amount as may be payable by virtue of regulation M5(2)).

(3) In these Regulations such a payment is referred to as "the guaranteed cash equivalent transfer value payment".

(4) The application must specify the pension scheme or other arrangement to which the payment or payments should be applied.

(5) The application must meet such other conditions as the Secretary of State may require.

(6) An application under this regulation may be withdrawn by notice in writing to the Secretary of State, unless an agreement for the application of the whole or part of the guaranteed cash equivalent transfer value payment has been entered into with a third party before the notice is given.

#### **M5 Applications for transfer value payments: time limits**

(1) Subject to paragraph (5), an application under regulation M4 must be made before the end of the period of 3 months beginning with the guarantee date, and the payment must be made no later than--

(a) 6 months after that date; or

(b) if it is earlier, the date on which the member reaches 60.

(2) If the payment is made later than 6 months after the guarantee date, the amount of the payment to which the member is entitled must be increased by--

(a) the amount by which the amount specified in the statement of entitlement falls short of the amount it would have been if the guarantee date had been the date on which the payment is made; or

(b) if it is greater and there was no reasonable excuse for the delay in payment, interest on the amount specified in the statement of entitlement, calculated on a daily basis over the period from the guarantee date to the date when the payment is made at an annual rate of 1 per cent above the Bank of England base rate.

(3) In this regulation "Bank of England base rate" means--

(a) except where sub-paragraph (b) applies, the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets, and

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- (b) if an order under section 19 of the Bank of England Act 1998 is in force, any equivalent rate determined by the Treasury under that section.
- (4) Paragraph (5) applies if--
  - (a) disciplinary or court proceedings against the member are begun within 12 months after the member leaves the employment which qualified the member to belong to this Section of the Scheme; and
  - (b) it appears to the Secretary of State that the proceedings may lead to all or part of the member's benefits being forfeited under regulation T6.
- (5) The Secretary of State may defer doing what is needed to carry out what the member requires until the end of the period of 3 months beginning with the date on which those proceedings (including any proceedings on appeal) are concluded.
- (6) In any case where a direction is given under regulation T6 for the forfeiture of a member's benefits, this regulation applies as if the amount specified in the statement of entitlement were reduced by an amount equal to the value of the benefits forfeited, as determined by the Scheme Actuary.
- (7) Subject to paragraph (8), if a transfer value payment is made in respect of a member's rights under this Section of the Scheme, those rights are extinguished.
- (8) If the member's rights described in regulation M1(4) have been excluded from the transfer payment, the Secretary of State will continue to be liable to provide the benefits described in regulation K2(7) (guaranteed minimum pension).

#### **M6 Special terms for transfer out (bulk transfers etc)**

- (1) If one or more members (the transferring members)--
  - (a) leave pensionable employment,
  - (b) join another occupational pension scheme, and
  - (c) exercise a right to transfer to that scheme under regulation M2,the Secretary of State may, after taking advice from the Scheme Actuary, make a single transfer payment to that scheme in respect of the transferring members.
- (2) The Secretary of State must calculate the amount of any transfer payment paid under this regulation after taking advice from the Scheme Actuary.

#### **M7 Member's right to transfer a preserved pension to the 2008 Section**

- (1) If a member meets the conditions referred to in paragraph (3), and subject to the following provisions of this regulation, a member may require the Secretary of State to use the cash equivalent of the member's rights under this Section of the scheme referred to in these Regulations to acquire rights in the 2008 scheme.
- (2) A member's right to require the Secretary of State to use the cash equivalent of the member's rights in the way referred to in paragraph (1) may only be exercised once.
- (3) The conditions referred to in paragraph (1) are that the member--

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- (a) is entitled to a deferred benefit under regulation L1,
  - (b) may not join this Section of the scheme in respect of any further NHS employment by virtue of regulation B2(1)(k) or B2(1)(m) or (n) , and
  - (c) becomes an active member of the 2008 Section on or before 31st March 2015 and before attaining the age of 60.
- (4) The Secretary of State shall provide a member to whom this regulation applies with a statement of the amount of the cash equivalent of the member's benefits accrued in accordance with these Regulations at the guarantee date ("a statement of entitlement").
- (5) In this regulation "the guarantee date" means any date that--
- (a) falls within the required period,
  - (b) is chosen by the Secretary of State,
  - (c) is specified in the statement of entitlement, and
  - (d) is within the period of 10 days ending with the date on which the member is provided with the statement of entitlement.
- (6) In counting the period of 10 days referred to in paragraph (5)(d), Saturdays, Sundays, Christmas Day, New Year's Day and Good Friday are excluded.
- (7) In paragraph (5), "the required period" means--
- (a) the period of three months beginning with the date that the Secretary of State receives notification from the member's employing authority that the member has joined the 2008 Section; or
  - (b) such longer period beginning with that date (but not exceeding six months) as may be reasonably required if, for reasons beyond the control of the Secretary of State, the requisite information cannot be obtained to calculate the amount of the cash equivalent.
- (8) Subject to paragraphs (9) to (11), the member's guaranteed cash equivalent shall be equal to the capitalised value of all of the member's rights to benefits accrued under these Regulations and any associated rights under Part I of the Pensions (Increase) Act 1971.
- (9) The Secretary of State shall--
- (a) take advice from the Scheme Actuary before determining the factors to be used in the calculation of the member's guaranteed cash equivalent, and
  - (b) calculate and verify the amount of the guaranteed cash equivalent in accordance with the Occupational Pension Schemes (Transfer Values) Regulations 1996.
- (10) Except in the case of a transfer payment accepted under regulation N3A (transfers in respect of members who were mis-sold pensions and who elect to join or re-join this Section of the scheme), a member's cash equivalent will be at least equal to the amount of any transfer payments accepted in respect of the member under regulation N1(4) (which deals with the crediting of additional service upon transfer), plus the amount of the member's contributions to this Section of the scheme.
- (11) Any part of the cash equivalent that relates to service before 29th January 1988 will be calculated as described in the previous Regulations as applicable immediately before that date, if this would be more favourable to the member.



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(12) A member who has received a statement of entitlement in accordance with paragraph (4) may apply to the Secretary of State for the cash equivalent of the member's rights under this Section of the scheme to be used to acquire rights under the 2008 Section.

(13) An application under this regulation must be made in respect of each and every portion of the cash equivalent and shall be--

- (a) made in writing on the form provided for this purpose by the Secretary of State;
- (b) made before the end of the period of three months beginning with the guarantee date;
- (c) irrevocable.

(14) On the making of such an application--

- (a) a member becomes entitled to be credited with a period of pensionable service or an equivalent increase to the member's pensionable earnings in the 2008 Section in respect of the cash equivalent value of the member's benefits under this Section of the scheme calculated in accordance with whichever of regulations 2.F.17 or 3.F.17 of the 2008 Section apply to the member, and
- (b) the member's rights under this Section of the scheme are extinguished on the day that the member is credited with a period of pensionable service or pensionable earnings in accordance with regulations 2.F.17 or 3.F.17 (as the case may be) of the 2008 Section.

### **Member's right to transfer a preserved pension to the 2015 Scheme**

**M8.**—(1) An active member of the 2015 Scheme, who meets both condition A and one of either condition B or condition C, may require the Secretary of State to use the cash equivalent of the member's rights under this Section of the scheme to acquire rights in the 2015 Scheme: this is subject to the following provisions of this regulation.

(2) Condition A is that the member—

- (a) is entitled to a deferred benefit under regulation L1,
- (b) has not been a member of the 2008 Section, and
- (c) became an active member of the 2015 Scheme before attaining the age of 60.

(3) Condition B is that the member has had a break in pensionable employment for any one period of more than five years beginning with the day immediately following the cessation of the pensionable employment in respect of which that person is entitled to the pension referred to in paragraph (2)(a), and ending on the day immediately before the person became an active member of the 2015 Scheme in accordance with paragraph (2)(c).

(4) Condition C is that the member—

- (a) has had a break in active membership of the 2015 Scheme for any one period of more than five years which is the first break of such a period since that membership commenced, and
- (b) has not previously had a break in pensionable employment before becoming an active member of the 2015 Scheme which would satisfy condition B.

(5) For the purposes of paragraphs (3) and (4) any break in pensionable employment where the member was in pensionable public service as defined in paragraph 3(2) of Schedule 7 to the 2013 Act is to be disregarded.

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(6) The Secretary of State must provide a member to whom this regulation applies with a statement of the amount of the cash equivalent of the member's benefits accrued in accordance with these Regulations at the guarantee date ("a statement of entitlement").

(7) In this regulation "the guarantee date" means any date that falls within the required period and is—

- (a) chosen by the Secretary of State,
- (b) specified in the statement of entitlement, and
- (c) within the period of 10 days ending with the date on which the member is provided with the statement of entitlement.

(8) In counting the period of 10 days referred to in paragraph (7)(c), Saturdays, Sundays, Christmas Day, New Year's Day and Good Friday are excluded.

(9) In paragraph (7), "the required period" means—

- (a) the period of three months beginning with the date that the Secretary of State receives notification from the member's employing authority that the member has joined the 2015 Scheme; or
- (b) such longer period beginning with that date (but not exceeding six months) as may be reasonably required if, for reasons beyond the control of the Secretary of State, the requisite information cannot be obtained to calculate the amount of the cash equivalent.

(10) Subject to paragraphs (11) to (13), the member's guaranteed cash equivalent shall be equal to the capitalised value of all of the member's rights to benefits accrued under these Regulations and any associated rights under Part I of the Pensions (Increase) Act 1971.

(11) The Secretary of State shall—

- (a) take advice from the Scheme Actuary before determining the factors to be used in the calculation of the member's guaranteed cash equivalent, and
- (b) calculate and verify the amount of the guaranteed cash equivalent in accordance with the Occupational Pension Schemes (Transfer Values) Regulations 1996.

(12) Except in the case of a transfer payment accepted under regulation N3A, a member's cash equivalent will be at least equal to the amount of any transfer payments accepted in respect of the member under regulation N1(4), plus the amount of the member's contributions to this Section of the scheme.

(13) A member who has received a statement of entitlement in accordance with paragraph (6) may apply to the Secretary of State for the cash equivalent of the member's rights under this Section of the scheme to be used to acquire rights under the 2015 Scheme.

(14) An application under this regulation must be made in respect of each and every portion of the cash equivalent and is—

- (a) to be made in writing on the form provided for this purpose by the Secretary of State;
- (b) to be made before the end of the period of three months beginning with the guarantee date;
- (c) irrevocable.

(15) On the making of such an application—

- (a) a member becomes entitled to be credited with an increase to the member's pensionable earnings and a period of pensionable service in the 2015 Scheme in respect

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- of the cash equivalent value of the member's benefits under this Section of the scheme calculated in accordance with regulation 145 of the 2015 Scheme, and
- (b) the member's rights under this Section of the scheme are extinguished on the day that the member is credited with an increase to the member's pensionable earnings and a period of pensionable service in accordance with regulation 145 of the 2015 Scheme.
- (16) A member's right to require the Secretary of State to use the cash equivalent of the member's rights in the way referred to in paragraph (1) may only be exercised once.

## **Part N Transfers from other pension arrangements**

### **N1 Member's right to transfer accrued rights to benefits to this Section of the scheme**

(1) Within 12 months after joining this Section of the scheme, a member in pensionable employment may, in writing, request the Secretary of State to accept a transfer payment in respect of the member's rights under another occupational pension scheme, a personal pension scheme, or a buy-out policy but not in respect of rights under a free-standing AVC scheme--

- (a) established on, or after, the 6th April 2006 as a registered free-standing AVC scheme for the purposes of the 2004 Act; or
- (b) which on 6th April 2006 became a registered free-standing AVC scheme for the purposes of that Act and which immediately before that date was approved by the Commissioners for Her Majesty's Revenue and Customs by virtue of section 591(2)(h) of the Income and Corporation Taxes Act 1988 (free-standing AVC schemes).

(2) The Secretary of State shall not accept the transfer payment unless--

- (a) the transferring scheme or insurance company provides all the information about the member's rights that the Secretary of State reasonably requires; and
- (b) the amount of the transfer payment that relates to rights accrued in the transferring scheme before 6th April 1997 is at least equal to the yearly rate of the guaranteed minimum pension for which the Secretary of State would be liable as a result of accepting the transfer payment, multiplied by the factor appropriate to the member's age, as set out in the following table.

| <i>member's age</i> | <i>appropriate factor</i> |
|---------------------|---------------------------|
| 29 or under         | 8                         |
| 30-39               | 9                         |
| 40-49               | 10                        |
| 50 or over          | 12                        |

(3) Except in the case of a person to whom regulation B5 applies, the Secretary of State shall not accept the transfer payment if--

- (a) except where paragraph (3A) applies the member joins this Section of the scheme, or requests the Secretary of State to accept the transfer payment, after reaching age 60, or
- (b) the request is made following a notice given under regulation B4(5) (opted-out person rejoining this Section of the scheme) in circumstances where the member had a previous op-

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portunity to request the Secretary of State to accept a transfer payment in respect of those same rights but did not take that opportunity.

(3A) This paragraph applies where the member's employment is transferred to a new employer on the transfer of his employment to a new employer as a result of a transfer of an undertaking to that employer.

(4) If the Secretary of State accepts the transfer payment, the member will be credited with an additional period of pensionable service as described in whichever of regulations N2 (transfers made under the Public Sector Transfer Arrangements), N3 (transfers that are not made under the Public Sector Transfer Arrangements) and N3A (transfers in respect of members to whom regulation B5 applies who elect to join or rejoin this Section of the scheme) is applicable.

(5) For the purposes of calculating a member's final year's pensionable pay, any period of pensionable service with which a member is credited in respect of a transfer payment will be treated as pensionable employment and the pensionable pay by reference to which that service is calculated will be treated as pensionable pay received in respect of that employment.

## **N2 Transfers made under the Public Sector Transfer Arrangements**

(1) Subject to paragraph (2), if the transfer is from another occupational pension scheme that participates in the Public Sector Transfer Arrangements, the additional period of pensionable service to be credited to the member in respect of the transfer payment will be equal to the period that, if used to calculate a cash equivalent under regulation M3 (amount of member's cash equivalent), would produce an amount equal to the amount of the transfer payment.

(2) Paragraph (1) applies only if the transfer payment--

- (a) represents all the member's rights to benefits under the transferring scheme; and
- (b) is calculated in a manner that is consistent with the actuarial methods and assumptions used by the Secretary of State to calculate cash equivalents under regulation M3 in the case of transfers under the Public Sector Transfer Arrangements.

(3) For the purpose of calculating the additional period of pensionable service under paragraph (1), regard shall be had to the member's age and marital status, and to the yearly rate of pay and any other factor notified to the Secretary of State by the trustees or managers of the transferring scheme as having been taken into account for the purpose of calculating the amount of the transfer payment.

## **N3 Transfers that are not made under the Public Sector Transfer Arrangements**

(1) Except where regulation N2 (transfers made under the Public Sector Transfer Arrangements) applies, the additional period of pensionable service to be credited to the member in respect of the transfer payment will be calculated in a manner that is consistent with the actuarial methods and assumptions used by the Secretary of State to calculate cash equivalents under regulation M3 (amount of member's cash equivalent), in the case of transfers that are not made under the Public Sector Transfer Arrangements.

(2) When calculating the additional period of pensionable service under paragraph (1), due allowance shall be made for the expected increase in the pensionable pay of all members of the same age as the member in respect of whom the transfer payment is being accepted between the date on which that member joins this Section of the scheme (or the date on which the trans-

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fer payment is accepted, if that is more than 12 months later) and the date on which the member will reach age 60.

### **N3A Transfers in respect of members to whom regulation B5 applies who elect to join or rejoin this Section of the scheme**

(1) In the case of a member to whom regulation B5 applies, this regulation shall apply for the purpose of calculating the amount of the transfer payment by reference to which an additional period of pensionable service may be credited by the Secretary of State to that member.

(2) Subject to paragraphs (3) and (4), the transfer payment in respect of which an additional period of pensionable service may be credited by the Secretary of State to a member referred to in paragraph (1) shall be calculated in a manner that is consistent with the actuarial methods and assumptions used by the Secretary of State to calculate cash equivalents under regulation M3 (amount of member's cash equivalent) in the case of transfers that are not made under the Public Sector Transfer Arrangements and shall be of an amount equal to the total amount of--

(i) an amount which would enable the member to be credited by this Section of the scheme with such additional period of pensionable service as the Secretary of State may approve in respect of the period during which he made contributions to a personal pension scheme ("the relevant scheme");

(ii) the amount of the cash equivalent, if any, which the member transferred to the relevant scheme by exercising a right under regulation M2 (exercising a right to transfer or buy-out) ("the transferred rights"); and

(iii) an amount, to be determined from time to time by the Scheme Actuary, which represents the income which would have been received on the amount referred to in subparagraph (ii) had that amount been invested during the period commencing at the end of the month in which it was paid by this Section of the scheme to the relevant scheme and ending at the end of the month in which the transfer payment was paid to this Section of the scheme by the relevant scheme.

(3) The amount, if any, payable by virtue of paragraphs (2)(ii) and (iii) shall be at least equal to the amount of the cash equivalent transfer value which would be payable by this Section of the scheme in respect of the transferred-out service if this Section of the scheme were to pay a cash equivalent transfer value in respect of that service immediately after the time at which the transfer payment is paid to this Section of the scheme by the relevant scheme.

(4) In the case of a member to whom regulation B5 applies who has been credited with an additional period of pensionable service calculated as specified in regulation N3 (transfers that are not made under the Public Sector Transfer Arrangements), the Secretary of State may adjust the amount of the transfer payment referred to in paragraph (2) on account of the payment by reference to which that pensionable service was credited.

(5) In this regulation--

"personal pension scheme" has the same meaning as in regulation B5(4);

"transfer payment" means the payment payable to this Section of the scheme by the relevant scheme in respect of a member to whom regulation B5 applies who elects to join or rejoin this Section of the scheme; and

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"transferred-out service" means the period of pensionable service which the member transferred out of this Section of the scheme by exercising a right under regulation M2 (exercising a right to transfer or buy-out).

#### **N4 Special terms for transfers in (bulk transfers etc)**

(1) This regulation applies where one or more members of another occupational pension scheme ("the transferring members")--

- (a) cease to be in pensionable employment under that scheme,
- (b) join this Section of the Scheme, and
- (c) consent in writing to a transfer payment being accepted in respect of them and pensionable service being credited to them as mentioned in paragraphs (2) and (3).

(2) The Secretary of State may, after taking advice from the Scheme Actuary, accept a single transfer payment in respect of the transferring members.

(3) Where such a transfer payment is accepted, each of the transferring members must be credited with such additional period of pensionable service as the Secretary of State determines to be appropriate after taking advice from the Scheme Actuary.

#### **N5 (revoked by SI 2008/654)**

### **Part P Members absent from work**

#### **P1 Absence because of illness or injury or certain types of leave**

(1) This regulation applies to members who are absent from work because of illness or injury or who are on maternity leave, adoption leave, paternity leave or ~~parental leave~~, [parental leave or shared parental leave](#).

(2) A period of absence to which this regulation applies will count as pensionable service for so long as the member contributes to this Section of the scheme.

(3) If the earnings used to calculate a member's pensionable pay are reduced during a period of absence to which this regulation applies--

- (a) for the purpose of calculating the member's contributions to this Section of the scheme (other than by way of payment for additional service or unreduced retirement lump sum), pensionable pay for the period of absence will be calculated on the basis of the member's reduced earnings; and
- (b) for all other purposes, the member's pensionable pay for the period of absence will be calculated as if no reduction were being made.

(4) If the earnings used to calculate a member's pensionable pay cease during a period of absence to which this regulation applies--

- (a) subject to sub-paragraph (b), the member will be treated as having left pensionable employment except that no refund of contributions or other benefit will be payable until the member actually leaves pensionable employment;



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(b) subject to paragraph (4A), in the case of a member on maternity leave, adoption leave, paternity leave or ~~parental leave~~, **parental leave or shared parental leave** who paid contributions on the basis of reduced earnings in accordance with paragraph 3(a), contributions shall continue to be payable at that rate.

(4A) For the purposes of paragraph (4)(b), the rate of contributions payable shall be the rate that would have been payable on the basis of reduced earnings in accordance with paragraph (3)(a) had the member's reduced earnings excluded any earnings for a day during which the member returned to work for the purposes of keeping in touch with the workplace.

(5) If a member fails to pay any contributions which are required to be paid to this Section of the scheme in respect of a period of absence to which this regulation applies, the member will be treated as having left pensionable employment except that no refund of contributions or other benefit shall be payable unless the member actually leaves pensionable employment.

(6) If a member to whom this regulation applies leaves pensionable employment or, by virtue of paragraph (4)(a) or (5), is treated as having left pensionable employment, without becoming entitled to a preserved pension, then if the member later returns to pensionable employment regulation L4(4) (early leavers returning to pensionable employment) will apply as if the reference to 12 months was a reference to 3 years.

(7) The benefits payable on the death of a member whose earnings ceased during a period of absence to which this regulation applies will be calculated as if the member had died in pensionable employment on the day before his earnings ceased.

(8) For the purposes of this regulation, "maternity leave" includes any day during which the member returns to work for the purposes of keeping in touch with the workplace.

## **P2 Other leave of absence**

(1) If, on or after 1st April 2008, a member is on a leave of absence for reasons other than those referred to in regulation P1 the maximum period of such leave that will count as pensionable employment under this paragraph is--

(a) where the member, for a continuous period of six months commencing with the member's first day of leave of absence, pays to this Section of the scheme contributions due from the member in accordance with regulation D1, six months;

(b) where the member, for a continuous period of less than six months commencing with the member's first day of leave of absence, pays to this Section of the scheme contributions due from the member in accordance with regulation D1, the period in respect of which those contributions were paid.

(2) If, having paid contributions for the period referred to in paragraph (1)(a), a member remains on leave of absence for reasons other than those referred to in regulation P1 the maximum period of such leave that will count as pensionable employment under this paragraph is--

(a) where the member pays to this Section of the scheme both contributions due from the member in accordance with regulation D1 and contributions due from the member's employer in accordance with regulation D2 for a continuous period of 18 months commencing immediately after the expiry of the period referred to in paragraph (1)(a), 18 months;

(b) where the member pays to this Section of the scheme both contributions due from the member in accordance with regulation D1 and contributions due from the member's employer

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in accordance with regulation D2 for a continuous period of less than 18 months commencing immediately after the expiry of the period referred to in paragraph (1)(a), the period in respect of which those contributions were paid.

(3) If the earnings used to calculate the member's pensionable pay are reduced or cease during a period of absence to which this regulation applies pensionable pay (and, consequently, the member's contributions and benefits) for the period of absence will be calculated on the basis of the member's earnings immediately before the absence started.

## **Part Q Right to buy additional service and unreduced retirement lump sum**

### **Q1 Right to buy additional service**

(1) Subject to the provisions of this regulation and regulations Q3(2) and (6) (electing to buy additional service), Q4 (paying by single payment) and Q6 (paying by regular additional contributions), a member in pensionable employment may increase his rights to benefits under this Section of the scheme, by buying additional service.

(1A) A member may only increase the member's rights to benefit by buying additional service, other than that to which paragraph (9) of this regulation refers, if--

- (a) the member has given notice of the member's intention to exercise that right in writing or in such other form as the Secretary of State agrees to accept; and
- (b) that notice is received by the member's employing authority or the scheme administrator on or before 31st March 2008; and
- (c) the Secretary of State accepts an election to pay for additional service under regulation Q3 and the member makes regular additional contributions in respect of that election from a birthday that falls between 1st April 2008 and 31st March 2009.

(2) A member buying additional service to which paragraph (9) of this regulation refers, may choose to pay for that additional service by--

- (a) making a single payment in accordance with regulation Q4; or
- (b) making regular additional contributions in accordance with regulation Q6; or
- (c) a combination of (a) and (b).

(2A) A member buying additional service other than that to which paragraph (9) of this regulation refers, must pay for that additional service by making regular additional contributions in accordance with regulation Q6.

(3) The member must exercise his right to buy additional service within the time limits described in regulation Q4 or, as the case may be, regulation Q6 and before becoming entitled to a pension under regulation E1 (normal retirement pension) or L1 (preserved pension).

(4) Any period of additional service that the member buys will count as pensionable service for all of the purposes of this Section of the scheme, except--

- (a) for the purpose of calculating whether and, if so, by how much the member's pensionable service should be (or, where the member dies in pensionable employment, would have been) increased as described in regulation E2 or E2A; and
- (b) for the purpose of calculating the member's qualifying service in accordance with regulation C3 (meaning of qualifying service).

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(5) For the purposes of regulation G7 (widower's pension), if a woman exercised her right to buy additional service before 6th April 1988, the additional service bought as a result of the exercise of that right will be treated as service before 6th April 1988.

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

(5B) For the purpose of regulation G14 (surviving nominated partner's pension), if a member who has a nominated partner exercised the member's right to buy additional service before 6 April 1988, the additional service bought as a result of the exercise of that right will be treated as service before 6th April 1988.

(6) Subject to paragraph (7) and regulation C2(3), the maximum period of additional service that the member may buy is the period set out in the following table opposite the number of years of pensionable service that the member could complete if he stayed in pensionable employment until age 60 or, in the case of a special class officer, age 55. A member who could not complete at least 9 years pensionable service prior to reaching age 60 or, in the case of a special class officer, age 55 may not buy any additional service.

| <i>Potential years of pensionable service</i> | <i>Maximum period of additional service that member may buy</i> |
|---|---|
| 9   | 1 year  |
| 10  | 2 years   |
| 11  | 3 years   |
| 12  | 4 years   |
| 13  | 5 years   |
| 14  | 7 years   |
| 15  | 9 years   |
| 16  | 11 years  |
| 17  | 13 years  |
| 18  | 15 years  |
| 19  | 17 years  |
| 20 or more                                    | 20 years  |

(6A) A member who

- (i) joined this Section of the scheme on or after 17th March 1987;
- (ii) has made an application prior to 1st September 1997 to buy additional service; and
- (iii) does not commence making payments under regulation Q6 until on or after 1st September 1997,

may, until no later than 31st August 1998, elect that paragraph (6) shall cease to apply to him.

(6B) Paragraph (6) shall cease to apply to a member who

- (i) joined the scheme on or after 17th March 1987;
- (ii) makes an application on or after 1st September 1997 to buy additional service; and
- (iii) commences payments under regulation Q6 on or after 1st September 1997.

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(7) Subject to paragraph (10), the member's right to buy additional service is subject to any limits imposed by the Inland Revenue.

(8) Where a special class officer buys a period of additional service, the amount of the benefits attributable to that period of additional service will be those that would be payable in the case of a member who is not a special class officer.

~~(9) Where a member, following a break in pensionable employment in respect of which he received a refund of contributions which has not been repaid, rejoins this Section of the scheme, he may buy all or any part of the previous pensionable service provided that the employment giving rise to that service was not employment to which the contracting-out requirements applied.~~

(9) Where a member, following a break in pensionable employment in respect of which he received a refund of contributions which has not been repaid, rejoins this Section of the scheme, he may buy all or any part of the previous pensionable service up to, and including, 5th April 2016 provided that the employment giving rise to that service was not contracted-out employment.

(10) Except in the case of a pension debit member who is a moderate earner, a member may not replace any rights debited as a consequence of a pension sharing order with any rights which he would not have been able to acquire (in addition to the debited rights) had the pension sharing order not been made.

(11) For the purposes of paragraph (10)--

"moderate earner" means a member whose pensionable pay during the tax year preceding the tax year in which his marriage or civil partnership is dissolved or annulled is not more than 25 per cent of the permitted maximum for the tax year in which the dissolution or annulment occurred;

"pension debit member" means a person whose shareable rights under this Section of the scheme are subject to a debit under section 29(1)(a) of the 1999 Act;

"permitted maximum" means the same as in section 590C of the Income and Corporation Taxes Act 1988 (earnings cap); and

[definition "tax year" (omitted)]

## **Q2 Right to buy an unreduced retirement lump sum**

(1) Subject to the provisions of this regulation and regulations Q3(2) and (6) (electing to buy unreduced retirement lump sum), Q5 (paying by single payment), and Q6 (paying by regular additional contributions), a member in pensionable employment whose pensionable service started before 25th March 1972 and who is, or has been, married may make payments to this Section of the scheme to off-set all or part of any reduction in the lump sum payable to the member under regulation E6 (lump sum on retirement).

(2) The member may choose to pay for an unreduced retirement lump sum by making a single payment in accordance with regulation Q5 or by making regular additional contributions in accordance with regulation Q6 or partly in one way and partly in the other.

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(3) The member must exercise the right to buy an unreduced retirement lump sum within the time limits described in regulation Q5 or, as the case may be, regulation Q6 and before the lump sum becomes payable.

### **Q3 Electing to buy additional service or unreduced retirement lump sum**

(1) A member electing to buy additional service or unreduced retirement lump sum shall do so by giving notice in writing to the employing authority on the form provided, giving such information as may be required.

(2) A member may not exercise a right to buy additional service or unreduced retirement lump sum during a period of absence from work or while his earnings are reduced or have ceased.

(3) For the purposes of these Regulations, the date on which a member elects to buy additional service or unreduced retirement lump sum means the date on which the employing authority receives the member's completed form exercising that right.

(4) If a member who elects to pay for additional service or unreduced retirement lump sum by a single payment leaves pensionable employment within 3 months after starting that employment, the election will cease to have effect.

(5) For the purposes of paragraph (4), and notwithstanding regulation P1(5) (absence through illness or injury or maternity), a member whose earnings cease during a period of absence from work will not be treated as if he had left pensionable employment.

(6) The Secretary of State shall not accept an election from a member who wishes to pay for additional service or unreduced retirement lump sum by additional regular contributions unless satisfied that the member is in good health and that there is no reason why the member's health should prevent him from paying the contributions for the whole period for which he has chosen to pay them.

### **Q4 Paying for additional service by single payment**

(1) A member who wishes to buy additional service for all or part of the member's previous pensionable service in accordance with regulation Q1(9) by a single payment must elect to do so within 12 months of re-joining this Section of the scheme following the break in pensionable employment described in that regulation.

(2) (revoked)

(3) The amount of a single payment for additional service will be one-half of the cost calculated in accordance with Table 1 of Schedule 1.

(4) For the purposes of Table 1 of Schedule 1, "remuneration" means, subject to paragraph (5), the yearly average of a member's pensionable pay (ignoring any reduction or cessation of earnings as a result of absence or otherwise) in respect of the 3 months' pensionable employment immediately preceding the date on which the member elects to buy the additional service or unreduced retirement lump sum.

(5) If the member has not been in pensionable employment for 3 months before electing to buy the additional service or unreduced retirement lump sum, "remuneration" means the yearly average of the member's pensionable pay in respect of the first 3 months' pensionable employment.

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(6) The member must make any single payment for additional service within 3 months after electing to do so or, if later, within 6 months after starting pensionable employment.

(7) (revoked)

#### **Q5 Paying for unreduced retirement lump sum by single payment**

(1) A man who wishes to pay for an unreduced retirement lump sum by a single payment must elect to do so within 12 months after getting married, or, if he is not then a member, within 12 months of first rejoining this Section of the scheme after getting married.

(2) A woman who wishes to pay for an unreduced retirement lump sum by a single payment must elect to do so within 12 months after nominating her husband to receive a dependent widower's pension under regulation G8 (dependent widower's pension).

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

(2B) A member who has a nominated partner who wishes to pay for an unreduced lump sum by a single payment must elect to do so within 12 months after applying for the member's nominated partner to receive a dependent surviving nominated partner's pension under regulation G15.

(3) The amount of a single payment for an unreduced retirement lump sum will be calculated in accordance with Table 2 of Schedule 1.

(4) For the purposes of Table 2 of Schedule 1, "remuneration" means, subject to paragraph (5), the same as in regulation Q4(4) and (5) (meaning of remuneration for the purposes of Table 1 of Schedule 1).

(5) In the case of a member who elects to buy an unreduced retirement lump sum but who is no longer required to contribute under regulation D1 (contributions by members) because regulation D1(3) or (4) applies, "remuneration" means the amount to which a pension equal to the member's final year's pensionable pay and beginning on the day on which regulation D1(3) or (4) started to apply would have been increased under Part I of the Pensions (Increase) Act 1971 at the date of the election to buy the unreduced retirement lump sum.

(6) The member must make any single payment for an unreduced retirement lump sum within 3 months after electing to do so or, if later, within 6 months after starting pensionable employment.

#### **Q6 Paying for additional service or unreduced retirement lump sum by regular additional contributions**

(1) A member who wishes to pay for additional service or an unreduced retirement lump sum by regular additional contributions must elect to do so before reaching age 63.

(2) Any such regular additional contributions shall be deducted from the members earnings, and paid to the Secretary of State, in like manner as under regulation D1(5) (contributions by members).

(3) Subject to paragraph (4), the member must pay the regular additional contributions from his next birthday following the date on which he elects to buy the additional service or unreduced retirement lump sum until either his 60th or 65th birthday, whichever the member chooses ("the chosen date").



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(4) The period for which a member elects to pay regular additional contributions must be at least 2 years.

(5) The regular additional contributions will be calculated as a percentage of the member's pensionable pay, in accordance with Table 3 of Schedule 1 (if the member is buying additional service) or Table 4 of Schedule 1 (if the member is buying an unreduced retirement lump sum).

(6) The member's total regular contributions to this Section of the scheme before 1st April 2008, including contributions under regulation D1 may not exceed 15 per cent of pensionable pay, or any other limit specified for the time being by HM Revenue and Customs.

(6A) The member's total regular additional contributions made on or after 1st April under this regulation may not exceed--

(a) in the case of a member paying contributions of 5 per cent of the member's pensionable pay under regulation D1 on the member's birthday immediately following the date of the election referred to in paragraph (3), 10 per cent of pensionable pay;

(b) in the case of a member paying contributions of more than 5 per cent of the member's pensionable pay under regulation D1 on the birthday referred to in (a), 9 per cent of pensionable pay, or

(c) in any case referred to in (a) or (b) above, any other limit specified for the time being by HM Revenue and Customs.

(7) Where a person elects to buy additional service in the circumstances described in regulation Q1(9), the cost will be calculated as one-half of the cost calculated in accordance with Table 3 of Schedule 1.

(8) If a member who has elected to pay for additional service or unreduced retirement lump sum by regular additional contributions stops paying the contributions before the chosen date under paragraph (3), regulation Q7 (part payment for additional service or unreduced retirement lump sum) will apply.

#### **Q7 Part payment for additional service or unreduced retirement sum**

(1) If a member who is paying for additional service or unreduced retirement lump sum by regular additional contributions stops paying before the chosen date under regulation Q6(3), the member's benefits will be calculated as described in this regulation.

(2) If, within 12 months after starting to pay the additional contributions, the member dies in pensionable employment or makes an application for a pension under regulation E2 or E2A which subsequently becomes payable, an amount equal to the contributions (less any tax that may be payable) will be returned to the member or the member's personal representatives.

(3) If, 12 months or more after starting to pay the additional contributions, the member dies in pensionable employment or becomes entitled to a pension under regulation E2 or E2A prior to his attaining the age of 60, the additional contributions shall be deemed to have been paid and the member's benefits will be increased to include the additional service or unreduced retirement lump sum that the member has chosen to buy.

(4) If neither of paragraphs (2) or (3) apply, the member's benefits will include a proportion of the additional service or unreduced retirement lump sum that the member has chosen to buy, calculated as described in paragraph (5).

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(5) Subject to paragraph (6) the proportion will be calculated as--

period for which contributions were paid/period for which contributions should have been paid

(6) If the member becomes entitled to receive benefits before the chosen date under regulation Q6(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 early payment of the pension and the lump sum by such amounts as the Secretary of State, after taking the advice of the Scheme Actuary, shall determine.

### **Q8 Option to pay additional periodical contributions to purchase additional pension**

(1) A member who is in pensionable employment may opt to make additional periodical contributions during the contribution option period to increase by a specified amount--

(a) the benefits payable to the member under Parts E, L and S (including if a member dies after a pension becomes payable, the benefits paid to a surviving partner and dependent children at the same rate as the member's pension for three to six months under Part S, G and H); or

(b) those benefits and the benefits otherwise payable in respect of surviving partners and dependent children under Parts S, G and H.

(2) A member may exercise the option under paragraph (1) more than once.

(3) If a member exercises an option under paragraph (1), the member's employing authority must--

(a) deduct the member's contributions from the member's earnings; and

(b) pay them to the Secretary of State not later than the 19th day of the month following the month in which the earnings were paid.

(4) The annual amount of the periodical contributions payable at the beginning of the contribution option period must not be--

(a) an amount less than the minimum amount; or

(b) an amount other than a multiple of the minimum amount.

(5) In paragraph (4) "the minimum amount" means the amount that would, in accordance with tables prepared for the Secretary of State by the Scheme Actuary for the Scheme year in which the contributions are paid, be the amount of the contributions required to secure an increase in the member's pension of--

(a) £250; or

(b) such other amount as the Secretary of State may for the time being determine assuming that the contributions are made in accordance with the option for the remainder of the option period.

(6) The tables referred to in paragraph (5)--

(a) may specify different amounts for different descriptions of members; and

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(b) may be amended during a Scheme year,

but no such amendment affects the contributions payable under any option during that year, except an option under which contributions begin to be paid after the date on which the amendment takes effect.

(7) The total increase in the member's pension as a result of contributions made under this regulation, taken together with any increase as a result of--

(a) contributions made under regulation Q10; or

(b) contributions made under regulation Q11,

may not exceed £5000 or such other amount as the Secretary of State may for the time being determine.

(8) In these Regulations "the contribution option period", in relation to an option under this regulation, means a period of whole years, that--

(a) is specified in the option;

(b) begins with the pay period in respect of which the first contribution is made under the option;

(c) is not less than 1 year nor more than 20 years; and

(d) does not end later than the member's chosen birthday as specified in the option

(9) For the purposes of this part, a member's "chosen birthday" must be either the member's 60th or 65th birthday.

### **Q9 Effect of member being absent or leaving and rejoining this Section of the Scheme during the contribution option period**

(1) This paragraph applies if during the contribution option period a member who has exercised the option under regulation Q8--

(a) is absent from work for any of the reasons described in ~~regulation P1(2)~~ [regulation P1\(1\)](#); or

(b) is on a leave of absence in accordance with regulation P2.

(2) If paragraph (1) applies--

(a) the contributions under the option continue to be payable unless the member ceases paying contributions under regulation D1; and

(b) where the member does so cease, the member may continue to make contributions in accordance with the option if the member resumes making contributions under regulation D1 before the end of the period of 12 months beginning with the day on which the member first ceased to pay those contributions.

(3) This paragraph applies if a member--

(a) exercises the option under regulation Q8;

(b) leaves pensionable employment during the contribution option period; and

(c) returns to pensionable employment within 12 months of leaving.

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(4) If paragraph (3) applies, the member may continue to make contributions in accordance with the option after returning to pensionable employment unless a refund of contributions has been made to the member under regulation L2.

(5) For the purposes of paragraph (4) it does not matter whether the member has paid any of the repaid contributions to the Secretary of State in accordance with regulation L4(5) (early leavers returning to pensionable employment).

#### **Q10 Members option to pay lump sum contributions to purchase additional pension**

(1) A member who is in pensionable employment may opt to make a single lump sum contribution to increase by a specified amount--

(a) the benefits payable to the member under parts E, L and S (including if a member dies after a pension becomes payable, the benefits paid to a surviving partner and dependent children at the same rate as the member's pension for three to six months under Part S, G and H); or

(b) those benefits and the benefits otherwise payable in respect of surviving partners and dependent children under Parts S, G and H.

(2) A member may only make a contribution under this regulation of an amount--

(a) that is not less than the minimum amount; or

(b) a multiple of that amount.

(3) In paragraph (2) "the minimum amount" means the amount that is, in accordance with tables prepared for the Secretary of State by the Scheme Actuary, the amount of the single contribution required at the time that the option is exercised to secure an increase in the member's pension of--

(a) £250, or

(b) such other amount as the Secretary of State may for the time being determine.

(4) A member may exercise the option under paragraph (1) more than once.

(5) If a member exercises an option under paragraph (1) the additional contribution is payable by the member to the employing authority--

(a) by deduction from the member's earnings or otherwise; and

(b) before the end of the period of 1 month beginning with the day on which the member is notified by the Secretary of State that the option is accepted; and

(c) the employing authority must pay the additional contribution to the Secretary of State not later than the 19th day of the month following the month in which the earnings were paid or, as the case may be, the authority received payment of the contribution.

(6) The total increase in the member's pension as a result of contributions made under this regulation, taken together with any increase as a result of--

(a) contributions made under regulation Q8; or

(b) contributions made under regulation Q11,

may not exceed £5000 or such other amount as the Secretary of State may for the time being determine.

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### **Q11 Payment of additional lump sum contributions by employing authority**

- (1) The employing authority of a member who is in pensionable employment may opt to make a single lump sum contribution to increase by a specified amount--
  - (a) the benefits payable to the member under parts E, L and S (including, if a member dies after a pension becomes payable, the benefits paid to a surviving partner and dependent children at the same rate as the member's pension for three to six months under Part S, G and H); or
  - (b) those benefits and the benefits otherwise payable in respect of surviving partners and dependent children under Parts S, G and H.
- (2) An employing authority may only make a contribution under this regulation of an amount--
  - (a) that is not less than the minimum amount (as defined in regulation Q10(3)); or
  - (b) a multiple of that amount.
- (3) An employing authority may only exercise the option under paragraph (1) with the member's consent, but may exercise it more than once in respect of the same member.
- (4) The total increase in the member's pension as a result of contributions made under this regulation, taken together with any increase as a result of--
  - (a) contributions made under regulation Q8; or
  - (b) contributions made under regulation Q10,may not exceed £5000 or such other amount as the Secretary of State may for the time being determine.
- (5) A contribution under this regulation must be paid by the employing authority to the Secretary of State within one month of the date on which the authority gave the Secretary of State notice under regulation Q12(2).

### **Q12 Exercise of options under regulations Q8, Q10 and Q11**

- (1) A member exercising an option under regulation Q8 or Q10 must do so by giving notice in writing to the employing authority, giving such information as may be required.
- (2) An employing authority exercising an option under regulation Q11 must do so by giving notice in writing to the Secretary of State, giving such information as may be required.
- (3) An option under regulation Q8, Q10 or Q11 may not be exercised during a period whilst the member is absent from work for any reason.
- (4) For the purposes of these Regulations--
  - (a) a member is treated as exercising an option under regulation Q8 or Q10 on the date on which the employing authority receives the member's notice under paragraph (1); and
  - (b) an employing authority is treated as exercising an option under regulation Q11 on the date on which the Secretary of State receives the authority's notice under paragraph (2).
- (5) The Secretary of State--
  - (a) must refuse to accept an option exercised under--

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- (i) regulation Q8 if not satisfied that that the member is in good health and there is no reason why the member's health should prevent the member from paying the contributions for the whole contribution period;
  - (ii) regulation Q10 or Q11 if not satisfied that the member is in good health,
  - (b) may refuse to accept an option under regulation Q8, Q10 or Q11 in any other circumstances.
- (6) If the Secretary of State refuses to accept such an option, the Secretary of State must give notice in writing of that fact--
- (a) in the case of an option exercised under regulation Q8 or Q10, to the member; and
  - (b) in the case of an option exercised under regulation Q11, to the employing authority and the member.
- (7) These Regulations apply as if an option--
- (a) under regulation Q8, Q10 or Q11 had not been exercised if the Secretary of State refuses to accept the option;
  - (b) under regulation Q10 had not been exercised if the payment is not received by the employing authority--
    - (i) before the end of the period of 1 month beginning with the day on which the Secretary of State notifies the member of the acceptance of the option; or
    - (ii) if it is earlier, on or before the member's chosen birthday, and
  - (c) under regulation Q11 had not been exercised if the payment is not received by the Secretary of State on or before the member's chosen birthday.

### **Q13 Cancellation and cessation of options under regulation Q8**

- (1) A member may cancel an option under regulation Q8(1) by giving the employing authority notice in writing.
- (2) If a member cancels such an option, the additional periodical contributions cease to be payable for the first pay period beginning after the date on which the employing authority receives the notice and all subsequent pay periods.
- (3) If it appears to the Secretary of State that the requirement in regulation Q8(7) will not be met if the member continues to make periodical contributions under an option exercised under regulation Q8, the Secretary of State may cancel the option by giving the member notice in writing.
- (4) If the Secretary of State cancels such an option in accordance with paragraph (3), 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.
- (5) If, after the exercise of the option under regulation Q8, the Secretary of State has reasonable grounds to believe that the member's health will prevent the member from paying contributions for the whole contribution period, the Secretary of State may cancel the option by giving the member notice in writing.
- (6) If the Secretary of State cancels such an option in accordance with paragraph (5)—



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- (a) the additional periodical contributions cease to be payable for the first pay period beginning after the date specified in the notice ("date of cancellation") and all subsequent pay periods, and
- (b) any periodical payments made prior to the date of cancellation shall be returned to the member.

#### **Q14 Effect of payment of additional contributions under this Part**

(1) This regulation applies if--

- (a) an option is exercised by a member under regulation Q8 and all the contributions to be made under the option are made;
- (b) an option is exercised by a member under regulation Q10 or by a member's employing authority under regulation Q11 and the lump sum payment is made.

(2) Subject to paragraph (7), the member's pension is increased by the full amount of the increase to be made in accordance with the terms of the option after the final adjustment in that amount in accordance with regulation Q17.

(3) Paragraph (2) is without prejudice to any reduction falling to be made in accordance with regulation Q15(5) as a result of the member becoming entitled to payment of a pension before the member's chosen birthday.

(4) In the case of an option under regulation Q8(1)(b), Q10(1)(b) or Q11(1)(b), any benefit payable to a surviving partner or a dependent child in respect of the member under these regulations is increased by the appropriate amount.

(5) In paragraph (4) subject to regulations Q15 and Q16(3) "the appropriate amount" means--

- (a) in the case of a surviving partner pension payable under regulation G2, G4 or S4A(10), 37.5 per cent of the amount of the increase mentioned in paragraph (2) that would have applied in the member's case if the member had become entitled to the increase on the date of death (disregarding paragraph (3));
- (b) in the case of a surviving partner pension payable under regulation G3, 37.5 per cent of the amount of the increase in the member's pension as a result of the option;
- (c) in the case of a child allowance payable under regulation H3, H5 or S4A(17)(b), the appropriate fraction of 75 per cent of the amount of the increase mentioned in paragraph (2) that would have applied in the member's case if the member had become entitled to the increase on the date of death (disregarding paragraph (3));
- (d) in the case of a child allowance payable under regulation H4, the appropriate fraction of 75 per cent of the amount of the increase in the member's pension as a result of the option.

(6) For the purposes of paragraph (5) the "appropriate fraction" means the same fraction as that applied to the member's pension in order to calculate the amount of child allowance payable in respect of that member.

(7) Paragraph (8) applies only to an option under Q8(1)(a), Q10(1)(a) or Q11(1)(a) where a pension is to be paid for either three or six months at the same rate as the member's pension was being paid at the date of that member's death.

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(8) Any increase in a member's pension shall be included only in a benefit payable to a surviving partner or a dependent child in respect of the member under these regulations whilst it is being paid at the rate and for the duration of one of the periods referred to in paragraph (7).

**Q15 Effect of death or early payment of pension after option exercised under regulation Q8, Q10 or Q11**

(1) If a member in respect of whom an option under regulation Q8, Q10 and Q11 has been exercised dies before the end of the period of 12 months beginning with the date on which the option was exercised--

- (a) regulation Q14(4) does not apply, and
- (b) an amount equal to the contributions paid under the option must be paid--
  - (i) in the case of an option under regulation Q8 or Q10, to the member's personal representatives; and
  - (ii) in the case of an option under regulation Q11, to the employing authority which made the contribution.

(2) Subject to regulation Q13(5) and (6), if a member in respect of whom an option under regulation Q8 has been exercised dies after the end of the period of 12 months beginning with the date on which the option was exercised and before the end of the contribution option period, regulation Q14(4) applies as if all contributions due after the date of death had been made.

(3) If a member in respect of whom an option under regulation Q8, Q10 or Q11 has been exercised becomes entitled to a pension under regulation E2A as a result of a claim made before the end of the period of 12 months beginning with the date on which the option was exercised--

- (a) regulation Q14(2) and (4) does not apply; and
- (b) an amount equal to the contributions paid under the option must be paid--
  - (i) in the case of an option under regulation Q8 or Q10, to the member, and
  - (ii) in the case of an option under regulation Q11, to the employing authority which made the contribution.

(4) Subject to regulation Q13(5) and (6), if a member in respect of whom an option under regulation Q8 has been exercised becomes entitled to a pension under regulation E2A before the end of the contribution option period as a result of a claim made after the end of the period of 12 months beginning with the date on which the option was exercised, regulation Q14(2) and (4) applies as if all contributions under the option had been made.

(5) If a member in respect of whom an option under regulation Q8, Q10 or Q11 has been exercised--

- (a) becomes entitled to a pension under regulation E3, E3A, or E5; or
- (b) becomes entitled to a pension under regulation E1 or L1 before reaching the age of 60; or
- (c) becomes entitled to a pension under regulation E1 after age 60 but before the member's chosen birthday

the increase in the member's pension which would otherwise be due under regulation Q14(2) or regulation Q16 is reduced.

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(6) The amount of the reduction is such amount as the Secretary of State determines, after consulting the Scheme Actuary, to be appropriate by reason of the payment of the increase before the member reaches the member's chosen birthday.

#### **Q16 Effect of part payment of periodical contributions**

(1) This regulation applies if--

- (a) the full number and amount of contributions due under an option under regulation Q8 for the whole contribution option period are not made; and
- (b) paragraphs (1) to (4) of regulation Q15 do not apply.

(2) The increase in the member's pension is--

- (a) the appropriate proportion of the increase that would have been made under regulation Q14(2) if the full number and amount of contributions had been made; or
- (b) the appropriate proportion of the increase calculated in accordance with sub-paragraph (a) reduced in accordance with regulation Q15(6) if regulation 15(5) applies to the member.

(3) In the case of an option under regulation Q8(1)(b), Q10(1)(b) or Q11(1)(b), the increase in any surviving partner or child allowance payable under parts G and H and S in respect of the member is--

- (a) the appropriate proportion of the increase that would have been made under regulation Q14(4) if the full number and amount of contributions had been made; or
- (b) the appropriate proportion of the increase calculated in accordance with sub-paragraph (a) reduced in accordance with regulation Q15(5) if that regulation applies to the member.

(4) For the purposes of paragraphs (2) and (3), the appropriate proportion is calculated in accordance with such method as the Scheme Actuary may determine and specify in guidance given to the Secretary of State.

(5) In making a determination under paragraph (4), the Scheme Actuary must have regard to--

- (a) the proportion that the total contributions paid bears to the full amount of contributions due under an option under regulation Q8 for the whole contribution option period; and
- (b) the preservation requirement

#### **Revaluation of increases bought under options: members' pensions**

**Q17.**—(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 whichever of paragraphs (5) or (5A) applies.

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

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- 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 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) If the member exercised the option on or before 31 March 2011, 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).

(5A) If the member exercised the option on or after 1 April 2011, 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 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 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.

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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 (see section 8(2) of that Act) and “the prices index” means, as regards any month, the change in the general level of prices for that month used to determine increases to official pensions for the purposes of that Act.

## **Part R Special provisions for certain members**

### **R1 Practitioners and specialist trainees in general practice**

(1) These Regulations apply to members who are or have been practitioners as if they were officers employed by the relevant Local Health Board or the National Health Service Commissioning Board, but with the modifications described in Schedule 2.

(2) These Regulations apply to members who are or have been specialist trainees in general practice as if they were whole-time officers employed by the relevant employing authority.

(3) These Regulations apply from 1st April 2004 to a non-GP provider as if they were a whole-time officer employed by the National Health Service Commissioning Board or relevant Local Health Board with the modifications described in paragraphs 3, 4, 5, 10 and 23 of Schedule 2 and Schedule 2B.

### **R2 Nurses, physiotherapists, midwives and health visitors**

(1) Subject to paragraph (2), this regulation applies to a member--

(a) who, at the coming into force of these Regulations--

(i) is in pensionable employment as a nurse, physiotherapist, midwife or health visitor, or

(ii) has accrued rights to benefits under this Section of the scheme arising out of a previous period in which she was engaged in such employment and at no time since the last occasion on which she was so engaged has she had a break in pensionable employment for any one period of 5 years or more,

and

(b) who spends the whole of the last 5 years of her pensionable employment as a nurse, physiotherapist, midwife or health visitor.

(2) This regulation shall cease to apply if the member has a break in pensionable employment for any one period of 5 years or more ending after the coming into force of these Regulations.

(3) Where this regulation applies--

(a) regulation E1 (normal retirement pension) will apply to the member as if the reference, in paragraph (1) of that regulation, to age 60, were a reference to age 55;

(b) if the member leaves pensionable employment because of redundancy, but without becoming entitled to a pension under regulation E3 (early retirement pension on grounds of redundancy) or regulation E3A (early retirement pension (termination of employment by employ-

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ing authority)), regulation L1 (preserved pension) will apply as if the references, in paragraphs (1), (3) and (4) of that regulation, to age 60, were references to age 55.

(4) Where, in accordance with paragraph (3), a member becomes entitled to receive a pension before age 60, the amount payable shall--

(a) in the case of a female member, be calculated by reference to all of her pensionable service under this Section of the scheme; and

(b) in the case of a male member, be calculated only by reference to pensionable service on or after 17th May 1990.

(5) Subject to regulation Q6(4), if the member chooses to pay for additional service or unreduced retirement lump sum by regular additional contributions under regulation Q6, contributions may be made from the next birthday following the exercise of the right to do so, until the member's 55th, 60th or 65th birthday, whichever the member chooses, and that date will be the chosen date under regulation Q6(3).

(6) For the purposes of paragraphs (1) and (2), pensionable employment includes employment that qualified the member for benefit under a health service scheme.

(7) For the purpose of calculating the 5 year period referred to in paragraph (1)(b), "pensionable employment" does not include additional service bought under regulation Q1 or a period in respect of which a refund of contributions has been paid under regulation L2.

### **R3 Mental health officers**

(1) Subject to paragraph (2), this regulation applies to a member who at the coming into force of these Regulations--

(a) is in pensionable employment under this Section of the scheme as a mental health officer, or

(b) has accrued rights to benefits under this Section of the scheme arising out of a previous period in which he was engaged in such employment and at no time since the last occasion on which he was so engaged has he had a break in pensionable employment for any one period of 5 years or more.

(2) Subject to paragraph (3), this regulation shall cease to apply if the member has a break in pensionable employment for any one period of 5 years or more ending after the coming into force of these Regulations.

(3) Paragraph (2) shall be without prejudice to the operation of paragraph (5)(a) in relation to any period prior to this regulation ceasing to apply.

(4) For the purposes of paragraphs (1) and (2), "pensionable employment" includes employment that qualified the member for benefit under a health service scheme.

(5) Subject to paragraphs (6) and (7), where this regulation applies--

(a) if the member has in excess of 20 years' pensionable service as a mental health officer, regulation E1 (normal retirement pension) will apply as if the reference, in paragraph (1) of that regulation, to age 60, were a reference to age 55, but only if the member was in pensionable employment as a mental health officer immediately before leaving; and



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- (b) each complete year of pensionable service as a mental health officer in excess of 20 years will count as 2 years' pensionable service.
- (6) For the purposes of calculating the 20 year period referred to in paragraph (5)--
  - (a) there shall, in the case of a member who has reached age 50, be taken into account any period before he became a mental health officer in which he was employed on the staff of a hospital used wholly or partly for the treatment of persons suffering from mental disorder and in which he devoted the whole or substantially the whole of his time to the treatment and care of such persons, unless it would be more favourable to the member (or, if the member has died, to the persons entitled to benefits in respect of the member) to disregard any such period;
  - (b) pensionable service does not include additional service bought under regulation Q1 (right to buy additional service).
- (7) Paragraph (5) does not apply--
  - (a) for the purpose of calculating, under regulations E2 or E2A and H3, H4 and H5 (child allowance), the pensionable service the member could have completed if he had stayed in pensionable employment until a particular age;
  - (b) for the purpose of calculating a minimum widow's, widower's, surviving civil partner's or surviving nominated partner's pension based on the member's pensionable service after 5th April 1978 under regulation G6(2) (member marries after leaving pensionable employment); or
  - (c) for the purpose of calculating a member's benefits where it would be more favourable to the member or other person entitled to the benefits not to apply that paragraph and to calculate the member's benefits by reference to the member's final year's pensionable pay when the member leaves pensionable employment, completes 45 years' pensionable service (calculated without regard to paragraph (5)(b)), reaches age 65 or dies, whichever occurs first.
- (8) Where, by virtue of paragraph (7)(c), paragraph (5) does not apply, the amount of any contributions that should have been paid by the member under regulation D1 (contributions by members), but which were not deducted from the member's earnings, will be deducted from the lump sum payable on the member's retirement or death.
- (9) If a member who has in excess of 20 years pensionable service for the purposes of paragraph (5) leaves NHS employment before reaching age 55 because of redundancy, but without becoming entitled to a pension under regulation E3 (early retirement pension on grounds of redundancy) or regulation E3A (early retirement pension (termination of employment by employing authority)), and was in pensionable employment as a mental health officer immediately before leaving, regulation L1 (preserved pension) will apply as if the references in that regulation, to age 60, were to age 55.
- (10) Subject to paragraph (12), if any member to whom this regulation applies becomes entitled to a preserved pension under regulation L1 on ceasing to be a mental health officer, the pension will be based on the greater of the member's basic service and a period of service calculated as--

(basic service/potential basic service) x potential service

where--

"basic service" means the member's pensionable service, calculated without regard to paragraph (5);

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"potential basic service" means the pensionable service the member could have completed if he had stayed in pensionable employment until age 55, calculated without regard to paragraph (5); and

"potential service" means the pensionable service the member could have completed, taking account of paragraph (5), if he had stayed in pensionable employment as a mental health officer until age 55.

(11) Subject to paragraph (12), if a member with at least 2 years' qualifying service ceases to be a mental health officer while continuing in pensionable employment, the member's pension in respect of the period before ceasing to be a mental health officer will, if it would be more favourable to him, be of an amount equal to the preserved pension to which the member would have become entitled in accordance with paragraph (10) if he had left pensionable employment on the day he ceased to be a mental health officer.

(12) Paragraphs (10) and (11) do not apply if the member again becomes a mental health officer within 12 months after the date on which he ceased to be a mental health officer.

(13) Subject to regulation Q6(4), if a member elects to pay for additional service or unreduced retirement lump sum by regular additional contributions under regulation Q6 he may elect to make those contributions from his next birthday following the date on which he elected to buy the additional service or unreduced lump sum until his 55th, 60th or 65th birthday, whichever he chooses, and that date will be the chosen date under regulation Q6(3).

(14) In this regulation, "mental health officer" means--

(a) an officer working whole-time on the medical or nursing staff of a hospital used wholly or partly for the treatment of persons suffering from mental disorder, who devotes all, or almost all, of his time to the treatment or care of persons suffering from mental disorder;

(b) any other officer employed in such a hospital who is within a class or description of officers designated by the Secretary of State as mental health officers for this purpose; and

(c) a specialist in part-time NHS employment who devotes all, or almost all, his time to the treatment or care of persons suffering from mental disorder and who satisfies the requirements of paragraph (15).

(15) A member satisfies the requirements of this paragraph if he holds a whole-time specialist post and either--

(a) he receives at least 10/11ths of the pensionable pay that he would have received for whole-time NHS employment, or

(b) he was appointed before 1st January 1980 and retains the right, to which he was entitled on 31st December 1979, to be paid at least 9/11ths of the pensionable pay that he would have received for whole-time NHS employment.

(16) The Secretary of State may agree to treat as a mental health officer any member who, by reason of having transferred to part-time pensionable employment, would otherwise have ceased to be a mental health officer providing that person is engaged in work which had it been whole time, would have qualified that member for mental health officer status and there is no break in pensionable employment between the transfer from whole-time to part-time employment.

(17) Where a member is treated as a mental health officer by virtue of paragraph (15) or (16), each year of part-time pensionable service shall, for the purpose of determining whether the

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member has in excess of 20 years pensionable service for the purposes of paragraph (5) (but for no other purpose), be treated as if it were a year of whole-time pensionable service.

#### **R4 Members doing more than one job**

(1) This regulation applies to members in NHS employment--

- (a) with more than one employing authority;
- (b) who hold, under one employing authority, two or more separate employments; or
- (c) to whom paragraph (10A) below applies.

(2) The member may contribute to this Section of the scheme in respect of all or any of his employments with employing authorities, providing that the employments in respect of which he chooses to contribute to this Section of the scheme do not in aggregate exceed, as determined by the Secretary of State, a single comparable whole-time employment.

(3) Any amount by which the member's pensionable pay in respect of concurrent part-time employments exceeds the amount that the Secretary of State determines would have been paid in respect of a single comparable whole-time employment will be ignored.

(4) Any amount by which the member's pensionable service in respect of concurrent part-time employments, calculated as described in regulation R5 (pensionable service in respect of part-time employment), exceeds the period during which the member carried on those employments, will be ignored.

(5) Subject to paragraph (6), the member shall not become entitled to a pension under any of regulations E1 to E5 or a preserved pension under regulation L1 until the termination of all NHS employments (including employment as a practitioner) or he reaches age 75.

(6) If the member leaves employment with one employing authority and becomes entitled to a pension under regulation E3 (early retirement pension on grounds of redundancy) or regulation E3A (early retirement pension (termination of employment by employing authority)) in relation to the employment that has ended, the member may elect to take benefits only in respect of the employment that has ended and to continue to accrue rights to benefits in respect of any other continuing pensionable employment.

(7) Where the member elects under paragraph (6), paragraph (5) will apply in relation to any employment in respect of which the member continues to accrue rights to benefits.

(8) For the purposes of paragraph (5) the member, on leaving NHS employment, shall be treated as having terminated all NHS employment where any remaining NHS employment amounts to 16 hours per week or less.

(9) Regulation S2 (reduction of pension on return to NHS employment) will apply to any member who becomes entitled to a pension under paragraph (6) while continuing in other NHS employment.

(10) Subject to paragraph (10A), in calculating the member's final year's pensionable pay there shall be taken into account pensionable pay in respect of any other pensionable employment in that final year except a pensionable employment in respect of which the member continues to accrue benefits in accordance with paragraph (6).

(10A) A member who becomes entitled to a pension under regulation E3 or E3A, and has terminated concurrent employment as a practitioner not more than 12 months before the date on

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which he becomes entitled to that pension, shall not be entitled to receive a pension under regulation E3 or E3A in respect of any employment as a practitioner, but shall be entitled only to receive a pension under regulation E1 or E5, or a preserved pension under regulation L1, in respect of such employments.

(10B) Where paragraph (10A) applies, the member may, in respect of any service as an officer which has terminated and to which paragraph 9(1), (6) or (9) of Schedule 2 applies, elect for that paragraph not to apply and instead to receive a pension under regulation E3 or E3A in respect of that service.

(11) The member will not receive a refund of contributions under regulation L2 until he leaves all pensionable employment without becoming entitled to a pension under any of regulations E1 to E5 or a preserved pension under regulation L1.

(12) The member may exercise a right to transfer or buy-out under regulations M1 to M5 (transfers and buy-outs) only if he leaves all pensionable employment before reaching age 60 and before becoming entitled to a pension under this Section of the scheme.

## **R5 Part-time employment**

(1) Subject to paragraphs (6) and (10), a member's pensionable service in part-time employment will not count at its full length but will be calculated as described in paragraphs (2) or (3), whichever is applicable, as its whole-time equivalent.

(2) If the member's part-time employment is expressed as a specified number of half-days or sessions a week, the whole-time equivalent of the member's pensionable service in respect of that employment will be calculated by multiplying the full length of that service by the following fraction--

member's pensionable pay/comparable whole-time earnings

(3) In any case where paragraph (2) does not apply, the whole-time equivalent of the member's pensionable service in respect of part-time employment will be calculated by multiplying the full length of that service by the following fraction--

member's hours of employment each week/hours constituting comparable whole-time employment

(4) Subject to paragraph (5), for the purpose of calculating a member's final year's pensionable pay in respect of part-time employment, the member's pensionable pay will be the amount that the Secretary of State determines would have been paid in respect of a single comparable whole-time employment and any amount by which the member's actual final year's pensionable pay in respect of part time employment exceeds the amount determined will be ignored.

(4A) "A single comparable whole-time employment" in paragraph 4 means the number of hours, half-days or sessions which the Secretary of State determines would constitute a single comparable whole-time pensionable employment.

(5) Paragraph (4) does not apply to the calculation of final year's pensionable pay for the purposes of--

- (a) regulations F1(2) and F2(2) (lump sum payable on death in pensionable employment or after pension becomes payable);
- (b) regulation S2 (reduction of pension on return to NHS employment).

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(6) If a member with pensionable service in part-time employment becomes entitled to a pension under regulation E2, E2A, E3 or E3A (ill health pensions, pensions on redundancy and early retirement pensions)--

(a) the member's pensionable service in part-time employment will count at its full length for the purpose of calculating--

(i) whether and (if so) to what extent, the pensionable service upon which the pension under regulation E2 or E2A is based should be increased under that regulation; or

(ii) the qualifying service for the purposes of regulation E3(2)(a) or regulation E3A(2)(a),

(b) the pension will be based on the whole-time equivalent of the period of part-time employment and, in the case of a pension under regulation E2 or E2A, the increase under that regulation will be limited to such amount as bears the same proportion to the amount that would have been paid had the pensionable service not been part-time as the whole-time equivalent bears to comparable whole-time employment.

(7) If a member in part-time pensionable employment elects to buy additional service as described in regulation Q1 (right to buy additional service), the period of additional service will be calculated in accordance with Table 1 or Table 3 of Schedule 1 (whichever is applicable) and then reduced by multiplying the full length of that additional service by the following fraction--

$$\frac{\text{part-time pensionable employment}}{\text{comparable whole-time pensionable employment}}$$

where--

"part-time pensionable employment" means the number of hours, half-days or sessions that the member was required to work under his contract of employment during the period by reference to which "remuneration" was calculated for the purposes of Table 1 of Schedule 1 or regular additional contributions were paid in accordance with regulation Q6 (paying by regular additional contributions); and

"comparable whole-time pensionable employment" means the number of hours, half-days or sessions that would have constituted comparable whole-time pensionable employment during that period.

(8) If a member in part-time pensionable employment elects to buy an unreduced retirement lump sum as described in regulation Q2 (right to buy an unreduced retirement lump sum), the period referred to in Table 2 or Table 4 of Schedule 1 (whichever is applicable) will be reduced in like manner as described in paragraph (7) above.

(9) Paragraphs (7) and (8) above also apply for the purposes of regulation Q7 (part payment for additional service or unreduced retirement lump sum).

(10) A member's pensionable service in respect of part-time employment will count at its full length (and concurrent periods of employment will be treated as a single employment) for the purposes of regulations C2(3) (limit on pensionable service that counts for benefits) and C3(1) (qualifying service).

## **R6 Members entitled to fees for domiciliary consultations**

(1) This regulation applies to members who, as medical or dental officers, have received fees from an employing authority in respect of domiciliary consultations.



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(2) Any fees received in respect of domiciliary consultations will be included in the member's pensionable pay for the purposes of regulation D1 (contributions by members).

(3) Any fees in respect of domiciliary consultations that are included in the member's pensionable pay for the purposes of regulation D1 will also be included in the member's pensionable pay for the purpose of deciding the year by reference to which final year's pensionable pay is to be calculated, but the member's final year's pensionable pay will then be reduced by the amount of any fees received in respect of domiciliary consultations during that year.

(4) If the member's final year's pensionable pay is reduced as described in paragraph (3), a supplementary benefit shall be payable with each benefit that is payable to, or in respect of, the member under this Section of the scheme.

(5) Subject to paragraph (6), each supplementary benefit that is payable in accordance with paragraph (4) will be calculated in the same way as the benefit that it supplements as if the amount of the fees received in respect of domiciliary consultations during the year by reference to which final year's pensionable pay is calculated were the member's final year's pensionable pay.

(6) Any supplementary benefit will be based on the same pensionable service as the benefit that it supplements, except that--

(a) any period of additional service bought as described in regulation Q1 (right to buy additional service) will be ignored;

(b) any additional period of pensionable service credited to the member by virtue of paragraph (5)(b) of regulation R3 (mental health officers) will be ignored;

(c) any period of service calculated as described in regulation 35(7) of the previous regulations (calculation of service in respect of part-time employment before 15th December 1966) will be ignored; and

(d) where that pensionable service consists of or includes part-time employment, regulation R5(1) (part-time employment) will be ignored.

(7) If the member exercises a right to buy additional service under regulation Q1 or unreduced retirement lump sum under regulation Q2, the amount of any fees received from an employing authority in respect of domiciliary consultations will not be included in the member's pensionable pay for the purpose of calculating the cost of the additional service or unreduced retirement lump sum, except as described in paragraph (8).

(8) If the member exercises a right to buy an unreduced retirement lump sum under regulation Q2--

(a) any fees received during the last financial year ending before the member elects to buy an unreduced retirement lump sum will be included in the member's remuneration for the purpose of calculating the amount payable under regulation Q5(3) (paying for an unreduced retirement lump sum by a single payment); and

(b) any fees received while the member is paying for an unreduced retirement lump sum by regular additional contributions will be included in the member's pensionable pay for the purposes of regulation Q6(5) (paying for an unreduced retirement lump sum by regular additional contributions).

(9) If the member returns to NHS employment after becoming entitled to a pension, the member's final year's pensionable pay will include, for the purposes of calculating previous pay under



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regulation S2 (reduction of pension on return to NHS employment), the amount of any fees received in respect of domiciliary consultations during the year by reference to which final year's pensionable pay is calculated.

### **R7 Members who work temporary additional sessions**

- (1) This regulation applies to members who work temporary additional sessions.
- (2) Any period of employment in respect of a temporary additional session will be ignored when calculating a member's pensionable service, and any payment received in respect of that employment will be ignored when calculating the member's pensionable pay.
- (3) In this regulation, "temporary additional session" means a session equivalent to an extra notional half-day which a specialist or an officer appointed to a post in the grade of associate specialist has, in exceptional circumstances, undertaken to work and which does not form part of the member's normal contractual duties.
- (4) In the case of a member who holds a whole-time specialist post and who receives at least 10/11ths of the pensionable pay that he would have received for whole-time pensionable employment, temporary additional session also includes any session in excess of 10 in any one week, regardless of its length.

### **R8 Former members of health service schemes**

- (1) For the purposes of these Regulations, "health service scheme" means--
  - (a) a superannuation scheme provided under regulations made under section 10 of the Superannuation Act 1972 and for the time being in force in relation to Scotland,
  - (b) a superannuation scheme provided under regulations for the time being in force under Article 12 of the Superannuation (Northern Ireland) Order 1972,
  - (c) in the case of a member whose pensionable employment commenced on or before 1st April 2012, a superannuation scheme made under section 2 of the Superannuation Act 1984 (an Act of Tynwald), or
  - (d) any other occupational pension scheme approved for this purpose by the Secretary of State.
- (2) A member who leaves employment in respect of which he qualified for benefit under a health service scheme and who joins this Section of the scheme may, subject to paragraphs (3) and (4), require the Secretary of State to credit him with a period of pensionable service (together with the rights attaching to that service) under this Section of the scheme, calculated as if--
  - (a) the employment to which the health service scheme applied were NHS employment; and
  - (b) the member's contributions to the health service scheme were contributions to this Section of the scheme.
- (3) The member may exercise this right only if a transfer payment is made from the health service scheme to this Section of the scheme.
- (4) A member who wishes to exercise this right must do so by making application in writing to the Secretary of State within 1 year after joining this Section of the scheme.

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(5) A member who leaves employment to which a health service scheme applied without becoming entitled to any benefits other than a return of contributions may buy additional service as described in regulation Q1 (right to buy additional service) and regulations Q4(7) and Q6(8) will apply, as the case may be, as if the previous service under a health service scheme were previous pensionable service under this Section of the Scheme.

(6) A member who leaves employment in respect of which the member qualified for benefit under a health service scheme and who joins the 2015 Scheme may, by notice in writing, require the Secretary of State to credit the member with a relevant period of pensionable service (together with the rights attaching to that service) under this Section of the scheme.

This is subject to paragraphs (8) and (9).

(7) That relevant period of pensionable service is calculated as if—

- (a) the employment to which the health service scheme applied were NHS employment, and
- (b) the member's contributions to that health service scheme were contributions to this Section of the scheme.

(8) The member may only exercise the right referred to in paragraph (6) if—

- (a) a transfer payment is made from the health service scheme to this Section of the scheme, and
- ~~(b) on the day the member becomes an active member of the 2015 Scheme, paragraph 2 of Schedule 7 to the 2013 Act applies to the period of service in respect of which that transfer value payment is made.~~  
(b) on the day the member becomes an active member of the 2015 Scheme either—
  - (i) paragraph 2 of Schedule 7 to the 2013 Act, or
  - (ii) paragraph 2 of Schedule 7 to the Public Service Pensions Act (Northern Ireland) 2014,

applies to the period of service in respect of which that transfer value payment is made.

(9) A notice referred to in paragraph (6) must be addressed to the Secretary of State and given within 1 year after joining the 2015 Scheme.

#### **R8A Former members of the NBSBPS**

(1) This regulation applies--

- (a) where, on 1st September 2007, the Secretary of State agrees to accept a single transfer payment in respect of all persons who were members of the NBSBPS on 31st August 2007 (including pensioner and deferred members) to this Section of the scheme; and
- (b) whether or not that transfer payment is made on the same day the Secretary of State agrees to accept it.

(2) A person referred to in paragraph (1) who, on 31st August 2007, was not a pensioner or deferred member of the NBSBPS shall be credited with such period of pensionable service under this Section of the scheme as the Secretary of State may determine having first taken advice from the Scheme Actuary.

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(3) Subject to paragraph (4), a deferred or pensioner member referred to in paragraph (1) shall be credited with a period of pensionable service under this Section of the scheme (together with the rights attaching to that credited service), calculated as if--

(a) the employment to which the NBSBPS applied was NHS employment that terminated on 31st August 2007; and

(b) his contributions to the NBSBPS were contributions to this Section of the scheme.

(4) Subject to paragraphs (5) and (6), a pensioner member who was entitled to a pension from the NBSBPS on 31st August 2007, shall be entitled to a member's pension under this regulation--

(a) as from 1st September 2007; and

(b) at a yearly rate equal to the pension he was formerly entitled to from the NBSBPS.

(5) For the purpose of calculating any further lump sum payable under regulation F2 (member dies after pension becomes payable) there shall be taken into account any pension and lump sum payments made under the rules of the NBSBPS.

(6) For the purposes of calculating any benefits that become payable in accordance with regulations G3 or H4 (member dies after pension becomes payable) on or after 1st September 2007 to the widow, widower, surviving civil partner or dependent child of a pensioner member referred to in paragraph (1), the member's pension referred to in those regulations means the member's pension under paragraph (4) of this regulation calculated without regard to any reduction that may have been made to that pension to take account of--

(a) early retirement from the NBSBPS; or

(b) national insurance modifications whereby benefits provided under the NBSBPS are modified for the purposes of the National Insurance Acts 1946 and 1965.

(7) Subject to paragraph (2) and (6) of regulation G1 (widow's pensions), paragraph (2) of regulation G7 (widower's pensions) and paragraph (6) of regulation G10 (surviving civil partner's pension), a widow, widower or surviving civil partner of a pensioner member referred to in paragraph (1) who was entitled to a widow, widower's or surviving civil partner's pension from the NBSBPS on 31st August 2007, shall be entitled to such a pension under this regulation--

(a) as from 1st September 2007; and

(b) at a rate equal to the pension he or she was formerly entitled to from the NBSBPS.

(8) Subject to paragraph (3) of regulation H1 (dependent child), a dependent child of a pensioner member referred to in paragraph (1) who was entitled to a pension from the NBSBPS on 31st August 2007, shall be entitled to such a pension under this regulation--

(a) as from 1st September 2007; and

(b) at a rate equal to the pension he or she was formerly entitled to from the NBSBPS.

### **R9 Members whose earnings are reduced**

(1) The Secretary of State may agree to pay a preserved pension under regulation L1 in respect of a member's pensionable service before the member's earnings were reduced if--

(a) the member has at least two years qualifying service; and

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- (b) within the three month period after the member's earnings are reduced that member's employer certifies that the reduction is due to the circumstances described in paragraph (2); or
  - (c) the member satisfies all of the conditions specified in paragraph (2A).
- (2) The circumstances referred in paragraph (1)(b) are that the reduction is due to--
- (a) the member being transferred to other employment with an employing authority; or
  - (b) the member taking up other employment with an employing authority, in circumstances approved by the Secretary of State; or
  - (c) a change in the member's duties, while continuing in the same employment, otherwise than at the member's request or as a result of something done by the member.
- (2A) The conditions referred to in paragraph (1)(c) are that--
- (a) the member has attained normal minimum pension age or, where relevant, protected pension age;
  - (b) the member makes an election and the Secretary of State has not previously accepted an election made by that member, and
  - (c) the member's employer has certified that--
    - (i) the member's pensionable pay is reduced by at least 10 per cent for a period of at least one year beginning with the first pay day on which the reduced pensionable pay was paid;
    - (ii) for a period of at least 12 months ending immediately before the reduction referred to in (i), the member's pensionable pay had not been subject to any other reduction;
    - (iii) the reduction to the member's pensionable pay is the result of a change to that member's duties so that the member's new, or remaining, duties are less demanding and carry less responsibility than the member's previous duties.
- (3) The preserved pension will be calculated and paid as described in regulation L1 (preserved pension), as if the member had left pensionable employment immediately before his earnings were reduced.
- (4) An election referred to in paragraph (2A) of this regulation must be made--
- (a) in writing and addressed to the Secretary of State, and
  - (b) within 15 months of the member's pensionable pay being reduced.
- (5) If a member continues to contribute to this Section of the scheme after the Secretary of State agrees to pay a preserved pension under regulation L1 in accordance with paragraph (1), the member's pensionable service before and after the member's earnings are reduced will, subject to paragraph (6), be treated separately unless, when the member becomes entitled to receive a pension, or dies, (whichever occurs first), it would be more favourable to the member to treat the member's pensionable service before and after the reduction, and all such other reductions (if any), as continuous.
- (6) The member's pensionable service before and after the member's earnings are reduced--
- (a) will be treated as continuous for the purpose of calculating the member's qualifying service under regulation C3 (meaning of "qualifying service"); and

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(b) if the member next leaves pensionable employment with a pension under regulation E2 (early retirement pension on grounds of ill-health) or E2A, will be treated as continuous for the purpose of calculating whether, and if so to what extent, the pensionable service on which the pension is based should be increased.

(7) If the member leaves pensionable employment with a pension under regulation E2 or E2A and the member's pensionable service falls to be increased as described in--

(a) paragraphs (4) to (6) of regulation E2; or

(b) paragraphs (4) to (6) of regulation E2A

then, if the member's pensionable service before and after the break is treated separately under paragraph (5), the increase will apply only in respect of benefits attributable to the period after the member's earnings were reduced.

(8) For the purposes of this regulation, "pensionable pay" in respect of part-time employment means the amount that the Secretary of State determines would have been paid in respect of a single comparable whole-time employment.

### **R10 Polygamous marriages**

(1) If a member dies without leaving a widow or widower but the member was at the date of death married to a spouse under a law which permits polygamy any benefits that would be payable to the member's widow or widower shall be payable to that spouse, or where there is more than one, to those spouses in equal shares.

(2) The shares will be calculated as at the date the member dies.

(3) A spouse's share of a pension will not be increased on the death of any other spouse.

### **R11 (revoked)**

### **R12 Pension sharing on divorce or nullity of marriage or, dissolution or nullity of civil partnership**

(1) Schedule 2A shall have effect in relation to--

(a) pension credit rights; and

(b) pension credit benefit payable,

under this Section of the scheme.

(2) Except as provided for in this regulation and in Schedule 2A, Parts B to V of these Regulations shall not apply to a person entitled to a pension credit or to a pension credit member.

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

### **S1 Suspension of pension on return to NHS employment**

(1) This regulation applies where a pension is payable to a member by virtue of regulation E1 (normal retirement pension), E4 (early retirement pension with employer's consent) or E5 (early

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retirement pension with actuarial reduction), or a preserved pension is payable to the member in the circumstances described in L1, and, within one month of the pension becoming payable, the member enters NHS employment in which he is engaged for more than 16 hours per week.

(2) A member to whom this regulation applies must inform his employer, and any other person that the Secretary of State may specify, that his pension under this Section of the scheme has become payable.

(3) Where this regulation applies the pension referred to in paragraph (1) shall, subject to paragraph (4), cease to be payable.

(4) The pension referred to in paragraph (1) shall again become payable if the member either ceases to be in any NHS employment (or reduces the number of hours worked to 16 or less) for a period of one month or, if sooner--

(a) from the date of the member's 70th birthday if the pension referred to in paragraph (1) becomes payable on or before 31st March 2008; or

(b) from the date of the member's 75th birthday if the pension referred to in paragraph (1) becomes payable on or after 1st April 2008.

(5) For the purposes of this regulation "NHS employment" includes--

(a) employment in respect of which regulations made under section 10 of the Superannuation Act 1972, and having effect in Scotland, apply; employment to which regulations made under Article 12 of the Superannuation (Northern Ireland) Order 1972 apply and employment commencing on or before 31st March 2012 to which a scheme made under section 2 of the Superannuation Act 1984 (an Act of Tynwald) applies; and

(b) employment with an employer with whom an agreement has been made under section 235 of the 2006 Act or in respect of whom a direction has been made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967.

## **S2 Reduction of pension on return to NHS employment**

(1) Subject to paragraph (15), this regulation applies to a member--

(a) until the member attains the age of 60; and

(b) who is in receipt of a relevant pension; and

(c) who continues in, or subsequently returns to, NHS employment.

(1A) A relevant pension for the purpose of this regulation is a pension payable,--

(a) in respect of pensionable employment that ceased before 1st April 2008,--

(i) under any or regulations E2 to E3C (pensions on ill health retirement and redundancy), or

(ii) in accordance with L1(2)(b)(preserved pension), or

(b) in respect of pensionable employment that ceased on or after 1st April 2008,--

(i) any of regulations E2 to E3, or

(ii) in accordance with E3A(2)(d)(ii)(early retirement pension (termination of employment by employing authority)) or



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- (iii) except where paragraph (c) applies, in accordance with L1(2)(b), or
- (c) where the member is a special class officer--
  - (i) regulation E1(normal retirement pension), or
  - (ii) if regulation R2(3)(b)(nurses, physiotherapists, midwives and health visitors) or regulation R3(9) (mental health officers) applies to the member, in accordance with L1(2)(b).
- (2) A member to whom this regulation applies must--
  - (a) inform the member's employer, and any other person that the Secretary of State may specify, that the member's pension under this Section of the scheme has become payable, and
  - (b) if requested to do so, provide any information (or authorise any other person to provide information) about the member's pay from NHS employment to the Secretary of State or to any other person the Secretary of State may specify.
- (3) If the relevant pension is one referred to in paragraph (1A)(a) or (c)--
  - (a) the member's pension will be reduced by the appropriate amount;
  - (b) the appropriate amount is the difference between the member's previous pay and the aggregate of--
    - (i) the amount of the member's pension (including in that amount any amount by which that pension has been reduced pursuant to an election under regulation E7); and
    - (ii) the amount of the member's pay from NHS employment for any financial year after the pension becomes payable.
- (3A) If the relevant pension is one referred to in paragraph (1A)(b), the member's pension will be reduced in accordance with paragraphs (3B) to (3D) if Amount A exceeds the member's previous pay.
- (3B) The reduction in that member's pension shall be equal to the difference between amount A and the member's previous pay, but shall not exceed Amount B.
- (3C) For the purposes of paragraphs (3A) and (3B), amount A is the aggregate of--
  - (a) the amount of the member's pay from NHS employment for any financial year after the pension becomes payable; and
  - (b) Amount B.
- (3D) For the purposes of paragraphs (3B) and (3C), amount B is the difference between--
  - (a) the amount of the member's pension (including in that amount any amount by which that pension has been reduced pursuant to an election under regulation E7); and
  - (b) the amount of an actuarially reduced pension.
- (4) A member's pension will be reduced as described in this regulation whether or not the member is included in this Section of the scheme in respect of the employment after his pension becomes payable and regardless of any provision of these Regulations under which a member may be treated as having left NHS employment without actually leaving.
- (5) For the purposes of paragraph (3), the amount to be taken as the member's previous pay shall--

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- (a) be increased in each financial year by the amount by which a pension beginning on the date on which the member's pension under this Section of the scheme became payable (or, if earlier, the member left pensionable employment) would have been increased under Part I of the Pensions (Increase) Act 1971 at the 6th April falling in that financial year;
  - (b) in the case of a person who holds a continuing employment (otherwise than as a practitioner), be increased by the annual rate of pay in respect of the continuing employment; and
  - (c) in the case of a person who is employed as a practitioner in continuing employment, be increased by the average of the annual amounts of uprated earnings in respect of the last 3 financial years prior to the pension referred to in paragraph (1) becoming payable.
- (6) For the purpose of calculating the reduction to be made under paragraph (3) or (3A) in respect of any part of a financial year, the amount of the member's "previous pay" will be reduced proportionately.
- (7) This paragraph applies to a person who held a part-time pensionable employment immediately before the pension described in paragraph (1) became payable and who, within the 12 months preceding the date on which the pension became payable, held a concurrent part-time pensionable employment.
- (8) Where paragraph (7) applies and the concurrent part-time pensionable employment terminated before the pension described in paragraph (1) became payable, previous pay shall be increased as described in paragraph (9).
- (9) For the purpose of paragraph (8), previous pay shall be increased by the annual rate of pay in respect of the concurrent part-time employment mentioned in that paragraph or, if higher, that part of the pensionable pay for that employment which falls within the 12 month period mentioned in paragraph (7).
- (10) This paragraph applies to a person who within the 12 months preceding the date on which the pension described in paragraph (1) became payable, was in pensionable employment as a practitioner.
- (11) Where paragraph (10) applies and the pensionable employment as a practitioner terminated before the pension described in paragraph (1) became payable, previous pay shall be increased as described in paragraph (12).
- (12) For the purpose of paragraph (11), previous pay shall be increased by the average of the annual amounts of the member's uprated earnings in respect of the pensionable employment as a practitioner mentioned in that paragraph.
- (13) For the purpose of paragraph (11), "uprated earnings" means the same as in paragraph 11(2) of Schedule 2.
- (14) For the purposes of this regulation--
- "actuarially reduced pension" means such annual amount as the Secretary of State determines, after consulting the Scheme Actuary, to be the amount that would have been payable to the member (regardless of whether the member has reached normal minimum pension age or protected minimum pension age) if the member had become entitled to a pension --
- (a) calculated in accordance with regulation E5 (early retirement pension with actuarial reduction) at the time he became entitled to a pension mentioned in paragraph (1A)(b), plus
  - (b) any increases to that amount payable under Part I of the Pensions (Increase) Act 1971 for that period;

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"annual rate of pay" means the annual rate of so much of the member's pensionable pay immediately before his pension became payable as consisted of salary, wages or other regular payments of a fixed nature plus so much of his pensionable pay as consisted of fees and other regular payments not of a fixed nature as was payable during the last year before his pension became payable;

"continuing employment" means a pensionable employment which a person held immediately before he became entitled to a pension under this Section of the scheme and which he continues to hold whether it is pensionable or not;

"NHS employment" has the same meaning as in regulation S1(5);

"pension" means the amount of pension paid under this Section of the scheme for any financial year, plus any increases to that pension payable under Part I of the Pensions (Increase) Act 1971 for that period;

"pay" means the amount of pensionable pay received by the member during that financial year from NHS employment (or what would have been his pensionable pay had he been in pensionable employment); and

"previous pay" means the greater of--

- (a) final year's pensionable pay; and
- (b) the annual rate of pay for any pensionable employment in respect of which the pension referred to in paragraph (1) became payable and which the member held immediately before becoming entitled to that pension.

(15) This regulation does not apply to--

(a) practice staff in respect of whom a pension is payable under any of regulations E1 to E5 (retirement pensions) and L1 (preserved pension) who were employed by a registered medical practitioner on both 31st August 1997 and 1st September 1997 and who--

(i) were ineligible to rejoin this Section of the scheme with effect from 1st September 1997; or

(ii) made an election not to rejoin this Section of the scheme with effect from that date and who have not cancelled that election; and

(b) members who are transferred into NHS employment as a result of a transfer of an undertaking to the employer

(c) a person in respect of whom a pension is payable under any of regulations E1 to E5 and L1 who was employed by an Independent Provider on both the day that Provider's approval as an employing authority takes effect in accordance with Schedule 2B ("the effective date") and the day immediately before the effective date, and who—

(i) was ineligible to rejoin this Section of the scheme on the effective date and remains ineligible to do so;

(ii) made an election not to rejoin this Section of the scheme with effect from the effective date and has not cancelled it; or

(iii) was ineligible to rejoin this Section of the scheme on the effective date and became eligible to do so on the day immediately following the expiry of the protection period in regulation E2C(6)(b) ("the day of eligibility"), but who has made an election not to rejoin with effect from the day of eligibility and that election remains operative..

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### **S3 Benefits in respect of pensionable employment after pension becomes payable**

(1) This regulation applies to a member in respect of whom a pension is payable under regulation E2 (early retirement pension on grounds of ill-health) and who subsequently returns to pensionable employment.

(2) For the purposes of paragraphs (3) and (5), the member's "previous service" means the pensionable service in respect of which the member became entitled to receive a pension under regulation E2 and the member's "later service" means any pensionable service which accrues after becoming so entitled.

(3) Subject to paragraph (5), the member's benefits in respect of later service shall be calculated without regard to the member's previous service.

(4) Where the member becomes entitled, under regulation E2 to a pension in respect of later service, regulation E2(3) shall not apply in the calculation of that pension.

(5) For the purposes of regulation C2 (meaning of "pensionable service") and regulation D1(3) and (4) (contributions by members), the member's previous service and later service shall be aggregated.

### **S3A Benefits in respect of pensionable employment after pension becomes payable under regulation E2A**

(1) This regulation applies to a member in respect of whom a pension is payable under regulation E2A (ill health pension on early retirement) and who subsequently returns to pensionable employment.

(2) For the purposes of this regulation--

(a) the member's "previous service" means the pensionable service in respect of which the member became entitled to receive a pension under regulation E2A; and

(b) the member's "later service" means any pensionable service which accrues after becoming so entitled.

(3) Subject to paragraph (4), the member's benefits in respect of later service shall be calculated without regard to the member's previous service.

(4) For the purposes of regulation C2 (meaning of pensionable service) and regulation D1(3) and (4) (contributions by members), the member's previous service and later service shall be aggregated.

(5) Subject to the following provisions of this regulation, a member who--

(a) is entitled to a tier 1 pension in respect of the member's previous service; and

(b) satisfies the tier 1 condition or, as the case may be, the tier 2 condition in respect of the member's later service,

shall be entitled to the following benefits.

(6) Those benefits are--

(a) the member's original tier 1 pension in respect of the member's previous service; and

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(b) a tier 1 pension or, as the case may be, a tier 2 pension in respect of the member's later service.

(7) A member--

(a) to whom a tier 2 pension is payable in place of a tier 1 pension in respect of the member's previous service in accordance with regulation E2B(3), and

(b) who satisfies the tier 1 condition or, as the case may be the tier 2 condition, in respect of the member's later service,

shall be entitled to the following benefit.

(8) That benefit is the aggregate of--

(a) a tier 2 pension paid in accordance with regulation E2B in respect of the member's previous service; and

(b) a tier 1 pension in respect of the member's later service.

#### **S4 Benefits on death in pensionable employment after pension under regulation E2 becomes payable**

(1) This regulation applies to a member in respect of whom a pension is payable under regulation E2 (early retirement pension on grounds of ill-health) who--

(a) returns to pensionable employment after that pension becomes payable; and

(b) dies in pensionable employment.

(1A) Subject to the modifications set out in paragraph (1B), this regulation shall also apply to a member in respect of whom a pension is payable under regulation E2 (early retirement on grounds of ill-health) who--

(a) returns to pensionable employment after that pension becomes payable; and

(b) on the day they die, is--

(i) under the age of 70;

(ii) in NHS employment;

(iii) no longer required to pay contributions pursuant to regulation D1(3) or (4) (contributions by members) on or before 1st April 2008; and

(iv) except where regulation R4(6) applies, not in receipt of a pension under any of regulations E1 to E5 in respect of his later service.

(1B) The modifications referred to in paragraph (1A) are--

(a) in paragraph (3A), for "on the date of the member's death" substitute "on the member's last day of pensionable employment";

(b) in paragraph (7), for "pensionable pay when he died" substitute "final year's pensionable pay";

(c) in paragraph (8), for "the 6 months immediately following the member's death" substitute "the 3 months immediately following the member's death or the 6 months immediately following the member's death if he leaves a dependent child";

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(d) in paragraph (11), for "the 6 month period" substitute "the 3 month or, as the case may be, the 6 month period";

(e) in paragraph (12)--

(i) for "rate of pensionable pay when he died" substitute "final year's pensionable pay",  
and

(ii) for "at that time" substitute "when he died".

(1C) Subject to the modifications set out in paragraph (1D), this regulation shall also apply to a member in respect of whom a pension is payable under regulation E2 (early retirement on grounds of ill-health) who--

(a) returns to pensionable employment after that pension becomes payable, and

(b) on the day the member dies, the member is--

(i) under the age of 75,

(ii) in NHS employment,

(iii) no longer required to pay contributions pursuant to regulation D1(3) or (4) (contributions by members) on, or after, 2nd April 2008, and

(iv) except where regulation R4(6) applies, not in receipt of a pension under any of regulations E1 to E5 in respect of the member's later service.

(1D) The modifications referred to in paragraph (1C) are--

(a) in paragraph (3A), for "on the date of the member's death" substitute "on the member's last day of pensionable employment";

(b) in paragraph (7), for "pensionable pay when he died" substitute "final year's pensionable pay";

(c) in paragraph (12)--

(i) for "rate of pensionable pay when he died" substitute "final year's pensionable pay",  
and

(ii) for "at that time" substitute "when he died".

(2) In this regulation, "previous service" and "later service" have the same meaning as in regulation S3(2).

(3) If this regulation applies, a lump sum payable on the member's death shall be payable in addition to any lump sum payable under regulation F2.

(3A) The additional lump sum referred to in paragraph (3) shall be equal to 5 times the amount of the pension that would have been payable to the member had he left NHS employment and been entitled to a pension based on his later service under regulation E1 (normal retirement pension) on the date of the member's death.

(4) If a member to whom this regulation applies leaves a surviving--

(a) spouse or civil partner; or

(b) nominated partner (if the member became entitled to the pension referred to in paragraph (1) on or after 1st April 2008),



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the amount of pension payable to the surviving spouse, civil partner or nominated partner shall be the aggregate of the amounts referred to in paragraphs (5) and (7).

(5) Subject to paragraph (9), the amount payable in respect of the member's previous service shall be equal to the amount of the member's pension (if any) that was payable when he died.

(6) The amount referred to in paragraph (5) shall be paid for--

(a) the 3 months immediately following the member's death; or

(b) the 6 months immediately following the member's death if he leaves a dependent child who is dependent on the surviving spouse, civil partner or nominated partner.

(7) The amount payable in respect of the member's later service shall be equal to the rate of the member's pensionable pay when he died.

(8) The amount referred to in paragraph (7) shall be paid for the 6 months immediately following the member's death.

(9) Paragraph (5) shall not apply if the aggregate of the spouse's or civil partner's pension and any child allowance which would otherwise be payable under these Regulations in respect of the member's previous service is greater.

(10) Upon expiry of the 3 month or, as the case may be, 6 month period referred to in paragraph (6), the amount of the surviving spouse's, civil partner's or nominated partner's pension in respect of the member's previous service shall be the amount determined in accordance with regulation G3.

(11) Upon expiry of the 6 month period referred to in paragraph (8), the amount of the surviving spouse's, civil partner's or nominated partner's pension in respect of the member's later service shall be equal to one-half of the rate of pension mentioned in paragraph (3A) that would have been payable to the member.

(12) If a member to whom this regulation applies leaves a dependent child but--

(a) does not leave a surviving spouse or civil partner; and

(b) a nominated partner pension is not payable in respect of the member's later service,

the child allowance, for the 6 months immediately following the member's death, shall be equal to the aggregate of the member's rate of pensionable pay when he died and the amount of the member's pension (if any) that he was receiving at that time.

(13) Subject to paragraph (14), except where a child allowance is payable at the rate mentioned in paragraph (12), the child allowance in respect of the member's later service shall--

(a) be paid as a proportion of the rate of pension mentioned in paragraph (3A) that would have been payable to the member; and

(b) such proportion shall be determined in accordance with the circumstances as described in regulation H3 (member dies in pensionable employment).

(14) If a member to whom this regulation applies leaves a child who was a dependent child both at the time the member terminated the member's previous service and when he died, any child allowance payable under these Regulations shall be calculated according to--

(a) regulation H4 (member dies after pension becomes payable) in respect of the pension already in payment; and

(b) regulation H3 in respect of later pensionable employment.

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(15) If the aggregate of the pensionable service used in the calculation referred to in paragraph (14)(a) and that used in the calculation referred to in paragraph (14)(b) ("the member's aggregated service") is less than 10 years, additional service will be allocated to the later period of pensionable employment for the purpose of the calculation under regulation H3.

(16) The amount of additional service referred to in paragraph (15) is the difference between 10 years pensionable service and the member's aggregated service.

#### **S4A Benefits on death in pensionable employment after pension under regulation E2A becomes payable**

(1) This regulation applies to a member in respect of whom a pension is payable under regulation E2A who--

- (a) returns to pensionable employment after that pension becomes payable; and
- (b) dies in pensionable employment.

(1A) Subject to the modifications set out in paragraph (1B), this regulation shall also apply to a member in respect of whom a pension is payable under regulation E2A who--

- (a) returns to pensionable employment after that pension becomes payable, and
- (b) on the day the member dies, the member is--
  - (i) under the age of 75,
  - (ii) in NHS employment,
  - (iii) no longer required to pay contributions pursuant to regulation D1(3) or (4) (contributions by members), and
  - (iv) except where regulation R4(6) applies, not in receipt of a pension under any of regulations E1 to E5 in respect of the member's later service.

(1B) The modifications referred to in paragraph (1A) are--

- (a) in paragraph (6), for "on the date of the member's death" substitute "on the member's last day of pensionable employment";
- (b) in paragraph (10), for "rate of pensionable pay when the member died" substitute "final year's pensionable pay";
- (c) in paragraph (15)(a), for "rate of pensionable pay when the member died" substitute "final year's pensionable pay";
- (d) in paragraph (15)(b), for "at that time" substitute "when he died".

(2) For the purposes of this regulation, the member's "previous service" means the pensionable service in respect of which the member became entitled to receive a tier pension under regulation E2A (ill health pension on early retirement) and the member's "later service" means any pensionable service which accrues after becoming so entitled.

(3) Subject to paragraph (4), the member's benefits in respect of later service shall be calculated without regard to the member's previous service.

(4) For the purposes of regulation C2 (meaning of pensionable service) and regulation D1(3) and (4) (contributions by members), the member's previous service and later service shall be aggregated.

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(5) If this regulation applies, a lump sum payable on the member's death shall be payable in addition to any lump sum payable under regulation F2 (member dies after pension becomes payable).

(6) The additional lump sum referred to in paragraph (5) shall be equal to 5 times the amount of the pension that would have been payable to the member had he left NHS employment and been entitled to a tier 2 pension based on the member's later service under regulation E2A on the date of the member's death.

(7) If a member to whom this regulation applies leaves a surviving spouse, civil partner or nominated partner, the amount of pension payable to the surviving spouse, civil partner or nominated partner shall be the aggregate of the amounts referred to in paragraphs (8) and (10).

(8) Subject to paragraph (12), the amount payable in respect of the member's previous service shall be equal to the amount of the member's pension (if any) that was payable when he died.

(9) The amount referred to in paragraph (8) shall be paid for--

- (a) the 3 months immediately following the member's death; or
- (b) the 6 months immediately following the member's death if the member leaves a dependent child who is dependent on the surviving spouse, civil partner or nominated partner.

(10) The amount payable in respect of the member's later service shall be equal to the member's rate of pensionable pay when the member died.

(11) The amount referred to in paragraph (10) shall be paid for the 6 months immediately following the member's death.

(12) Paragraph (8) shall not apply if the aggregate of the spouse's, civil partner's or nominated partner's pension and any child allowance which would otherwise be payable under these Regulations in respect of the member's previous service is greater.

(13) Upon expiry of the 3 month or, as the case may be, 6 month period referred to in paragraph (9), the amount of the surviving spouse's, civil partner's or nominated partner's pension in respect of the member's previous service shall be the amount determined in accordance with regulation G3 (member dies after pension becomes payable).

(14) Upon expiry of the 6 month period referred to in paragraph (11), the amount of the surviving spouse's, civil partner's or nominated partner's pension in respect of the member's later service shall be equal to one-half of the rate of pension that would have been payable to the member had he become entitled to the pension mentioned in paragraph (6).

(15) If a member to whom this regulation applies leaves a dependent child but does not leave a surviving spouse, civil partner, or nominated partner, the child allowance, for the 6 months immediately following the member's death, shall be equal to the aggregate of--

- (a) the member's rate of pensionable pay when the member died; and
- (b) the amount of the member's pension (if any) that he was receiving at that time.

(16) Subject to paragraph (17), except where a child allowance is payable at the rate mentioned in paragraph (15), the child allowance in respect of the member's later service shall--

- (a) be paid as a proportion of the rate of pension that would have been payable to the member had he become entitled to the pension mentioned in paragraph (6); and

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(b) such proportion shall be determined in accordance with the circumstances as described in regulation H3 (member dies in pensionable employment).

(17) If a member to whom this regulation applies leaves a child who was a dependent child both at the time the member terminated the member's previous service and when he died, any child allowance payable under these Regulations shall be calculated according to--

(a) regulation H4 (member dies after pension becomes payable) in respect of the pension already in payment; and

(b) regulation H3 in respect of later pensionable employment.

(18) If the aggregate of the pensionable service used in the calculation referred to in paragraph (17)(a) and that used in the calculation referred to in paragraph (17)(b) ("the member's aggregated service") is less than 10 years, additional service will be allocated to the later period of pensionable employment for the purpose of the calculation under regulation H3.

(19) The amount of additional service referred to in paragraph (18) is the difference between 10 years pensionable service and the member's aggregated service.

## **Part T General rules about benefits**

### **T1 Claims for benefits**

(1) A person claiming to be entitled to benefits under these Regulations ("the claimant") shall make a claim in writing to the Secretary of State in such form as the Secretary of State may from time to time require.

(2) Pursuant to such a claim, the claimant and the member's employing authority (including any previous employing authority of the member) shall provide such--

(a) evidence of entitlement,

(b) authority or permission as may be necessary for the release by third parties of information in their possession relating to the member or, where relevant, the claimant, and

(c) other information the Secretary of State considers is relevant to the claim,

as the Secretary of State may from time to time require for the purposes of these Regulations.

(3) A claim referred to in paragraph (1) may be given to the Secretary of State by a person other than the claimant.

(4) The Secretary of State may accept any claim for benefits to which this regulation applies, and any evidence, authority or permission given in connection with that claim, if it is made or given by means of an electronic communication that is approved by the Secretary of State for that purpose.

### **T1A Provision of information: continuing entitlement to benefit**

(1) The Secretary of State 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 Secretary of State with all or any of the following material—

(a) evidence of the person's identity;

(b) the person's contact details;

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(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 Secretary of State may withhold all, or any part, of any benefit payable to that person.

## **T2 Deduction of tax**

The Secretary of State shall deduct from any payment under this Section of the scheme any tax which is required to be paid in respect of it.

### **T2A Deduction of tax: further provisions**

(1) For the purposes of these Regulations and the 2004 Act, the scheme administrator shall be the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG).

(2) Subject to paragraph (2A), if a person's entitlement to a benefit under these Regulations--

(a) constitutes a benefit crystallisation event in accordance with section 216 of the 2004 Act; and

(b) a lifetime allowance charge under that Act is payable in respect of that event,

that charge shall be paid by the scheme administrator.

(2A) The member's present or future benefits in respect of which any charge under paragraph (2) arises shall be reduced by an amount that fully reflects the amount of tax paid by the scheme administrator and shall be calculated by reference to advice provided by the Scheme Actuary for that purpose.

(3) (revoked)

(4) (revoked)

(5) (revoked)

(6) (revoked)

(7) Where a person is entitled to a benefit under these Regulations he shall (whether or not he intends to rely on entitlement to transitional protection, an enhanced lifetime allowance, or to enhanced protection) give to the scheme administrator such information as will enable the scheme administrator to determine--

(a) whether any lifetime allowance is payable in respect of the benefit and, if so,

(b) the amount of that charge.

(8) If a person applying for a benefit under these Regulations intends to rely on entitlement to an enhanced lifetime allowance by virtue of any of the provisions listed in section 256(1) of the 2004 Act (enhanced lifetime allowance regulations), he shall give to the scheme administrator--

(a) the reference number issued by the Commissioners under the Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006 in respect of that entitlement;

(b) the information referred to in paragraph (7).

(8A) If a person claiming a benefit under these Regulations intends to rely on entitlement to transitional protection against a lifetime allowance charge in accordance with paragraph 14 of

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Schedule 18 to the 2011 Act or paragraph 1 of Schedule 22 to the Finance Act 2013, that person shall give to the scheme administrator—

- (a) the reference number issued by the Commissioners under the Registered Pension Schemes (Lifetime Allowance Transitional Protection) Regulations 2011 or the Registered Pension Schemes and Relieved Non-UK Pension Schemes (Lifetime Allowance Transitional Protection) (Notification) Regulations 2013 in respect of that entitlement; and
- (b) the information referred to in paragraph (7).

(8B) If a person claiming a benefit under these Regulations intends to rely on entitlement to individual protection against a lifetime allowance charge in accordance with paragraph 1 of Schedule 6 to the Finance Act 2014, that person must give to the scheme administrator—

- (a) the reference number issued by the Commissioners under the Registered Pension Schemes and Relieved Non-UK Pension Schemes (Lifetime Allowance Transitional Protection) (Individual Protection 2014 Notification) Regulations 2014 in respect of that entitlement, and
- (b) the information referred to in paragraph (7).

(9) The information referred to in paragraph (7) or, as the case may be, paragraph (8), (8A) or (8B) shall be given to the scheme administrator--

- (a) at the time the person makes a claim for a benefit; or
- (b) where that information has not been provided at the time of making the claim, within such time as the scheme administrator specifies in writing.

(10) Where the person fails to provide all, or part of, the information referred to in paragraph (7) or, as the case may be, paragraph (8), (8A) or (8B) within the time limits specified by the scheme administrator where relevant, the scheme administrator may treat the whole of the benefit as a chargeable benefit and pay the charge on that basis.

(11) Subject to regulation F2(4), where--

- (a) a member has given notice to the scheme administrator in accordance with regulation F2(1) that a lump sum payable under that regulation is to be treated as a pension protection lump sum death benefit in accordance with paragraph 14 of Schedule 29 to the 2004 Act; and
- (b) has not revoked that notice,

the scheme administrator shall deduct tax at 55 per cent (or such other amount as applies from time to time) from the lump sum payable in accordance with section 206 of that Act.

(11A) Where—

- (a) a lump sum on death is payable in accordance with regulation F2 (member dies after pension becomes payable); and
- (b) that lump sum is payable in respect of a member who had reached the age of 75 at the date of the member's death,

the scheme administrator shall deduct tax at the rate referred to in paragraph (11) from the lump sum payable in accordance with section 206 of the 2004 Act.

(11B) Where—



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(a) the Secretary of State's liability to pay a pension under regulation E1 (normal retirement pension) is discharged by the payment of a lump sum in accordance with paragraph (4) of that regulation; and

(b) that lump sum payment is made to a member who has reached the age of 75, the scheme administrator shall deduct tax at the rate of 55 per cent (or such other amount as applies from time to time) from the lump sum payable in accordance with section 205A of the 2004 Act.

(12) This paragraph applies to a member who—

(a) is liable to an annual allowance charge in accordance with section 237A of the 2004 Act, and

(b) meets the conditions specified in paragraph (1) of section 237B of that Act.

(13) A member to whom paragraph (12) applies may give notice in writing to the scheme administrator specifying that the scheme administrator and the member are to be jointly and severally liable for the payment of the annual allowance charge due in respect of that member in accordance with section 237B of that Act.

(14) Unless the scheme administrator's liability for an annual allowance charge referred to in paragraph (13) is discharged in accordance with section 237D of the 2004 Act—

(a) that annual allowance charge will be paid by the scheme administrator on behalf of the member, and

(b) that member's present or future benefits in respect of which that charge arises shall be adjusted in accordance with section 237E of the 2004 Act and shall be calculated by reference to advice provided by the Scheme Actuary for that purpose.

(15) Paragraph (16) applies to members who are practitioners or non-GP providers.

(16) The members referred to in paragraph (15) shall provide the information required by regulation 15A of the Registered Pension Schemes (Provision of Information) Regulations 2006 in respect of their benefits under the scheme in a manner prescribed from time to time by the Secretary of State.

(17) "Enhanced lifetime allowance" and "enhanced protection" shall be construed in accordance with the 2004 Act.

### **T3 Benefits not assignable**

(1) Any assignment of, or charge on, or any agreement to assign or charge, any right to a benefit under this Section of the scheme is void.

(2) On the bankruptcy of any person entitled to a benefit under this Section of the scheme, no part of the benefit shall be paid to any trustee or other person acting on behalf of the creditors, except as provided for in paragraph (3).

(3) Where, following the bankruptcy of any person entitled to a benefit under this Section of the scheme, the court makes an income payments order under section 310 of the Insolvency Act 1986 that requires the Secretary of State to pay all or part of the benefit to the person's trustee in bankruptcy the Secretary of State shall comply with that order.

### **T4 Beneficiary who is incapable**

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(1) If the Secretary of State considers that a beneficiary is unable to look after his affairs (by reason of illness, mental disorder, minority or otherwise), she may use any amounts due to the beneficiary for his benefit or may pay them to some other person to do so.

(2) Payment under paragraph (1) to a person other than the beneficiary will discharge the Secretary of State from any obligation in respect of the amount concerned.

#### **T5 Offset for crime negligence or fraud**

(1) If a loss to public funds occurs as a result of a member's criminal, negligent or fraudulent act or omission, the Secretary of State may reduce any benefits or other amounts payable to, or in respect of, the member (other than guaranteed minimum pensions and benefits arising out of a transfer payment) by an amount equal to the loss.

(2) If the loss to public funds is equal to or greater than the value of the benefits or other amounts payable to or in respect of the member, a reduction under paragraph (1) may result in the benefits ceasing to be payable.

(3) The Secretary of State shall give the member a certificate specifying the amount of the loss to public funds and of the reduction in benefits.

(4) If the amount of the loss is disputed, no reduction in benefits will be made until the member's obligation to make good the loss has become enforceable under the order of a court or arbitrator.

(5) Where the loss referred to in paragraph (1) is suffered by an employing authority, the amount of the reduction in benefits will be paid to the employing authority.

#### **T6 Loss of rights to benefits**

(1) Subject to paragraph (2), the Secretary of State may direct that all or part of any rights to benefits or other amounts payable to or in respect of a member be forfeited if the member is convicted of any of the following offences, committed before the benefit or other amount becomes payable--

(a) an offence in connection with employment to which this Section of the scheme applies which is certified by the Secretary of State either to have been gravely injurious to the State or to be liable to lead to serious loss of confidence in the public service;

(b) an offence of treason;

(c) one or more offences under the Official Secrets Acts 1911 to 1989 for which the member has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in the aggregate to, at least 10 years.

(1A) Subject to paragraph (2), the Secretary of State may also direct that all or part of any rights to benefits or other amounts payable in respect of a member be forfeited where such benefits or amounts are payable to a person who is--

(a) the member's widow, widower, surviving nominated partner or surviving civil partner;

(b) a dependant of the member;

(c) a person not coming within sub-paragraph (a) or (b) who is specified in a notice or nomination given under regulation F5; or

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(d) a person to whom such benefits or amounts are payable under the member's will or on his intestacy,

and that person is convicted of the offence of murder or manslaughter of that member or of any other offence of which unlawful killing of that member is an element.

~~(2) A guaranteed minimum pension may be forfeited only if paragraph (1)(b) or (c) applies.~~

(2) A guaranteed minimum pension may be forfeited only if paragraph (1)(b) or (c) or paragraph (1A) applies.

## **T7 Commutation of trivial pensions**

(1) Where a person has become entitled to a pension of a trivial amount, the Secretary of State may pay to that person a lump sum representing the capital value of that pension and of any benefits that might otherwise have become payable on that person's death.

(2) Any lump sum payable under this regulation will be calculated by the Secretary of State, after taking advice from the Scheme Actuary.

(3) A pension may be treated as trivial only if all benefits payable under this Section of the scheme to the person concerned are of an amount consistent with--

~~(a) the contracting out and preservation requirements of the 1993 Act; and~~

(a) the preservation requirements; and

(b) either—

(i) the lump sum rule and lump sum death benefit rule, or

(ii) the requirements of regulation 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 (payments by larger pension schemes).

(4) (revoked)

(5) A payment made under paragraph (1) shall discharge the Secretary of State's liability in respect of that pension and of any benefits that might otherwise have become payable on that person's death.

## **T8 Interest on late payment of benefits**

(1) Subject to paragraph (2) below, where the whole or any part of a qualifying payment under these Regulations is not paid by the end of the period of one month beginning with the due date, the Secretary of State shall pay interest, calculated in accordance with paragraph (3) below, on the unpaid amount to the person to whom the qualifying payment should have been made.

(2) Interest under paragraph (1) above shall not be payable where the Secretary of State is satisfied that the qualifying payment was not made on the due date by reason of some act or omission on the part of the member or other recipient of the qualifying payment.

(3) The interest referred to in paragraph (1) above shall be calculated at the base rate on a day to day basis from the due date to the date of payment, and shall be compounded with three-monthly rests.

(4) In this regulation--

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"base rate" means the Official Bank Rate for the time being quoted by the Bank of England;

"due date" means—

- (za) in the case of a pension payable under regulation E3A, where the member's employing authority is an Independent Provider the later of—
  - (i) the date on which the Secretary of State receives the additional contributions referred to in regulation D2, or
  - (ii) the day immediately following that on which the member retires from pensionable employment.

(a) in the case of a lump sum under Part F above, the day immediately following the day of the member's death, unless the lump sum falls to be paid to the member's personal representative, in which case it means the later of--

- (i) the date on which probate or letters of administration are produced to the Secretary of State, or
- (ii) the Secretary of State is satisfied that the lump sum may be paid as provided in regulation F5(4),

whichever is the earlier;

(aa) in the case of an amount in respect of a pension under regulation F2 that is payable to--

- (i) the member's personal representatives, the date on which probate or letters of administration were produced to the Secretary of State,
- (ii) any person or body to whom the pension has been assigned by the member's personal representatives, the date on which the notice under regulation F2(10) was received by the Secretary of State, and
- (iii) any person or body other than those referred to in (i) and (ii), the day immediately following the day of the member's death;

(b) in the case of a pension payable on a member's death other than a pension payable under regulation F2, the day immediately following the day of his death;

(c) in the case of a pension under regulation L1, the day on which the pension becomes payable in accordance with that regulation;

(d) in the case of a refund of contributions, the day after that on which the Secretary of State receives from the Commissioners of Inland Revenue the information he requires for the purposes of compliance with paragraphs (3) to (5) of regulation L2; and

(e) in any other case, the day immediately following that of the member's retirement from pensionable employment,

and the first day on which the Secretary of State is in possession of all information (including information which the Secretary of State obtains as result of a determination under regulation E2B(3)) necessary to be able to calculate the value of the qualifying payment;

"qualifying payment" means any amount payable by way of a pension or lump sum, or by way of a refund of contributions, under these Regulations, and for these purposes--

- (a) any amount paid by way of an interim payment calculated by reference to an expected pension benefit award, pending final calculation of the full value of that benefit; or

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- (b) any amount paid that increases the amount of an earlier payment due to--
  - (i) a backdated or later increase in pensionable pay, or
  - (ii) the payment of a tier 2 pension under regulation E2A in place of a tier 1 pension being paid to a member following a determination by the Secretary of State under regulation E2B(3),

shall be treated as a separate qualifying payment;

- (5) (revoked)

### **Interest and Administration Charges: late paid contributions**

**T9.**—(1) For the purposes of this regulation there is a “chargeable event” where an employing authority fails to pay, by the dates therein specified, the full amount of contributions it is required to pay under any of the following provisions—

- (a) regulations D1, D2, D3, Q4, Q5, Q6, Q8, Q10, Q11;
- (b) paragraph 10 or 23 of Schedule 2,
- (c) Schedule 2B.

(2) Where there is a chargeable event, the amount of contributions that should have been paid under a provision referred to in paragraph (1) is to be determined by the Secretary of State having regard to—

- (a) the amount of contributions historically paid pursuant to the provision in question by that employing authority;
- (b) any reasons or explanation provided by the employing authority for the change in the amount of contributions (if any) it has paid pursuant to that provision;
- (c) any other factors that the Secretary of State considers relevant.

(3) Where there is a chargeable event, the employing authority is liable to pay standard rate interest on the amount of unpaid contributions determined under paragraph (2) and an administration charge in respect of each such event.

(4) Where the Secretary of State becomes aware of a chargeable event, the Secretary of State shall give the employing authority a written notice specifying—

- (a) the date of that event;
- (b) the amount of unpaid contributions determined under paragraph (2) ;
- (c) the amount of standard rate interest payable in respect of that event;
- (d) the amount of administration charge payable in respect of it;
- (e) that payment of the amounts referred to in paragraphs (c) and (d) is to be made within 1 month of the date of the notice and that failure to do so incurs further interest and administration charges.

(5) Any amount payable by way of interest or payable by way of an administration charge is to be paid as single lump sum unless the Secretary of State considers the case to be exceptional and considers it appropriate for that amount to be paid over a period, and by a number of instalments, determined by the Secretary of State.

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(6) Where the Secretary of State considers the case to be exceptional, nothing in the preceding paragraphs prevents the Secretary of State from waiving all or any part of the amount of interest, or all or any part of an administration charges, payable.

(7) In the case of arrears in respect of the scheme year 2014-2015 and subsequent years, the standard rate of interest is the aggregate of the percentage (if any) by which the consumer prices index for the February before the scheme year in which the chargeable event arose is higher than it was for the previous February plus 3%, compounded at annual intervals.

(8) In respect of arrears in respect of the scheme year 2014-2015 and subsequent years, the administration charge is £75.

(9) In any particular case the Secretary of State may direct that, for the purposes of this regulation, “employing authority” includes one or more of—

- (a) the transferee under a transfer of staff order pursuant to—
  - (i) in the case of England, section 28(4)(b) of, or paragraph 29(3) of Schedule 4 to, the 2006 Act;
  - (ii) in the case of Wales, section 22(4)(b) of, or paragraph 8 of Schedule 3 to, the 2006 (Wales) Act;
- (b) without limiting sub-paragraph (a), a successor, transmittee or assignee of all or part of an employing authority’s business or functions.

## **Part U Administrative matters**

### **U1 Extension of time limits**

In any particular case, the Secretary of State may extend any time limit mentioned in these Regulations.

### **U1A Determinations by medical practitioners**

(1) The Secretary of State may make arrangements for his functions under these Regulations in relation to a decision whether a person is--

- (a) permanently incapable of efficiently discharging the duties of his employment because of physical or mental infirmity for the purposes of regulation E2 or E2A;
- (b) incapable of earning a living because of physical or mental infirmity for the purposes of regulation G8(2), regulation G11(2) or regulation G15(2)(a);
- (c) incapable of earning a living because of permanent physical or mental infirmity for the purposes of regulation H1(6);
- (d) in good health for the purposes of regulation J1(6);
- (e) suffering from mental or physical infirmity that makes him permanently incapable of efficiently discharging the duties of employment or suffering from mental or physical infirmity that makes him permanently incapable of engaging in regular employment for the purposes of regulation L1(3)(a) and (b) respectively,
- (f) permanently incapable of regular employment because of physical or mental infirmity for the purposes of regulation E2A(2)(b)(ii),



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(g) expected to live for less than one year for the purposes of the lump sum rule referred to in regulations E1(4)(b), E2A(7)(b) and L1(5)(b),

(h) able to satisfy the severe ill health condition for the purposes of subsection (3)(a) of section 229 of the 2004 Act (total pension input amount),

to be discharged by--

(i) a registered medical practitioner (whether practising on his own or as part of a group); or

(ii) a body corporate or unincorporate employing such practitioners (whether under a contract of service or for services),

approved by the Secretary of State to act on his behalf.

(2) In relation to the decisions referred to in paragraph (1), the Secretary of State may require any person referred to in that paragraph to submit to a medical examination by a registered medical practitioner selected by the Secretary of State, and in that event, the Secretary of State shall--

(a) also offer the person an opportunity of submitting a report from that person's own medical adviser as a result of an examination by such an adviser, and

(b) take that report into consideration together with the report of the medical practitioner selected by the Secretary of State.

## **U2 Determination of questions**

Any question arising under these Regulations as to the rights or liabilities of any person shall be determined by the Secretary of State and any dispute shall be resolved by the Secretary of State in accordance with the dispute resolution procedure issued from time to time by her in conformity with section 50 of the Pensions Act 1995.

## **Accounts and actuarial reports**

**U3.**—(1) The Secretary of State must keep accounts for the scheme in a form approved by the Treasury.

(2) The accounts are to be open to examination by the Comptroller and Auditor General.

(3) In respect of a member, an employing authority must keep a record of all—

(a) contributions paid under regulations D1, Q6 and Q8;

(b) contributions due under regulations D1, Q6 and Q8 but unpaid;

(c) contributions paid under regulation ~~D2(1)~~ D2;

(d) contributions due under regulation ~~D2(1)~~ D2 but unpaid;

(e) hours, half-days or sessions constituting part-time pensionable employment for the purposes of regulation R5;

(f) pensionable pay;

(g) absences from work referred to in regulations P1 and P2;

(h) commencement and termination of pensionable employment;

(i) reason for termination of pensionable employment.

(4) That record is to be in a manner approved by the Secretary of State.

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(5) Except where the Secretary of State waives such requirement, an employing authority must provide the Secretary of State with a composite statement in respect of all scheme members covering all the matters referred to in paragraph (3) within 2 months of the end of a scheme year: this is subject to Schedule 2.

(6) Where an employing authority has provided the information in accordance with paragraph (5) and subsequently there is a change to any of that information, that employing authority must, within 1 month of the change, provide the Secretary of State with the revised information.

(7) In respect of each scheme year an employing authority must, within 2 months of a request and in a manner prescribed by the Secretary of State, provide the Secretary of State with details of the total contributions paid for all scheme members under regulations D1, D2, Q6 and Q8.

(8) Where an employing authority has provided the details requested in accordance with paragraph (7) and subsequently there is a change in those details, that employing authority must, within 1 month of the change, provide the Secretary of State with the revised details.

(9) An employing authority must, 1 month before the beginning of each scheme year, and in a manner prescribed the Secretary of State, provide the Secretary of State with a statement of estimated total contributions due under regulations D1, D2, Q6 and Q8 for that scheme year.

**U4 Cost sharing** – Omitted

### **Benefit information statements**

**U5.**—(1) The Secretary of State must provide a benefit information statement to each member in accordance with—

- (a) section 14 (information about benefits) of the 2013 Act, and
- (b) any Treasury directions given from time to time pursuant to that section.

(2) Paragraph (1) does not provide a right for a member to request a benefit information statement.

(3) The Secretary of State is only required to provide a member with one benefit information statement per scheme year.

(4) A benefit information statement provided pursuant to paragraph (1) is to be treated as though it is the information mentioned in regulation 16(2)(a) of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 for the purposes of determining whether or not information must be given under regulation 16(1) of those Regulations.

## **Part V Miscellaneous and supplementary**

### **V1 Option to members detrimentally affected by these Regulations**

(1) This regulation applies in relation to any pension which is payable under these Regulations to or in respect of a person who, having served in an employment or office, service in which qualified persons to participate in the benefits provided under the previous regulations, ceased to serve therein or died before these Regulations came into force.

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(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 he would have been if the provision had not applied, that person may elect that the provision shall not so apply by giving notice in accordance with paragraph (3).

(3) A notice given pursuant to paragraph (2) shall be in writing and shall be delivered to the Secretary of State within 6 months of the coming into force of these Regulations.

(4) An election pursuant to paragraph (2) shall have effect in relation to the pension referred to in paragraph (1) only to the extent that such pension has accrued by virtue of contributions made and periods of service rendered prior to 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 pension to that extent, such person shall be treated as if he had never recommenced pensionable employment at any time after that cessation (or, as the case may be, the last such cessation).

## **V2 Revocations and savings**

(1) The Regulations specified in Column 1 of the Table to Schedule 3 are revoked to the extent specified in Column 2 of that Table.

(2) Anything done under, or by virtue of, any regulation revoked by these Regulations, if it could have been done under or for the purpose of the corresponding provision of these Regulations, shall be deemed to have been done under or by virtue of the corresponding provision of these Regulations and anything begun under, or by virtue of, any such regulation may be continued under these Regulations as if begun under these Regulations.

(3) Where, prior to the coming into force of these Regulations, any of the following provisions of the previous regulations applied in relation to a member, namely--

(a) regulation 11 (additional benefits for certain transferred officers);

(b) regulations 30 to 33 (continuation of previous arrangements in respect of additional contributory payments);

(c) regulation 35(7) (part-time service before 15 December 1966 in respect of certain practitioners);

(d) regulations 40 to 43 (benefits in the case of certain re-employed pensioners);

(e) regulations 44 to 51 (optants and certain other arrangements);

(f) regulations 56 and 57 (modification of benefits and obligations in connection with the National Insurance Acts 1946 and 1965);

(g) regulations 63 to 65 (officers formerly employed in certain hospitals or in the Blood Transfusion Service);

(h) regulation 78 (part-time specialists with service before 15th December 1966);

(i) regulation 79 (continuation of contracts or policies of insurance in certain cases); and

(j) regulation 83 (provisions relating to contributions on a former higher rate of remuneration);

any rights and liabilities relating to that member by virtue of those provisions shall be deemed to continue to apply notwithstanding the revocation of those provisions.

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**SCHEDULE 1 PURCHASE OF ADDITIONAL SERVICE AND UNREDUCED RETIREMENT LUMP SUM**

**Regulations Q4, Q5**

**Table 1** Paying for additional service by a single payment

| <i>Member's age when employing authority receives notice of election</i> | <i>Cost per £100 of remuneration for each year of additional service</i> |
|--|--|
| (1)  | (2)  |
|  | £  |
| 20   | 25.20  |
| 21   | 24.70  |
| 22   | 24.20  |
| 23   | 23.70  |
| 24   | 23.20  |
| 25   | 22.70  |
| 26   | 22.20  |
| 27   | 21.80  |
| 28   | 21.40  |
| 29   | 21.10  |
| 30   | 20.90  |
| 31   | 20.70  |
| 32   | 20.50  |
| 33   | 20.30  |
| 34   | 20.10  |
| 35   | 20.00  |
| 36   | 20.00  |
| 37   | 20.00  |
| 38   | 20.00  |
| 39   | 20.00  |
| 40   | 20.00  |
| 41   | 20.00  |
| 42   | 20.00  |
| 43   | 20.00  |
| 44   | 20.00  |
| 45   | 20.10  |
| 46   | 20.30  |
| 47   | 20.50  |
| 48   | 20.70  |
| 49   | 20.90  |
| 50   | 21.00  |
| 51   | 21.00  |
| 52   | 21.00  |
| 53   | 21.00  |
| 54   | 21.00  |
| 55   | 21.10  |

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|    |       |
|----|-------|
| 56 | 21.30 |
| 57 | 21.60 |
| 58 | 21.90 |
| 59 | 21.90 |
| 60 | 21.70 |
| 61 | 21.50 |
| 62 | 21.30 |
| 63 | 21.10 |
| 64 | 21.00 |
| 65 | 20.80 |
| 66 | 20.30 |
| 67 | 19.70 |
| 68 | 19.10 |
| 69 | 18.50 |

Table 2 Paying for unreduced retirement lump sum by a single payment

| <i>Member's age when employing authority receives notice of election</i> | <i>Cost per £100 of remuneration for each year of service in respect of which unreduced retirement lump sum is bought</i> |
|--|---|
| (1)  | (2)   |
|  | £   |
| 20 & under   | 2.97  |
| 21   | 2.91  |
| 22   | 2.85  |
| 23   | 2.79  |
| 24   | 2.73  |
| 25   | 2.67  |
| 26   | 2.61  |
| 27   | 2.56  |
| 28   | 2.51  |
| 29   | 2.48  |
| 30   | 2.46  |
| 31   | 2.44  |
| 32   | 2.41  |
| 33   | 2.39  |
| 34   | 2.36  |
| 35   | 2.35  |
| 36   | 2.35  |
| 37   | 2.35  |
| 38   | 2.35  |
| 39   | 2.35  |
| 40   | 2.35  |
| 41   | 2.35  |
| 42   | 2.35  |
| 43   | 2.35  |
| 44   | 2.35  |

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|    |      |
|----|------|
| 45 | 2.36 |
| 46 | 2.38 |
| 47 | 2.41 |
| 48 | 2.44 |
| 49 | 2.46 |
| 50 | 2.47 |
| 51 | 2.47 |
| 52 | 2.47 |
| 53 | 2.47 |
| 54 | 2.47 |
| 55 | 2.48 |
| 56 | 2.50 |
| 57 | 2.50 |
| 58 | 2.50 |
| 59 | 2.50 |
| 60 | 2.50 |
| 61 | 2.50 |
| 62 | 2.50 |
| 63 | 2.50 |
| 64 | 2.50 |
| 65 | 2.50 |
| 66 | 2.50 |
| 67 | 2.50 |
| 68 | 2.50 |
| 69 | 2.50 |

Table 3 Paying for additional service by regular additional contributions

| <i>Member's age at next birthday after employing authority receives notice of election</i> | <i>Percentage of pensionable pay for each complete year of additional service</i> |           |           |
|--|---|-----------|-----------|
|  | <i>Birthday to which member has elected to pay contributions</i>                  |           |           |
|  | <i>55</i>   | <i>60</i> | <i>65</i> |
| 20   | .61   | .50       | .36       |
| 21   | .64   | .52       | .38       |
| 22   | .67   | .54       | .40       |
| 23   | .70   | .56       | .42       |
| 24   | .74   | .58       | .44       |
| 25   | .78   | .60       | .46       |
| 26   | .82   | .62       | .48       |
| 27   | .86   | .64       | .50       |
| 28   | .90   | .66       | .52       |
| 29   | .94   | .68       | .54       |
| 30   | .98   | .70       | .56       |
| 31   | 1.02  | .72       | .58       |



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|    |       |       |       |
|----|-------|-------|-------|
| 32 | 1.07  | .75   | .60   |
| 33 | 1.12  | .78   | .62   |
| 34 | 1.17  | .81   | .64   |
| 35 | 1.22  | .85   | .67   |
| 36 | 1.28  | .89   | .69   |
| 37 | 1.35  | .93   | .72   |
| 38 | 1.43  | .98   | .74   |
| 39 | 1.51  | 1.03  | .77   |
| 40 | 1.60  | 1.09  | .80   |
| 41 | 1.70  | 1.15  | .83   |
| 42 | 1.83  | 1.22  | .87   |
| 43 | 2.00  | 1.30  | .91   |
| 44 | 2.20  | 1.39  | .95   |
| 45 | 2.42  | 1.48  | 1.00  |
| 46 | 2.69  | 1.58  | 1.06  |
| 47 | 3.02  | 1.70  | 1.13  |
| 48 | 3.45  | 1.85  | 1.21  |
| 49 | 4.02  | 2.03  | 1.29  |
| 50 | 4.80  | 2.25  | 1.38  |
| 51 | 6.04  | 2.53  | 1.48  |
| 52 | 8.05  | 2.86  | 1.60  |
| 53 | 12.18 | 3.26  | 1.74  |
| 54 |       | 3.80  | 1.90  |
| 55 |       | 4.58  | 2.08  |
| 56 |       | 5.77  | 2.30  |
| 57 |       | 7.77  | 2.56  |
| 58 |       | 12.06 | 2.92  |
| 59 |       |       | 3.40  |
| 60 |       |       | 4.10  |
| 61 |       |       | 5.20  |
| 62 |       |       | 6.97  |
| 63 |       |       | 10.42 |

Table 4 Paying for unreduced retirement lump sum by regular additional contributions

| <i>Member's age at next birthday after employing authority receives notice of election</i> | <i>Percentage of pensionable pay for each complete year of additional service in respect of which unreduced retirement lump sum is bought</i> |           |           |
|--|---|-----------|-----------|
|  | <i>Birthday to which member has elected to pay contributions</i>  |           |           |
|  | <i>55</i>   | <i>60</i> | <i>65</i> |
| 20 & under   | .07   | .06       | .04       |
| 21   | .07   | .06       | .04       |
| 22   | .08   | .06       | .05       |
| 23   | .08   | .07       | .05       |

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|    |      |      |      |
|----|------|------|------|
| 24 | .09  | .07  | .05  |
| 25 | .09  | .07  | .05  |
| 26 | .10  | .07  | .06  |
| 27 | .10  | .08  | .06  |
| 28 | .11  | .08  | .06  |
| 29 | .11  | .08  | .06  |
| 30 | .12  | .08  | .07  |
| 31 | .12  | .08  | .07  |
| 32 | .13  | .09  | .07  |
| 33 | .13  | .09  | .07  |
| 34 | .14  | .10  | .08  |
| 35 | .14  | .10  | .08  |
| 36 | .15  | .11  | .08  |
| 37 | .16  | .11  | .08  |
| 38 | .17  | .12  | .09  |
| 39 | .18  | .12  | .09  |
| 40 | .19  | .13  | .09  |
| 41 | .20  | .13  | .10  |
| 42 | .22  | .14  | .10  |
| 43 | .24  | .15  | .11  |
| 44 | .26  | .16  | .11  |
| 45 | .29  | .17  | .12  |
| 46 | .32  | .19  | .12  |
| 47 | .36  | .20  | .13  |
| 48 | .41  | .22  | .14  |
| 49 | .47  | .24  | .15  |
| 50 | .56  | .27  | .16  |
| 51 | .71  | .30  | .17  |
| 52 | .95  | .34  | .19  |
| 53 | 1.43 | .38  | .20  |
| 54 |      | .45  | .22  |
| 55 |      | .54  | .24  |
| 56 |      | .68  | .27  |
| 57 |      | .91  | .30  |
| 58 |      | 1.42 | .34  |
| 59 |      |      | .40  |
| 60 |      |      | .48  |
| 61 |      |      | .61  |
| 62 |      |      | .82  |
| 63 |      |      | 1.23 |

**SCHEDULE 2 MEDICAL AND DENTAL PRACTITIONERS**

**Regulation R1**

**Additional definitions used in this Schedule**

**1**

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In this Schedule--

"Board and advisory work" means--

- (a) work undertaken as a member of the Board of an employing authority which is not a GMS practice, a PMS practice, an APMS contractor or an OOH provider; or
- (b) advisory work commissioned by and undertaken on behalf of such an authority, where it is connected to the authority's role in performing, or securing the delivery of, NHS services or associated management activities or similar duties,

but which is not in itself the performance of NHS services, and payment for which is made by that authority directly to the person carrying out that work;

"collaborative services" means primary medical services provided by a GP performer, a GMS practice, a PMS practice, an APMS contractor or an OOH provider under or as a result of an arrangement between--

- (a) the National Assembly for Wales, the National Health Service Commissioning Board, a Clinical Commissioning Group or a Local Health Board; and
- (b) a local authority,

under, in the case of England, section 80(6A) of the 2006 Act or in the case of Wales, section 38(6) of the 2006 (Wales) Act, under which the Clinical Commissioning Group, the National Assembly for Wales, the National Health Service Commissioning Board or the Local Health Board is responsible for providing services for purposes related to the provision of health care;

"commissioned services" means medical services provided under a contract between--

- (a) a GP performer, a GMS practice, a PMS practice, an APMS contractor or an OOH provider; and
- (b) either--
  - (i) a Special Health Authority, which relates to the provision of health care,
  - (ii) the National Assembly for Wales, the National Health Service Commissioning Board or a Local Health Board under, in the case of England, section 12ZA of the 2006 Act or, in the case of Wales, section 10 of the 2006 (Wales) Act (which relates to arrangements made with any person or body, including a voluntary one, for the provision of services under the Act),
  - (iii) a National Health Service trust under paragraph 18 of Schedule 4 to the 2006 Act or paragraph 18 of Schedule 3 to the 2006 (Wales) Act,
  - (iv) a National Health Service foundation trust under section 47(2)(b) of the 2006 Act, or
  - (v) a local authority acting under section 2B of the 2006 Act,

which is for the purposes of the health service;

"Doctors' Retainer Scheme" has the same meaning as given at paragraph 39 of the Statement published in accordance with regulation 34 of the National Health Service (General Medical Services) Regulations 1992;

.....

"local authority" means--

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- (a) any of the bodies listed in section 1 of the Local Authority Social Services Act 1970 (local authorities), or
- (b) the Council of the Isles of Scilly;

"locum practitioner" means a registered medical practitioner (other than a specialist trainee in general practice) whose name is included in a medical performers list and who is engaged, otherwise than in pursuance of a commercial arrangement with an agent, under a contract for services by--

- (a) a GMS practice;
- (b) a PMS practice;
- (c) an APMS contractor;
- (d) an OOH provider; or
- (e) a Local Health Board,

to deputise or assist temporarily in the provision of [services pursuant to an NHS standard contract or an NHS standard sub-contract](#), essential services, additional services, enhanced services, dispensing services, OOH services, commissioned services, certification services, Board and advisory work, health related functions exercised under section 75 of the 2006 Act, NHS 111 services or collaborative services (or any combination thereof);

"NHS 111 services" means services provided as part of the telephone advice line commissioned by a Clinical Commissioning Group or the National Health Service Commissioning Board;

"officer service" means, subject to paragraph 9 (officer service treated as practitioner service), pensionable service as an officer;

"pensionable earnings" has the meaning given in paragraphs 3 to 8;

"pensionable earnings ceiling", in relation to a GDS contract or a PDS agreement, is to be construed in accordance with paragraph 3(2B);

"practitioner income" has the meaning given in paragraph 3(2), or as the case may be, paragraph 3(2A);

"practitioner service" means, subject to paragraph 9 (officer service treated as practitioner service), pensionable service as a practitioner;

"uprated earnings" is to be construed in accordance with paragraph 11(2).

## **Application of Regulations with modifications**

### **2**

(1) These Regulations, subject to the modifications described in this Schedule, apply to members who are or have been practitioners as if they were officers employed by the relevant Local Health Board or the National Health Service Commissioning Board or, in the case of a locum practitioner, the listing Authority and, except where the context otherwise requires, references to an employing authority shall, in relation to a practitioner, be taken as a reference to the relevant Board or, in the case of a locum practitioner, the listing Authority.

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(1A) In sub-paragraph (1), "listing authority", in relation to a locum practitioner, means the Board that prepares and publishes the medical performers list on which he is included.

(2) Notwithstanding any other provision of these Regulations, a practitioner who wishes to contribute to this Section of the scheme must do so in respect of all of his work as a practitioner other than any period or periods of work as a locum practitioner: this is subject to sub-paragraph (16) of paragraph 23.

## **Membership: locum practitioners**

### **2A**

(1) Regulation B1(2) (automatic membership of this Section of the scheme) does not apply to locum practitioners.

(2) A locum practitioner may apply to join this Section of the scheme by sending an application to the employing authority and submitting such evidence relating to his service as a locum practitioner and the contributions payable in respect of it as are required by the authority.

(3) On receiving such an application, such evidence and such contributions, the employing authority must submit the application to the Secretary of State.

(4) (revoked)

(5) No application may be made under sub-paragraph (2) in respect of a period of engagement as a locum practitioner ending earlier than ten weeks before the date of the application.

## **Meaning of "pensionable earnings"**

### **3**

(1) In the case of a either a type 1 practitioner or a non-GP provider who is not in receipt of any salary, wages, fees or any other regular payment in respect of his employment by virtue of the application of these Regulations to him as if he were such an officer under regulation R1, "pensionable earnings" means--

(a) in the case of a type 1 medical practitioner or a non-GP provider, practitioner income less any sum on account of practice expenses (for these purposes, D2(1) contributions payable under paragraph 10(6) or (7) are neither practitioner income nor practice expenses); and

(b) in the case of a type 1 dental practitioner, practitioner income (taking into account any relevant pensionable earnings ceiling).

(2) Subject to sub-paragraph (3), for the purposes of this paragraph, "practitioner income" means as regards type 1 medical practitioners--

(a) payments made to such a person—

(i) pursuant to a GMS contract, a PMS agreement or an APMS contract, an NHS standard contract, [an NHS standard sub-contract where the party to the NHS standard contract in question is an employing authority](#), or a contract entered into by a local authority pursuant to its functions under the 2006 Act relating to the improvement and protection of public health and which the Secretary of State agrees to treat as a qualifying contract for these purposes;

(ii) in respect of the performance of certification services, commissioned services or collaborative services where the practitioner is a GMS practice, a PMS practice

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or an APMS contractor: this also applies to such payments received from such a practitioner;

- (iii) in respect of the provision of primary medical services under, in the case of England, section 83(2)(a) of the 2006 Act or, in the case of Wales, section 41(2)(a) of the 2006 (Wales) Act where such a person has been engaged by a Local Health Board to assist in the provision of such services;
  - (iv) in respect of the provision of locum services;
  - (v) in respect of the performance of primary medical services, commissioned services, collaborative services, NHS 111 services and certification services where those payments are made by an OOH provider or other employing authority providing OOH services;
  - (vi) in respect of primary dental services, general ophthalmic services or pharmaceutical services;
  - (vii) in respect of practice-based work carried out in educating or training, or organising the education or training of, medical students or practitioners;
  - (viii) in respect of the provision of primary medical services where such a person has been engaged by a clinical commissioning group to assist in the provision of such services;
- (b) any charges collected from patients in respect of the services mentioned in subparagraph (a) which the type 1 medical practitioner is authorised by or under any enactment to retain other than charges authorised by regulations made under in the case of England, section 185(1) of the 2006 Act or in the case of Wales, section 133(1) of the 2006 (Wales) Act (charges for more expensive supplies of dental appliances); and
- (c) any sums paid to the practitioner out of a fund determined by reference to the number of beds in a hospital;
- (d) in the case of a type 1 medical practitioner, allowances and any other sums (but excluding payments made to cover expenses) paid in respect of Board and advisory work.
- (e) health-related functions exercised under section 75 of the 2006 Act.

(2A) Subject to sub-paragraphs (2B), (2D) and (3), for the purposes of this paragraph, "practitioner income" means, as regards a type 1 dental practitioner, income which accrues to the practitioner which is derived from a GDS contract or a PDS agreement, and--

- (a) includes charges collected from patients which are required, by virtue of directions given under, in the case of England, sections 94, 103 or 109 of the 2006 Act or in the case of Wales, sections 52, 60 or 66 of the 2006 (Wales) Act (which relate to PDS agreements and payments under GDS contracts), to be set off against payments under the contract or agreement; but
- (b) does not include—
  - (i) charges collected from patients which are not required, by virtue of such directions, to be so set off,
  - (ii) income received by a practitioner to whom regulation B2 (restrictions on membership), regulation B3 (restriction on further participation in this Section of the scheme) or regulation B4 (opting-out of this Section of the scheme) applies, or



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(iii) income received on or after 7th November 2011 by a practitioner in respect of the performance of services under a GDS contract or a PDS agreement to which the practitioner's employer is not a party.

(2B) As regards each GDS contract or PDS agreement from which practitioner income is derived, the maximum amount of practitioner income which may be derived from that contract in any financial year is, subject to sub-paragraph (2C), the value of that contract in that financial year--

(a) less the value of following payments (where payable in that financial year by the National Health Service Commissioning Board or Local Health Board that is a party to the contract or agreement)--

- (i) monthly seniority payments,
- (ii) adoption leave, maternity leave, parental leave, [shared parental leave](#) or paternity leave payments;
- (iii) sickness leave payments,
- (iv) reimbursement of the salary of a foundation trainee,
- (v) reimbursement of the national insurance contributions of a foundation trainee, and
- (vi) reimbursement of non-domestic rates; then

(b) multiplied by a percentage to be determined by the Secretary of State,

which produces the amount referred to in this Schedule as the "pensionable earnings ceiling".

(2C) Where the income of a type 1 dental practitioner includes payments made under a GDS contract or a PDS agreement consisting of all or any of—

- (a) monthly seniority payments;
- (aa) a dental trainers grant;
- (b) maternity leave, paternity leave, parental leave, [shared parental leave](#) or adoption leave payments; and
- (c) sickness leave payments,

those payments are practitioner income for the purposes of this paragraph (that is, they are pensionable earnings notwithstanding that they are not included in the calculation of the pensionable earnings ceiling for a particular GDS contract or PDS agreement).

(2D) The following payments under a GDS contract or PDS agreement are not to be considered practitioner income for the purposes of this paragraph--

- (a) reimbursement of the salary of a foundation trainee;
- (b) reimbursement of the national insurance contributions of a foundation trainee; and
- (c) reimbursement of non-domestic rates.

(2E) For the avoidance of doubt, income which accrues to a type 1 dental practitioner while he is engaged as a type 2 practitioner is practitioner income of that type 1 dental practitioner, but unaffected by any pensionable earnings ceiling (although the combined earnings of that practitioner will be subject to the upper limit specified in paragraph 8).

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(3) If the practitioner is in concurrent employment as an officer, or with a local authority or university, or as a civil servant, or in any other employment that the Secretary of State may in any particular case allow, "practitioner income" does not include any amounts for which the practitioner is required to account to the employer as a term or condition of that employment.

(4) In sub-paragraph (2)(a), "locum services" shall have the same meaning as for the purposes of paragraph 6.

## **Calculating pensionable earnings of medical practitioners in partnership**

### **4**

(1) In the case of type 1 medical practitioners practising in partnership (with or without a non-GP provider who is a partner in a partnership), the pensionable earnings of each type 1 medical practitioner and non-GP provider who is a partner in a partnership shall be calculated by aggregating the pensionable earnings of each (including for this purpose, any amount that would constitute pensionable earnings in the case of any of them who are not included in this Section of the scheme) and, subject to sub-paragraph (2), dividing the total equally by reference to the number of such partners.

(2) Where the type 1 medical practitioners and any non-GP providers who are partners in a partnership do not share equally in the partnership profits, they may elect that each partner's pensionable earnings shall correspond to each partner's share of the partnership profits.

(3) Where a type 1 medical practitioner practising in partnership also has earnings in respect of NHS employment otherwise than as a practitioner, the partners may elect that the pensionable earnings of that practitioner, as determined in accordance with sub-paragraph (1) or (2), shall be reduced by the amount of those earnings and the pensionable earnings of each of them (including that practitioner) be then increased in proportion to their respective shares of the partnership profits.

(4) The calculations described in sub-paragraphs (2) and (3) will be made by the National Health Service Commissioning Board or Local Health Board to which the partners are required to give notice of their election in accordance with paragraph 5.

## **Elections relating to calculation of "pensionable earnings" in medical partnerships**

### **5**

(1) Type 1 medical practitioners and any non-GP providers who are partners in any partnership must exercise the elections described in paragraph 4(2) and (3) by giving notice in writing to their host Board.

(2) (revoked)

(3) (revoked)

(4) The notice must be signed by all the type 1 medical practitioners and non-GP providers in the partnership and must state as a fraction each practitioner's and non-GP provider's share in the partnership profits. In the case of medical practitioners, the notice must state the name of every Local Health Board or the National Health Service Commissioning Board on whose list the name of any practitioner in the partnership is included.

(5) (omitted)

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(6) Any notice given under this paragraph will take effect from the date agreed between the practitioners and the National Health Service Commissioning Board or Local Health Board concerned. If no agreement is reached, the date will be decided by the Secretary of State.

(7) Any notice given under this paragraph may be cancelled or amended by a subsequent notice in writing signed by all the practitioners in the partnership. A notice will continue in effect until cancelled, or (if earlier) there is a change in the partnership.

## **5A Distribution of pensionable earnings between type 1 dental practitioners employed or engaged by the same GDS or PDS contractor**

Omitted

### **Meaning of "pensionable earnings" in relation to other practitioners**

6

(1) In the case of a type 2 medical practitioner, "pensionable earnings" means--

(a) all salary, wages, fees and other regular payments paid to the practitioner by an employing authority in respect of the performance of essential services, additional services, enhanced services, dispensing services, OOH services, commissioned services, certification services, collaborative services, general dental services, health-related functions exercised under section 75 of the 2006 Act, pharmaceutical services[,], an NHS standard contract, [an NHS standard sub-contract where the party to the NHS standard contract in question is an employing authority](#) or a contract entered into by a local authority pursuant to its functions under the 2006 Act relating to the improvement and protection of public health and which the Secretary of State agrees to treat as a qualifying contract for these purposes or NHS 111 services; but does not include bonuses or payments made to cover expenses;

(b) allowances and other sums (but excluding payments made to cover expenses) paid by an employing authority in respect of Board and advisory work; and

(c) practice-based work carried out in educating or training, or organising the education or training of, medical students or practitioners.

(2) In the case of a type 2 dental practitioner, "pensionable earnings" means all salary, wages, fees and other regular payments paid to the practitioner--

(a) in the case of a foundation trainee, under his contract of employment with a GDS or PDS contractor; or

(b) in all other cases, by an employing authority in respect of the performance of primary dental services,

but does not include bonuses or payments made to cover expenses.

(3) In the case of a locum practitioner, "pensionable earnings" means all fees and other payments made to the locum practitioner in respect of the provision of locum services (but excluding payments made to cover expenses or for overtime), less such expenses as are deductible in accordance with guidance laid down by the Secretary of State.

(4) In this paragraph, references to the provision of locum services, in relation to a practitioner, are to board and advisory work performed for the National Health Service Commissioning Board or a Local Health Board, and—

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- (a) primary medical services,
- (b) commissioned services,
- (c) collaborative services,
- (d) health-related functions exercised under section 75 of the 2006 Act,
- (e) pharmaceutical services,
- (f) NHS 111 services,
- (g) services pursuant to an NHS standard contract, an NHS standard sub-contract where the party to the NHS standard contract in question is an employing authority or a contract entered into by a local authority pursuant to its functions under the 2006 Act relating to the improvement and protection of public health and which the Secretary of State agrees to treat as a qualifying contract for these purposes,
- ~~(h) performed by a practitioner engaged by an employing authority under a contract for services to deputise for a registered medical practitioner or to temporarily assist in the provision of such services.~~

**Exclusions and deductions from pensionable earnings--all practitioners**

7

Any sum that is withheld or otherwise recovered from a practitioner under the National Health Service (Service Committees and Tribunal) Regulations 1974 will be excluded or deducted from the practitioner's pensionable earnings in such manner and to such extent as the Secretary of State may approve.

**Limit on pensionable earnings--dental practitioners**

8

(1) A dental practitioner's pensionable earnings in any financial year ending before 1st April 1995 are subject to the upper limit specified in the following table for the period in which the year falls.

| <i>Period</i>                     | <i>Upper limit for each year</i> |
|-----------------------------------|----------------------------------|
| 1st April 1950 to 31st March 1966 | £3,500                           |
| 1st April 1966 to 31st March 1972 | £6,000                           |
| 1st April 1972 to 31st March 1975 | £10,000                          |
| 1st April 1975 to 31st March 1978 | £15,000                          |
| 1st April 1978 to 31st March 1982 | £21,000                          |
| 1st April 1982 to 31st March 1985 | £33,000                          |
| 1st April 1985 to 31st March 1988 | £40,000                          |
| 1st April 1988 to 31st March 1989 | £45,000                          |
| 1st April 1989 to 31st March 1990 | £54,000                          |
| 1st April 1990 to 31st March 1991 | £58,000                          |
| 1st April 1991 to 31st March 1992 | £65,000                          |
| 1st April 1992 to 31st March 1993 | £72,000                          |
| 1st April 1993 to 31st March 1994 | £73,000                          |
| 1st April 1994 to 31st March 1995 | £75,000                          |

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(2) A dental practitioner's pensionable earnings in any financial year starting after the 31st March 1995 and ending before 1st April 2008 are subject to the upper limit specified by the Secretary of State for that year.

(3) In the case of a dental practitioner employed by persons carrying on a deceased practitioner's dentistry business, pensionable earnings cannot exceed the total of the amount paid to him by those persons, plus any amounts paid to him by the National Health Service Commissioning Board or Local Health Board or the Dental Services Division of the National Health Service Business Services Authority that those persons allow him to retain.

### **Officer service treated as practitioner service**

#### **9**

(1) Subject to sub-paragraph (3), if a member does not have more than 10 years' officer service on first becoming a practitioner, the member's officer service before first becoming a practitioner will be treated as practitioner service.

(2) For the purpose of calculating any benefit in respect of officer service that is treated as practitioner service under sub-paragraph (1), the member's pensionable pay in respect of that officer service--

(a) may be disregarded and his uprated earnings increased by the same proportion as his practitioner's service is increased by virtue of the officer service being treated as practitioner service under sub-paragraph (1); or

(b) may be treated as pensionable earnings,

whichever is the more favourable to him.

(3) Sub-paragraph (1) does not apply where--

(a) the member first became a practitioner before 31st March 1977 and the benefits calculated under the corresponding provision, as it applied immediately before that date, would have been greater; or

[(aa) (revoked)]

(b) the member's pension in respect of total officer service would otherwise be greater than the member's pension in respect of total practitioner service (where "pension" includes, in each case, any increases payable under Part I of the Pensions (Increase) Act 1971) and the member's total pension would be reduced if the member's officer service before first becoming a practitioner were treated as practitioner service.

(4) The calculation described in sub-paragraph (3)(b) will be made when the member's pension under this Section of the scheme becomes payable. If the member dies before his pension becomes payable, the calculation will be made at the date of his death and by reference to the pension which would have become payable under regulation E1 (normal retirement pension) or L1 (preserved pension) if he had left pensionable employment immediately before that date.

(5) When calculating the member's total officer service and total practitioner service for the purposes of sub-paragraph (3)(b), any increase in the member's service by virtue of regulation E2 or E2A, and any additional service bought as described in regulation Q1 (right to buy additional service), will be ignored.

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- (5A) Where a member has more than 10 years' officer service before first becoming--
- (a) a practitioner
  - (b) (revoked)

the member's officer service before first becoming such a practitioner may be treated as practitioner service if it would be more favourable to him.

[(5AA) (revoked)]

(5B) For the purpose of calculating any benefits in respect of officer service that is treated as practitioner service under sub-paragraph (5A), the member's pensionable pay in respect of that officer service shall be treated as pensionable earnings.

(5C) If--

- (a) any part of the period of a member's officer service is treated as practitioner service for the purposes of sub-paragraph (1) or (5A) ("the converted service") and,
- (b) any part of the converted service has been credited to the member as a result of a transfer-in under regulations N2 or N3 (but not regulation R8(2)) ("the converted service credit"),

the amount of pensionable pay deemed to be received in respect of the converted service credit will be calculated in accordance with paragraph 18 of this Schedule.

(6) Subject to sub-paragraph (8), if a member has, in total, less than one year's officer service on the last occasion on which he ceases to be a practitioner before his pension under this Section of the scheme becomes payable, that officer service will be treated as practitioner service.

(6A) Subject to sub-paragraph (8), if a member has in total, 1 year's officer service or more on the last occasion on which he ceases to be a practitioner before his pension under this Section of the scheme becomes payable, that officer service may be treated as practitioner service if it would be more favourable to him.

(6B) Any officer service which is treated as practitioner service by virtue of sub-paragraph (6) or (6A) shall include any periods of officer service which are concurrent with periods of practitioner service.

(7) For the purpose of calculating any benefit in respect of officer service that is treated as practitioner service under sub-paragraph (6) or (6A), the member's pensionable pay in respect of that officer service will be treated as pensionable earnings.

(8) If the member has officer service before first becoming a practitioner, sub-paragraph (1) will be applied before sub-paragraph (6) or (6A) and--

- (a) neither sub-paragraph (6) nor (6A) will apply to any officer service that is treated as practitioner service under sub-paragraph (1) or (5A); and
- (b) any officer service that is treated as practitioner service under sub-paragraph (1) or (5A) will be ignored for the purpose of deciding whether sub-paragraph (6) or (6A) applies.

(9) If any member with practitioner service works in employment as an officer for less than 1 year after last ceasing to be a practitioner, any officer service that is attributable to that employment will be treated as practitioner service.



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(10) For the purpose of calculating any benefit in respect of officer service that is treated as practitioner service under sub-paragraph (9), the member's pensionable pay in respect of that officer service will be treated as pensionable earnings.

(11) Where the officer service mentioned in sub-paragraph (6), sub-paragraph (6A) or sub-paragraph (9) has been credited as a result of a transfer under regulation N1 (member's right to transfer accrued rights to benefits to this Section of the scheme), the pensionable pay in respect of it shall be deemed to be the pensionable pay by reference to which the additional period of service was calculated under regulation N2(3) or N3(2), whichever is applicable.

[(12) (revoked)]

## **Locum practitioners: breaks between contracts**

### **9A**

(1) Paragraph (4A) of regulation C3 does not apply and this paragraph applies instead where a locum practitioner ceases to be engaged as such a practitioner and so ceases to be treated as being in pensionable employment and is re-engaged as such a practitioner before the expiry of a period not exceeding three months from the day on which he so ceases.

(2) For the purposes of these Regulations--

- (a) he is treated as continuing to be in qualifying service during the period whilst he is not so engaged and as not being required to rejoin this Section of the scheme at the time when he becomes so re-engaged, but
- (b) that period does not count as practitioner service (or as a period in pensionable employment).

## **Contributions to this Section of the scheme**

### **10**

(1) In the case of members who are practitioners or non-GP providers, regulation D1 (contributions by members) and regulation D2 (contributions by employing authorities) are modified as described in the following sub-paragraphs.

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

- (a) in respect of the 2014-2015 scheme year, table 1;
- (b) in respect of the 2015-2016 to 2018-2019 scheme years, table 2.

**Table 1:**

#### **Scheme Year 2014-2015**

| <i>Column 1</i>                  | <i>Column 2</i>                     |
|----------------------------------|-------------------------------------|
| <i>Pensionable Earnings Band</i> | <i>Contribution Percentage Rate</i> |
| Up to £15,431                    | 5%                                  |
| £15,432 to £21,477               | 5.6%                                |
| £21,478 to £26,823               | 7.1%                                |
| £26,824 to £49,472               | 9.3%                                |
| £49,473 to £70,630               | 12.5%                               |
| £70,631 to £111,376              | 13.5%                               |

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|                               |       |
|-------------------------------|-------|
| £111,377 to any higher amount | 14.5% |
|-------------------------------|-------|

**Table 2:**

**Scheme Years 2015-2016 to 2018-2019**

| <i>Column 1</i><br><i>Pensionable Earnings Band</i> | <i>Column 2</i><br><i>Contribution Percentage rate</i> |
|---|--|
| Up to £15,431                                       | 5%   |
| £15,432 to £21,477                                  | 5.6%   |
| £21,478 to £26,823                                  | 7.1%   |
| £26,824 to £47,845                                  | 9.3%   |
| £47,846 to £70,630                                  | 12.5%  |
| £70,631 to £111,376                                 | 13.5%  |
| £111,377 to any higher amount                       | 14.5%  |

(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 Secretary of State shall, with the consent of the Treasury, determine the pensionable earnings bands and contribution percentage rates specified in the relevant table in respect of each scheme year.

(2B) Before determining those pensionable earnings bands or contribution percentage rates, the Secretary of State must consider the advice of the Scheme Actuary.

(2C) If, apart from this sub-paragraph, the earnings for a scheme year in respect of a member's practitioner or non-GP provider service would not be a whole number of pounds, those earnings will be rounded down to the nearest whole pound.

(2D) If a member is in practitioner or non-GP provider service as well as (concurrently) employment other than as a practitioner or non-GP provider in respect of which the member is liable to pay contributions in accordance with regulation D1, the contributions payable in respect of the member's--

(a) practitioner or non-GP provider service, shall be determined in accordance with the provisions of these regulations that apply to a practitioner or non-GP provider, and

(b) employment as an officer, shall be determined in accordance with the provisions of these regulations that apply to an officer.

(2E) Where a practitioner (other than a dentist performer) or a non-GP provider is also in service as a dentist performer (or vice versa) the practitioner service as a practitioner (other than as a dentist performer) or as a non-GP provider and the practitioner service as a dentist performer will each be treated separately under this paragraph.

(2F) In determining, in accordance with this paragraph, the contributions that are payable pursuant to regulations D1(1) and D2(1), a host Board must take account of all pensionable earnings, including those determined by another host Board, as a—

(a) practitioner, from all practitioner sources;

(b) non-GP provider, from all non-GP provider sources;

(c) dentist performer, from all dentist performer sources.

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(2G) An employing authority that is not a host Board shall, in respect of any pensionable earnings it pays to a practitioner or to a non-GP provider, take advice from the relevant host Board in determining the contributions payable in accordance with sub-paragraph (2) of this regulation.

(2H) A practitioner and a non-GP provider member whose applicable pensionable earnings fall into a pensionable earnings band specified in column 1 of the relevant table in sub-paragraph (1A) must, in respect of a scheme year, contribute the percentage of that person's pensionable earnings specified in column 2 of that table in respect of that amount: such contributions must be paid in 12 equal monthly instalments throughout that year.

(2I) For the purposes of sub-paragraph (2H), a practitioner and a non-GP provider member's applicable pensionable earnings are—

- (a) the estimated amount of that member's earnings agreed between the host Board and that member having regard to any estimates of pensionable earnings which have been provided pursuant to paragraph 23(12);
- (b) in the absence of an agreement referred to in sub-paragraph (a), whichever of the following the host Board considers the most appropriate in the circumstances—
  - (i) an estimate of the amount of that member's earnings that corresponds to that member's most recent certified pensionable earnings referred to in paragraph 23, or
  - (ii) the amount of earnings that corresponds to the host Board's estimate of that member's pensionable earnings from, as the case may be, all practitioner, or non-GP provider sources for that year.

(2J) Where during the scheme year the host Board and the member agree that the estimated amount of that member's earnings should be different to that last agreed under paragraph (a) of sub-paragraph (2I) or last determined under paragraph (b) of that sub-paragraph, that member must pay the monthly contributions determined in accordance with sub-paragraph (2K).

(2K) Those contributions are to be determined as follows—

Step 1: agree the member's new estimated pensionable earnings (Amount A)

Step 2: find the percentage rate of contributions payable on Amount A applying the relevant table in sub-paragraph (1A)

Step 3: find Amount B by dividing Amount A by the percentage rate found at Step 2

Step 4: find Amount C by deducting from Amount B the amount of any contributions already paid prior to the new estimate of earnings being agreed

Step 5: divide Amount C by the number of whole months of the scheme year remaining to find the amount payable in each such month.

(2L) A member must pay monthly contributions determined in accordance with sub-paragraph (2M), where—

- (a) during the scheme year the host Board is satisfied that the member's pensionable earnings will exceed those last agreed under paragraph (a) of sub-paragraph (2I) or last determined under paragraph (b) of that sub-paragraph,
- (b) an agreement referred to in paragraph (a) of sub-paragraph (2I) cannot be reached, and
- (c) the host Board determines what the new estimated amount of earnings is for the purpose of identifying the rate of contributions to be paid by the member.

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(2M) Those monthly contributions are to be determined as follows—

Step 1: take the new estimated pensionable earnings determined in accordance with sub-paragraph (2L)(c) (Amount D)

Step 2: find the percentage rate of contributions payable on Amount D earnings applying the relevant table in sub-paragraph (1A)

Step 3: find Amount E by dividing Amount D by the percentage rate found at Step 2

Step 4: find Amount F by deducting from Amount E the amount of any contributions already paid prior to the new estimate of earnings being agreed

Step 5: divide Amount F by the number of whole months of the scheme year remaining to find the amount payable in each such month.

(2N) A practitioner (other than a dentist performer) and a non-GP provider member must pay contributions determined in accordance with sub-paragraph (2O) where, in respect of a scheme year to which one or more of sub-paragraph (2I), (2J) and (2L) applied throughout that year,—

- (a) that member has in accordance with paragraph 23 of this Schedule, certified their pensionable earnings for that year and forwarded it to the host Board, or the host Board has the figure that represents that member's final pensionable earnings for that scheme year where that member was not required to certify them, and
- (b) the amount of earnings referred to in paragraph (a) exceed the amount of earnings used for the purposes of, as the case may be, one or more of sub-paragraphs (2H), (2J) or (2L).

(2O) Those contributions are determined as follows—

Step 1: find the member's aggregate earnings for the scheme year in question (Amount G)

Step 2: find the percentage rate of contributions payable on Amount G applying the relevant table in sub-paragraph (1A)

Step 3: find Amount H by dividing Amount G by the percentage rate found at Step 2

Step 4: find the amount of contributions to be paid by deducting from Amount H the amount of any contributions already paid in respect of that scheme year in accordance with any or all of sub-paragraphs (2H), (2J) or (2L) prior to the certification of earnings in accordance with paragraph 23 of this Schedule.

(2P) For the purposes of sub-paragraph (2O), a member's aggregate earnings are the aggregate of—

- (a) the certified or final pensionable earnings from all practitioner (but not dentist performer) or, as the case may be, non-GP provider sources, and
- (b) any additional pensionable earnings the member is treated as having received during an absence from work in accordance with regulation P1 or P2 as modified by paragraph 19 of this Schedule.

(2Q) A dentist performer member must pay contributions determined in accordance with sub-paragraph (2R) where, in respect of a scheme year to which one or more of sub-paragraph (2I), (2J) and (2L) applied throughout that year, that dentist performer has—

- (a) in accordance with paragraph 23 of this Schedule, certified their pensionable earnings for that year and forwarded it to the host Board, or

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- (b) was not required to certify their earnings in accordance with that paragraph but the host Board has the figure that represents that member's pensionable earnings for that scheme year.

(2R) The contributions are payable at the rate specified in column 2 of the relevant table in sub-paragraph (1A) in respect of the amount of pensionable earnings referred to in column 1 of that table which corresponds to that part of the relevant aggregate which exceeds the amount of pensionable earnings on which contributions have already been paid pursuant to any or all of sub-paragraphs (2H), (2J) or (2L).

(2S) For the purposes of sub-paragraph (2R), the relevant aggregate is the aggregate of—

- (a) the certified or final pensionable earnings from all dentist performer sources, uprated according to the formula—

$$(PE / NDPS) \times 365$$

where—

PE is the certified or final amount of dentist performer's pensionable earnings from all dentist performer sources for that year;

NDPS is the number of days of dentist performer service from the date the dentist performer service commenced in the scheme year to the end of the scheme year, and

- (b) any additional pensionable earnings the dentist performer is treated as having received during an absence from work in accordance with regulation P1 or P2 as modified by paragraph 19 of this Schedule.

(3) Contributions must be paid until the member--

- (a) reaches age 75 or completes 45 years' pensionable service, if the member is not a special class officer;

- (b) reaches age 65, or completes 45 years' pensionable service and reaches age 60, if the member is a special class officer.

(4) Save where sub-paragraph (5) applies, type 1 medical practitioners and non-GP providers shall pay D1 contributions to the host Board.

(4A) Type 1 dental practitioners shall pay D1 contributions in respect of pensionable earnings that relate to a particular GDS contract or PDS agreement to the employing authority that is a party to that GDS contract or PDS agreement, and that employing authority is liable to pay the D2(1) contributions that are payable in respect of those pensionable earnings.

(5) Where a type 1 medical practitioner or a non-GP provider is engaged under a contract of service or for services by an employing authority or is a partner or shareholder in an employing authority that is not an OOH provider, that authority shall--

- (a) deduct D1 contributions from any pensionable earnings it pays to him; and

- (b) where it is not also the host Board, pay those contributions to that Board.

(6) Subject to sub-paragraph (7), where a type 1 medical practitioner or a non-GP provider is--

- (a) an employing authority which is a GMS practice, a PMS practice or an APMS contractor; or

- (b) a shareholder or partner in such an employing authority,

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that employing authority shall pay D2(1) contributions to the host Board.

(7) Where—

- (a) the type 1 medical practitioner is a shareholder or partner in more than one employing authority referred to in sub-paragraph (6), each such employing authority shall pay D2(1) contributions on any pensionable earnings it pays to that practitioner or, as the case may be, on the practitioner's share of the partnership profits, to the host Board;
- (b) the non-GP provider is a shareholder or partner in more than one employing authority referred to in sub-paragraph (6), that non-GP provider must nominate one of those employing authorities and that nominated authority must pay D2(1) contributions on any pensionable earnings it pays to that non-GP provider or, as the case may be, on the non-GP provider's share of the partnership profits, to the host Board.

(8) Where sub-paragraph (5) applies (but sub-paragraph (6) does not) and the employing authority referred to in that sub-paragraph is--

- (a) not the host Board, that authority shall pay D2(1) contributions to the host Board;
- (b) is the host Board, that Board shall pay D2(1) contributions to the Secretary of State in respect of any pensionable earnings it pays to him.

(9) Where a type 2 practitioner (other than a locum practitioner) is engaged under a contract of service or for services by an employing authority, that authority shall--

- (a) deduct D1 contributions from any pensionable earnings it pays to him; and
- (b) in the case of a type 2 medical practitioner, where it is not also the host Board, pay those contributions to that Board.

(10) In the case of a type 2 medical practitioner, where paragraph (9) applies, and the employing authority referred to in that sub-paragraph--

- (a) is not the host Board, that authority shall pay D2(1) contributions to the host Board;
- (b) is the host Board, that Board shall pay D1 and D2(1) contributions to the Secretary of State in respect of any pensionable earnings it pays to him.

(10A) As regards a type 2 dental practitioner who--

- (a) is a foundation trainee--
  - (i) the GDS or PDS contractor who employs him shall deduct D1 contributions from any pensionable earnings the contractor pays to him and shall pay those contributions to the employing authority that is a party to the contractor's GDS contract or PDS agreement, and
  - (ii) that employing authority is liable to pay the D2(1) contributions that are payable in respect of those pensionable earnings; or
- (b) is not a foundation trainee, the employing authority with which he has a contract for services from which his pensionable earnings are derived is liable to pay the D2(1) contributions that are payable in respect of those pensionable earnings.

(11) Locum practitioners must pay D1 contributions to the host Board.

(12) Where contributions are payable by a locum practitioner under sub-paragraph (11) in respect of pensionable locum work carried out for an employing authority, that employing authority shall pay contributions under regulation D2(1) in respect of that work.



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(13) Where D2(1) contributions are payable in respect of a locum practitioner under sub-paragraph (12), those contributions shall be payable—

- (a) to the host Board where the Secretary of State is not that host Board, and
- (b) to the Secretary of State if the employing authority is the host Board.

(13A) D1 contributions that are required to be paid to an employing authority by or in respect of a type 1 or type 2 dental practitioner in accordance with this paragraph shall be paid to that employing authority not later than--

- (a) the 7th day of the month following the month to which the earnings relate; or
- (b) if the contributions are in respect of earnings derived from a PDS agreement and the monthly payment date in respect of that agreement is not the first working day of the month following the month to which the earnings relate, the 7th day after the date on which the earnings to which those contributions relate were paid.

(13B) It shall be a function of an employing authority--

- (a) to which D1 contributions are paid in respect of a type 1 or type 2 dental practitioner in accordance with this paragraph;
- (b) which is liable to pay D2(1) contributions in respect of any type 1 or type 2 dental practitioner,

to forward or pay those contributions to the Secretary of State not later than the 12th day after the date on which, by virtue of sub-paragraph (13A), it is due to receive the D1 contributions or, in the case of D2(1) contributions, the related D1 contributions.

(14) Contributions which are required to be paid to the host Board—

- (a) other than pursuant to sub-paragraphs (2N) or (2Q) must be paid to that Board not later than the 7th day of the month following the month in which the earnings were paid;
- (b) pursuant to sub-paragraph (2N) or, as the case may be, sub-paragraph (2Q) at the same time as providing that Board with the certificate referred to in the relevant sub-paragraph.

(15) Where, as regards a type 1 or type 2 medical practitioner, an employing authority--

- (a) is not the host Board, it shall be a function of that employing authority to provide the host Board with a record of any--
  - (i) pensionable earnings paid by it to a practitioner;
  - (ii) contributions deducted by it in accordance with sub-paragraph (5) or (9),

not later than the 7th day of the month following the month in which the earnings were paid;

(b) is the host Board that has deducted contributions in accordance with sub-paragraph (5) or (9) and is liable to pay D2(1) contributions in respect of any pensionable earnings it pays to a practitioner, it shall be a function of that Board to maintain a record of--

- (i) the matters referred to in paragraph (a)(i) and (ii) above;
- (ii) any contributions paid to it by a type 1 medical practitioner; and
- (iii) any contributions paid to it by a locum practitioner.

(16) It shall be a function of the host Board to pay the contributions--

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- (a) paid to it by a type 1 medical practitioner or locum practitioner;
- (b) paid to it by another employing authority;
- (c) it is liable to pay by virtue of sub-paragraphs (8)(b) and (10)(b),

in accordance with the provisions of this paragraph, to the Secretary of State not later than the 19th day of the month following the month in which the earnings were paid.

(17) Sub-paragraph (17A) applies where, despite the provisions of this paragraph—

- (a) a type 1 or type 2 practitioner, locum practitioner or non-GP provider has failed to pay contributions payable pursuant to regulations D1, Q4, Q5, Q6, Q8 and Q10;
- (b) a type 1 practitioner or non-GP provider has failed to pay D2(1) contributions; or
- (c) an employing authority has failed to deduct or pay to the Secretary of State contributions pursuant to regulations D1, Q4, Q5, Q6, Q8 and Q10.

(17A) The Secretary of State may recover the amount of any unpaid contributions referred to in sub-paragraph (17)—

- (a) where an employing authority has ceased to exist and paragraph (a) of that sub-paragraph applies, by adding the amount of those unpaid contributions to the amount of D1 contributions the practitioner or non-GP provider in question is due to pay to the host Board: that practitioner or non-GP provider is to record that amount of those unpaid contributions in a certificate referred to in paragraph 23 of this Schedule; or
- (b) by deduction from any payment of a benefit to, or in respect of, the member entitled to that benefit: such a deduction may only be made where the Secretary of State has notified the member of an intention to do so.

(17B) The provisions of sub-paragraph (17A) are without prejudice to any other method of recovery the Secretary of State may have.

(17C) Notwithstanding regulation R1 and regulation D2(1), contributions payable by an employing authority in respect of a GP Provider or non-GP Provider under these Regulations and any administration charge or interest under regulation T9 payable in respect of them, are not payable by the National Health Service Commissioning Board or a relevant Local Health Board but are—

- (a) payable by that GP Provider or non-GP Provider where that Provider is a sole Provider, or
- (b) payable by the practice where the provider is a GP Provider or non-GP Provider.

(18) For the purposes of this paragraph—

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

## **Normal retirement pension**

### **11**

(1) In the case of members who are or have been practitioners, regulation E1 (normal retirement pension) is modified so that the yearly rate of a member's pension--

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- (a) in respect of officer service, will be equal to 1/80th of final year's pensionable pay for each complete year of service, plus the relevant daily proportion for each additional day (as described in that regulation); and
  - (b) in respect of practitioner service will be equal to 1.4 per cent of the member's uprated earnings.
- (2) In respect of--
- (a) any scheme year prior to the 2008-2009 scheme year, the member's uprated earnings have been uprated in the manner determined by the Secretary of State having consulted such professional organisations as the Secretary of State considered appropriate;
  - (b) the 2008-2009 scheme year and any later scheme year, the member's uprated earnings are to be calculated by uprating the member's pensionable earnings by the amount of the annual increase due under the provisions of the Pensions (Increase) Act 1971 and section 59 of the Social Security Pensions Act 1975, plus 1.5 per cent annually.
- (3) Nothing in this paragraph shall be taken to require the Secretary of State to revisit the calculation of uprated earnings referred to in sub-paragraph (2)(a).

## **Practitioners with benefits from both practitioner and officer service**

### **11A**

- (1) A member--
- (a) who has at least two years' qualifying service or in respect of whom a transfer payment has been made to this Section of the scheme in respect of his rights under a personal pension scheme;
  - (b) who ceases to be in officer service while continuing in practitioner service; and
  - (c) whose officer service is not treated as practitioner service under paragraph 9(5A) or (6A),

shall be entitled to receive a separate pension and retirement lump sum in respect of his officer service.

- (2) A member--
- (a) who has at least two years' qualifying service or in respect of whom a transfer payment has been made to this Section of the scheme in respect of his rights under a personal pension scheme; and
  - (b) who ceases, or who ceased before 1st April 2003, to be in practitioner service while continuing in officer service on or after that date,

shall be entitled to receive a separate pension and retirement lump sum in respect of such of his pensionable service as is specified in sub-paragraph (3).

- (3) The pensionable service specified for the purposes of sub-paragraph (2) is--
- (a) any practitioner service; and
  - (b) any officer service which falls to be treated as practitioner service under paragraph 9.

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(4) Subject to sub-paragraph (5), the amount of any pension or retirement lump sum which a member is entitled to receive under sub-paragraph (1) or (2) shall be the same as the amount of the pension or retirement lump sum which the member would have been entitled to receive under these Regulations if he had left pensionable employment on the day on which he ceased to be in officer service or, as the case may be, ceased to be in practitioner service.

(5) A member who is entitled to a pension and retirement lump sum under sub-paragraph (2) shall, if it would be more favourable to him, be treated as having continued in practitioner service until the last day of his pensionable employment.

(6) A member who, before commencing the member's final period of practitioner service, has service as an officer (whether that service as an officer consists of a separate period of such service or two or more such periods), and--

- (a) that officer service is preceded by an earlier period of practitioner service, and
- (b) some or all of the officer service is not concurrent with practitioner service,

shall, if it would be more favourable, be entitled to receive a separate pension and retirement lump sum for such part of that officer service that is not concurrent with the member's practitioner service.

(7) The amounts of the pension and retirement lump sum referred to in sub-paragraph (6)--

- (a) shall be subject to a 1.5% increase for each whole year or part of a year within the increment period,
- (b) that increase shall be applied in like manner and at the same intervals as an increase applied to a pension under the Pensions (Increase) Act 1971, and
- (c) that increase shall be effective immediately before the pension and lump sum become payable under these Regulations.

(8) The increment period referred to in sub-paragraph (7) shall--

- (a) begin with the day immediately following the day on which the member's service as an officer referred to in sub-paragraph (6) ceased for the last time, and
- (b) end with the day immediately before the pension and retirement lump sum become payable under these Regulations.

## **Early Retirement Pension (ill-health)**

### **12**

(1) In the case of members who are or have been practitioners, regulations E2 and E2A are modified so that, if the member satisfies the requirements for a pension based on pensionable service that is increased under any of paragraphs (4) to (6) of regulation E2 or paragraphs (4) to (6) of regulation E2A--

- (a) the member's total pensionable service will be increased as described in whichever of those paragraphs applies;
- (b) the length of the member's officer service and practitioner service will each be increased by the proportion by which the member's total pensionable service is increased; and

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(c) for the purpose of calculating the member's pension in respect of practitioner service, the member's uprated earnings will then be increased by the same proportion as the member's practitioner service is increased under paragraph (b).

(2) For the purposes of sub-paragraph (1), "total pensionable service" includes both officer service and practitioner service but does not include any period of additional service that the member buys under regulation Q1 (right to buy additional service).

(3) Regulation E2A is modified so that the definition of "regular employment of like duration" in paragraph (18) of that regulation means such employment as the Secretary of State considers would involve a similar level of engagement in the member's current pensionable service as a practitioner.

### **Early retirement pension (employer's consent)**

13 Omitted

### **Lump sum on member's death in pensionable employment or after pension becomes payable**

14

(1) In the case of members who die in pensionable employment as practitioners, regulation F1 (lump sum payable on member's death in pensionable employment) is modified so that, in relation to the member's employment as a practitioner, the reference to final year's pensionable pay in regulation F1(2) is treated as a reference to--

(a) in the case of a member who is required to pay contributions under regulation D1(4), the yearly average of the member's uprated earnings at the date of death, or

(b) in the case of a member who is no longer required to pay contributions under regulation D1(4), the yearly average of the member's uprated earnings on the member's last day of pensionable service.

(2) In the case of members who die after a pension under this Section of the scheme in respect of practitioner service becomes payable, regulation F2 (lump sum payable on member's death after pension becomes payable) is modified so that, in relation to the member's employment as a practitioner, the reference to final year's pensionable pay in regulation F2(2) is treated as a reference to the yearly average of the member's uprated earnings on the member's last day of pensionable service.

### **Widows, widowers or surviving civil partners pension on member's death in pensionable employment**

15

In the case of members who die in pensionable employment as practitioners, regulation G2 (widow's pension on member's death in pensionable employment) is modified so that the reference, in regulation G2(2), to the rate of the member's pensionable pay when he died is treated, in relation to the member's employment as a practitioner, as a reference to the average rate of the member's pensionable earnings during the last complete quarter before the member died.

### **Increased widower's pension**

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## **16**

In the case of female members who made a nomination under regulation G8 (dependent widowers pension) or an election under regulation G9 (increased widower's pension), those regulations are modified so that the lump sum payable on the member's retirement will be reduced by 2.8 per cent of uprated earnings for each complete year of practitioner service before 25th March 1972, and by 1.4 per cent of uprated earnings for each complete year after 24th March 1972, plus, in each case, the relevant daily proportion for each additional day.

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

#### **16A**

In the case of a civil partner who made a nomination under regulation G11 (dependent surviving civil partner's pension) or an election under G13 (increased surviving civil partner's pension) those regulations are modified so that the lump sum payable on the member's retirement will be reduced by 1.96 per cent of uprated earnings for each complete year of practitioner service plus the relevant daily proportion for each additional day.

### **Increased dependent surviving nominated partner's pension**

#### **16B**

In the case of a member who made a nomination under regulation G15 (dependent surviving nominated partner's pension) that regulation is modified so that the lump sum payable on the member's retirement will be reduced by 1.96 per cent of uprated earnings for each complete year of practitioner service before 6 April 1988 plus the relevant daily proportion for each additional day.

### **Increased surviving partner pension**

#### **16C**

In the case of a member who made an election under regulation G17 (increased surviving partner's pension) that regulation is modified so that the lump sum payable on the member's retirement will be reduced by 1.96 per cent of uprated earnings for each complete year of practitioner service before 6 April 1988 plus the relevant daily proportion for each additional day.

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

## **17**

In the case of members who die in pensionable employment as practitioners--

(a) paragraphs (4C), (4D), (6) and (7) of regulation H3 (member dies in pensionable employment) are modified so that the references to the rate of the member's pensionable pay when he died is treated, in relation to the member's employment as a practitioner, as references to the average rate of the member's pensionable earnings during the last complete quarter before the member died;

(b) paragraphs (10) and (12) of that regulation is modified so that the reference to the member's final year's pensionable pay when he died is treated as a reference to the yearly average of the member's uprated earnings at the date of death.

### **Preserved pension**



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**17A.** Regulation L1(14) is modified so that—

(a) paragraph (b) in the definition of “NHS employment” reads—

“(b) the 2015 Scheme and that member has a break of service under the 2015 Regulations that exceeds five years.”; and

(b) the definition of “regular employment of like duration” reads—

““regular employment of like duration” means such employment as the Secretary of State considers would involve a similar level of engagement to the member’s pensionable service as a practitioner immediately before that service ceased.”

## **Transfers from other pension arrangements**

### **18**

(1) In the case of members who are practitioners, regulations N1 (member's right to transfer accrued rights to benefits to this Section of the scheme) and N4 (transfers in respect of more than one member) are modified so that, if a transfer payment is accepted in respect of the member's rights under another occupational pension scheme, a personal pension scheme, or a buy-out policy, the benefits in respect of the transfer payment will be calculated as described in this paragraph.

(2) The benefits in respect of the transfer payment will be calculated by increasing the member's pensionable earnings for the financial year in which the member joined this Section of the scheme (or the financial year in which the transfer payment is received, if the payment is received more than 12 months after the member joined this Section of the scheme).

(3) The amount of the increase referred to in sub-paragraph (2) will be calculated by--

(a) treating the member as entitled to a period of officer service equal to the period of employment that qualified the member for the rights in respect of which the transfer payment is being made;

(b) calculating the final year's pensionable pay that would have given rise to a cash equivalent, in respect of that officer service under regulation M3 (amount of member's cash equivalent) equal to the amount of the transfer payment; and

(c) increasing the member's pensionable earnings by an amount equal to the pensionable pay that the member would have received during that period of officer service if the member's pensionable pay had been equal to the final year's pensionable pay mentioned in paragraph (b) throughout that period.

(4) For the purposes of sub-paragraph (3), the final year's pensionable pay mentioned in paragraph (b) will be calculated in a manner that is consistent with the actuarial methods and assumptions referred to

in--

(a) regulation N2 (transfers made under the Public Sector Transfer Arrangements) where the transfer payment is made under the Public Sector Transfer Arrangements; or

(b) regulation N3 (transfers that are not made under the Public Sector Transfer Arrangements) in any other case.

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(5) The upper limit on a dental practitioner's pensionable earnings under paragraph 8 (limit on pensionable earnings - dental practitioners) will not apply to any increase in a member's pensionable earnings under this paragraph.

## **Members absent from work**

### **19**

(1) In the case of members who are practitioners, regulations P1 and P2 (absence from work) are modified so that the references to pensionable pay in regulations P1(3) and P2(3) are treated, in relation to the member's employment as a practitioner, as references to pensionable earnings.

(2) Subject to sub-paragraph (8), regulation P1 is further modified so that, if a member's earnings in respect of employment as a practitioner are reduced during a period of absence from work by reason of illness or injury, the member's pensionable earnings will be calculated as described in sub-paragraphs (4) and (5) below (instead of on the basis of the member's earnings immediately before the absence started).

(3) Subject to sub-paragraph (8), regulation P1 is further modified so that, if a member's earnings in respect of employment as a practitioner cease during a period of absence from work by reason of illness or injury, the member will be treated as continuing in pensionable employment for a period of 12 months from the date on which the member's earnings ceased and the member will not be treated as having left pensionable employment in accordance with regulation P1(4) until the end of that 12 month period. During the 12 month period, the member's pensionable earnings will be calculated as described in sub-paragraphs (4) and (5) below.

(4) If the member is one of a number of practitioners who have elected as described in paragraph 4(2) above, each practitioner's pensionable earnings will be calculated as if the partnership's aggregate pensionable earnings were equal to the amount of the partnership's aggregate pensionable earnings during the 12 month period ending immediately before the member's earnings were reduced or ceased.

(5) Except where the member's pensionable earnings fall to be calculated as described in sub-paragraph (4), the member will be treated as having continued to receive the same average rate of pensionable earnings as during the 12 month period ending immediately before his earnings were reduced or ceased.

[(6) (revoked)]

(7) Regulations P1 and P2 and the previous sub-paragraphs do not apply in the case of locum practitioners.

(8) Before a calculation of a member's pensionable earnings can be made in accordance with sub-paragraphs (4) and (5), written notice of the length of the absence must be given to the Secretary of State by—

- (a) the member, where the member is a type 1 practitioner or a non-GP provider; or
- (b) in all other cases, the National Health Service Commissioning Board or relevant Local Health Board.

(9) The notice referred to in sub-paragraph (8) must be provided to the Secretary of State in such form and manner as the Secretary of State may stipulate from time to time.

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## **Right to buy additional service and unreduced retirement lump sum**

### **20**

(1) In the case of members who are practitioners, regulations Q1 (right to buy additional service), Q2 (right to buy unreduced retirement lump sum) Q4 and Q5 (paying by single payment) and Q6 (paying by regular additional contributions) are modified so that the cost of buying additional service and unreduced retirement lump sum and the benefits in respect of any additional service bought under regulation Q1 are calculated as described in this paragraph.

(2) Regulation Q1 is modified so that, if the member elects to pay for additional service by a single payment, the benefits in respect of the additional service will be calculated by increasing the member's pensionable earnings for the financial year in which the member elects to buy the additional service.

(3) The amount of the increase referred to in sub-paragraph (2) will be calculated using the formula--

relevant earnings x additional service bought

where--

"relevant earnings" means the amount of remuneration by reference to which the amount of the single payment was calculated; and

"additional service bought" means the period of additional service that the member chooses to buy, calculated in complete years with a relevant daily proportion for each additional day.

(4) Regulation Q1 is further modified so that, if the member chooses to pay for additional service by regular additional contributions, the benefits in respect of the additional service will be calculated by increasing the member's pensionable earnings for the year in which the member stops paying those contributions.

(5) The amount of the increase referred to in sub-paragraph (4) will be calculated using the formula--

relevant uprated earnings x additional service bought

where--

"relevant uprated earnings" means the yearly average of the part of the member's uprated earnings that is attributable to the period during which the member paid regular additional contributions; and

"additional service bought" means the period of additional service that the member chooses to buy, calculated in complete years with a relevant daily proportion for each additional day.

(6) Regulation Q4(4) and (5) is modified so that, for the purposes of Table 1 of Schedule 1, "remuneration" means, subject to sub-paragraph (7) below, the yearly average of a member's uprated earnings in respect of practitioner service before the date on which the employing authority receives notice in writing, on the form provided, exercising the member's right to buy additional service. For the purpose of this calculation, any officer service that is treated as practitioner service by virtue of paragraph 9 (officer service treated as practitioner service) will be ignored.

(7) If, when the employing authority receives a notice exercising a right to buy additional service, the member has not been in practitioner service for a complete quarter, "remuneration" will

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be calculated by reference to the member's uprated earnings at the end of the member's first complete quarter in practitioner service.

(8) Regulation Q6(5) is modified so that, if the member elects to pay for additional service or unreduced retirement lump sum by regular additional contributions, the contributions will be calculated as a percentage of pensionable earnings (instead of pensionable pay), in accordance with Table 3 of Schedule 1 (if the member is buying additional service) or Table 4 of Schedule 1 (if the member is buying an unreduced retirement lump sum).

(9) The upper limit on a dental practitioner's pensionable earnings under paragraph 8 (limit on pensionable earnings--dental practitioners) shall not apply to any increase in a member's pensionable earnings under this paragraph.

## **Members doing more than one job**

### **21**

(1) In the case of members who are practitioners, Regulation R4 (members doing more than one job) is modified as described in this paragraph in relation to any practitioner who is in concurrent employment as an officer.

(2) A practitioner who opts not to contribute to this Section of the scheme in respect of his employment as a practitioner may, nevertheless, participate in this Section of the scheme in respect of concurrent employment as an officer.

(3) Regulation R4(2) is modified so that a practitioner may participate in this Section of the scheme in respect of concurrent whole-time or part-time employment as an officer, even if he also participates in this Section of the scheme in respect of employment as a practitioner.

(4) For the purposes of paragraph 12 (early retirement pension on grounds of ill-health), any amount by which a member's service in respect of concurrent employments exceeds the period during which the member carried on those employments will be ignored for the purpose of calculating the member's total pensionable service.

(5) If a transfer payment is accepted in respect of a member who is contributing to this Section of the scheme in respect of employment as a practitioner and concurrent employment as an officer, the member may elect whether the benefits in respect of the transfer payment should be calculated as described in regulations N1 to N3 or as described in paragraph 18 (transfers from other pension arrangements).

## **Reduction of pension on return to NHS employment**

### **22**

(1) In the case of members who are or have been practitioners, regulation S2 (reduction of pension on return to NHS employment) is modified as described in this paragraph.

(2) Regulation S2(14) is modified so that--

(a) "pay" means the amount of pensionable earnings received by the member, for any financial year, from NHS employment (or what would have been his pensionable earnings had he been in pensionable employment);

(b) "previous pay" means the average of the annual amounts of the member's uprated earnings in respect of practitioner service (or service which is treated as practitioner service).

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(3) In the case of a practitioner who becomes entitled to receive, simultaneously, a pension under this Section of the scheme in respect of both officer service and practitioner service, the member's previous pay in respect of his practitioner service shall be increased by the amount of his previous pay in respect of his officer service.

(4) In the case of a practitioner who becomes entitled to receive a pension under this Section of the scheme and who holds a continuing employment otherwise than as a practitioner, previous pay will be increased by the annual rate of pay of the continuing employment.

(5) This sub-paragraph applies where a practitioner becomes entitled to receive a pension under this Section of the scheme and in the 12 months preceding the date on which he became so entitled, held concurrent pensionable employment as an officer.

(6) Where sub-paragraph (5) applies and the concurrent pensionable employment terminated before the pension became payable, previous pay in relation to the practitioner service shall be increased as described in sub-paragraph (7).

(7) For the purposes of sub-paragraph (6), previous pay shall be increased by the annual rate of pay in respect of the concurrent pensionable employment mentioned in that sub-paragraph or, if higher, that part of the pensionable pay for that employment which falls within the 12 months period mentioned in sub-paragraph (5).

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

### **22A**

The following provisions are modified so that the reference to the member's rate of pensionable pay when he dies is treated as a reference to the average rate of the member's pensionable earnings during the last complete quarter before the member died--

- (a) paragraphs (7) and (12) of regulation S4 (benefits on death in pensionable employment after pension under regulation E2 becomes payable); and
- (b) paragraphs (10) and (15)(a) of regulation S4A (benefits on death in pensionable employment after pension under regulation E2A becomes payable).

## **Accounts and actuarial reports**

### **23**

(1) In the case of members who are practitioners or non-GP providers, regulation U3 (accounts and actuarial reports) is modified as described in this paragraph.

(2) In respect of each scheme year, a type 1 medical practitioner and a non-GP provider shall provide each relevant host Board with a certificate that correctly records the totality of their pensionable earnings based on--

- (a) the accounts drawn up in accordance with generally accepted accounting practice by the practice of which the member is a member; and
- (b) the return that member has made to Her Majesty's Revenue and Customs in respect of their earnings for that year,

no later than 1 month after the date on which that return was required to be submitted to Her Majesty's Revenue and Customs.

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(3) In respect of each scheme year, a type 2 medical practitioner and a locum practitioner shall provide each relevant host Board with a certificate that correctly records the totality of their pensionable earnings based on--

- (a) the payments they receive from employing authorities for practitioner services, and
- (b) the return that member has made to Her Majesty's Revenue and Customs in respect of their earnings for that year,

no later than 1 month after the date on which that return was required to be submitted to Her Majesty's Revenue and Customs.

(4) Within 1 month of the end of each financial year, a host Board must give to each—

- (a) GDS or PDS contractor with which that host Board is a party to a GDS contract or a PDS agreement, a notice which sets out, in accordance with the host Board's records, the amount of the pensionable earnings ceiling and the amount of the pensionable earnings the contractor has paid to every type 1 dental practitioner who has performed services under that contract or agreement during that financial year ("an annual reconciliation notice"); and
- (b) type 1 dental practitioner referred to in (a), a notice which sets out the amount of pensionable earnings each practitioner has been paid for that financial year as indicated in the host Board's records ("a performer's notice").

(5) Within 3 months of the end of each financial year the GDS or PDS contractor must return the annual reconciliation notice to the host Board stating—

- (a) that the amounts referred to in sub-paragraph (4)(a) are correct or, where either or both of those amounts are incorrectly shown in the notice, the correct figure or figures;
- (b) in the case of a type 1 dental practitioner whose earnings, during the period covered by the annual reconciliation notice, are not pensionable because they fall within paragraph 3(2A)(b) of this Schedule, the earnings that would otherwise have been pensionable if that paragraph did not apply;
- (c) the amount of any monthly seniority payments, maternity leave payments, paternity leave payments, adoption leave payments, parental leave payments, [shared parental leave payments](#) or sickness leave payments paid under the contract or agreement during the financial year;
- (d) the amount of pensionable earnings the contractor has paid to each type 1 dental practitioner under the contract or agreement during the financial year;
- (e) whether each type 1 dental practitioner who performed services under the contract or agreement referred to in sub-paragraph (4)(a) was given the opportunity to verify the pensionable earnings declared for them in the annual reconciliation notice; and
- (f) the name and dentist's reference number of any type 1 dental practitioner who—
  - (i) failed to verify; or
  - (ii) disagrees with,the amounts declared for them in the annual reconciliation notice and, where paragraph (ii) applies, the reason for the disagreement.

(6) Within 3 months of the end of each financial year, each type 1 dental practitioner who performed services under the contract or agreement referred to in sub-paragraph (4)(a) must return the performers' notice to the host Board, stating—



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- (a) that they were (or were not, as the case may be) in pensionable employment for the period covered by the performer's notice;
  - (b) that they were (or were not, as the case may be) directly employed by the contractor referred to in sub-paragraph (4)(a) during the period covered by the performer's notice;
  - (c) in the case of a practitioner, who was in pensionable employment during the period covered by the notice, the pensionable earnings they received under the contract or agreement during that period;
  - (d) in the case of a practitioner whose earnings, during the period covered by the performer's notice, fell within paragraph 3(2A)(b) of this Schedule, the earnings that would otherwise have been pensionable if that paragraph did not apply;
  - (e) the amount of any monthly seniority payments, maternity leave payments, paternity leave payments, adoption leave payments, parental leave payments, [shared parental leave payments](#) or sickness leave payments received by the practitioner under the contract or agreement during the financial year; and
  - (f) whether the practitioner and contractor have together verified that any amounts the practitioner has declared in respect of sub-paragraph (6)(c), (d) or (e) are the same as the equivalent amounts declared in the annual reconciliation notice referred to in sub-paragraph (5).
- (7) Within 3 months of the end of each financial year, a type 2 dental practitioner must provide the host Board with whom their employer has entered into a GDS contract or a PDS agreement, with a notice of their pensionable earnings based on—
- (a) the payments they have received from their employer for practitioner services provided under that GDS contract or PDS agreement during that financial year; and
  - (b) the pensionable earnings they have received, as a type 2 dental practitioner, from all other type 2 dental practitioner sources during that financial year.
- (8) An employing authority may, in exceptional circumstances, and with the agreement of the Secretary of State, arrange or agree a different time limit for the issue and return of the certificates, notices or statements referred to in sub-paragraphs (2) to (7) and may, if a material particular has changed, accept a replacement.
- (9) Subject to sub-paragraph (10), an annual reconciliation notice will be invalid if—
- (a) it contains information that the employing authority's records show is inaccurate or misleading in a material particular;
  - (b) subject to sub-paragraph (8), it is not received within the specified time limit;
  - (c) the total of the amounts specified in it in respect of each type 1 dental practitioner that performed services under the contract or agreement referred to in sub-paragraph (4)(a) is greater than the aggregate of the pensionable earnings ceiling referred to in sub-paragraph (4)(a) and the amount referred to in sub-paragraph 5(c);
  - (d) it is incomplete in any material particular; or
  - (e) one or more of the practitioners referred to in it did not, for whatever reason, verify the earnings figure the contractor has declared for them.
- (10) Where an employing authority has received an annual reconciliation notice which is valid for some or all of the practitioners listed in it, the amounts notified to that employing authority for the financial year to which the notice relates will, subject to sub-paragraphs (16), (17) and (18), be the pensionable earnings for those practitioners.

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(11) Where an employing authority has received an annual reconciliation notice which is invalid for some or all of the practitioners listed in it, the pensionable earnings for those practitioners for the financial year to which the notice relates will be—

- (a) zero, where the employing authority's records show that value or the authority is unable to estimate the value of the practitioner's pensionable earnings; or
- (b) the figure that the employing authority estimates will represent that practitioner's share of the aggregate of the pensionable earnings ceiling referred to in sub-paragraph 4(a) and the amount referred to in sub-paragraph (5)(c) ("the maximum amount"), less the difference between—
  - (i) that maximum amount, and
  - (ii) the total of the monthly amounts in respect of which estimated contributions to this Section of the scheme under regulation D1 (contributions by members) were paid on account during the financial year to which the earnings relate,

but if the total mentioned in sub-paragraph (ii) is greater than the maximum amount, then no amount is to be deducted pursuant to this sub-paragraph.

(12) Each employing authority and GDS or PDS contractor must, in respect of each scheme year, provide the host Board and the Secretary of State with a statement of estimated contributions due under regulations D1, D2, Q6 and Q8 in respect of any—

- (a) non-GP provider that is a GMS or PMS practice or an APMS contractor who assists in the provision of NHS services provided by that GMS or PMS practice or APMS contractor;
- (b) type 1 medical practitioner who performs medical services as, or on behalf of, the practice or contractor;
- (c) type 2 medical practitioner employed by the practice or contractor;
- (d) type 1 dental practitioner who performs services under a GDS contract or a PDS agreement, or
- (e) type 2 dental practitioner employed or engaged to perform services under a GDS contract or a PDS agreement.

(13) In respect of each scheme year, each employing authority and GDS or PDS contractor shall, in respect of type 2 medical or dental practitioners employed or engaged by the practice or contractor, provide the Secretary of State with an end-of-year statement of—

- (a) pensionable earnings;
- (b) contributions to this Section of the scheme made under regulation D1 (contributions by members) and the modifications to that regulation referred to in paragraph 10 of this Schedule;
- (c) contributions to this Section of the scheme made under regulation D2 (contributions by employing authorities) and the modifications to that regulation referred to in paragraph 10 of this Schedule; and
- (d) any pensionable earnings deemed in accordance with regulation P1 (absence because of illness or injury or certain types of leave) and the modifications to that regulation referred to in paragraph 19 of this Schedule.

(14) The host Board and the Secretary of State shall be provided with—

- (a) the statement referred to in sub-paragraph (12) at least 1 month before the beginning of that scheme year;

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- (b) the statement referred to in sub-paragraph (13) no later than 3 months after the end of that scheme year.

(15) No later than 13 months after the end of each scheme year, each employing authority, GDS contractor and PDS contractor must forward to the Secretary of State a copy of the records referred to in regulation U3(3) and (4).

(16) A member's pensionable earnings for a scheme year shall be zero and no contributions paid in respect of that scheme year are to be refunded where, in respect of that scheme year, a practitioner or non-GP Provider has failed to comply with the requirements of—

- (a) whichever of sub-paragraphs (2), (3), (5), (6) or (7) applies to that member, or
- (b) sub-paragraph (2) of paragraph 2.

This is subject to sub-paragraphs (17) and (18).

(17) If, in respect of a scheme year, the employing authority of a practitioner or non-GP provider member is in possession of a figure representing all or part of that member's pensionable earnings for that year, the Secretary of State may treat that figure as the amount of that member's pensionable earnings for that year where—

- (a) that member has failed to comply with the requirements of whichever of sub-paragraphs (2), (3), (5), (6) or (7) applies to them, and
- (b) a benefit in respect of that member's service as a practitioner or non-GP provider is payable to, or in respect of them, under these Regulations.

(18) If, in respect of a scheme year, a practitioner or non-GP provider—

- (a) dies without complying with the requirements of whichever of sub-paragraphs (2), (3), (5), (6) or (7) applies to them; or
- (b) is, in the opinion of the Secretary of State, unable to look after their own affairs by reason of illness or lack of capacity within the meaning of the Mental Capacity Act 2005,

the Secretary of State may require that practitioner's or non-GP provider's personal representatives or person (or persons) duly authorised to act on the member's behalf to provide the relevant certificate, notice or statement within the period specified in sub-paragraph (19).

(19) The period is—

- (a) that referred to in whichever of sub-paragraphs (2), (3), (5), (6) or (7) was or is applicable to them; or
- (b) such other period as the Secretary of State permits.

(20) The certificates, notices and statements referred to in this paragraph—

- (a) shall be in such form as the Secretary of State shall from time to time require;
- (b) may be provided to the Secretary of State in such manner as the Secretary of State may from time to time permit.

## **SCHEDULE 2A PENSION SHARING ON DIVORCE OR NULLITY OF MARRIAGE OR, ON THE DISSOLUTION OR NULLITY OF A CIVIL PARTNERSHIP**

### **Discharge of liability in respect of a pension credit following the death of the person entitled to the pension credit**

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## 1

(1) The Secretary of State shall, following the death of the person entitled to a pension credit before liability in respect of that credit has been discharged, discharge his liability in respect of that credit by way of the payment of a lump sum in accordance with paragraph (2)(a)(i) of regulation 6 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (discharge of liability in respect of a pension credit following the death of the person entitled to the pension credit).

(2) The amount of a lump sum payable under this paragraph shall be--

(a) payable in accordance with regulation F5 as modified by paragraph 9 below; and

(b) equal to 3 times the annual rate of the pension credit benefit to which the person entitled to the pension credit would have been entitled had he reached normal benefit age on or before the date of death.

## 2 (revoked)

### **Pension credit benefit on attaining normal benefit age**

## 3

(1) A pension credit member shall be entitled under this Section of the scheme to pension credit benefit which shall consist of--

(a) a pension; and

(b) where the member, from whose rights the pension credit member's pension credit rights are derived, has not received a lump sum on or before the day on which the pension sharing order or provision takes effect, a lump sum.

(2) Subject to paragraphs 3A to 4, a pension credit member shall be entitled to the payment of the pension credit benefit when he reaches normal benefit age.

(3) Payment of the pension credit benefit to which a pension credit member is entitled shall not be deferred beyond normal benefit age.

(4) A pension payable in accordance with this paragraph shall be payable to the pension credit member for life.

(5) Subject to paragraph (7), the value of the pension referred to in this paragraph shall be equal to the value of the pension credit rights which have accrued to or in respect of the pension credit member.

(6) The lump sum referred to in this paragraph shall be equal to 3 times the annual rate of the pension.

(7) A pension credit member who is entitled to a lump sum in accordance with sub-paragraph (1)(b) may opt to exchange part of a pension to which the pension credit member would otherwise be entitled for a lump sum, which must be an evenly divisible multiple of £12.

(8) If a pension credit member so opts, 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.

(9) An option under paragraph (7) 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).

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(10) In paragraph (9) "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.

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

(12) The option under sub paragraph (7) may only be exercised by giving notice in writing to the scheme administrator in the form required by the Secretary of State--

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

### **Pension credit benefit before attaining normal benefit age (with actuarial reduction)**

#### **3A**

(1) Subject to sub-paragraph (2), a pension credit member shall be entitled to the payment of the pension credit benefit described in paragraph 3 of this Schedule 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 that paragraph will be reduced by such amount as the Secretary of State, after taking the advice of the Scheme Actuary, may determine.

### **Pension credit benefit before attaining normal benefit age (on grounds of ill health)**

#### **3B**

(1) A pension credit member shall be entitled to the payment of the pension credit benefit described in paragraph 3 of this Schedule before attaining normal benefit age if the Secretary of State is satisfied that the pension credit member--

- (a) meets the ill-health condition specified in paragraph 1 of Schedule 28 to the 2004 Act, and
- (b) had previously been engaged in regular employment but is now permanently incapable of engaging in regular employment due to mental or physical infirmity.

(2) For the purpose of sub-paragraph (1), the Secretary of State may require whatever medical evidence that the Secretary of State considers necessary.

### **Commutation of the whole of pension credit benefit before normal benefit age**

#### **4**

(1) A pension credit member shall be entitled to the commutation of the whole of his pension credit benefit before reaching normal benefit age in the circumstances permitted by paragraph (b) of the lump sum rule in section 166(1) of the 2004 Act.

(1A) For the purpose of sub-paragraph (1), the Secretary of State may require whatever medical evidence that the Secretary of State considers necessary.

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(2) The pension credit payable in the circumstances described in sub-paragraph (1) shall consist of--

(a) where paragraph 3(1)(b) applies, a lump sum equal to the aggregate of--

(i) 3 times the annual rate of the pension otherwise payable under paragraph 3 of this Schedule had the pension credit member reached normal benefit age on the date when commutation in accordance with this paragraph is applied for,

(ii) 5 times the annual rate of the pension referred to in paragraph (i) after that annual rate has been reduced by the maximum amount of pension that the pension credit member may exchange for a lump sum under paragraph 3(7) of this Schedule, and

(iii) the lump sum resulting from the reduction to the pension credit member's pension referred to in paragraph (ii);

(b) where paragraph 3(1)(b) does not apply, a lump sum equal to 5 times the annual rate of the pension otherwise payable under paragraph 3 of this Schedule had the pension credit member reached normal benefit age on the date when commutation in accordance with this paragraph is applied for.

### **Commutation of the whole of pension credit benefit at normal benefit age**

#### **5**

(1) Where--

(a) the pension credit member is suffering from serious ill health at normal benefit age; or

(b) the total benefits payable to the pension credit member, including any pension credit benefit, is of an amount that complies with the provisions of paragraphs 7 to 9 of Part I of Schedule 29 to the 2004 Act (lump sum rule: trivial commutation lump sum) at normal benefit age,

the Secretary of State may discharge his liability in respect of the payment of pension credit benefit by the payment of a lump sum to the pension credit member at normal benefit age.

(2) The pension credit payable in the circumstances described in sub-paragraph (1)(a) shall consist of--

(a) where paragraph 3(1)(b) applies, a lump sum equal to the aggregate of--

(i) 3 times the annual rate of the pension otherwise payable under paragraph 3 of this Schedule,

(ii) 5 times the annual rate of the pension referred to in paragraph (i) after that annual rate has been reduced by the maximum amount of pension that the pension credit member may exchange for a lump sum under paragraph 3(7) of this Schedule, and

(iii) the lump sum resulting from the reduction to the pension credit member's pension referred to in paragraph (ii);

(b) where paragraph 3(1)(b) does not apply, a lump sum equal to 5 times the annual rate of the pension otherwise payable under paragraph 3 of this Schedule.

(3) In this paragraph "serious ill health" means ill health which is such as to give rise to a life expectancy of less than one year from the date on which the payment of the pension credit benefit of the pension credit member is applied for.



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### **Pension credit member dies before pension credit benefit becomes payable**

#### **6**

- (1) If a pension credit member dies before his pension under this Section of the scheme becomes payable under paragraph 3, a lump sum on death shall be payable in accordance with regulation F5 as modified by paragraph 9 below.
- (2) The lump sum shall be equal to 3 times the annual rate of the pension credit member's pension, to which he would have been entitled had he reached normal benefit age on or before the date of death, calculated in accordance with paragraph 3(5).

### **Pension credit member dies after pension credit benefit becomes payable**

#### **7**

- (1) If a pension credit member dies within 5 years after his pension under this Section of the scheme became payable under paragraph 3 of this Schedule, a lump sum on death shall be payable in accordance with regulation F5 as modified by paragraph 9 below.
- (2) Subject to sub-paragraph (3), the lump sum on death shall be equal to 5 times the annual rate of the pension credit member's pension less the amount of pension already paid.
- (3) The maximum payment under this regulation shall not exceed the amount calculated in accordance with sub-paragraph (4), less the aggregate of--
  - (a) the amount of any lump sum paid to the pension credit member in accordance with paragraph 3(6), and
  - (b) the amount of any lump sum paid to the pension credit member in accordance with paragraph 3(7).
- (4) 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.
- (5) Where a pension credit member referred to in paragraph (1) dies on or before 5th April 2011 and had attained the age of 75 at the date of the pension credit member's death--
  - (a) the lump sum referred to in that paragraph shall cease to be payable, and
  - (b) shall instead be converted into an annual pension to be determined and paid in accordance with paragraph (6).
- (6) The pension referred to in paragraph (5) shall be--
  - (a) determined in accordance with guidance and tables provided by the Scheme Actuary for the purpose of converting the amount of the lump sum into an annual pension;
  - (b) paid to the person who would otherwise be entitled to receive the lump sum in accordance with regulation F5; and
  - (c) paid to that person from the day after the pension credit member's death until the fifth anniversary of the day the pension credit member's pension under this Section of the scheme became payable.

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(7) If, in accordance with regulation F5, a pension credit member has given notice that more than one person is to receive a share of the lump sum, each such person shall receive the same percentage of the annual pension as was specified for that person in the pension credit member's notice.

(8) If, in accordance with regulation F5, the annual pension is to be paid to the pension credit member's personal representatives they may, as part of the distribution of the pension credit member's estate, give irrevocable notice to the Secretary of State--

(a) specifying--

- (i) one or more individuals, or
- (ii) one incorporated or unincorporated body,

to whom the benefit of the pension under this regulation from the date of receipt of the notice by the Secretary of State is to be assigned, and

(b) where two or more individuals are specified, specifying the percentage of the pension payable to each of them,

and the pension (or, as the case may be, the percentage of it specified in respect of the person) may be paid to the person or body, unless paragraph (9) applies.

(9) This paragraph applies if--

- (a) the person specified in the notice has died before payment can be made,
- (b) payment to the person or body specified in the notice is not, in the opinion of the Secretary of State, reasonably practicable, or
- (c) the person to whom the pension (or a specified percentage of the pension) would otherwise be payable has been convicted of an offence specified in regulation T6(1A) and the Secretary of State has directed, as a consequence of that conviction, that the person's right to a payment in respect of the pension credit member's death is forfeited.

(10) The prohibition on assignment of benefits in regulation T3 (benefits not assignable) shall not apply to an assignment by personal representatives under this regulation.

## **Excluded membership**

### **8**

Where a pension credit member is also a member of this Section of the scheme, any period which may count for any purpose in connection with his pension credit benefit shall not be taken into account for the purpose of ascertaining his entitlement to, or, as the case may be, the calculation of, benefits other than pension credit benefits under this Section of the scheme.

## **Payment of lump sum on death**

### **9**

Regulation F5 (payment of lump sum) shall apply in respect of a person entitled to a pension credit or a pension credit member, as the case may be, with the following modifications--

- (a) the reference in that regulation to "any of regulations F1 to F4" shall be a reference to "paragraph 1, 6 or 7 of Schedule 2A";

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(b) the reference in paragraphs (2), (3), (4) and (5) of that regulation to "member" shall be a reference to "person entitled to a pension credit or, as the case may be, the pension credit member";

(c) the reference in paragraphs (2), (3), (4) and (10) of that regulation to "member's personal representative" shall be a reference to "personal representative of the person entitled to a pension credit or, as the case may be, the pension credit member.";

(d) for paragraph (6) substitute--

"(6) A nomination shall be given only by a person entitled to a pension credit, or as the case may be, a pension credit member under this Section of the scheme.";

(e) for paragraph (9) substitute--

"(9) A person entitled to a pension credit, or as the case may be, a pension credit member whose credit was implemented on, or after, 1st April 2008 cannot give a notice referred to in paragraph (3)(a).";

(f) in paragraph (12) omit sub-paragraph (d).

## **Transfers**

### **10**

The Secretary of State shall not pay or accept a transfer value in respect of any pension credit rights or pension credit benefits.

## **General rules about benefits**

### **11**

Regulations T1 (claims for benefits), T2 (deduction of tax), T3 (benefits not assignable) and T4 (beneficiary who is incapable) of these Regulations shall apply to a pension credit member.

## **Offset for crime, negligence or fraud**

### **12**

Regulation T5 (offset for crime, negligence or fraud) shall apply to a pension credit member with the following modifications wherever the words to be modified appear--

(a) the reference to "member's" or "member" shall be a reference to "pension credit member's" or "pension credit member", as the case may be; and

(b) (revoked)

## **Loss of rights to benefits**

### **13**

Regulation T6 (loss of rights to benefits) shall apply to a pension credit member with the following modifications wherever the words to be modified appear--

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- (a) the reference to "member" shall be a reference to "pension credit member"; and
- (b) (revoked)

### **Interest on late payment of benefits**

#### **14**

Regulation T8 (interest on late payment of benefits) shall apply in respect of a pension credit member with the following modifications--

- (a) in paragraph (2) of that regulation references to "member" or "member's" shall be references to "pension credit member";
- (b) in the definition of "due date"--
  - (i) in sub-paragraph (a) the reference to "a lump sum under Part F above" shall be a reference to "a lump sum under paragraph 1, 6 or 7 of Schedule 2A";
  - (ii) in sub-paragraph (a) the reference to "the member's death" shall be a reference to "the death of the person entitled to the pension credit or the pension credit member";
  - (ia) in sub-paragraph (aa)--
    - (aa) the reference to a pension under regulation F2 shall be a reference to a pension under sub-paragraph (5) of paragraph 7 of Schedule 2A;
    - (bb) the reference to the member's personal representatives shall be a reference to the personal representatives of the person entitled to the pension credit or the pension credit member, and
    - (cc) the reference to the member's death shall be a reference to the death of the person entitled to the pension credit or the pension credit member;
  - (iii) sub-paragraphs (b), (c) and (d) shall be omitted;
  - (iv) in sub-paragraph (e) the reference to "of the member's retirement from pensionable employment" shall be a reference to "when the pension credit member becomes entitled to the payment of pension credit benefit";
- (c) in the definition of "qualifying payment" the reference to ", or by way of a refund of contributions," shall be omitted.

### **Administrative matters**

#### **15**

Regulation U2 (determination of questions) shall apply to a person who is entitled to a pension credit or, as the case may be, a pension credit member.

### **Medical determinations**

#### **16**

The Secretary of State may make arrangements for the Secretary of State's functions under this Schedule in relation to a decision whether a person is--

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(a) permanently incapable of regular employment because of physical or mental infirmity for the purpose of paragraph 3B;

(b) expected to live for less than one year for the purposes of the lump sum rule referred to in paragraph 4,

to be discharged by--

(i) a registered medical practitioner (whether practising on his own or as part of a group); or

(ii) a body corporate or unincorporate employing such practitioners (whether under a contract of service or for services),

approved by the Secretary of State to act on the Secretary of State's behalf.

## Schedule 2B

### Independent Providers

#### 1. In this Schedule—

“75% threshold” means 75% of the total gross amounts payable in a scheme year to an Independent Provider by the commissioning party in respect of a qualifying contract they have entered into;

“approval application” is to be construed in accordance with paragraphs 13 to 23;

“commissioning party” is a person who commissions services from an Independent Provider under a qualifying contract;

“default notice” is to be construed in accordance with paragraphs 45 to 49;

“Independent Provider” is to be construed in accordance with paragraph 2;

“IP guarantee” means a guarantee, indemnity, bond or other form of assurance which the Secretary of State may require an Independent Provider to provide to guarantee payment to the Secretary of State of such of the Independent Provider’s liabilities or potential liabilities under this Section of the scheme as the Secretary of State specifies;

“required level of cover” means a sum equal to 110% of 3/12ths of a reasonable estimate of the Independent Provider’s total annual contribution liability arising under regulations D1, D2, Q6, Q8, Q10 and Q11 in respect of the qualifying contract in respect of which it was granted employing authority status;

“wholly or mainly condition” is to be construed in accordance with paragraph 3.

#### 2. An “Independent Provider” means a person that employs an individual under a contract of service and—

(a) is not otherwise an employing authority in respect of that individual;

(b) is a party to a qualifying contract;

(c) has been granted employing authority status for the purposes of this Section of the scheme by the Secretary of State following a written application made by it to the Secretary of State for that purpose, and

(d) has, if so required by the Secretary of State, provided the Secretary of State with an IP guarantee.

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**3.** The “wholly or mainly condition”—

- (a) requires that any employee of an Independent Provider performing services pursuant to a qualifying contract does so, if not for the whole of their time in that employment, then for more than 50% of that time;
- (b) is to be assessed over—
  - (i) each scheme year, or
  - (ii) part of a scheme year where the services referred to in paragraph (a) commence or cease part way through such a year.

## **IP Guarantees**

**4.** The Secretary of State may, as a condition of granting an Independent Provider employing authority status pursuant to an approval application, require that Independent Provider to provide an IP guarantee.

**5.** The Secretary of State may at any time require an Independent Provider that has been granted employing authority status to provide an IP guarantee.

**6.** Without prejudice to the generality of paragraphs 4 and 5, the Secretary of State may, in particular, require an Independent Provider to provide an IP guarantee if—

- (a) that Independent Provider has, after being approved as an employing authority pursuant to this Schedule, failed to meet any of its liabilities under these Regulations as an employing authority;
- (b) that Independent Provider has, before being approved as an employing authority pursuant to this Schedule, previously failed to meet any of those liabilities in any other capacity as an employing authority;
- (c) the Secretary of State has reasonable grounds to believe that the Independent Provider is unable, or is likely to become unable, to meet any of those liabilities.

**7.** Where the Secretary of State requires an Independent Provider to provide an IP guarantee the Secretary of State must require that guarantee to—

- (a) guarantee payment to the Secretary of State of the required level of cover: such a guarantee must take effect on the date on which approval under this Schedule takes effect;
- (b) be in a form approved by the Secretary of State from time to time;
- (c) be underwritten by one or more bodies satisfactory to the Secretary of State.

But the Secretary of State may exceptionally specify that a guarantee is to meet other requirements.

**8.** Where an Independent Provider is required to provide an IP guarantee and has been granted employing authority status in respect of more than one qualifying contract, the required level of cover applies to each of those contracts and may be guaranteed by one or more IP guarantees.

**9.** In order to ensure that the required level of cover continues to be guaranteed by its extant IP guarantees, those guarantees must be reviewed by the Independent Provider—

- (a) no later than 1 month prior to the start of a scheme year;



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- (b) no later than 1 month after the date on which it was granted employing authority status;
- (c) no later than 1 month before the date on which they are expressed to cease to have effect (where that is not the start of a scheme year);
- (d) whenever it becomes a party to another qualifying contract;
- (e) immediately whenever it reasonably believes that its estimated contribution liability pursuant to regulations D1, D2, Q6, Q8, Q10 and Q11 has increased, or may increase, by more than 10%;
- (f) upon the Secretary of State notifying it in writing that the Secretary of State considers that the sum guaranteed by those guarantees does not, at least, equal the required level of cover.

**10.** Where paragraph 9(e) applies, and the Independent Provider determines that the amount of cover currently provided by its extant IP guarantee (or guarantees where it has more than one) does not equal the required level of cover in respect of all of its qualifying contracts, it must within 14 days of that determination either—

- (a) increase the amount of cover provided by that guarantee or guarantees so that it is at least equal to the required level of cover and notify the Secretary of State in writing of it having done so; or
- (b) take out one or more further guarantees for the amount by which the required level of cover has increased and notify the Secretary of State in writing of it having done so.

**11.** Paragraph 10 applies with equal effect where the Independent Provider is advised by the Secretary of State in accordance with paragraph (9)(f) that the amount of cover currently provided by its extant IP guarantee (or guarantees) is not at least equal the required level of cover in respect of all of its qualifying contracts.

**12.** Where paragraph 10 or 11 applies, and the Independent Provider determines that the amount of cover currently provided by its IP guarantee or guarantees remains at least equal to the required level of cover in respect of all of its qualifying contracts, it shall—

- (a) notify the Secretary of State in writing of that fact within 14 days of its determination, and
- (b) provide the Secretary of State with such information in that regard as the Secretary of State may require from time to time.

## **Approval and Approval Applications**

**13.** An Independent Provider may only make an approval application in respect of a qualifying contract.

**14.** An Independent Provider must apply for approval on either—

- (a) a “closed approval” basis which, if granted, covers an employee—
  - (i) who is not otherwise covered by a direction made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967, and
  - (ii) who was, within the twelve months preceding the date of entering into employment with the Independent Provider, in an employment in which that employee was entitled to participate in superannuation benefits provided under section 10

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of the Superannuation Act 1972 whether or not that employee had actually been a member of this Section of the Scheme pursuant to that entitlement; or

- (b) an “open approval” basis which, if granted, covers any employee performing services pursuant to such a contract who satisfies the wholly or mainly condition and regardless of whether that employee would fall within sub-paragraph (a).

**15. An approval application must—**

- (a) be in writing;
- (b) be in a form that the Secretary of State may from time to time require;
- (c) contain—
  - (i) a declaration that an employee of an Independent Provider who is, at the date of that application, already engaged in performing services pursuant to a qualifying contract satisfies the wholly or mainly condition;
  - (ii) an undertaking that any person who, on or after the date of approval is engaged to perform such services, will do so in a way that complies with the wholly or mainly condition;
- (d) contain a declaration that the Independent Provider is not already an employing authority in respect of any employee referred to in paragraph (c);
- (e) provide such details as the Secretary of State may from time to time require of the qualifying contracts to which the Independent Provider is a party;
- (f) confirm that employing authority status is sought on a closed approval basis or, as the case may be, on an open approval basis;
- (g) where the Secretary of State has, prior to the approval of an application, notified the Independent Provider that an IP guarantee is required, contain such details of that guarantee as the Secretary of State may from time to time require;
- (h) provide an estimate, for the scheme year in respect of which approval (if given) is to take effect, of—
  - (i) the gross sums the Independent Provider anticipates receiving from the commissioning party in respect of the clinical services it is to provide under each qualifying contract it is a party to;
  - (ii) the number of employees who will be engaged in performing services pursuant to each such qualifying contract and who will satisfy the wholly or mainly condition;
  - (iii) the total pensionable pay of those employees referred to in paragraph (ii);
  - (iv) the total member contributions payable by those employees pursuant to regulation D1 (broken down to correspond to the estimated tiers tabulated in that regulation), Q6, Q8 or Q10;
  - (v) the total employer contributions payable in respect of those employees pursuant to regulation D2 and Q11;
  - (vi) the total number of employees who would satisfy the wholly or mainly condition and who are engaged in performing services pursuant to each such qualifying contract but who are otherwise not eligible to be members of this Section of the scheme;
  - (vii) the total estimated pay of those employees referred to in paragraph (vi).

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~~16. An approval application may specify the date from which approval by the Secretary of State (if granted) is to have effect (“the nominated date”).~~

~~17. Where the Secretary of State is satisfied that the Independent Provider will satisfy the matters set out in paragraph 15 at that nominated date, approval shall take effect from that date provided it is later than the date on which approval is granted.~~

~~18. If an approval application does not specify a nominated date, approval shall take effect from that date it is granted.~~

16. An approval application may nominate a date (“the nominated date”) from which approval by the Secretary of State (if granted) is to have effect.

17. Where paragraph 16 applies and—

- (a) the Secretary of State is satisfied that the Independent Provider will satisfy the conditions in paragraph 15 at the nominated date,
- (b) the Secretary of State accepts the nominated date for approval purposes, and
- (c) the nominated date is later than the date on which the Secretary of State approves the application,

approval takes effect from the nominated date.

17A. Where paragraph 16 applies and—

- (a) the Secretary of State is satisfied that the Independent Provider did satisfy the conditions in paragraph 15 at the nominated date,
- (b) the Secretary of State accepts the nominated date for approval purposes,
- (c) the nominated date is earlier than the date on which the Secretary of State approves the application, and
- (d) the Secretary of State has received the contributions referred to in paragraphs (iv) and (v) of sub-paragraph (h) of paragraph 15,

approval takes effect from the nominated date.

18. Where an approval application—

- (a) does not include a nominated date, or
- (b) does include such a date, but which the Secretary of State does not accept for approval purposes,

approval takes effect from the date that it is granted by the Secretary of State.

19. Where an Independent Provider has been granted employing authority status, any of its employees engaged in performing services pursuant to any qualifying contract in respect of which that approval was granted or extends under paragraph 20 or 21 and who satisfy the wholly or mainly condition, shall become officer members of this Section of the scheme: this applies equally to any such employee who would, if otherwise a member of this Section of the scheme, be subject to regulation R1 of and Schedule 2 to, these Regulations.

20. Where an Independent Provider has been granted employing authority status in respect of one or more qualifying contracts, that approval and the basis on which it was granted automatically extends to any other qualifying contract to which the Independent Provider is, or subsequently becomes, a party: approval in respect of any other qualifying contract takes effect from the date that other qualifying contract was entered into.

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**21.** Where an Independent Provider is an associated Independent Provider (“AIP”) in relation to another Independent Provider (“IP1”) and IP1 has been granted employing authority status in respect of one or more qualifying contracts, that approval and the open or closed approval basis on which it was granted automatically extends to any qualifying contract to which—

- (a) AIP is a party: that extension takes effect from the date on which IP1 was granted approval;
- (b) AIP subsequently becomes a party: that extension takes effect from the date that contract is entered into.

For these purposes an Independent Provider is another provider’s AIP if that other Independent Provider exercises, or is able to exercise, or is entitled to acquire direct or indirect control over the AIP’s affairs.

**22.** Where an Independent Provider, having been granted employing authority status, subsequently becomes a party to another qualifying contract or that approval extends under paragraph 20 or 21 to another qualifying contract and that contract would have the effect of increasing its estimated contribution liability under regulations D1, D2, Q6, Q8, Q10 and Q11 by 10% or more on the date on which approval in respect of that contract takes effect, the Secretary of State may require that Independent Provider to take any of the steps referred to in paragraph 23.

**23.** Those steps are to require the Independent Provider to—

- (a) increase the sum already guaranteed by the Independent Provider’s IP guarantee or guarantees where there is more than one;
- (b) provide one or more further IP guarantee guaranteeing payment of a sum equal to the amount of the increase in the potential contribution liability;
- (c) guarantee, by way of one or more IP guarantees, payment of a sum equal to the total potential contribution liability in respect of both the contract or contracts in respect of which the Independent Provider was originally granted employing authority status and the subsequent qualifying contract where the Independent Provider has not previously been required to provide one.

### **Change from open approval to closed approval basis**

**24.** An Independent Provider granted employing authority status on an open approval basis may give the Secretary of State a modification notice stating that it wishes its status as an employing authority to cease to be on that basis but to continue instead on a closed approval basis.

**25.** A modification notice given in respect of one or more qualifying contracts is effective in respect of all qualifying contracts.

**26.** A modification notice must—

- (a) be in writing;
- (b) specify a date on which the modification is to take effect (“the operative modification date”): that date cannot fall within the period of 6 months commencing with the date of the modification notice (“the modification period”);

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- (c) be accompanied by the written consent of any affected person who has consented to the giving of that notice: for these purposes an “affected person” is any person who became an officer member of this Section of the scheme pursuant to paragraph 19.

**27.** On the operative modification date—

- (a) the basis of the Independent Provider’s approval changes from an open to a closed approval basis;
- (b) any affected person who gave consent to the giving of the modification notice ceases to be a member of this Section of the scheme;
- (c) any affected person who did not give such consent remains a member of this Section of the scheme.

**28.** A person who is, but for a modification notice, otherwise entitled to participate in this Section of the scheme during the modification period by virtue of the Independent Provider having been granted approval on an open approval basis, continues to be so entitled but only for the duration of that period.

**29.** Nothing in paragraph 28 prevents a person referred to in that paragraph from becoming a member of this Section of the scheme by virtue of their employment with some other employing authority.

**30.** During the modification period, a person who was eligible to become an officer member of this Section of the scheme in accordance with paragraph 19 but who did not do so by virtue of opting out in accordance with regulation B4, may, in accordance with paragraph (5) of that regulation, join or re-join this Section of the scheme.

### **Change from closed approval to open approval basis**

**31.** An Independent Provider granted employing authority status on a closed approval basis when it first applied for approval may give the Secretary of State a modification notice stating that it wishes its status as an employing authority to cease to be on that basis but to continue instead on an open approval basis.

**32.** An Independent Provider that has previously modified its participation in this Section of the scheme may give the Secretary of State a further modification notice stating that it wishes its status as an employing authority to cease to be on a closed approval basis but to continue instead on an open approval basis.

**33.** An application referred to in paragraphs 31 and 32 must specify—

- (a) the date (“the modification date”) from which the change to open approval is sought: the modification date must not be less than 3 months from the date the application is received by the Secretary of State;
- (b) that approval on an open approval basis is sought in respect of all employees of the Independent Provider engaged to perform services pursuant to a qualifying contract at the modification date provided always that such persons satisfy the wholly or mainly condition and regardless of whether they were so engaged at the date of any earlier approval.

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**34.** Where the Secretary of State is satisfied that the Independent Provider will, at the modification date, satisfy the matters set out in paragraph 15, the change to open approval basis is to take effect from that date.

### **The 75% Pensionable Pay Threshold and Contribution Surcharge**

**35.** The maximum proportion of the gross sums payable to an Independent Provider in respect of a qualifying contract that may, in a scheme year, be paid to its employees who are members of this Section of the scheme without it being liable for an employer contribution surcharge, is 75% (“the 75% threshold”).

**36.** Where an Independent Provider has two or more qualifying contracts, the 75% threshold is to be determined by reference to the aggregate of the gross sums payable in respect of all of those contracts.

**37.** Where the 75% threshold is exceeded, the Independent Provider must pay the Secretary of State an employer contribution surcharge on that part of the total pensionable pay of that Independent Provider’s employees in excess of the 75% threshold.

This is subject to paragraph 38.

**38.** Where the Secretary of State is satisfied that the Independent Provider has provided a reasonable explanation or justification for the threshold being exceeded, the Secretary of State may require the Independent Provider to pay an employer contribution surcharge on such part of that excess as the Secretary of State considers reasonable having regard to its declared NHS income, profits, losses and expenses for the scheme year in question.

**39.** Where the employer contribution surcharge has been imposed on all or part of the excess in accordance with paragraphs 37 and 38 and the Secretary of State subsequently considers that all or part of it should no longer attract the surcharge, the Secretary of State must notify the Independent Provider of what part of the excess is to remain subject to an employer contribution surcharge.

**40.** An Independent Provider must pay an employer contribution surcharge to the Secretary of State within 1 month, beginning with the date of that notice, of being notified by the Secretary of State that it is so payable (“a contribution surcharge notice”): the Secretary of State may, by that notice, exceptionally require a contributions surcharge to be paid within a different period.

**41.** Where an Independent Provider fails to pay an employer contribution surcharge, it is liable to pay the administration charge and interest referred to in regulation T9: interest is to continue to accrue on the late paid surcharge for so long as it remains unpaid and further administration charges may be levied in respect of it.

**42.** The Secretary of State may exceptionally waive all or any part of a sum payable by way of interest or an administration charge.

**43.** The rate of the employer contribution surcharge for the scheme year 2014-2015 and subsequent years, is 12%.

**44.** Where the 75% threshold is exceeded, the whole of the pensionable pay an employee receives in respect of the performance of services pursuant to a qualifying contract is nevertheless, and subject to regulation C1(10) to (12), to count both for the purpose of ascertaining



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that employee's entitlement to benefits under these Regulations and for the purpose of calculating them.

### **Default Notices**

**45.** Where, in respect of any qualifying contract, an Independent Provider does not pay the Secretary of State, on the due date, all of the contributions which it is liable to pay under regulations D1, D2, Q6, Q8, Q10, the Secretary of State must issue a default notice to that Independent Provider.

**46.** A default notice must notify the Independent Provider—

- (a) of any charges accrued or accruing in accordance with regulation T9(4);
- (b) that continued non-payment of the contributions will result in the Secretary of State terminating the Independent Provider's employing authority status on the day following the end of the second month following the month for which the contributions are due but not paid.

**47.** The Secretary of State must provide the commissioning party to the contract referred to in paragraph 45 with a copy of any default notice issued to an Independent Provider.

**48.** Where, one month after issue of a default notice, some or all of the contributions referred to in paragraph 45 remain unpaid, the Secretary of State must—

- (a) notify the commissioning party to the contract referred to in paragraph 45 of that non-payment specifying the period or periods for which contributions are outstanding and the amount or amounts outstanding, and
- (b) request that commissioning party to consider withholding from any payments it is due to pay to the Independent Provider in pursuance of any qualifying contract an amount equal to the amount of the unpaid contributions and to pay that amount to the Secretary of State.

**49.** Where the Secretary of State receives an amount from the commissioning party pursuant to paragraph 48(b), the Secretary of State must—

- (a) give that commissioning party a written receipt of such payment;
- (b) notify the Independent Provider in writing that a sum equal to the amount of its unpaid contributions has been withheld pursuant to paragraph 48(b) and paid to the Secretary of State by the commissioning party pursuant to that paragraph.

### **Pension Returns**

**50.** An Independent Provider must, in writing and in such form as the Secretary of State may from time to time require, provide the Secretary of State with the information referred to in paragraph 52 in respect of the relevant period—

- (a) within two months of the end of a scheme year; and
- (b) within two months of the date of its termination, or withdrawal, of participation in this Section of the scheme where that does not occur at the end of a scheme year.

**51.** For—

- (a) paragraph 50(a), the relevant period is the complete scheme year in respect of which the information is being provided;

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- (b) paragraph 50(b), the relevant period is that beginning with the start of the scheme year in which withdrawal or termination took place and ending on the date of that withdrawal or termination.

**52.** The information referred to in paragraph 50 is—

- (a) a complete list of all qualifying contracts to which the Independent Provider is or has been a party over the relevant period;
- (ab) a complete list of such of the contracts referred to in paragraph (a) which the Independent Provider has sub-contracted by way of NHS standard sub-contract to a third party: that list must identify the third party and also specify the total gross amounts expressed to be payable under such sub-contracts to that third party;
- (b) the total gross amounts—
  - (i) estimated for the purposes of paragraph 15 and expressed to be payable over the relevant period under those contracts to the Independent Provider by the commissioning party;
  - (ii) actually received by the Independent Provider from the commissioning party in respect of those contracts over the relevant period;
- (c) whether the Independent Provider was granted approval as an employing authority on an open or closed approval basis;
- (d) whether the Independent Provider has changed its approval status and, if so, when;
- (e) where the Secretary of State has required the Independent provider to have an IP guarantee, the amount guaranteed by it or by each guarantee where there is more than one;
- (f) the number of employees who were engaged in performing services pursuant to a qualifying contract who satisfied the wholly or mainly condition;
- (g) the total actual pensionable earnings of those employees;
- (h) the total actual employee contributions payable by those employees pursuant to regulation D1 (broken down to correspond to the tiers tabulated in that regulation), Q6, Q8 or Q10;
- (i) the total actual employer contributions payable in respect of those employees pursuant to, as the case may be, either or both of regulations D2 and Q11;
- (j) confirmation that those of its employees who were or became officer members of the scheme during the relevant period continued to satisfy the wholly or mainly condition throughout that period;
- (k) the total actual number of employees who did satisfy the wholly or mainly condition and who were engaged in performing services pursuant to a qualifying contract but who were otherwise not eligible to be members of this Section of the scheme;
- (l) the total actual amount of pensionable earnings of employees satisfying the wholly or mainly condition compared to the total gross amounts payable to the Independent Provider by a commissioning party in respect of all of its qualifying contracts: that amount to be expressed as a percentage;
- (m) where the percentage referred to in (l) exceeds the 75% threshold, an explanation for that: this is subject to paragraph 37;

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- (n) whether the Independent Provider has ceased to be a party to a qualifying contract;
- (o) whether the Independent Provider no longer employs any person who satisfies the wholly or mainly condition.

**53.** Where any employee of an Independent Provider who became an officer member of this Section of the scheme pursuant to paragraph 19 ceases to satisfy the wholly or mainly condition or any other condition relating to membership of this Section of the scheme, the Independent Provider must inform that employee that the employee's membership of this Section of the scheme has come to an end on that date of failure to comply with the relevant condition and notify the Secretary of State in writing of that fact.

### **Provision of information**

**54.** In order to assess whether the grant of employing authority status to an Independent Provider should continue, the Secretary of State may at any time require an Independent Provider to provide the Secretary of State with information—

- (a) relating to those employed by it who have become officer members of this Section of the scheme pursuant to paragraph 19;
- (b) relating to all or any qualifying contracts it has entered into in respect of which employing authority status was granted or extended;
- (c) relating to the numbers of persons engaged in performing services pursuant to such contracts and the proportion of their time spent in doing so;
- (d) which the Secretary of State considers relevant for that purpose.

**55.** Information referred to in paragraph 54 must be provided within 14 days of the Secretary of State requesting it.

**56.** The Secretary of State may, by notice in writing, require the Independent Provider to provide such information (which does not fall within paragraph 54) as the Secretary of State considers necessary to determine whether there has been compliance with any provision of these Regulations: the Independent Provider must provide that information within the period specified in that notice.

### **Termination of employing authority status by Secretary of State**

**57.** The Secretary of State must terminate an Independent Provider's status as an employing authority where that Independent Provider is no longer a party to any qualifying contract.

**58.** The Secretary of State may terminate an Independent Provider's status as an employing authority in any of the following circumstances—

- (a) where the Independent Provider subsequently acquires the status of an employing authority specified in any of the paragraphs, other than paragraph (o), of the definition of "employing authority" in regulation A2: in such a case the Independent Provider ceases to be an employing authority as an Independent Provider by virtue of paragraph (o) of that definition but not otherwise;
- (b) where all of the employees of the Independent Provider who have acquired membership of this Section of the Scheme pursuant to paragraph 19 cease to satisfy the wholly or mainly condition;

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- (c) where the Independent Provider fails to review, in accordance with paragraph 9, the amount of cover guaranteed by its IP guarantee or, having carried out such a review fails to increase the amount of cover guaranteed by the IP guarantee where such an increase is required;
- (d) where, following the issue of a default notice, the Independent Provider fails to pay to the Secretary of State the amount specified in that notice by the date specified in it;
- (e) where paragraph 10 applies and the Independent Provider fails to take the action required by sub-paragraph (a) and (b) of that paragraph within the specified period;
- (f) where an Independent Provider fails to provide information in accordance with paragraph 54 and the Secretary of State is not satisfied that the information so provided supports the continuation of the Independent Provider's status as an employing authority;
- (g) where an Independent Provider fails to provide information in accordance with paragraph 56;
- (h) where an Independent Provider fails to notify the Secretary of State that the guarantor of any its IP guarantees has withdrawn or revoked it;
- (i) where an Independent Provider has in any three years in any five year period exceeded the 75% threshold;
- (j) where an Independent Provider otherwise has a history or pattern of exceeding the 75% threshold .

**59.** Where an Independent Provider's status as an employing authority must be terminated in accordance with paragraph 57 or the Secretary of State determines that it should be pursuant to paragraph 58, the Secretary of State is to give that Independent Provider, as soon as reasonably practicable, written notice of that fact and the date from which termination takes effect.

**60.** Where an Independent Provider's employing authority status is terminated, on the date of that termination—

- (a) its employees who are members of this Section of the scheme cease to be such members;
- (b) its employees who were eligible to be members of this Section of the scheme cease to be so eligible.

### **Withdrawal of participation in this Section of the scheme**

**61.** An Independent Provider can withdraw from participation in this Section of the scheme by giving the Secretary of State notice ("a withdrawal notice") stating that it wishes its status as an employing authority under paragraph (o) of the definition of an employing authority in regulation A2 to cease.

**62.** An Independent Provider may not give a withdrawal notice that affects any person who has become an officer member of this Section of the scheme by virtue of paragraph 19 unless that person gives the Independent Provider written consent.

**63.** The date on which withdrawal from this Section of the scheme takes effect ("the operative withdrawal date"), cannot fall within the period of 6 months commencing with the date of the withdrawal notice ("the withdrawal period").

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**64.** A withdrawal notice must—

- (a) be in writing; and
- (b) be accompanied by evidence of the consent of the persons referred to in paragraph 62 to the giving of that notice: such a notice has no effect in respect of such a person who has not given such consent.

**65.** A withdrawal notice is effective in respect of all qualifying contracts to which the Independent Provider is a party.

**66.** Where paragraph 64(b) is satisfied, a person who has given written consent pursuant to paragraph 62 ceases, on the operative withdrawal date, to be an officer member of this Section of the scheme in respect of their employment with that Independent Provider.

**67.** A person who could, but for a withdrawal notice, have become entitled to participate in this Section of the scheme by virtue of satisfying paragraph 19 during the withdrawal period, will continue to be entitled to do so: at the end of that period, such a person is no longer entitled to participate in this Section of the scheme.

This is subject to paragraph 68.

**68.** Nothing in paragraphs 62 to 67 prevents a person from becoming a member of this Section of the scheme by virtue of their employment with some other employing authority.

**69.** A person who was eligible to become an officer member of this Section of the Scheme in accordance with paragraph 19 but who did not do so by virtue of opting out in accordance with regulation B4, may, in accordance with paragraph (5) of that regulation, join or re-join this Section of the scheme during the withdrawal period.

**70.** An Independent Provider that has withdrawn from participation in this Section of the scheme, may again apply for approval as an employing authority pursuant to this Schedule.

This is subject to paragraph 71.

**71.** An application referred to in paragraph 70 must specify that approval is sought in respect of all persons the Independent Provider has engaged pursuant to a contract of service to perform services pursuant to any qualifying contracts at the date on which approval is granted provided always that such persons satisfy the wholly or mainly condition: for these purposes it does not matter whether such persons were so engaged at the date of any earlier approval or have been so engaged since the operative withdrawal date (or the latest of them if there is more than one).

**72.** Where after approval as an employing authority pursuant to this Schedule—

- (a) an Independent Provider satisfies one of the other paragraphs of the definition of employing authority in regulation A2 and by virtue of doing so would otherwise become an employing authority for the purposes of these Regulations, and
- (b) that Independent Provider gives the Secretary of State a withdrawal notice, that notice does not affect its employees who would otherwise qualify as members of this Section of the scheme by virtue of paragraph (a) provided always that the Secretary has not terminated that Independent Provider's status as an employing authority pursuant to paragraph 58(a).