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# **NHS Pension Scheme 2008 Section Informal Consolidation of amendments including 1<sup>st</sup> April 2022 SI**

**National Health Service Pension Scheme Regulations 2008  
SI 2008 No 653  
Coming into force 1<sup>st</sup> April 2008**

**Key:** **Green = 25<sup>th</sup> March 2022 amendments (S.I. 2022 No. 273) (temporary)**  
**Blue = 1<sup>st</sup> April 2022 amendments (S.I. 2022 No. 327)**

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- 3.K.19 Treatment of service credited from the 1995 Section when benefits in cases of mixed service are payable
- 3.K.20 Circumstances in which a 1995 Section member may defer making an option to join this Section of the Scheme under regulation 3.K.2
- 3.K.21 2008 Section Optants who are in receipt of a tier 1 ill-health pension under Regulation E2A of the 1995 Regulations
- 3.K.22 Lump sum payable on the death of a 2008 Section Optant who is in receipt of a tier 1 ill-health pension under regulation E2A of the 1995 Regulations
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- 3.L.1 Application of Chapter 3.L
- 3.L.2 Nominations and notices accepted by the Secretary of State under the 1995 Regulations and Chapter 3.E of these Regulations
- 3.L.3 Waiting Period Joiners who are in receipt of a tier 1 ill-health pension under Regulation E2A of the 1995 Regulations
- 3.L.4 Lump sum payable on the death of a Waiting Period Joiner
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## **PART 4**

### **BENEFITS IN CASES OF MIXED SERVICE**

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- 4.A.1 Application of Part 4

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- 4.A.2 Interpretation: general

#### **CHAPTER 4.B**

##### **COMPARISON OF ENTITLEMENTS**

### ***Application of Chapter 4.B***

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#### 4.B.1 Application of Chapter 4.B

##### ***Officer service before practitioner service***

4.B.2 Cases with up to 10 years of officer service

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#### **Part 1**

##### **Introductory and General**

#### **Chapter 1.A**

##### **Introduction**

##### **1.A.1 Citation and commencement**

(1) These Regulations may be cited as the National Health Service Pension Scheme Regulations 2008.

(2) These Regulations come into force on 1st April 2008.

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### **1.A.2 Application of remaining Parts**

- (1) Part 2 of these Regulations provides for benefits to be payable in relation to service as an officer (as defined in that Part).
- (2) Part 3 of these Regulations provides for benefits to be payable in relation to service as--
  - (a) a practitioner, or
  - (b) an OOH provider,(both as defined in that Part).
- (3) Part 4 of these Regulations modifies Parts 2 and 3 where a member has pensionable service under both Parts 2 and 3.

## **Chapter 1.B Scheme Reports and Accounts**

### **1.B.1 Actuarial reports and accounts**

- (1) The following paragraphs apply to the National Health Service Pension Scheme as set out in these Regulations and the National Health Service Pension Scheme Regulations 1995.
- (2) The Secretary of State shall keep accounts of all income and expenditure of the scheme in a form approved by the Treasury.
- (3) The accounts shall be open to examination by the Comptroller and Auditor General.
- (3A) The Scheme actuary must prepare an actuarial report of the scheme at the 31st March 2012.
- (3B) The Scheme actuary must send a copy of the actuarial report of the scheme to the Secretary of State and the Treasury.
- (3C) Where the Secretary of State indicates to the Scheme actuary that the actuarial report referred to in paragraph (3A) is also to be used for the purposes of establishing a scheme under section 1 of the Public Service Pensions Act 2013 ("the proposed new scheme"), the Scheme actuary must prepare the report taking account of any Treasury directions given from time to time pursuant to sections 11(2) and 12(3) of that Act (including any specific requirements in those directions relating to a preliminary valuation undertaken for the purposes of setting the employer cost cap for the proposed new scheme).
- (4) .....
- (5) .....
- (6) .....

### **~~1.B.2 Cost Sharing~~**

Omitted



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### **1.B.3 Provision of information relevant for tax purposes**

- (1) A person who is entitled to a benefit under this Section of the Scheme must give the Scheme administrator such information as will enable the Scheme administrator to determine--
- (a) whether a lifetime allowance charge arises on the person becoming entitled to the benefit, and
  - (b) if any such charge arises, the amount of the tax payable.
- (2) Paragraph (1) applies whether or not the person intends to rely on having given notice under any of the provisions specified in section 256(1) of the 2004 Act (enhanced lifetime allowance regulations).
- (3) If a person applying for a benefit under this Section of the Scheme intends to rely on entitlement by virtue of any such notice, in addition to the information mentioned in paragraph (1) the person must give the Scheme administrator the reference number issued by the Commissioners under the Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006 in respect of that entitlement.
- (3A) If a person applying for a benefit under this Section of the Scheme intends to rely on entitlement to transitional protection against a lifetime allowance charge in accordance with paragraph 14 of Schedule 18 to the 2011 Act or paragraph 1 of Schedule 22 to the Finance Act 2013, that person must give to the Scheme administrator 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.
- (3B) 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 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.
- (4) The information that a person is required to give under this regulation must be given--
- (a) at the time the person makes a claim for a benefit, or
  - (b) within such period ending after that time as the Scheme administrator specifies in writing.
- (5) If a person fails to comply with paragraph (4)(b), the Scheme administrator may calculate and pay tax due in respect of the lifetime allowance charge on the basis that the whole benefit is chargeable.
- (6) Paragraph (7) applies to members who are practitioners or non-GP providers.
- (7) The members referred to in paragraph (6) 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.



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## **Part 2**

### **Benefits for Officers**

#### **Chapter 2.A**

##### **Introduction**

##### **General Interpretation**

###### **2.A.1 Interpretation: general**

(1) In this Part--

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

"the 1995 Act" means the Pensions Act 1995;

"the 1995 Regulations" means the National Health Service Pension Scheme Regulations 1995;

"the 1995 Section" means the section of the National Health Service Pension Scheme for England and Wales set out in the National Health Service Pension Scheme Regulations 1995;

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

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

"the 2003 Act" means the Health and Social Care (Community Health and Standards) Act 2003;

"the 2004 Act" means the Finance Act 2004;

"the 2003 Order" means the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003;

"the 2004 Order" means the General Medical Services and Personal Medical Services Transitional and Consequential Provisions Order 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;

"2008 Section Optant" has the meaning given in regulation 2.K.1;

"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 2014 Act" means the Public Service Pensions Act (Northern Ireland) 2014;

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

"the 2016 Order" means the Pensions Act 2014 (Contributions Equivalent Premium) (Consequential Provision) and (Savings) (Amendment) Order 2016;

"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;

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"active member" has the meaning given in section 124(1) of the 1995 Act and, except where the context otherwise requires, refers to membership of this Section of the Scheme (but see regulation 2.D.5(9));

"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 2.D.11 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 pension", in relation to a member, except where the context otherwise requires, means so much of any pension payable to a member as is payable by virtue of contributions made under regulations 2.C.8, 2.C.10 and 2.C.11;

"additional services" has the meaning given in regulation 3.A.1;

"APMS contract" means arrangements under section 83(2) of the 2006 Act or 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--

(a) with whom the National Health Service Commissioning Board or Local Health Board has made arrangements under section 83(2) of the 2006 Act or section 41(2)(b) of the 2006 Wales Act, and

(b) 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;

"base rate" means the Bank of England base rate--

(c) 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, or

(d) where 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;

"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;

"capped transferred-in service", must be read in accordance with regulation 2.F.12;

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

"CCT" means a 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 services related to the provision of medical certificates listed in Schedule 4 to the GMS Contracts Regulations;

“civil partner” and “civil partnership” are to be construed in accordance with regulation 2.A.1A;

“closed approval” shall be construed in accordance with regulation 2.M.3;

"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 National Assembly for Wales, the National Health Service Commissioning Board, a Clinical Commissioning Group 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) one of the following bodies--

(i) a Special Health Authority, which relates to the provision of health care; or

(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); or

(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; or

(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;

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"commissioning party" means a person who commissions services from an Independent Provider under a qualifying contract;

"consumer prices index" means the all items consumer prices index published by the Statistics Board of the UK Statistics Authority

~~"contracting-out requirements"~~ (omitted)

"the contribution option period" has the meaning given in regulation 2.C.8(8);

"corresponding 1995 scheme" means a corresponding health service scheme the provisions of which the Secretary of State has determined correspond to the provisions of the 1995 Regulations;

"corresponding 2008 scheme" means a corresponding health service scheme the provisions of which the Secretary of State has determined correspond to the provisions of these Regulations;

"corresponding health service scheme" means--

- (a) a superannuation scheme provided under regulations made under section 10 of the Superannuation Act 1972 and having effect in Scotland,
- (b) a superannuation scheme provided under Article 12 of the Superannuation (Northern Ireland) Order 1972,
- (c) a scheme made under section 2 of the Superannuation Act 1984 (an Act of Tynwald), in the case of a member who entered NHS employment on or before 1st April 2012, and
- (d) any other occupational pension scheme approved for the purposes of this regulation by the Secretary of State;

"deferred member" has the meaning given in section 124(1) of the 1995 Act, except where the context requires otherwise, refers to membership of this Section of the Scheme (but see paragraph (3) and regulation 2.D.5(9));

"dentist performer" means a dental practitioner--

- (a) whose name is included in a dental performers list or who is a foundation trainee in the first two months of foundation training, and
- (b) who performs primary dental services under--
  - (i) a GDS contract,
  - (ii) a PDS agreement to which a PDS contractor is a party, or
  - (iii) a contract for services with a Local Health Board which relates to arrangements under which it provides primary dental services under section 56(2) of the 2006 (Wales) Act (primary dental services) or a PDS agreement to which a PDS contractor is not a party;

"dependent child" is to be construed in accordance with regulation 2.E.9;

"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;

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

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"employing authority" means--

- (a) .....
- (b) a Special Health Authority established under section 28 of the 2006 Act or section 22 of the 2006 (Wales) Act 2006,
- (c) .....
- (d) a Local Health Board established under section 11 of the 2006 (Wales) Act,
- (e) a National Health Service trust established under section 25 of the 2006 Act or section 18 of the 2006 (Wales) Act,
- (f) an NHS foundation trust within the meaning of section 30(1) of the 2006 Act,
- (g) any other body which--
  - (i) is constituted under an Act relating to health services (in whole or in part), and
  - (ii) the Secretary of State agrees to treat as an employing authority for the purposes of the Scheme,
- (h) an OOH provider,
- (i) an APMS contractor,
- (j) a GMS practice,
- (k) a PMS practice,
- (l) in relation to 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 this Part as the Secretary of State may in any particular case direct, any employer of such a person whom the Secretary of State agrees to treat as an employing authority for the purposes of this Part;
- (m) in relation to officers of a hospital of such classes as may be provided in an agreement to participate in benefits under this Part pursuant to section 235 of the 2006 Act (superannuation of officers of certain hospitals), and subject to such modifications to this Part as the Secretary of State may in any particular case direct, any employer of such a person whom the Secretary of State agrees to treat as an employing authority for the purposes of this Part;
- (n) host Board;
- (o) the National Health Service Commissioning Board established under section 9 of the Health and Social Care Act 2012;
- (p) a Clinical Commissioning Group established under section 10 of the Health and Social Care Act 2012;
- (q) an Independent Provider

"employment" includes an office or appointment (other than an honorary office or appointment), and related expressions are to be read accordingly;

"enhanced services, in relation to—

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- (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;

"GMS Contracts Regulations" means--

- (a) in relation to England, the National Health Service (General Medical Services Contracts) Regulations 2004;
- (b) in relation to Wales, the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004;

"GDS contract" means a general dental services contract under section 100 of the 2006 Act or 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;

"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;
- (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;

"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



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

- (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), or
  - (ii) under an agreement pursuant to section 50 arrangements;

"GP provider" has the meaning given in regulation 3.A.1;

"GP Registrar" means a medical practitioner who is being trained in general practice--

- (a) in England by a general medical practitioner who is approved under article 4(5)(d) for the purpose of providing training under article 5(1)(c)(i) of the 2003 Order, whether as part of training leading to the award of a CCT or otherwise, or
- (b) in Wales by a medical practitioner who is being trained in general practice by a GP trainer whether as part of training leading to the award of a CCT or otherwise;

"GP trainer" means a registered medical practitioner who is 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) of that Order;

"the guarantee date" has the meaning given in regulation 2.F.2(2);

"guaranteed cash equivalent transfer value payment" has the meaning given in regulation 2.F.3(3);

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

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

"IP guarantee" shall be construed in accordance with regulation 2.M.2;

"Independent Provider" is to be construed in accordance with regulation 2.M.1;

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"lifetime allowance", in relation to a person, has the meaning given in section 218 of the 2004 Act;

"locum practitioner" means a registered medical practitioner (other than a GP Registrar) 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 or the National Health Service Commissioning Board,

to deputise or assist temporarily in the provision of 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);

"lower earnings limit" must be read in accordance with section 5 of the Social Security Contributions and Benefits Act 1992;

"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 Finance Act 2004;

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

"member", except where the context otherwise requires, means an active member, a non-contributing member, a deferred member, a pensioner member or a pension credit member;

"medical performers' list" means a list of registered medical practitioners prepared and published--

- (a) by the National Health Service Commissioning Board pursuant to regulation 3(1) of the National Health Service (Performers Lists) Regulations 2004 (performers lists), or
- (b) by a Local Health Board pursuant to regulation 3(1) of the National Health Service (Performers Lists) (Wales) Regulations 2004 (performers lists);

"New to Partnership Payment Scheme" means the scheme set out in paragraphs 2.14 to 2.16 of the "Update to the GP contract agreement 2020/21 – 2023/24" dated 6th February 2020;

"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;

"NHS employment" means employment with an employing authority;



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. . .

“NHS standard contract” means the terms and conditions 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) Regulations 2012;

“NHS standard sub-contract” means a sub-contract that complies with the National Health Service Commissioning Board’s guidance “NHS Template Sub-Contract for the Provision of Clinical Services for use with the NHS Standard Contract 2021/22 (Full Length and Shorter Form versions) Guidance”;

"non-contributing member" means a member who--

- (a) is under the age of 75 and in NHS employment,
- (b) is no longer required to make contributions to this Section of the Scheme in accordance with regulation 2.C 1(1), but
- (c) will be entitled to a pension under these Regulations--
  - (i) on ceasing to be employed in NHS employment and making a claim for the pension, or
  - (ii) upon reaching age 75;

"non-GP provider" means--

- (c) 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 non-GP provider assists in the provision of NHS services provided by that practice;
- (d) a partner in a partnership all of whose members have entered into a PMS agreement for the provision of primary medical services--
  - (i) but who is not a GP provider; and
  - (ii) who demonstrates to the satisfaction of the Secretary of State that non-GP provider assists in the provision of NHS services provided by that partnership;
- (e) a partner in a partnership that is an APMS contractor that has entered into an APMS contract for the provision of primary medical services--
  - (i) but who is not a GP provider; and
  - (ii) who demonstrates to the satisfaction of the Secretary of State that non-GP provider assists in the provision of NHS services provided by that partnership;
- (f) 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,

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but who is not a GP provider and who demonstrates to the satisfaction of the Secretary of State that non-GP provider assists in the provision of NHS services provided by that company;

(g) 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 non-GP provider participates in the provision of NHS services

and these Regulations shall apply as if that non-GP provider were a whole time officer;

"occupational pension scheme" means an occupational pension scheme within the meaning of section 1 of the 1993 Act 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 Chapter 2.F;

(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 employed by an employing authority including a GP Registrar and a non-GP provider, but does not include—

(a) a GP performer;

(b) a dentist performer;

(c) a person engaged under a contract for services;

"officer service" means pensionable service as an officer under this Part;

"OOH provider" has the meaning given by regulation 2.A.15;

"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, APMS contractor or PMS practice to patients to whom the practice or contractor is required by its GMS contract, APMS contract or PMS agreement to provide essential services, would be or would be similar to essential services;

"open approval" is to be construed in accordance with regulation 2.M.3;

"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

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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 2.B.5;

"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 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--

(a) is a party to a PDS agreement, and

(b) is neither the National Health Service Commissioning Board, nor a Local Health Board;

"pension debit member" means a member of this Section of the Scheme whose benefits, or future benefits, under this Scheme have been reduced under section 31 of the 1999 Act (reduction under pension sharing order following divorce or nullity of marriage), whether before or after the member became a member of this Section of the Scheme;

"pensioner member" has the meaning given in section 124(1) of the 1995 Act and, except where the context otherwise requires, refers to membership of this Section of the Scheme (but see paragraphs (3) and (4) and regulation 2.D.5(9));

"pensionable earnings" has the meaning given in regulation 3.A.7 (read with regulation 3.A.8);

"pensionable employment" means employment as an officer which is pensionable under this Part;

"pensionable pay" has the meaning given in regulation 2.A.8 (read with regulation 2.A.9);

"pensionable service" has the meaning given by regulations 2.A.2 and 2.A.3 (read with regulation 2.A.4);

"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 1995 Act;

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

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

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

- (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 Chapter 2.F;
- (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 purposes of the 2004 Act;

"PMS agreement" means an agreement for the provision of primary medical services pursuant to--

- (a) section 50 arrangements,
- (b) section 92 arrangements, or
- (c) a transitional agreement under Part 4 of the 2004 Order;

"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 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 where the party to the NHS standard contract in question is an employing authority;
- (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 who--
  - (i) is not a GP Registrar, and
  - (ii) is a locum practitioner, a GP provider or a GP performer, or
- (b) a dentist performer

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“or

(c) an ophthalmic provider;

"preservation requirements" means the requirements of Chapter 1 of Part 4 of the 1993 Act relating to the preservation of benefits under occupational pension schemes;

"public sector transfer arrangements" means arrangements approved by the Secretary of State as providing reciprocal arrangements for the payment and receipt of transfer values between this Section of the Scheme and other occupational pension 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 National Health Services Act 2006 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
- (d) an NHS standard sub-contract;

"qualifying service" has the meaning given in regulation 2.A.5 (read with regulation 2.A.6);

"recent leaver" has the meaning given in regulation 2.E.6(3);

"reckonable pay" has the meaning given in regulation 2.A.10 (read with 2.A.11 to 2.A.14);

"registered" means registered under Chapter 2 of Part 4 of the 2004 Act;

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

"retail prices index" has the meaning given in section 989 of the Income Tax Act 2007;

..... [Definition of "safeguarded percentage" omitted]

..... [Definition of "safeguarded rights" omitted]

"the Scheme" means the National Health Service Pension Scheme for England and Wales;

"the Scheme actuary" means the actuary appointed by the Secretary of State for the time being to provide a consulting service on actuarial matters relevant to the Scheme;

"scheme administration charge" means the charge provided for in regulation 2.C.6A.

"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 it has in the Occupational Pension Schemes (Schemes that were Contracted-out) (No. 2) Regulations 2015;

"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;

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

"State pension age" means pensionable age, as defined in section 181(1) of the 1993 Act;

"tax year" means a year of assessment for income tax purposes;

"temporary additional session" has the meaning given in regulation 2.A.8(5);

"tier 1 ill-health pension" must be read in accordance with regulation 2.D.8;

"tier 2 ill-health pension" must be read in accordance with regulation 2.D.8;

"trade dispute" has the meaning given in section 35(1) of the Jobseekers Act 1995;

"type 1 medical practitioner" has the meaning given in regulation 3.A.1;

"Waiting Period Joiner" has the meaning given in regulation 2.L.1;

"whole-time", in relation to an employment that is comparable to one or more part-time employments, has the meaning given by paragraph (4)

"wholly or mainly condition" is to be construed in accordance with regulation 2.M.1(2);

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

(2) In these Regulations—

(a) "host Board"—

- (i) 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;
- (ii) 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;
- (iii) 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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- (iv) in respect of a non-GP provider who is a shareholder in a company limited by shares that is a GMS practice or a PMS practice or an APMS contractor which 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 an agreement or contract;
  - (v) 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;
- (b) a person referred to in sub-paragraph (a) is deemed to be employed by the appropriate Board, except where—
  - (i) regulation 2.C.5(7) or (8) applies, or
  - (ii) contributions payable pursuant to regulation 2.C.5 by an employing authority in respect of a non-GP Provider: in such a case those contributions and any scheme administration charge under regulation 2.C.6A and any supplementary charge or interest under regulation 2.J.9A which attaches to them, are not payable by the NHS Commissioning Board or a relevant Local Health Board but are payable by that non-GP Provider or by the practice in which they are a non-GP provider.
- (3) In determining whether a person who is an active member or a pensioner member of this Section of the Scheme is also a deferred member of it, the fact that the person is an active member or a pensioner member and the person's rights as such are to be disregarded.
- (4) In determining whether a person is a pensioner member of this Section of the Scheme, the fact that the person is not entitled to payment of pension because of Chapter 2.H (abatement) is to be disregarded.
- (5) For the purposes of this Part--
  - (a) an employment that is comparable to a part-time employment that is not held concurrently by a person with any other such employment is "whole-time" if it is employment for such number of hours or sessions as in the opinion of the Secretary of State amounts to whole-time employment in the case of an employment for services of the kind performed in the part-time employment, and
  - (b) an employment that is comparable to two or more part-time employments that are held concurrently by a person is "whole-time" if it is employment for such number of hours or sessions as in the opinion of the Secretary of State amounts to whole-time employment in the case of an employment for services of the kind performed in the two or more part-time employments.

#### **2.A.1A Civil partnerships and marriage of same sex couples**

- (1) In this Part, 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;

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(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 this Part.

(5) In this regulation, “civil partnership” and “civil partners” have the meanings given by section 1 of the Civil Partnership Act 2004.

## **Pensionable Service**

### **2.A.2 Meaning of "pensionable service"**

(1) In this Part, references to a member's pensionable service, are references to the aggregate of the following periods--

(a) any period of service in respect of which the member contributes to this Section of the scheme under regulation 2.C.1 (contributions by members),

(b) any period of absence from service which counts as pensionable service under regulation 2.A.4, . . .

(c) any period of service credited to the member as pensionable service under Chapter 2.F (transfers from other pension arrangements) ; and

(d) any period of pensionable service the member is entitled to count under Chapter 2.K.

This is subject to paragraph (2).

(2) A member's pensionable service does not include--

(a) any period of service 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 pensioner member or deferred member, any period taken into account--

(i) in determining the member's entitlement to the pension in payment or, as the case may be, the deferred pension, or

(ii) in calculating the amount of that pension,

but, in the case of a pensioner member or deferred member entitled to a pension under regulation 2.D.5 (partial retirement) subject to paragraph (6),



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- (c) any period of service in respect of which the Secretary of State's liability to provide benefits is discharged--
    - (i) by the payment of a contributions equivalent premium under section 55 of the 1993 Act or article 3 of the 2016 Order,
    - (ii) under regulation 2.C.18 (repayment of contributions), or
    - (iii) by the payment of a transfer value payment on transfer out under Chapter 2.F (transfers), or
  - (d) any period of service which would result in the aggregate mentioned in paragraph (1) exceeding 45 years.
- (3) A member's pensionable service must not exceed 45 years unless--
- (a) the member gives notice in writing to the Secretary of State and the member's employing authority of an intention to remain in pensionable service beyond 45 years, and
  - (b) that notice is received by the Secretary of State and the member's employing authority--
    - (i) not earlier than three months before the member reaches 45 years pensionable service, and
    - (ii) by the end of the pay period during which the member reaches the 45 year limit.
- (4) If the notice required by paragraph (3) has been properly received and the member has pensionable service in excess of 45 years--
- (a) benefits under this Part shall be calculated by reference to a maximum of 45 years of pensionable service, and
  - (b) the Secretary of State shall select the years by reference to which the benefits are to be calculated, selecting the years which produce the most favourable result to the member.
- (5) If, when the employment in which a person is an active member ceases, a payment is made in respect of untaken leave, for the purpose of this Part--
- (a) the member's pensionable service is treated as continuing for a period equal to the period of leave in respect of which payment is made, and
  - (b) the payment is treated as the member's pensionable pay for that period.
- (6) In the case of a pensioner member or deferred member entitled to a pension under regulation 2.D.5 (partial retirement), paragraph (2)(b) only applies to so much of the member's pensionable service as is mentioned in regulation 2.D.5(9)(a) (the specified percentage of the pensionable service as respects which the member is an active member on the option day).
- (7) Regulation 2.A.3 makes further provision where service is in part-time employment.
- (8) Where a member is also a member of the 1995 Section, any reference in this Part to "45 years" shall be taken to be a reference to a shorter period determined by the formula--

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$SP = 45 \text{ years} - LPS$

where--

SP is the shorter period, measured in years and days, and

LPS is the length of pensionable service (within the meaning of the 1995 Regulations), measured in years and days, giving rise to membership of the 1995 Section and, in the case of a member of that Section who has become entitled to a pension (including a preserved pension) under that Section, including any period that was taken into account for the purpose of determining whether the member was entitled to that pension, or for the purpose of calculating the amount of that pension.

### **2.A.3 Meaning of "pensionable service": part-time service**

(1) The number of days of a member's pensionable service in part-time employment for a period is calculated by multiplying the total hours of employment during the period by 7, and dividing by the number of hours of employment per week for a comparable whole-time employment.

This is subject to paragraphs (2) to (6).

(2) If the part-time employment is for a specified number of sessions per week--

(a) paragraph (1) does not apply, and

(b) the number of days of the member's pensionable service in the part-time employment for the period is calculated by multiplying the number of sessions of employment during the period by 7, and dividing by the number of sessions per week of the length of the specified sessions for a comparable whole-time employment.

This is subject to paragraphs (3) to (6).

(3) If during the period for which a part-time employment is held there is an alteration--

(a) in the case of an employment to which paragraph (1) applies, in the number of hours of employment per week for a comparable whole-time employment, or

(b) in the case of an employment to which paragraph (2) applies, in the number of specified sessions per week or the length of those sessions for a comparable whole-time employment,

separate calculations must be made under paragraph (1) or, as the case may be, paragraph (2) for the periods before and after the alteration.

(4) If, apart from this paragraph, a member's pensionable service in respect of the part-time employments held for a period, calculated in accordance with paragraph (1) or (2), would exceed that period, the excess is ignored.

(5) Paragraphs (1) and (2) do not apply for the purposes of regulation 2.A.2(3) (45 year limit), and for those purposes part-time employments held concurrently are treated as a single employment.

(6) Temporary additional sessions are ignored in calculating a member's pensionable service in a part-time employment.

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#### **2.A.4 Pensionable service: breaks in service**

- (1) Paragraph (2) applies if a member is absent from work because of--
- (a) illness or injury,
  - (b) maternity leave,
  - (c) adoption leave,
  - (d) paternity leave, or
  - (e) parental leave or shared parental leave.
- (2) The period of absence counts as pensionable service if the member contributes to this Section of the scheme under regulation 2.C.1 in respect of the period of absence.
- (3) If a member is on leave of absence but does not fall within paragraph (1)(a) to (e), and contributes to this Section of the Scheme under regulation 2.C1 by contributions made at the same intervals as those made by the member before the absence, the maximum period of such leave that can be counted as pensionable service under this paragraph is--
- (a) where the member contributes for a continuous period of 6 months commencing with the first day of the member's leave of absence, 6 months, and
  - (b) where the member contributes for a continuous period of less than 6 months commencing with the first day of the member's leave of absence, the period in respect of which the member pays those contributions.
- (3A) If, having paid contributions for the period mentioned in paragraph (3)(a) a member remains on a leave of absence that does not fall within paragraph (1)(a) to (e) and contributes to this Section of the Scheme both member contributions under regulation 2.C1 and employer contributions under regulation 2.C5 by contributions made at the same intervals as those made by the member before the absence, the maximum period of such leave that can be counted as pensionable service under this paragraph is--
- (a) where the member contributes for a continuous period of 18 months commencing immediately after the expiry of the period mentioned in paragraph (3)(a), 18 months, and
  - (b) where the member contributes for a continuous period of less than 18 months commencing immediately after the expiry of the period mentioned in paragraph (3)(a), the period in respect of which the member pays those contributions.
- (4) This paragraph applies if a person--
- (a) ceased to be an active member because of--
    - (i) ceasing to be employed in an employment in which the person is eligible to be such a member, or
    - (ii) exercising the option under regulation 2.B.5 (opting out of this Section of the Scheme), and
  - (b) less than 12 months after the date on which the person ceased to be an active member becomes such a member again.

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(5) If paragraph (4) applies, the person's pensionable service before the person ceased to be an active member and after the person became such a member again is treated as a single continuous period of pensionable service, unless paragraph (6) applies.

(6) This paragraph applies if--

- (a) the person does not become a deferred member in respect of the pensionable service before the break in which the person was an active member,
- (b) the person has received a repayment of contributions under regulation 2.C.18 in respect of that service (but see paragraph (8)), or
- (c) the person's rights under this Section of the Scheme in respect of that service have been extinguished under regulation 2.F.7 because a transfer value payment has been made in respect of them.

(7) In the case of a member who leaves pensionable service whilst the person is absent from work because of--

- (a) illness or injury,
- (b) maternity leave,
- (c) adoption leave,
- (d) paternity leave, or
- (e) parental leave or shared parental leave,

this regulation applies as if the reference to 12 months in paragraph (4)(b) were a reference to 3 years.

(8) Paragraph (6)(b) does not apply if the person repays to the Secretary of State any contributions repaid to the person as mentioned in that paragraph, together with any interest paid to the person on those contributions, before the expiry of the period of 6 months beginning with the date on which the person becomes an active member again.

(9) For the regulations where paragraph (5) applies in respect of the service in which the person was an active member and becomes an active member again, see Chapter 2.G (re-employment and rejoining this Section of the Scheme).

## **Qualifying Service**

### **2.A.5 Meaning of "qualifying service"**

(1) In this Part, references to a member's qualifying service, are references to the aggregate of the following periods--

- (a) the member's pensionable service under this Part other than such pensionable service as is referred to in regulation 2.A.2(1)(c) (transferred-in service),
- (b) in the case of a person in respect of whom a transfer value in respect of his rights under another pension arrangement (including the 1995 Section) has been accepted under Chapter 2.F (transfers), a period equal to the person's

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period as an active member in any occupational pension scheme in respect of which the rights accrued,

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

(i) became an active member on the transfer of the person's employment to a new employer as the result of a transfer of an undertaking to that employer, and

(ii) has rights under another occupational pension scheme to which the person was eligible to belong in the person's employment with the former employer, in respect of which no transfer payment has been accepted under regulation 2.F.10,

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

(d) any period treated as qualifying service under paragraph (3), (5) or (6) or under regulation 2.A.6, . . .

(e) where the member ceased to be an active member under Part 3 not more than 12 months before becoming a member under this Part, any period of qualifying service under Part 3,

(f) in the case of a person--

(i) who is eligible to join this Section of the Scheme by virtue of regulation 2.B.1(5)(c), and

(ii) for whom the interval between leaving the 1995 Section and joining this Section of the Scheme is less than one month,

a period equal to the period of qualifying service (within the meaning of the 1995 Regulations), measured in years and days, that the member was entitled to count under regulation C3 of the 1995 Regulations when the member left that scheme;

(g) in the case of a 2008 Section Optant, any period of qualifying service the member is entitled to count under Chapter 2.K;

(h) in the case of a Waiting Period Joiner referred to in regulation 2.L.1, a period equal in length to the period of qualifying service which the member is entitled to count under the 1995 Section; and

(i) in the case of a person who is eligible to join this Section of the Scheme by virtue of regulation 2.B.1(5)(e), (g) or (h) (eligibility: general), a period equal in length to the period of qualifying service which the member is entitled to count under the 1995 Section.

(2) Paragraph (3) applies if a member who is employed on a casual basis--

(a) ceases to pay contributions because of a break in the employment in which the member is an active member of a period not exceeding three months, and

(b) re-enters employment in which the member is eligible to be an active member on the same basis after the break.

(3) For the purposes of this Part the member is treated--

(a) as continuing to be in qualifying service during the break, and

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(b) as not being required to rejoin this Section of the scheme on re-entering the employment.

(4) For the other rules applying where there is a short break in service, see regulation 2.A.6.

(5) If--

(a) a pension becomes payable to a member under regulation 2.D.11 (early retirement on termination of employment by employing authority) in a case where regulation 2.D.13(5) applies, and

(b) the member has elected to take benefits under regulation 2.D.11 only in respect of the old employment and to continue to accrue rights to benefits in respect of any continuing employments in which the member is an active member,

the pensionable service in respect of which that pension is calculated is treated as qualifying service in relation to any employment in respect of which rights to benefits continue to accrue.

(6) In determining the service that is pensionable service for the purposes of this regulation, regulation 2.A.3 (meaning of "pensionable service": part-time service) does not apply, but for those purposes part-time employments held concurrently are treated as a single employment.

#### **2.A.6 Qualifying service: disregard of breaks in service**

(1) This regulation applies for the purpose of calculating the qualifying service of a member whose pensionable service ceases for an interval (other than in circumstances where regulation 2.A.5(2) applies).

(2) If the interval--

(a) does not exceed one month, or

(b) is due to a trade dispute,

the member's qualifying service before and after the interval is treated as continuous for the purpose of calculating the member's qualifying service after the interval (but the period of the interval is ignored).

This is subject to paragraph (6).

(3) For the purposes of paragraph (2) it does not matter if the member's pensionable service before the interval is treated separately from that after the interval for the purpose of calculating the member's benefits.

(4) If--

(a) a person who is an active member ceases to be employed in the employment that qualifies the person to belong to this Section of the Scheme and becomes a deferred member, but not a pensioner member, in respect of the service in that employment, and

(b) after a period not exceeding 12 months the person becomes employed again in such an employment and becomes an active member again in that employment,

qualifying service in the earlier employment is treated as a single continuous period of qualifying service with that in the later employment.

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This is subject to paragraph (6).

(5) If--

(a) a person who is an active member in an employment opts to cease to be such a member whilst continuing to be employed in the employment and becomes a deferred member, but not a pensioner member, in respect of that service, and

(b) after a period not exceeding 12 months the person becomes such an active member again in that employment,

qualifying service in the earlier period of active membership is treated as a single period of qualifying service with that in the later period of such membership.

This is subject to paragraph (6).

(6) Where--

(a) the person has received a repayment of contributions under regulation 2.C.18 in respect of the earlier period, paragraphs (4) and (5) do not apply (but see paragraph (7)), or

(b) the person's rights under this Section of the Scheme in respect of that period have been extinguished under regulation 2.F.7 because a transfer value payment has been made, paragraphs (2), (4) and (5) do not apply.

(7) Paragraph (6)(a) does not apply if the person repays to the Secretary of State any contributions repaid to the person as mentioned in that paragraph together with any interest on those contributions, before the expiry of the period of 6 months beginning with the date on which the member becomes a member again.

(8) If--

(a) a member is a deferred member or pensioner member in respect of the period of pensionable service before pensionable service ceases for an interval, and

(b) the periods of pensionable service before and after pensionable service ceases for an interval are not treated as a single period of continuous service under regulation 2.A.4(5) or regulation 2.G.3(2)(a),

the period of pensionable service in respect of which the member is a deferred member or a pensioner member is treated as qualifying service in relation to the period after the interval.

## **Calculating Service**

### **2.A.7 Calculation of periods of membership or service**

(1) References in this Part to any period expressed in days are references to the period in question ignoring 29th February, expressed in days.

(2) For the purposes of this Section of the Scheme, and except where provided otherwise in this Part, periods of service are to be expressed in the first instance in complete days or fractions of a day, and the initial aggregation of periods that require to be aggregated is done in the first instance by reference to periods so expressed.



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(3) If, when all periods of service that require to be aggregated have been aggregated, there is any excess part day over the number of whole days, that excess is rounded up to a full day.

(4) If service is referred to as service in years and days--

(a) the days referred to in paragraph (2), and

(b) the full days referred to in paragraph (3),

are converted into years and days on the assumption that a year contains 365 days.

(5) If service is referred to as service in years--

(a) the days referred to in paragraph (2), and

(b) the full days referred to in paragraph (3),

are converted into years by dividing the number of days by 365, and using the result to four decimal places.

## **Pensionable Pay**

### **2.A.8 Meaning of "pensionable pay"**

(1) In this Part, subject to the following provisions of this regulation, "pensionable pay" means all salary, wages, fees and other regular payments made to a person in respect of employment in which the person is an active member of this Section of the Scheme.

(2) In the case of a member who, in addition to one or more such employments, holds an honorary office or appointment, any distinction award payable to the member as a consequence of holding the honorary office or appointment, is treated--

(a) in the case of a member in one such employment, as pensionable pay of that employment, and

(b) in the case of a member in two or more such employments, as pensionable pay of such of those employments as the Secretary of State considers appropriate.

(3) "Pensionable pay" does not include--

(a) bonuses,

(aa) pay awards and pay increases that are expressed by the Secretary of State to be non-consolidated,

(b) payments made to cover expenses, or

(c) payments for overtime.

(4) If--

(a) a person is an active member in respect of two or more part-time employments, and

(b) in the opinion of the Secretary of State, the total pensionable pay for the employments (apart from this paragraph) exceeds the amount that would be the



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pensionable pay for a comparable whole-time employment, not held concurrently with any other employment under which services of the kinds performed in the two or more part-time employments are performed,

the excess pensionable pay is ignored for the purposes of this Part.

(5) In the case of a non-GP provider who is not in receipt of any salary, wages, fees or any other regular payment, pensionable pay means practitioner income less--

(a) any sum on account of practice expenses (for these purposes, contributions payable under regulation 2.C.1(5) or (6) are neither practitioner income nor practice expenses); and

(b) any payment or allowance made pursuant to the New to Partnership Payment Scheme.

(6) For the purposes of this regulation, the practitioner income of a non-GP provider means income that accrues to the non-GP provider which is derived from-

(a) a GMS contract;

(b) a PMS agreement;

(c) an APMS contract;

(d) payments from, or to, a practitioner who is a GMS practice, a PMS practice or an APMS contractor in respect of the performance of certification services, commissioned services, collaborative services or health-related functions exercised under section 75 of the 2006 Act.

(7) In the case of a non-GP provider who is in partnership with a type 1 medical practitioner practising in partnership, the pensionable earnings of each non-GP provider who is a partner in a partnership shall be calculated by aggregating the pensionable earnings of each partner (including for this purpose, any amount that would constitute pensionable earnings in the case of any of them who are not included in the scheme) and, subject to paragraph (8), dividing the total equally by reference to the number of such partners.

(8) If the non-GP providers and any type 1 medical practitioners 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.

(9) The calculations described in paragraph (8) will be made by the National Health Service Commissioning Board or the Local Health Board to which the partners are required to give notice of their election in accordance with paragraph (10).

(10) Non-GP providers and any type 1 medical practitioners who are partners in any partnership must exercise the election described in paragraph (8) by giving notice in writing to their host Board in accordance with paragraph (11).

(11) A notice given under this regulation--

(a) must be signed by all the non-GP providers and type 1 medical practitioners in the partnership and must state as a fraction each non-GP provider's and practitioner's share in the partnership profits;

(b) will take effect--

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- (i) from the date agreed between the partners and the National Health Service Commissioning Board or Local Health Board concerned; or
- (ii) if no agreement is reached, a date decided by the Secretary of State;
- (c) will continue in effect until cancelled or amended by a subsequent notice in writing signed by all the partners in the partnership;
- (d) will be automatically cancelled upon a change in the members of the partnership.

#### **2.A.9 Pensionable pay: breaks in service**

(1) Paragraph (2) applies if a member is absent from work because of--

- (a) illness or injury,
- (b) maternity leave,
- (c) adoption leave,
- (d) paternity leave, or
- (e) parental leave or shared parental leave,

and the earnings used to calculate the member's pensionable pay under regulation 2.A.8 are reduced or cease.

(2) For the purposes of this Part (apart from regulations 2.C.1 and 2.C.2), and subject to paragraph (3) in the case of a member who is not a non-GP provider and paragraph (7) in the case of a member who is a non-GP provider, amounts equal to the pensionable pay that the member would have received if those circumstances had not applied are treated as having been paid to the member.

(3) Paragraph (2) does not apply to a member who is not a non-GP provider falling within paragraph (1)(a) as respects any period after the earnings used to calculate the member's pensionable pay under regulation 2.A.8 have ceased to be paid to the member.

(4) For the purposes of regulations 2.C.1 and 2.C.2, if for any period whilst the member falls within--

- (a) paragraph (1) the earnings used to calculate the member's pensionable pay under regulation 2.A.8 are reduced, amounts equal to the reduced earnings are treated as pensionable pay, and
- (b) paragraph (1)(b) to (e) the earnings used to calculate the member's pensionable pay under regulation 2.A.8 are reduced, during any period following that period whilst the member continues to fall within that paragraph and no such earnings are paid, amounts equal to the reduced earnings are treated as pensionable pay.

(5) For the purposes of paragraph (4)(b), any pay received by a woman on maternity leave in respect of any days during which the member returns to work for the purposes of keeping in touch with the workplace is to be ignored.

(6) For the purposes of this Part, during any period of absence which counts as pensionable service under regulation 2.A.4(3) or (3A) (up to 24 months' leave of absence with full contributions) amounts equal to the rate of the member's pensionable pay immediately before the absence are treated as pensionable pay.

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(7) In the case of a non-GP provider who--

- (a) is one of a number of non-GP providers or practitioners who have elected as described in regulation 2.A.8(8), each non-GP provider's or 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;
- (b) except where the non-GP provider's pensionable pay falls to be calculated as described in sub-paragraph (a), the non-GP provider 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.

(8) If the earnings used to calculate a member's pensionable pay cease during a period of absence to which this regulation applies--

- (a) a non-GP provider falling within paragraph (1)(a) will, subject to sub-paragraph (b), be treated as having continued 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 until the end of that 12 month period;
- (b) a non-GP provider falling within paragraph (1)(b) to (e) of this regulation who paid contributions on the basis of reduced earnings in accordance with paragraph (4)(b) will, subject to paragraph (9), continue to pay contributions at that rate, except that no refund of contributions or other benefit will be payable until the member actually leaves pensionable employment;
- (c) a member other than a non-GP provider will, subject to paragraph (5), 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.

(8A) For the purposes of paragraph (8)(a)--

- (a) during the 12 month period, the non-GP provider's pensionable earnings will be calculated as described in paragraph (7)(a) or (b);
- (b) at the end of the 12 month period, when the member is regarded as having left pensionable employment, no refund of contributions or other benefit will be payable until the member actually leaves employment.

(9) For the purposes of paragraph (8)(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 (4)(a) had the non-GP provider's reduced earnings excluded any earnings for a day during which the non-GP provider, whilst on maternity leave, returned to work for the purposes of keeping in touch with the workplace.

(10) 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.

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(11) If a member to whom . . . this regulation applies leaves pensionable employment or, by virtue of paragraph (8)(c), (8A)(b) or (10), is treated as having left pensionable employment, without becoming entitled to a preserved pension, then if the member later returns to pensionable employment regulation 2.A.4(4) will apply as if the reference to 12 months were a reference to 3 years.

(12) The benefits payable on the death of a member whose earnings ceased during a period of absence to which paragraph (7) applies will be calculated as if the member had died in pensionable employment on the day before the member's earnings ceased.

## **Reckonable Pay**

### **2.A.10 Meaning of "reckonable pay": general**

(1) This regulation applies for the purpose of determining the meaning of "reckonable pay" in relation to--

- (a) a member whose active membership ceases, . . .
- (b) a member becoming entitled to the immediate payment of a pension during the member's active membership period--
  - (i) on the exercise of the option under regulation 2.D.5 (partial retirement: members aged at least 55), or
  - (ii) under regulation 2.D.1(1)(b)(ii); or
- (c) a non-contributing member.

(2) This regulation is subject to regulations 2.A.11 to 2.A.14, 2.K.7 and 2.K.9 to 2.K.11;

(3) A member's "reckonable pay" is determined by the formula—

$$IRP \times (RP_a / RP_i)$$

Where—

IRP is the interim reckonable pay determined in paragraph (4), (6) or (7), as appropriate, before any adjustment for inflation in accordance with regulation 2.A.11,

RP<sub>a</sub> is the annual rate of retirement pension the member would be entitled to if the reckonable pay used to calculate it was the interim reckonable pay, including any adjustment for inflation described in regulation 2.A.11, and

RP<sub>i</sub> is the annual rate of retirement pension the member would be entitled to if the reckonable pay used to calculate it was the interim reckonable pay, excluding any adjustment for inflation described in regulation 2.A.11, but instead including any increases that pay would attract if it was the annual rate of an official pension within the meaning of section 5(1) of the Pensions (Increase) Act 1971.

(4) If the period of the member's pensionable service ending with the relevant day equals 365 days, "interim reckonable pay" means the member's pensionable pay for that period.

(5) In this regulation--

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(a) "the relevant day" means--

- (i) in a case within paragraph (1)(a), the day on which the member's active membership ceases, . . .
- (ii) in a case within paragraph (1)(b), the day before that on which the member becomes entitled to the pension;
- (iii) in a case within paragraph (1)(c), the member's last day of pensionable service;

(b) "the best consecutive 1095 day period" shall be determined by comparing--

- (i) the period of 1095 days immediately preceding the relevant day (Period 1);
- (ii) the period of 1095 days which overlaps Period 1 by 730 days (Period 2);
- (iii) the period of 1095 days which overlaps Period 2 by 730 days,

and so on.

(6) Except where paragraph (4) or (7) applies, in this regulation "interim reckonable pay" means one-third of the member's pensionable pay for the period of 1095 days--

(a) that begins--

- (i) during the member's pensionable service, and
- (ii) within the period of 10 years ending with the relevant day, and

(b) for which the member's pensionable pay was the highest ("the best consecutive 1095 day period").

(7) If the member's pensionable service within the period of 10 years ending with the relevant day--

- (a) is less than 365 days, or
- (b) exceeds 365 days but is less than 1095 days,

"interim reckonable pay" means the member's pensionable pay for the period of the member's pensionable service, divided by the number of days in that period and multiplied by 365.

(8) If two or more periods of pensionable service are treated as a single continuous period of pensionable service under--

- (a) regulation 2.A.4(5) (pensionable service: breaks in service), or
- (b) regulation 2.G.3(2) (exception to general rule in regulation 2.G.2),

the references in--

- (i) paragraph (4) to a period of pensionable service equalling 365 days,
- (ii) paragraph (5) to a period of 1095 days,
- (iii) paragraph (7) to the period of pensionable service less than 365 days or more than 365 days but less than 1095 days,

are references to periods together amounting to periods of that length, disregarding any breaks during the single period.

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(9) Paragraph (8) does not apply if the other employment is an employment in respect of which the member continues to accrue benefits in accordance with regulation 2.D.13 despite being entitled to a pension under regulation 2.D.11.

(10) If--

(a) a person's reckonable pay in respect of an employment that the person has left falls to be determined under this regulation by reference to the person's pensionable pay for any period in respect of an employment, and

(b) the person held that employment concurrently during that period with another employment in which the person was an active member,

the member's pensionable pay for that period in the other employment must be taken into account in that determination.

(11) For the purposes of this regulation, pensionable service does not include--

(a) any period of pensionable service that a member is entitled to count under Chapter 2.F unless the transfer value payment in respect of that service is accepted from a corresponding 2008 scheme;

(b) any period of pensionable service that a 2008 Section Optant is entitled to count under--

(i) regulation 2.K.3;

(ii) regulation 2.K.5, or

(iii) regulation 2.K.13.

## **2.A.11 Adjustments for inflation in determining reckonable pay under 2.A.10**

(1) In determining--

(a) the pensionable pay for the period of pensionable service referred to in 2.A.10(4),

(b) the period of 1095 days for which the member's pensionable pay was the highest for the purposes of regulation 2.A.10(6), or

(c) the pensionable pay for either of the periods of pensionable service referred to in regulation 2.A.10(7),

the amount of pensionable pay is adjusted for inflation.

(2) The reference in paragraph (1) to adjusting the amount of pensionable pay for inflation, is a reference to increasing the member's pensionable pay (for a specified period or periods) by an amount equal to the amount by which, at the relevant day, an official pension within the meaning of section 5(1) of the Pensions (Increase) Act 1971 first qualifying for an increase under that Act on the same day as the specified period, or periods, ended, would have been increased (if at all).

(3) In this regulation--

(a) "specified period" means any single scheme year falling in the period, or periods, referred to in 2.A.10(4), (6) or (7), and

(b) "the relevant day" has the meaning given in regulation 2.A.10(5).



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#### **2.A.12 Restriction on pensionable pay used for calculating benefits in respect of capped transferred-in service**

- (1) This regulation applies for determining the amount of a member's pensionable pay for the purposes of calculating so much of any benefit under this Section of the Scheme as falls to be calculated by reference to capped transferred-in service.
- (2) If a member's pensionable pay exceeds the permitted maximum, the excess is disregarded for the purposes of any such calculation as is mentioned in paragraph (1).
- (3) In this regulation "permitted maximum" means--
  - (a) in relation to the tax year 2008-09, £117,600, and
  - (b) in relation to any later tax year, the figure found for that year under paragraphs (5) and (6).
- (4) If the retail prices index for the month of September preceding the tax year 2009-10 or any later tax year is higher than it was for the previous September, the figure for that year is 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.
- (5) If the retail prices index for the month of September preceding the tax year 2009-10 or any later tax year is not higher than it was for the previous September, the figure for that year is the same as for the previous tax year.
- (6) In this regulation--
  - (a) "capped transferred-in service" has the meaning given by regulation 2.F.12; and
  - (b) "pensionable pay" has the meaning given by regulation 2.A.8.

#### **2.A.12A Restriction of reckonable pay where the Secretary of State considers the amount is inordinate**

- (1) Where, having regard to the matters referred to in paragraph (2), the Secretary of State considers that the amount which would otherwise constitute the member's interim reckonable pay for the purposes of regulation 2.A.10 is inordinate, the Secretary of State may, determine what the amount of a member's interim reckonable pay is to be and the date from which any change in the amount of that pay as a result of that determination is to take effect.
- (2) 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);



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- (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.
- (3) Where the Secretary of State determines the amount of a member's interim reckonable pay pursuant to paragraph (1)—
- (a) the difference between the amount which would, but for the determination pursuant to paragraph (1), be the member's interim reckonable pay and the amount so determined pursuant to that paragraph and adjusted for the purposes of regulation 2.A.11, must 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 2.C.1 shall, 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 2.C.5 are to be refunded to that employing authority.

#### **2.A.13 Meaning of "reckonable pay": non-concurrent part-time employment**

(1) This regulation applies if a member's reckonable pay falls to be determined under regulation 2.A.10 by reference to the member's pensionable pay for any period for a part-time employment that was not held concurrently with any other such employment in which the member was an active member.

(2) The member's reckonable pay for that period in respect of the part-time employment is the amount that would have been paid in respect of that employment for that period if it had been a whole-time employment not held concurrently with any other employment.

This is subject to paragraph (4).

(3) For the purposes of paragraph (2) it is assumed that the same rate of pay per hour or session (or part of an hour or session) is paid for the whole-time employment as is paid per hour or session (or part of an hour or session) for the part-time employment.

(4) If, in a case where, apart from this paragraph, paragraph (2) would apply, it appears to the Secretary of State that, by reason of exceptional circumstances, the application of the assumptions in paragraph (3) for the purposes of paragraph (2) would result in an excessive amount being given by paragraph (2), that amount must be reduced by such amount as is in the opinion of the Secretary of State appropriate having regard to what would have been paid for that period in respect of a comparable whole-time employment.

(5) This regulation does not apply to the calculation of the reckonable pay of an active member or a pensioner member for the purposes of regulation 2.E.17(1) or (2) (lump sum payable on death of active or pensioner member).

#### **2.A.14 Meaning of "reckonable pay": concurrent part-time employments**

(1) This regulation applies if under regulation 2.A.10(10) a member's reckonable pay falls to be determined by reference to the member's pensionable pay for any period for two or more part-time employments held concurrently during that period.

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(2) The member's reckonable pay for that period is calculated as follows--

Step 1

Calculate the reckonable pay for each of the employments under regulation 2.A.13 as if it were not held concurrently with any other such employment.

Step 2

Find the appropriate fraction for each of the employments (see paragraph (3)).

Step 3

Add together the appropriate fraction of the reckonable pay for each of the employments as calculated at Step 1.

(3) Except where paragraph (4) applies, the appropriate fraction for an employment is--

$$HPW / THPW$$

where--

HPW is the number of hours per week of the employment, and

THPW is the total hours per week of both or all the employments.

(4) The appropriate fraction for an employment for a specified number of sessions per week is--

$$SPW / TSPW$$

where--

SPW is the number of sessions per week of the employment, and

TSPW is the total sessions per week of both or all the employments.

(5) If--

(a) one or more of the employments is an employment for a specified number of sessions per week, and

(b) one or more of the employments is not such an employment,

the denominator for the fractions given in paragraph (3) and (4) is calculated on the basis that a session is 3.5 hours or such number of hours as the Secretary of State may in any particular case determine.

## **2.A.15 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

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- (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;
  - (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; and
    - (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; or
    - (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

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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) a body corporate is to be treated as another person's associated company if that person has control of it, except if that person is an employing authority; and

(b) 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 must 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 the Secretary of State's 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) If 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.

(6) If paragraph (5) applies, NHS employment shall be treated as commencing on the later of the nominated date (if any) and the approval date.

(7) For the purposes of this regulation the conditions for approval are those referred to in paragraph (1)(a) or (b) as the case may be.

(8) 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 2.C.7;

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

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- (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"); or
  - (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; or
  - (iii) a receiver, manager, or administrative receiver has been appointed under Part III of the 1986 Act; or
  - (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.
- (9) An OOH provider--
  - (a) must give the appointed Group or Board notice in writing upon the occurrence of any of the events referred to in paragraph (8)(c) and must give such notice on the same day as that event;
  - (b) that wishes to cease to participate in this Section of the scheme must 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.
- (10) An OOH provider must 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 (8);
  - (b) the day upon which the period referred to in paragraph (9)(b) expires if a notice under that provision has been given.

## **Chapter 2.B**

### **Membership**

#### **2.B.1 Eligibility: general**

- (1) A person is eligible to be an active member of this Section of the Scheme on or after 1st April 2015 if conditions A to C are met and the person is not prevented by regulation 2.B.2, 2.B.3 or 2.B.6.
- (2) Condition A is that the person is in NHS employment.
- (3) Condition B is that the person—
  - (a) enters NHS employment on or after 1st April 2008 and has service ("relevant service") as an active member of this Section of the Scheme—
    - (i) on or before 1st April 2012; or

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- (ii) after 1st April 2012, but only where that service is pursuant to the provisions of Chapter 2.K,
  - (b) has not had a break in service for any one period of five years or more ending in the period starting on 2nd April 2012 and finishing on 1st April 2015, and
  - (c) meets all of the “other Section conditions” (see paragraph (5)).
- (4) Condition C is that the person has not reached the age of 75 and was born on, or before, 31st August 1960.
- (5) The “other Section conditions” are that—
- (a) the person has not received a repayment of contributions under regulation 2.C.18 in respect of their relevant service;
  - (b) the person’s rights under this Section of the Scheme in respect of their relevant service have not been extinguished under regulation 2.F.7;
  - (c) the person is not entitled to a repayment of contributions under regulation 2.C.18 by virtue of paragraph (2)(a) to (c) of that regulation.
- (6) 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,and is not the subject of a direction made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967,
  - (b) who would, if paragraph (a) did not apply, fall within regulation 2.B.2(1B) to (1G), 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.

### **2.B.1A Eligibility: transitional**

- (1) A person is eligible to be an active member of this Section of the Scheme if—
- (a) the person is not prevented from being so by regulation 2.B.2, 2.B.3 or 2.B.6, and
  - (b) either—
    - (i) the Secretary of State has accepted that person’s option to join this Section of Scheme under Chapter 2.K, or
    - (ii) that person meets all of the requirements in paragraph (2).
- (2) Those requirements are that the person—
- (a) is under age 75,
  - (b) was an active member of the 1995 Section on or after 1st April 2008,
  - (c) became a pensioner member of the 1995 Section on, or before, 1<sup>st</sup> October 2009,



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- (d) has either—
  - (i) returned to NHS employment since becoming a pensioner member referred to in (c), or
  - (ii) commenced for the first time NHS employment, and
- (e) is not eligible to be an active member of the 1995 Section in respect of the employment referred to in (d).

This is subject to the following paragraphs of this regulation.

(3) A person referred to in paragraph (2) is eligible to be an active member of this Section of the Scheme, from the day immediately following the end of Waiting Period A, if that person is entitled to a pension under one of the following regulations of the 1995 Regulations—

- (a) E1 (normal retirement pension),
- (b) E2A(3)(a) (tier 1 ill-health pension on early retirement),
- (c) E3A (early retirement pension (termination of employment by employing authority)), or
- (d) E5 (early retirement pension (with actuarial reduction)).

(4) A person referred to in paragraph (2) shall be eligible to be an active member of this Section of the Scheme, from the day immediately following the longer of Waiting Period A and Waiting Period B, if that person is entitled to a pension under one of the following regulations of the 1995 Regulations—

- (a) E2 (early retirement pension (ill health)),
- (b) E3 (early retirement pension (redundancy etc additional provisions)).

(5) If a person referred to in paragraph (2) is entitled to a pension under regulation E2A(3)(b) (tier 2 ill-health pension on early retirement), that person shall be eligible to be an active member of this Section of the Scheme from the day immediately following whichever of the following occurs last—

- (a) the anniversary of that person entering NHS employment, or
- (b) the end of Waiting Period A.

(6) A person to whom paragraph (1)(b)(i) or (3)(b) applies and who is entitled to a tier 1 ill-health pension under regulation E2A(3)(a) of the 1995 Regulations, ceases to be eligible to be an active member of this Section of the Scheme from the date the Secretary of State makes a determination that that person is entitled to a tier 2 ill-health pension in place of that tier 1 ill-health pension under regulation E2B(3) of those Regulations (re-assessment of ill-health condition determined under regulation E2A).

(7) For the purposes of this regulation—

- (a) “Waiting Period A” is a period of two calendar years beginning on the day the person becomes entitled to the pension under the 1995 Regulations;
- (b) “Waiting Period B” is a period beginning on the day the person becomes entitled to the pension under the 1995 Regulations which is equal to the calendar length of—
  - (i) any increase to the person’s pensionable service in the 1995 Section which has been applied in accordance with paragraph (3) of regulation E2 of the 1995 Regulations (early retirement pension (ill-health)), or



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- (ii) any additional service with which the person has been credited in accordance with regulation 5 of the National Health Service (Compensation for Premature Retirement) Regulations 2002.

(8) This regulation applies to any person who has previously been an active member of a corresponding 1995 scheme as though any reference to—

- (a) the “1995 Section” includes a reference to that corresponding 1995 scheme;
- (b) the “1995 Regulations” includes a reference to any regulations, orders, rules or other instruments governing that corresponding 1995 scheme;
- (c) regulations “E1”, “E2”, “E2A”, “E2B(3)”, “E3”, “E3A”, “E3A(3)(a)”, “E3A(3)(b)” or “E5” includes the equivalent of those regulations in a health service scheme the provisions of which correspond to the 1995 Regulations, and
- (d) “regulation 5 of the National Health Service (Compensation for Premature Retirement) Regulations 2002” includes the equivalent of that regulation as it applies to a member of a corresponding 1995 scheme.

## **2.B.2 Restrictions on eligibility: general**

(A1) A person is not eligible to be an active member of this Section of the Scheme in respect of service in NHS employment after 31st March 2022.

(A2) Paragraphs (1) to (14) of this regulation apply in respect of service in NHS employment before 1st April 2022.

(1) A person who is entitled to the immediate payment of a pension under this Section of the Scheme under a regulation that requires the person not to be in NHS employment may only be an active member in accordance with--

- (a) regulation 2.D.5 (partial retirement (members aged at least 55)),
- (b) regulation 2.G.4 (effect of re-employment on tier 2 ill-health pensions),
- (c) regulation 2.D.13 (exceptions to requirement that NHS employment must have ceased), or
- (d) Chapter 2.G.

(1A) A person who was born on, or after, 1st September 1960 is not eligible to be an active member of this Section of the Scheme in respect of service in NHS employment on, or after, 1st April 2015.

(1B) A person is not eligible to be an active member of this Section of the Scheme if that person has had a break in service ending on or after 2nd April 2012, and any of the following apply—

- (a) that break in service is for any one period of five years or more;
- (b) that person receives a repayment of contributions under regulation 2.C.18 in respect of their service before that break (see regulation 2.B.1(3)(a));
- (c) that person becomes entitled to a repayment of contributions under regulation 2.C.18 by virtue of paragraph (2)(a) to (c) of that regulation in respect of their service before that break; or

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- (d) that person's rights under this Section of the Scheme in respect of their service before that break have been extinguished under regulation 2.F.7 because a transfer value payment is made in respect of them.

(1C) A person who on 1st April 2012 has attained the age of 55 may not contribute to or accrue further pensionable service under this Section of the Scheme unless that person either—

- (a) is, on 1st April 2015, an active member of this Section of the Scheme in accordance with regulation 2.B.1; or
- (b) returns to NHS employment on or after 2nd April 2015 in circumstances where paragraph (1B)(a) does not apply.

(1D) Paragraph (1E) applies to a person—

- (a) who, on 1st April 2012, has attained the age of 51 years and 7 months but has not attained the age of 55, and
- (b) whose eligibility cessation date has not been reached (see paragraph (1F)).

(1E) A person referred to in paragraph (1D) may not contribute to or accrue further pensionable service under this Section of the Scheme unless that person either—

- (a) is, on 1st April 2015, an active member of this Section of the Scheme in accordance with regulation 2.B.1, or
- (b) returns to NHS employment on or after 2nd April 2015 in circumstances where paragraph (1B)(a) does not apply.

(1F) For the purposes of paragraph (1D), a person's eligibility cessation date is to be determined according to the formula—

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

where—

A is 1st April 2022

T 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 55.

(1G) For the purposes of paragraphs (1C)(b) and (1E)(b), any break in service 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.

(1H) Paragraph (1I) applies to a person who in the opinion of the Secretary of State—

- (a) was previously an active member of a corresponding 2008 scheme,
- (b) the regulations governing that corresponding scheme include provisions pursuant to subsection (5) of section 18 of the 2013 Act or subsection (5) of section 18 of the 2014 Act that provide for exceptions to subsection (1) of those sections, 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.

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(1I) The Secretary of State may permit a person referred to in paragraph (1H) to join this Section of the Scheme and, for the purposes of paragraphs (1C) to (1G), the member's previous pensionable employment under the corresponding scheme referred to in paragraph (1H) will be treated as if it were previous pensionable employment under this Section of the Scheme.

(1J) Paragraph (1K) applies to a person who, in the opinion of the Secretary of State—

- (a) was previously an active member in respect of service in an existing scheme (within the meaning of Schedule 5 to the 2013 Act or Schedule 5 to the 2014 Act),
- (b) is not receiving a pension in respect of that service on the relevant day,
- (c) the regulations of that existing scheme include provisions pursuant to subsection (5) of section 18 of the 2013 Act or subsection (5) of section 18 of the 2014 Act that provide for exceptions to subsection (1) of those sections,
- (d) pursuant to those provisions, the person would have been eligible to be an active member of the existing scheme if the member had returned to employment for the purposes of that scheme on the relevant day, and
- (e) the member would, if the member's previous service in the existing scheme had been previous service under this Section of the Scheme, have been eligible for active membership of this Section of the Scheme on the relevant day pursuant to paragraphs (1A) to (1G).

(1K) The Secretary of State may permit a person referred to in paragraph (1J) to join this Section of the Scheme and, for the purposes of paragraphs (1C) to (1G), the member's previous service as an active member under the existing scheme referred to in paragraph (1J) will be treated as if it were previous service as an active member of this Section of the Scheme.

(1L) For the purposes of paragraphs (1J) and (1K) "the relevant day" is the day the member commences NHS employment for the purposes of these Regulations.

(1LA) Paragraph (1LE) applies to a person if—

- (a) paragraph (1LB) is satisfied, and
- (b) that person's employment was originally transferred out of the public sector (whether or not the employment from which that person is being transferred for the purposes of paragraph (1LB) to (1LF) is in the public sector).

(1LB) This paragraph is satisfied if, in the opinion of the Secretary of State—

- (a) the 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; and
- (b) the employment from which the person is transferred—
  - (i) qualified that person for benefits under an occupational pension scheme, and

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- (ii) the rules of that scheme (in the opinion of the Secretary of State) entitle that person to receive benefits on retirement upon attaining the age of 65 years.

(1LC) The reference in paragraph (1LB) 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 a person whose employment is being transferred should, as far as practicable, be treated in the same way as they would have been under a transfer of an undertaking.

(1LD) For the purposes of paragraph (1LB)(b)(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 65 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.

(1LE) The Secretary of State may permit a person referred to in paragraph (1LA) who would otherwise not be permitted to join this Section of the Scheme in accordance with regulation 2.B.1 to do so and, for the purposes of paragraphs (1C) to (1G), the member's previous service as an active member under the occupational pension scheme referred to in paragraph (1LB)(b)(i) will be treated as if it were previous service as an active member of this Section of the Scheme.

(1LF) Before permitting a person referred to in paragraph (1LE) to join this Section of the Scheme the Secretary of State must take advice from the Scheme actuary.

(1M) A person referred to in paragraph (1C), (1E), (1I), (1K) or (1LE) may elect, using a form provided by the Secretary of State, not to make contributions or accrue further service under this Section of the Scheme in accordance with whichever of those paragraphs apply, but instead (where eligible) to become an active member of the 2015 Scheme.

(1N) Such an election—

- (a) is irrevocable;
- (b) must be given to the Secretary of State before the date specified by the Secretary of State in the election form;
- (c) is to be treated as having been given on the date the election form is received by the Secretary of State.

(1O) The date referred to in (1N)(b) must be a date that is at least three months later than the date on which the Secretary of State provided the member with an election form.

(1P) An election shall be effective from the first day of the member's pensionable employment in the 2008 Section falling on, or after, 1st April 2015, and from that date—

- (a) that member is to be treated as if that member had been an active member of the 2015 Scheme, and

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- (b) contributions made in respect of the member in the 2008 Section shall be treated as if they had been contributions made in respect of that member in the 2015 Scheme.

(1Q) The Secretary of State may allow a member to exercise an election after the date specified under paragraph (1N)(b) where the Secretary of State considers that the member has not had a reasonable opportunity to consider whether to exercise an election before that date.

(2) A person is not eligible to be an active member of this Section of the Scheme if the person—

- (a) became a pensioner member of the 1995 Section or a corresponding 1995 scheme on, or before, 1st April 2008 (except if paragraph (1)(b)(i) of regulation 2.B.1A applies to that person), or
- (b) became a pensioner member of the 1995 Section or a corresponding 1995 scheme on, or after, that date (except if paragraph (1)(b)(i) or (ii) of regulation 2.B.1A applies to that person or that person became an active member of this Section of the Scheme before reaching normal benefit age for the purposes of the 1995 Section),.

(3) A person is not eligible to be an active member of this Section of the Scheme in respect of service in an employment if the person is an active member of a superannuation scheme established under section 1 or 9 of the Superannuation Act 1972 in respect of service in that employment.

(4) A person who is employed by a GDS or PDS contractor (other than a dentist performer) is not eligible to be an active member of the Scheme in respect of service in that employment.

(5) A person who holds an honorary appointment and does not at the same time hold any other employment which entitles him to be a member of this Section of the Scheme is not eligible to be an active member of this Section of the Scheme.

(6) A person is not eligible to be an active member of this Section of the Scheme in any further employment if the person--

- (a) becomes entitled to a tier 2 pension under regulation 2.D.8, and
- (b) opts to exchange that pension for a lump sum in accordance with regulation 2.D.15.

(7) A person is not eligible to be an active member of this Section of the Scheme in any future employment if the person--

- (a) ceases to be entitled to a tier 1 ill-health pension under regulation 2.D.8, and
- (b) becomes entitled to a tier 2 ill-health pension under that regulation on the date the Secretary of State makes a determination under regulation 2.D.9(3).

This is subject to paragraph (8).

(8) A person to whom paragraph (7) applies is eligible to be an active member of this Section of the Scheme in any further employment after the first anniversary of that person's first day of such employment following the date of the Secretary of State's determination under regulation 2.D.9.

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(9) A person who satisfies Condition A or Condition B is not eligible to be an active member of 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.

(10) 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.

(11) 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.

(12) A person referred to in paragraph (9) may be an active member of 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 such a member.

(13) The reference in paragraph (10)(c)(ii) to an arrangement broadly equivalent to a TUPE transfer is to an arrangement--

- (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.

(13A) For the purposes of paragraphs (13B) to (13F), a retention arrangement is one under which—



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- (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.

(13B) 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 (13E).

(13C) A person who, pursuant to the retention arrangement referred to in paragraph (13B) 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 (13E).

(13D) A person who on, or after, 2nd April 2014 and pursuant to a retention arrangement (other than the one referred to in paragraph (13B)) 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 (13E).

(13E) The Secretary of State may exceptionally allow a person referred to in paragraph (13B), (13C) or (13D) 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.

(13F) Nothing in this regulation prevents the other body referred to in paragraph (13B), (13C) or (13D) from applying for approval as an employing authority pursuant to regulation 2.M.3.

(14) 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.

### **2.B.3 Concurrent employments**

- (1) This regulation applies if for any period a person holds two or more employments in respect of which the person is (or apart from this regulation would be) eligible to be an active member of this Section of the Scheme.



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(2) The person may only be such a member in respect of so many hours or, as the case may be, sessions in each such employment as, in the opinion of the Secretary of State, do not, taken together, exceed a comparable whole-time employment not held concurrently with any other employment.

(3) If the person is such a member in respect of two or more employments which, in the opinion of the Secretary of State, when taken together exceed a comparable whole-time employment not held concurrently with any other employment, the person is not eligible to be an active member in respect of any employment (or part of an employment) which exceeds a comparable whole-time employment not held concurrently with any other employment.

(4) For the purposes of paragraphs (2) and (3), two or more employments taken together exceed a comparable whole-time employment if the total number of hours or sessions under the employments exceeds the number of hours or sessions that would, in the opinion of the Secretary of State, constitute a comparable whole-time employment under which services of the kinds performed in the two or more employments were performed.

(5) For the purposes of this regulation an employment is "whole-time" if it is employment for such number of hours or sessions as in the opinion of the Secretary of State amounts to whole-time employment in the case of an employment for services of the kind performed in the two or more employments.

(6) A person may participate in this Section of the Scheme in respect of employment as an officer even if he also participates in Part 3 in respect of concurrent employment as a practitioner.

## **Joining and Leaving the Scheme**

### **2.B.4 Joining this Section of the Scheme**

(1) Subject to paragraph (3), a person in NHS employment who is eligible to be an active member of this Section of the Scheme, becomes such a member, unless absent from work for any reason, on either—

- (a) the commencement of the person's employment; or
- (b) where the person has previously opted out of this Section of the Scheme under regulation 2.B.5(1) 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 2.B.5(1) was given within 12 months immediately preceding that date.

(2) A person who is eligible to be such a member by virtue of falling within regulation 2.B.1(3)(b) may opt to become such a member by giving notice in writing to the employing authority.

(3) A person who has previously exercised an option to opt out of this Section of the Scheme in accordance with regulation 2.B.5(1) in respect of an employment in which that person was an active member, and who remains eligible to be an active member in respect of that employment, may opt to join or re-join this Section of the

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Scheme by giving notice in writing to the employing authority in such form as the Secretary of State requires.

(4) A notice under paragraph (3) takes effect--

- (a) from the beginning of the first pay period to begin after the notice is received by the employing authority, or
- (b) if the notice specifies a date that is the first day of a later pay period, from that date.

(5) A notice under paragraph (3) may not be given by a person who is absent from work for any reason.

(6) .....

### **2.B.5 Opting out of this Section of the Scheme**

(1) A person who is an active member of this Section of the Scheme in any NHS employment may opt at any time to cease to be such a member by giving notice in writing to the person's employing authority.

(2) A person who so opts ceases to be such a member on the date the notice takes effect.

(3) The notice takes effect--

- (a) from the beginning of the first pay period to begin after the notice is received by the employing authority, or
- (b) if the notice specifies a later date, from the beginning of the first pay period after that in which the specified date falls.

(4) A person to whom paragraph (1)(a) of regulation 2.B.4 applies in respect of an employment who gives notice in writing under paragraph (1) of this regulation within one month of the date of commencing that NHS employment, is treated as not having become an active member by virtue of that regulation.

(5) 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 12 months immediately preceding that date.

(6) 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.

### **2.B.6 Restriction on further participation in this Section of the Scheme**

(1) A person who ceases to meet any of conditions A to C in regulation 2.B.1 in an employment or is prevented by regulation 2.B.2 or 2.B.3 from continuing to be an active member in an employment must cease to be an active member of this Section of the Scheme in that employment.

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(2) Accordingly--

- (a) a person within paragraph (1) may not make any further contributions to this Section of the Scheme under Chapter 2.C., and
- (b) any further service of the person is not pensionable service for the purposes of this Section of the Scheme.

## **Chapter 2.C**

### **Contributions**

#### **Basic Contributions by Members**

##### **2.C.1 Contributions by members**

(1) Each active member must make contributions to this Section of the Scheme ("member contributions") in respect of—

- (a) the member's pensionable pay in accordance with regulation 2.C.2 where the member is not a non-GP provider;
- (b) the member's pensionable earnings in accordance with regulation 2.C.4 where the member is a non-GP provider.

(2) Member contributions must be made—

- (a) until the member completes 45 years' pensionable service, or
- (b) where the notice required by regulation 2.A.2(3) has been properly received, until the member ceases officer service.

(3) In the case of a member who is not a non-GP provider, the member's employing authority must deduct member contributions from the member's pensionable pay and pay them to the Secretary of State not later than the 19th day of the month following the month in which the pay was paid to the member.

(4) In the case of a member who is a non-GP provider, the host Board must pay to the Secretary of State contributions under this regulation paid to it by the non-GP provider or paid to it by another employing authority not later than the 19th day of the month following the month in which the earnings were paid to the non-GP provider.

(5) Paragraph (6) applies where, despite the provisions of this regulation—

- (a) a member who—
  - (i) is not a non-GP provider, has failed to pay member contributions; or
  - (ii) is a non-GP provider, has failed to pay such contributions; or
- (b) an employing authority has failed to deduct such contributions in respect of a member referred to in paragraph (a).

(6) The Secretary of State may recover any sum that remains due in respect of contributions referred to in paragraph (5)—

- (a) in any case where an employing authority has ceased to exist and the member is a non-GP provider member referred to in paragraph (5)(a)(ii), by adding those contributions to the amount of contributions that the non-GP provider is due to pay to the host Board;
- (b) by deduction from any benefit payable to, or in respect of, a member where the Secretary of State has notified the member of an intention to do so.

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(6A) Where paragraph (6)(a) applies, the non-GP provider must record the amount of unpaid contributions in a certificate referred to in regulation 2.J.14.

(7) Paragraph (6) is without prejudice to any other method of recovery the Secretary of State may have.

(8) A member who is absent from service in circumstances within regulation 2.A.4(1) to (3A), may make contributions to this Section of the Scheme in respect of the member's pensionable pay or, as the case may be, pensionable earnings in accordance with that regulation and whichever of regulations 2.C.2 or 2.C.4 applies to that member.

(9) If, apart from this paragraph, the pay or, as the case may be, earnings for a scheme year in respect of a member's service would not be a whole number of pounds, that pay or, as the case may be, those earnings must be rounded down to the nearest whole pound.

## **2.C.2 Contribution rate for members other than non-GP providers**

(1) Contributions under regulation 2.C.1(1)(a) must be paid at the member's contribution rate for the scheme year in question.

(2) A member's contribution rate for each scheme year from 2015-16 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 from 2015-16**

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable Pay 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 £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%

(3) The Secretary of State shall, with the consent of the Treasury, determine the pensionable pay bands and contribution percentage rates specified in the tables set out in this regulation in respect of each scheme year.

(4) Before determining those pensionable pay bands or contribution percentage rates, the Secretary of State must consider the advice of the Scheme actuary.

## **2.C.3 Determination of pensionable pay for the purposes of setting a contribution rate for members other than non-GP providers**

(1) 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 part ("the current scheme year"); and

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

- (i) the determinations referred to in paragraphs (4) to (21) shall apply to each such employment separately; and
- (ii) each such employment shall be treated separately for the purpose of paying contributions.

(2) For the purposes of determining the relevant annual contribution rate for the current scheme year paragraphs (3) to (15) apply to a member who is 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.

This is subject to paragraphs (16) and (17).

(3) For the purposes of paragraphs (4) to (15)--

- (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;
  - (ii) any additional pensionable pay that the member is treated as having received during an absence from work in accordance with regulation 2.A.9 shall be included;
- (c) the amount of pensionable pay determined in accordance with those paragraphs shall be rounded down to the nearest whole pound.

(4) 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 (2) of regulation 2.C 2 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.

(5) 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,

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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 (2) of regulation 2.C 2 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.

(6) 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,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 2.C 2 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.

(7) 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 (2) of regulation 2.C 2 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.

(8) If a member--



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- (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 (2) of regulation 2.C 2 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 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.

- (9) 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 (2) of regulation 2.C 2 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



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in that previous scheme year and ending on the last day of that previous scheme year.

(10) 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 (2) of regulation 2.C 2 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 during the previous scheme year;

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

(11) 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 (2) of regulation 2.C 2 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.

(12) 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;

(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 (2) of regulation 2.C 2 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.

(13) 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 (2) of regulation 2.C 2 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.

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(14) 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 (2) of regulation 2.C 2 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.

(15) 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 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 (2) of regulation 2.C 2 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

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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.

(16) 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 (2) of regulation 2.C 2 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 (20).

(17) Subject to paragraph (18), 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 (2) of regulation 2.C 2 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 (20), and

(b) as if the member's employment had commenced on that date.

(18) Paragraph (17) 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.

(19) If the change to a member's pensionable pay referred to in paragraph (17) 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.

(20) Where paragraph (16) or (17) 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 (16) or, as the case may be, paragraph (17) during the current scheme year;

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

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(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.

(21) If none of paragraphs (4) to (17) 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 (4) of regulation 2.C 2, 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 (2) of regulation 2.C 2 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).

(22) 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 (16) or (17) of this regulation, or

(iii) in part during 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 under this Section of 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 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.

(23) 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 (16) or (17) of this regulation, or

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

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(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 under this Section of 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.

(24) 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 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,

(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.

(25) 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 not in pensionable employment with the employing authority by which that payment is made,

for all purposes 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,

(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.

(26) In any case where paragraph (16) applies and it is apparent at the time when the person becomes an active member in an employment under this Part that the person's pensionable pay in that employment includes any amount that is variable, that amount is to be taken as such amount as the employing authority



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consider appropriate for the current scheme year and, in the case of a member who works part time, is the variable amount that would be paid in respect of a comparable whole time employment.

(27) If a transfer payment from a corresponding health service scheme is accepted in respect of a person, the person is treated for the purposes of this regulation as if--

- (a) the person was an active member of this Section of the Scheme during any period during which the person was an active member of that scheme, and
- (b) the pay by reference to which the person's benefits under that scheme were calculated was pensionable pay for the purposes of this Section of the Scheme.

#### **2.C.4 Contribution rate and determination of pensionable earnings for non-GP providers**

(1) Member contributions payable by a non-GP provider under regulation 2.C.1(1)(b) must be paid at the member's contribution rate for the scheme year in question.

(2) A member's contribution rate is the percentage specified in column 2 of the relevant table in paragraph (15) in respect of the corresponding pensionable earnings band specified in column 1 of that table into which the member's pensionable earnings fall.

(3) 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.

(4) Before determining those pensionable earnings bands or contribution percentage rates, the Secretary of State must consider the advice of the Scheme actuary.

(5) A non-GP provider member whose pensionable earnings fall into a pensionable earnings band specified in column 1 of the relevant table in paragraph (20) must, in respect of the scheme year in question, 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.

(6) For the purposes of paragraph (5), a non-GP provider member's 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 regulation 2.J.14(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 regulation 2.J.14, or



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- (ii) the amount of earnings that corresponds to the host Board's estimate of that member's pensionable earnings from all non-GP provider sources for that year.

(7) Where during the scheme year the host Board and the non-GP provider member agree that the estimated amount of that member's earnings should be different to that last agreed under paragraph (a) of paragraph (6) or last determined under paragraph (b) of that paragraph, that member must pay the monthly contributions determined in accordance with paragraph (8).

(8) 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 paragraph (20)

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.

(9) A non-GP provider member must pay monthly contributions determined in accordance with paragraph (10), where—

- (a) during the scheme year the host Board is satisfied that the member's pensionable earnings will exceed those last agreed under sub-paragraph (a) of paragraph (6) or last determined under sub-paragraph (b) of that paragraph,
- (b) an agreement referred to in sub-paragraph (a) of that paragraph 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.

(10) Those contributions are to be determined as follows—

Step 1: take the new estimated pensionable earnings determined in accordance with paragraph (9)(c) (Amount D)

Step 2: find the percentage rate of contributions payable on Amount D earnings applying the relevant table in paragraph (20)

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.

(11) A non-GP provider member must pay contributions determined in accordance with paragraph (12) where, in respect of a scheme year to which

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one or more of paragraphs (6), (7) and (9) applied throughout that year, that member has—

- (a) in accordance with regulation 2.J.14, 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 paragraphs (6), (7) or (9).

(12) 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 paragraph (20)

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 paragraphs (6), (7) or (9) prior to the certification of earnings in accordance with regulation 2.J.14.

(13) For the purposes of paragraph (12), a member's aggregate earnings are the aggregate of—

- (a) the certified or final pensionable earnings from all 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 2.A.9.

(14) If a non-GP provider member 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 must—

- (a) deduct contributions due under this regulation from any pensionable earnings it pays to that person, and
- (b) if it is not also the host Board, pay those contributions to that Board not later than—
  - (i) except in the circumstances described in paragraph (11), the 7th day of the month following the month in which the earnings were paid;
  - (ii) in the circumstances described in paragraph 11, at the same time as providing that Board with the certificate referred to in regulation 2.J.14.

(15) If a member is in non-GP provider service and concurrently in practitioner service in respect of which the member is liable to pay contributions in accordance with regulation 3.C.1, contributions payable in respect of the member's non-GP provider service shall be determined under this regulation

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and contributions payable in respect of the member's practitioner service shall be determined under regulation 3.C.2.

(16) In determining member contributions payable in accordance with this regulation, a host Board must take account of pensionable earnings from all non-GP provider sources, including any pensionable earnings as a non-GP provider determined by another host Board.

(17) An employing authority that is not a host Board shall, in respect of any pensionable earnings it pays to a non-GP provider, take advice from any relevant host Board in determining the contributions payable in accordance with this regulation.

(18) Where paragraph (17) does not apply, a non-GP provider shall pay member contributions to the host Board.

(19) If 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 must—

- (a) deduct contributions due under this regulation from any pensionable earnings it pays to that person, and
- (b) if it is not also the host Board, pay those contributions to that Board not later than the 7th day of the month following the month in which the earnings were paid.

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

in respect of the 2014-2015 scheme year, table 1;

in respect of each scheme year from 2015-2016, table 2.

**Table 1**

**Scheme Year 2014-2015**

<i>Column 1</i> <i>Pensionable Earnings Band</i>	<i>Column 2</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%
£111,377 to any higher amount	14.5%

**Table 2:**

**Scheme Years from 2015-2016**

<i>Column 1</i> <i>Pensionable Earnings Band</i>	<i>Column 2</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 £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%
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#### **2.C.4A Members' contributions: redundancy**

(1) This regulation applies if—

- (a) a member's employment is terminated by reason of redundancy,
- (b) the member become entitled to payment of a pension under regulation 2.D.11 where regulation 2.D.11A 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 2.D.11A.

(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 2.C.6(2A).

(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.

(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 2.D.11A 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 2.C.6(2A).

### **Contributions by Employing Authorities**

#### **2.C.5 Contributions by employing authorities: general**

(1) The employing authority of a member who is an active member of this Section of the Scheme under this Part must contribute to the scheme, in respect of the pensionable pay, or as the case may be, pensionable earnings of that member, at the rate determined by the Secretary of State and specified in paragraph (4) ("the employer's standard rate").

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(2) In specifying the employer's standard rate, the Secretary of State must—

- (a) obtain the consent of the Treasury, and
- (b) take account of the advice of the Scheme actuary and the cost of providing for any increase in pensions under this Section of the Scheme as a result of orders made under the provisions of the Pensions (Increase) Act 1971 and section 59 of the Social Security Pensions Act 1975.

(3) If for any period a person holds more than one employment (whether under a contract of service or for services) with an employing authority in respect of which the person is an active member of the Scheme, this regulation and regulation 2.C.6 apply in respect of each of those employments as if it were the only employment held.

(4) The employer's standard rate is 20.6%.

(5) In any particular case the Secretary of State may direct that, for the purposes of this Chapter, "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;
- (c) the last employing authority of a person to whom these Regulations apply.

(6) If 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,

that employing authority shall pay employer's standard rate contributions to the host Board not later than the 7th day of the month following the month in which the earnings were paid.

This is subject to paragraph (7).

(7) If a non-GP provider is a shareholder or partner in more than one employing authority referred to in paragraph (6), each employing authority must pay employer's standard rate contributions on any pensionable earnings it pays to the non-GP provider or, as the case may be, on the non-GP provider's share of the partnership profits, to the host Board not later than the 7th day of the month following the month in which the earnings were paid.

(8) If paragraph (14) of regulation 2.C.4 applies (but paragraph (6) of this regulation does not) and the employing authority referred to in regulation 2.C.4(14)—

- (a) is not the host Board, that authority must pay employer's standard rate contributions under this regulation to the host Board not later than the 7th day of the month following the month in which the earnings were paid;

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(b) is the host Board, that Board must pay employer's standard rate contributions under this regulation to the Secretary of State in respect of any pensionable earnings it pays to the non-GP provider.

(9) Not later than the 19th day of the month following the month in which pensionable pay or, as the case may be, pensionable earnings are paid to a member, the employer's standard rate contributions under this regulation must be paid to the Secretary of State—

(a) in the case of a member other than a non-GP provider, by that member's employing authority,

(b) in the case of a non-GP provider, by the host Board.

## **2.C.6 Contributions by employing authorities: members becoming entitled to pensions under regulation 2.D.11**

(1) If a pension becomes payable to a member under regulation 2.D.11 (early retirement on termination of employment by employing authority) in circumstances where regulation 2.D.11A does not apply, the employing authority must subject to paragraph (6), make a contribution to the Secretary of State in respect of—

(a) the cost of providing the pension under that regulation for the period between the member leaving the employment in which the member was an active member and reaching age 65—

(i) before any part of that pension is exchanged for a lump sum under regulation 2.D.14, and

(ii) in the case of a 2008 Section Optant, after that pension is reduced in accordance with regulation 2.K.12;

(b) the cost of providing for any increase in the rate of the benefits referred to in sub-paragraph (a) for that period as a result of orders made under section 59 of the Social Security Pensions Act 1975 (so far as not already met by contributions made under regulation 2.C.5(1)); and

(c) in the case of a 2008 Section Optant, the additional cost attributable to the early payment of the lump sum to be paid to such an Optant under regulation 2.K.12.

(2) If, on a pension under regulation 2.D.11 becoming payable to a member in respect of the termination of the member's employment with an employing authority ("the first authority"), a pension also becomes payable to the member in respect of pensionable service with one or more other employing authorities, the first authority must, subject to paragraph (6), also make any additional contributions due in accordance with paragraph (1) in respect of that other pension.

(2A) Where, on leaving pensionable employment, a pension becomes payable to a member under regulation 2.D.11 in circumstances where regulation 2.D.11A applies, 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.

(2B) 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



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pension under regulation 2.D.11 and any lump sum under regulation 2.K.12 in circumstances where regulation 2.D.11A applies; and

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

(3) An employing authority is not responsible for meeting any costs in respect of the early payment of benefits to the extent that the benefits are attributable to contributions made under regulation 2.C.8, 2.C.10 or 2.C.11.

(4) Any contributions payable under this regulation must be paid--

(a) except in a case within paragraph (b), by a single payment made within one month of the date on which the pension under regulation 2.D.11 became payable, or

(b) if the Secretary of State agrees, by not more than 5 equal annual instalments, the first of which is to be paid within one month of the date on which the pension under regulation 2.D.11 became payable and the others by 31 October in each of the following 4 scheme years.

(4A) Sub-paragraph (b) of paragraph (4) does not apply where the member leaves the employment in which the member was an active member on, or after, 1st April 2013.

(5) The following amounts must be determined by the Secretary of State on the advice of the Scheme actuary--

(a) the costs mentioned in paragraph (1),

(b) the amount of the payment mentioned in paragraph (4)(a), and

(c) the amount of each of the instalments payable under paragraph (4)(b).

(6) In the case of an employing authority which is an Independent Provider, any contributions that are due to the Secretary of State under this regulation must be—

(a) determined by the Secretary of State on the advice of the Scheme actuary;

(b) paid by way of a single lump sum payment;

(c) received by the Secretary of State within 1 month of the date on which the Provider is notified of the amount of those contributions due.

(7) Where a Provider fails to make the payment in accordance with paragraph

(6)(c), entitlement to benefits under regulation 2.D.11 ceases.

## **2.C.6A Scheme administration charge**

(1) Each employing authority must, in respect of each member who is liable to contribute to this Section of the Scheme, pay a scheme administration charge in accordance with this regulation.

(2) The scheme administration charge is to be paid to the Secretary of State on the same day, and in respect of the same period, as the employer's standard rate contributions under regulation 2.C.5 are to be paid by that employing authority in respect of the member referred to in paragraph (1).



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(3) The scheme administration charge is to be calculated as a percentage of that member's pensionable pay, or as the case may be, pensionable earnings, for the period mentioned in paragraph (2).

(4) The percentage mentioned in paragraph (3) is to be determined by the Secretary of State taking into account the administrative costs of running the scheme and notified to each employing authority.

### **2.C.7 Guarantees, indemnities and bonds**

(1) This regulation applies if--

(a) an employing authority fails to pay contributions or has previously failed to do so in accordance with regulation 2.C.5 or 2.C.6, and

(b) the authority is--

- (i) a GMS practice;
- (ii) a PMS practice;
- (iii) an APMS contractor; or
- (iv) an OOH provider.
- (v) an Independent Provider.

(2) The Secretary of State may require the authority to have in force a guarantee, indemnity or bond which provides for payment to the Secretary of State, should that authority fail to meet them, of all future liabilities of the authority (or such liabilities as are specified by the Secretary of State) under--

(a) this Part, or

(b) the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000.

(3) The guarantee, indemnity or bond must be in such form, in respect of such an amount and provided by such a person as the Secretary of State approves for the purpose.

## **Additional Contributions to Purchase Additional Pensions**

### **2.C.8 Member's option to pay additional periodical contributions to purchase additional pension**

(1) An active member may opt to make additional periodical contributions by monthly instalments during the contribution option period--

(a) to increase by a specified amount the benefits payable to the member under Chapter 2.D (retirement benefits for members)(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 or six months under Chapter 2.E (death benefits)), or

(b) to increase by a specified amount those benefits and to increase the benefits otherwise payable in respect of surviving partners and dependent children under Chapter 2.E (death benefits) in respect of the member.

(2) A member may exercise the option under paragraph (1) more than once.

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- (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
  - (b) may be amended during a scheme year,
- but no such amendment affects the contributions payable during that year under any option, 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 2.C.10 (member's option to pay additional lump sum contributions to purchase additional pension), or
  - (b) contributions made under regulation 2.C.11 (payment of additional lump sum contributions by employing authority),
- may not exceed £5000 or such other amount as the Secretary of State may for the time being determine (taking into account any increase in the member's pension as a result of the exercise of an option in accordance with regulations 3.C.6 to 3.C.15).
- (8) In this Part "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 65th birthday.

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(9) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.4.

### **2.C.9 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 2.C.8--

- (a) is absent from work because of illness or injury,
- (b) is on maternity leave,
- (c) is on adoption leave,
- (d) is on paternity leave,
- (e) is on parental leave or on shared parental leave, or
- (f) is on a leave of absence of the kind mentioned in regulation 2.A.4(3).

(2) If paragraph (1) applies--

- (a) the contributions under the option continue to be payable unless the member ceases paying contributions under regulation 2.C.1, 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 2.C.1 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) a member exercises the option under regulation 2.C.8,
- (b) the member ceases to be an active member during the contribution option period, and
- (c) the member becomes an active member again before the end of the period of 12 months beginning with the day on which the member ceased to be an active member.

(4) If paragraph (3) applies, the member may continue to make contributions in accordance with the option after becoming an active member again unless a repayment of contributions has been made to the member under regulation 2.C.18.

(5) For the purposes of paragraph (4) it does not matter whether the member has paid any of the repaid contributions back to the Secretary of State.

### **2.C.10 Member's option to pay lump sum contribution to purchase additional pension**

(1) An active member may opt to make a single lump sum contribution--

- (a) to increase by a specified amount the benefits payable to the member under Chapter 2.D (retirement benefits for members) (including if a member dies after a pension becomes payable, the benefits paid to a surviving partner and

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dependent children at the same rate as the member's pension for three or six months under Chapter 2.E (death benefits)), or

(b) to increase by a specified amount those benefits and to increase the benefits otherwise payable in respect of surviving partners or dependent children under Chapter 2.E (death benefits) in respect of the member.

(2) A member may only make a contribution under this regulation of an amount that is--

(a) not less than the minimum amount, or

(b) in the case of an amount exceeding the minimum amount, a multiple of the minimum 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)--

(a) the additional contribution is payable by the member to the employing authority--

(i) by deduction from the member's earnings or otherwise, and

(ii) 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

(b) the employing authority must pay it 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 2.C.8 (member's option to pay additional periodical contributions to purchase additional pension), or

(b) contributions made under regulation 2.C.11 (payment of additional lump sum contributions by employing authority),

may not exceed £5000 or such other amount as the Secretary of State may for the time being determine (taking into account any increase in the member's pension as a result of the exercise of an option in accordance with regulations 3.C.6 to 3.C.15).

(7) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.4.

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## **2.C.11 Payment of additional lump sum contributions by employing authority**

- (1) The employing authority of an active member may opt to make a single lump sum contribution--
- (a) to increase by a specified amount the benefits payable to the member under Chapter 2.D (retirement benefits for members) (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 or six months under Chapter 2.E (death benefits)), or
  - (b) to increase by a specified amount those benefits and to increase the benefits otherwise payable in respect of surviving partners or dependent children under Chapter 2.E (death benefits) in respect of the member.
- (2) An employing authority may only make a contribution under this regulation of an amount that is--
- (a) not less than the minimum amount (as defined in regulation 2.C.10(3)), and
  - (b) in the case of an amount exceeding the minimum amount, a multiple of the minimum amount (as so defined).
- (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 2.C.8 (member's option to pay additional periodical contributions to purchase additional pension), or
  - (b) contributions made under regulation 2.C.10 (member's option to pay lump sum contribution to purchase additional pension),
- may not exceed £5000 or such other amount as the Secretary of State may for the time being determine (taking into account any increase in the member's pension as a result of the exercise of an option in accordance with regulations 3.C.6 to 3.C.15).
- (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 2.C.12(2).
- (6) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.4.

## **2.C.12 Exercise of options under regulations 2.C.8, 2.C.10 and 2.C.11**

- (1) A member exercising an option under regulation 2.C.8 or 2.C.10 must do so by giving notice in writing to the employing authority giving such information as may be required and must, at the same time, provide the Secretary of State with a copy of that notice.
- (2) An employing authority exercising an option under regulation 2.C.11 must do so by giving notice in writing to the Secretary of State, giving such information as may be required.

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- (3) An option under regulation 2.C.8, 2.C.10 or 2.C.11 may not be exercised during a period whilst the member is absent from work for any reason.
- (4) For the purposes of this Part--
  - (a) a member is treated as exercising an option under regulation 2.C.8 or 2.C.10 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 2.C.11 on the date on which the Secretary of State receives the authority's notice under paragraph (2).
- (5) The Secretary of State may refuse to accept an option exercised under regulation 2.C.8, 2.C.10 or 2.C.11 and must do so if not satisfied that--
  - (a) the member is in good health, and
  - (b) in the case of an option exercised under regulation 2.C.8, there is no reason why the member's health should prevent the member from paying the contributions for the whole contribution period.
- (6) If the Secretary of State refuses to accept such an option--
  - (a) the Secretary of State must give notice in writing of that fact--
    - (i) in the case of an option exercised under regulation 2.C.8 or 2.C.10, to the member, and
    - (ii) in the case of an option exercised under regulation 2.C.11, to the employing authority and the member, and
  - (b) this Part applies as if the option had not been exercised.
- (7) This Part also applies as if an option under regulation 2.C.10 or 2.C.11 had not been exercised if--
  - (a) in the case of an option under regulation 2.C.10, 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 65th birthday, and
  - (b) in the case of an option under regulation 2.C.11, the payment is not received by the Secretary of State--
    - (i) before the end of the period of 1 month beginning with the day on which the authority gave the Secretary of State notice under paragraph (2), or
    - (ii) if it is earlier, on or before the member's 65th birthday.

### **2.C.13 Cancellation of options under regulation 2.C.8**

- (1) A member may cancel an option under regulation 2.C.8(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.

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(3) If it appears to the Secretary of State that the requirement in regulation 2.C.8(7) (overall maximum) will not be met if the member continues to make periodical contributions under an option exercised under regulation 2.C.8, 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 2.C.8, 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)—

- (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.

## **2.C.14 Effect of payment of additional contributions under this Chapter**

(1) This regulation applies if--

- (a) an option is exercised by a member under regulation 2.C.8 and all the contributions to be made under the option are made,
- (b) an option is exercised by a member under regulation 2.C.10 or by a member's employing authority under regulation 2.C.11 and the lump sum payment is made.

(2) Subject to paragraph (9), 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 2.C.17 (revaluation of increases bought under options).

(3) Paragraph (2) is without prejudice to any increase or reduction falling to be made in the total amount of the member's pension under Chapter 2.D or Chapter 2.K as a result of the member becoming entitled to payment of the pension before or after reaching the age of 65 (see regulations 2.D.3 to 2.D.5 and 2.K.21).

(4) In the case of an option under regulation 2.C.8(1)(b), 2.C.10(1)(b) or 2.C.11(1)(b), any pension payable under Chapter 2.E (death benefits) in respect of the member is increased by the appropriate amount.

(5) In paragraph (4), subject to regulations 2.C.15 and 2.C.16(3), "the appropriate amount" means--

- (a) in the case of a pension under regulation 2.E.1 the amount of which is determined under regulation 2.E.3 (active members) or 2.E.5 (deferred members), 37.5% 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)),



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- (b) in the case of a pension under regulation 2.E.1 the amount of which is determined under regulation 2.E.4 (pensioner members), 37.5% of the amount of the increase in the member's pension as a result of the option,
  - (c) in the case of a pension under regulation 2.E.8 the amount of which is determined under regulation 2.E.10 (active members) or 2.E.12 (deferred members), the appropriate fraction (within the meaning of regulation 2.E.10 or, as the case may be, 2.E.12) of 75% 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)), and
  - (d) in the case of a pension under regulation 2.E.8 the amount of which is determined under regulation 2.E.11 (pensioner members), the appropriate fraction (within the meaning of that regulation) of 75% the amount of the increase in the member's pension as a result of the option.
- (6) Except as provided in regulation 2.D.5, no separate claim is required as respects any additional pension payable by virtue of this regulation.
- (7) This regulation is subject to regulation 2.C.15.
- (8) For the effect of the options under 2.C.8 where this regulation does not apply, see regulation 2.C.16 (effect of part payment of periodical contributions).
- (9) Paragraph (10) applies only to an option under regulations 2.C.8(1)(a), 2.C.10(1)(a) or 2.C.11(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.
- (10) Any increase to the 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 (9).
- (11) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.4.

#### **2.C.15 Effect of death or early payment of pension after option exercised under regulation 2.C.8, 2.C.10 or 2.C.11**

- (1) If a member in respect of whom an option under regulation 2.C.8, 2.C.10 or 2.C.11 has been exercised dies before the end of the period of 12 months beginning with the date on which the option was exercised--
- (a) an amount equal to the contributions paid under the option must be paid--
    - (i) in the case of an option under regulation 2.C.8 or 2.C.10, to the member's personal representatives, and
    - (ii) in the case of an option under regulation 2.C.11, to the employing authority which made the contribution, and
  - (b) regulation 2.C.14(4) does not apply.
- (2) If a member in respect of whom an option under regulation 2.C.8 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

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period, regulation 2.C.14(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 2.C.8, 2.C.10 or 2.C.11 has been exercised becomes entitled to a pension under regulation 2.D.8 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 2.C.14(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 2.C.8 or 2.C.10, to the member, and
  - (ii) in the case of an option under regulation 2.C.11, to the employing authority which made the contribution.

(4) If a member in respect of whom an option under regulation 2.C.8 has been exercised becomes entitled to a pension under regulation 2.D.8 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 2.C.14(2) and (4) applies as if all contributions under the option had been made. This is subject to regulation 2.C.13(5) and (6).

(5) If a member in respect of whom an option under regulation 2.C.8, 2.C.10 or 2.C.11 has been exercised--

- (a) becomes entitled to a pension under regulation 2.D.4, 2.D.10, or 2.D.11, or
- (b) becomes entitled to a pension under regulation 2.D.5 before reaching the age of 65,

the increase in the member's pension under Chapter 2.D which would otherwise be due under regulation 2.C.14(2) or regulation 2.C.16 is reduced.

(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 65.

(7) This regulation is subject to regulation 2.C.16.

## **2.C.16 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 2.C.8 for the whole contribution option period are not made, and
- (b) regulation 2.C.15(1) to (4) does not apply.

(2) The increase in the member's pension under Chapter 2.D is the appropriate proportion of the increase that would have been made under regulation 2.C.14(2) if the full number and amount of contributions had been made (but taking account of regulation 2.C.15(5) if that applies).

(3) In the case of an option under regulation 2.C.8(1)(b), the increase in any benefit payable under Chapter 2.E (death benefits) in respect of the member is the appropriate proportion of the increase that would have been made under

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regulation 2.C.14(4) if the full number and amount of contributions had been made (but taking account of regulation 2.C.15(5) if that applies).

(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 2.C.8 for the whole contribution option period, and
- (b) the preservation requirements.

(6) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.4.

## **2.C.17 Revaluation of increases bought under options: members' pensions**

(1) Where an option under regulation 2.C.8, 2.C.10 or 2.C.11 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—

Step 1 - Calculate the basic amount of the increase in accordance with regulations 2.C.14 to 2.C.16, 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 2.C.14 to 2.C.16, 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.

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- 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 2.C.14 to 2.C.16, 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.
- 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.

## **Repayment of Contributions**

### **2.C.18 Repayment of contributions**

(1) The contributions made by a member under this Chapter are not repayable in any circumstances except if--

- (a) paragraph (2) applies, or
- (b) Chapter 2 of Part 4ZA of the 1993 Act (early leavers: cash transfer sums and contribution refunds) applies and the payment is made in accordance with that Chapter.

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(2) This paragraph applies if--

- (a) a person who is not a pensioner member ceases to be an active member and does not continue to be, or become, an active member for the purposes of Part 3 within 12 months of ceasing officer service,
- (b) the person does not fall within sub-paragraph (a), (b), (c) or (d) of regulation 2.D.1(2) (former members entitled to a pension),
- (c) paragraph (1)(b) does not apply, and
- (d) the person claims repayment of contributions under this regulation by applying in writing to the Secretary of State.

(3) If paragraph (1)(b) applies, the person is entitled to be paid the amount to which the person is entitled under Chapter 2 of Part 4ZA of the 1993 Act, less--

- (a) such part of any contributions equivalent premium paid in respect of the person under section 55 of the 1993 Act or article 3 of the 2016 Order, and
- (b) an amount equal to the income tax payable under section 205 of the 2004 Act (short service refund lump sum charge) as a result of the repayment.

(4) If paragraph (2) applies, the person is entitled to be paid an amount equal to the sum of the contributions made by the person under this Chapter, less the amounts mentioned in paragraph (3)(a) and (b).

(5) If a repayment is made under this regulation, the member's rights under this Section of the Scheme are extinguished unless the person or the person's spouse or civil partner is entitled to a guaranteed minimum pension under this Section of the Scheme and a contributions equivalent payment has not been paid.

(6) A person--

- (a) who is entitled to a repayment of contributions under this regulation, and
- (b) whose pensionable service did not cease because the person's employment was terminated at the person's request,

is entitled to interest on the amount of the repayment unless the person's pensionable service ceased because the person's employment was terminated by reason of misconduct or inefficiency.

(7) The interest is calculated on a compound basis at the rate of 2.5% per year, with yearly rests, for the period starting on 1st April after the contributions were paid and ending with the day the member leaves pensionable service.

This is subject to paragraphs (8) and (9).

(8) Paragraph (7) does not apply if paragraph (1)(b) applies and the person is entitled to a greater amount of interest under Chapter 2 of Part 4ZA of the 1993 Act.

(9) So far as the contributions were paid under another scheme and were included in a transfer payment to this Section of the Scheme--

- (a) interest for the period before the transfer payment was made is calculated in accordance with the scheme making the transfer payment (subject to any provision made in any enactment applicable to the transfer), and
- (b) paragraph (7) does not apply as respects that period.

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## **Chapter 2.D**

### **Members' Retirement Benefits**

#### ***Entitlement to pensions***

##### **2.D.1 Normal retirement pensions**

(1) The general rule is that a member is entitled to a pension payable for life in respect of any period of pensionable service ("the relevant service") if the member--

- (a) has reached the age of 65, and
- (b) either--
  - (i) has ceased to be employed in NHS employment and has claimed payment of the pension, or
  - (ii) will reach the age of 75 on the next day.

This is subject to paragraph (2), regulation 2.D.13 (exceptions to requirement that NHS employment must have ceased) and the following provisions of this Part.

(2) A person to whom paragraph (1) applies is not entitled to a pension under this regulation unless--

- (a) the member is entitled to count at least 2 years of qualifying service in respect of the relevant service, or
- (b) a transfer value payment has been accepted by the Scheme during the relevant service under Chapter 2.F (transfers), otherwise than from an occupational pension scheme,
- (c) the member is entitled to a pension under this regulation in respect of any previous period of pensionable service, or
- (d) the member has reached the age of 65.

(3) A pension to which a member is entitled under this regulation becomes payable immediately the member becomes entitled to it.

(4) The amount of the annual pension payable under this regulation (disregarding any additional pension) is given by the formula--

$$(RP / 60) \times (LRS / 365)$$

where--

RP is the member's reckonable pay, and

LRS is the length of the member's relevant service, expressed in days.

(5) A claim referred to in paragraph (1)(b)(i) and made in accordance with regulation 2.J.2, takes effect from the date the claim is received by the Secretary of State.

(6) This regulation does not apply to pensions derived from pension credit rights.

(7) In this Chapter "NHS employment" includes--

- (a) employment with an employer in respect of whom a direction has been made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967, and



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(b) employment with an employer with whom an agreement has been made under section 235 of the 2006 Act.

(8) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.12.

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

(1) The general rule is that a pension credit member is entitled to a pension for life derived from the member's pension credit rights if the member has reached 65 and has claimed payment of the pension.

(2) The pension becomes payable--

(a) when the pension credit member reaches 65, or

(b) if it is later, when the pension sharing order under which the member is entitled to the pension credit takes effect.

This is subject to paragraphs (5) and (8).

(3) The pension must be of such an amount that its value is equal to the member's pension credit, as calculated in accordance with regulations made under paragraph 5(b) of Schedule 5 to the 1999 Act.

(4) A claim under paragraph (1) must be made by notice in writing in such form as the Secretary of State requires and takes effect from the date specified in the claim as the date on which the pension is to become payable.

(5) A pension credit member who has not reached the age of 65 is entitled to immediate payment of a reduced pension payable for life if the pension credit member has--

(a) reached the age of 55, and

(b) claimed the payment of the pension.

(6) The amount of the annual pension under paragraph (5)--

(a) is first calculated as mentioned in paragraph (3) of this regulation, and

(b) then that amount is reduced by such amount as the Secretary of State determines, after consulting the Scheme actuary, to be appropriate by reason of the payment of the pension before the member reaches 65.

(7) A claim under paragraph (5) must be made by notice in writing in such form as the Secretary of State requires and takes effect from the date specified in the claim as the date on which the pension is to become payable.

(8) A pension credit member who has not reached the age of 65 is entitled to immediate payment of a pension payable for life if, in the opinion of the Secretary of State, the pension credit member--

(a) meets the ill-health condition specified in paragraph 1 of Schedule 28 to the 2004 Act,

(b) had previously been engaged in regular employment but is now permanently incapable of engaging in regular employment due to mental or physical infirmity, and

(c) has claimed the pension.



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(9) The amount of the pension under paragraph (8) is calculated as specified in paragraph (3) of this regulation.

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

### **2.D.3 Late payment of pension with actuarial increase**

(1) This regulation applies if a member becomes entitled to immediate payment of pension under regulation 2.D.1 after reaching the age of 65.

(2) So much of the amount of the pension to which the member would otherwise be entitled under that regulation (before any commutation under regulation 2.D.14) as is attributable--

(a) to the member's pensionable service before that age; and

(b) to any contributions paid under regulations 2.C.8, 2.C.10 or 2.C.11 before that age,

is increased.

(3) The amount of the increase must be calculated in accordance with guidance and tables provided by the Scheme actuary to the Secretary of State for the purposes of this regulation.

(4) In preparing that guidance and those tables the Scheme actuary must use such factors as the Scheme actuary considers appropriate, having regard, in particular, to the period after reaching the age of 65 before the member becomes entitled to immediate payment of the pension and the life expectancy of the member.

(5) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.21.

### **2.D.4 Early payment of pensions with actuarial reduction**

(1) A member who has not reached the age of 65 is entitled to immediate payment of a reduced pension payable for life if the member--

(a) has reached the age of 55,

(b) meets the condition in regulation 2.D.1(2)(a) or (b),

(c) has ceased to be employed in NHS employment, and

(d) has claimed payment of the pension.

(2) The amount of the annual pension under this regulation--

(a) is first calculated as mentioned in regulation 2.D.1(4) (and, if additional pension is payable, in accordance with regulation 2.C.14(2) or 2.C.16(2)), and

(b) then that amount is reduced by such amount as the Secretary of State determines, after consulting the Scheme actuary, to be appropriate by reason of the payment of the pension before the member reaches 65.

(3) A claim under paragraph (1) must be made by notice in writing in such form as the Secretary of State requires and takes effect--

(a) in the case of a deferred member, from the date specified in the claim as the date on which the pension is to become payable,

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- (b) in the case of an active member or a non-contributing member, from the day immediately following the day on which the member ceased to be employed in NHS employment.
- (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 (1), would be insufficient to meet his liability to provide a guaranteed minimum pension.
- (5) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.12.

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

- (1) An active member or a non-contributing member may exercise an option under this regulation if--
  - (a) the member has reached the age of 55 and continues to be employed in the employment in which the member is an active member, or where the member has more than one such employment, in at least one of those employments;
  - (b) the member would be entitled to a pension for life, by virtue of regulation 2.D.1(1)(b)(i) and not regulation 2.D.1(1)(b)(ii), if the member had--
    - (i) reached the age of 65,
    - (ii) ceased to be so employed, and
    - (iii) claimed payment of the pension,
  - (c) the terms on which the member holds the employment or employments referred to in (a) change, and
  - (d) as a result the annual rate of the member's pensionable pay is reduced to 90% or less of the amount of the member's pensionable pay during the period of 12 months ending with the option day.
- (2) If the member was not an active member during the whole of the period of 12 months mentioned in paragraph (1)(d), that paragraph applies as if the member's pensionable pay during that period were--

$$PP \times (365 / N)$$

where--

PP is the member's pensionable pay for the part of that period during which the member was an active member, and

N is the number of days in that period on which the member was an active member.

- (3) The option may only be exercised by notice in writing in such form as the Secretary of State requires and must be accompanied by a statement in writing by the employing authority, or employing authorities, that the conditions in paragraph (1)(c) and (d) are met.
- (4) The option must specify--

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- (a) the percentage of the member's pension (excluding any additional pension) in respect of which the member claims immediate payment ("the specified percentage"), and
  - (b) whether the member claims immediate payment of additional pension (if any).
- (5) A member who duly exercises the option under this regulation is entitled--
  - (a) in the case of a member who has reached the age of 65, to immediate payment of the specified percentage of the pension to which the member would be entitled under regulation 2.D.1 if the member had ceased to be employed in one or more employments on the option day (disregarding any additional pension, but subject to any increase under regulation 2.D.3),
  - (b) in the case of a member who has not reached the age of 65, to immediate payment of the specified percentage of the pension to which the member would be entitled under regulation 2.D.4 if the member had ceased to be employed in one or more employments on the option day (disregarding any additional pension), and
  - (c) if the option specifies that the member claims immediate payment of additional pension, the additional pension--
    - (i) in a case within sub-paragraph (a), to an increase of the same percentage as would be made in that pension under regulation 2.D.3 if the member had ceased to be employed on the option day, and
    - (ii) in a case within sub-paragraph (b), to a reduction of the same amount as would have been made in that pension under regulation 2.D.4 if the member had so ceased.
- (6) The specified percentage must be such that--
  - (a) the pension to which the member becomes entitled as a result of the option (before the exercise of the option under regulation 2.D.14 and disregarding any additional pension)--
    - (i) is not less than the amount of the pension payable by reference to 20% of the member's pensionable service at the end of the option day (disregarding any additional pension), and
    - (ii) taken together with any such increase to which the member becomes entitled as a result of the option (before any such commutation), is not less than 0.05% of the member's lifetime allowance on the option day,
  - (b) the percentage of the pension (other than additional pension) in respect of which the member does not require immediate payment is not less than the amount of the pension payable by reference to 20% of the member's pensionable service at the end of the option day (disregarding any additional pension), and
  - (c) that pensionable service referred to in (b) is at least 1 year, within the meaning of regulation 2.A.3 in the case of a part-time member, at the end of that date.
- (7) The option under this regulation may only be exercised on no more than two occasions and the Secretary of State shall take advice from the Scheme actuary regarding--

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- (a) any benefits to be paid after the exercise of the first option (but before the exercise of the second option);
  - (b) any benefits to be paid after the exercise of any second option, and
  - (c) the final payment.
- (8) In this regulation "the option day" means the day before the reduction in pensionable pay by virtue of which the option is exercisable takes effect.
- (9) For the purposes of this Part, a member who has exercised the option under this regulation--
- (a) is a pensioner member as respects the pension to which the member is immediately entitled as a result of exercising the option and the specified percentage of the pensionable service that pension represents, as respects which the member is an active member on the option day,
  - (b) if the member continues in pensionable service after the option day, is an active member or a non-contributing member as respects--
    - (i) the pensionable service after that day in which the member continues, and
    - (ii) so much of the pensionable service as respects which the member is an active member or a non-contributing member on the option day as does not fall within sub-paragraph (a) ("the unspecified service"), and
  - (c) if the member does not continue in pensionable service after the option day, is a deferred member as respects the unspecified service.
- (10) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.12.

## **S.I. 2022/273 - Temporary modification to reg 2.D.6(2)(a) until 31 October 2022**

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

- (1) This regulation applies if, in a case where a member has exercised the option under regulation 2.D.5--
- (a) during the period of 12 months beginning with the day after the option day the terms on which the member holds the employment or employments referred to in 2.D.5(1)(a) change again, and
  - (b) as a result the member's pensionable pay in that employment or those employments is increased to more than 90% of the member's pensionable pay during the period of 12 months ending with the option day, or
  - (c) following an increase referred to in (b), the member's pensionable pay in that employment or those employments is reduced to 90 per cent or less of the member's pensionable pay during the period of 12 months ending with the option day.
- (2) In the circumstances referred to in--
- ~~(a) paragraph (1)(b), the amount of the member's pension mentioned in sub-paragraphs (a) and (b) of regulation 2.D.5(5) shall be abated to zero from the~~

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~~first pension day immediately following the day on which the level of the member's pensionable pay increased;~~ [omitted]

(b) paragraph (1)(c), subject to any adjustments in accordance with (c), the member shall again be entitled to receive payment of the full amount of the pension mentioned in sub-paragraphs (a) and (b) of that regulation as from the first pension day immediately following the day on which the level of the member's engagement reduced,

(c) where (b) applies, before restoring the payment of a pension the Secretary of State shall have regard to the advice of the Scheme actuary as to whether the amount of the pension should be adjusted in view of the length of time during which it was abated to zero in accordance with (a).

(3) If the member was not an active member or a non-contributing member during the whole of the period of 12 months mentioned in paragraph (1)(b), that paragraph applies as if the member's pensionable pay during that period were--

$$PP \times (365 / N)$$

where--

PP is the member's pensionable pay for the part of that period during which the member was an active member or a non-contributing member, and

N is the number of days in that period on which the member was an active member or a non-contributing member.

(4) If, in the opinion of the Secretary of State, had the terms and conditions of the member's employment remained the same after the option day (apart from pensionable pay), the annual rate of pensionable pay for the employment as at the time of the change mentioned in paragraph (1)(a) would have exceeded the annual rate referred to in paragraph (1)(b)--

(a) paragraph (2)(a) does not apply, and

(b) this regulation applies as if paragraph (1)(b) referred to that annual rate instead of the actual annual rate.

(5) For the purposes of this regulation, if during the period of 12 months beginning with the day after the option day the member enters a further employment, or employments, in which the member is an active member or a non-contributing member of this Section of the Scheme--

(a) that event is treated as if the terms on which the member holds the employment in respect of which the option was exercised ("the option employment") had changed again, and

(b) the member's pensionable pay in the further employment is treated as an increase in the member's pay in the option employment.

(6) In this regulation "the option day" has the same meaning as regulation 2.D.5 (see paragraph (8) of that regulation).

## **2.D.7 Application of regulations 2.D.5 and 2.D.6 where concurrent part-time employments held**

(1) This regulation provides for the application of regulations 2.D.5 and 2.D.6 if a person is an active member or a non-contributing member in two or more part-time employments held concurrently on the option day.

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- (2) Those regulations apply in relation to each of the employments as if it were the only employment held by the member on that day, but subject to the following modifications.
- (3) In regulation 2.D.5(1) for sub-paragraph (d) substitute--
- "(d) as a result of that change the sum of the annual rate of the member's pensionable pay in that employment and every other employment held by the member on the option day is reduced to 90% or less of the sum of--
- (i) the member's pensionable pay in the employment during the period of 12 months ending with the option day, and
  - (ii) the member's pensionable pay during that period in every other employment held by the member on the option day."
- (4) In regulation 2.D.5(2)--
- (a) after the words "paragraph (1)(d)" insert "in the employment or any other employment referred to in that paragraph", and
  - (b) after the words "that period" insert the words "in that employment".
- (5) In regulation 2.D.6(1) for sub-paragraph (b) substitute--
- "(b) as a result the annual rate of the member's pensionable pay in that employment is increased to more than 90% of the sum of--
- (i) the member's pensionable pay in the employment during the period of 12 months ending with the option day, and
  - (ii) the member's pensionable pay during that period in every other employment held by the member on the option day."
- (6) In regulation 2.D.6(3)--
- (a) after the words "paragraph (1)(b)" insert "in the employment or any other employment referred to in that paragraph", and
  - (b) after the words "that period" insert the words "in that employment".
- (7) For regulation 2.D.6(4) substitute--
- "(4) If, in the opinion of the Secretary of State, had the terms and conditions of the member's employment or any other such employment remained the same after the option day (apart from pensionable pay), the annual rate of pensionable pay for the employment as at the time of the change mentioned in paragraph (1)(a) would have exceeded the annual rate referred to in paragraph (1)(b) for that employment--
- (a) paragraph (2)(a) does not apply, and
  - (b) this regulation applies as if paragraph (1)(b) referred to that annual rate instead of the actual annual rate."
- (8) Where--
- (a) a member's pension is abated in accordance with regulation 2.D.6(2)(a), in the circumstances described in regulation 2.D.6(1)(b), and
  - (b) the member's pensionable pay does not reduce in the manner described in regulation 2.D.6(1)(c),



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the pension will (in any event) be payable by the Secretary of State when the member retires, or partially retires again, from pensionable employment or attains the age of 75 and in doing so the Secretary of State shall--

- (i) have regard to any pensions already paid, including any lump sum paid as a result of the member exercising an option under regulation 2.D.14,
- (ii) take advice of the Scheme actuary.

#### **2.D.8 Early retirement on ill-health (active members and non-contributing members)**

(1) A pension payable under this regulation shall be known as an ill-health pension and may be paid at two different tiers known as a tier 1 ill-health pension and a tier 2 ill-health pension.

(2) An active member or a non-contributing member who has not reached the age of 65 and who has ceased to be employed in NHS employment is entitled to immediate payment of a tier 1 ill-health pension that is payable for life if--

- (a) in the opinion of the Secretary of State the member suffers from physical or mental infirmity as a result of which the member is permanently incapable of discharging the duties of the member's employment efficiently,
- (b) the member's employment is terminated because of that physical or mental infirmity,
- (c) the member has at least 2 years of qualifying service, and
- (d) the member has claimed the pension.

(3) An active member who has not reached the age of 65 is entitled to immediate payment of a tier 2 ill-health pension if--

- (a) in addition to meeting the condition in paragraph (2)(a), in the opinion of the Secretary of State the member suffers from physical or mental infirmity as a result of which the member is permanently incapable of engaging in regular employment of like duration,
- (b) the member's employment is terminated because of that physical or mental infirmity,
- (c) the member has at least 2 years of qualifying service, and
- (d) the member has claimed the pension.

(4) The annual amount of a tier 1 ill-health pension (disregarding any additional pension) is calculated as specified in regulation 2.D.1(4).

(5) The annual amount of a tier 2 ill-health pension (disregarding any additional pension) is calculated as specified in regulation 2.D.1(4), but on the assumption that the member's pensionable service--

- (a) is increased by the enhancement period where the member—
  - (i) has not had a break in pensionable service of 12 months or more; or
  - (ii) has returned to pensionable employment 12 months or more after having a break in such service and it would be more favourable to the member to treat the member's pensionable service before and after the break, and all such other breaks (if any), as continuous;



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(b) is not increased by the enhancement period in the circumstances referred to in (a)(ii) if--

(i) the member's pensionable service before and after the break is treated separately under regulation 2.G.2; or

(ii) the member's pensionable service in respect of an earlier service credit is treated separately under regulation 2.K.7.

(6) In this regulation "the enhancement period" means two-thirds of the member's assumed pensionable service.

This is subject to paragraph (7).

(7) If the member's pensionable service includes any period which, apart from this paragraph would be calculated in accordance with regulation 2.A.3 (meaning of "pensionable service": part-time service), the enhancement period that would apply apart from this paragraph is reduced by multiplying it by the fraction--

$$TPSa / TPSn$$

where--

TPSa is the member's total pensionable service, applying that regulation in respect of any period in part-time employment, and

TPSn is the member's total pensionable service if that regulation were not applied.

(8) In this regulation "the member's assumed service" means the further pensionable service that the member could have counted if the member had continued in service until reaching the age of 65.

This is subject to paragraph (9).

(9) To the extent that any increase under paragraph (5) would cause a member's pensionable service to exceed the limit of 45 years provided for in regulation 2.A.2(3), the amount of any excess will be reduced accordingly.

(10) This regulation is subject to--

(a) regulation 2.G.4 (effect of re-employment on tier 2 ill-health pensions), and

(b) regulation 2.G.5 (re-employed tier 1 ill-health pensioners).

(11) A member does not qualify for a pension under this regulation if the member's NHS employment has been terminated by the member--

(a) being dismissed from such employment (unless the Secretary of State is satisfied that the member was dismissed because of the member's infirmity); or

(b) retiring or resigning from such employment at a time when the member was the subject of disciplinary proceedings or had been notified that such proceedings were being contemplated; or

(c) otherwise retiring or resigning from such employment unless at the time of doing so the member's employing authority has notified the Secretary of State in writing that the member's physical or mental infirmity is the reason for the termination of that employment and the Secretary of State is satisfied that is the case.

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(12) For the purposes of determining whether a member is permanently incapable of discharging the duties of the member's employment efficiently under paragraph (2)(a), the Secretary of State shall have regard to the factors in paragraph (14) (no one of which shall be decisive) and disregard the member's personal preference for or against engaging in that employment.

(13) For the purposes of determining whether a member is permanently incapable of engaging in regular employment of like duration under paragraph (3)(a), the Secretary of State shall have regard to the factors in paragraph (15) (no one of which shall be decisive) and disregard the factors in paragraph (16).

(14) The factors to be taken into account for paragraph (12) 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 his incapacity, irrespective of whether such rehabilitation is undergone; and
- (d) any other matter which the Secretary of State considers appropriate.

(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; 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 his incapacity (irrespective of whether such rehabilitation is undergone) having due 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 his incapacity (irrespective of whether such training is undergone) having due regard to the member's--
  - (i) mental capacity;
  - (ii) physical capacity;
  - (iii) previous training; and

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- (iv) previous practical, professional and vocational experience; and
  - (e) any other matter which the Secretary of State considers appropriate.
- (16) The factors to be disregarded for paragraph (13) are--
- (a) the member's personal preference for or against engaging in any particular employment; and
  - (b) the geographical location of the member.
- (17) 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) discharging the duties of the member's employment efficiently under paragraph (2)(a), or
    - (ii) engaging in regular employment of like duration under paragraph (3)(a),
- before the member reaches age 65, or
- (c) that, through no fault on the part of the member, it is not possible for the member to receive before the member reaches age 65;
- "permanently" means--
- (a) the period until age 65, and
  - (b) in the case of a 2008 Section Optant who, before joining this Section of the Scheme, was assessed by a medical adviser as being--
    - (i) permanently incapable of efficiently discharging their duties for the purposes of regulation E2A(2)(b)(i) of the 1995 Regulations (ill-health pension on early retirement), that Optant shall be deemed to be permanently incapable of discharging the duties of the Optant's employment efficiently for the purposes of paragraph (2)(a) of this regulation;
    - (ii) permanently incapable of regular employment of like duration for the purposes of regulation E2A(2)(b)(ii) of the 1995 Regulations, that Optant shall be deemed to be permanently incapable of engaging in regular employment of like duration for the purposes of paragraph (3)(a) of this regulation;
- "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;

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- (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.
- (18) In the case of a 2008 Section Optant, this regulation is subject to regulations 2.K.12 and 2.K.14 to 2.K.18.
- (19) In the case of a Waiting Period Joiner, this regulation is subject to regulation 2.L.3.

#### **2.D.9 Re-assessment of entitlement to an ill-health pension determined under regulation 2.D.8**

- (1) This regulation applies if--
- (a) in the opinion of the Secretary of State a member meets the condition in regulation 2.D.8(2)(a), and
  - (b) at the time the member is awarded a pension under that regulation the Secretary of State gives the member notice in writing 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 meets the condition in regulation 2.D.8(3)(a) at the date of such a consideration.
- (2) A member to whom a notice under paragraph (1)(b) has been given may apply to the Secretary of State for a review of whether the member subsequently meets the condition in regulation 2.D.8(3)(a) if--
- (a) the member makes the application in writing--
    - (i) within three years of the date of issue of the notice, or
    - (ii) in the case of a member who engages in further NHS employment during the period of three years referred to in paragraph (1)(b), before the first anniversary of the day on which that employment commences or, if sooner, before the end of that period;
  - (b) the application for a review is accompanied by further written medical evidence--
    - (i) relating to whether the condition in regulation 2.D.8(3)(a) is satisfied at the date of the Secretary of State's review; and
    - (ii) that evidence relates to the same physical or mental impairment as a result of which the member met the condition in regulation 2.D.8(2)(a);
  - (c) no previous application for a review has been made under this paragraph, and
  - (d) the member has not become entitled to a tier 2 ill-health pension in respect of any later service under regulation 2.G.5.
- (3) If, after considering the further medical evidence provided by the member, the Secretary of State determines that the member meets the condition in 2.D.8(3)(a), then as from the date on which that determination is made the member--
- (a) ceases to be entitled to a tier 1 ill-health pension; and
  - (b) becomes entitled to a tier 2 ill-health pension under regulation 2.D.8, which shall be calculated as if paragraph (8) of that regulation included the

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words "from the date of the Secretary of State's determination under regulation 2.D.9" after "continued in service".

(4) In the case of a 2008 Section Optant, this regulation is subject to regulations 2.K.16 and 2.K.17.

#### **2.D.10 Early retirement on ill-health (deferred members)**

(1) A deferred member who has not reached the age of 65 is entitled to immediate payment of a pension that is payable for life if--

- (a) in the opinion of the Secretary of State the member suffers from physical or mental infirmity as a result of which the member is permanently incapable of engaging in regular employment of like duration, and
- (b) the member has claimed the pension.

(2) A deferred member who is in NHS employment and has not reached the age of 65 is entitled to immediate payment of a pension that is payable for life if--

- (a) in the opinion of the Secretary of State the member--
  - (i) does not fall within paragraph (1)(a), but
  - (ii) suffers from physical or mental infirmity as a result of which the member is permanently incapable of discharging the duties of the member's employment efficiently, and
- (b) the member has left that employment and claimed the pension.

(3) The amount of the annual pension payable under this regulation (disregarding any additional pension) is calculated as specified in regulation 2.D.1(4).

(4) For the purposes of determining whether a member is permanently incapable of discharging the duties of the member's employment efficiently under paragraph (2)(a)(ii), the Secretary of State shall have regard to the factors in paragraph (6) (no one of which shall be decisive) and disregard the member's personal preference for or against engaging in that employment.

(5) For the purposes of determining whether a member is permanently incapable of engaging in regular employment of like duration under paragraph (1)(a), the Secretary of State shall have regard to the factors in paragraph (7) (no one of which shall be decisive) and disregard the factors in paragraph (8).

(6) The factors to be taken into account for paragraph (4) 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 his incapacity, irrespective of whether such rehabilitation is undergone; and
- (d) any other matter which the Secretary of State considers appropriate.

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- (7) The factors to be taken into account for paragraph (5) are--
- (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 his incapacity (irrespective of whether such rehabilitation is undergone) having due 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 his incapacity (irrespective of whether such training is undergone) having due regard to the member's--
    - (i) mental capacity;
    - (ii) physical capacity;
    - (iii) previous training; and
    - (iv) previous practical, professional and vocational experience;
  - (e) any other matter which the Secretary of State considers appropriate.
- (8) The factors to be disregarded for paragraph (5) are--
- (a) the member's personal preference for or against engaging in any particular employment; and
  - (b) the geographical location of the member.
- (9) 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) discharging the duties of the member's employment efficiently under paragraph (2)(a)(ii), or
    - (ii) engaging in regular employment of like duration under paragraph (1)(a),before the member reaches age 65, or

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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 age 65;

"permanently" means the period until age 65; 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.

(10) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.12.

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

(1) A member other than a non-GP provider who has reached the age of 55, but not 65, is entitled to a pension payable for life if--

(a) the employment in which the member is an active member or a non-contributing member is terminated by the member's employing authority and the member has ceased to be employed in NHS employment,

(b) the member has 2 years of qualifying service,

(ba) where sub-paragraph (c)(ii) applies, the member's employing authority states whether an additional contribution option applies to the member,

(c) the member's employing authority certifies that the member—

(i) has at least 2 years' continuous employment determined in accordance with any terms and conditions applying to the employment,

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

(iii) has not unreasonably refused to seek suitable alternative employment or accept an offer of such employment.

(ca) where the member's employing authority is an Independent Provider, that the Secretary of State has received the contributions referred to in paragraph (6) of regulation 2.C.6 in respect of that member;

(d) the Secretary of State certifies that the member's employment is terminated--

(i) by reason of redundancy, or



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- (ii) in the interests of the efficiency of the service in which the member is employed, and
  - (e) the member has claimed payment of the pension.
- (2) A certificate under paragraph (1)(d)(ii) may only be given with the agreement of the employing authority.
- (3) A pension to which a member is entitled under this regulation becomes payable immediately the member becomes entitled to it: this is subject to paragraph (3A).
- (3A) A member who satisfies the conditions of this regulation 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.
- (4) The amount of the annual pension payable under this regulation (disregarding any additional pension) is given by the formula--
- $$(RP / 60) \times (LPS / 365)$$
- where--
- RP is the member's reckonable pay, and
- LPS is the length of the member's pensionable service, expressed in days.
- This is subject to paragraph (6).
- (5) A claim under paragraph (1)(e)--
- (a) must be made in writing to the Secretary of State within 6 months of the employment terminating, and
  - (b) must contain such information as the Secretary of State may from time to time require.
- (6) If the member--
- (a) has received a related payment in respect of the cessation of the employment,
  - (b) the terms and conditions relating to the employment require that payment to be reduced to take account of the additional contributions the employing authority must make to the Secretary of State in accordance with regulation 2.C6, and
  - (c) that payment has not been so reduced,
- the amount of that payment (or, if there is more than one such payment, the aggregate amount of those payments) is deducted from the amount of the pension.
- (7) In paragraph (6) "related payment" means--
- (a) a redundancy payment under the Employment Rights Act 1996,
  - (b) a corresponding payment under the arrangements of the Whitley Councils for the Health Services of Great Britain, or
  - (c) a payment made by virtue of any arrangement made pursuant to paragraph 26(3) of Schedule 4 to the 2006 Act or paragraph 26(3) of Schedule 3 to the 2006 (Wales) Act.

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- (8) This regulation does not apply to practice staff.
- (9) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.12.

**2.D.11A Early retirement on termination of employment by employing authority: additional contribution option**

(1) This regulation applies to a member who satisfies the conditions in regulation 2.D.11 and has an additional contribution option.

(2) Where this regulation applies the payment of the member's pension under regulation 2.D.11 does not start until the employing authority has—

- (a) remitted to the Secretary of State the member's contribution paid to it pursuant to regulation 2.C.4A(6); and at the same time,
- (b) paid the contribution under regulation 2.C.6(2A).

(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 2.C.4A, 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 payment referred to in regulation 2.D.11(6)(a),
- (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 2.C.6, 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 2.D.11.

(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 2.C.6 is insufficient to meet the cost of the pension payable pursuant to regulation 2.D.11.

(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 payment unless and to the extent that a contribution paid by the member under regulation 2.C.4A 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 the lump sum (if any) were calculated pursuant to regulations 2.D.4 and 2.K.12.

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(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 2.C.8, 2.C.10 or 2.C.11.

#### **2.D.12 Option to have periods of service treated separately where pay is reduced**

(1) This regulation applies if--

- (a) the reckonable pay of an active member who has at least 2 years of qualifying service is reduced, and
- (b) the reduction occurs in circumstances specified in paragraph (2).

(2) The circumstances are that--

- (a) the member is transferred from one employment to another,
- (b) the member leaves one employment and takes up another in circumstances approved by the Secretary of State for the purposes of this regulation, or
- (c) the member's duties change while the member continues in the same employment, otherwise than at the member's request or as a result of something done by the member.

(3) The member may opt to be treated for the purposes of this Section of the Scheme in accordance with this regulation as follows--

- (a) the member is treated as a deferred member of this Section of the Scheme as respects the earlier service, and
- (b) if the member is an active member of this Section of the Scheme in the later service, for the purposes of this Chapter the member is treated as respects the later service as if the member became an active member for the first time on the day that service began.

(4) But nothing in paragraph (3) prevents the member's earlier service and later service counting as a single continuous period for the purposes of regulation 2.A.5 (qualifying service).

(5) If the member's pensionable service is to be increased under regulation 2.D.8(5)--

- (a) the member's pensionable service will count as a continuous period for the purposes of calculating to what extent the pensionable service on which the pension is based should be increased, and
- (b) the increase will apply only in respect of the pension attributable to the later service.

(6) If a member has duly exercised the option under this regulation, the member is treated as mentioned in paragraph (3) (but subject to paragraph (4) and (5)) unless paragraph (7) applies.

(7) This paragraph applies if--

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(a) at the time that the member first becomes entitled to a pension under this Section of the Scheme in respect of the earlier service or the later service, or

(b) if it is earlier, at the time of the member's death,

in the opinion of the Secretary of State the benefits payable to or in respect of the member would be more valuable if the option and any other options exercised by the member under this regulation were disregarded.

(8) The option under this regulation may only be exercised by giving notice in writing to the Secretary of State in such form as the Secretary of State requires before the end of the period of 3 months beginning with the first day of the later service.

(9) In this regulation--

"the earlier service" means--

(a) in the case of a change of circumstances within paragraph (2)(a) or (b), the service in the employment that the member has left, and

(b) in the case of a change of circumstances within paragraph (2)(c), the service in the employment before the change in the member's duties took effect, and

"the later service" means--

(a) in the case of a change of circumstances within paragraph (2)(a) or (b), the service in the employment that the member has begun, and

(b) in the case of a change of circumstances within paragraph (2)(c), the service in the employment after the change in the member's duties took effect.

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

(1) A member is not prevented from becoming entitled to a pension under regulation 2.D.1 in respect of relevant service because of continuing in NHS employment if paragraph (2) or (2A) applies.

(2) This paragraph applies if--

(a) the member is an active member or a non-contributing member in the NHS employment and that employment is employment into which the member has been transferred as a result of a transfer of an undertaking to the employing authority, and

(b) the member is a deferred member in respect of pensionable service that ceased before the member commenced the employment referred to in sub-paragraph (a).

(2A) This paragraph applies if the member is in employment with an employing authority in respect of which the member is eligible to join 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.

(3) In paragraph (1), "relevant service" means—

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- (a) the pensionable service referred to in paragraph (2)(b) in respect of which the member is a deferred member; or
  - (b) the service in this Section referred to in paragraph (2A).
- (4) A member is not prevented from becoming entitled to a pension under regulation 2.D.11 in respect of pensionable service in an employment ("the old employment") because of continuing in NHS employment if paragraph (5) applies.
- (5) This paragraph applies if--
  - (a) before the termination of the old employment the member held two or more NHS employments concurrently, and
  - (b) the member elected to take benefits under regulation 2.D.11 only in respect of the old employment and to continue to accrue rights to benefits in respect of any continuing employments in which the member is an active member.
- (6) For the effect of a pension becoming payable as a result of paragraph (2) or (2A) applying, see--
  - (a) Chapter 2.G (re-employment and rejoining this Section of the Scheme),
  - (b) Chapter 2.H (abatment).

### ***Options to exchange pension for lump sum***

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

- (1) A member (other than a pension credit member whose rights under this Section of the Scheme are attributable to a disqualifying pension credit for the purpose of paragraph 2 of Schedule 29 to the 2004 Act) may opt to exchange part of a pension to which the member would otherwise be entitled for a lump sum.
- (2) If a member so opts, for every £1 by which the member's annual amount of a pension is reduced, the member is to be paid a lump sum of £12.
- (3) An option under paragraph (1) 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).
- (4) In paragraphs (2) and (3) "annual amount", in relation to a pension, means the amount of the annual pension to which the member would be entitled under this Chapter apart from the option, together with any increases payable under the Pensions (Increase) Act 1971, calculated as at the time payment would first be due.
- (5) 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 (see, in particular, section 241 of, and paragraph 1 of Schedule 29 to, that Act).
- (6) 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 (1) 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.

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(7) The option under this regulation may only be exercised by giving notice in writing to the scheme administrator in such form as the Secretary of State requires--

- (a) at the time of claiming the pension, or
- (b) before such later time as the scheme administrator specifies in writing.

This is subject to paragraphs (8) and (9).

(8) If the pension is an ill-health pension under regulation 2.D.8, the option under this regulation may only be exercised by giving notice in writing to the scheme administrator in such form as the Secretary of State requires--

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

(9) If the pension is a tier 2 ill-health pension under regulation 2.D.9, in substitution for a tier 1 ill-health pension under regulation 2.D.8, the option under this regulation may only be exercised--

- (a) in relation to the difference between the tier 1 ill-health pension that ceases to be payable in accordance with paragraph (3) of regulation 2.D.9 and the tier 2 ill-health pension to which the member becomes entitled under that paragraph, and
- (b) by giving notice in writing to the scheme administrator in such form as the Secretary of State requires--
  - (i) at the time of award of the tier 2 ill-health pension under that paragraph, or
  - (ii) before such later time as the scheme administrator specifies in writing.

(10) In the case of a 2008 Section Optant, this regulation is subject to paragraph (4) of regulation 2.K.8 and regulation 2.K.12.

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

(1) An active member or a non-contributing member, a deferred member or a pension credit member may opt to exchange a relevant pension for a lump sum if the Secretary of State is satisfied that the conditions for the lump sum to be a serious ill-health lump sum for the purposes of the 2004 Act will be met (see paragraph 4 of Schedule 29 to that Act).

(2) For the purposes of paragraph (1), a "relevant pension" is a pension payable to that member under regulation--

- (a) 2.D.1 (normal retirement pensions),
- (b) 2.D.2 (pension credit members' pensions),
- (c) 2.D.8 (early payment of pensions: ill-health), or

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- (d) 2.D.10 (early retirement on ill-health(deferred members)).
- (3) The option may only be exercised--
  - (a) in the case of a pension payable under regulation 2.D.1 or 2.D.2, before or at the time when the pension becomes payable,
  - (b) in the case of a pension payable under regulation 2.D.8 or 2.D.10, before the pension becomes payable to the member.
- (4) An active member or a non-contributing member aged 65 or over who exercises the option is to be paid, as soon as is reasonably practicable, an amount equal to the sum of--
  - (a) the maximum lump sum to which the member could have become entitled on exercising the option under regulation 2.D.14 if at the appropriate time the member had become entitled to a pension under regulation 2.D.1, and
  - (b) the total annual amount of the pension to which the member would have been entitled under regulation 2.D.1 after exercising that option, multiplied by 5.
- (5) A pension credit member who exercises the option is to be paid, as soon as reasonably practicable, an amount equal to the sum of--
  - (a) the maximum lump sum (if any) to which the pension credit member could have become entitled on exercising the option under regulation 2.D.14 at the appropriate time, and
  - (b) the total annual amount of the pension to which the pension credit member is entitled under regulation 2.D.2 after exercising that option, multiplied by 5.
- (6) An active member or a non-contributing member entitled to a pension under regulation 2.D.8 who exercises the option is to be paid, as soon as is reasonably practicable, an amount equal to the sum of--
  - (a) the maximum lump sum to which the member could have become entitled on exercising the option under regulation 2.D.14 at the appropriate time, and
  - (b) the total annual amount of the pension to which the member is entitled under regulation 2.D.8 after exercising that option, multiplied by 5.
- (7) A deferred member entitled to a pension under regulation 2.D.10 who exercises the option is to be paid, as soon as is reasonably practicable, an amount equal to the sum of--
  - (a) the maximum lump sum to which the member could have become entitled on exercising the option under regulation 2.D.14 at the appropriate time, and
  - (b) the total annual amount of the pension to which the member is entitled under regulation 2.D.10 after exercising that option, multiplied by 5.
- (8) In this regulation "the appropriate time" means--
  - (a) for the purposes of paragraph (4) and (5) the time when the option under this regulation is exercised, and
  - (b) for the purposes of paragraphs (6) and (7) the time payment of the pension under regulation 2.D.8 or, as the case may be, 2.D.10 would otherwise first be due.



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(9) In this regulation references to the "annual amount" of a pension are to the amount of the annual pension to which the member would be entitled, together with any increases payable under the Pensions (Increase) Act 1971, calculated as at the appropriate time.

(10) The option under this regulation may only be exercised by notice in writing to the Secretary of State in such form as the Secretary of State requires.

### ***Pension debit members and pension credit members***

#### **2.D.16 Reduction in pension debit member's benefits**

(1) The benefits to which a pension debit member is entitled under this Chapter are subject to the reduction to be made under section 31 of the 1999 Act.

(2) In the case of a 2008 Section Optant, this regulation is subject to paragraph (2) of regulation 2.K.8.

#### **2.D.17 ...**

...

### ***Allocation***

#### **2.D.18 Election to allocate pension**

(1) A member may elect to allocate a part of the annual amount of the member's pension under this Section of the Scheme for the provision of a pension after the member's death for a single person who is the member's spouse or civil partner or another person who is the member's dependant within the meaning of paragraph 15 of Schedule 28 to the 2004 Act if conditions A and B are met.

(2) Condition A is that the member has not become entitled to the payment of any pension under this Section of the Scheme other than a pension payable under regulation 2.D.5 (partial retirement: members aged at least 55).

(3) Condition B is that in the case of a member who is not making the election on claiming the pension, the member--

(a) has reached the age of 65 and has completed 45 years of pensionable service, or

(b) the member has reached the age of 70.

(4) Any pension provided as a result of such an election must be calculated in accordance with tables prepared by the Scheme actuary.

(5) The member may not elect to allocate more than one-third of the member's relevant annual pension.

(6) The member may not elect to allocate an amount that would result in--

(a) the allocated annual pension exceeding the member's unallocated relevant annual pension,

(b) the allocated pension exceeding such amount as the Secretary of State may determine for the purposes of this paragraph, after consultation with the

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Scheme actuary, having regard to any restrictions imposed under Part 4 of the 2004 Act, or

(c) the value of the allocated annual pension being such that a lump sum could be paid under regulation 2.J.5 (commutation of small pensions) by way of commutation of a pension of that amount if the person entitled to the pension was not entitled to any other benefits under this Section of the Scheme.

(7) The annual pension that is allocated must be an exact number of pounds.

(8) If a member--

(a) elects to allocate a part of the member's pension under paragraph (1) after reaching the age of 65 and whilst in pensionable service, and

(b) dies before the pension becomes payable,

for the purposes of paragraphs (5) to (7) the member is treated as entitled to the relevant pension to which the member would have been entitled if the member had become entitled to the pension immediately before death.

(9) References in this regulation to the member's relevant pension, in relation to any pension, are references to so much of the pension as would be payable if the member had exercised the option under regulation 2.D.14 so as to obtain the maximum lump sum possible.

#### **2.D.19 Procedure for election under regulation 2.D.18**

(1) An election under regulation 2.D.18 in respect of a member's pension must be made--

(a) at the time when the member claims the pension or, if the member does not become entitled to the pension at that time, when the member does become so entitled, or

(b) if the member is in pensionable service after reaching the age of 65, at any time after reaching that age and before reaching the age of 75.

(2) The election must be made by giving notice in writing to the Secretary of State.

(3) The notice must be in such form and contain such information as the Secretary of State requires.

(4) Subject to paragraphs (6) and (7), an election under regulation 2.D.18 takes effect once it has been accepted by the Secretary of State.

(5) The election may not be withdrawn, amended or revoked after it has taken effect.

(6) The election does not take effect if--

(a) the member or the person in whose favour the election was made ("the beneficiary") dies on or before the day on which the Secretary of State accepts it, or

(b) the Secretary of State is not satisfied that at the time when the election is made the member is in good health.

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(7) The election is treated as not having taken effect if the beneficiary dies before the member is notified in writing that the Secretary of State has accepted the election.

#### **2.D.20 Effect of allocation**

- (1) If an election under regulation 2.D.18 for the allocation of a member's pension to another person ("the beneficiary") has taken effect--
- (a) the member's pension is reduced accordingly (even if the beneficiary predeceases the member), and
  - (b) if the beneficiary survives the member, on the member's death the beneficiary becomes entitled to the payment of a pension for life of such amount as is determined in accordance with regulation 2.D.18.
- (2) An allocation is disregarded for the purposes of this regulation if it would result in a pension being paid under this regulation to a beneficiary who is neither--
- (a) the member's spouse or civil partner on the date when the member becomes entitled to the pension or dies, nor
  - (b) a dependant of the member for the purposes of paragraph 15(2) or (3) of Schedule 28 to the 2004 Act when the member dies.
- (3) References in this Part to pensions under this Chapter do not include pensions under this regulation except where the context otherwise requires.
- (4) Any such pension is payable in addition to any pension payable to the beneficiary in respect of the member's death under Chapter 2.E of this Part.

### ***Dual capacity membership***

#### **2.D.21 Dual capacity membership**

- (1) This paragraph applies if a member is--
- (a) a member of this Section of the Scheme of two or more of the kinds specified in paragraph (2),
  - (b) a pensioner member in respect of two or more pensions, or
  - (c) a deferred member in respect of two or more pensions.
- (2) The kinds of member are--
- (a) an active member or a non-contributing member,
  - (b) a deferred member,
  - (c) a pensioner member, and
  - (d) a pension credit member.
- (3) If paragraph (1) applies, the general rule is that--
- (a) benefits are payable to the member under this Chapter (or to any person to whom the member has opted to allocate pension under regulation 2.D.18) as if the member were two or more members of the kinds in question (so that two or more pensions or lump sums are payable in respect of the one member), and

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- (b) the amounts payable are determined accordingly.
- (4) The rule in paragraph (3) is subject to any indication to the contrary and, in particular, does not affect the interpretation of--
  - (a) regulation 2.A.2(3) (45 year limit),
  - (b) regulation 2.D.5(9) in a case where a member is both an active member or a non-contributing member and a pensioner member by virtue of that regulation,
  - (c) regulation 2.D.12 (option to have periods of service treated separately where pay is reduced),
  - (d) regulation 2.G.3 (exception to general rule in 2.G.2 about separate treatment of pay and service),
  - (e) regulation 2.G.4 (effect of re-employment on tier 2 ill-health pensions),
  - (f) regulation 2.G.5 (re-employed tier 1 ill-health pensioners),
  - (g) regulation 2.G.6 (deferred pension becoming payable during NHS re-employment as a result of a transfer of undertaking), or
  - (h) Chapter 2.H (abatement).
- (5) If a person who is a pension credit member is entitled to two or more pension credits--
  - (a) benefits are payable to the person under this Section of the Scheme (or to any person to whom the member has opted to allocate pension under regulation 2.D.18) as if the person were two or more persons, each being entitled to one of the pension credits (so that two or more pensions or lump sums are payable to the one pension credit member), and
  - (b) the amounts of those benefits are determined accordingly.

### ***Contracting-out obligations (GMPs, etc)***

#### **2.D.22 Guaranteed minimum pensions etc**

- (1) If a member has a guaranteed minimum under section 14 of the 1993 Act in relation to benefits under this Section of the Scheme--
  - (a) nothing in this Part permits or requires anything that would cause requirements made by or under that Act in relation to such a member and such a member's rights under this Section of the Scheme not to be met in the case of the member,
  - (b) nothing in this Part prevents anything from being done which is necessary or expedient for the purposes of meeting such requirements in the case of the member, and
  - (c) the following provisions are without prejudice to the generality of this paragraph.
- (2) If apart from this rule--
  - (a) no pension would be payable to the member under this Section of the Scheme, or
  - (b) the weekly rate of the pensions payable would be less than the guaranteed minimum,

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a pension at a weekly rate equal to the guaranteed minimum is payable to the member for life from the date on which the member reaches State pension age or, as the case may be, pensions the aggregate weekly rate of which is equal to the guaranteed minimum are so payable.

(3) If--

- (a) on reaching State pension age the member is still in employment (whether or not it is scheme employment), and
- (b) if it is not scheme employment, the member consents to a postponement of the member's entitlement under paragraph (2),

paragraph (2) does not apply until the member leaves employment.

This is subject to paragraph (4).

(4) If the member continues in employment for a further 5 years after reaching State pension age and does not then leave employment, the member is entitled from the end of that period to so much of the member's pension under this Chapter as equals the member's guaranteed minimum (or, as the case may be, to so much of the member's pensions under this Chapter as together have a weekly rate equal to the member's guaranteed minimum), unless the member consents to a further postponement of the entitlement.

(5) If paragraph (3) or (4) applies, the amount of the guaranteed minimum to which the member is entitled under this rule is increased in accordance with section 15 of the 1993 Act.

(6) If--

- (a) before State pension age the member becomes entitled to the immediate payment of a pension, and
- (b) the member has a guaranteed minimum under section 14 of the 1993 Act in relation to the whole or part of the pension,

the weekly rate of the pension, so far as attributable to that service, must not be less than that guaranteed minimum, multiplied by such factor as is indicated in tables provided by the Scheme actuary for a person of the member's age and sex at the date on which the pension becomes payable.

(7) This paragraph applies if a person has ceased to be in employment that is contracted-out by reference to this Section of the Scheme, and either--

- (a) all the person's rights to benefits under this Section of the Scheme, except the person's rights in respect of the person's guaranteed minimum or the person's section 9(2B) rights ("the person's contracting-out rights"), have been transferred under Chapter 2.F (transfers), or
- (b) the person has no rights to benefits under this Section of the Scheme apart from the person's contracting-out rights.

(8) If paragraph (7) applies--

- (a) from the date on which the person reaches State pension age the person is entitled to a pension payable for life at a weekly rate equal to his guaranteed minimum, if any, and
- (b) from the date on which the person reaches pension age the person is entitled to a pension in respect of the person's section 9(2B) rights,

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but a person falling within paragraph (7) is not to be regarded as a pensioner for the purposes of Chapter 2.E (death benefits).

(9) Paragraphs (2) to (8) do not apply to--

(a) a pension that is forfeited--

(i) as a result of a conviction for treason, or

(ii) in a case where an offence within regulation 2.J.7(2)(b) (Official Secrets Acts offences) is committed,

(b) a pension that is commuted under regulation 2.D.15 (option for members in serious ill-health to exchange whole pension for lump sum), or

(c) a pension that is commuted under regulation 2.J.5 (commutation of small pensions) where the conditions in regulation 25 of the Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015 are met,

but if any other provision of this Section of the Scheme is inconsistent with this rule, this rule prevails.

(10) In this regulation--

(a) "scheme employment", in relation to a member, means employment in the employment by virtue of which the member is eligible for membership of this Section of the Scheme, and

(b) references to the amount of a pension are to its amount--

(i) disregarding any additional pension,

(ii) after the subtraction of any amount exchanged under regulation 2.D.14 (general option to exchange part of pension for lump sum), and

(iii) before the subtraction of any amount allocated under regulation 2.D.18 (election to allocate pension).

## **Chapter 2.E**

### **Death Benefits**

#### ***Pensions for surviving adults***

##### **2.E.1 Surviving adult dependants' pensions**

(1) If an active member, a non-contributing member, a deferred member or a pensioner member dies leaving a surviving adult dependant, the surviving adult dependant is entitled to a pension that is payable for life.

(2) In this Part "surviving adult dependant", in relation to a deceased member or former member, means the member's or former member's surviving spouse, civil partner or scheme partner.

(3) For the rate at which the pension referred to in paragraph (1) is payable see regulations 2.E.3 to 2.E.7 and, in any case where that pension includes additional pension, regulations 2.C14(4) and 2.C16(3).

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### **Meaning of “surviving scheme partner”**

**2.E.2.** In this Part, a person (P) is a “surviving scheme partner” if the Secretary of State is satisfied that for a continuous period of at least two years, ending with the member’s death—

- (a) the member and P were living together as if they were husband and wife or civil partners,
- (b) the member and P were not prevented from marrying or entering into a civil partnership,
- (c) the member and P were financially interdependent or P was financially dependent on the member, and
- (d) neither the member nor P were living with a third person as if they were husband and wife or as if they were civil partners.

### **2.E.3 Amount of pensions under regulation 2.E.1: active and non-contributing members**

(1) In the case of an active member or a non-contributing member, for the period of 6 months beginning with the day after the member's death ("the initial period") the rate of the pension payable under regulation 2.E.1 (if that amount is greater than the amount of the pension payable to the surviving adult under this Chapter apart from this paragraph), is equal to--

- (a) in the case of a deceased active member, the rate of the member's pensionable pay at the time of death; and
- (b) in the case of a deceased non-contributing member, the rate of the deceased's reckonable pay.

(2) Subject to paragraph (3), after the initial period, if the member dies with 2 or more years of qualifying service, the annual amount of the pension payable under regulation 2.E.1--

- (a) if the member has not reached the age of 65, is equal to 37.5% of the tier 2 ill-health pension under regulation 2.D.8 to which the member would have been entitled if on the date of death the member had become entitled to such a pension, and
- (b) if the member has reached the age of 65, is equal to 37.5% of the pension under regulation 2.D.1 (normal retirement pensions) to which the member would have been entitled if on the date of death the member had become entitled to such a pension in respect of any period of pensionable service that the member is entitled to count.

Sub-paragraph (b) is subject to paragraph (7).

(3) After the initial period, if the member dies with less than 2 years of qualifying service but after reaching the age of 65, the annual amount of the pension payable under regulation 2.E.1 is equal to 37.5% of the pension to which the member would have been entitled (disregarding any additional pension) if on the date of death the member had become entitled to a pension under regulation 2.D.1 (normal retirement pensions) in respect of any period of pensionable service that the member is entitled to count.

This is subject to paragraph (7).



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(4) After the initial period, if--

- (a) the member dies with less than 2 year's qualifying service and before reaching the age of 65, and
- (b) the surviving adult has a guaranteed minimum under section 17 of the 1993 Act in relation to benefits in respect of the deceased member under this Section of the Scheme,

the annual amount of the pension payable under regulation 2.E.1 is equal to that guaranteed minimum, unless paragraph (5) applies.

(5) This paragraph applies if the Secretary of State's liability to provide a guaranteed minimum pension in respect of the surviving adult is discharged by the payment of a contributions equivalent premium under section 55 of the 1993 Act or article 3 of the 2016 Order.

(6) This regulation is subject to regulation 2.E.7 (re-employed pensioners).

(7) For the purposes of paragraphs (2)(b) and (3) any increase under--

- (a) regulation 2.D.3, or
- (b) regulation 2.K.21,

is ignored.

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

(1) In the case of a pensioner member, for the initial period the rate of the pension payable under regulation 2.E.1 is equal to the rate of the member's pension in payment at the time of death if that amount is greater than the sum of--

- (a) the amount of the pension payable to the surviving adult dependant under this Chapter apart from this paragraph, and
- (b) the amount of the children's pensions otherwise payable under this Part.

(2) At any time when the rate is not the rate mentioned in paragraph (1), the rate of the surviving adult dependant's pension in the case of the death of a pensioner member is equal to 37.5% of the pension to which the member was entitled on the date of death (disregarding any additional pension).

(3) For the purposes of paragraph (1) any reduction in the rate of the member's pension under--

- (a) Chapter 2.H,
- (b) regulation 2.D.14, or
- (c) regulation 2.K.12,

is ignored.

(3A) For the purpose of paragraph (2)--

- (a) any reduction in the rate of the member's pension under--
  - (i) regulation 2.D.4,
  - (ii) regulation 2.D.14, or
  - (iii) regulation 2.K.12; and
- (b) any increase in the rate of the member's pension under--

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- (i) regulation 2.D.3, or
- (ii) regulation 2.K.21,

is ignored.

(4) In this regulation "the initial period" means--

- (a) if the member leaves one or more dependent children who are dependant on the surviving adult dependant, the period of 6 months beginning with the day after the member's death, and
- (b) otherwise the period of 3 months beginning with that day.

(5) For the purposes of paragraph (4) a child born after the member's death is treated as having been born before it.

(6) If a member who has had a tier 2 ill-health retirement pension under regulation 2.D.8 replaced by a tier 1 ill-health retirement pension (by virtue of regulation 2.G.4(2))--

- (a) is in further NHS employment and dies before the end of the initial period (within the meaning of regulation 2.G.4(6)(c) and in accordance with regulation 2.G.4(2)); or
- (b) is in further employment that is not NHS employment and dies within a period of one year beginning with the day on which that further employment ceased to be an "excluded employment" (within the meaning of regulation 2.G.4(6)(a)),

the member's pension referred to in paragraph (1) means that member's original tier 2 ill-health pension.

(7) This regulation is subject to regulation 2.E.7 (re-employed pensioners: adult survivor pensions in initial period).

(8) . . .

## **2.E.5 Amount of pensions under regulation 2.E.1: deferred members**

(1) In the case of a deferred member--

- (a) who left pensionable service less than 12 months before the date of death, and
- (b) whose surviving adult dependant would have been the member's surviving adult dependant if the member had died on the member's last day of pensionable service,

the rate of the pension payable under regulation 2.E.1 is equal to 37.5% of the tier 2 ill-health pension under regulation 2.D.8 to which the member would have been entitled if on the date the member's pensionable service ceased the member had become entitled to such a pension under regulation 2.D.8 (but disregarding any additional pension).

(2) In the case of any other deferred member, the rate of the pension payable under regulation 2.E.1 is equal to 37.5% of the pension under regulation 2.D.1 (normal retirement pensions) in respect of any period of pensionable service to which the member would have been entitled if on the date of death the member had become entitled to such a pension.

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## **2.E.6 Recent leavers**

(1) If--

(a) a recent leaver dies leaving a surviving spouse or civil partner who has a guaranteed minimum under section 17 of the 1993 Act in relation to benefits in respect of the recent leaver under this Section of the Scheme, and

(b) the member has died before reaching the age of 65,

the surviving spouse or civil partner is entitled to a pension that is payable for life of an amount equal to that person's guaranteed minimum pension (disregarding any additional pension), unless paragraph (2) applies.

(2) This paragraph applies if the Secretary of State's liability to provide a guaranteed minimum pension in respect of the surviving adult is discharged by the payment of a contributions equivalent premium under section 55 of the 1993 Act or article 3 of the 2016 Order.

(3) In this Part "recent leaver" means a person--

(a) who left pensionable service less than 12 months before the date of death,

(b) who is not a deferred member or a pensioner member because of rights resulting from that employment, and

(c) in respect of whom no transfer value or refund of contributions has been paid in respect of that employment.

## **2.E.7 Re-employed pensioners: adult survivor pensions in initial period**

(1) This regulation applies if, apart from this regulation, both regulations 2.E.3(1) and 2.E.4(1) would apply on the death of a member.

(2) Where this regulation applies, the rate of pension payable by virtue of regulation 2.E.3(1) and 2.E.4(1) during the initial period (as defined in the respective regulations) shall instead be the rate provided in paragraph (3).

(3) Subject to paragraph (4), for the relevant initial period the rate of the pension payable under regulation 2.E.1 is equal to the sum of--

(a) in the case of--

(i) a deceased active member, the rate of the deceased's pensionable pay at the time of death, or

(ii) a deceased non-contributing member, the rate of the deceased's reckonable pay on the deceased's last day of pensionable service, and

(b) the rate of the deceased member's pension payable at the time of death after taking account of any reduction in the rate of the pension under--

(i) Chapter 2.H,

(ii) regulation 2.D.14, and

(iii) regulation 2.K.12.

(4) Paragraph (3)(a) does not apply if--

(a) the rate of the pension payable to the surviving adult in respect of later service, and

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(b) any children's pension that would otherwise be payable in respect of later service under this Part,  
would be greater.

## **Pensions for dependent children**

### **2.E.8 Surviving children's pensions**

- (1) If a member or a recent leaver dies leaving one or more dependent children, a pension is payable in respect of them.
- (2) This is subject to paragraphs (7) to (9).
- (3) If a dependent child ceases to be a dependent child after the date of death, the pension ceases to be payable in respect of that child.
- (4) If a dependent child is born after the date of death, the same pension is payable in respect of the child as if the child had been born on the date of death.
- (5) If a member or a recent leaver dies leaving two or more dependent children, they are entitled to such shares of the pension as the Secretary of State may from time to time decide.
- (6) An amount payable under this regulation in respect of a dependent child is payable to the dependent child or, if the Secretary of State so decides, to another person for the dependent child's benefit.
- (7) No pension is payable in respect of any dependant children who on the deceased's death are dependant on an adult who is entitled to a surviving adult's pension whilst that pension is payable at the rate mentioned in regulation 2.E.4(1) or 2.E.7(3)(b), except so much of that pension as is additional pension.
- (8) If a dependent child is incapable of earning a living because of physical or mental infirmity for any period and the child is maintained out of money provided by Parliament in a hospital or other institution for a period exceeding one month, no pension is payable in respect of the child for any part of that period after the first month.
- (9) If, apart from this paragraph, a pension would be payable in respect of any person as a dependent child of three or more persons who were deceased members or recent leavers--
  - (a) a pension is only payable in respect of two of them, and
  - (b) the amount payable is equal to the sum of the two highest pensions.
- (10) For the rate at which the pension referred to in paragraph (1) is payable, see regulations 2.E.10 to 2.E.15 and, in any case where that pension includes additional pension, regulations 2.C14(4) and 2.C16(3).

### **2.E.9 Meaning of "dependent child"**

- (1) In this Part "dependent child", in relation to a deceased member or recent leaver, means a person who--
  - (a) meets the relationship condition (see paragraph (2)),
  - (b) either--

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- (i) has not reached the age of 23, or
  - (ii) in the opinion of the scheme administrator was financially dependent on the deceased at the date of death because of physical or mental impairment and remains so,
- (c) was born--
  - (i) before the deceased ceased to be an active member, or
  - (ii) within one year after the deceased ceased to be an active member,
- (d) in the case of a person within sub-paragraph (c)(i), was dependent on the deceased--
  - (i) at the date of death, and
  - (ii) if the deceased died after ceasing to be an active member, when the deceased ceased to be an active member, and
- (e) in the case of a person within sub-paragraph (c)(ii)--
  - (i) was dependent on the deceased both at birth and at the deceased's death, or
  - (ii) if the person was born after the deceased's death, would have been dependent on the deceased had the deceased not died before the person's birth.
- (2) A person meets the relationship condition if the person is--
  - (a) a natural child or natural grandchild of the deceased,
  - (b) an adopted child of the deceased who was adopted whilst the deceased was an active member,
  - (c) a step-child of the deceased whose natural or adoptive parent is the deceased's surviving spouse or civil partner from a marriage entered into, or a civil partnership formed, whilst the deceased was an active member,
  - (d) in a case where the deceased left a surviving scheme partner with whom the deceased was living as mentioned in regulation 2.E.2(a) and (b) when the deceased ceased to be an active member, a person whose natural or adoptive parent is the deceased's surviving scheme partner,
  - (e) a brother or sister, or a child of a brother or sister, of the member or the member's spouse or civil partner or scheme partner,
  - (f) a half-brother or half-sister, or a child of a half-brother or half-sister, of the member or the member's spouse or civil partner or scheme partner,
  - (g) a person whom, in the opinion of the scheme administrator, the deceased intended when the deceased ceased to be an active member to adopt, or
  - (h) a person who had been dependent on the deceased for 2 years or (if less) half the person's life when the deceased ceased to be an active member.

#### **2.E.10 Amount of children's pension under regulation 2.E.8: deceased active members and deceased non-contributing members**

- (1) This regulation applies for determining the annual amount of the pension payable under regulation 2.E.8(1) if at the date of death the deceased was an

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active, or a non-contributing member of this Section of the scheme who was not also a pensioner member.

(2) Subject to paragraphs (6) and (7), that amount is the appropriate fraction of the basic death pension.

(3) In this regulation "the basic death pension" means--

$$0.75 \times (RP / 60) \times (LRS / 365)$$

where--

RP is the deceased's reckonable pay, and

LRS is the length of the deceased's relevant service, expressed in days.

(4) For this purpose "relevant service" means--

(a) in the case of an active member, the greater of--

(i) the pensionable service the deceased was entitled to count on the date of death, increased by the enhancement period (if any) that would have applied for the purposes of regulation 2.D.8(5) if the deceased had become entitled to a tier 2 ill-health pension on the date of death, and

(ii) 10 years' pensionable service;

(b) in the case of a non-contributing member, the pensionable service that the deceased was entitled to count on the date of death.

In the case of a 2008 Section Optant, this is subject to regulation 2.K.24 and in the case of a Waiting Period Joiner, this is subject to regulation 2.L.5.

(5) In this regulation "the appropriate fraction" means--

(a) if there is a surviving parent of the dependent child or children or a surviving spouse or civil partner of a parent of the dependent child or children and a surviving adult dependant's pension is payable under regulation 2.E.1--

(i) one-quarter if there is only one dependent child, and

(ii) one-half if there are two or more dependent children,

(b) if there is a such a parent or spouse or partner of a parent, but no surviving adult dependant's pension is payable under regulation 2.E.1--

(i) one-third if there is only one dependent child, and

(ii) two-thirds if there are two or more dependent children,

(c) if there is no such parent nor spouse nor partner of such a parent--

(i) one-third if there is only one dependent child, and

(ii) two-thirds if there are two or more dependent children.

(6) If--

(a) a surviving adult dependant's pension is payable under regulation 2.E.1, and

(b) there is a dependent child who is not dependent on the person entitled to that pension,

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the rate of the pension payable in respect of that child for the first 3 months after the deceased's death is equal to--

- (i) in the case of a deceased active member, the rate of the deceased's pensionable pay at the date of death, and
- (ii) in the case of a deceased non-contributing member, the rate of the deceased's reckonable pay.

(7) In a case within paragraph (5)(b) or (c), the rate of the pension in respect of the dependant child or children for the period of 6 months beginning with the deceased's death is equal to--

- (i) in the case of a deceased active member, the rate of the deceased's pensionable pay at the date of death, and
- (ii) in the case of a deceased non-contributing member, the rate of the deceased's reckonable pay.

#### **2.E.11 Amount of children's pension under regulation 2.E.8: deceased pensioner members**

(1) This regulation applies for determining the annual amount of the pension payable under regulation 2.E.8(1) (surviving children's pensions) if at the date of death the deceased was a pensioner member of this Section of the scheme who was not also an active member or a non-contributing member.

(2) Subject to paragraphs (5), (6) and (7), that amount is the appropriate fraction of the basic death pension.

(3) In this regulation "the basic death pension" means the greater of--

- (a) 75% of the deceased's annual pension (disregarding any additional pension), and
- (b) 75% of the annual pension to which the deceased would have been entitled if the deceased had been entitled to count 10 years' pensionable service (disregarding any additional pension).

In the case of a 2008 Section Optant, this is subject to regulation 2.K.24 and in the case of a Waiting Period Joiner, this is subject to regulation 2.L.5.

(4) In this regulation "the appropriate fraction" means--

- (a) if there is a surviving parent of the dependent child or children or a surviving spouse or civil partner of a parent of the dependent child or children and a surviving adult dependant's pension is payable under regulation 2.E.1--
  - (i) one-quarter if there is only one dependent child, and
  - (ii) one-half if there are two or more dependent children,
- (b) if there is such a parent or spouse or partner of a parent, but no surviving adult dependant's pension is payable under regulation 2.E.1--
  - (i) one-third if there is only one dependent child, and
  - (ii) two-thirds if there are two or more dependent children.
- (c) if there is no such parent or spouse or partner of a parent--



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- (i) one-third if there is only one dependent child, and
  - (ii) two-thirds if there are two or more dependent children.
- (5) If--
  - (a) a surviving adult dependant's pension is payable under regulation 2.E.1, and
  - (b) there is a dependent child who is not dependent on the person entitled to that pension,

the rate of the pension in respect of that child for the first 3 months after the deceased's death is equal to the rate of the member's pension at the date of death (disregarding any additional pension).
- (6) In a case within paragraph (4)(b) or (c), the rate of the pension in respect of the dependent child or children for the period of 6 months beginning with the deceased's death is equal to the greater of—
  - (a) the rate of the member's pension at the date of death disregarding any reduction made under Chapter 2.H (abatement) and any additional pension, and
  - (b) the amount of children's pension that would otherwise be payable under these Regulations.
- (7) If the deceased member's pension was payable under regulation 2.D.4 (early payment of pensions with actuarial reduction), the reference in paragraph (3)(a) and (b) to the member's pension is a reference to the amount that the member's pension would have been if it had been calculated without the reduction mentioned in paragraph (2)(b) of that regulation.
- (8) For the purposes of paragraphs (1) and (2), any reduction in the member's pension under regulation 2.D.14 and regulation 2.K.12 will be ignored.

#### **2.E.12 Amount of children's pension under regulation 2.E.8: deceased deferred members**

- (1) This regulation applies for determining the annual amount of the pension payable under regulation 2.E.8(1) if at the date of death the deceased was a deferred member of this Section of the scheme who was not also an active member or a non-contributing member or a pensioner member.
- (2) That amount is the appropriate fraction of the basic death pension.
- (3) In this regulation "the basic death pension"--
  - (a) if the deceased died within 12 months after ceasing to be an active member or a non-contributing member, means the amount that would be the basic death pension for the purposes of regulation 2.E.10 if the deceased had died on the day of so ceasing (disregarding any additional pension), and
  - (b) otherwise, means the greater of--
    - (i) 75% of the pension to which the deceased would have been entitled if the deceased had become entitled to a pension under 2.D.1 on the date of death (disregarding any additional pension), and
    - (ii) 75% of the pension to which the deceased would have been entitled if the deceased had become so entitled and the pension had been calculated

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on the assumption that the member was entitled to 10 years' pensionable service (disregarding any additional pension).

In the case of a 2008 Section Optant, this is subject to regulation 2.K.24 and in the case of a Waiting Period Joiner, this is subject to regulation 2.L.5.

(4) In this regulation "the appropriate fraction" means--

(a) if there is a surviving parent of the dependent child or children or a surviving spouse or civil partner of a parent of the dependent child or children and a surviving adult's pension is payable--

(i) one-quarter if there is only one dependent child, and

(ii) one-half if there are two or more dependent children,

(b) otherwise--

(i) one-third if there is only one dependent child, and

(ii) two-thirds if there are two or more dependent children.

#### **2.E.13 Amount of children's pension under regulation 2.E.8: recent leavers**

(1) This regulation applies for determining the annual amount of the pension payable under regulation 2.E.8(1) if at the date of death the deceased was a recent leaver (within the meaning of regulation 2.E.6(3)).

(2) That amount is the appropriate fraction of the basic death pension.

(3) In this regulation--

(a) "the basic death pension" means 75% of the pension to which the deceased would have been entitled if the deceased had become entitled to--

(i) a pension under regulation 2.D.8(5) on the date of death, or

(ii) if greater, the amount that the member's pension would have been if it had been based on 10 years' pensionable service (disregarding any additional pension), and

(b) "the appropriate fraction" means--

(i) if there is a surviving parent of the dependant child or children or a surviving spouse or civil partner of a parent of the dependant child or children and a surviving adult's pension is payable--

(aa) one-quarter if there is only one dependant child, and

(bb) one-half if there are two or more dependant children,

(ii) otherwise--

(aa) one-third if there is only one dependant child, and

(bb) two-thirds if there are two or more dependant children.

#### **2.E.14 Power to increase pension in respect of children not maintained by surviving parent etc**

(1) This regulation applies if--

(a) a member dies leaving a dependent child or children,

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- (b) there is a surviving parent of the dependent child or children or a surviving spouse or civil partner of a parent of the dependent child or children, and
  - (c) the dependent child or children are not being maintained by that surviving parent, spouse or partner.
- (2) The Secretary of State may increase the amount of the pension that would otherwise be payable under this Chapter in respect of the dependant child or children.
- (3) The increased amount may not exceed the amount that would have been payable under this Chapter if there had been no such surviving parent or spouse or partner of a parent.

#### **2.E.15 Amount of children's pension under regulation 2.E.8: re-employed pensioners**

- (1) This regulation applies for determining the annual amount of a pension payable under regulation 2.E.8(1) if at the date of death the deceased was an active member or a non-contributing member who was also a pensioner member of this Section of the Scheme.
- (2) If there is no surviving adult dependant, the rate of the pension in respect of the dependent child or children for the period of 6 months beginning with the deceased's death is equal to the sum of--
- (a) in the case of--
    - (i) a deceased active member, the rate of the deceased's pensionable pay at the date of death, or
    - (ii) a deceased non-contributing member, the rate of the deceased's reckonable pay, and
  - (b) the rate of the pension being received by the deceased at the date of death (after taking account of any abatement under Chapter 2.H).
- (3) Subject to paragraph (5), except where a pension is payable at the rate mentioned in paragraph (2), the pension in respect of the member's later service shall be paid as the appropriate fraction of 75% of the rate of pension described in--
- (a) regulation 2.D.8(5) of this Part if the deceased has not reached the age of 65 on the date of death, or
  - (b) regulation 2.D.1 of this Part if the deceased has reached the age of 65 on the date of death.
- (4) In this regulation "appropriate fraction" has the meaning given in regulation 2.E.10(5).
- (5) If any dependent child was a dependent child both at the time when the pensionable service in respect of which the pension is payable ceased and at the date of death, the annual amount of the pension in respect of the dependent child or children is the sum of--
- (a) the annual amount that would be payable in respect of the child under regulation 2.E.10 as a result of the member dying whilst an active member or a non-contributing member if that regulation applied to members who are also

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pensioner members (disregarding the pensionable service in respect of which the pension is payable ("the pension service") and any additional pension), and

(b) the annual amount that would be payable in respect of the child under regulation 2.E.11 as a result of the member dying whilst a pensioner member if that regulation applied to members who are also active members or non-contributing members (having regard only to the pension service and disregarding any additional pension).

(6) If, apart from this paragraph, the sum of--

(a) the relevant service (as defined in regulation 2.E.10(4)) for the purposes of the calculation of the annual amount referred to in paragraph (5)(a), and

(b) the pension service,

would be less than 10 years' pensionable service, the deceased's relevant service for the purposes of that calculation is increased by the length of the shortfall.

### ***Lump sum death benefits***

#### **2.E.16 Lump sum benefits on death: introduction**

(1) If a member or a recent leaver or a deferred member dies before reaching the age of 75, a lump sum is payable in accordance with this Chapter.

(2) Paragraph (1) is subject to the following provisions of this Chapter.

(3) This regulation does not apply if--

(a) the member is--

(i) a pensioner member, or

(ii) a pension credit member who dies after any benefits attributable to the pension credit have become payable, and

(b) the death takes place more than five years after the member's pension becomes payable.

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

(1) The lump sum payable on the death of an active member or a non-contributing member, who is not also a deferred member or a pensioner member, is an amount equal to twice the member's reckonable pay.

In the case of a 2008 Section Optant, this is subject to regulation 2.K.23 and in the case of a Waiting Period Joiner, this is subject to regulation 2.L.4.

(2) The lump sum payable on the death of a pensioner member, who is not also an active member or a non-contributing member or a deferred member, is, in respect of each pension to which the member is entitled, the lesser of--

(a) an amount equal to five times the annual rate of the pension (other than any additional pension), less the amount of the pension payments already made to the member, and

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- (b) an amount equal to twice the member's reckonable pay by reference to which the pension was calculated, less the aggregate of--
  - (i) any lump sum paid to the member when the pension came into payment as a result of the member exercising the option under regulation 2.D.14, and
  - (ii) in the case of a 2008 Section Optant, the lump sum paid to the Optant under regulation 2.K.12.

This is subject to regulations 2.E.20A and 2.E.21.

- (3) The lump sum payable on the death of a deferred member, who was not an active member or a non-contributing member or a pensioner member, is an amount equal to the member's deferred annual pension, multiplied by 2.25.
- (4) The lump sum payable on the death of a recent leaver is an amount equal to the deferred annual pension to which the person would have been entitled if the person were entitled to such a pension calculated by reference to the pensionable service the recent leaver was entitled to count in the service that has ceased, multiplied by 2.25.
- (5) References in this regulation to a member's deferred annual pension are to the annual pension, in respect of any period of pensionable service, to which the member would have been entitled under regulation 2.D.1 (normal retirement pensions) if on the date of death the member had become entitled to such a pension (other than any additional pension).
- (6) The reference in paragraph (2)(a) to the annual rate of the member's pension is to the member's pension after it has been reduced to take account of--
  - (a) the exercise by the member of an option under regulation 2.D.14, and
  - (b) in the case of a 2008 Section Optant, the lump sum paid to the Optant under regulation 2.K.12.
- (7) If a pensioner member exercised the option under regulation 2.D.18 (election to allocate pension), the reference in paragraph (2)(a) to the amount of the pension payments already made to the member is a reference to the amount of the pension payments that would have been made apart from the election.
- (8) For the purposes of this regulation, the fact that a person--
  - (a) was an active member or a non-contributing member in service in an employment in respect of which the member has exercised the option under regulation 2.D.5,
  - (b) is a deferred member as a result of service in an employment in respect of which the member has exercised that option, or
  - (c) is a pensioner member by virtue of being entitled to a pension under that regulation,

is ignored.

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

- (1) Paragraph (2) applies for determining the lump sum payable by virtue of this regulation on the death of a member who--

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- (a) was an active member or a non-contributing member otherwise than in service in an employment in respect of which the member had exercised the option under regulation 2.D.5 (partial retirement: members aged at least 55), and
  - (b) was also a pensioner member.
- (2) The lump sum is an amount equal to the sum of--
- (a) five times the annual rate of pension--
    - (i) payable under regulation 2.D.8(5) (tier 2 ill-health pension), if the deceased had not reached the age of 65,
    - (ii) payable under regulation 2.D.1 (normal retirement pensions), if the deceased had reached the age of 65,
- to which the member would have been entitled--
- (aa) in the case of a deceased active member, at the member's date of death, or
  - (bb) in the case of a deceased non-contributing member, on the last day of the member's pensionable service, and
- (b) in respect of each pension to which the person has been entitled for less than 5 years, the lesser of--
- (i) five times the annual rate of the pension payable after exercising any option under regulation 2.D.14 (general option to exchange part of pension for lump sum), less the amount of the pension payments already made to the member, and
  - (ii) an amount equal to twice the member's reckonable pay by reference to which the pension was calculated, less any lump sum paid to the member when the pension came into payment as a result of the member exercising the option under regulation 2.D.14 (general option to exchange part of pension for lump sum).

This is subject to paragraph (4).

- (3) If the pensioner member exercised the option under regulation 2.D.18, the reference in paragraph (2)(b) to the amount of the pension payments already made to the member is a reference to the amount of the pension payments that would have been made apart from the election.
- (4) In the case of a 2008 Section Optant--
- (a) the reference to the annual rate of pension in paragraph (2)(b)(i) is to the annual rate of pension after it has been reduced to take account of the lump sum paid to the Optant under regulation 2.K.12, and
  - (b) the amount of the Optant's reckonable pay for the purposes of paragraph (2)(b)(ii) shall be reduced by the aggregate of--
    - (i) the amount of the lump sum paid to the Optant under regulation 2.K.12, and
    - (ii) the lump sum under regulation 2.D.14 referred to in paragraph (2)(b)(ii).

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## **2.E.19 Amount of lump sum: dual capacity members: members with pensions under regulation 2.D.5**

(1) Paragraph (2) applies for determining the lump sum payable by virtue of this regulation on the death of a member who--

(a) was an active member or a non-contributing member in service in an employment in respect of which the member has exercised the option under regulation 2.D.5 (partial retirement: members aged at least 55), and

(b) was a pensioner member by virtue of being entitled to a pension under that regulation.

(2) The lump sum is an amount equal to the sum of--

(a) twice the appropriate fraction of the member's reckonable pay in that employment at the date of death, and

(b) if the member had been entitled to any pensions under regulation 2.D.5 for less than 5 years, the lesser of--

(i) the total of the guarantee amounts for each of those pensions (see paragraph (3)), and

(ii) the aggregate lump sum cap (see paragraph (4)).

In the case of a 2008 Section Optant, this is subject to regulation 2.K.23.

(3) The guarantee amount for a pension under regulation 2.D.5 is five times the annual rate of the pension at the date of death, less the amount of the pension payments already made to the member in respect of the pension.

(4) The aggregate lump sum cap is equal to twice the appropriate fraction of the reckonable pay by reference to which the pension to which the member became entitled on last exercising the option under regulation 2.D.5 was calculated, less the total of any lump sums paid to the member--

(a) in exchange for pensions under regulation 2.D.5 as a result of the member exercising the option under regulation 2.D.14, and

(b) in the case of a 2008 Section Optant, the lump sum paid to that Optant under regulation 2.K.12.

(5) In this regulation "the appropriate fraction" means--

$DPS / TDPS$

where--

DPS is, where the member continues in pensionable service as an active member or a non-contributing member on the option day (or the last such option day if the option has been exercised more than once), the total number of days which do not form part of the specified percentage of pensionable service at the option day, and

TDPS is the aggregate of DPS and the total number of days of pensionable service (at the option day or the last such option day if the option has been exercised more than once) which forms part of the specified percentage of pensionable service.



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## **2.E.20 Amount of lump sum: pension credit members**

- (1) The lump sum payable on the death of a pension credit member who dies before any benefits derived from the member's pension credit have become payable is an amount equal to the amount of the annual pension to which the member would have become entitled under regulation 2.D.2 (pension credit members) if the member had reached the age of 65 on the date of death, multiplied by 2.25.
- (2) The lump sum payable on the death of a pension credit member who dies after a pension under that regulation has become payable is equal to the lower of--
  - (a) the annual amount of the pension that would have been payable to the member during so much of the period of five years beginning with the date on which the pension became payable as falls after the date of death, and
  - (b) *2RP CLS*,

where--

RP is the amount as at the valuation day of the reckonable pay of the debit member from whose rights the pension credit member's pension credit is derived, and

CLS is the amount of the lump sum (if any) paid to the pension credit member as a result of the member exercising the option under regulation 2.D.14 (general option to exchange part of pension for lump sum) on becoming entitled to the pension under regulation 2.D.2.

~~(3)~~— [omitted]

(4) In this regulation--

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

## **2.E.20A Pension payable when member dies on or after reaching age 75**

- (1) If, on or before 5th April 2011, a pensioner member or a pension credit member dies--
  - (a) on or after reaching age 75, and
  - (b) before the fifth anniversary of the date on which the member's pension became payable,an annual pension, calculated in accordance with paragraph (2), may be payable from the day following the date of the member's death until the anniversary referred to in sub-paragraph (b).
- (2) The pension payable under paragraph (1) is determined by--
  - (a) calculating the amount of the lump sum that would have been payable in respect of the pensioner member or pension credit member under regulation 2.E.17(2) or, as the case may be, 2.E.20 as if on the day the member died the member had not reached the age of 75, and
  - (b) converting any amount determined in sub-paragraph (a) to an annual pension payable for the period specified in paragraph (1), by reference to guidance and tables provided by the Scheme actuary for the purpose.

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(3) The "beginning date" of the pension calculated in paragraph (2) will, for the purposes of the Pensions (Increase) Act 1971, be the day immediately following the date of death of the pensioner member or pension credit member.

(4) The pension calculated under this regulation will be payable in accordance with regulation 2.E.21.

#### **2.E.21 Payment of lump sums or pensions on death**

(1) A lump sum payable under regulation 2.E.16 or a pension payable under regulation 2.E.20A must be paid in accordance with this regulation.

(2) The lump sum or pension must be paid to the member's personal representatives, except so far as it is payable to a different person or body under paragraph (4), (6) or (10).

(3) A member may give notice to the Secretary of State--

(a) specifying--

(i) the member's personal representatives,

(ii) one or more other individuals, or

(iii) one incorporated or unincorporated body,

to whom the lump sum or pension is to be paid, and

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

(4) If the member--

(a) has given notice under paragraph (3) specifying a person, and

(b) has not revoked that notice,

the lump sum or pension (or, as the case may be, the percentage of it specified in respect of the person) may be paid to the person, unless paragraph (5) or (7) applies.

(5) This paragraph applies if--

(a) the person specified in the notice has died before the payment can be made, or

(b) payment to that person is not, in the opinion of the Secretary of State, reasonably practicable.

(6) If the member--

(a) leaves a surviving adult dependant, and

(b) has not given notice under paragraph (3) or has revoked any notice so given,

the lump sum or pension may be paid to that person unless paragraph (7) applies.

(7) This paragraph applies if the person to whom the lump sum or pension (or a specified percentage of the lump sum or pension) would otherwise be payable has been convicted of an offence specified in regulation 2.J.7(2) (forfeiture of rights to benefit) and the Secretary of State has directed, as a consequence of that

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conviction, that the person's right to a payment in respect of the member's death is forfeited.

(8) A notice under paragraph (3)--

- (a) must be given in writing, and
- (b) may be revoked at any time by a further notice in writing.

(9) The Secretary of State may pay the lump sum to any person claiming to be the member's personal representative or otherwise to fall within paragraph (3)(a), without requiring proof that the person is such a person concerned, if the lump sum does not exceed--

- (a) £5,000, or
- (b) 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.

(10) The member's personal representatives 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 regulation 2.E.20A 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 the payment can be made,
- (b) payment to that person or body 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 2.J.7(4) (forfeiture of rights to benefit) 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.

(12) The prohibition on assignment of benefits in regulation 2.J.13 (prohibition on assignment or charging of benefits) shall not apply to an assignment by personal representatives under this regulation.

(13) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.20.

(14) In the case of a Waiting Period Joiner, this regulation is subject to regulation 2.L.2.

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## **2.E.22 Tax treatment under the 2004 Act of lump sums payable on pensioners' deaths**

- (1) A pensioner's lump sum (less any amount deducted under paragraph (4) where that applies) is treated for the purposes of the 2004 Act as a pension protection lump sum death benefit if the member has given the Scheme administrator a statement in writing that any such lump sum is to be treated as such a benefit.
- (2) In this regulation "pensioner's lump sum" means--
  - (a) a lump sum payable under regulation 2.E.16 to which regulation 2.E.17(2) applies, or
  - (b) so much of a lump sum payable under regulation 2.E.16 as is calculated under regulation 2.E.18(2).
- (3) Paragraph (4) applies if the person who is the scheme administrator for the purposes of section 206 of the 2004 Act ("the administrator") is liable for tax under that section in respect of a pension protection lump sum death benefit.
- (4) The administrator may deduct from the lump sum the tax payable in respect of it.

## ***Miscellaneous and general provisions***

### **2.E.23 Death during period of absence**

- (1) This regulation applies if a person dies during a period when the person--
  - (a) is absent from work because of illness or injury,
  - (b) is on ordinary maternity leave,
  - (c) is on ordinary adoption leave,
  - (d) is on paternity leave, parental leave or shared parental leave,and the earnings used to calculate the person's pensionable pay have ceased to be paid before the person's death.
- (2) Any benefits payable under this Chapter must be calculated as if the person had died in pensionable service on the day before those earnings ceased.

### **2.E.24 Polygamous marriages**

- (1) This regulation applies if--
  - (a) a member dies without leaving a surviving adult dependant, and
  - (b) at the date of death the member was married to one or more persons under a law which permits polygamy.
- (2) If, had the member left a surviving adult dependant, any benefit would have been payable to the surviving adult dependant as such, that benefit is payable--
  - (a) if there is one such person, to that person, or
  - (b) if there are two or more such persons, to those persons in equal shares.

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- (3) Such a person's share of a pension will not be increased on the death of any of such persons.

#### **2.E.25 Dual capacity membership: death benefits**

- (1) This paragraph applies if the deceased member was--
- (a) a member of this Section of the Scheme of two or more of the kinds specified in paragraph (2),
  - (b) a pensioner member in respect of two or more pensions, or
  - (c) a deferred member in respect of two or more pensions.
- (2) The kinds of member are--
- (a) an active member,
  - (b) a deferred member,
  - (c) a pensioner member, and
  - (d) a pension credit member.
- (3) If paragraph (1) applies, the general rule is that--
- (a) benefits are payable in respect of the member under this Chapter as if two or more members of the kinds in question had died (so that two or more pensions or lump sums are payable in respect of the one deceased member), and
  - (b) the amounts payable are determined accordingly.
- (4) Paragraph (3) does not apply where specific provision to the contrary is made about a person to whom that paragraph would otherwise apply.
- (5) See, in particular--
- (a) regulation 2.E.3 (amount of pensions under regulation 2.E.1: active members),
  - (b) regulation 2.E.4 (amount of pensions under regulation 2.E.1: pensioner members),
  - (c) regulation 2.E.7 (re-employed pensioners: adult survivor pensions in initial period),
  - (d) regulation 2.E.8 (surviving children's pensions),
  - (e) regulation 2.E.15 (amount of children's pension under regulation 2.E.8: re-employed pensioners),
  - (f) regulation 2.E.16 (lump sum benefits on death: introduction),
  - (g) regulation 2.E.18 (amount of lump sum: dual capacity members (disregarding regulation 2.D.5 employments)),
  - (h) regulation 2.E.19 (amount of lump sum: dual capacity members: members with pensions under regulation 2.D.5), and
  - (hh) regulation 2.E.20A (pension payable when member dies on or after reaching age 75),
  - (i) Chapter 2.G (re-employment and rejoining this Section of the Scheme).

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(6) If a person who is a pension credit member is entitled to two or more pension credits--

- (a) benefits are payable in respect of the person under this Chapter as if the person were two or more persons, each being entitled to one of the pension credits (so that two or more pensions or lump sums are payable in respect of the one pension credit member), and
- (b) the amounts of those benefits are determined accordingly.

#### **2.E.26 Guaranteed minimum pensions for surviving spouses and civil partners**

(1) If a person who is the surviving spouse or civil partner of a deceased active, deferred or pensioner member has a guaranteed minimum under section 17 of the 1993 Act in relation to benefits in respect of the deceased member under this Section of the Scheme--

- (a) nothing in this Part permits or requires anything that would cause requirements made by or under that Act in relation to such a person and such a person's rights under a scheme not to be met in the case of the person,
- (b) nothing in this Part prevents anything from being done which is necessary or expedient for the purposes of meeting such requirements in the case of the person, and
- (c) paragraph (2) is without prejudice to the generality of this paragraph.

(2) If apart from this regulation--

- (a) no pension would be payable to the surviving spouse or civil partner under this Chapter, or
- (b) the weekly rate of the pensions payable would be less than the guaranteed minimum,

a pension the weekly rate of which is equal to the guaranteed minimum is payable to the surviving spouse or civil partner for life or, as the case may be, pensions the aggregate weekly rate of which is equal to the guaranteed minimum are so payable.

(3) Paragraph (2) does not apply to a pension that is forfeited following a conviction for any of the following—

- (a) treason;
- (b) an offence under the Official Secrets Acts 1911 to 1989 referred to in regulation 2.J.7(2)(b);
- (c) murder or manslaughter or any other offence of unlawful killing referred to in regulation 2.J.7(4).

## **Chapter 2.F Transfers**

### ***Transfers out***

#### **2.F.1 Introduction: rights to transfer value payment**

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- (1) This Chapter supplements the rights conferred by or under Chapter 1 of Part 4ZA of the 1993 Act (transfer rights: general).
- (2) This Chapter is without prejudice to that Chapter or Chapter 2 of that Part (early leavers: cash transfer sums and contribution refunds).
- (3) Accordingly--
  - (a) a member to whom Chapter 1 of that Part applies (see section 93 of that Act) is entitled to require the payment of a transfer value in respect of the rights to benefit that have accrued to or in respect of the member under this Section of the Scheme, and
  - (b) a member to whom Chapter 2 of that Part applies (see section 101AA(1) of that Act) is entitled to a cash transfer sum or a contribution refund in accordance with that Chapter.
- (4) Subject to paragraphs (5) and the other provisions of this Chapter, any other member is entitled to require such a payment as if such rights had accrued to or in respect of him by reference to the pensionable service the member is entitled to count under this Section of the Scheme (and references in this Chapter to the member's accrued rights or benefits are to be read accordingly).
- (5) Paragraph (4) does not--
  - (a) give any rights to an active member,
  - (b) give any rights to a pensioner member in respect of the pension to which the member has become entitled, or
  - (c) give any rights to a pension credit member in respect of rights that are directly attributable to a pension credit.

## **2.F.2 Applications for statements of entitlement**

- (1) A member who requires a transfer value payment to be made 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 this Part, "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.

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.

- (3) 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



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Secretary of State, the requisite information cannot be obtained to calculate the amount of the cash equivalent.

(4) The member may withdraw the application for a statement of entitlement by notice in writing at any time before the statement is provided.

### **2.F.3 Applications for transfer value payments: general**

(1) A member who has applied for and received a statement of entitlement under regulation 2.F.2 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 2.F.4(2)).

(3) In this Part 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.

### **2.F.4 Applications for transfer value payments: time limits**

(1) An application under regulation 2.F.3(1) 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 65.

This is subject to paragraph (4).

(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% above the base rate.

(3) Paragraph (4) 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 the Scheme, and

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- (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 2.J.7 (forfeiture of rights to benefit).
- (4) 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.
- (5) In any case where a direction is given under regulation 2.J.7 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.
- (6) In respect of an applicant who falls within regulation 2.F.1(4)--
  - (a) in the case of an application that requires the guaranteed cash equivalent transfer value payment to be made to a registered occupational pension scheme or a registered personal pension scheme, an application under paragraph (1) may only be made if--
    - (i) the applicant became a member of that scheme not later than the end of the period of 12 months beginning with the day after the date on which the member ceased to be in the pensionable service in which the rights accrued ("the leaving date"), and
    - (ii) the application is made not later than--
      - (aa) the end of the period of 12 months beginning with the day on which the applicant became a member of that scheme, or
      - (bb) if the applicant became a member of that scheme on or before the leaving date, the end of the period of 12 months beginning with the day after the leaving date.
  - (b) in any other case, an application under paragraph (1) may only be made before the end of the period of 12 months beginning with the day after the leaving date.

## **2.F.5 Ways in which transfer value payments may be applied**

- (1) A deferred member may only require the Secretary of State to apply the guaranteed cash equivalent transfer value payment in one or more of the ways permitted under section 95 of the 1993 Act.
- (2) In any other case, a member may only require the Secretary of State to apply the guaranteed equivalent transfer value payment in one or more of the ways permitted under section 101AE of the 1993 Act.
- (3) The whole of the guaranteed cash equivalent transfer value payment must be applied, 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 6 April 1997,

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may be excluded from the guaranteed 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 transfer payment may only be made to--

- (a) a pension scheme that is registered under Chapter 2 of Part 4 of the 2004 Act, or
- (b) an arrangement that is a qualifying recognised overseas pension scheme for the purposes that Part (see section 169(2) of that Act).

(6) Paragraph (1) applies whether or not the deferred member is entitled to a guaranteed cash equivalent transfer value payment under Chapter 1 of Part 4ZA of the 1993 Act.

## **2.F.6 Calculating amounts of transfer value payments**

(1) The amount of the guaranteed cash equivalent transfer value payment is to be calculated and verified by the Secretary of State in accordance with the Occupational Pension Schemes (Transfer Values) Regulations 1996.

This is subject to paragraphs (2), (3) and (5).

(2) Before determining the factors to be used in the calculation of the member's guaranteed cash equivalent, the Secretary of State shall take advice from the Scheme actuary.

(3) If the amount calculated in accordance with paragraph (1) is less than the member's minimum transfer value (if any), the amount of the guaranteed cash equivalent transfer value payment is to be equal to that value instead.

This is subject to paragraph (5).

(4) In paragraph (3) "minimum transfer value" means--

- (a) in the case of a person other than a 2008 Section Optant, the sum of--

- (i) any transfer value payments that have been made to this Section of the Scheme in respect of the person as a result of which the person is entitled to count any pensionable service under this Section of the Scheme by reference to which the accrued rights subject to the transfer are calculated, and

- (ii) any contributions paid by the person under Chapter 2.C as a result of which the person is entitled to count such service;

- (b) in the case of a 2008 Section Optant, the sum of--

- (i) any transfer value payments that have been made to this Section of the Scheme in respect of the person as a result of which the person is entitled to count any pensionable service under this Section of the Scheme by reference to which the accrued rights subject to the transfer are calculated,

- (ii) any contributions paid by the person under Chapter 2.C as a result of which the person is entitled to count such service, and

- (iii) the aggregate of any--

- (aa) transfer value payments that have been made to the 1995 Section in respect of the Optant;

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(bb) any contributions paid by the Optant under regulation D1 of the 1995 Regulations (contributions by members) in respect of pensionable employment in that Section on or before 31 March 2008, and

(cc) any payments made by the Optant under regulation Q1 of the 1995 Regulations (right to buy additional service) for the purchase of additional service,

which entitle the Optant to count, under Chapter 2.K, any pensionable service by reference to which the accrued rights subject to the transfer are calculated.

(5) 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 (1) 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.

(6) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.12.

## **2.F.7 Effect of transfers-out**

(1) If a transfer value payment is made under this Chapter in respect of a person's rights under this Section of the Scheme, those rights are extinguished.

### ***Transfers in***

## **2.F.8 Right to apply for acceptance of transfer value payment from another scheme**

(1) Subject to the provisions of this Chapter, an active member may apply for a transfer value payment in respect of some or all of the rights that have accrued to or in respect of him under any kind of scheme or arrangement to which paragraph (2) applies, other than a FSAVC, to be accepted by this Section of the Scheme.

(2) This paragraph applies to--

(a) a registered occupational pension scheme other than a corresponding health service scheme,

(b) a registered personal pension scheme,

(c) a registered buy-out policy, and

(d) a corresponding 1995 scheme, and

(e) a corresponding 2008 scheme.

(2A) a member who makes an application for a transfer value to be accepted by the Secretary of State in respect of his rights under a corresponding 2008 scheme may not also make an application for a transfer value to be accepted in respect of his rights under a corresponding 1995 scheme.

(3) Paragraph (1) does not apply to rights that are directly attributable to a pension credit.

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- (4) In this regulation "FSAVC" means--
- (a) a scheme which--
    - (i) immediately before 6th April 2006 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), and
    - (ii) became a registered scheme for the purposes of the 2004 Act by virtue of Schedule 36 to that Act, or
  - (b) a scheme established on or after that date as a registered free-standing AVC scheme.
- (5) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.13.

## **2.F.9 Procedure for applications under regulation 2.F.8**

- (1) An application under regulation 2.F.8---
- (a) must be made in writing,
  - (b) must specify the scheme or arrangement from which the transfer value payment is to be made and the anticipated amount of the payment,
  - (c) may only be made—
    - (i) during the period of one year beginning with the day on which the applicant becomes eligible to be an active member of this Section of the Scheme and before the applicant reaches the age of 65; or
    - (ii) where the applicant is not eligible to be an active member of this Section of the Scheme and the application is made in respect of a transfer from a corresponding 2008 Scheme, during the period of one year beginning with the day on which the applicant becomes eligible to be an active member of the 2015 Scheme if either—
      - (aa) paragraph 2 of Schedule 7 to the 2013 Act, or
      - (bb) 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; or
    - (iii) where the applicant is not eligible to be an active member of this Section of the Scheme and the application is made in respect of a period of service in an existing scheme (within the meaning of Schedule 5 to the 2013 Act or Schedule 5 to the 2014 Act) or an existing public body scheme listed in Schedule 10 to those Acts, during the period of one year beginning with the day on which the applicant becomes eligible to be an active member of the 2015 Scheme if—
      - (aa) paragraph 2 of Schedule 7 to the 2013 Act or paragraph 2 of Schedule 7 to the 2014 Act applies to the period of service in respect of which that transfer value payment is made, and

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- (bb) the transfer value payment is not made and accepted under the public sector transfer arrangements.
- (d) if the Secretary of State so requires, may only be made if the member has first requested a statement--
  - (i) in the case of a transfer made under the public sector transfer arrangements, of the service that the member will be entitled to count as a result of the transfer if the payment is accepted by the Secretary of State, and
  - (ii) in a case where the transfer is not made under those arrangements (including a transfer of rights from a corresponding 1995 scheme), of the service that member will be entitled so to count if the payment is so accepted by the Secretary of State within such period as is specified in the statement, and
- (e) must meet such other conditions as the Secretary of State may require.
- (2) A statement given to the member in pursuance of such a request as is mentioned in paragraph (1)(d)--
  - (a) in the case mentioned in paragraph (1)(d)(i), must inform the member of the effect (if any) of regulation 2.A.12 (restriction on reckonable pay used for calculating benefits in respect of capped transferred-in service) in the member's case, and
  - (b) in the case mentioned in paragraph (1)(d)(ii), must specify such amount as is calculated in accordance with guidance and tables provided by the Scheme actuary for the purpose.
- (3) A statement given to the member of a corresponding 1995 scheme in pursuance of such a request as is mentioned in paragraph (1)(d) must inform the member of the amount of pensionable service that will count under this Section of this Scheme for the purposes of--
  - (a) calculating benefits payable to or in respect of the member, and
  - (b) determining whether or not the member has reached 45 years of pensionable service for the purposes of regulation 2.A.3.

## **2.F.10 Acceptance of transfer value payments**

- (1) If an application is duly made by a member under regulation 2.F.8, the Secretary of State may accept the transfer value payment if such conditions as the Secretary of State may require are met, unless paragraph (5) applies.
- (2) If the Secretary of State accepts the payment--
  - (a) the member is entitled to count the appropriate period of pensionable service for the purposes of calculating benefits payable to or in respect of the member under this Section of the Scheme, but
  - (b) in the case of a member any of whose service falls to be treated as capped transferred-in service, with such period as so falls counting as such service.
- (3) In paragraph (2)(a) "the appropriate period" means the period calculated in accordance with regulation 2.F.11.



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(3A) If the Secretary of State accepts the payment from the member of a corresponding 1995 scheme, the relevant period of pensionable service shall count when determining whether or not the member has reached 45 years of pensionable service for the purposes of regulation 2.A.3.

(3B) In paragraph (3A) "the relevant period" means the period calculated in accordance with regulation 2.F.11.

(4) For the meaning of "capped transferred-in service", see regulation 2.F.12.

(5) The Secretary of State may not accept a transfer value payment if--

(a) it would be applied in whole or in part in respect of the member's entitlement to a guaranteed minimum pension, and

(b) it is less than the amount required for that purpose, as calculated in accordance with guidance and tables prepared by the Scheme actuary for the purposes of this paragraph.

(6) Paragraph (5) does not apply if the transfer would be paid under the public sector transfer arrangements.

(7) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.13.

## **2.F.11 Calculation of transferred-in pensionable service**

(1) Subject to this regulation, the period of service that the member is entitled to count under regulation 2.F.10 as the result of a transfer is to be calculated in accordance with any guidance, tables and other relevant factors provided by the Scheme actuary for that purpose.

(2) For the purposes of the calculation under paragraph (1) the member's annual pensionable pay is to be taken to be the amount of that pay as at the day on which the member's pensionable service begins ("the starting day"), unless paragraph (3) applies.

(3) If the transfer payment is received by the Secretary of State more than 12 months after the starting day, the member's annual pensionable pay is to be taken to be the amount of that pay as at the day on which the transfer payment is received.

(4) But paragraph (3) does not apply if--

(a) a written statement estimating the pensionable service that the member would be entitled to count as result of the transfer was given to the member by the Secretary of State during the period of 3 months ending 12 months after the starting day, and

(b) the transfer payment is received by the Secretary of State less than 3 months after the date of the statement.

(5) If the transfer value payment is accepted under the public sector transfer arrangements, the period of pensionable service the member is entitled to count is calculated--

(a) in accordance with those arrangements, and



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- (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 that is used by the transferring scheme for calculating the transfer value payment.
- (6) If the transfer value payment is accepted from a corresponding 2008 scheme, the period of pensionable service the member is entitled to count is the period that the member would be entitled to count if--
  - (a) the member's employment to which that scheme applied were NHS employment in respect of which the member was a member of this Section of the Scheme, and
  - (b) the member's contributions to that scheme were contributions to this Section of the Scheme.
- (7) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.13.

## **2.F.12 Meaning of "capped transferred-in service"**

- (1) This regulation applies if--
  - (a) the Secretary of State accepts a transfer value payment in respect of a member under a transfer to which the public sector transfer arrangements apply, and
  - (b) the service in respect of which the transfer is made was or included capped service in employment to which the Scheme from which the transfer value payment is made ("the transferring scheme") applied.
- (2) For the purposes of this Part, the same proportion of the service that the member is entitled to count under regulation 2.F.10(2)(a) as the capped service bears to the whole of the service in respect of which the transfer is made is capped transferred-in service.
- (3) For the purposes of paragraph (1)(b), the service in respect of which the transfer is made was capped service so far as--
  - (a) in the case of service before 6th April 2006, the member was an active member of the transferring scheme whose pension under that scheme in respect of the service was to be calculated by reference to remuneration limited in each tax year to the permitted maximum for that year within the meaning of section 590C(2) of the Income and Corporation Taxes Act 1988, or
  - (b) in the case of service on or after 6th April 2006, the member was an active member of the transferring scheme whose pension under that scheme in respect of the service was to be calculated by reference to remuneration limited in each tax year to an amount calculated in the same manner as the permitted maximum under that section was calculated for tax years ending before that date.
- (4) For the purposes of paragraph (3), it does not matter whether, apart from the application of the limit, the member's remuneration in any tax year would have exceeded the amount of the limit.
- (5) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.13.

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### **2.F.13 Public sector transfer arrangements**

(1) This Chapter applies to a transfer where—

- (a) the member is an active member of the 2015 Scheme,
- (b) the member makes an application under regulation 2.F.8 for a transfer value payment in respect of some or all of the rights that have accrued to or in respect of the member under—
  - (i) an existing scheme listed in Schedule 5 to the 2013 Act,
  - (ii) an existing public body scheme listed in Schedule 10 to that Act,
  - (iii) another occupational pension scheme that participates in the Public Sector Transfer Club,
- (c) the application under regulation 2.F.8 is made within one year beginning with the day the member became eligible to be an active member of the 2015 Scheme and before the member reaches the member's normal pension age in the 2015 Scheme,
- (d) the transfer value payment is made and accepted under the public sector transfer arrangements, and
- (e) on the day the transfer is completed, paragraph 2 of Schedule 7 to the 2013 Act applies to the period of service in respect of which the transfer value payment is made.

(2) This Chapter also applies in the case of any other transfer to which the public sector transfer arrangements apply (not being a transfer referred to in paragraph (1)) as it applies in other cases, except to the extent that—

- (a) any provision in this Chapter provides otherwise, or
- (b) the arrangements themselves make different provision.

### **2.F.14 Bulk transfers out**

(1) This regulation applies if--

- (a) the employment of one or more active members ("the transferring employees") is transferred without their consent to a new employer,
- (b) on that transfer the transferring employees cease to be eligible to be active members of this Section of the Scheme,
- (c) after that transfer the transferring employees become active members of another occupational pension scheme ("the new employer's scheme"),
- (d) the Secretary of State has agreed special terms for the making of transfer value payments in respect of the transferring employees to the new employer's scheme, after consultation with the Scheme actuary, and
- (e) the transferring employees have consented in writing to their rights being transferred in accordance with those terms.

(2) In the case of the transferring members or the transferred members the transfer value payment to be paid--

- (a) is not calculated in accordance with regulation 2.F.6, but
- (b) is to be such amount as the Secretary of State determines to be appropriate in accordance with the special terms after consulting the Scheme actuary.

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(3) This Chapter has effect with such modifications as are necessary to give effect to those terms.

(4) If the transfer is directly or indirectly attributable to an enactment, this Chapter has effect with such modifications as the Secretary of State considers necessary in consequence of the transfer.

(5) Where a member to whom this regulation applies is also a member to whom Part 3 applies, a bulk transfer under this regulation also operates as a transfer of that member's rights under Part 3.

### **2.F.15 Bulk transfers in**

(1) This regulation applies if--

- (a) the employment of one or more persons ("the transferred employees") is transferred without their consent to a new employer,
- (b) on that transfer the transferred employees cease to be active members of an occupational pension scheme ("the former employer's scheme"),
- (c) after that transfer the transferred employees become active members of this Section of the Scheme,
- (d) the Secretary of State has agreed special terms for the acceptance of transfer value payments in respect of the transferred employees from the former employer's scheme, after consulting the Scheme actuary, and
- (e) the transferred employees have consented in writing to their rights being transferred in accordance with those terms.

(2) This Section of the Scheme has effect with such modifications as are necessary to give effect to the terms mentioned in paragraph (1)(e).

(3) If the transfer is directly or indirectly attributable to an enactment, this Section of the Scheme has effect with such modifications as the Secretary of State considers necessary in consequence of the transfer.

### **2.F.16 EU and other overseas transfers**

(1) This regulation applies in the case of a member whose transfer is subject to transfer arrangements concluded with any scheme for the provision of retirement benefits established outside the United Kingdom.

(2) The Scheme applies in relation to the member with such modifications as the Secretary of State considers necessary to comply with--

- (a) the terms of those arrangements,
- (b) any applicable provision contained in or made under any enactment, and
- (c) the requirements to be met by a scheme registered under Chapter 2 of Part 4 of the 2004 Act.

### **2.F.17 Transfers across from the 1995 Section**

(1) An active member who is entitled to have a cash equivalent value calculated in respect of the entirety of the member's rights under the 1995 Section, pursuant to

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regulation M7 of the 1995 Regulations, may apply to convert that cash equivalent value into rights under this Section of the Scheme.

- (2) An application under paragraph (1)--
  - (a) must be made in writing using an application form provided for the purpose by the Secretary of State,
  - (b) may only be made before the end of the period of three months beginning with the guarantee date established under regulation M7 of the 1995 Regulations,
  - (c) may only be made if the member has first been furnished with a statement of the pensionable service that the member will be entitled to count under this Section of the Scheme if the application is accepted by the Secretary of State,
  - (d) must meet such other conditions as the Secretary of State may require, and
  - (e) is irrevocable.
- (3) The statement mentioned in paragraph (2)(c) must--
  - (a) inform the member of the amount of pensionable service that will count under this Section of this Scheme for the purposes of calculating benefits payable to or in respect of the member,
  - (b) inform the member of the amount of pensionable service that will count under this Section of this Scheme when determining whether or not the member has reached 45 years of pensionable service for the purposes of regulation 2.A.3, and
  - (c) be calculated in accordance with any guidance, tables and other relevant factors provided by the Scheme actuary for that purpose.
- (4) If the Secretary of State accepts an application under paragraph (1)--
  - (a) the member is entitled to count under this Section of this Scheme the periods of pensionable service mentioned in paragraphs (3)(a) and (b) for the purposes specified therein, and
  - (b) those periods of pensionable service shall be credited to the member on the day that the Secretary of State received the member's application.

## **2.F.18 Right to transfer a deferred pension to the 2015 Scheme**

(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 a deferred member of this Section of the Scheme, and
- (b) became an active member of the 2015 Scheme before attaining the age of 65.

(3) Condition B is that the member has 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 service in respect of which that

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person is a deferred member of this Section of the Scheme and ending on the day immediately before the person became an active member of the 2015 Scheme in accordance with paragraph (2)(b).

(4) Condition C is that the member—

- (a) has 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 active membership of this Section of the Scheme 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.

(5A) The Secretary of State must provide a member to whom this regulation applies with a notice in writing stating that the member has the right to request a statement of the amount of the cash equivalent of the member's benefits accrued in accordance with these Regulations ("a statement of entitlement").

(5B) The Secretary of State must provide the member with the notice referred to in paragraph (5A) within 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.

(5C) A member who has received a notice in accordance with paragraph (5A) may request the Secretary of State to provide a statement of entitlement in accordance with paragraph (5D).

(5D) For the purposes of paragraph (5C), a request for a statement of entitlement must—

- (a) be made by the member in writing on the form provided by the Secretary of State for that purpose;
- (b) be received by the Secretary of State before the end of the three month period beginning with the date of the notice under paragraph (5A).

(6) The Secretary of State must provide a member who has requested a statement of entitlement in accordance with paragraph (5D) with a statement of entitlement at the guarantee date.

(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.

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(9) In paragraph (7), “the required period” means—

- (a) the period of three months beginning with the date that the Secretary of State receives the member’s request for a statement of entitlement in accordance with paragraph (5D); 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 must—

- (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) 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 2.F.10, 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 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.



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## **Chapter 2.G**

### **Re-employment and Rejoining this Section of the Scheme**

#### **Preliminary**

#### **2.G.1 Application of Chapter 2.G**

- (1) This Chapter applies to persons who--
- (a) have been active members of this Section of the Scheme in respect of their service in an employment,
  - (b) have ceased to be employed in that employment and have become deferred members or pensioner members of this Section of the Scheme because of their rights in respect of that service,
  - (c) become employed again in an employment that qualifies them to belong to this Section of the Scheme, and
  - (d) become active members of this Section of the Scheme in respect of their service in that employment.

This is subject to paragraphs (4) to (7).

- (2) In these regulations a member to whom this Chapter applies is referred to as a "re-employed member".

- (3) In this Chapter, in relation to any re-employed member--

- (a) the service referred to in paragraph (1)(a) is referred to as "the earlier service", and
- (b) the service referred to in paragraph (1)(d) is referred to as "the later service".

- (4) This Chapter also applies to members who--

- (a) cease to be active members in respect of their service in an employment as the result of exercising the option under regulation 2.B.5, and
- (b) later become active members in that or another employment,

as it applies to members who cease to be employed in the employment in which they are active members, and paragraph (3) must be read accordingly.

- (5) This Chapter does not apply if the earlier service and the later service are treated as a single continuous period of pensionable service under regulation 2.A.4(5) (pensionable service: breaks in service).

- (6) Regulation 2.G.4 applies whether or not the employment mentioned in paragraph (1)(c) is employment that qualifies the member to belong to this Section of the Scheme.

- (7) Regulation 2.G.6 applies whether or not the deferred member becomes an active member in the NHS employment in which the deferred member is re-employed.

- (8) If a re-employed member ceases to be an active member again, this Chapter applies again in respect of the later service as if it were the earlier service (and so on).



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**General rule: separate treatment of service etc except where unfavourable to member**

**2.G.2 General rule: separate treatment of service etc**

- (1) The general rule is that, in accordance with regulations 2.D.21 and 2.E.25--
  - (a) the re-employed member's pensionable service in respect of the earlier service and the later service are treated separately, and
  - (b) the re-employed member's reckonable pay in respect of the earlier service and the later service is determined separately.
- (2) This regulation is subject to the provisions mentioned in regulations 2.D.21(4) and 2.E.25(5).

**2.G.3 Exception to general rule in 2.G.2**

- (1) The general rule in regulation 2.G.2 does not apply if--
  - (a) at the time that the member first becomes entitled to a pension under this Section of the Scheme in respect of the earlier service or the later service, or
  - (b) if it is earlier, at the time of the member's death,in the opinion of the Secretary of State the benefits payable to or in respect of the member would be more valuable if that general rule were disregarded.
- (2) Accordingly, in a case within paragraph (1)--
  - (a) the member's pensionable service in respect of the earlier service and the later service are treated as one single continuous period,
  - (b) the member's qualifying service in respect of the earlier service and the later service are each treated as one single continuous period,
  - (c) the member is not treated as a deferred member in respect of the earlier service, and
  - (d) the member's reckonable pay in respect of the later period may be determined by reference to the earlier period as well as the later period (as a result of regulation 2.A.10(8)).
- (3) This regulation is subject to regulation 2.G.6.

**Special rules about re-employment of ill-health pensioners**

**2.G.4 Effect of re-employment on tier 2 ill-health pensions**

- (1) This regulation applies if a member who is entitled to a tier 2 pension under regulation 2.D.8 in respect of earlier service--
  - (a) did not opt to exchange that pension for a lump sum in accordance with regulation 2.D.15, and
  - (b) has re-entered employment (the "further employment").
- (2) Subject to paragraphs (3) and (4), the member ceases to be entitled to the tier 2 ill-health pension under regulation 2.D.8, and becomes entitled to a tier 1 ill-health pension under that regulation.

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- (3) In a case where the further employment is--
- (a) not NHS employment, and
  - (b) an excluded employment,
- paragraph (2) does not apply.
- (4) In a case where the further employment is--
- (a) NHS employment, and
  - (b) an excluded employment
- paragraph (2) does not apply during the initial period.
- (5) As regards a further employment in NHS employment--
- (a) paragraph (2) applies from the first tier 1 ill-health pension payment date which falls after the first anniversary of the member's re-entry into NHS employment, whether or not that day is part of a continuous period of further NHS employment beginning with entry into that employment, and
  - (b) the member may not rejoin the Scheme in respect of that employment or any other NHS employment until after the first anniversary of the member's re-entry into NHS employment, whether or not that or any other NHS employment is an excluded employment.
- (6) For the purposes of this regulation--
- (a) an employment is an excluded employment at any time in a tax year, in relation to a member, if the member's earnings at that time for the purposes of national insurance from the employment and any other employments are such that the lower earnings limit for that year is not exceeded,
  - (b) for the purposes of paragraph (2) an employment that has been an excluded employment in a tax year is not treated as ceasing to be such an employment until the first day following the end of the pension pay period for the tier 2 ill-health pension in which the limit described in sub-paragraph (a) is first exceeded, and
  - (c) "the initial period" means the period of 12 months beginning with the day on which the member first enters an employment which results in this regulation applying.
- (7) A member who, before attaining the age of 65, has ceased to be entitled to a tier 2 ill-health pension under paragraph (2), and who--
- (a) is in further NHS employment and ceases to be employed at all during the initial period, or
  - (b) is in further employment that is not NHS employment and ceases to be employed in that further employment within a period of one year beginning with the day on which that further employment ceased to be an excluded employment,
- may apply to the Secretary of State under this paragraph to become entitled to a tier 2 ill-health pension.
- (8) An application under paragraph (7)--
- (a) where paragraph (7)(a) applies, must--

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- (i) state that the member has ceased to be employed at all,
  - (ii) be made within the initial period,
  - (iii) be made in writing and be accompanied by evidence from a registered medical practitioner that the member meets the condition in regulation 2.D.8(3)(a);
- (b) where paragraph (7)(b) applies, must--
  - (i) state that the member has ceased to be employed at all,
  - (ii) be made within a period of one year beginning with the day on which that employment ceased to be an excluded employment,
  - (iii) be made in writing and be accompanied by evidence from a registered medical practitioner that the member meets the condition in regulation 2.D.8(3)(a).
- (9) If on an application under paragraph (7) the Secretary of State is satisfied that the member meets the condition in 2.D.8(3)(a), from the day following that on which the member's last employment ceased--
  - (a) the member ceases to be entitled to the tier 1 ill-health pension under regulation 2.D.8, and
  - (b) becomes entitled to a tier 2 ill-health pension under that regulation in respect of the earlier service.
- (10) A member who falls within paragraph (1) must--
  - (a) notify the Secretary of State if the member is in NHS employment at the end of the initial period,
  - (b) notify the Secretary of State if the member's aggregate earnings for the purposes of national insurance from employments held in a tax year are such that the lower earnings limit for that year is exceeded,
  - (c) provide the Secretary of State or any other person specified by the Secretary of State with such further information as the Secretary of State specifies concerning any further employment.
- (11) This regulation is subject to regulation 2.G.5.

## **2.G.5 Re-employed tier 1 ill-health pensioners**

- (1) This regulation applies to re-employed members who are entitled to a tier 1 ill-health pension under regulation 2.D.8 in respect of the earlier service.
- (2) For the purposes of determining whether a member can count 45 years of pensionable service for any purpose, the earlier service and the later service are aggregated.
- (3) If the re-employed member became entitled to a tier 1 ill-health pension for the earlier service, and on the termination of the later service the member becomes entitled to--
  - (a) a tier 1 ill-health pension, or
  - (b) a tier 2 ill-health pension,

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under regulation 2.D.8 in respect of the later service, the re-employed member is entitled to the benefits set out in paragraph (4).

(4) The benefits mentioned in paragraph (3) are--

- (a) the member's original tier 1 ill-health pension in respect of his earlier service, and
- (b) a tier 1 or, as the case may be, tier 2 ill-health pension in respect of the later service.

This is subject to paragraph (5).

(5) If the re-employed member--

- (a) ceases to be entitled to a tier 1 ill-health pension in respect of the earlier service,
- (b) becomes entitled to a tier 2 ill-health pension in respect of that earlier service in accordance with regulation 2.D.9(3), and
- (c) on the termination of the later service, the member becomes entitled to a tier 1 or, as the case may be, tier 2 ill-health pension in respect of that later service,

the re-employed member is entitled to the benefits set out in paragraph (6).

(6) The benefits mentioned in paragraph (5) are--

- (a) a tier 2 ill-health pension paid in accordance with regulation 2.D.9 in respect of the member's earlier service, and
- (b) a tier 1 ill-health pension in respect of the member's later service.

### ***Special rule for members transferred out on transfer of undertaking***

#### **2.G.6 Deferred pension becoming payable during NHS re-employment as a result of a transfer of undertaking**

(1) This regulation applies if a re-employed member becomes entitled to a pension under 2.D.1 or 2.D.4 by virtue of the application of regulation 2.D.13(2)(a) (transfer of undertaking to employing authority).

(2) Regulation 2.G.3 does not apply.

(3) Accordingly, any benefits payable in respect of the later service are calculated without regard to pensionable service in respect of the earlier service.

This is subject to paragraph (4).

(4) For the purposes of determining whether a member can count 45 years pensionable service for any purpose, the earlier service and the later service are aggregated.

## **Chapter 2.H Abatement**

### **2.H.1 Application of Chapter 2.H**

(1) This Chapter applies if--

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- (a) a person who is a pensioner member of this Section of the Scheme is employed in NHS employment,
  - (b) the person's employment is not employment to which the person was transferred as a result of a transfer of an undertaking to the person's employer,
  - (c) the person's pension is a pension under--
    - (i) regulation 2.D.8 (early retirement on ill-health: active members),
    - (ii) regulation 2.D.10 (early retirement on ill-health: deferred members), or
    - (iii) regulation 2.D.11(1)(d)(ii) (early retirement on termination of employment by employing authority) in a case where the Secretary of State certified that the member's employment was terminated in the interests of the efficiency of the service in which the member was employed, and
  - (d) the person has not reached the age of 65.
- (2) In this Chapter "NHS employment" includes--
- (a) employment with an employer in respect of whom a direction has been made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967,
  - (b) employment to which regulations made under section 10 of the Superannuation Act 1972 and having effect in Scotland apply,
  - (c) employment to which regulations made under Article 12 of the Superannuation (Northern Ireland) Order 1972 apply,
  - (d) 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
  - (e) employment with an employer with whom an agreement has been made under section 235 of the 2006 Act.
- (3) In this Chapter, subject to paragraph (4)--
- (a) a person to whom this Chapter applies is referred to as an "employed pensioner",
  - (b) the pension to which the employed pensioner is entitled is referred to as the "old service pension",
  - (c) the employment in respect of which the pension is payable is referred to the "the old employment", and
  - (d) the employment in which the employed pensioner is employed is referred to as the "new employment".
- (4) This Chapter applies whether or not the person is an active member of this Section of the Scheme in the new employment.
- This is subject to paragraph (4A).
- (4A) This Chapter does not apply to a person who is a pensioner member of this Section of the Scheme if—
- (a) that person is employed by an Independent Provider—
    - (i) on the day that Provider's approval as an employing authority takes effect in accordance with Chapter 2.M ("the effective date"); and

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(ii) on the day immediately before the effective date; and

(b) any of paragraphs (4B), (4C) or (4D) apply to that person.

(4B) This paragraph applies to a person who is not eligible to be an active member of this Section of the Scheme on the effective date and remains ineligible to be such a member.

(4C) This paragraph applies to a person who exercises an option not to rejoin this Section of the Scheme which takes effect from the effective date and has not been cancelled.

(4D) This paragraph applies to a person who—

- (a) is not eligible to rejoin this Section of the Scheme on the effective date,
- (b) becomes eligible to do so on the day immediately following the first anniversary of the member entering NHS employment in accordance with paragraph (5)(b) of regulation 2.G.4 (“the day of eligibility”),
- (c) exercises an option not to rejoin this Section of the Scheme that takes effect from the day of eligibility has which has not been cancelled.

(5) .....

## **2.H.2 Information**

(1) A person who becomes an employed pensioner must--

- (a) inform the person's employer in the new employment and any other person that the Secretary of State may specify that the old service pension is payable, and
- (b) where requested, provide any information about their relevant income in the new employment to the Secretary of State or to any other person that the Secretary of State may specify.

(2) A person who ceases to be an employed pensioner in one new employment and becomes an employed pensioner in another new employment must--

- (a) inform the person's employer in the other new employment, and any other person that the Secretary of State may specify, that the old service pension is payable, and
- (b) where requested, provide any information about their relevant income in the other new employment to the Secretary of State or to any person that the Secretary of State may specify.

(3) For the meaning of "relevant income" see regulation 2.H.4.

## **2.H.3 Reduction of pension**

(1) If the condition in paragraph (2) is met, the amount of the old service pension for any financial year is reduced.

(2) The condition is that the employed pensioner's relevant income for the financial year exceeds the employed pensioner's previous pay.

(3) The amount of the reduction under paragraph (1) is equal to that excess but cannot exceed the enhancement amount.

(4) For the meaning of "relevant income" and "enhancement amount" see regulation 2.H.4.

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- (5) For the meaning of "previous pay" see regulation 2.H.5.
- (6) For the purpose of calculating the reduction to be made under paragraph (1) in respect of any part of a financial year, the amount of the member's previous pay will be reduced proportionately.
- (7) .....
- (8) If the member has a guaranteed minimum under section 14 of the 1993 Act in relation to the old service pension, nothing in this regulation requires the reduction of the old service pension below the amount of the member's guaranteed minimum in relation to it.

#### **2.H.4 Meaning of "relevant income"**

- (1) The employed pensioner's relevant income for a financial year is the aggregate of--
  - (a) the amount of pay received by the employed pensioner during that year from the new employment (assuming, in any case where the employed pensioner is not an active member of this Section of the Scheme in the new employment, that the employed pensioner is such a member), and
  - (b) the enhancement amount in relation to the old service pension.
- (2) The enhancement amount, in relation to an old service pension, is the difference between--
  - (a) the amount of that pension for that year, and
  - (b) the amount that that pension would have been had it been payable under regulation 2.D.4 (early payment of pensions with actuarial reduction).
- (3) If the old service pension is payable under 2.D.8 or 2.D.10 (ill-health pensions) to an employed pensioner who had not reached the age of 55 at the time when entitlement to the pension arose, for the purposes of paragraph (2)(b)--
  - (a) the fact that entitlement to a pension under regulation 2.D.4 depends on reaching that age is ignored, but
  - (b) the employed person's actual age at the relevant time is taken into account in determining the reduction to be made under regulation 2.D.4(2).
- (4) If the old service pension is a tier 2 ill-health pension, for the purposes of paragraph (2)(b), only the employed pensioner's actual pensionable service at the time when entitlement to the pension arose is taken into account in determining the amount that would have been payable under regulation 2.D.4.
- (5) If the employed pensioner exercised the option under regulation 2.D.14 (general option to exchange part of pension for lump sum) in relation to the old service pension, the resulting reduction in the pension is ignored for the purposes of this regulation.
- (6) The resulting reduction in the pension is taken into account for the purposes of this regulation if the employed pensioner—
  - (a) exercised the option under regulation 2.D.18 in relation to the old service pension, or
  - (b) is a 2008 Section Optant who was entitled to a lump sum under regulation 2.K.12 in relation to the old service pension.



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(7) References in this regulation to the amount of a pension for any financial year are to its amount for that year after any increases payable under the Pensions (Increase) Act 1971 in respect of that pension, including the increases that would have been payable in respect of any amount not paid because of a reduction ignored under paragraph (5).

#### **2.H.5 Meaning of "previous pay": general**

(1) For the purposes of this Chapter an employed pensioner's previous pay is the greater of--

- (a) the employed pensioner's reckonable pay for the purposes of the old service pension, and
- (b) the annual rate of pay for the old employment at the time it ceased.

This is subject to paragraph (3) and regulations 2.H.6 and 2.H.7.

(2) In this regulation "annual rate of pay" means the sum of--

(a) the annual rate of so much of the employed pensioner's pensionable pay immediately before the old service pension became payable as consisted of--

- (i) salary,
- (ii) wages, or
- (iii) other regular payments,

of a fixed nature, and

(b) so much of any fees and other regular payments not of a fixed nature as--

- (i) was payable to the employed pensioner during the period of 12 months ending with the day the old employment ceased, and
- (ii) formed part of the employed pensioner's pensionable pay.

(3) The amount to be taken as the employed pensioner's previous pay must be adjusted in each financial year for inflation.

This is subject to regulation 2.H.6.

(4) The reference in paragraph (3) to adjusting that amount in each financial year for inflation is to increasing it by the same amount as that by which an annual pension equal to that amount would have been increased under the Pensions (Increase) Act 1971 at 6th April in that financial year if--

- (a) that pension was eligible to be so increased, and
- (b) the beginning date for that pension were the same as the beginning date for the old service pension.

(5) 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).

#### **2.H.6 Meaning of "previous pay": members with concurrent employments**

(1) In the case of an employed pensioner who held one or more other NHS employments as an officer at the same time as the old employments, the amount to be taken as the employed pensioner's previous pay is the sum of--

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- (a) the amount of the employed pensioner's previous pay, in accordance with regulation 2.H.5, and
  - (b) in respect of any of the other NHS employments as an officer which are held in the financial year mentioned in 2.H.3(2), the annual rate of pay for those employments in that financial year, and
  - (c) in respect of any of the other NHS employments as an officer which are not held in the financial year mentioned in 2.H.3(2), the pensionable pay for that employment for the period of 12 months ending with the day before the old employment ceased (or, if the employed pensioner was not a member of the Scheme in that employment in that period, the amount that would have been the pensionable pay for it assuming that the employed pensioner had been such a member.
- (2) The amount to be taken as the employed pensioner's previous pay in accordance with paragraph (1) must be adjusted in each financial year for inflation in the manner set out in regulation 2.H.5(4).

## **2.H.7 Application of this Chapter to part-time employment**

- (1) This regulation provides for the application of this Chapter where the old employment or the new employment is a part-time employment.
- (2) The amount of the employed pensioner's reckonable pay for the purposes of the old service pension, as referred to in regulation 2.H.5(1)(a), shall be determined without reference to regulation 2.A.13 or 2.A.14 (reckonable pay for concurrent and non-concurrent part-time workers).

## **2.H.8 Employed pensioners with more than one pension**

- (1) This regulation provides for the application of this Chapter where a person is entitled to more than one old service pension falling within regulation 2.H.1(1)(c) in any financial year.
- (2) In regulation 2.H.3--
- (a) for paragraphs (1) to (2) substitute--
    - "(1) If the condition in paragraph (2) is met, the amount of the old service pensions for any financial year are reduced.
    - (2) The condition is that the employed pensioner's relevant income for the financial year exceeds the employed pensioner's previous pay for all the old employments.
    - (3) The amount of the reduction under paragraph (1) in the case of each of the pensions is equal to the same proportion of that excess as the amount of the pension for the financial year before the reduction bears to the sum of the pensions for that year before the reduction".
- (3) In regulation 2.H.4(1)(b) for "the old service pension" substitute "all the old service pensions".
- (4) Regulation 2.H.9 applies as if references to the old service pensions were references to all those pensions.

## **2.H.9 Provisional reductions and later adjustments**

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- (1) If it appears to the Secretary of State that the condition in regulation 2.H.3(2) will be met in any financial year in respect of the old service pension for that year, the Secretary of State may reduce the amount of that pension paid at any time in the financial year.
- (2) Where the old service pension for a financial year is being reduced under this Chapter, the Secretary of State must review the amount of the reduction--
  - (a) at the end of the financial year, and
  - (b) at any time during the financial year if it appears to the Secretary of State that--
    - (i) the amount of the reduction made for the year is or may become incorrect, or
    - (ii) no reduction should be made.
- (3) If at any time during the financial year it so appears, the Secretary of State must make such adjustments, whether by altering the amount of the reduction or by repaying to the employed pensioner any amount that should not have been deducted from the pension, as appear to the Secretary of State to be required.
- (4) If at the end of the financial year it is apparent that--
  - (a) the reduction in the old service pension for the year was excessive, or
  - (b) no such reduction should have been made,the Secretary of State must repay the amount due to the employed pensioner.
- (5) If at the end of the financial year it is apparent that the old service pension paid for the year exceeded the amount due because the reduction in the old service pension required under regulation 2.H.3 was not made, the employed pensioner must repay the excess to Secretary of State.
- (6) Paragraph (5) does not affect the Secretary of State's right to recover a payment or overpayment in any case where the Secretary of State considers it appropriate to do so.

## **Chapter 2.J**

### **Miscellaneous and Supplementary Provisions**

#### **Scheme Administrator**

##### **2.J.1 Appointment of Scheme administrator**

For the purposes of this Part and of Part 4 of the 2004 Act, the Scheme administrator is the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG).

#### **Claims**

##### **2.J.2 Claims for benefits**

- (1) A person claiming to be entitled to benefits under this Part ("the claimant") shall make a claim in writing to the Secretary of State.
- (2) Pursuant to such a claim, the claimant and, where appropriate, the member's employing authority (including any previous employing authority of the member) shall provide such--

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- (a) evidence of entitlement,
- (b) information required in order to deal with the claim, and
- (c) authority or permission as may be necessary for the release by third parties of information in their possession relating to the claimant or member,

as the Secretary of State may from time to time require for the purposes of this Part.

(3) A claim referred to in paragraph (1) may be made by a person or persons other than the claimant where the Secretary of State so provides.

(4) Any claim for benefit required in writing under this Part, and any evidence, information, authority or permission given in connection with that claim, may be made or given by means of an electronic communication where such method of communication is approved by the Secretary of State from time to time.

(5) In this regulation, "electronic communication" has the same meaning as in section 15(1) of the Electronic Communications Act 2000.

#### **2.J.2A 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;
- (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.

#### **Power to Extend Time Limits**

##### **2.J.3 Power to extend time limits**

The Secretary of State may extend any time limit mentioned in this Part as it applies in any particular case.

#### **Beneficiaries who are Incapable of Looking After Their Affairs**

##### **2.J.4 Beneficiaries who are incapable of looking after their affairs**

(1) In the case of a beneficiary who, in the opinion of the Secretary of State, is by reason of illness, mental disorder, minority or otherwise unable to look after the beneficiary's affairs, the Secretary of State may--

- (a) use any amount due to the beneficiary under the Scheme for the beneficiary's benefit, or
- (b) pay it to some other person to do so.

(2) Payment of an amount to a person other than the beneficiary under paragraph (1) discharges the Secretary of State from any obligation under the Scheme in respect of the amount.

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## **Commutation of Small Pensions**

### **2.J.5 Commutation of small pensions**

- (1) The Secretary of State may pay any person entitled to a pension under this Section of the Scheme a lump sum representing the capital value of the pension and of any benefits that might have become payable under this Section of the Scheme on the person's death apart from the payment if the conditions specified in paragraph (2) are met.
- (2) The conditions are that the payment complies with the following requirements (so far as apply)--
- (a) . . . [omitted]
  - (b) the preservation requirements,
  - (c) regulation 2 of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc) Regulations 1997,
  - (d) . . .
  - (e) the lump sum rule (see, in particular, paragraph 7 of Schedule 29 to the 2004 Act. trivial commutation lump sums for the purposes of Part 4 of that Act),
  - (f) the lump sum death benefit rule (see, in particular, paragraph 20 of that Schedule: trivial commutation lump sum death benefit for the purposes of that Part); and
  - (g) regulation 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 (payments by larger pension schemes).
- (3) The lump sum must be calculated by the Secretary of State in accordance with advice from the Scheme actuary.
- (4) The payment of a lump sum under this regulation discharges all liabilities of the Secretary of State in respect of the pension in question and of any other such benefits as mentioned in paragraph (1).

## **Reduction in and Forfeiture of Benefits**

### **2.J.6 Reduction in benefits in cases where loss caused by member's crime, negligence or fraud**

- (1) If, as a result of a member's criminal, negligent or fraudulent act or omission, a loss to public funds occurs that arises out of or is connected with the member's employment relationship with the member's employer, the Secretary of State--
- (a) may reduce any pension or other benefit payable to, or in respect of, the member under these Regulations by an amount less than or equal to the loss, or
  - (b) in a case where the loss equals or exceeds the value of the pension or other benefit, reduce them to nil or by any amount less than that value.
- (2) Paragraph (1) does not apply so far as the pension or other benefit--
- (a) is a guaranteed minimum pension, or
  - (b) arise out of a transfer payment.

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(3) If the Secretary of State proposes to exercise the power under paragraph (1), the Secretary of State must 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 may be made under paragraph (1) until the member's obligation to make good the loss has become enforceable--

(a) under the order of a competent court, or

(b) in consequence of an award of an arbitrator or, in Scotland, an arbiter to be appointed (failing agreement by the parties) by the sheriff.

(5) If the loss is suffered by an employing authority, the amount of any reduction under paragraph (1) must be paid to that authority.

### **2.J.7 Forfeiture of rights to benefits**

(1) 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 under these Regulations be forfeited if--

(a) the member is convicted of any of the offences specified in paragraph (2), and

(b) the offence was committed before the benefit or other amount becomes payable.

(2) The offences are--

(a) an offence in connection with employment that qualifies the member to belong to this Section of the Scheme, in respect of which the Secretary of State has issued a forfeiture certificate,

(b) one or more offences under the Official Secrets Acts 1911 to 1989 for which the member has been sentenced on the same occasion to--

(i) a term of imprisonment of at least 10 years, or

(ii) two or more consecutive terms amounting in the aggregate to at least 10 years.

(3) In paragraph (2)(a) "forfeiture certificate" means a certificate that the Secretary of State is satisfied that the offence--

(a) has been gravely injurious to the State, or

(b) is liable to lead to serious loss of confidence in the public service.

(4) The Secretary of State may direct that all or part of any rights to benefits or other amounts payable in respect of a member under these Regulations be forfeited where the benefits or amounts are payable to a person to whom paragraph (5) applies who has been convicted of the murder or manslaughter of that member or of any other offence of which unlawful killing of that member is an element.

(5) This paragraph applies to a person who is--

(a) the member's widow, widower, surviving scheme partner or surviving civil partner,

(b) a dependant of the member,

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- (c) a person not falling within sub-paragraph (a) or (b) who is specified in a notice given under regulation 2.E.21(3) or (10) (payment of lump sum or pension on death), or
  - (d) a person to whom such benefits or amounts are payable under the member's will or on the member's intestacy.
- (6) A guaranteed minimum pension may be forfeited only if paragraph (1) applies in the case of an offence within paragraph (2)(b) or to which paragraph (4) applies.
- (7) This regulation is without prejudice to section 2 of the Forfeiture Act 1870 (under which forfeiture is required in cases of treason, subject to whole or partial restoration under section 70(2) of the Criminal Justice Act 1948).

***The following paragraphs 2.J.7(8) to (19) were quashed by order of the High Court in R. (on the application of British Medical Association) v Secretary of State for Health and Social Care [2020] EWHC 64 (Admin) and no longer have effect:***

(8) If, on or after 1st April 2019, a member is—

- (a) charged with an offence; or
- (b) convicted of an offence,

which, in the opinion of the Secretary of State, may lead to all or part of the member's benefits being forfeited under paragraph (1), the Secretary of State may make a suspension decision in accordance with paragraphs (10) to (15) of this regulation.

(9) If, on or after 1st April 2019, any of the persons referred to in sub-paragraphs (a) to (d) of paragraph (5) are charged with, or convicted of an offence which, in the opinion of the Secretary of State, may lead to all or part of any rights to benefits or other amounts payable in respect of a member being forfeited under paragraph (4), the Secretary of State may make a suspension decision in accordance with paragraphs (10), (11), and (16) to (19) of this regulation.

(10) A suspension decision is a decision of the Secretary of State suspending the right to, and the payment of, all or part of any benefit or other amounts payable—

- (a) which the member is in receipt of, or becomes entitled to,
- (b) in respect of a member,

under these Regulations.

(11) If the Secretary of State makes a suspension decision under paragraph (8) or (9), that decision will continue to apply—

- (a) until the date of any direction made by the Secretary of State under this regulation; or
- (b) where the Secretary of State determines not to direct forfeiture under this regulation, the date of that decision.

(12) Paragraph (13) applies if—

- (a) the Secretary of State makes a suspension decision under paragraph (8) in respect of a member otherwise entitled to the payment of a pension under Chapter 2.D (members' retirement benefits) of these Regulations; and



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(b) the Secretary of State subsequently determines not to issue a direction under paragraph (1).

(13) The Secretary of State will pay to the member described in paragraph (12) an amount equal to the total amount of the benefit payments suspended together with the interest due under regulation 2.J.9 (interest on late payment of benefits and refunds of contributions).

(14) Paragraph (15) applies if—

(a) the Secretary of State makes a suspension decision under paragraph (8) in respect of a member otherwise entitled to the payment of a pension under Chapter 2.D (members' retirement benefits) of these Regulations; and

(b) the Secretary of State subsequently directs forfeiture of an amount less than the total amount suspended.

(15) The Secretary of State will pay to the member described in paragraph (14) an amount equal to the difference between the total amount of the benefit payments suspended and the amount forfeited together with the interest due under regulation 2.J.9 (interest on late payment of benefits and refunds of contributions).

(16) Paragraph (17) applies if—

(a) the Secretary of State makes a suspension decision under paragraph (9); and

(b) the Secretary of State subsequently determines not to issue a direction under paragraph (4) in respect of the benefits to which that decision relates.

(17) The Secretary of State will pay to the person to whom paragraph (9) applies an amount equal to the total amount of the benefit payments suspended together with the interest due under regulation 2.J.9 (interest on late payment of benefits and refunds of contributions).

(18) Paragraph (19) applies if—

(a) the Secretary of State makes a suspension decision under paragraph (9); and

(b) the Secretary of State subsequently directs forfeiture of an amount less than the total amount suspended.

(19) The Secretary of State will pay to the person described in paragraph (9) an amount equal to the difference between the total amount of the benefit payments suspended and the amount forfeited together with the interest due under regulation 2.J.9 (interest on late payment of benefits and refunds of contributions).

## **Provisions about Tax**

### **2.J.8 Deduction of tax**

(1) The Secretary of State may deduct from any payment under this Section of the Scheme any tax which is required to be paid in respect of it.

(2) Without prejudice to the generality of paragraph (1), if a person becoming entitled to a benefit under this Part--

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- (a) is a benefit crystallisation event under section 216 of the 2004 Act, and
  - (b) a lifetime allowance charge under section 214 of that Act arises when that event occurs,

the tax charged must be paid by the Scheme administrator.
- (3) Paragraph (4) applies if--
  - (a) a member has given the scheme administrator a statement in accordance with regulation 2.E.22 (tax treatment under the 2004 Act of lump sums payable on pensioners' death) 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 withdrawn that statement.
- (4) Without prejudice to the generality of paragraph (1), when the lump sum is paid, the Scheme administrator may deduct the tax payable under section 206 of that Act (special lump sum death benefits charge) from the lump sum.
- (5) Paragraph (6) applies if—
  - (a) a lump sum death benefit is payable on the death of a pensioner member in accordance with paragraph (2) of regulation 2.E.17 (amount of lump sum: single capacity members and recent leavers (disregarding regulation 2.D.5 employments)); 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.
- (6) Without prejudice to the generality of paragraph (1), when the lump sum is paid, the Scheme administrator may deduct the tax payable under section 206 of the 2004 Act (special lump sum death benefits charge).
- (7) Paragraph (8) applies if—
  - (a) an active, non-contributing or pension credit member opts to exchange a relevant pension for a lump sum in accordance with paragraph (3)(a) of regulation 2.D.15 (option for members in serious ill-health to exchange whole pension for lump sum); and
  - (b) that lump sum payment is made to a member who has reached the age of 75.
- (8) Without prejudice to the generality of paragraph (1), when the lump sum is paid, the Scheme administrator may deduct the tax payable under section 205A of the 2004 Act (serious ill-health lump sum charge).
- (9) Without prejudice to the generality of paragraph (1), a person who—
  - (a) is liable for 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,

may give notice in writing to the Scheme administrator specifying that the Scheme administrator and that person are to be jointly and severally liable for the payment of the annual allowance charge due in respect of that person in accordance with section 237B of the 2004 Act.

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(10) Unless the Scheme administrator's liability for an annual allowance charge referred to in paragraph (9) 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 person'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.

## **Interest on Delayed Payments**

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

(1) This regulation applies if the whole or part of an amount to which this regulation applies is not paid by the end of the period of one month beginning with the due date.

(2) This regulation applies to any amount payable by way of a pension, lump sum, refund of contributions under this Section of the Scheme (other than any amount due under regulation 2.C.5 or 2.C.6) or interim or substitute award.

(3) The Secretary of State must pay interest on the amount of a pension, lump sum, refund of contributions or an interim or substitute award which is unpaid ("the unpaid amount") to the person to whom it should have been paid unless the Secretary of State is satisfied that the unpaid amount was not paid on the due date because of some act or omission on the part of the member or other person to whom it should have been paid.

(4) The interest on the unpaid amount is calculated at the base rate on a day to day basis from the due date for the amount to the date of its payment and compounded with three-monthly rests.

(5) For the purposes of this regulation, except where paragraph (6) applies, "due date", in relation to an unpaid amount (other than an unpaid amount in respect of an interim or substitute award), means--

(za) in the case of a pension payable under regulation 2.D.11, where the member's employing authority is an Independent Provider, the later of—

- (i) the date on which the Secretary of State receives the contributions referred to in paragraph (6) of regulation 2.C.6, or
- (ii) the day immediately following that on which the member retires from pensionable employment;

(a) in the case of an amount in respect of a pension or lump sum payable to a member under Chapter 2.D or a lump sum under regulation 2.K.12, the day immediately following that of the member's retirement from pensionable employment,

(b) in the case of an amount in respect of a pension payable on a member's death, other than a pension payable under regulation 2.E.20A (pension payable when member dies on or after reaching age 75), the day after the date of death,

(c) in the case of an amount in respect of a lump sum under Chapter 2.E that is payable to the member's personal representatives, the earlier of--

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- (i) the date on which probate or letters of administration were produced to the Secretary of State, and
  - (ii) the date on which the Secretary of State was satisfied that the lump sum may be paid as provided in regulation 2.E.21(9), and
- (d) in the case of an amount in respect of any other lump sum under that Chapter, the day after the date of the member's death, and
- (e) in the case of an amount in respect of a refund of contributions, the day after that on which the Secretary of State received from Her Majesty's Commissioners of Revenue and Customs the information required for the purposes of calculating the amount to be subtracted under regulation 2.C.18(3) or (4),
- (f) in the case of an amount in respect of a pension under regulation 2.E.20A 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 2.E.21(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.
- (6) The due date for an unpaid amount--
  - (a) referred to in paragraph (5) in respect of which the Secretary of State was not in possession of all the information necessary for the calculation of the amount of the pension, lump sum or refund of contributions referred to in that paragraph on the date which would, in accordance with paragraph (5) be the due date; or
  - (b) in respect of an interim or substitute award,shall be the first day on which the Secretary of State was in possession of all the information necessary to calculate that pension, lump sum, refund of contributions or interim or substitute award.
- (7) In this regulation, "interim or substitute award" means--
  - (a) any amount paid by way of an interim payment calculated by reference to an expected benefit under this Section of the Scheme pending final calculation of the full value of that benefit, . . .
  - (b) any amount paid that increases the amount of an earlier payment due to a backdated or later increase in pensionable pay; and
  - (c) any amount paid that increases the amount of an earlier payment due to the payment of a tier 2 ill-health pension under regulation 2.D.8 paid to a member in substitution for a tier 1 ill-health pension under that regulation following a determination by the Secretary of State under regulation 2.D.9.

#### **2.J.9A Interest and Administration Charges: late paid contributions**

- (1) For the purposes of this regulation, where an employing authority fails to pay, by the dates therein specified, contributions and the scheme

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administration charge it is required to pay under any or all of regulations 2.C.1, 2.C.4, 2.C.5, 2.C.6, 2.C.6A, 2.C.8, 2.C.10, 2.C.11 or 2.M.6, there is a chargeable event.

(2) Where there is a chargeable event, the Secretary of State may determine what amount of contributions or, as the case may be, the scheme administration charge are unpaid having regard to—

- (a) the amount of contributions or, as the case may be, the scheme administration charge historically paid at a chargeable event by that employing authority;
- (b) any reasons or explanation provided by the employing authority for the change in the amount of contributions or, as the case may be, the scheme administration charge (if any) it has paid at such an event;
- (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 constituting that event and the amount of unpaid scheme administration charge or both together with a supplementary 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 the chargeable event;
- (b) the amount of unpaid contributions or unpaid scheme administration charge, or both; determined under paragraph (2);
- (c) the amount of interest at the standard rate payable in respect that event;
- (d) the amount of supplementary 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 supplementary charges.

(5) Any amount payable by way of interest or payable by way of an supplementary 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 all, or part, of such an amount to be paid over a period and by a number of instalments determined by the Secretary of State.

(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 supplementary 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) The supplementary charge in respect of arrears in respect of the scheme year 2014-2015 and subsequent years 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—

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- (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.

## **Determinations**

### **2.J.10 Determination of questions**

- (1) Except as otherwise provided by this Part, any question arising under this Section of the Scheme is to be determined by the Secretary of State.
- (2) Any such disagreement as is referred to in section 50 of the 1995 Act (resolution of disputes) must be resolved by the Secretary of State in accordance with any arrangements applicable under that section.

### **2.J.11 Determinations by medical practitioners**

- (1) The Secretary of State may make arrangements for functions under this Part in relation to decisions within paragraph (2) that are exercisable by the Secretary of State to be discharged by--
  - (a) a registered medical practitioner (whether practising alone or as apart of a group) whom the Secretary of State has approved to act on the Secretary of State's behalf, or
  - (b) a corporate or unincorporated body which--
    - (i) employs registered medical practitioners (whether under a contract of service or a contract for services), and
    - (ii) is so approved.
- (2) This paragraph applies to any decision as to a person's health or degree of physical or mental infirmity . . . that is required for the purposes of this Part and, in particular, any such decision required for the purposes of--
  - (za) regulation 2.D.2(8) (pension credit members);
  - (a) regulation 2.D.8(2)(a) or (3)(a) (early retirement on ill-health (active members)),
  - (b) regulation 2.D.9(1)(a) or (b) or (3) (re-assessment of ill-health pension),
  - (c) regulation 2.D.10(1)(a) or (2)(a) (early retirement on ill-health (deferred members)),
  - (cc) regulation 2.D.15(1) (option for members in serious ill-health to exchange whole pension for lump sum),
  - (d) regulation 2.D.19(6)(b) (procedure for allocation election under regulation 2.D.18),
  - (e) regulation 2.E.9(1)(b)(ii) (meaning of "dependent child"),



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(f) regulation 2.J.4(1) (beneficiaries who are incapable of looking after their affairs),

(g) determining whether an individual satisfies the severe ill health condition for the purposes of subsection (3)(a) of section 229 of the 2004 Act (total pension input amount).

(3) In relation to decisions within paragraph (2), the Secretary of State may require any person entitled, or claiming to be entitled, to a benefit under this Part 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 also offer the person an opportunity of submitting a report from the person's own medical adviser as a result of an examination by that medical adviser, and the Secretary of State shall take that report into consideration together with the report of the medical practitioner selected by the Secretary of State.

## **General Prohibition on Unauthorised Payments**

### **2.J.12 General prohibition on unauthorised payments**

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

## **Prohibition on Assignment or Charging of Benefits**

### **2.J.13 Prohibition on assignment or charging of benefits**

(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 may be paid to the person's trustee in bankruptcy or other person acting on behalf of the creditors, except in accordance with an order under section 310 of the Insolvency Act 1986 (income payments orders).

## **Record Keeping and Contribution Estimates**

### **2.J.14 Employing authority and certain member record keeping and contribution estimates**

(1) As regards a member who is a non-GP provider who derives practitioner income from the contracts, agreements or payments referred to in regulation 2.A.8(6), in respect of each scheme year, the member shall provide each relevant host Board with a certificate 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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(2) As regards a GMS or a PMS practice or an APMS contractor, in respect of each scheme year, the practice or contractor must provide the host Board with a statement of estimated pensionable earnings in respect of any non-GP provider that is a GMS or PMS practice or APMS contractor or who assists in the provision of NHS services provided by that GMS or PMS practice or an APMS contractor, at least 1 month before the beginning of that scheme year.

(3) If, in respect of a scheme year, a non-GP provider has failed to comply with the requirements of paragraph (1), the non-GP provider's pensionable earnings for that scheme year shall be zero and no contributions paid in respect of that scheme year are to be refunded.

This is subject to paragraph (4).

(4) If, in respect of a scheme year--

- (a) a non-GP provider has failed to comply with the requirements of paragraph (1),
- (b) a benefit is payable for, or in respect of their non-GP provider service, and
- (c) the non-GP provider's employing authority is in possession of a figure representing all or part of the non-GP provider's pensionable earnings for that year,

the Secretary of State may treat that figure as the amount of the non-GP provider's pensionable earnings for that year.

(5) If, in respect of a scheme year, a non-GP provider--

- (a) dies without complying with the requirements of paragraph (1), or
- (b) is, in the opinion of the Secretary of State, unable to look after the non-GP provider's own affairs by reason of illness or mental disorder,

the Secretary of State may require that non-GP provider's personal representatives to provide the relevant certificate--

- (i) within the period referred to in paragraph (1), or
- (ii) within such other period as the Secretary of State permits.

(6) An employing authority must, in respect of a person, keep a record of all—

- (a) contributions paid under regulations 2.C.1, 2.C.8 or 2.C.10;
- (b) contributions due under regulations 2.C.1, 2.C.8 or 2.C.10, but unpaid;
- (c) contributions paid under regulation 2.C.5;
- (d) contributions due under regulation 2.C.5, but unpaid;
- (e) hours or sessions referred to in regulation 2.A.3;
- (f) pensionable pay or, in the case of non-GP Provider, pensionable earnings;
- (g) absences from work referred to in regulation 2.A.4;
- (h) commencement and termination of pensionable employment;
- (i) reasons for termination of pensionable employment.

(7) That record is to be in a manner approved by the Secretary of State.

(8) Except where the Secretary of State waives such requirement, an employing authority must provide a composite statement in respect of the

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matters referred to in paragraph (6) in respect of all scheme members to the Secretary of State within 2 months of the end of each scheme year.

(9) Where an employing authority has provided the information in accordance with paragraph (8) and there is then a change to any of the information provided, that employing authority must, within 1 month of the change, provide the Secretary of State with the revised information.

(10) In respect of each scheme year an employing authority shall, 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 2.C.1, 2.C.5 and 2.C.8.

(11) Where an employing authority has provided the information requested pursuant to paragraph (10) and there is a revision to the total contributions paid, that employing authority must, within 1 month of the change, provide the Secretary of State with the revised total.

(12) If the Secretary of State so requests, in respect of each scheme year an employing authority must, 1 month before the beginning of that scheme year, and in a manner prescribed by the Secretary of State, provide the Secretary of State with a statement of estimated total contributions due under regulations 2.C.1, 2.C.5 and 2.C.8.

## **2.J.15 Benefit information statements**

(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.

## **Chapter 2.K** **2008 Section Optants**

### **2.K.1 Application of Chapter 2.K**

(1) This Chapter makes provision in relation to persons who are active members of the 1995 Section on or after 1st October 2009 and who opt to become members of this Section of the Scheme on the basis set out in this Chapter, including persons who--

- (a) return to NHS employment in respect of which there is a liability to pay contributions to the Scheme in accordance with regulation D1 of the 1995 Regulations (contributions by members) within a period of less than 5 years

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beginning with the day on which they last left such employment (whether or not that period includes 1st October 2009);

(b) become members of the 1995 Section (whether for the first time or for a second or subsequent time having previously been a member of that Section) in accordance with regulation B2(3) of the 1995 Regulations (restrictions on membership).

(c) both—

(i) became entitled to a pension under regulation E3 or E3A of the 1995 Regulations (which deal with an early retirement pension on the grounds of redundancy and an early retirement pension on termination of employment by employing authority, respectively) on leaving employment with one employing authority, and

(ii) elected to continue to be an active member of the 1995 Section in respect of any other continuing pensionable employment in accordance with paragraph (6) of regulation R4 of those Regulations (members doing more than one job).

This Chapter does not apply to a person if--

(i) that person is an active member of the 1995 Section by virtue of regulation E2(11) of the 1995 Regulations (early retirement pension (ill-health)), or

(ii) that person is a former member of a corresponding 1995 scheme and the administrators of that scheme have confirmed that the person did not elect to join the relevant corresponding 2008 scheme when offered the opportunity to do so.

(2) In these Regulations a member of this Section of the Scheme to whom this Chapter applies is referred to as a "2008 Section Optant".

## **2.K.2 Options for 1995 Section members to join this Section of the Scheme under Chapter 2.K**

(1) A person who by virtue of that person's employment--

(a) was an active member of the 1995 Section--

(i) on, or after, 1st October 2009, and

(ii) on the day that person's option to join this Section of the Scheme was received by the Secretary of State, and

(b) would be eligible to join this Section of the Scheme if that person met the condition in regulation 2.B.1(3)(a) (which requires that the person's employment began on or after 1st April 2008),

may join this Section of the Scheme under the terms of this Chapter.

(2) A person who satisfies the conditions in paragraph (1) may only join this Section of the Scheme if that person opts to do so.

(3) The option may only be exercised by giving notice in writing to the Scheme administrator--

(a) in such form as the Secretary of State requires, and

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(b) before the date the Secretary of State specifies for that purpose in the comparative statement of benefits under the 1995 Section and the 2008 Section of the Scheme issued to that person ("the comparative statement").

This is subject to paragraphs (4) and (9) and regulation 2.K.19.

(4) For the purpose of paragraph (3)--

(a) the date specified by the Secretary of State in the comparative statement shall be a date that is at least four months later than the comparative statement issue date, and

(b) the notice shall be--

(i) irrevocable, and

(ii) treated as having been given on the date on which it is received by the Scheme administrator.

(5) The option shall be effective from the first day of the member's pensionable employment in the 1995 Section falling on or after 1st April 2008, and--

(a) the person shall be treated as if that person had been a member of this Section of the Scheme from that date,

(b) the member's service both for the purpose of ascertaining entitlement to, and calculation of, benefits under the 1995 Section shall count under this Section of the Scheme only to the extent that it would have counted had the member been an active member of this Section of the Scheme from that date.

This is subject to paragraph (12).

(6) If contributions due from the member under Chapter 2.C in respect of any periods beginning on or after 1st April 2008 are not made when they are due because of the time when the option is exercised, the amount overdue is to be paid by deduction from the member's pensionable pay in such manner and at such rate as the Secretary of State requires.

(7) If, in a case where paragraph (6) applies, the member ceases to be an active member of this Section of the Scheme before the amount overdue has been paid under that paragraph, the amount outstanding becomes payable immediately.

(8) The Secretary of State may extend the time limit in paragraph (3) if the Secretary of State considers that the person has not had a reasonable opportunity to consider whether to exercise the option.

(9) The Secretary of State may accept an option to join the 2008 Section that is received after the person ceases to be an active member of the 1995 Section if either paragraph (9A) applies to that person or that person satisfies all of the following ---

(a) a comparative statement of benefits under the 1995 Section and the 2008 Section of the Scheme was issued to the person whilst that person was an active member of the 1995 Section,

(b) but for the exercise of the option the person would otherwise become entitled to the immediate payment of benefits under Part E of the 1995 Regulations,

(c) the person has provided the Secretary of State with a notice in writing in such form as the Secretary may require that benefits are not to be paid from the 1995 Section and has not revoked that notice, and

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- (d) the person exercises the option before the end of the four month period beginning with the comparative statement issue date.
  - (9A) This paragraph applies to a person who—
    - (a) has ceased to pay contributions in accordance with paragraph (3) or paragraph (4) of regulation D1 of the 1995 Regulations (contributions by members),
    - (b) is continuing in NHS employment, and
    - (c) exercises the option before the end of the four month period beginning with the comparative statement issue date.
  - (10) A person may revoke a notice given for the purposes of paragraph (9)(c)--
    - (a) at any time;
    - (b) in writing on the form provided by the Secretary of State for that purpose.
  - (11) A person who has revoked a notice in accordance with paragraph (10) may not provide a further notice under paragraph (9).
  - (12) A person exercising an option under this regulation who is entitled to a pension under regulation E2A of the 1995 Regulations (ill-health pension on early retirement) may count as qualifying service for the purpose of this Section of the Scheme a period of service measured in years and days equal to the qualifying service that person was entitled to count under regulation C3 of the 1995 Regulations (meaning of qualifying service) in determining their entitlement to that pension.
  - (13) For the purposes of paragraphs (4), (9) and (9A) the comparative statement issue date is the date on which the comparative statement of benefits under the 1995 Section and the 2008 Section of the Scheme is sent (whether by electronic communication or otherwise)--
    - (a) to the person, or
    - (b) to the person's employing authority.
  - (14) Where paragraph (13)(b) applies the person must have a period equal to at least three months ending on the date specified by the Secretary of State in accordance with paragraph (4)(a) in which to opt to join this Section of the Scheme.
- This is subject to paragraph (1)(a)(ii) and any extension of time in accordance with paragraph (8).

### ***Transfer of service from the 1995 Section***

#### **2.K.3 Service credited from the 1995 Section**

- (1) A 2008 Section Optant who--
  - (a) becomes a member of this Section of the Scheme, and
  - (b) is not entitled to a pension under regulation E2A of the 1995 Regulations (ill-health pension on early retirement),is entitled to count the following service under this Section of the Scheme.
- (2) The member may count as qualifying service a period equal in length to the period of qualifying service up to, and including, 31st March 2008 which the member was entitled to count under the 1995 Section (but not exceeding 45 years).

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(3) The period of pensionable service which a 2008 Section Optant who is under age 60 on 1st October 2009 may count is a period equal in length to the period of pensionable service up to, and including, 31st March 2008 which the Optant was entitled to count under regulation C2 of the 1995 Regulations (meaning of pensionable service).

This is subject to paragraph (6) and regulation 2.K.13.

(4) The period of pensionable service which a 2008 Section Optant who is age 60 or over on 1st October 2009 may count is a period equal in length to the pensionable service up to, and including, 31st March 2008 which the Optant was entitled to count under regulation C2 of the 1995 Regulations calculated by multiplying that period of service (specified in days) by the factor specified in paragraph (5) applicable to that case.

This is subject to paragraph (6) and regulation 2.K.13.

(5) The factor referred to in paragraph (4) is the factor specified by the Secretary of State for that purpose.

(6) For the purposes of paragraphs (3) and (4) the pensionable service which the 2008 Section Optant was entitled to count under regulation C2 of the 1995 Regulations--

(a) shall not include any pensionable service the Optant was entitled to count under regulation C2(1)(e) of those Regulations,

(b) shall be calculated without regard to paragraph (5) of regulation R3 of those Regulations (mental health officers), and

(c) where the Optant is entitled to count any part-time pensionable service in the 1995 Section, shall be calculated in accordance with regulation R5 of those Regulations (part-time employment).

(7) When a 2008 Section Optant becomes a member of this Section of the Scheme under this Part all rights in respect of that Optant under the 1995 Section are extinguished.

#### **2.K.4 Treatment of Additional Pension**

(1) This regulation applies to a 2008 Section Optant who, whilst a member of the 1995 Section, had exercised an option to purchase additional pension ("OPAP") under regulation Q8 or Q10 or whose employing authority had done so under regulation Q11 of those Regulations (which deal with the purchase of additional pension by periodical contributions and lump sums).

(2) Where paragraph (1) applies, the amount of additional pension that will count under this Section of the Scheme shall be calculated in accordance with--

(a) paragraph (3) when all the contributions required to be made under the OPAP have been made in accordance with regulation Q14 of the 1995 Regulations (effect of payment of additional contributions under this Part),

(b) paragraph (4) when the OPAP has ceased or been cancelled in accordance with regulation Q13 of those Regulations (cancellation and cessation of options under regulation Q8).



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(3) Where paragraph (2)(a) applies, the amount of additional pension that will count under regulation 2.C.14 shall be equal to the amount of additional pension--

- (a) purchased in the 1995 Section under regulation Q14 of the 1995 Regulations where the person's chosen birthday under the OPAP was 65;
- (b) that would have been purchased in the 1995 Section under regulation Q14 of the 1995 Regulations if the person's chosen birthday had been 65 and, in determining that amount, the Secretary of State shall have regard to the advice of the Scheme actuary, where the person's chosen birthday under the OPAP was 60.

Paragraph (3)(b) is subject to paragraph (9).

(4) Where paragraph (2)(b) applies, the amount of additional pension that will count under regulation 2.C.16 shall be equal to the amount of additional pension--

- (a) that was purchased in the 1995 Section under regulation Q13 of the 1995 Regulations, where the person's chosen birthday under the OPAP was 65;
- (b) that would have been purchased in the 1995 Section under regulation Q13 of the 1995 Regulations if the person's chosen birthday had been 65 and, in determining that amount, the Secretary of State shall have regard to the advice of the Scheme actuary, where the person's chosen birthday under the OPAP was 60.

Paragraph (4)(b) is subject to paragraph (9).

(5) The additional pension referred to in paragraph (3) or (4) that counts in this Section of the Scheme shall do so from the effective date specified in paragraph (5) of regulation 2.K.2.

(6) This paragraph applies--

- (a) to a person referred to in paragraph (1), and
- (b) where at the effective date specified in paragraph (5) of regulation 2.K.2--
  - (i) that person--
    - (aa) was making additional contributions in accordance with an OPAP exercised under regulation Q8 of the 1995 Regulations; or
    - (bb) had applied to make, but had not yet begun making, additional contributions under regulation Q8 of the 1995 Regulations; or
    - (cc) had applied to make, but had not yet made, a single lump sum contribution in accordance with an OPAP exercised under regulation Q10 of the 1995 Regulations; or
  - (ii) that person's employing authority had applied to make, but had not yet made, a single lump sum contribution on the person's behalf, in accordance with an OPAP exercised under regulation Q11 of the 1995 Regulations.

(7) Where paragraph (6) applies and the person's chosen birthday referred to in regulation Q8 of the 1995 Regulations was 65, the OPAP referred to in that paragraph will apply in this Section of the Scheme as if the OPAP were an option to purchase additional pension in accordance with whichever of regulation 2.C.8, 2.C.10 or 2.C.11 would apply in that case.



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(8) Where paragraph (6) applies and the person's chosen birthday referred to in regulation Q8 of the 1995 Regulations was 60, the OPAP referred to in that paragraph will apply in this Section of the Scheme--

- (a) as if the OPAP were an option to purchase additional pension in accordance with whichever of regulation 2.C.8, 2.C.10 or 2.C.11 would apply in that case, and
- (b) after adjustment, having regard to the advice of the Scheme actuary, so that--
  - (i) the amount of the additional pension purchased in this Section of the Scheme is the same as that which would have been purchased in the 1995 Section, but
  - (ii) the additional periodical or lump sum contributions payable, regard being had to the normal retirement age of 65 applying in this Section of the Scheme, reduce or (where appropriate) cease to be payable.

This is subject to paragraph (9).

(9) If paragraph (3)(b), (4)(b) or (8) of this regulation applies and--

- (a) the amount of the additional pension calculated in accordance with paragraph (3)(b) or (4)(b) will exceed the limit on the total increase in the member's pension referred to, as the case may be, in regulation 2.C.8, 2.C.10 or 2.C.11, or
- (b) the limit on the total increase in the member's pension referred to in regulation 2.C.8 will be exceeded by the amount of additional pension that counts in this Section of the Scheme in accordance with paragraph (8)(b)(i) of this regulation notwithstanding any reduction in, or cessation of, additional contributions payable in accordance paragraph (8)(b)(ii),

the total increase in the member's pension under this regulation, taken together with any other increase under regulations 2.C.8, 2.C.10 or 2.C.11--

- (i) will be subject to the limit on the total increase in the member's pension described in regulation 2.C.8, 2.C.10 or 2.C.11, and
- (ii) the amount of additional pension that counts in this Section of the Scheme in accordance with paragraphs (2) to (8) of this regulation that exceeds that limit will be converted to pensionable service for the purposes of regulation 2.A.2(1)(d), and in determining the amount of additional pension to be converted into pensionable service, the Secretary of State shall have regard to the advice of the Scheme actuary.

## **2.K.5 Treatment of Additional Service**

(1) A 2008 Section Optant--

- (a) who becomes a member of this Section of the Scheme, and
- (b) is buying or has already bought a period of additional service that counts as pensionable service under regulation C2(1)(e) of the 1995 Regulations (meaning of pensionable service),

will be able to count as pensionable service in this Section of the Scheme the service referred to in whichever of paragraphs (5) or (6) apply to that Optant.

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(2) The additional service referred to in paragraph (1) is--

- (a) any additional service bought under regulation Q1 of the 1995 Regulations (right to buy additional service) before the date that person's option to join this Section of the Scheme was received by the Secretary of State in accordance with regulation 2.K.2, and
- (b) any additional service bought under regulations 25 or 26 of the National Health Service (Superannuation) Regulations 1980 (purchase of added years of contributing service, and additional payments to reckon certain periods of service as contributing service at actual length, respectively).

This is subject to paragraphs (3) and (4).

(3) The additional service referred to at paragraph (2)(a) will be calculated in accordance with--

- (a) paragraph (4), and as the case may be paragraph (8), of regulation Q1 of the 1995 Regulations, in the case of an election that had ceased and was paid for in full by the date referred to in paragraph (2)(a);
- (b) paragraphs (1), (4) and (5) (but not (6)) of regulation Q7 of the 1995 Regulations (part payment for additional service or unreduced retirement sum), in the case of an election that had ceased but had only partially been paid for at that date, or
- (c) paragraphs (1), (4) and (5) (but not (6)) of regulation Q7 of the 1995 Regulations, in the case of an election that remained in force immediately before that date.

Paragraph (3)(c) is subject to paragraph (7).

(4) The additional service referred to at paragraph (2)(b) will be calculated in accordance with whichever of--

- (a) paragraph (3) or (4)(b) of regulation 25, or
- (b) paragraph (1) or (3)(b) of regulation 26,

of the National Health Service (Superannuation) Regulations 1980 applies to the Optant.

(5) The period of pensionable service which a 2008 Section Optant who is under age 60 on 1st October 2009 may count under this Section of the Scheme is a period equal in length to the period of additional service calculated in respect of that Optant in accordance with whichever of paragraph (3) or (4) apply to the Optant.

(6) The period of pensionable service which a 2008 Section Optant who is age 60 or over on 1st October 2009 may count under this Section of the Scheme is the period found by--

- (a) first taking a period equal in length to the period of additional service (specified in days) calculated in respect of that Optant in accordance with whichever of paragraph (3) or (4) applies ("Period AS"), and
- (b) then multiplying Period AS by the factor specified by the Secretary of State for that purpose.

(7) Where a member was buying additional service by means of additional contributions immediately before the date referred to in paragraph (2)(a), the member's--

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- (a) election to buy additional service will cease from that date, and
  - (b) any additional contributions due under the election that are unpaid at that date will be deducted from the member's pensionable pay in accordance with regulation 2.K.2(6) and (7).
- (8) For the purposes of calculating the Optant's benefits under this Section of the Scheme the pensionable service that the Optant is entitled to count under paragraph (5) or, as the case may be, paragraph (6) of this regulation will be added to the pensionable service the member is entitled to count under--
- (a) regulation 2.K.3(3), if the member is under age 60 on 1st October 2009, or
  - (b) regulation 2.K.3(4), if the member is age 60 or over on that date.

This is subject to regulation 2.K.18.

## **2.K.6 Treatment of unreduced retirement lump sum**

- (1) This regulation applies to a 2008 Section Optant who becomes a member of this Section of the Scheme and, at the date that person's option to join this Section of the Scheme was received by the Secretary of State in accordance with regulation 2.K.2, had made an election under regulation Q2 of the 1995 Regulations (right to buy an unreduced lump sum) to--
- (a) purchase an unreduced retirement lump sum for service before 25th March 1972, or
  - (b) buy additional survivor's pension for service before 6th April 1988,
- which satisfies any of the conditions in paragraph (2).
- (2) Those conditions are that the election--
- (a) was paid for in full by the date referred to in paragraph (1);
  - (b) ceased before the date referred to in paragraph (1), but before completion of the additional contributions payable;
  - (c) was payable by additional contributions and remained in force immediately before the date referred to in paragraph (1); or
  - (d) was payable by deduction from the member's retirement lump sum.
- (3) If paragraph (1) applies, the election referred to in that paragraph will cease to be effective from 1st April 2008 and--
- (a) any additional contributions under the election that were due but not paid at that date will be deducted in accordance with regulations 2.K.2(6) and (7);
  - (b) any liability to pay additional contributions under the election will cease from, and including, 1st April 2008, and
  - (c) any requirement to pay for an unreduced retirement lump sum by the deduction referred to in paragraph (2)(d) will lapse.

## **2.K.7 Treatment of 2008 Section Optants to whom regulation L4(3) of the 1995 Regulations applied immediately before 1st April 2008**

- (1) This regulation applies to a 2008 Section Optant--

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- (a) whose benefits on retirement or death would, but for this regulation, be calculated in accordance with Chapters 2.D and 2.E; and
  - (b) who, but for joining this Section of the Scheme, would otherwise have been entitled to have benefits on retirement or death calculated in accordance with regulation L4(3) of the 1995 Regulations (early leavers returning to pensionable employment).
- (2) For the purpose of calculating the benefits on retirement or death of a 2008 Section Optant referred to in paragraph (1), the Optant may, where it would be more beneficial to the Optant, be treated--
- (a) as a deferred member of this Section of the Scheme in respect of any period of pensionable service credited to that Optant under regulation 2.K.3 that relates to one or more periods of pensionable employment in the 1995 Section that occurred before a break of 12 months or more in such employment ("an earlier service credit"), and
  - (b) as if the Optant became an active member for the first time on the first day of any period of pensionable service credited to that Optant under regulation 2.K.3 that relates to a period of pensionable employment in the 1995 Section that occurred after a break of 12 months or more in such employment.

This is subject to paragraph (3).

- (3) The Optant's benefits in respect of an earlier service credit mentioned in paragraph (2)(a) shall be calculated--
- (a) separately, and
  - (b) by reference to the final year's pensionable pay calculated in accordance with regulation C1 of the 1995 Regulations (meaning of pensionable pay and final year's pensionable pay) in respect of that particular period.

This is subject to regulation 2.D.8(5)(b)(ii).

## **2.K.8 Pension debit members**

- (1) This regulation applies where, on becoming a member of this Section of the Scheme, a 2008 Section Optant is a pension debit member.
- (2) The amount of the reduction to be made to the Optant's pension under this Section of the Scheme shall be the amount of the reduction that applied to the Optant's pension under the 1995 Section calculated in accordance with section 31 of the 1999 Act (reduction of benefit) adjusted by the factor referred to in paragraph (3).
- (3) The factor referred to in paragraph (2) is the factor specified by the Secretary of State for that purpose.
- (4) The Secretary of State may, after taking advice from the Scheme actuary, make such modifications to--
- (a) the Optant's rights, and
  - (b) as to the form of the Optant's benefits,
- as the Secretary of State considers necessary for the purpose specified in paragraph (5).
- (5) If in the opinion of the Secretary of State, it is necessary for the purpose of giving effect to the pension sharing order to which the Optant's rights are subject for

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some or all of the benefits under this Section of the Scheme to be taken in a different form from that in which that Optant would otherwise be entitled to take them, the Secretary of State may modify those benefits as described in paragraph (4).

#### **2.K.9 Treatment of 2008 Section Optants to whom regulation R9 of the 1995 Regulations applied immediately before 1st April 2008**

- (1) This regulation applies to a 2008 Section Optant--
- (a) whose earnings in respect of pensionable employment in the 1995 Section were reduced;
  - (b) whose employer certified that the reduction in sub-paragraph (a) occurred in the circumstances described in paragraph (2) of regulation R9 of the 1995 Regulations (members whose earnings are reduced);
  - (c) who, subject to the agreement of the Secretary of State, would, on retirement or death, have become entitled to have a preserved pension calculated and paid as described in regulation L1 of the 1995 Regulations (preserved pension) in respect of pensionable service in the 1995 Section before the Optant's earnings were reduced; and
  - (d) whose benefits on retirement or death would, but for this regulation, be calculated in accordance with Chapters 2.D and 2.E.
- (2) For the purpose of calculating the benefits on retirement or death of a 2008 Section Optant referred to in paragraph (1), the Optant may, where it would be more beneficial to the Optant, be treated--
- (a) as a deferred member of this Section of the Scheme in respect of any period of pensionable service credited to that Optant under regulation 2.K.3 that relates to one or more periods of pensionable service in the 1995 Section before that Optant's earnings were reduced as described in paragraph (1) ("a protected service credit"), and
  - (b) as if the Optant became an active member for the first time on the first day of any period of pensionable service credited to that Optant under regulation 2.K.3 that relates to a period of pensionable service in the 1995 Section after that Optant's earnings were reduced as described in paragraph (1).

This is subject to paragraph (3).

- (3) The Optant's benefits in respect of a protected service credit mentioned in paragraph (2)(a) shall be calculated--
- (a) separately, and
  - (b) by reference to the final year's pensionable pay calculated in accordance with regulation C1 of the 1995 Regulations (meaning of pensionable pay and final year's pensionable pay) in respect of that particular period.

#### **2.K.10 Restriction on pensionable pay used for calculating benefits in respect of capped Optant service**

- (1) This regulation applies for determining the amount of an Optant's pensionable pay for the purposes of calculating so much of any benefit under this Section of the Scheme as falls to be calculated by reference to capped Optant service.

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(2) If an Optant's pensionable pay exceeds the permitted maximum, the excess is disregarded for the purposes of any such calculation as is mentioned in paragraph (1).

(3) In this regulation "permitted maximum" means--

- (a) in relation to the tax year 2009-10, £123,600, and
- (b) in relation to any later tax year, the figure found for that year under paragraphs (4) and (5).

(4) If the retail prices index for the month of September preceding the tax year 2010-11 or any later tax year is higher than it was for the previous September, the figure for that year is 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.

(5) If the retail prices index for the month of September preceding the tax year 2010-11 or any later tax year is not higher than it was for the previous September, the figure for that year is the same as for the previous tax year.

(6) In this regulation--

- (a) "capped Optant service" has the meaning given by regulation 2.K.11; and
- (b) "pensionable pay" has the meaning given by regulation 2.A.8.

## **2.K.11 Meaning of "capped Optant service"**

(1) This regulation applies if a 2008 Section Optant is entitled to count a period of service under this Section of the Scheme in accordance with--

- (a) regulation 2.K.3, or
- (b) regulation 2.K.5,

in respect of service in the 1995 Section that was, or included, capped service.

(2) For the purposes of this Part, the same proportion of the total service that the member is entitled to count under regulations 2.K.3 and 2.K.5 as the capped service bears to the whole of the Optant's service in the 1995 Section up to and including 31st March 2008 is capped Optant service.

(3) For the purposes of paragraph (1) the Optant's service in the 1995 Section was capped service so far as--

- (a) in the case of service before 6th April 2006, the Optant was an active member of the 1995 Section whose pension under that Section in respect of the service was to be calculated by reference to remuneration limited in each tax year to the permitted maximum for that year within the meaning of section 590C(2) of the Income and Corporation Taxes Act 1988, or
- (b) in the case of service on or after 6th April 2006, the Optant was an active member of the 1995 Section whose pension under that Section in respect of the service was to be calculated by reference to remuneration limited in each tax year to an amount calculated in the same manner as the permitted maximum



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under section 590C(2) of the Income and Corporation Taxes Act 1988 was calculated for tax years ending before that date.

(4) For the purposes of paragraph (3), it does not matter whether, apart from the application of the limit, the Optant's remuneration in any tax year would have exceeded the amount of the limit.

## **2.K.12 Amount of pension and lump sum to be paid to a 2008 Section Optant**

(1) This regulation applies to a 2008 Section Optant who--

(a) is entitled to an annual pension under Chapter 2.D, or

(b) is entitled to the payment of a transfer value under Chapter 2.F in respect of the pension that has accrued to, or in respect of, that Optant under this Section of the Scheme.

(2) In the case of a 2008 Section Optant referred to in paragraph (1)(a)--

(a) that Optant shall be entitled to the payment of a lump sum determined in accordance with whichever of the following paragraphs of this regulation apply to that Optant, and

(b) the annual amount of pension referred to in paragraph (1)(a) to which the Optant is entitled shall be reduced by an amount equal to the amount of the lump sum referred to in sub-paragraph (a) divided by 12.

(3) In the case of a 2008 Section Optant referred to in paragraph (1)(b)--

(a) the transfer value shall be calculated by reference to a lump sum determined under paragraph (5) of this regulation, and

(b) the pension by reference to which, apart from this regulation, the transfer value in respect of that Optant would otherwise be calculated shall be reduced by an amount equal to the amount of the lump sum referred to in paragraph (a) divided by 12.

(4) Except in the case of an Optant to whom paragraph (6), (8), (10) or (12) applies, the amount of the lump sum shall be determined as described in paragraph (5).

This is subject to paragraphs (13) and (15).

(5) The amount of the lump sum shall be determined by--

(a) applying the formula--

$$(3 \times (\text{Relevant Service} \times \text{Reckonable Pay})) / (80 \times 365)$$

and

(b) rounding down the amount found under sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.

(6) In the case of an Optant who--

(a) becomes entitled to an annual amount of pension payable under regulation 2.D.4, and

(b) has not attained age 60 on the day of becoming entitled to that pension, the amount of lump sum shall be determined as described in paragraph (7).



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(7) The amount of the lump sum that is to be paid to an Optant referred to in paragraph (6) shall be calculated by--

(a) applying the formula--

$(3 \times (\text{Relevant Service} \times \text{Reckonable pay} \times \text{Reduction Factor})) / (80 \times 365)$

and

(b) rounding down the amount found under sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.

(8) In the case of an Optant who--

(a) becomes entitled to an annual amount of pension payable under regulation 2.D.5 for the first time, and

(b) has not attained age 60 on the day of becoming entitled to that pension,

the amount of lump sum shall be determined as described in paragraph (9).

(9) The amount of the lump sum that is to be paid to an Optant referred to in paragraph (8) shall be calculated by--

(a) applying the formula--

$(3 \times (\text{Specified Service} \times \text{Reckonable pay} \times \text{Reduction Factor})) / (80 \times 365)$

and

(b) rounding down the amount found under sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.

(10) In the case of an Optant who--

(a) becomes entitled to an annual amount of pension payable under regulation 2.D.5 for the first time, and

(b) has attained age 60 on the day of becoming entitled to that pension,

the amount of lump sum shall be determined as described in paragraph (11).

(11) The amount of the lump sum that is to be paid to an Optant referred to in paragraph (10) shall be calculated by--

(a) applying the formula--

$(3 \times (\text{Specified Service} \times \text{Reckonable Pay})) / (80 \times 365)$

and

(b) rounding down the amount found under sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.

(12) In the case of an Optant--

(a) who is a pensioner member as respects a pension payable under regulation 2.D.5 as described in paragraph (9)(a) of that regulation, and

(b) who--

(i) subsequently exercises an option under that regulation for the second or final time, or

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- (ii) becomes entitled to any other pension under Chapter 2.D in respect of pensionable service not taken into account for the purposes of calculating the pension payable under sub-paragraph (a),

the amount of lump sum payable under this regulation shall be determined by the Secretary of State after taking advice from the Scheme actuary.

(13) If, on becoming a member of this Section of the Scheme, a 2008 Section Optant is a pension debit member the amount of the lump sum determined under this regulation shall be reduced by the amount calculated under paragraph (14) ("the pension debit reduction").

(14) The amount of the pension debit reduction referred to in paragraph (13) shall be calculated by--

- (a) applying the formula--

$3 \times (1995 \text{ Section Pension Debit} \times \text{Increase Factor})$

and

- (b) rounding up the amount found in sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.

(15) If any part of an Optant's benefit under this Section of the Scheme falls to be calculated by reference to capped Optant service under regulation 2.K.10 the determinations in this regulation shall apply separately in respect of--

- (a) the pension to which the Optant is entitled in respect of the service that falls to be calculated by reference to capped Optant service, and
- (b) the pension to which the Optant is entitled in respect of the service that does not fall to be calculated by reference to capped Optant service.

(16) For the purposes of this regulation--

"1995 Section Pension Debit" is the amount by which the Optant's annual pension under the 1995 Regulations was to be reduced in accordance with section 31 of the 1999 Act;

"annual amount", in relation to a pension, means the amount of the annual pension to which the member would be entitled under this Section of the Scheme apart from this regulation, together with any increases payable under the Pensions (Increase) Act 1971, calculated as at the time payment would first be due;

"Increase Factor" is the factor that would have applied to the 1995 Section Pension Debit for the purposes of section 29 of the 1999 Act (creation of pension debits and credits) if the Optant had become entitled to a pension under the 1995 Regulations--

- (a) on the date that the Optant becomes entitled to a pension referred to in paragraph (1)(a), or
- (b) on the day after the Optant's last day of pensionable service if the Optant becomes entitled to the payment of a transfer value referred to in paragraph (1)(b);

"Reckonable Pay" is the Optant's reckonable pay calculated under Chapter 2.A;

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"Reduction Factor" is the reduction factor that the Secretary of State, after taking advice from the Scheme actuary, determines would have applied to that Optant's lump sum retiring allowance under regulation E6(7)(b) of the 1995 Regulations (lump sum on retirement) if that Optant had become entitled to a pension calculated under regulation E5 of those Regulations (early retirement pension (with actuarial reduction)) on the day he became entitled to a pension under regulation 2.D.4 or, as the case may be, regulation 2.D.5;

"Relevant Service " is a period (expressed in days) equal to the aggregate of--

- (a) the period of pensionable service that the Optant is entitled to count under regulation 2.K.3, and
- (b) the period of pensionable service (if any) that the Optant is entitled to count under regulations 2.K.5 and 2.K.18;

"Specified Service" is the amount of the Optant's Relevant Service (expressed in days) multiplied by the specified percentage;

"specified percentage" is the percentage of the member's pension in respect of which the member claims immediate payment under regulation 2.D.5(4)(a).

(17) In the case of a 2008 Section Optant whose benefits are subject to the modification provided in Part 4, this regulation is subject to regulation 3.K.11(16).

### ***Miscellaneous provisions***

#### **2.K.13 Transfers in: transitional provision**

(1) This regulation applies to a 2008 Section Optant who--

- (a) commenced a period of pensionable employment in the 1995 Section on, or after, 1st April 2008, and
- (b) within one year of the commencement of that employment, makes an application to transfer accrued rights to benefits to the 1995 Section under regulation N1 of the 1995 Regulations (member's right to transfer accrued rights to benefits to this Section of the Scheme).

(2) If--

- (a) the Secretary of State accepts the transfer payment in respect of the application referred to in paragraph (1) in accordance with regulation N1(4) of the 1995 Regulations, and
- (b) that payment is received by the Secretary of State before the day on which the person's option to join this Section of the Scheme is received,

the period of pensionable service that the Optant is entitled to count in respect of that transfer payment for the purposes of calculating benefits payable to or in respect of the Optant under this Section of the Scheme will be calculated as described in paragraph (4).

(3) If the transfer payment in respect of an application referred to in paragraph (1) is received by the Secretary of State on, or after, the day on which the person's option to join this Section of the Scheme is received--

- (a) the Secretary of State may accept that payment under this Section of the Scheme--

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- (i) without requiring the Optant to make an application under regulation 2.F.8, and
    - (ii) subject to such other conditions as the Secretary of State may require, and
  - (b) if the Secretary of State accepts the payment, the period of pensionable service that the Optant is entitled to count in respect of that payment for the purposes of calculating benefits payable to or in respect of the Optant under this Section of the Scheme will be calculated as described in paragraph (4).
- (4) The period of pensionable service that the Optant is entitled to count for the purposes of calculating benefits payable to, or in respect of, that Optant under this Section of the Scheme--
- (a) will be calculated in accordance with regulation 2.F.11, and
  - (b) the starting day for the purposes of regulation 2.F.11(2) and (3) will be the day that the Optant's pensionable employment referred to in paragraph (1) commenced.
- This is subject to paragraph (5).
- (5) If the transfer value payment is accepted by the Secretary of State under the public sector transfer arrangements--
- (a) regulation 2.F.12 shall apply to the Optant in respect of the period of pensionable service that the Optant is entitled to count under this regulation, and
  - (b) the reference in regulation 2.F.12(2) to the service that the member is entitled to count under regulation 2.F.10(2)(a) shall be read as a reference to the service the Optant is entitled to count under paragraph (4) of this regulation.

#### **2.K.14 2008 Section Optants: Transitional Tier 2 ill-health pension**

- (1) This regulation applies to a 2008 Section Optant--
- (a) who has submitted a form AW33E (or such other form as the Secretary of State was willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation E2A of the 1995 Regulations (ill-health pension on early retirement), and
  - (b) that form and supporting medical evidence was received by the Secretary of State before the date on which the Secretary of State received the Optant's option to join this Section of the Scheme.
- (2) If the Optant referred to in paragraph (1) becomes entitled to a pension under regulation 2.D.8(3) ("a tier 2 ill-health pension") within a period of one year beginning with the day on which that Optant's option to join this Section of the Scheme is received--
- (a) that Optant's service shall be increased by the enhancement period determined in accordance with paragraph (3) of this regulation ("the transitional enhancement period"), and
  - (b) the transitional enhancement period shall apply to that Optant's service in place of the enhancement period that, apart from this regulation, would otherwise apply to the Optant's service under regulation 2.D.8(6).

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This is subject to paragraph (5).

(3) In this regulation--

- (a) "the transitional enhancement period" means two-thirds of the Optant's assumed pensionable service, and
- (b) "the Optant's assumed pensionable service" means the further pensionable service that the Optant could have counted if the Optant had continued in service until reaching the age of 60.

This is subject to paragraph (4).

(4) If the transitional enhancement period determined under paragraph (3) is less than four years pensionable service, the transitional enhancement period by which the Optant's pensionable service is increased shall be the lesser of--

- (a) four years pensionable service, and
- (b) the pensionable service the Optant could have counted if the Optant had continued in service until reaching the age of 60.

(5) In the case of an Optant to whom this regulation applies, references to the "enhancement period" in regulation 2.D.8 are to be read as references to the "transitional enhancement period" determined under this regulation.

#### **2.K.15 Treatment of ill-health retirement applications made by 2008 Section Optants within one year of joining this Section of the Scheme**

(1) This regulation applies to a 2008 Section Optant--

- (a) who submits a form AW33E (or such other form as the Secretary of State is willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation 2.D.8, and
- (b) that form and supporting medical evidence is received by the Secretary of State before the end of the period of one year commencing on the day on which the Secretary of State received the Optant's option to join this Section of the Scheme.

(2) If, following a consideration of the form and medical evidence referred to in paragraph (1), the Optant referred to in that paragraph becomes entitled to a pension under regulation 2.D.8(3) ("a tier 2 ill-health pension")--

- (a) that Optant's service shall be increased by the enhancement period determined in accordance with whichever of paragraphs (3) or (4) of regulation 2.K.14 apply to the Optant, and
- (b) the transitional enhancement period shall apply to that Optant's service in place of the enhancement period that, apart from this regulation, would otherwise apply to the Optant's service under regulation 2.D.8(6).

This is subject to paragraph (3).

(3) In the case of an Optant to whom this regulation applies, references to the "enhancement period" in regulation 2.D.8 are to be read as references to the "transitional enhancement period" determined under this regulation.

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## **2.K.16 Application of regulation 2.D.9 where a 2008 Section Optant has submitted an application for ill-health retirement under the 1995 Section**

- (1) This regulation applies to a 2008 Section Optant--
  - (a) who submitted a form AW33E (or such other form as the Secretary of State was willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation E2A of the 1995 Regulations (ill-health pension on early retirement), and
  - (b) that form and supporting medical evidence was received by the Secretary of State before the date on which the Secretary of State received the Optant's option to join this Section of the Scheme.
- (2) If, following a consideration of the form and medical evidence referred to in paragraph (1), the Optant referred to in that paragraph becomes entitled to a pension under regulation 2.D.8(2) ("a tier 1 ill-health pension")--
  - (a) within a period of one year beginning with the day on which that Optant's option to join this Section of the Scheme is received, and
  - (b) immediately before joining this Section of the Scheme the Optant was notified under regulation E2B of the 1995 Regulations (re-assessment of ill-health condition determined under regulation E2A) that the Optant may ask the Secretary of State to consider whether that Optant subsequently meets the tier 2 condition under that regulation,that Optant shall be entitled to a re-assessment of entitlement to an ill-health pension determined under regulation 2.D.9 in accordance with the following paragraphs of this regulation.
- (3) For the purposes of assessing whether the Optant satisfies the condition in regulation 2.D.8(3)(a) at the date of the Secretary of State's review, "permanently" shall mean until age 60.
- (4) If, after considering the further medical evidence provided by the Optant under regulation 2.D.9, the Secretary of State determines that the Optant meets the condition in regulation 2.D.8(3)(a), then as from the date on which that determination is made the Optant--
  - (a) ceases to be entitled to a tier 1 ill-health pension; and
  - (b) becomes entitled to a tier 2 ill-health pension under regulation 2.D.8 but which shall be calculated in accordance with paragraph (5) of this regulation.
- (5) For the purpose of calculating the tier 2 ill-health pension referred to in paragraph (4)--
  - (a) the Optant's service shall be increased by the transitional enhancement period determined in accordance with whichever of paragraphs (3) or (4) of regulation 2.K.14 apply to that Optant, and
  - (b) the transitional enhancement period shall apply to that Optant's service in place of the enhancement period that, apart from this regulation, would otherwise apply to that Optant's service under regulation 2.D.8(6).

This is subject to paragraph (6).

- (6) In the case of an Optant to whom this regulation applies--



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- (a) regulation 2.K.14 shall be read as if paragraph (3)(b) of that regulation included the words "from the date of the Secretary of State's determination under regulation 2.D.9" after "continued in service", and
- (b) references to the "enhancement period" in regulation 2.D.8 are to be read as references to the "transitional enhancement period" determined under this regulation.

**2.K.17 Application of regulation 2.D.9 where a 2008 Section Optant has submitted an application for ill-health retirement under the 2008 Section within a year of joining the 2008 Section**

- (1) This regulation applies to a 2008 Section Optant--
  - (a) who submits a form AW33E (or such other form as the Secretary of State is willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation 2.D.8,
  - (b) that form and supporting medical evidence was received by the Secretary of State before the end of the period of one year commencing on the day the Secretary of State received the Optant's option to join this Section of the Scheme, and
  - (c) following a consideration of the form and medical evidence referred to in sub-paragraph (a)--
    - (i) the Optant becomes entitled to a tier 1 ill-health pension under regulation 2.D.8, and
    - (ii) at the time the Optant is awarded a pension under that regulation the Secretary of State gives the Optant notice in writing in accordance with regulation 2.D.9(1)(b) that the Optant's case may be considered once within a period of three years commencing with the date of that award to determine whether the Optant meets the condition in regulation 2.D.8(3)(a) at the date of such a consideration.
- (2) If, after considering the further medical evidence provided by the Optant under regulation 2.D.9, the Secretary of State determines that the Optant meets the condition in regulation 2.D.8(3)(a), then as from the date on which that determination is made the Optant--
  - (a) ceases to be entitled to a tier 1 ill-health pension; and
  - (b) becomes entitled to a tier 2 ill-health pension under regulation 2.D.8 but which shall be calculated in accordance with paragraph (3) of this regulation.
- (3) For the purpose of calculating the tier 2 ill-health pension referred to in paragraph (2)--
  - (a) the Optant's service shall be increased by the transitional enhancement period determined in accordance with whichever of paragraphs (3) or (4) of regulation 2.K.14 apply to that Optant, and
  - (b) the transitional enhancement period shall apply to that Optant's service in place of the enhancement period that, apart from this regulation, would otherwise apply to that Optant's service under regulation 2.D.8(6).

This is subject to paragraph (4).



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- (4) In the case of an Optant to whom this regulation applies--
- (a) regulation 2.K.14 shall be read as if paragraph (3)(b) of that regulation included the words "from the date of the Secretary of State's determination under regulation 2.D.9" after "continued in service", and
  - (b) references to the "enhancement period" in regulation 2.D.8 are to be read as references to the "transitional enhancement period" determined under this regulation.

**2.K.18 Transitional provision: Treatment of additional service in respect of Optants retiring on the grounds of ill-health**

- (1) This regulation applies to a 2008 Section Optant who, apart from this regulation, would be entitled to count a period of pensionable service determined in accordance with paragraph (3) of regulation 2.K.5.
- (2) If--
- (a) an Optant referred to in paragraph (1) submitted a form AW33E (or such other form as the Secretary of State was willing to accept) together with supporting medical evidence (if not included on the form) pursuant to regulation E2A of the 1995 Regulations (ill-health pension on early retirement);
  - (b) that form and supporting medical evidence was received by the Secretary of State before the end of a period of one year commencing on the date on which the Optant commenced payment for a period of additional service under regulation Q6 of the 1995 Regulations (paying for additional service and unreduced retirement lump sum by regular additional contributions); and
  - (c) following a consideration of the form and medical evidence referred to in (a) that Optant becomes entitled to a tier 1 or tier 2 ill-health pension under regulation 2.D.8 within a period of one year beginning with the day on which the Optant's option to join this Section of the Scheme is received,
- that Optant will not be entitled to count a period of pensionable service under regulation 2.K.5 and--
- (i) an amount equal to the contributions (less any tax that may be payable) made by the Optant in respect that period of additional service shall be returned to the Optant in accordance with regulation Q7(2) of the 1995 Regulations (part payment for additional service or unreduced retirement sum); and
  - (ii) paragraph (7) of regulation 2.K.5 will not apply.

- (3) If--
- (a) an Optant referred to in paragraph (1) submitted a form AW33E (or such other form as the Secretary of State was willing to accept) together with supporting medical evidence (if not included on the form) pursuant to regulation E2A of the 1995 Regulations;
  - (b) that form and supporting medical evidence was received by the Secretary of State after a period of at least one year commencing on the date on which the Optant commenced payment for a period of additional service under regulation Q6 of the 1995 Regulations; and
  - (c) following a consideration of the form and medical evidence referred to in (a) that Optant becomes entitled to a tier 1 or tier 2 ill-health pension under

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regulation 2.D.8 within a period of one year beginning with the day on which the Optant's option to join this Section of the Scheme is received,

in addition to the pensionable service that Optant is entitled to count under regulation 2.K.5, that Optant shall also be entitled to count a period of pensionable service determined under paragraph (4) of this regulation.

(4) The period of pensionable service that an Optant is entitled to count under this regulation shall be a period of service equal to the difference between--

(a) the period of service the Optant is entitled to count under regulation 2.K.5, and

(b) the period of service the Optant elected to purchase under regulation Q1 of the 1995 Regulations calculated in accordance with regulation Q7(3) of the 1995 Regulations and as if the member had become entitled to a pension under regulation E2A of those Regulations on the day the Secretary of State received that Optant's option to join this Section of the Scheme.

(5) For the purposes of calculating the Optant's benefits under this Section of the Scheme, the pensionable service the Optant is entitled to count under paragraph (4) of this regulation will be added to the service the member is entitled to count under regulation 2.K.3(3).

#### **2.K.19 Circumstances in which a 1995 Section member may defer making an option to join this Section of the Scheme under regulation 2.K.2**

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

(a) on, or after, 1st October 2009--

(i) is an active member of the 1995 Section, or

(ii) is a member of that Section who is absent from work because of illness or injury and whose earnings have ceased in the circumstances described in paragraph (4)(a) of regulation P1 of the 1995 Regulations (absence because of illness or injury or certain types of leave),

(b) has submitted a form AW33E (or such other form as the Secretary of State was willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation E2A of the 1995 Regulations (ill-health pension on early retirement), and

(c) that form and supporting medical evidence was received by the Secretary of State--

(i) before the date on which a comparative statement of benefits under the 1995 Section and the 2008 Section of the Scheme is sent to the person (whether by electronic communication or otherwise) in accordance with regulation 2.K.2; or

(ii) if such a statement has been issued to that person, before the date specified by the Secretary of State for the purposes of paragraph (3) of that regulation.

(2) A person to whom paragraph (1) applies may opt to join this Section of the Scheme in accordance with paragraph (3).

(3) The option under paragraph (2) may only be exercised if--

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- (a) the person gives notice in writing to the Scheme administrator in such form as the Secretary of State requires, and
- (b) that notice is received by the Scheme administrator within a period of four months starting with, where--
  - (i) that person is sent a written notification of the Secretary of State's decision as to whether, in consideration of the form and medical evidence referred to in paragraph (1), that person has met the tier 1 or the tier 2 condition specified in regulation E2A of the 1995 Regulations ("the first decision"), the date of that decision;
  - (ii) that person is sent a written notification of the Secretary of State's decision in respect of the stage one dispute ("a stage one decision"), the date of that decision;
  - (iii) that person is sent a written notification of the Secretary of State's decision in respect of the stage two dispute ("a stage two decision"), the date of that decision; or
  - (iv) that person is sent written notification of the final determination by the Pensions Ombudsman, the date of that determination.

This is subject to paragraph (4).

- (4) Paragraph (3) shall cease to apply to any person if at any time that person--
  - (a) returns to NHS employment, or
  - (b) claims a pension under regulation E5 or L1 of the 1995 Regulations (early retirement pension (with actuarial reduction) and preserved pension, respectively).
- (5) For the purpose of this regulation--

"stage one dispute" means a request made to the Secretary of State for a review of the first decision under section 50 of the 1995 Act (resolution of disputes), that is received by the Secretary of State within a period of one year starting with the date on which that person's contract of employment is terminated;

"stage two dispute" means a request made to the Secretary of State to review the stage one decision under section 50 of the 1995 Act that is received by the Secretary of State within a period of six months starting with the day on which that person is sent a written notification of a stage one decision;

"the final determination by the Pensions Ombudsman" means a written determination under section 151 of the 1993 Act made as the result of the investigation of a complaint by the person in respect of the stage two decision that was received by the Pensions Ombudsman within a period of three years starting with the day on which the person is sent written notification of the stage two decision.

## **2.K.20 Nominations and notices accepted by the Secretary of State under the 1995 Regulations to apply under Chapter 2.E of these Regulations**

- (1) This regulation applies if--

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- (a) the Secretary of State has accepted any of the nominations or notices specified in paragraph (2) in respect of the benefits to be paid on the death of a person who is a 1995 Section member, and
  - (b) on the day that the Secretary of State receives that person's option to join this Section of the Scheme, that person has not revoked that nomination or notice.
- (2) The nominations and notices referred to in paragraph (1) are--
- (a) a nomination made in accordance with regulation F5 of the 1995 Regulations (payment of lump sum) in favour of one or more persons in respect of any lump sum that becomes payable under regulations F1 to F4 of the 1995 Regulations (which deal with lump sum payments on the death of a member in different circumstances);
  - (b) a notice provided for the purposes of paragraph (3)(a) of regulation F5 of the 1995 Regulations that the person's surviving partner (within the meaning of that regulation) is not to receive the payment of any lump sum that becomes payable under regulations F1 to F4 of the 1995 Regulations;
  - ~~(c)~~—(omitted)
- (3) For the purpose of this Section of the Scheme a nomination or notice referred to in paragraph (1) shall be treated--
- (a) in the case of the nomination referred to in paragraph (2)(a), as if that nomination has been accepted by the Secretary of State as a notice for the purposes of regulation 2.E.21,
  - (b) in the case of a notice referred to in paragraph (2)(b), as if that notice had been accepted by the Secretary of State as a notice for the purposes of regulation 2.E.21 specifying that the Optant's personal representatives are to receive any lump sum or pension on the death of the Optant, and
  - (c) in the case of a notice referred to in paragraph (2)(c), as if that notice had been accepted by the Secretary of State as a declaration for the purposes of regulation 2.E.2.

#### **2.K.21 Late payment of pension with actuarial increase for a 2008 Section Optant**

- (1) This regulation applies if a 2008 Section Optant becomes entitled to immediate payment of a pension under regulation 2.D.1 after reaching the age of 65.
- (2) In the case of an Optant to whom paragraph (1) applies so much of the amount of the pension as is attributable to--
  - (a) the pensionable service that Optant is entitled to count under--
    - (i) regulation 2.K.3,
    - (ii) regulation 2.K.5 (if any), and
    - (iii) this Section of the Scheme on or after 1st April 2008 but before reaching the age of 65, and
  - (b) any contributions paid under regulations 2.C.8, 2.C.10 or 2.C.11 before reaching that age,

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shall be increased in accordance with paragraph (4).

This is subject to paragraph (6).

(3) In paragraph (2) the reference to the amount of the pension is to the amount of pension--

(a) before that pension had been reduced in accordance with regulation 2.K.12, and

(b) before any commutation under regulation 2.D.14.

(4) The amount of the increase referred to in paragraph (2) must be calculated in accordance with guidance and tables provided by the Scheme actuary to the Secretary of State for the purposes of this regulation.

(5) In preparing that guidance and those tables the Scheme actuary must use such factors as the Scheme actuary considers appropriate, having regard, in particular, to--

(a) the period after reaching the age of 65 before the Optant becomes entitled to immediate payment of the pension, and

(b) the life expectancy of the Optant.

(6) The increase shall apply to the Optant's pension in place of the actuarial increase that, apart from this regulation, would otherwise apply to the Optant's pension under regulation 2.D.3.

#### **2.K.22 2008 Section Optants who are in receipt of a tier 1 ill-health pension under Regulation E2A of the 1995 Regulations**

(1) This regulation applies to a 2008 Section Optant who--

(a) is entitled to a tier 1 ill-health pension under regulation E2A of the 1995 Regulations (ill-health pension on early retirement) in respect of service in the 1995 Section ("the earlier 1995 Section service"), and

(b) becomes entitled to a tier 1 ill-health pension or, as the case may be, a tier 2 ill-health pension under regulation 2.D.8 in respect of service in this Section of the Scheme ("the later 2008 Section service").

(2) For the purposes of determining whether an Optant can count 45 years of pensionable service for any purpose, the earlier 1995 Section service and the later 2008 Section service are aggregated.

(3) If, on the termination of the later 2008 Section service the Optant becomes entitled, under regulation 2.D.8, to--

(a) a tier 1 ill-health pension, or

(b) a tier 2 ill-health pension,

in respect of the later 2008 Section service, the Optant is entitled to the benefits set out in paragraph (4).

(4) The benefits mentioned in paragraph (3) are--

(a) the member's tier 1 ill-health pension under regulation E2A of the 1995 Regulations in respect of the member's earlier 1995 Section service, and

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- (b) a tier 1 or, as the case may be, tier 2 ill-health pension in respect of the member's later 2008 Section service.

This is subject to paragraph (5) and regulations 2.K.14 to 2.K.18.

(5) If the Optant--

- (a) ceases to be entitled to a tier 1 ill-health pension in respect of the earlier 1995 Section service,
- (b) becomes entitled to a tier 2 ill-health pension in respect of that earlier 1995 Section service in accordance with regulation E2B of the 1995 Regulations (re-assessment of ill health condition determined under regulation E2A), and
- (c) becomes entitled to a tier 1 or, as the case may be, tier 2 ill-health pension in respect of the later 2008 Section service on the termination of that later service,

the Optant is entitled to the benefits set out in paragraph (6).

(6) Those benefits are--

- (a) a tier 2 ill-health pension paid in accordance with regulation E2B of the 1995 Regulations in respect of the earlier 1995 Section service, and
- (b) a tier 1 ill-health pension in respect of the later 2008 Section service.

**2.K.23 Lump sum payable on the death of a 2008 Section Optant who is in receipt of a tier 1 ill-health pension under regulation E2A of the 1995 Regulations**

(1) This regulation applies to a 2008 Section Optant who, on the date of that Optant's death--

- (a) is entitled to a tier 1 ill-health pension under regulation E2A of the 1995 Regulations (ill-health pension on early retirement) in respect of service in the 1995 Section, and
- (b) is an active or a non-contributing member in respect of service in this Section of the Scheme ("the later 2008 Section service").

(2) The lump sum payable on the death of an Optant referred to in paragraph (1) shall be--

- (a) calculated in accordance with whichever of paragraphs (3), (4) or (5) applies to that Optant, and
- (b) paid in place of the lump sum that, apart from this regulation, would otherwise be payable in respect of that Optant's later 2008 Section service under regulation 2.E.17.

(3) If the deceased Optant was, at the date of the Optant's death, an active member who had not exercised the option under regulation 2.D.5, the lump sum referred to in paragraph (2)(a) is an amount equal to five times the annual rate of pension--

- (a) payable under regulation 2.D.8(5), if the deceased Optant had not reached the age of 65, or
- (b) payable under regulation 2.D.1, if the deceased Optant had reached the age of 65,



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to which the deceased Optant would have been entitled at the date of the Optant's death.

(4) If the deceased Optant was a non-contributing member who had not exercised the option under regulation 2.D.5, the lump sum referred to in paragraph (2)(a) is an amount equal to five times the annual rate of pension--

- (a) payable under regulation 2.D.8(5), if the deceased Optant had not reached the age of 65, or
- (b) payable under regulation 2.D.1, if the deceased Optant had reached the age of 65,

to which the Optant would have been entitled on the last day of the Optant's pensionable service.

(5) If the Optant was an active member or a non-contributing member who had exercised the option under regulation 2.D.5, the lump sum referred to in paragraph (2)(a) shall be determined by the Secretary of State after taking advice from the Scheme actuary.

#### **2.K.24 Children's pensions payable on the death of a 2008 Section Optant who is in receipt of a tier 1 ill-health pension under regulation E2A of the 1995 Regulations**

(1) This regulation applies to a 2008 Section Optant ("a deceased Optant") who, in respect of service in this Section of the Scheme, was--

- (a) at the date of the Optant's death--
  - (i) an active member,
  - (ii) a non-contributing member,
  - (iii) a pensioner member, or
  - (iv) a deferred member, and
- (b) on that date was entitled to a tier 1 ill-health pension under regulation E2A of the 1995 Regulations (ill-health pension on early retirement) in respect of service in the 1995 Section ("the earlier 1995 Section service").

(2) In the case of a deceased Optant referred to in paragraph (1)(a)(i) and (ii), "relevant service" for the purposes of paragraph (3) of regulation 2.E.10 shall have the meaning given in paragraph (3) of this regulation.

(3) "Relevant service" means--

- (a) in the case of a deceased Optant who was, at the date of the Optant's death, an active member the greater of--
  - (i) the pensionable service the deceased Optant was entitled to count at that date, increased by the enhancement period (if any) that would have applied for the purposes of regulation 2.D.8(5) if the deceased Optant had become entitled to a tier 2 ill-health pension at that date, and
  - (ii) the deceased Optant's later 2008 Section service as an active member plus the difference between--



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(aa) the aggregate of the deceased Optant's earlier 1995 Section service and the later 2008 Section service as an active member, and

(bb) 10 years pensionable service,

where the amount of service in (aa) is less than that specified in (bb);

(b) in the case of a deceased Optant referred to in paragraph (1)(a)(ii), the pensionable service that the deceased Optant was entitled to count under this Section of the Scheme of the Scheme on the date of that Optant's death.

(4) In the case of a deceased Optant referred to in paragraph (1)(a)(iii), "the basic death pension" for the purposes of paragraph (3) of regulation 2.E.11 shall have the meaning given in paragraph (5) of this regulation.

(5) The "basic death pension" means the greater of--

(a) 75% of the deceased Optant's annual pension (disregarding any additional pension), and

(b) 75% of the annual pension to which the deceased would have been entitled in respect of the aggregate of the deceased Optant's later 2008 Section service plus the difference between--

(i) the aggregate of the deceased Optant's earlier 1995 Section service and the later 2008 Section service, and

(ii) 10 years pensionable service,

where the amount of service in (i) is less than that specified in (ii).

(6) In the case of a deceased Optant referred to in paragraph (1)(a)(iv), "the basic death pension" for the purposes of paragraph (3) of regulation 2.E.12 shall have the meaning given in paragraph (7) of this regulation.

(7) The "basic death pension" means--

(a) if the deceased Optant died within 12 months after ceasing to be an active member or a non-contributing member, the amount that would be the basic death pension for the purposes of regulation 2.E.10 if the deceased Optant had died on the day of so ceasing (disregarding any additional pension), and

(b) if the deceased Optant died more than 12 months after ceasing to be an active member or a non-contributing member, the greater of--

(i) 75% of the pension to which the deceased Optant would have been entitled if the deceased Optant had become entitled to a pension under regulation 2.D.1 on the date of death (disregarding any additional pension), and

(ii) 75% of the annual pension to which the deceased Optant would have been entitled in respect of the aggregate of the deceased Optant's later 2008 Section service that has been deferred plus the difference between--

(aa) the aggregate of the deceased Optant's earlier 1995 Section service and the later 2008 Section service that has been deferred, and

(bb) 10 years pensionable service,

where the amount of service in (aa) is less than that specified in (bb).

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## **Chapter 2.L**

### **Waiting Period Joiners**

#### **2.L.1 Application of Chapter 2.L**

(1) This Chapter makes provision in relation to pensioner members of the 1995 Section who are eligible to be members of this Section of the Scheme in accordance with paragraph (1)(b)(ii) of regulation 2.B.1A (eligibility: transitional).

(2) A member of this Section of the Scheme to whom this Chapter applies is referred to as a “Waiting Period Joiner”.

#### **2.L.2 Nominations and notices accepted by the Secretary of State under the 1995 Regulations and Chapter 2.E of these Regulations**

(1) This regulation applies if—

- (a) on the day a Waiting Period Joiner becomes an active member of this Section of the Scheme—
  - (i) the Secretary of State has accepted any of the nominations or notices specified in paragraph (2) in respect of the benefits to be paid on the death of that Joiner, and
  - (ii) that Joiner has not revoked that nomination or notice, or
- (b) at any time after a Waiting Period Joiner becomes an active member of this Section of the Scheme, that Joiner gives a notice, nomination or declaration for the purposes of a regulation listed in the table in paragraph (4).

(2) The nominations and notices referred to in paragraph (1)(a) are—

- (a) a nomination made in accordance with regulation F5 of the 1995 Regulations (payment of lump sum) in favour of one or more persons in respect of any lump sum that becomes payable under regulations F1 to F4 of those Regulations (which deal with lump sum payments on the death of a member in different circumstances);
- (b) a notice provided for the purposes of paragraph (3)(a) of regulation F5 of the 1995 Regulations that the person’s surviving partner (within the meaning of that regulation) is not to receive the payment of any lump sum that becomes payable under regulations F1 to F4 of those Regulations;
- (c) [omitted].

(3) For the purpose of this Section of the Scheme a nomination or notice referred to in paragraph (1)(a) shall be treated—

- (a) in the case of the nomination referred to in paragraph (2)(a), as if that nomination has been accepted by the Secretary of State as a notice for the purposes of regulation 2.E.21,
- (b) in the case of a notice referred to in paragraph (2)(b), as if that notice had been accepted by the Secretary of State as a notice for the purposes of regulation 2.E.21 specifying that the Waiting Period Joiner’s personal representatives are to receive any lump sum or pension on the death of that Joiner, and

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- (c) in the case of a notice referred to in paragraph (2)(c), as if that notice had been accepted by the Secretary of State as a declaration for the purposes of regulation 2.E.2.

(4) A notice, nomination or declaration referred to in paragraph (1)(b) that is given by a Waiting Period Joiner for the purposes of a regulation listed in column 1 of the following table shall, without more, be treated as a notice, nomination or declaration given for the purposes of the corresponding regulation in column 2.

<i>Column 1</i>	<i>Column 2</i>
<i>1995 Regulations</i>	<i>2008 Regulations</i>
F5	2.E.21
G14	2.E.2

### **2.L.3 Waiting Period Joiners who are in receipt of a tier 1 ill-health pension under Regulation E2A of the 1995 Regulations**

(1) This regulation applies to a Waiting Period Joiner who—

- (a) is entitled to a tier 1 ill-health pension under regulation E2A of the 1995 Regulations (ill-health pension on early retirement) in respect of service in the 1995 Section (“the earlier 1995 Section service”), and
- (b) becomes entitled to a tier 1 ill-health pension or, as the case may be, a tier 2 ill-health pension under regulation 2.D.8 in respect of service in this Section of the Scheme (“the later 2008 Section service”).

(2) For the purposes of determining whether a Waiting Period Joiner can count 45 years of pensionable service for any purpose, the earlier 1995 Section service and the later 2008 Section service are aggregated.

(3) A Waiting Period Joiner is entitled to the benefits set out in paragraph (4) if, on the termination of the later 2008 Section service, that Joiner becomes entitled to a tier 1 or a tier 2 ill-health pension under regulation 2.D.8 in respect of that later service.

(4) Those benefits are—

- (a) a tier 1 ill-health pension under regulation E2A of the 1995 Regulations in respect of the member’s earlier 1995 Section service, and
- (b) a tier 1 or, as the case may be, a tier 2 ill-health pension in respect of the member’s later 2008 Section service.

This is subject to paragraph (5).

(5) A Waiting Period Joiner is entitled to the benefits set out in paragraph (6) where that Joiner—

- (a) ceases to be entitled to a tier 1 ill-health pension in respect of the earlier 1995 Section service,
- (b) becomes entitled to a tier 2 ill-health pension in respect of that earlier 1995 Section service in accordance with regulation E2B of the 1995 Regulations (re-assessment of ill health condition determined under regulation E2A), and
- (c) becomes entitled to a tier 1 or, as the case may be, a tier 2 ill-health pension in respect of the later 2008 Section service on the termination of that later service.

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(6) Those benefits are—

- (a) a tier 2 ill-health pension paid in accordance with regulation E2B of the 1995 Regulations in respect of the earlier 1995 Section service, and
- (b) a tier 1 ill-health pension in respect of the later 2008 Section service.

#### **2.L.4 Lump sum payable on the death of a Waiting Period Joiner**

(1) This regulation applies to a Waiting Period Joiner who, on the date of that Joiner's death, is an active or a non-contributing member in respect of service in this Section of the Scheme ("the later 2008 Section service").

(2) The lump sum payable on the death of a Joiner referred to in paragraph (1) shall be calculated in accordance with whichever of paragraphs (3) to (6) applies to that Joiner and shall be paid in place of the lump sum that, apart from this regulation, would otherwise be payable in respect of that Joiner's later 2008 Section service under regulation 2.E.17.

(3) Where, at the date of a Waiting Period Joiner's death, that Joiner was an active member who had not reached age 65 and who had not exercised the option under regulation 2.D.5, the lump sum referred to in paragraph (2) is an amount equal to the annual rate of pension payable under regulation 2.D.8(5) to which that deceased Joiner would have been entitled at that date, multiplied by five.

(4) Where, at the date of a Waiting Period Joiner's death, that Joiner was an active member who had reached age 65 and who had not exercised the option under regulation 2.D.5, the lump sum referred to in paragraph (2) is an amount equal to the annual rate of pension payable under regulation 2.D.1 to which that deceased Joiner would have been entitled at that date, multiplied by five.

(5) Where, at the date of a Waiting Period Joiner's death, that Joiner was a non-contributing member who had not exercised the option under regulation 2.D.5, the lump sum referred to in paragraph (2) is an amount equal to the annual rate of pension to which that Joiner would have been entitled under regulation 2.D.1 on the last day of that Joiner's pensionable service, multiplied by five.

(6) Where, at the date of a Waiting Period Joiner's death, that Joiner was an active member or a non-contributing member who had exercised the option under regulation 2.D.5, the lump sum referred to in paragraph (2) shall be determined by the Secretary of State after taking advice from the Scheme actuary.

#### **2.L.5 Children's pensions payable on the death of a Waiting Period Joiner**

(1) This regulation applies in respect of a Waiting Period Joiner's service in this Section of the Scheme, where at the date of that Joiner's death that Joiner was an active, non-contributing, pensioner or deferred member who was entitled to a pension under the 1995 Regulations in respect of service in the 1995 Section ("the earlier 1995 Section service").

(2) In the case of a deceased Waiting Period Joiner who, at the date of that Joiner's death was an active or non-contributing member, "relevant service" for the purposes of paragraph (4) of regulation 2.E.10 shall have the meaning given in paragraph (3) of this regulation.

(3) "Relevant service" means—

- (a) in the case of a deceased Waiting Period Joiner who was, at the date of that Joiner's death, an active member the greater of—

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- (i) the pensionable service that Joiner was entitled to count at that date, increased by the enhancement period (if any) that would have applied for the purposes of regulation 2.D.8(5) if that Joiner had become entitled to a tier 2 ill-health pension at that date, and
- (ii) that Joiner's later 2008 Section service as an active member plus the difference between—
  - (aa) the aggregate of that Joiner's earlier 1995 Section service and the later 2008 Section service as an active member, and
  - (bb) 10 years pensionable service,

where the amount of service in (aa) is less than that specified in (bb);

- (b) in the case of a deceased Waiting Period Joiner who, at the date of that Joiner's death was a non-contributing member, the pensionable service that Joiner was entitled to count under this Section of the Scheme on the date of that Joiner's death.

(4) In the case of a deceased Waiting Period Joiner who, at the date of that Joiner's death was a pensioner member, "the basic death pension" for the purposes of paragraph (3) of regulation 2.E.11 shall have the meaning given in paragraph (5) of this regulation.

(5) The "basic death pension" means the greater of—

- (a) 75% of the deceased Waiting Period Joiner's annual pension (disregarding any additional pension), and
- (b) 75% of the annual pension to which that Joiner would have been entitled in respect of the aggregate of that Joiner's later 2008 Section service plus the difference between—
  - (i) the aggregate of that Joiner's earlier 1995 Section service and the later 2008 Section service, and
  - (ii) 10 years pensionable service,

where the amount of service in (i) is less than that specified in (ii).

(6) In the case of a deceased Waiting Period Joiner who, at the date of that Joiner's death was a deferred member, "the basic death pension" for the purposes of paragraph (3) of regulation 2.E.12 shall have the meaning given in paragraph (7) of this regulation.

(7) The "basic death pension" means—

- (a) if the deceased Waiting Period Joiner died within 12 months after ceasing to be an active member or a non-contributing member, the amount that would be the basic death pension for the purposes of regulation 2.E.10 if that Joiner had died on the day of so ceasing (disregarding any additional pension), and
- (b) if the deceased Waiting Period Joiner died more than 12 months after ceasing to be an active member or a non-contributing member, the greater of—
  - (i) 75% of the pension to which that Joiner would have been entitled if that Joiner had become entitled to a pension under regulation 2.D.1 on the date of death (disregarding any additional pension), and
  - (ii) 75% of the annual pension to which that Joiner would have been entitled in respect of the aggregate of that Joiner's later 2008

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Section service that has been deferred plus the difference between—

(aa) the aggregate of that Joiner's earlier 1995 Section service and the later 2008 Section service that has been deferred, and

(bb) 10 years pensionable service,

where the amount of service in (aa) is less than that specified in (bb).

## Chapter 2.M *Independent Providers*

### **2.M.1 General**

(1) In this Chapter—

“approval application” is to be construed in accordance with regulation 2.M.3;

“default notice” is to be construed in accordance with regulation 2.M.7;

“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 2.C.1, 2.C.5, 2.C.6, 2.C.8, 2.C.10 or 2.C.11 in respect of the qualifying contract in respect of which it was granted employing authority status.

(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.

(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.

### **2.M.2 IP Guarantees**

(1) 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.



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(2) The Secretary of State may at any time require an Independent Provider that has been granted employing authority status to provide an IP guarantee.

(3) Without prejudice to the generality of paragraphs (1) and (2), 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 Chapter, 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 Chapter, 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.

(4) 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 Chapter 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.

(5) 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 guarantee.

(6) 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;
- (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 2.C.1, 2.C.5, 2.C.6, 2.C.8, 2.C.10 or 2.C.11 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.

(7) Where paragraph (6)(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



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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 its 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 IP 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.

(8) Where paragraph (6)(f) 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.

### **2.M.3 Approval Applications**

(1) An Independent Provider may only make an approval application as an employing authority in respect of a qualifying contract.

(2) 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 is performing services pursuant to such a contract and who satisfies the wholly or mainly condition, and
  - (iii) 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 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).

(3) 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;

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- (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 2.C.1 (broken down to correspond to the estimated tiers tabulated in regulation 2.C.2), 2.C.8 and 2.C.10;
  - (v) the total employer contributions payable in respect of those employees pursuant to regulation 2.C.5, 2.C.6 and 2.C.11;
  - (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).
- (4) An approval application may nominate a date (“the nominated date”) from which approval by the Secretary of State (if granted) is to have effect.
- (5) Where paragraph (4) applies and—
  - (a) the Secretary of State is satisfied that the Independent Provider will satisfy the conditions in paragraph (3) 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.

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(5A) Where paragraph (4) applies and—

- (a) the Secretary of State is satisfied that the Independent Provider did satisfy the conditions in paragraph (3) 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 paragraph (3),

approval takes effect from the nominated date.

(6) 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.

(7) 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 (8) or (9) 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 Part 3 of these Regulations.

(8) 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.

(9) 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.

(10) Where an Independent Provider, having been granted employing authority status, subsequently becomes a party to another qualifying contract or that approval extends under paragraph (8) or (9) to another qualifying contract and that contract would have the effect of increasing its estimated contribution liability under regulations 2.C.5, 2.C.6, 2.C.8, 2.C.10 and 2.C.11 by 10% or more on the date on which approval in respect of that contract takes

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effect, the Secretary of State may require that Independent Provider to take any of the steps referred to in paragraph (11).

(11) 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 it has more than one);
- (b) provide one or more further IP guarantees 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 it was not previously required to provide one.

## **2.M.4 Change from open approval to closed approval basis**

(1) 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.

(2) A modification notice given in respect of one or more qualifying contracts is effective in respect of all qualifying contracts.

(3) 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");
- (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 regulation 2.M.3(7).

(4) 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.

(5) 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.

(6) Nothing in paragraph (5) 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.

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(7) During the modification period, a person who was eligible to become an officer member of this Section of the Scheme in accordance with regulation 2.M.3(7) but who did not do so by virtue of opting out in accordance with regulation 2.B.5, may, in accordance with regulation 2.B.4, join or re-join this Section of the Scheme.

## **2.M.5 Change from closed approval to open approval basis**

(1) 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.

(2) 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.

(3) An application referred to in paragraphs (1) and (2) 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.

(4) Where the Secretary of State is satisfied that the Independent Provider will, at the modification date, satisfy the matters set out in regulation 2.M.3, the change to open approval basis is to take effect from that date.

## **2.M.6 75% Pensionable Pay Threshold and Contribution Surcharge**

(1) 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”).

(2) 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.

(3) 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 (4).

(4) 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 a

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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.

(5) Where the employer contribution surcharge has been imposed on all or part of the excess in accordance with paragraphs (3) and (4) 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.

(6) 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 contribution surcharge to be paid within a different period.

(7) Where an Independent Provider fails to pay an employer contribution surcharge, it is liable to pay the supplementary charge and interest referred to in regulation 2.J.9A: interest is to continue to accrue on the late paid surcharge for so long as it remains unpaid and further supplementary charges may be levied in respect of it.

(8) The Secretary of State may exceptionally waive all or any part of a sum payable by way of interest or a supplementary charge.

(9) The rate of the employer contribution surcharge for the scheme year 2014-2015 and subsequent years, is 12%.

(10) 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 (subject to regulation 2.A.12A) to count both for the purpose of ascertaining that employee's entitlement to benefits under these Regulations and for the purpose of calculating them.

## **2.M.7 Default Notices**

(1) Where, in respect of a 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 2.C.1, 2.C.5, 2.C.6, 2.C.8, 2.C.10 or 2.C.11, the Secretary of State must issue a default notice to that Independent Provider.

(2) A default notice must notify the Independent Provider—

(a) of any charges accrued or accruing in accordance with regulation 2.J.9A;

(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.

(3) The Secretary of State must provide the commissioning party to the qualifying contract referred to in paragraph (1) with a copy of any default notice issued to an Independent Provider.

(4) Where, one month after issue of a default notice, some or all of the contributions referred to in paragraph (1) remain unpaid, the Secretary of State must—

(a) notify the commissioning party to a qualifying contract referred to in sub-paragraph (1) of that non-payment specifying the period or periods



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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.

(5) Where the Secretary of State receives an amount from the commissioning party pursuant to paragraph 4(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 4(b) and paid to the Secretary of State by the commissioning party pursuant to that paragraph.

## **2.M.8 Pension Returns**

(1) 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 (3) 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.

(2) For—

- (a) paragraph (1)(a), the relevant period is the complete scheme year in respect of which the information is being provided;
- (b) paragraph (1)(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.

(3) The information referred to in paragraph (1)—

- (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 sub-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 in accordance with regulation 2.M.3(3), 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;



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- (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 2.C.1 (broken down to correspond to the estimated tiers tabulated in regulation 2.C.2) and to regulations 2.C.8 and 2.C.10;
- (i) the total actual employer contributions payable in respect of those employees pursuant to, as the case may be, regulations 2.C.5, 2.C.6 and 2.C.11;
- (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 regulation 2.M.6;
- (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.

(4) Where any employee of an Independent Provider who became an officer member of this Section of the Scheme pursuant to regulation 2.M.3(7) 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.

## **2.M.9 Provision of information**

(1) 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—

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- (a) relating to those employed by it who have become officer members of this Section of the scheme pursuant to regulation 2.M.3(7);
- (b) relating to all or any qualifying contracts 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.

(2) Information referred to in paragraph (1) must be provided within 14 days of the Secretary of State requesting it.

(3) The Secretary of State may, by notice in writing, require the Independent Provider to provide such information (which does not fall within sub-paragraph (1)) 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.

#### **2.M.10 Termination of employing authority status by Secretary of State**

(1) 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.

(2) 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 (q), of the definition of "employing authority" in regulation 2.A.1: in such a case the Independent Provider ceases to be an employing authority as an Independent Provider but not by virtue of whichever of those paragraphs applies to it;
- (b) where all of the employees of the Independent Provider who have acquired membership of this Section of the Scheme pursuant to regulation 2.M.3(7) cease to satisfy the wholly or mainly condition;
- (c) the Independent Provider fails to review, in accordance with regulation 2.M.2(6) the amount of cover guaranteed by its IP guarantee or, having carried out such a review (whether pursuant to a default notice or otherwise), fails to increase the amount of cover provided 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 by the date specified in regulation 2.M.7(2);
- (e) where, regulation 2.M.2(7) applies and the Independent Provider fails to take the action required by paragraph (a) and (b) within the specified period;
- (f) where an Independent Provider fails to provide the information referred to in regulation 2.M.9(1) or (3);
- (g) where the Secretary of State is not satisfied that the information provided by an Independent Provider pursuant to regulation 2.M.9(1)

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supports the continuation of the Independent Provider's status as an employing authority;

- (h) where an Independent Provider fails to notify the Secretary of State that the guarantor of any of 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 or has a pattern of doing so.

(3) Where the Secretary of State determines that an Independent Provider's status as an employing authority must or should be terminated in accordance with this regulation, 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.

(4) Where an Independent Provider's employing authority status is so terminated, its employees who are, or who were eligible to be, members of this Section of the Scheme, cease to be such members or eligible to be such members on the date of that termination.

#### **2.M.11 Withdrawal of participation in this Section of the Scheme**

(1) 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 (q) of the definition of an employing authority in regulation 2.A.1, to cease.

(2) 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 regulation 2.M.3(7) unless that person gives the Independent Provider written consent to that happening.

(3) 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").

(4) A withdrawal notice must—

- (a) be in writing; and
- (b) be accompanied by evidence of the consent of the persons referred to in paragraph (2) to the giving of that notice: such a notice has no effect in respect of such a person who has not given such consent.

(5) A withdrawal notice is effective in respect of all qualifying contracts to which the Independent Provider is a party.

(6) Where paragraph (4)(b) is satisfied, a person who has given written consent pursuant to paragraph (2) ceases, on the operative withdrawal date, to be an officer member of this Section of the Scheme.

(7) A person who could, but for a withdrawal notice, have become entitled to participate in this Section of the Scheme by virtue of satisfying regulation 2.M.3(7) during the withdrawal period, continues to be so entitled during that period: at the end of that period such a person will not be entitled to be member of this Section of the Scheme pursuant to this Chapter.

This is subject to paragraph (8).

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(8) Nothing in paragraphs (2) to (7) prevents a person referred to in that paragraph from becoming such a member by virtue of their employment with some other employing authority.

(9) During the withdrawal period, a person who was eligible to become an officer member of this Section of the Scheme in accordance with regulation 2.M.3(7) but who did not do so by virtue of opting out in accordance with regulation 2.B.5 may, in accordance with regulation 2.B.4, join or re-join this Section of the Scheme.

(10) An Independent Provider that has withdrawn from participation in this Section of the Scheme, may apply for approval as an employing authority pursuant to this Chapter.

This is subject to paragraph (11).

(11) An application referred to in paragraph (10) must specify that approval is sought in respect of all persons the Independent Provider engages 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 regardless of whether they 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).

(12) Where after approval as an employing authority pursuant to this Chapter—

- (a) an Independent Provider satisfies one of the other paragraphs of the definition of employing authority in regulation 2.A.1 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 regulation 2.M.10(1).