
STATUTORY RULES OF NORTHERN IRELAND

2008 No. 256

The Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008

PART 3

BENEFITS FOR PRACTITIONERS ETC.

CHAPTER 1

INTRODUCTION

Preliminary

Interpretation of Part 3: general

137.—(1) In this Part—

“the 1972 Order” means the Health and Personal Social Services (Northern Ireland) Order 1972(1);

“the 1993 Act” means the Pension Schemes (Northern Ireland) Act 1993(2);

“the 1995 Order” means the Pensions (Northern Ireland) Order 1995(3);

“the 1995 Regulations” means the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995(4);

“the 1997 Order” means the National Health Service (Primary Care) (Northern Ireland) Order 1997(5);

“the 1999 Order” means the Welfare Reform and Pensions (Northern Ireland) Order 1999(6);

“the 2003 Order” means the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003(7);

“the 2004 Order” means the General Medical Services Transitional and Consequential Provisions (No.2) (Northern Ireland) Order 2004(8);

“the Agency” means the Northern Ireland Central Services Agency for the Health and Social Services established under Article 26 of the 1972 Order;

(1) [S.I.1972/1265 \(N.I. 14\)](#)

(2) [1993 c. 48](#)

(3) [1995 c. 26](#)

(4) [S.R. 1995 No. 95](#), as amended by [S.R. 1997 Nos. 217 and 390](#), [S.R. 1998 No. 299](#), [S.R. 1999 No. 293](#), [S.R. 2002 No. 69](#), [S.R. 2004 Nos. 103 and 104](#), [S.R. 2005 Nos. 155, 533, 534 and 565](#), [S.R. 2006 Nos. 159 and 410](#) and [S.Rs. 2008 Nos. 96, 130 and 163](#)

(5) [1997/1177 \(N.I. 7\)](#)

(6) [1999/3147 \(N.I. 11\)](#)

(7) [S.I. 2003/1250](#) as amended by [S.I. 2007/3101](#)

(8) [S.R. 2004 No. 156](#)

“active member” has the meaning given in Article 121(1) of the 1995 Order and, except where the context otherwise requires, refers to membership of the Scheme (but see regulation 180(8));

“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 165, 167 and 168;

“additional services” with regard to a—

- (a) GMS practice has the meaning given in regulation 2 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 additional services within the meaning given in regulation 2 of those Regulations;

“APMS contract” means arrangements under Article 56 (2)(b) of the 1972 Order between a Health and Social Services Board and an APMS contractor;

“APMS contractor” means a person—

- (a) with whom a Health and Social Services Board has made arrangements under Article 56 (2)(b) of the 1972 Order, and
- (b) who has entered into, or would be eligible to enter into, a GMS contract for the provision of primary medical services;

“appropriate proportion” means—

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187;

“assistant medical practitioner” means a medical practitioner, employed by a principal medical practitioner, who in that employment is wholly or mainly engaged in assisting his employer in the discharge of the employer’s duties as a practitioner, and for whose employment the consent of the relevant Health and Social Services Board and the Agency is required;

“assistant dental practitioner” means a dental practitioner, employed by a principal dental practitioner, who in that employment is wholly or mainly engaged in assisting his employer in the discharge of the employer’s duties as a practitioner, and for whose employment the consent of the relevant Health and Social Services Board and the Agency is required;

“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(9);

“base rate” means the Bank of England base rate—

- (a) 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
- (b) 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;

“Board and advisory work” means—

- (a) work undertaken as a member of the Board of an employing authority which is not a GMS practice, an APMS contractor or an OOH provider; or

(b) advisory work commissioned by and undertaken on behalf of such an authority, if it is connected to the authority's role in performing, or securing the delivery of, primary medical services or associated management activities or similar duties,

but which is not in itself the performance of primary medical services, and payment for which is made by that authority directly to the person carrying out that work;

"buy-out policy" means a policy of insurance or annuity contract that is appropriate for the purposes of section 15 of the 1993 Act and "buy out" must be read accordingly;

"capped transferred-in service" must be read in accordance with regulation 231;

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

"CCT" means a Certificate of Completion of Training awarded under article 8 of the 2003 Order, 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 3 to the GMS Contracts Regulations;

"chapter" unless otherwise specified, means a chapter in this Part;

"collaborative services" means primary medical services provided by a GP performer, a GMS practice, an APMS contractor or an OOH provider under or as a result of an arrangement between—

(a) a Health and Social Services Board; and

(b) a person or body, under which a Health and Social Services Board is responsible for providing services for purposes related to the provision of health care in accordance with Article 56 of the 1972 Order;

"commissioned services" means medical services provided under a contract between—

(a) a GP performer, a GMS practice, an APMS contractor or an OOH provider; and

(b) a Health and Social Services Board under Article 56 of the 1972 Order;

"contracting-out requirements" means the requirements mentioned in section 5(2) of the 1993 Act;

"contribution option period" has the meaning given in regulation 165(8);

"corresponding health service scheme" has the meaning given in regulation 230(7);

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

"deferred member" has the meaning given in Article 121(1) of the 1995 Order and, except where the context requires otherwise, refers to membership of the Scheme (but see regulation 180(8));

"dental performers list" means a list of dental practitioners prepared by the Agency in accordance with regulations made under the Health and Personal Social Services General Dental Services Regulations (Northern Ireland) 1993(10);

"dentist performer" means a dental practitioner who has undertaken to provide general dental services and whose name is included in a dental performers list;

"Department" means the Department of Health, Social Services and Public Safety;

"dependent child" is to be construed in accordance with regulation 202;

“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 Part III of the Pharmaceutical Services Regulations (Northern Ireland) 1997⁽¹¹⁾;

“employing authority” means—

- (a) a Health and Social Services Board established under Article 16 of the 1972 Order,
- (b) a Health and Social Services Trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991 (HSS Trusts)⁽¹²⁾,
- (c) the Agency,
- (d) any other body which is constituted under an Order relating to health services and which the Department agrees to treat as an employing authority for the purposes of the Scheme,
- (e) an OOH provider,
- (f) an APMS contractor,
- (g) a GMS practice,
- (h) a PMS practice,
- (i) a host Board; and
- (j) in relation to a person who is subject to a direction made under Article 12 (5) of the Superannuation (Northern Ireland) Order 1972, and subject to such modifications to this Part as the Department may in any particular case direct, any employer of such a person whom the Department agrees to treat as an employing authority for the purposes of this Part;

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

“enhanced services” with regard to—

- (a) a GMS practice, has the meaning given in regulation 2 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 of those Regulations;

“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 or an APMS contractor;

“GDS arrangements” means general dental services arrangements under Article 61 of the 1972 Order;

“GDS provider” is a person who is a party to GDS arrangements;

“GMS contract” means a contract under Articles 57 and 57A of the 1972 Order or under Article 13 of the 2004 Order;

“GMS Contracts Regulations” means the Health and Personal Social Services (General Medical Services Contracts) Regulations (Northern Ireland) 2004⁽¹³⁾;

“GMS practice” means—

- (a) a registered medical practitioner; or
- (b) two or more individuals practising in partnership; or

⁽¹¹⁾ S.R. 1997 No. 381

⁽¹²⁾ S.I.1991/194 (N.I. 1); Article 10 was amended by the Health and Personal Social Services (Northern Ireland) Order 1994 (S.I. 1994/429 (N.I. 2)) Article 3(8)

⁽¹³⁾ S.R. 2004 No. 140 as amended by S.R. 2005 No. 230

(c) a company limited by shares,

with whom a Health and Social Services Board has entered into a GMS contract;

“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 or certification services (or a combination of those services)—

(a) under a GMS contract or APMS contract; or

(b) on behalf of an OOH provider; or

(c) under a contract of service or for services with a Health and Social Services Board which relates to arrangements under which it provides primary medical services under Article 56 of the 1972 Order;

“GP provider” means a GP performer who is—

(a) a GMS practice or an APMS contractor;

(b) a partner in a partnership that is a GMS practice or an APMS contractor; or

(c) a shareholder in a company limited by shares that is a GMS practice or an APMS contractor,

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

“GP Registrar” means a medical practitioner who is being trained in general practice by a general medical practitioner who is approved under article 4(5)(d) of the 2003 Order for the purpose of providing training under article 5(1)(c)(i) of that Order, 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;

“health services” has the meaning given in Article 2 (1) of the 1972 Order;

“the guarantee date” has the meaning given in regulation 221(2);

“guaranteed cash equivalent transfer value payment” has the meaning given in regulation 222(3);

“guaranteed minimum pension” means guaranteed minimum pension, or accrued rights to guaranteed minimum pension, under section 10 of the 1993 Act;

“host Board”—

(a) in respect of a non-GP provider who is—

(i) a partner in a partnership—

(aa) that is a GMS practice; or

(bb) is an APMS contractor that has entered into an APMS contract for the provision of primary medical services;

(ii) a shareholder in a company limited by shares that is a GMS practice or an APMS contractor that has entered into an APMS contract for the provision of primary medical services;

(iii) an individual who is an APMS contractor,

means the Health and Social Services Board with which that partnership (in the case of sub-paragraph (i)), company (in the case of sub-paragraph (ii)) or practice or contractor

(in the case of sub-paragraph (iii)) has entered into an agreement or contract referred to in those provisions;

- (b) in respect of a registered medical practitioner, means the Health and Social Services Board on whose medical performers list his name appears;

“HSC employment” means employment with an employing authority;

“the HPSS Superannuation Scheme 1995” means the Scheme set out in the 1995 Regulations;

“lifetime allowance”, in relation to a person, has the meaning given in section 218 of the Finance Act 2004⁽¹⁴⁾;

“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) an APMS contractor;
- (c) an OOH provider; or
- (d) a Health and Social Services Board,

to deputise or assist temporarily in the provision of essential services, additional services, enhanced services, dispensing services, OOH services, commissioned services, certification 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 (Northern Ireland) Act 1992⁽¹⁵⁾;

“lump sum rule” has the meaning given in section 166 of the Finance Act 2004;

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

“member”, except where the context otherwise requires, means an active 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 in accordance with the Health and Personal Social Services (Primary Medical Services Performers Lists) Regulations (Northern Ireland) 2004⁽¹⁶⁾;

“non-GP provider” in these Regulations shall apply as if he were a whole time officer and means—

- (a) a partner in a partnership that is a GMS practice who is not a GP provider and who demonstrates to the satisfaction of the Department that he assists in the provision of health and personal social services provided by that practice;
- (b) a partner in a partnership all of whose members have entered into arrangements for the provision of primary medical services—
 - (i) but who is not a GP provider; and
 - (ii) who demonstrates to the satisfaction of the Department that he assists in the provision of health and personal social services provided by that partnership;
- (c) 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 Department that he assists in the provision of health and personal social services provided by that partnership;

⁽¹⁴⁾ 2004 c. 12

⁽¹⁵⁾ 1992 c. 7

⁽¹⁶⁾ S.R. 2004 No. 149 as amended by S.R. 2005 No. 368

- (d) a shareholder in a company limited by shares that is—
 - (i) a GMS practice; or
 - (ii) an APMS contractor that has entered into a an APMS contract for the provision of primary medical services,
but who is not a GP provider and who demonstrates to the satisfaction of the Department that he assists in the provision of health and personal social services provided by that company;
- (e) an individual who is an APMS contractor but who is not a GP provider and who demonstrates to the satisfaction of the Department that he participates in the provision of health and personal social services;

“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, 6th April 2006 is a registered pension scheme for the purposes of the Finance Act 2004 and which the Department agrees to recognise as a transferring scheme for the purposes of Chapter 6;
- (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);

“officer” means a person other than a GP performer employed by an employing authority and includes a GP Registrar;

“officer service” means pensionable service as an officer under Part 2;

“OOH provider” has the meaning given by regulation 152;

“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 to patients to whom the practice is required by its GMS contract to provide essential services, would be or would be similar to essential services;

“opting-out” and related expressions are to be construed in accordance with regulation 157;

“out of hours period” means—

- (a) the period beginning at 6:30pm on any day from Monday to Thursday and ending at 8am the following day;
- (b) the period between 6:30pm on Friday and 8am the following Monday;
- (c) Good Friday, Christmas Day and a bank holiday;

“pay period” means—

- (a) in relation to a practitioner who receives regular payments for his service under a contract for services or contract of employment, means the period in respect of which each payment of salary, wages or fees is made in accordance with that contract, and
- (b) in all other cases, any period of three months ending on the last day of March, June, September or December;

“pensionable earnings” has the meaning given in regulation 143 (read with regulation 144);

“pensionable earnings ceiling” in relation to GDS arrangements, is to be construed in accordance with regulation 143(4);

“pensionable employment” means employment as a practitioner which is pensionable under this Part;

“pensionable service” has the meaning given by regulations 139 and 140 (read with regulation 141);

“pensioner member” has the meaning given in Article 121(1) of the 1995 Order and, except where the context otherwise requires, refers to membership of the Scheme (but see regulation 138 and regulation 180(8));

“pension credit” means a credit under Article 26 (1) (b) of the 1999 Order and includes a credit under section 29(1)(b) of the Welfare Reform and Pensions Act 1999⁽¹⁷⁾;

“pension credit benefit” has the meaning given by section 97B of the 1993 Act;

“pension credit member” has the meaning given by Article 121(1) of the 1995 Order;

“pension credit rights” has the meaning given by section 97B of the 1993 Act;

“pension sharing order or provision” means such an order or provision as is mentioned in Article 25(1) of the 1999 Order;

“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 Finance Act 2004 and which the Department agrees to recognise as a transferring scheme for the purposes of Chapter 6;
- (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
 - on the 6th April 2006 became a registered pension scheme for the purposes of the Finance Act 2004;

“practice staff” means a person who—

- (a) is not a registered medical practitioner, a GP Registrar or a non-GP provider, and
- (b) is employed by a GMS practice, an APMS contractor or an OOH provider to assist in the provision of the services it provides;

“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;

“practitioner income” has the meaning given in regulation 143(2) to (8);

“practitioner service” means service as a practitioner which is pensionable under this Part;

“preservation requirements” means the requirements of Chapter 1 of Part IV of the 1993 Act relating to the preservation of benefits under occupational pension schemes;

“principal medical practitioner” means a practitioner on the medical performers list;

“principal dental practitioner” means a practitioner whose name is included in a list of dentists prepared by the Agency under regulation 4 of the Health and Personal Social Services General Dental Services Regulations (Northern Ireland) 1993⁽¹⁸⁾;

“public sector transfer arrangements” means arrangements approved by the Department as providing reciprocal arrangements for the payment and receipt of transfer values between the Scheme and other occupational pension schemes;

“qualifying service” has the meaning given in regulation 141 (read with regulation 142);

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

“recent leaver” has the meaning given in regulation 199(3);

“registered” means registered under Chapter 2 of Part 4 of the Finance Act 2004;

“retail prices index” has the meaning given in section 989 of the Income Tax Act 2007⁽¹⁹⁾;

“safeguarded percentage” has the meaning given by section 64A(3) of the 1993 Act;

“safeguarded rights” has the meaning given by section 64A(1) of the 1993 Act;

“the Scheme” means the scheme, the rules of which are set out in this Part;

“the Scheme actuary” means the actuary appointed by the Department for the time being to provide a consulting service on actuarial matters relevant to the Scheme;

“scheme year” means a period of one year beginning with 1st April and ending with 31st March next following;

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

“State pension age” means pensionable age, as defined in section 176(1) of the 1993 Act;

“tax year” means a year of assessment for income tax purposes;

“tier 1 ill-health pension” must be read in accordance with regulation 182;

“tier 2 ill-health pension” must be read in accordance with regulation 182;

“trade dispute” has the meaning given in Article 2 (2) of the Jobseekers (Northern Ireland) Order 1995⁽²⁰⁾;

“uprated earnings” is to be construed in accordance with regulation 176 (4) (b);

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

Interpretation: further provisions

138.—(1) In determining whether a person who is an active member or a pensioner member 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.

(2) In determining whether a person is a pensioner member of the Scheme, the fact that the person is not entitled to payment of pension because of Chapter 8 is to be disregarded.

⁽¹⁸⁾ S.R. 1993 No. 326

⁽¹⁹⁾ 2007 c. 3

⁽²⁰⁾ S.I. 1995/2705 (N.I. 15)

Meaning of “pensionable service”

139.—(1) In this Part, references to a member’s pensionable service, subject to paragraph (2), are references to the aggregate of the following periods—

- (a) any period of service in respect of which the member contributes to the Scheme under regulation 160 (contributions by members),
- (b) any period of absence from service which counts as pensionable service under regulation 140,
- (c) any period of service credited to the member as pensionable service under Chapter 6 (transfers from other pension arrangements).

(2) A member’s pensionable service does not include—

- (a) any period of service in respect of which the Department 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 180 (partial retirement) subject to paragraph (7),

- (c) any period of service in respect of which the Department’s liability to provide benefits is discharged—
 - (i) by the payment of a contributions equivalent premium under section 51(2) of the 1993 Act,
 - (ii) under regulation 175 (repayment of contributions), or
 - (iii) by the payment of a transfer value payment on transfer out under Chapter 6 (transfers), or
- (d) subject to paragraph (3), 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 Department 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 Department 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 Department 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) For the purposes of paragraph (4)(b), in order to calculate the length of a member’s pensionable service, all periods of pensionable service will be added together and each resulting period of 365 days (disregarding pensionable service on 29th February in a leap year) will be treated as one year.

(6) 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 earnings for that period.

(7) In the case of a pensioner member or deferred member entitled to a pension under regulation 180 (partial retirement), paragraph (2)(b) only applies to so much of the member's pensionable service as is mentioned in regulation 180(8)(a) (the specified percentage of the pensionable service as respects which the member is an active member on the option day).

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

Pensionable service: breaks in service

140.—(1) This regulation applies to members who are absent from work because of—

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

(2) Subject to paragraph (5), a period of absence to which this regulation applies will count as pensionable service for so long as the member contributes to the Scheme.

(3) If—

- (a) a member is on leave of absence for a period not exceeding 6 months but does not fall within paragraph (1)(a) to (e), and
- (b) the member contributes to the Scheme under regulation 160 by contributions made at the same intervals as those made by the member before the absence,

so much of the period of absence beginning with the first day of absence as is a period in respect of which the conditions in paragraph (1)(a) and (b) are met counts as pensionable service.

(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 157 (opting out 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.

(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 175 in respect of that service (but see paragraph (8)), or

- (c) the person's rights under the Scheme in respect of that service have been extinguished under regulation 226 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,

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 Department 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 because the person has become a deferred member in respect of the service in which the person was an active member and becomes an active member again, see Chapter 7 (re-employment and rejoining the Scheme).

Qualifying service

Meaning of “qualifying service”

141.—(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 139(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 has been accepted under Chapter 6 (transfers), a period equal to the person's period as an active member in any occupational pension scheme in respect of which the rights accrued;
- (c) any period treated as qualifying service under paragraph (3) or under regulation 142;
- (d) where the member ceased to be an active member under Part 2 not more than 12 months before becoming a member under this Part, any period of qualifying service under Part 2.

(2) Paragraph (3) applies if the member is a locum practitioner who—

- (a) ceases to be engaged as such a practitioner and so ceases to be treated as being in pensionable service; and
- (b) is re-engaged as a locum practitioner before the expiry of a period not exceeding three months from the date of such cessation.

(3) Where this paragraph applies—

- (a) a locum practitioner is treated as continuing to be in qualifying service during the period of non-engagement as such a practitioner and is not required to re-join the Scheme on being re-engaged as a locum practitioner; and
- (b) that period does not count as practitioner service.

Qualifying service: disregard of breaks in service

142.—(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 141(3) 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).

(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 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.

(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.

(6) Paragraphs (2), (4) and (5) do not apply if—

- (a) the person has received a repayment of contributions under regulation 175 in respect of the earlier period (but see paragraph (7)); or
- (b) the person's rights under the Scheme in respect of that period have been extinguished under regulation 226 because a transfer value payment has been made.

(7) Paragraph (6)(b) does not apply if the person repays to the Department 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 140(5) or regulation 238(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.

Pensionable earnings

Meaning of “pensionable earnings”

143.—(1) In the case of a principal medical practitioner or a principal dental practitioner who is not in receipt of any salary, wages, fees or any other regular payment in respect of his employment by virtue of the application of these Regulations to him as if he were such an officer under Part 2, pensionable earnings means—

- (a) in the case of a principal medical practitioner, practitioner income less any sum on account of practice expenses (for these purposes, C3 contributions payable under regulation 164(5) or (6) are neither practitioner income nor practice expenses); and
- (b) in the case of a principal dental practitioner, practitioner income (taking into account any relevant pensionable earnings ceiling).

(2) Subject to paragraph (3), for the purposes of this regulation, the practitioner income of a principal medical practitioner means—

- (a) income that accrues to the principal medical practitioner which is derived from—
 - (i) a GMS contract;
 - (ii) an APMS contract;
 - (iii) payments from, or to, a practitioner who is a GMS practice or an APMS contractor in respect of the performance of certification services, commissioned services or collaborative services;
 - (iv) his engagement by a Health and Social Services Board to assist in the provision of primary medical services under Articles 57 and 57A of the 1972 Order;
 - (v) in the case of a principal medical practitioner, the provision of locum services;
 - (vi) payments made to a principal medical practitioner by an OOH provider in respect of the performance of primary medical services, commissioned services, collaborative services and certification services;
 - (vii) payments made to a principal medical practitioner by an employing authority in respect of primary dental services, general ophthalmic services or pharmaceutical services provided by the practitioner;
 - (viii) practice-based work carried out in educating or training, or organising the education or training of, GP Registrars or practitioners;
- (b) any charges collected from patients in respect of the services mentioned in sub-paragraph (a) which the principal medical practitioner is authorised by or under any statutory provision to retain, other than charges authorised by regulations made under Article 98 of, and Schedule 15 to, the 1972 Order;
- (c) any sums paid to the practitioner out of a fund determined by reference to the number of beds in a hospital; and
- (d) in the case of a principal medical practitioner, allowances and any other sums (but excluding payments made to cover expenses) paid in respect of Board and advisory work.

(3) Subject to paragraphs (4), (6) and (8), for the purposes of this paragraph, the practitioner income of a principal dental practitioner means income that accrues to the practitioner which is derived from GDS arrangements.

(4) For each GDS arrangement from which practitioner income is derived, the maximum amount of practitioner income which may be derived from provision of that service in any financial year is, subject to paragraph (5), the value of that service in that financial year less the value of the following payments (if payable in that financial year by the Health and Social Services Board that is a party to the service)—

- (a) monthly seniority payments;
- (b) maternity leave, paternity leave, parental leave or adoption leave payments;
- (c) sickness leave payments;
- (d) reimbursement of the salary of a vocational trainee;
- (e) reimbursement of the national insurance contributions of a vocational trainee;
- (f) reimbursement of non-domestic rates;

then multiplied by a percentage to be determined by the Department, which produces the amount referred to in this Part as the pensionable earnings ceiling.

(5) Income which accrues to a principal dental practitioner that is derived from the following payments under GDS arrangements is practitioner income for the purposes of this regulation (that is, it is pensionable earnings, notwithstanding that it is not included in the calculation of the pensionable earnings ceiling for a particular GDS service)—

- (a) monthly seniority payments;
- (b) maternity leave, paternity leave, parental leave or adoption leave payments;
- (c) sickness leave payments.

(6) The following payments under a GDS arrangement are not to be considered practitioner income for the purposes of this regulation—

- (a) reimbursement of the salary of a vocational trainee;
- (b) reimbursement of the national insurance contributions of a vocational trainee;
- (c) reimbursement of non-domestic rates.

(7) For the avoidance of doubt, income which accrues to a principal dental practitioner while engaged as an assistant dental practitioner is practitioner income of that principal dental practitioner, but unaffected by any pensionable earnings ceiling.

(8) If a practitioner is in concurrent employment as an officer, or with a university, or as a civil servant, or in any other employment that the Department may in any particular case allow, practitioner income does not include any amounts for which the practitioner is required to account to the employer as a term or condition of that employment.

(9) In paragraph (2)(a), locum services shall have the meaning given by regulation 149(4).

Pensionable earnings — breaks in service

144.—(1) This regulation applies to members who are absent from work because of—

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

(2) If the earnings used to calculate a member's pensionable earnings are reduced during a period of absence to which this regulation applies—

- (a) for the purpose of calculating the member's contributions to the scheme under regulation 160, pensionable earnings for the period of absence will be calculated on the basis of the member's reduced earnings; and
 - (b) for all other purposes, the member's pensionable earnings for the period of absence will be calculated in accordance with paragraph (3)(a) or (b).
- (3) In the case of a member who—
- (a) is one of a number of practitioners or non-GP providers who have elected as described in regulation 145(2), each practitioner's or non-GP provider'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; and
 - (b) (except where the member's pensionable earnings fall to be calculated as described in sub-paragraph (a)), that member will be treated as having continued to receive the same average rate of pensionable earnings as during the 12 month period ending immediately before his earnings were reduced or ceased.
- (4) If the earnings used to calculate a member's pensionable pay cease during a period of absence to which this regulation applies—
- (a) a practitioner 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 member falling within paragraph (1)(b) to (e) who paid contributions on the basis of reduced earnings in accordance with paragraph (3) (a) will, subject to paragraph (6), 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.
- (5) For the purposes of paragraph (4)(a)—
- (a) during the 12 month period, the member's pensionable earnings will be calculated as described in paragraph (3)(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.
- (6) For the purposes of paragraph (4)(b), the rate of contributions payable shall be the rate that would have been payable on the basis of reduced earnings in accordance with paragraph (2)(a) had the member's reduced earnings excluded any earnings for a day during which the member, whilst on maternity leave, returned to work for the purposes of keeping in touch with the workplace.
- (7) If a member fails to pay any contributions which are required to be paid to 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.
- (8) If a member to whom this regulation applies leaves pensionable employment or, by virtue of paragraph (5)(b) or (7), is treated as having left pensionable employment, without becoming entitled to a preserved pension, then if the member later returns to pensionable employment regulation 142(4) (b) will apply as if the reference to 12 months was a reference to 3 years.
- (9) The benefits payable on the death of a member whose earnings ceased during a period of absence to which this regulation applies will be calculated as if the member had died in pensionable employment on the day before his earnings ceased.

Calculating pensionable earnings of medical practitioners in partnership

145.—(1) In the case of principal medical practitioners practising in partnership (with or without a non-GP provider who is a partner in a partnership), the pensionable earnings of each principal medical practitioner and non-GP provider who is a partner in a partnership shall be calculated by aggregating the pensionable earnings of each (including for this purpose, any amount that would constitute pensionable earnings in the case of any of them who are not included in the Scheme) and, subject to paragraph (2), dividing the total equally by reference to the number of such partners.

(2) If the principal medical practitioners and any non-GP providers who are partners in a partnership do not share equally in the partnership profits, they may elect that each partner's pensionable earnings shall correspond to each partner's share of the partnership profits.

(3) If a registered medical practitioner practising in partnership also has earnings in respect of HSC employment otherwise than as a practitioner (under Part 2), the partners may elect that the pensionable earnings of that practitioner, as determined in accordance with paragraph (1) or (2), shall be reduced by the amount of those earnings and the pensionable earnings of each of them (including that practitioner) be then increased in proportion to their respective shares of the partnership profits.

(4) The calculations described in paragraphs (2) and (3) will be made by the Health and Social Services Board to which the partners are required to give notice of their election in accordance with regulation 146(1).

Elections relating to calculation of pensionable earnings in medical partnerships

146.—(1) Principal medical practitioners who are partners in any partnership must exercise the elections described in regulation 145(2) and (3) by giving notice in writing to their host Board in accordance with this regulation.

(2) The notice must be signed by all the principal medical practitioners and any non-GP providers in the partnership and must state as a fraction each practitioner's and non-GP provider's share in the partnership profits.

(3) In the case of medical practitioners, the notice must state the name of every Health and Social Services Board on whose list the name of any practitioner in the partnership is included.

(4) A notice given under this regulation—

(a) will take effect—

(i) from the date agreed between the practitioners and any non —GP providers and the Health and Social Services Board concerned; or

(ii) if no agreement is reached, a date decided by the Department;

(b) will continue in effect until cancelled or amended by a subsequent notice in writing signed by all the practitioners and any non-GP providers in the partnership;

(c) will be automatically cancelled upon a change in the members of the partnership.

Restriction on pensionable earnings used for calculating benefits in respect of capped transferred-in service

147.—(1) This regulation applies for determining the amount of a member's pensionable earnings for the purposes of calculating so much of any benefit under the Scheme as falls to be calculated by reference to capped transferred-in service as defined in regulation 231.

(2) If a member's pensionable earnings exceed 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 (4) and (5).
- (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, “pensionable earnings” has the meaning given in regulation 143.

Distribution of pensionable earnings between principal dental practitioners employed or engaged by the same GDS provider

148.—(1) After the end of each financial year, each GDS provider must, by a date to be decided by the Department, send to the employing authority with which he is party to GDS arrangements, a notice in a format approved by the Department, specifying, in respect of that financial year—

- (a) the pensionable earnings ceiling for those arrangements; and
- (b) the amount of any monthly seniority payments, maternity leave payments, paternity leave payments, adoption leave payments, parental leave payments or sickness leave payments paid under the arrangements,

and how much of the practitioner income that relates to the service each principal dental practitioner that performed services under those arrangements is to be treated as having earned during that financial year (and those who are partners in, or directors of, the provider must be identified as such).

(2) An employing authority may, in exceptional circumstances, and with the agreement of the Department, extend the date decided by the Department in accordance with paragraph (1) by which notices are to be submitted.

(3) The notice from the GDS provider is invalid if—

- (a) it contains information that is inaccurate or misleading in a material particular;
- (b) it is not received by the due date (although the employing authority may accept replacement notices in appropriate circumstances);
- (c) the total of the amounts specified in the notice in respect of each principal dental practitioner that performed services under GDS arrangements is greater than the total of the amounts referred to in paragraph (1)(a) and (b).

(4) If an employing authority has received a valid notice under this regulation, the amounts notified to it in respect of each principal dental practitioner mentioned in the notice are, for the financial year to which the notice relates, the pensionable earnings for that practitioner under the arrangements to which the notice relates.

(5) Despite paragraph (4), the employing authority may revise the amounts notified to it in appropriate circumstances (such as where it receives a valid replacement notice signed by all the principal dental practitioners who performed services under the arrangements).

(6) If an employing authority does not receive a valid notice under this paragraph from a GDS provider the pensionable earnings of each principal dental practitioner party to GDS arrangements for the financial year in respect of which the valid notice was required but not received are to be an equal share of the maximum amount of practitioner income that could be derived from that

arrangement in that financial year (that is, the total of the amounts referred to in paragraph (1)(a) and (b)), less the difference between—

- (a) that maximum amount; and
- (b) the total of monthly amounts in respect of which estimated member contributions were paid on account during the financial year to which the earnings relate,

but if the total mentioned in sub-paragraph (b) is greater than the maximum amount referred to in sub-paragraph (a), then no amount is to be deducted pursuant to this paragraph.

Meaning of pensionable earnings in relation to other practitioners

149.—(1) In the case of an assistant medical practitioner, pensionable earnings means—

- (a) all salary, wages, fees and other regular payments paid to the practitioner by an employing authority in respect of the performance of essential services, additional services, enhanced services, dispensing services, OOH services, commissioned services, certification services, collaborative services, general dental services or pharmaceutical services;
- (b) allowances and other sums (but excluding payments made to cover expenses) paid by an employing authority in respect of Board and advisory work;
- (c) earnings from practice-based work carried out in educating or training, or organising the education or training of, GP Registrars or practitioners,

but does not include bonuses or payments made to cover expenses or for overtime.

(2) In the case of an assistant dental practitioner, pensionable earnings means all salary, wages, fees and other regular payments paid to the practitioner—

- (a) in the case of a vocational trainee, under his contract of employment with a GDS provider; or
- (b) in all other cases, by an employing authority in respect of the performance of primary dental services,

but does not include bonuses or payments made to cover expenses or for overtime.

(3) In the case of a locum practitioner, pensionable earnings means all fees and other payments made to the locum practitioner in respect of the provision of locum services (but excluding payments made to cover expenses or for overtime), less such expenses as are deductible in accordance with guidance laid down by the Department.

(4) In this regulation, references to the provision of locum services, in relation to a practitioner, are to primary medical services, commissioned services, collaborative services or pharmaceutical services performed by a practitioner engaged by an employing authority under a contract for services to deputise for a registered medical practitioner or to temporarily assist in the provision of such services.

Exclusions and deductions from pensionable earnings — all practitioners

150. Any sum that is withheld or otherwise recovered from a practitioner under regulation 26 of and Schedule 5 to the Health and Personal Social Services (General Medical Service Contracts) Regulations (Northern Ireland) 2004⁽²¹⁾ will be excluded or deducted from the practitioner's pensionable earnings in such manner and to such extent as the Department may approve.

(21) S.R. 2004 No. 140

Limit on pensionable earnings — dentist performers carrying on deceased person's business

151. In the case of a dentist performer employed by persons carrying on a deceased practitioner's dentistry business, pensionable earnings cannot exceed the total of the amount paid to him by those persons, plus any amounts paid to him by a Health and Social Services Board that those persons allow him to retain.

Out of hours providers

152.—(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 contracts or GMS practices and the majority of those members are—
 - (aa) APMS contractors or GMS practices whose APMS contracts, GMS contracts require them to provide OOH services; or
 - (bb) registered medical practitioners who are partners or shareholders with an APMS contractor or in a GMS practice which is a partnership or a company limited by shares and which is required to provide OOH services under its GMS contract or APMS contract,
 - (ii) which has a contract with a Health and Social Services Board, an APMS contractor or a GMS practice for the provision of OOH services, and
 - (iii) in respect of which a Health and Social Services Board appointed by the Department to act on 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 or a GMS practice; or
 - (bb) a partner in a partnership that is an APMS contractor or a GMS practice; or

- (cc) a shareholder in a company limited by shares that is an APMS contractor or a GMS practice,
 - (vi) has a contract with a Health and Social Services Board, an APMS contractor or a GMS practice for the provision of OOH services, and
 - (vii) is approved as an employing authority by a Health and Social Services Board appointed by the Department to act on its behalf—
 - (aa) pursuant to a written application made by the body to it for that purpose; and
 - (bb) that Health and Social Services 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 Health and Social Services Board appointed by the Department to act on its behalf ("the appointed Health and Social Services Board").
- (4) An application referred to in paragraph (3) may specify the date from which approval by the appointed Health and Social Services 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 Health and Social Services 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, HSC 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 Health and Social Services Board may give an OOH provider a notice in writing terminating its participation in the scheme where that provider—
 - (a) does not have in force a guarantee, indemnity or bond as required by the Department in accordance with regulation 163;
 - (b) has ceased to satisfy the conditions for approval;
 - (c) has notified the Health and Social Services 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 II of the Insolvency (Northern Ireland) Order 1989⁽²²⁾ ("the 1989 Order"); 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 Part III of the 1989 Order; or

(22) S.I. 1989/2405 (N.I. 19)

- (iii) a receiver, manager or administrative receiver has been appointed under Part IV of the 1989 Order; 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 V or Part VI of the 1989 Order or an instrument of dissolution has been drawn up in accordance with section 67 of the Industrial and Provident Societies (Northern Ireland) Act 1969⁽²³⁾; 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 (Northern Ireland) Order 1986⁽²⁴⁾.
- (9) An OOH provider—
- (a) must give the appointed Health and Social Services 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 the Scheme must give the appointed Health and Social Services 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 the Scheme on—
- (a) such date as the appointed Health and Social Services 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

MEMBERSHIP

Eligibility: general

153.—(1) A person is eligible to be an active member of the Scheme if conditions A to C are met and the person is not prevented by regulation 154, 155 or 158.

- (2) Condition A is that the person is in practitioner service.
- (3) Condition B is that the person—
 - (a) enters practitioner service on or after 1st April 2008 and meets any one of the other Scheme conditions in paragraph (5), or
 - (b) entered that service before that date and on that date was not an active member of the HPSS Superannuation Scheme 1995 in that service or any other HSC employment.
- (4) Condition C is that the person has not reached the age of 75.
- (5) The “other scheme conditions” are that—
 - (a) the person has not previously been an active member of the HPSS Superannuation Scheme 1995;
 - (b) the person ceased to be an active member of the HPSS Superannuation Scheme 1995 at least 12 months before entering the employment mentioned in paragraph (3)(a) or (b) without becoming a pensioner member or a deferred member of that Scheme;

⁽²³⁾ 1969 c. 24

⁽²⁴⁾ S.I. 1986/1032 (N.I. 6)

- (c) the person ceased to be an active member of the HPSS Superannuation Scheme 1995 less than 12 months before entering the employment mentioned in paragraph (3)(a) or (b) without becoming a pensioner member or a deferred member of that Scheme and has received a repayment of contributions in respect of that membership; or
- (d) the person ceased to be an active member of the HPSS Superannuation Scheme 1995 on leaving HSC employment and before the person re-entered such employment—
 - (i) a transfer payment was made in respect of the person under Part VI of that Scheme, or
 - (ii) the person made an application under regulation 54 of that Scheme (exercising a right to transfer or buy-out) from which the person may not withdraw,
 but this sub-paragraph will not apply if the Department has permitted such a person to rejoin the HPSS Superannuation Scheme 1995 in the circumstances described in regulation 7(3)(25) of the 1995 Regulations.
- (6) This regulation shall apply to any person who has previously been an active member of a corresponding health service scheme as though in paragraphs (3) and (5) any reference to—
 - (a) “HPSS Superannuation Scheme 1995” includes a reference to that corresponding health service scheme, and
 - (b) “HSC employment” includes a reference to—
 - (i) employment to which regulations made under sections 10 (1) and (2) and 12 (1) and (2) of, and Schedule 3 to, the Superannuation Act 1972 apply,
 - (ii) employment with an employer in respect of whom a direction has been made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967(26),
 - (iii) employment to which regulations made under section 10 of the Superannuation Act 1972(27) and having effect in Scotland apply,
 - (iv) employment to which a scheme made under section 2 of the Superannuation Act 1984 (an Act of Tynwald) applies, and
 - (v) employment with an employer with whom an agreement has been made under section 235 of the National Health Service Act 2006.

Restrictions on eligibility: general

- 154.**—(1) A person is not eligible to be an active member of the Scheme if the person—
- (a) became a pensioner member of the HPSS Superannuation Scheme 1995 before 1st April 2008, or
 - (b) became a pensioner member or a deferred member of that Scheme on or after that date.
- (2) A person is not eligible to be an active member of the Scheme in respect of service in an employment if the person is an active member of a superannuation scheme established under Article 3 or 11 of the Superannuation (Northern Ireland) Order 1972 in respect of service in that employment.
- (3) 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 the Scheme is not eligible to be an active member of the Scheme.
- (4) A person is not eligible to be an active member of the Scheme in any further employment if the person—
- (a) becomes entitled to a tier 2 pension under regulation 182, and

(25) Regulation 7 was substituted by regulation 5 of [S.R. 2008 No. 163](#)

(26) [1967 c. 28](#)

(27) [1972 c. 11](#)

(b) opts to exchange that pension for a lump sum in accordance with regulation 186.

(5) A person who is entitled to the immediate payment of a pension under the Scheme under a regulation that requires the person not to be in HSC employment may only be an active member in accordance with—

- (a) regulation 180,
- (b) regulation 239 (effect of re-employment on tier 2 ill-health pensions), or
- (c) Chapter 7.

Concurrent employments

155. A practitioner may participate in the Scheme in respect of employment as a practitioner even if he also participates in Part 2 in respect of concurrent whole-time or part-time employment as an officer within the meaning of that Part.

Joining and leaving the Scheme

Joining the Scheme

156.—(1) A person entering employment with an employing authority in which the person is eligible to be an active member of the Scheme becomes such a member, unless regulation 157(4) or regulation 159 applies.

(2) A person who is eligible to be such a member by virtue of falling within regulation 153(3) (b) may opt to become such a member by giving notice in writing to the employing authority.

(3) A person who whilst an active member in any employment has exercised the option to opt out of the Scheme under regulation 157(1) and is eligible to be an active member—

- (a) in that employment, or
- (b) in a later employment to which paragraph (1) does not apply because of regulation 157(5), may opt to become an active member in the employment in which the member is eligible to be such a member by giving notice in writing to the employing authority in such form as the Department 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) Paragraph (1) is subject to regulation 157(5).

Opting out of the Scheme

157.—(1) A person who is an active member of the Scheme in any 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 within regulation 156(1) in respect of an employment (automatic membership on entering employment) who gives notice in writing under paragraph (1) before the end of the person's first pay period in the employment is treated as not having become an active member under that regulation.
- (5) Regulation 156(1) does not apply to a person entering an employment with an employing authority ("the later employment") if—
 - (a) the person has previously given notice under paragraph (1) in respect of an employment with the same authority that has ceased ("the earlier employment"), and
 - (b) either—
 - (i) the period beginning with the day following that on which the earlier employment ceased and ending with the day before the later employment begins, or
 - (ii) the period beginning with the day following that on which a relevant intermediate employment ceased and ending with the day before the later employment begins, is less than 12 months.
- (6) An employment is a relevant intermediate employment for the purposes of paragraph (5) if—
 - (a) regulation 156(1) did not apply to the person on entering it because of paragraph (5), and
 - (b) the person did not opt to become a member of the Scheme in that employment under regulation 156(3).
- (7) A practitioner who opts not to contribute to the Scheme in respect of all his employments as a practitioner may, nevertheless, participate in the scheme in respect of concurrent employment as an officer under Part 2.

Restriction on further participation in the Scheme

- 158.**—(1) A person who ceases to meet conditions A, B and C in regulation 153 in an employment or is prevented by regulation 154 from continuing to be an active member in an employment must cease to be an active member of the Scheme in that employment.
- (2) Accordingly—
 - (a) a person within paragraph (1) may not make any further contributions to the Scheme under Chapter 3 (contributions); and
 - (b) any further service of the person is not pensionable service for the purposes of the Scheme.

Membership: locum practitioners

- 159.**—(1) Regulation 156 does not apply to a locum practitioner.
- (2) A locum practitioner may apply to join the Scheme by sending an application to the employing authority and submitting such evidence relating to his service as a locum practitioner and the contributions payable in respect of it as are required by that employing authority.
 - (3) On receiving such an application, such evidence and such contributions, the employing authority must submit the application to the Department.
 - (4) No application may be made under paragraph (2) in respect of a period of engagement as a locum practitioner ending earlier than ten weeks before the date of the application.

CHAPTER 3

CONTRIBUTIONS

Basic contributions by members

Contributions by members

160.—(1) Each active member must make contributions to the Scheme in respect of the member's pensionable earnings in accordance with regulation 161.

(2) Contributions under paragraph (1) will be paid at the rate specified in regulation 161 and in accordance with this Chapter.

(3) A member who is absent from service in circumstances within regulation 140(1) to (3) may make contributions to the Scheme in respect of the member's pensionable earnings in accordance with those provisions and regulation 161.

Members' contribution rate

161.—(1) Contributions under regulation 160(1) must be paid at the member's contribution rate for the period in question.

(2) Subject to paragraph (3), a member's contribution rate for that period is the percentage specified in Column 2 of the following Table in respect of the corresponding pensionable earnings range specified in Column 1 of the Table into which the member's pensionable earnings fall.

Table

<i>Column 1</i> <i>Amount of pensionable earnings</i>	<i>Column 2</i> <i>Contribution rate</i>
Up to £19,682	5%
£19,683 to £65,002	6.5%
£65,003 to £102,499	7.5%
£102,500 to any higher amount	8.5%

(3) The Department may make a determination substituting any or all of the pensionable earnings amounts or contribution rates specified in the table in paragraph (2) with effect from a date specified in the determination.

(4) Before making a determination under paragraph (3), the Department must consider the advice of the Scheme actuary and the Department of Finance and Personnel.

(5) In paragraphs (6) to (11), a practitioner does not include a dentist performer.

(6) If a practitioner commences practitioner service for the first time (having no earlier practitioner service or earlier officer service) at any time during the 2008–2009 scheme year—

- (a) that practitioner's pensionable earnings in respect of that scheme year shall be the amount agreed between the host Board on the one hand and the practitioner on the other hand as representing their estimate of practitioner's pensionable earnings from all practitioner sources for that year; and
- (b) contributions payable for that part year shall be those specified in Column 2 of the Table in paragraph (2) in respect of the amount of pensionable earnings referred to in Column 1 of that Table which corresponds to those estimated earnings.

(7) If a practitioner—

- (a) commences further practitioner service (“the later service”) at any time during the 2008–2009 scheme year;
- (b) at the time of commencing that later service—
 - (i) has other practitioner service as a practitioner in respect of which he is liable to pay contributions in accordance with paragraph (6), or
 - (ii) had previously been, but no longer is, in other practitioner service in respect of which he was liable to pay contributions in accordance with paragraph (6), (“the earlier service”), and
- (c) regardless of whether or not the practitioner also is, or previously also was, in HSC employment under Part 2 during the 2008–2009 scheme year,

the practitioner shall pay contributions in respect of the later service at the rate determined in accordance with paragraph (6) in respect of the earlier service.

(8) If a practitioner—

- (a) commences practitioner service as a practitioner (“the later service”) at any time during the 2008–2009 scheme year;
- (b) had previous practitioner service during that scheme year in respect of which he was liable to pay contributions to the scheme as a dentist performer in accordance with paragraph (12) (“the earlier service”), but
- (c) had ceased the earlier service prior to commencing the later service, and
- (d) regardless of whether or not the practitioner also is, or previously also was, in HSC employment under Part 2 during the 2008–2009 scheme year,

the practitioner shall pay contributions in respect of the later service at the rate determined in accordance with paragraph (6) in respect of the earlier service.

(9) If a practitioner—

- (a) commences practitioner service as a practitioner (“the later service”) at any time during the 2008–2009 scheme year;
- (b) at the time of commencing that later service had not been in any other practitioner service;
- (c) prior to commencing that later service has been in HSC whole-time or part-time employment (excluding any employment under a zero hours contract) in respect of which he was liable to pay contributions to the scheme as an officer in accordance with regulation 28 (“the earlier service”), but
- (d) had ceased all those earlier officer services prior to commencing the later service,

the practitioner shall pay contributions in respect of the later service at the rate determined in accordance with paragraph (6) in respect of the earlier service.

(10) Where paragraph (9) applies and the practitioner had two or more earlier officer services, that practitioner shall pay contributions in respect of the later service referred to in paragraph (9) (a) at the rate determined—

- (a) in accordance with regulation 28 in respect of whichever of the earlier officer services is the last to cease, or
- (b) where all of those earlier officer services, or the last two or more of them, cease on the same day, in accordance with paragraph (6).

(11) Where paragraph (9) applies but for the fact that the earlier officer service, or one or more of them in the case of multiple earlier officer services, was a zero hours contract, the practitioner shall

pay contributions in respect of the later service referred to in paragraph (9)(a) at the rate determined in accordance with paragraph (6).

(12) If a dentist performer commences practitioner service for the first time (having no earlier practitioner service or officer service) at any time during the 2008–2009 scheme year—

- (a) that dentist performer’s pensionable earnings for that scheme year shall be calculated according to the formula—

$$\frac{EPE}{NDPE} \times 365$$

where—

EPE is an estimate of the dentist performer’s pensionable earnings from all dentist performer sources for the days of practitioner service in the scheme year; and

NDPE is the number of days of practitioner service, and

- (b) contributions payable for the 2008–2009 scheme year shall be those specified in Column 2 of the Table in paragraph (2) in respect of the amount of pensionable earnings referred to in Column 1 of that Table corresponding to the dentist performer’s pensionable earnings for the 2008–2009 scheme year calculated in accordance with this paragraph.

(13) If a dentist performer—

- (a) commences further practitioner service as such a performer (“the later service”) at any time during the 2008–2009 scheme year;
- (b) at the time of commencing that later service—
 - (i) has other practitioner service as a dentist performer in respect of which he is liable to pay contributions in accordance with paragraph (12), or
 - (ii) had previously been, but no longer is, in other practitioner service as a dentist performer in respect of which he was liable to pay contributions in accordance with paragraph (12),
 (“the earlier service”), and
- (c) regardless of whether or not the practitioner also is, or previously also was, in HSC employment under Part 2 during the 2008–2009 scheme year,

the practitioner shall pay contributions in respect of the later service at the rate determined in accordance with paragraph (12) in respect of the earlier service.

(14) If a dentist performer—

- (a) commences practitioner service as a dentist performer (“the later service”) at any time during the 2008–2009 scheme year;
- (b) had previous practitioner service during that scheme year in respect of which he was liable to pay contributions to the scheme as a practitioner (other than a dentist performer) in accordance with paragraph (6) (“the earlier service”), but
- (c) had ceased the earlier service prior to commencing the later service, and
- (d) regardless of whether or not the dentist performer also is, or previously also was, in HSC employment under Part 2 during the 2008–2009 scheme year,

the dentist performer shall pay contributions in respect of the later service at the rate determined in accordance with paragraph (12) in respect of the earlier service.

(15) If a dentist performer—

- (a) commences practitioner service as a dentist performer (“the later service”) at any time during the 2008–2009 scheme year;
- (b) at the time of commencing that later service had not been in any other practitioner service;
- (c) prior to commencing that later service has been in HSC whole-time or part-time employment (excluding any employment under a zero hours contract) in respect of which he was liable to pay contributions to the Scheme as an officer in accordance with regulation 28 (“the earlier service”), but

(d) had ceased all those earlier officer services prior to commencing the later service, the dentist performer shall pay contributions in respect of the later service at the rate determined in accordance with regulation 28 in respect of the earlier officer services.

(16) Where paragraph (15) applies and the dentist performer had two or more earlier officer services, that dentist performer shall pay contributions in respect of the later service referred to in paragraph (15)(a) at the rate determined—

- (a) in accordance with regulation 28 in respect of whichever of the earlier officer services is the last to cease, or
- (b) where all of those earlier officer services, or the last two or more of them, cease on the same day, in accordance with paragraph (12).

(17) Where paragraph (15) would apply but for the fact that the earlier officer service, or one or more of them in the case of multiple earlier officer services, was a zero hours contract, the dentist performer shall pay contributions in respect of the later service referred to in paragraph (15)(a) at the rate determined in accordance with paragraph (12).

(18) Where, at any time during the 2008–2009 scheme year, a practitioner (other than a dentist performer) also commences practitioner service as a dentist performer (or vice versa) the practitioner service as a practitioner (other than as a dentist performer) and the practitioner service as dentist performer will each be treated separately under this regulation.

(19) If, apart from this paragraph, the earnings for a scheme year in respect of a member’s whole-time employment would not be a whole number of pounds, it must be rounded down to the nearest whole pound.

(20) If, in the 2008–2009 scheme year a member is in practitioner service and concurrently in HSC employment in respect of which he is liable to pay contributions in accordance with regulation 28, contributions payable in respect of the member’s practitioner service shall be determined under this Part and contributions payable in respect of the member’s HSC employment shall be determined under Part 2.

(21) In this regulation, “a zero hours contract” means pensionable employment under Part 2 in respect of a contract under which—

- (a) an employing authority does not guarantee to provide work for the member;
- (b) there are no specified working hours or working patterns;
- (c) the member is paid only for work actually done under it.

Contributions by employing authorities: general

162.—(1) Each employing authority must contribute to the Scheme, in respect of each person who is an active member of the scheme in an employment with the authority, at such a rate as the Department specifies from time to time.

(2) In specifying such a rate, the Department must take account of the cost of providing for any increase in pensions under the Scheme as a result of orders made under the provisions of the

Pensions (Increase) Act (Northern Ireland) 1971⁽²⁸⁾ and Article 69 of the Social Security Pensions (Northern Ireland) Order 1975⁽²⁹⁾.

(3) Any contributions payable under this regulation must be paid to the Department.

(4) If for any period a person holds more than one employment with an employing authority in respect of which the person is an active member of the Scheme, this regulation applies in respect of each of those employments as if it were the only employment held.

(5) The rate for the period commencing on 1st April 2008 and ending on 31st March 2009 is 15.7%.

Guarantees, indemnities and bonds

163.—(1) This regulation applies if—

- (a) an employing authority fails to pay contributions in accordance with regulation 162, and
- (b) the authority is—
 - (i) a GMS practice;
 - (ii) an APMS contractor; or
 - (iii) an OOH provider.

(2) The Department may require the authority to have in force a guarantee, indemnity or bond which provides for payment to the Department, should that authority fail to meet them, of all future liabilities of the authority under—

- (a) these Regulations, or
- (b) the Health and Personal Social Services (Superannuation) (Additional Voluntary Contributions) Regulations (Northern Ireland) 1999⁽³⁰⁾.

(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 Department approves for the purpose.

Payment of Contributions

164.—(1) Contributions under this Part must be paid in respect of all periods of practitioner service—

- (a) until the member completes 45 years' pensionable service, or
- (b) where the notice required by regulation 139(3) has been properly received, until the member ceases practitioner service.

(2) Except if paragraph (3) applies, principal medical practitioners shall pay C1 contributions to the host Board.

(3) Principal dental practitioners shall pay C1 contributions in respect of pensionable earnings that relate to particular GDS arrangements to the employing authority that is a party to those GDS arrangements, and that employing authority is liable to pay the C3 contributions that are payable in respect of those pensionable earnings.

(4) If a principal medical practitioner is engaged under a contract of service or for services by an employing authority or is a partner or shareholder in an employing authority that is not an OOH provider, that authority shall—

- (a) deduct C1 contributions from any pensionable earnings it pays to him; and

⁽²⁸⁾ 1971 c. 35

⁽²⁹⁾ S.I.1975/1503 (N.I. 15)

⁽³⁰⁾ S.R. 1999 No. 294

- (b) if it is not also the host Board, pay those contributions to that Health and Social Services Board.

(5) Subject to paragraph (6), if a principal medical practitioner is—

- (a) an employing authority which is a GMS practice or an APMS contractor; or
- (b) a shareholder or partner in such an employing authority,

that employing authority must pay C3 contributions to the host Health and Social Services Board.

(6) If a principal medical practitioner is a shareholder or partner in more than one employing authority referred to in paragraph (5), each employing authority must pay C3 contributions on any pensionable earnings it pays to the practitioner or, as the case may be, on the practitioner's share of the partnership profits, to the host Board.

(7) If paragraph (4) applies (but paragraph (5) does not) and the employing authority referred to in that paragraph—

- (a) is not the host Board, that authority must pay C3 contributions to the host Board;
- (b) is the host Board, that Health and Social Services Board must pay C3 contributions to the Department in respect of any pensionable earnings it pays to him.

(8) If an assistant dental practitioner or an assistant medical practitioner (other than a locum practitioner) is engaged under a contract of service or for services by an employing authority, that authority shall—

- (a) deduct C1 contributions from any pensionable earnings it pays to him; and
- (b) in the case of an assistant medical practitioner, if it is not also the host Board, pay those contributions to that Health and Social Services Board.

(9) In the case of an assistant medical practitioner, if paragraph (8) applies and the employing authority referred to in that paragraph—

- (a) is not the host Board, that authority shall pay C3 contributions to the host Board;
- (b) is the host Board, that Health and Social Services Board shall pay C1 and C3 contributions to the Department in respect of any pensionable earnings it pays to him.

(10) A locum practitioner must pay C1 contributions to the host Board.

(11) If a locum practitioner is liable to pay contributions under paragraph (10) in respect of pensionable locum work he does for an employing authority which is not—

- (a) the host Board;
- (b) a GMS practice;
- (c) an APMS contractor,

that employing authority must pay C3 contributions to the host Board.

(12) In the case of an assistant dental practitioner who—

- (a) is a vocational trainee—
 - (i) the GDS provider who employs him shall deduct C1 contributions from any pensionable earnings the provider pays to him and shall pay those contributions to the appropriate employing authority; and
 - (ii) that employing authority is liable to pay the C3 contributions that are payable in respect of those pensionable earnings; or
- (b) is not a vocational trainee, the employing authority with which he has an arrangement from which his pensionable earnings are derived is liable to pay the C3 contributions that are payable in respect of those pensionable earnings.

(13) If contributions are payable by a locum practitioner under paragraph (10) in respect of pensionable locum work carried out for an employing authority which is—

- (a) a host Board;
- (b) a GMS practice; or
- (c) an APMS contractor,

the host Board shall pay C3 contributions in respect of such a practitioner.

(14) C1 contributions that are required to be paid to an employing authority by or in respect of a principal or assistant dental practitioner in accordance with this regulation shall be paid to that employing authority not later than the 7th day of the month following the month to which the earnings relate.

(15) It shall be a function of an employing authority—

- (a) to which C1 contributions are paid in respect of a principal or assistant dental practitioner in accordance with this regulation;
- (b) which is liable to pay C3 contributions in respect of any principal or assistant dental practitioner;
- (c) to forward or pay those contributions to the Department not later than the 12th day after the date on which, by virtue of paragraph (14), it is due to receive the C1 contributions or, in the case of C3 contributions, the related C1 contributions.

(16) Contributions which are required to be paid to the host Board in accordance with this regulation must be paid to that Health and Social Services Board not later than the 7th day of the month following the month in which the earnings were paid.

(17) If, as regards a principal or assistant medical practitioner, an employing authority—

- (a) is not the host Board, it shall be a function of that employing authority to provide the host Board with a record of any—
 - (i) pensionable earnings paid by it to a practitioner;
 - (ii) contributions deducted by it in accordance with paragraph (4) or (8),
 not later than the 7th day of the month following the month in which the earnings were paid;
- (b) is the host Board that has deducted contributions in accordance with paragraph (4) or (8) and is liable to pay C3 contributions in respect of any pensionable earnings it pays to a practitioner, it shall be a function of that Health and Social Services Board to maintain a record of—
 - (i) the matters referred to in paragraph (a)(i) and (ii); and
 - (ii) any contributions paid to it by the principal medical practitioner; and
 - (iii) any contributions paid to it by a locum practitioner.

(18) It shall be a function of the host Board to pay the contributions—

- (a) paid to it by a principal medical practitioner, non-GP provider or locum practitioner;
- (b) paid to it by another employing authority;
- (c) it is liable to pay by virtue of paragraphs (7)(b) and (9)(b),

in accordance with the provisions of this regulation, to the Department not later than the 19th day of the month following the month in which the earnings were paid.

(19) Without prejudice to any other method of recovery, if in respect of C1 contributions—

- (a) a principal dental practitioner, a principal medical practitioner, an assistant dental practitioner, an assistant medical practitioner or locum practitioner has failed to pay contributions; or
 - (b) an employing authority has failed to deduct such contributions,
- in accordance with this paragraph, the Department may recover any sum that remains due in respect of those contributions by deduction from any payment by way of benefits to, or in respect of, the member entitled to them if—
- (i) the member agrees to such a deduction; and
 - (ii) the deduction is to the member's advantage.
- (20) For the purposes of this regulation—
- (a) "C1 contributions" means contributions payable under regulation 160 by a practitioner under the Scheme;
 - (b) "C3 contributions" means contributions payable under regulation 162 by an employing authority in respect of a practitioner.

Additional contributions to purchase additional pensions

Member's option to pay additional periodical contributions to purchase additional pension

165.—(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 4 (members' retirement benefits) (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 5 (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 5 (death benefits) in respect of the member.
- (2) A member may exercise the option under paragraph (1) more than once.
- (3) If a member exercises an option under paragraph (1), any regular additional contributions must be deducted from the member's earnings and paid to the Department in the same manner as is specified in respect of C1 contributions (within the meaning of regulation 164) in relation to that member.
- (4) The annual amount of the periodical contributions payable at the beginning of the contribution option period must not be—
- (a) 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 Department 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 Department 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 167 (member's option to pay additional lump sum contributions to purchase additional pension), or
- (b) contributions made under regulation 168 (payment of additional lump sum contributions by employing authority),

may not exceed £5000 or such other amount as the Department 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 34 to 43).

(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.

Effect of member being absent or leaving and rejoining the Scheme during the contribution option period

166.—(1) This paragraph applies if during the contribution option period a member who has exercised the option under regulation 165 is absent from work because of—

- (a) illness or injury,
- (b) maternity leave,
- (c) adoption leave,
- (d) paternity leave,
- (e) parental leave, or
- (f) a leave of absence of the kind mentioned in regulation 140(3).

(2) If paragraph (1) applies—

- (a) the contributions under the option continue to be payable unless the member ceases paying contributions under regulation 160, and
- (b) if 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 160 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 165,
- (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 175.

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

Member's option to pay lump sum contribution to purchase additional pension

167.—(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 4 (members' retirement benefits) (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 5 (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 5 (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, and
- (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 Department 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 Department 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 Department that the option is accepted, and
- (b) the employing authority must pay it to the Department 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 employing 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 165 (member's option to pay additional periodical contributions to purchase additional pension), or
- (b) contributions made under regulation 168 (payment of additional lump sum contributions by employing authority),

may not exceed £5000 or such other amount as the Department 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 34 to 43).

Payment of additional lump sum contributions by employing authority

168.—(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 4 (members' retirement benefits) (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 5 (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 5 (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 167(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 165 (member's option to pay additional periodical contributions to purchase additional pension), or
- (b) contributions made under regulation 167 (member's option to pay lump sum contribution to purchase additional pension),

may not exceed £5000 or such other amount as the Department 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 34 to 43).

(5) A contribution under this regulation must be paid by the employing authority to the Department within one month of the date on which the authority gave the Department notice under regulation 169(2).

Exercise of options under regulations 165, 167 and 168

169.—(1) A member exercising an option under regulation 165 or 167 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 Department with a copy of that notice.

(2) An employing authority exercising an option under regulation 168 must do so by giving notice in writing to the Department, giving such information as may be required.

(3) An option under regulation 165, 167 or 168 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 165 or 167 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 168 on the date on which the Department receives the authority's notice under paragraph (2).

(5) The Department may refuse to accept an option exercised under regulation 165, 167 or 168 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 165, 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 Department refuses to accept such an option—
- (a) the Department must give notice in writing of that fact—
 - (i) in the case of an option exercised under regulation 165 or 167, to the member, and
 - (ii) in the case of an option exercised under regulation 168, to the employing authority and the member, and
 - (b) this Part applies as if the option had not been exercised.
- (7) These Regulations also apply as if an option under regulation 167 or 168 had not been exercised if—
- (a) in the case of an option under regulation 167, 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 Department 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 169, the payment is not received by the Department—
 - (i) before the end of the period of 1 month beginning with the day on which the authority gave the Department notice under paragraph (2), or
 - (ii) if it is earlier, on or before the member's 65th birthday.

Cancellation of options under regulation 167

170.—(1) A member may cancel an option under regulation 165(1) by giving the employing authority notice in writing.

(2) If a member cancels such an option, the additional periodical contributions cease to be payable for the first pay period beginning after the date on which the employing authority receives the notice and all subsequent pay periods.

(3) If it appears to the Department that the requirement in regulation 165(7) (overall maximum) will not be met if the member continues to make periodical contributions under an option exercised under regulation 165, the Department may cancel the option by giving the member notice in writing.

(4) If the Department cancels such an option, 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.

Effect of payment of additional contributions under this Chapter

171.—(1) This regulation applies if—

- (a) an option is exercised by a member under regulation 165 and all the contributions to be made under the option are made,
- (b) an option is exercised by a member under regulation 167 or by a member's employing authority under regulation 168 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 174 (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 4 as a result of the member becoming entitled to payment of the pension before or after reaching the age of 65 (see regulations 178 to 180).

(4) In the case of an option under regulation 165(1)(b), 167(1)(b) or 168(1)(b), any pension payable under Chapter 5 (death benefits) in respect of the member is increased by the appropriate amount.

(5) In paragraph (4), subject to regulations 172 and 173(3), "the appropriate amount" means—

- (a) in the case of a pension under regulation 194 the amount of which is determined under regulation 196 (active members) or regulation 198 (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)),
- (b) in the case of a pension under regulation 194 the amount of which is determined under regulation 197 (pensioner members), 37.5% of the amount of the increase in the member's pension under paragraph (2) as a result of the option,
- (c) in the case of a pension under regulation 201 the amount of which is determined under regulation 203 (active members) or regulation 205 (deferred members), the appropriate fraction (within the meaning of regulation 203 or, as the case may be, regulation 205) 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 201 the amount of which is determined under regulation 204 (pensioner members), the appropriate fraction (within the meaning of that regulation) of 75% of the amount of the increase in the member's pension as a result of the option.

(6) Except as provided in regulation 180 (partial retirement), no separate claim is required as respects any additional pension payable by virtue of this regulation.

(7) This regulation is subject to regulation 172.

(8) For the effect of the options under regulation 165 where this regulation does not apply, see regulation 173(effect of part payment of periodical contributions).

(9) Paragraph (10) applies only to an option under regulation 165(1)(a), 167(1)(a) or 168(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).

Effect of death or early payment of pension after option exercised under regulation 165, 167 or 168

172.—(1) If a member in respect of whom an option under regulation 165, 167 or 168 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 165 or 167, to the member's personal representatives, and
 - (ii) in the case of an option under regulation 168, to the employing authority which made the contribution, and

(b) regulation 171 (4) does not apply.

(2) If a member in respect of whom an option under regulation 165 has been exercised dies after the end of the period of 12 months beginning with the date on which the option was exercised and before the end of the contribution option period, regulation 171(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 165, 167 or 168 has been exercised becomes entitled to a pension under regulation 182 (early retirement on ill-health (active members)) 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 171(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 165 or 167, to the member, and

(ii) in the case of an option under regulation 168, to the employing authority which made the contribution.

(4) If a member in respect of whom an option under regulation 165 has been exercised becomes entitled to a pension under regulation 182 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 171(2) and (4) applies as if all contributions under the option had been made.

(5) If a member in respect of whom an option under regulation 165, 167 or 168 has been exercised—

(a) becomes entitled to a pension under regulation 179 (early payment of pension with actuarial reduction) or regulation 184 (early retirement on ill-health (deferred members)), or

(b) becomes entitled to a pension under regulation 180 before reaching the age of 65, the increase in the member's pension under Chapter 4 (members' retirement benefits) which would otherwise be due under regulation 171(2) or (4) is reduced.

(6) The amount of the reduction is such amount as the Department 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 173.

Effect of part payment of periodical contributions

173.—(1) This regulation applies if—

(a) the full number and amount of contributions due under an option under regulation 165 for the whole contribution option period are not made, and

(b) regulation 172(1) to (4) does not apply.

(2) The increase in the member's pension under Chapter 4 is the appropriate proportion of the increase that would have been made under regulation 171(2) if the full number and amount of contributions had been made (but taking account of regulation 172(5) if that applies).

(3) In the case of an option under regulation 165(1)(b), the increase in any benefit payable under Chapter 5 (death benefits) in respect of the member is the appropriate proportion of the increase that would have been made under regulation 171(4) if the full number and amount of contributions had been made (but taking account of regulation 172(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 Department.

- (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 165 for the whole contribution option period, and
 - (b) the preservation requirements.

Revaluation of increases bought under options: members' pensions

174.—(1) This regulation applies for the purposes of determining the final amount of the increase in a member's pension as a result of the exercise of an option under regulation 165, 167 or 168.

(2) The amount of that increase immediately before the beginning date for that pension is found as follows—

Step 1

Calculate the amount of the increase in accordance with regulations 171 to 173 immediately before that date (“the basic amount”).

Step 2

Multiply the basic amount by the retail prices index for the second month before that in which the person becomes entitled to it, to find the Step 2 amount.

Step 3

Divide the Step 2 amount by the retail prices index for the month in which the option was exercised to find the Step 3 amount.

Step 4

Add to the Step 3 any amount by which the Step 3 amount would be increased under the Pensions (Increase) Act (Northern Ireland) 1971 if it were the amount of the member's pension, to find the Step 4 amount.

Step 5

Divide the Step 4 amount by the Step 3 amount to find the Step 5 factor.

Step 6

Divide the Step 3 amount by the Step 5 factor to find the adjusted basic amount.

(3) The amount of the increase in a member's pension as a result of the exercise of an option under regulation 165, 167 or 168 as at the beginning date for that pension is—

- (a) if the adjusted basic amount is greater than the basic amount, the adjusted basic amount, and
- (b) otherwise the basic amount.

(4) 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 section 8(2) of the Pensions (Increase) Act (Northern Ireland) 1971.

Repayment of contributions

Repayment of contributions

175.—(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 V of Part IV of the 1993 Act (early leavers: cash transfer sums and contribution refunds) applies and the payment is made in accordance with that Chapter.
- (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 2 within 12 months of ceasing practitioner service,
 - (b) the person does not fall within sub-paragraph (a), (b), (c) or (d) of regulation 176(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 Department.
- (3) If paragraph (1)(b) applies, the person is entitled to be paid the amount to which the person is entitled under Chapter V of Part IV of the 1993 Act, less—
- (a) such part of any contributions equivalent premium paid in respect of the person as is permitted by or under section 57 of the 1993 Act, and
 - (b) an amount equal to the income tax payable under section 205 of the Finance Act 2004 (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 the Scheme are extinguished unless the person or the person's spouse or civil partner is entitled to a guaranteed minimum pension under 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) Subject to paragraphs (8) and (9), 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.
- (8) Paragraph (7) does not apply if paragraph (1)(b) applies and the person is entitled to a greater amount of interest under Chapter V of Part IV of the 1993 Act.
- (9) So far as the contributions were paid under another scheme and were included in a transfer payment to 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 statutory provision applicable to the transfer), and
 - (b) paragraph (7) does not apply as respects that period.

CHAPTER 4

MEMBERS' RETIREMENT BENEFITS

Entitlement to pensions

Normal retirement pensions

176.—(1) The general rule is, subject to paragraph (2) and the following provisions of this Part, 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 HSC employment and has claimed payment of the pension, or
 - (ii) will reach the age of 75 on the next day.

(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 6 (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—

- (a) amount of the annual pension payable to a practitioner member under this regulation (disregarding any additional pension) will be equal to 1.87% of the member’s uprated earnings, and
- (b) the member’s uprated earnings are to be calculated by uprating the member’s pensionable earnings by the amount of the annual increase due under the provisions of the Pensions (Increase) Act (Northern Ireland) 1971 and Article 69 of the Social Security Pensions (Northern Ireland) Order 1975, plus 1.5% annually.

(5) A claim referred to in paragraph (1)(b)(i) and made in accordance with regulation 249 takes effect from the date the claim is received by the Department.

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

Pension credit members

177.—(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.

(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 Order.

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

Late payment of pension with actuarial increase

178.—(1) This regulation applies if a member becomes entitled to immediate payment of pension under regulation 176 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 185) as is attributable—

(a) to the member's pensionable service before that age, or

(b) to any contributions paid under regulations 165, 167 or 168 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 Department 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.

Early payment of pensions with actuarial reduction

179.—(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 176(2)(a) or (b),

(c) has ceased to be employed in HSC 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 176(4) (and, if additional pension is payable, in accordance with regulation 171(2) or 173(2)), and

(b) then that amount is reduced by such amount as the Department 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 Department 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,

(b) in the case of an active member, from the day immediately following the day on which the member ceased to be employed in HSC employment.

(4) A member shall not be entitled to a pension under this regulation if the Department determines, having taken advice from the Scheme actuary, that the pension, as reduced under paragraph (1), would be sufficient to meet its liability to provide a guaranteed minimum pension.

Partial retirement (members aged at least 55)

180.—(1) An active 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 176(1)(b)(i) and not regulation 176(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 engages in the employment or employments referred to in sub-paragraph (a) change, and
- (d) as a result of that change the member's engagement in such employment reduces to 90% or less of its pre-change level.

(2) The option may only be exercised by notice in writing in such form as the Department requires and must be accompanied by—

- (a) appropriate supporting evidence, and
- (b) a statement in writing approved by the host Board that the conditions in paragraph (1)(c) and (d) are met.

(3) The option must specify—

- (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).

(4) 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 176 if the member had ceased to be employed in all his employments on the option day (disregarding any additional pension, but subject to any increase under regulation 178),
- (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 179 if the member had ceased to be employed in all his 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, subject—
 - (i) in a case within sub-paragraph (a), to an increase of the same percentage as would be made in that pension under regulation 178 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 179 if the member had so ceased.

(5) 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 185 and disregarding any additional pension)—
 - (i) is not less than 20 per cent of the pension that would have been payable if the member had ceased to be employed in all his employments 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 20 per cent of the amount of the pension that would have been payable if the member had ceased to be employed in all his employments at the end of the option day (disregarding any additional pension).
- (6) The option under this regulation may only be exercised on no more than two occasions, and the Department shall take advice from the Scheme actuary regarding—
- (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.
- (7) For the purposes of—
- (a) paragraph (1) and regulation 181, “pre-change level” means the level of the member's engagement in the employment referred to in paragraph (1)(a) during the period of 12 months ending with the option day,
 - (b) in this regulation—
 - (i) “pension” means the pension that a member would have been entitled to on the option day if the member had ceased to be employed in all of his employments and, in the case of practitioner services, the pensionable earnings taken into account when working out the pension will be drawn from the latest GP certificate referred to in regulation 260 and agreed with the host Board in the case of a principal medical practitioner or non-GP provider or the most recent finalised years earnings in any other case,
 - (ii) “the option day” means the day before the reduction referred to in paragraph (1)(d) by virtue of which the option is exercisable takes effect, and
 - (iii) regulation 181, a member's “employment” means practitioner service together with any concurrent HSC employment and “terms of employment” shall be construed accordingly.
- (8) For the purposes of this Part, a member who has exercised the option under this regulation—
- (a) is a pensioner member as respects the specified percentage of pension to which the member is immediately entitled as a result of exercising the option and the percentage of the pensionable service that 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 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 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.

Increase in pensionable earnings following exercise of option under regulation 180

181.—(1) This regulation applies if, in a case where a member has exercised the option under regulation 180—

- (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 regulation 180(1) (a) change again, and
- (b) as a result the level of the member's engagement in that employment or those employments is increased to more than 90 per cent of the member's pre-change level, or
- (c) following an increase referred to in sub-paragraph (b), the member's engagement in that employment or those employments is reduced to less than 90 per cent of the member's engagement 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 180(4) shall be abated to zero from the first pension day immediately following the day on which the level of the member's engagement increased,
- (b) paragraph (1)(c), subject to any adjustments in accordance with paragraph (3), 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.

(3) Where paragraph (2)(b) applies, before restoring the payment of a pension the Department 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 paragraph (2)(a).

(4) For the purposes of this regulation, if during the period of 12 months beginning with the day after the option day the member enters further employment or employments in which the member is an active member of the Scheme—

- (a) that event is treated as if the terms on which the member holds the employment or employments in respect of which the option was exercised ("the option employment") had changed again, and
- (b) the member's level of engagement in the further employment or employments is treated as an increase in the level of the member's engagement in the option employment or employments.

(5) In this regulation "the option day" has the same meaning as in regulation 180(7) (b) (ii).

(6) Where—

- (a) a member's pension is abated in accordance with paragraph (2)(a) in the circumstances described in paragraph (1)(b), and
- (b) the member's level of engagement does not reduce in the manner described in paragraph (1)(c),

the pension will (in any event) be payable by the Department when the member retires, or partially retires again, from pensionable employment or attains the age of 75 and in doing so the Department 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 185,

- (ii) take the advice of the Scheme actuary.

Early retirement on ill-health (active members)

182.—(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 who has not reached the age of 65 and who has ceased to be employed in HSC 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 Department 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 Department 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 176(4).

(5) The annual amount of a tier 2 ill-health pension (disregarding any additional pension) is calculated as specified in regulation 176(4), but on the assumption that the member's pensionable service—

- (a) is increased by the enhancement period where the member 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;
- (b) is not increased by the enhancement period in the circumstances referred to in subparagraph (a) if the member's pensionable service before and after the break is treated separately.

(6) In this regulation "the enhancement period" means, subject to paragraph (7), two-thirds of the member's assumed pensionable service.

(7) If the member's pensionable service includes both officer service and practitioner service—

- (a) the member's pensionable service shall be increased by the enhancement period and the enhancement factor shall be the proportion by which the member's pensionable service is increased by that period,
- (b) the length of the member's officer service (under Part 2) and the member's practitioner service will each be increased by the enhancement factor, and
- (c) the annual amount of a tier 2 ill-health pension (disregarding any additional pension) is calculated as specified in regulation 176(4), but on the assumption that the member's uprated earnings are increased by the enhancement factor.

(8) In this regulation “the member’s assumed service” means the further pensionable service that the member could have counted, subject to paragraph (9), if the member had continued in service until reaching the age of 65.

(9) To the extent that any increase under paragraph (8) would cause a member’s pensionable service to exceed the limit of 45 years provided for in regulation 139(3), the amount of any excess will be reduced accordingly.

(10) This regulation is subject to—

- (a) regulation 239 (effect of re-employment on tier 2 ill-health pensions), and
- (b) regulation 240 (re-employed tier 1 ill-health pensioners).

(11) A member does not qualify for a pension under this regulation if the member’s HSC employment has been terminated by the member—

- (a) being dismissed from such employment (unless the Department 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 notified the Department in writing that the member’s physical or mental infirmity is the reason for the termination of that employment and the Department is satisfied that is the case.

(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 Department 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 Department 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 Department 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
 - (iv) previous practical, professional and vocational experience; and
 - (e) any other matter which the Department 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 Department 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 the period until age 65; and
- “regular employment of like duration” means such employment as the Department considers would involve a similar level of engagement to the member's current pensionable service as a practitioner.

Re-assessment of entitlement to an ill-health pension determined under regulation 182

183.—(1) This regulation applies if—

- (a) in the opinion of the Department a member meets the condition in regulation 182(2)(a), and
- (b) at the time the member is awarded a pension under that regulation the Department 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 182(3)(a) at the date of such a consideration.

(2) A member to whom such a notice under paragraph (1) (b) has been given may apply to the Department for a review of whether he subsequently meets the condition in regulation 182(3) (a) if—

- (a) the member makes the application in writing within three years of the date of issue of the notice,
- (b) the request is accompanied by further written medical evidence—
 - (i) relating to whether the condition in regulation 182(3)(a) is satisfied at the date of the Department's review,
 - (ii) that relates to the same physical or mental impairment as a result of which the member met the condition in regulation 182(2)(a), and
- (c) no previous application has been made under this paragraph.

(3) If, after considering the further medical evidence provided by the member, the Department determines that the member meets the condition in regulation 182(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 182, which shall be calculated as if paragraph (8) of that regulation included the words “from the date of the Department's determination under regulation 183” after “continued in service”.

Early retirement on ill-health (deferred members)

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

(2) A deferred member who is in HSC 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 Department the member—
 - (i) does not fall within paragraph (1)(a), but
 - (ii) suffers from physical or mental impairment 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 claimed the pension.

(3) The amount of the annual pension payable under this regulation (disregarding any additional pension) is calculated as specified in regulation 176(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 Department 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 Department 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 Department considers appropriate.
- (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 Department 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 Department 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

- (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 such employment as the Department considers would involve a similar level of engagement to the member’s pensionable service as a practitioner immediately before that service ceased.

Options to exchange pension for lump sum

General option to exchange part of pension for lump sum

185.—(1) A member, other than a pension credit member, 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 (Northern Ireland) 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 Finance Act 2004 (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 10 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.

(7) The option under this regulation may only be exercised by giving notice in writing to the Department in such form as it requires—

- (a) at the time of claiming the pension, or
- (b) before such later time as the Department specifies in writing.

Option for members in serious ill-health to exchange whole pension for lump sum

186.—(1) An active member, a deferred member or a pension credit member may opt to exchange a relevant pension for a lump sum if the Department is satisfied that the conditions for the lump sum to be a serious ill-health lump sum for the purposes of the Finance Act 2004 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) 176 (normal retirement pensions),
- (b) 177 (pension credit members’ pensions),
- (c) 182 (early payment of pensions: ill-health), or
- (d) 184 (early retirement on ill-health (deferred members)).

(3) The option may only be exercised—

- (a) in the case of a pension payable under regulation 176 or 177, before or at the time when the pension becomes payable,
 - (b) in the case of a pension payable under regulation 182 or 184, before the pension becomes payable to the member.
- (4) An active member aged 65 or over who exercises the option is to be paid, as soon as is reasonably practicable and before reaching the age of 75, 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 185 if at the appropriate time the member had become entitled to a pension under regulation 176, and
 - (b) the total annual amount of the pension to which the member would have been entitled under regulation 176 after exercising that option, multiplied by 5.
- (5) A pension credit member who exercises the option is to be paid, as soon as is reasonably practicable and before reaching the age of 75, an amount equal to the annual amount of the pension to which the member would have been entitled under regulation 177 multiplied by 5.
- (6) An active member entitled to a pension under regulation 182 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 185 at the appropriate time, and
 - (b) the total annual amount of the pension to which the member is entitled under regulation 182 after exercising that option, multiplied by 5.
- (7) A deferred member entitled to a pension under regulation 184 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 185 at the appropriate time, and
 - (b) the total annual amount of the pension to which the member is entitled under regulation 184 after exercising that option, multiplied by 5.
- (8) In this regulation “the appropriate time” means—
- (a) for the purposes of paragraphs (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 182 or, as the case may be, regulation 184 would otherwise first be due.
- (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 (Northern Ireland) 1971, calculated as at the appropriate time.
- (10) The option under this regulation may only be exercised by notice in writing to the Department in such form as the Department requires.

Pension debit members and pension credit members

Reduction in pension debit member’s benefits

187. The benefits to which a pension debit member is entitled under this Chapter are subject to the reduction to be made under Article 28 of the 1999 Order.

Pension credit member's rights

188.—(1) If regulation 7(5) of the Pension Sharing (Pension Credit Benefit) Regulations (Northern Ireland) 2000⁽³¹⁾ (early retirement or deferred retirement) applies, the Department must be reasonably satisfied that the requirements of that regulation have been met.

(2) Section 64A(1)(a) of the 1993 Act (safeguarded rights) applies to the safeguarded rights of pension credit members.

(3) Safeguarded rights must be identified as being the safeguarded percentage of the pension credit rights.

*Allocation***Election to allocate pension**

189.—(1) A member may elect to allocate a part of the annual amount of the member's pension under the Scheme for the provision of a pension after the member's death for an individual 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 Finance Act 2004 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 the Scheme other than a pension payable under regulation 180 (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 Department may determine for the purposes of this paragraph, after consultation with the Scheme actuary, having regard to any restrictions imposed under Part 4 of the Finance Act 2004, or
- (c) the value of the allocated annual pension being such that a lump sum could be paid under regulation 252 (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 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,

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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 185 (general option to exchange part of pension for lump sum) so as to obtain the maximum lump sum possible.

Procedure for election under regulation 189

190.—(1) An election under regulation 189 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 Department.

(3) The notice must be in such form and contain such information as the Department requires.

(4) Subject to paragraphs (6) and (7), an election under regulation 189 takes effect once it has been accepted by the Department.

(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 Department accepts it, or
- (b) the Department is not satisfied that at the time when the election is made the member is in good health.

(7) The election is treated as not having taken effect if the beneficiary dies before the member is notified in writing that the Department has accepted the election.

Effect of allocation

191.—(1) If an election under regulation 189 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 189.

(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 Finance Act 2004 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 5 (death benefits).

*Dual capacity membership***Dual capacity membership**

- 192.**—(1) This paragraph applies if a member is—
- (a) a member 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 to the member under this Chapter (or to any person to whom the member has opted to allocate pension under regulation 189) 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
 - (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 139(3) (45 year limit),
 - (b) regulation 180(9) in a case where a member is both an active member and a pensioner member by virtue of that regulation,
 - (c) regulation 238 (exception to general rule in 237 about separate treatment of pay and service),
 - (d) regulation 239 (effect of re-employment on tier 2 ill-health pensions),
 - (e) regulation 240 (re-employed tier 1 ill-health pensioners), or
 - (f) Chapter 8 (abatements).
- (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 the Scheme (or to any person to whom the member has opted to allocate pension under regulation 189) 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.)***Guaranteed minimum pensions etc**

193.—(1) If a member has a guaranteed minimum under section 10 of the 1993 Act in relation to benefits under 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 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 the Scheme, or

(b) the weekly rate of the pensions payable would be less than the guaranteed minimum,

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) Subject to paragraph (4), 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, unless paragraph (4) applies.

(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 11 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 10 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 the Scheme, and either—

(a) all the person's rights to benefits under the Scheme, except the person's rights in respect of the person's guaranteed minimum or rights under section 5(2B) of the 1993 Act ("the person's contracting-out rights"), have been transferred under Chapter 6 (transfers), or

(b) the person has no rights to benefits under 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 his rights under section 5(2B) of the 1993 Act,

but a person falling within paragraph (7) is not to be regarded as a pensioner for the purposes of Chapter 5 (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 254(2)(b) is committed,
- (b) a pension that is commuted under regulation 186 (option for members in serious ill-health to exchange whole pension for lump sum), or
- (c) a pension that is commuted under regulation 252 (commutation of small pensions) where the conditions in regulation 60 of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996(32) are met,

but if any other provision 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 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 185 (general option to exchange part of pension for lump sum), and
 - (iii) before the subtraction of any amount allocated under regulation 189 (election to allocate pension).

CHAPTER 5

DEATH BENEFITS

Pensions for surviving adults

Surviving adult dependants' pensions

194.—(1) If an active 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 nominated partner.

(3) For the rate at which the pension referred to in paragraph (1) is payable see regulations 196 to 200 and, in any case where that pension includes additional pension, regulations 171(4) and 173(3).

Meaning of “surviving nominated partner”

195.—(1) A person is a surviving nominated partner in relation to a member for the purposes of this Part if—

- (a) the person and the member jointly made and signed a declaration in such form as the Department requires that remains effective at the member’s death, and
- (b) the person satisfies the Department that for a continuous period of 2 years ending with the member’s death—
 - (i) the person and the member were living together in an exclusive relationship as if they were husband and wife or civil partners,

- (ii) the person and the member were not prevented from marrying or forming a civil partnership, and
 - (iii) the person was financially dependent on the member or the person and the member were financially interdependent.
- (2) A declaration for the purposes of paragraph (1)(a) ceases to have effect if—
 - (a) it is revoked by the member or other person by a signed notice in writing to the Department in such form as the Department may require or is willing to accept,
 - (b) the member makes a further declaration for the purpose of paragraph (1)(a), or
 - (c) the person or the member marries or forms a civil partnership.

Amount of pensions under regulation 194: active members

196.—(1) In the case of an active 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 194(1)(a) is equal to the average rate of the member's pensionable earnings during the last complete quarter before he died if that amount is greater than the amount of the pension payable to the surviving adult under this Chapter apart from this paragraph.

(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 194—

- (a) if the member has not reached the age of 65, is equal to the appropriate proportion of the tier 2 ill-health pension under regulation 182 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 the appropriate proportion of the pension under regulation 176 (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.

(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 194 is equal to the appropriate proportion 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 176 (normal retirement pensions) in respect of any period of pensionable service that the member is entitled to count.

(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 13 of the 1993 Act in relation to benefits in respect of the deceased member under the Scheme,

the annual amount of the pension payable under regulation 194 is equal to that guaranteed minimum, unless paragraph (5) applies.

(5) This paragraph applies if the Department'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 51(2) of the 1993 Act.

(6) This regulation is subject to regulation 200 (re-employed pensioners; adult survivor pensions in initial period).

Amount of pensions under regulation 194: pensioner members

197.—(1) In the case of a pensioner member, for the initial period the rate of the pension payable under regulation 194(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 the appropriate proportion 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)—

- (a) any reduction in the rate of the pension under Chapter 8 (abatement), and
- (b) if the member was in receipt of a pension payable under regulation 179 (early payment of pensions with actuarial reduction), any reduction made under that regulation by reason of the payment of the pension before the age of 65,

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 182 replaced by a tier 1 ill-health retirement pension (by virtue of regulation 239(2))—

- (a) is in further HSC employment and dies before the end of the initial period (within the meaning of that regulation), or
- (b) is in further employment that is not HSC 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 that regulation),

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 200 (re-employed pensioners: adult survivor pensions in initial period).

(8) For the purposes of paragraph (1) and (2), any reduction to the member's pension under regulation 185 (general option to exchange part of pension for lump sum) will be ignored, except any reduction for the purposes of paragraph (1) where the benefits under this regulation form part of benefits payable under regulation 200.

Amount of pensions under regulation 194: deferred members

198.—(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 194(1) is equal to the appropriate proportion of the tier 2 ill-health pension under regulation 182 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 182 (but disregarding any additional pension).

(2) In the case of any other deferred member, the rate of the pension payable under regulation 194(1) is equal to the appropriate proportion of the pension under regulation 176 (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.

Recent leavers

199.—(1) If—

- (a) a recent leaver dies leaving a surviving spouse or civil partner who has a guaranteed minimum under section 13 of the 1993 Act in relation to benefits in respect of the recent leaver under 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 Department'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 51(2) of the 1993 Act.

(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.

Re-employed pensioners: adult survivor pensions in initial period

200.—(1) This regulation applies if, apart from this regulation, both regulations 196(1) and 197(1) would apply on the death of a member.

(2) Where this regulation applies, the rate of pension payable by virtue of regulations 196(1) and 197(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 194 is equal to the sum of—

- (a) the average rate of the member's pensionable earnings during the last complete quarter before he died, and
- (b) the member's pension payable at that time after taking account of any reduction in the rate of the pension under Chapter 8 (abatement).

(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
- (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***Surviving children's pensions**

201.—(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 Department 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 Department 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 197(1) or 200(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 203 to 208 and, in any case where that pension includes additional pension, regulations 171(4) and 173(3).

Meaning of “dependent child”

202.—(1) In this Part “dependent child”, in relation to a deceased member or recent leaver, means a person who—

(a) meets the relationship condition in paragraph (2),

(b) either—

(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) whilst the deceased was 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 nominated partner with whom the deceased was living as mentioned in regulation 195(1)(b)(i) when the deceased ceased to be an active member, a person whose natural or adoptive parent is the deceased's surviving nominated 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 nominated 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 nominated 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.

Amount of children's pension under regulation 201: deceased active members

203.—(1) This regulation applies for determining the annual amount of the pension payable under regulation 201(1) (surviving children's pensions) if at the date of death the deceased was an active member 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 twice the appropriate proportion of the deceased member's pension under regulation 176 inclusive of any increase due to such enhancement period, if any, as would have applied for the purposes of regulation 182(5) if the deceased had become entitled to a tier 2 ill-health pension on the date of death.

(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 194—
 - (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 194—
 - (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.
- (5) If—
 - (a) a surviving adult dependant's pension is payable under regulation 194, and
 - (b) there is a dependent child who is not dependent on the person entitled to that pension,
 the rate of the pension payable in respect of that child for the first 3 months after the deceased's death is equal to the average rate of the member's pensionable earnings during the last complete quarter before he died.
- (6) In a case within paragraph (4)(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 the rate of the member's pension at the date of death (disregarding any reduction made under Chapter 8 (abatement) and any additional pension).

Amount of children's pension under regulation 201: deceased pensioner members

204.—(1) This regulation applies for determining the annual amount of the pension payable under regulation 201(1) (surviving children's pensions) if at the date of death the deceased was a pensioner member of the Scheme who was not also an active 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) twice the appropriate proportion of the deceased's annual pension (disregarding any additional pension), and
- (b) twice the appropriate proportion 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).

(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 194—
 - (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 194—
 - (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—
 - (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 194, 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 rate of the member's pension at the date of death (disregarding any reduction made under Chapter 8 (abatement) and any additional pension).

(7) If the deceased member's pension was payable under regulation 179 (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 (3), (5) and (6), any reduction to the member's pension under regulation 185 (general option to exchange part of pension for lump sum) will be ignored, except any reduction for the purposes of paragraph (3) where the benefits under this regulation form part of benefits payable under regulation 208.

Amount of children's pension under regulation 201: deceased deferred members

205.—(1) This regulation applies for determining the annual amount of the pension payable under regulation 201(1) if at the date of death the deceased was a deferred member of the Scheme who was not also an active 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, means the amount that would be the basic death pension for the purposes of regulation 203 if the deceased had died on the day of so ceasing (disregarding any additional pension), and

(b) otherwise, means the greater of—

(i) twice the appropriate proportion of the pension to which the deceased would have been entitled if the deceased had become entitled to a pension under regulation 176 on the date of death (disregarding any additional pension), and

(ii) twice the appropriate proportion of the pension to which the deceased would have been entitled if the deceased had become so entitled and the pension had been calculated on the assumption that the member was entitled to 10 years' pensionable service (disregarding any additional pension).

(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.

Amount of children's pension under regulation 201: recent leavers

206.—(1) This regulation applies for determining the annual amount of the pension payable under regulation 201(1) (surviving children's pensions) if at the date of death the deceased was a recent leaver.

- (2) That amount is the appropriate fraction of the basic death pension.
- (3) In this regulation—
 - (a) “the basic death pension” means twice the appropriate proportion of the pension to which the deceased would have been entitled if the deceased had become entitled to a pension under regulation 176 on the date of death and the pension had been calculated on the assumption that the member was entitled to 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.

Power to increase pension in respect of children not maintained by surviving parent etc

207.—(1) This regulation applies if—

- (a) a member dies leaving a dependent child or children,
- (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 Department 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.

Amount of children's pension under regulation 201: re-employed pensioners

208.—(1) This regulation applies for determining the annual amount of a pension payable under regulation 201(1) if at the date of death the deceased was an active member who was also a pensioner member 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) the average rate of the member's pensionable earnings during the last complete quarter before he died, 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 8).

(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 twice the appropriate proportion of the rate of pension described in—

- (a) regulation 182(5) if the deceased has not reached the age of 65 on the date of death, or

- (b) regulation 176 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 203(4).
- (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 203 as a result of the member dying whilst an active member if that regulation applied to members who are also 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 204 as a result of the member dying whilst a pensioner member if that regulation applied to members who are also active 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 203(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

Lump sum benefits on death: introduction

209.—(1) If a member or a recent leaver 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.

Amount of lump sum: single capacity members and recent leavers (disregarding regulation 180 employments)

210.—(1) The lump sum payable on the death of an active member, who is not also a deferred member or a pensioner member, is an amount equal to twice the annual average of the member's uprated earnings at the time of death.

(2) The lump sum payable on the death of a pensioner member, who is not also an active 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
- (b) an amount equal to twice the annual average of the member's uprated earnings at the date of death, 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 185 (general option to exchange part of pension for lump sum).

(3) The lump sum payable on the death of a deferred member, who is not an active 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 176 (normal retirement pensions) if on the date of death the member had become entitled to such a pension (other than any additional pension).

(6) If a pensioner member exercised the option under regulation 185 (general option to exchange part of pension for lump sum), the reference in paragraph (2)(a) to the annual rate of the member's pension is to the pension payable after the exercise of that option.

(7) If a pensioner member exercised the option under regulation 189 (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) is an active member in service in an employment in respect of which the member has exercised the option under regulation 180 (partial retirement),
- (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.

Amount of lump sum: dual capacity members (disregarding regulation 180 employments)

211.—(1) Paragraph (2) applies for determining the lump sum payable by virtue of this regulation on the death of a member who—

- (a) is an active member otherwise than in service in an employment in respect of which the member has exercised the option under regulation 180 (partial retirement: members aged at least 55), and
- (b) is also a pensioner member.

(2) The lump sum is an amount equal to the sum of—

- (a) five times the annual rate of the pension—
 - (i) payable under regulation 182(5) (tier 2 ill-health pension), if the deceased had not reached the age of 65 on the date of death,
 - (ii) payable under regulation 176 (normal retirement pensions), if the deceased had reached the age of 65 on the date of death,

to which the member would have been entitled on the date of death, 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 185 (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 annual average of the member's uprated earnings at the date of death 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 185 (general option to exchange part of pension for lump sum).

(3) If the pensioner member exercised the option under regulation 189, 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.

Amount of lump sum: dual capacity members: members with pensions under regulation 180

212.—(1) Paragraph (2) applies for determining the lump sum payable by virtue of this regulation on the death of a member who—

- (a) is an active member in service in an employment in respect of which the member has exercised the option under regulation 180 (partial retirement: members aged at least 55), and
 - (b) is 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 annual average of the member's uprated earnings at the date of death, and
 - (b) if the member had been entitled to any pensions under regulation 180 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)).

(3) The guarantee amount for a pension under regulation 180 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 annual average of the member's uprated earnings by reference to which the pension to which the member became entitled on last exercising the option under regulation 180 was calculated, less the total of any lump sums paid to the member in exchange for pensions under regulation 180 as a result of the member exercising the option under regulation 185 (general option to exchange part of pension for lump sum).

(5) In this regulation "the appropriate fraction" means—

DPS

TDPS

where—

DPS is, where the member continues in pensionable service as an active member on the option day (or the last such option day if the option has been exercised more than once), the total percentage of the pension which does not form part of the specified percentage of pension at the option day, and

TDPS is the aggregate of DPS and the total percentage of the pension (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 pension.

Amount of lump sum: pension credit members

213.—(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 177 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)

$$2 AUE - CLS,$$

where—

AUE is the amount as at the valuation day of the annual average of the uprated earnings 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 185 (general option to exchange part of pension for lump sum) on becoming entitled to the pension under regulation 177.

(3) For the purposes of paragraph (2) the annual amount of the pension is taken to be the sum of—

- (a) the annual amount of the pension as at the beginning date for that pension, and
- (b) the increase (if any) in that annual amount under the Pensions (Increase) Act (Northern Ireland) 1971 payable as at the date of death.

(4) In this regulation—

“valuation day” means the day referred to in Article 26(7) of the 1999 Order, and

“the beginning date”, in relation to a pension, has the meaning given by section 8(2A) of the Pensions (Increase) Act (Northern Ireland) 1971.

Payment of lump sums on death

214.—(1) A lump sum payable under regulation 209 must be paid in accordance with this regulation.

(2) The lump sum must be paid to the member's personal representatives, except so far as it is payable to a different person under paragraph (4) or (6).

(3) A member may give notice to the Department—

- (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 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, 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 Department, 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 may be paid to that person unless paragraph (7) applies.

(7) This paragraph applies if the person to whom the lump sum (or a specified percentage of the lump sum) would otherwise be payable has been convicted of an offence specified in regulation 254(2) (forfeiture of rights to benefit) and the Department 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.

(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 Department 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) (Northern Ireland) Act 1967⁽³³⁾ as the amount to be treated as substituted for references to £500 in section 1 of that Act.

Tax treatment under the Finance Act 2004 of lump sums payable on pensioners' deaths

215.—(1) A pensioner's lump sum (less any amount deducted under paragraph (4) where that applies) is treated for the purposes of the Finance Act 2004 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 209 to which regulation 210(2) applies, or
- (b) so much of a lump sum payable under regulation 209 as is calculated under regulation 211(2).

(3) Paragraph (4) applies if the person who is the Scheme administrator for the purposes of section 206 of the Finance Act 2004 ("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.

(33) 1967 c. 5 (N.I.)

*Miscellaneous and general provisions***Death during period of absence**

216.—(1) This regulation applies if a person dies during a period when the person is absent from work because of—

- (a) illness or injury,
- (b) ordinary maternity leave,
- (c) ordinary adoption leave,
- (d) paternity leave or 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.

Polygamous marriages

217.—(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.

(3) Such a person's share of a pension will not be increased on the death of any such person.

Dual capacity membership: death benefits

218.—(1) This paragraph applies if the deceased member was—

- (a) a member 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 196 (amount of pensions under regulation 194: active members),
 - (b) regulation 197 (amount of pensions under regulation 194: pensioner members),
 - (c) regulation 200 (re-employed pensioners: adult survivor pensions in initial period),
 - (d) regulation 201 (surviving children's pensions),
 - (e) regulation 208 (amount of children's pension under regulation 201: re-employed pensioners),
 - (f) regulation 209 (lump sum benefits on death: introduction),
 - (g) regulation 211 (amount of lump sum: dual capacity members (disregarding regulation 180 employments)),
 - (h) regulation 212 (amount of lump sum: dual capacity members: members with pensions under regulation 180), and
 - (i) Chapter 7 (re-employment and rejoining the Scheme).
- (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.

Guaranteed minimum pensions for surviving spouses and civil partners

219.—(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 13 of the 1993 Act in relation to benefits in respect of the deceased member under 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—

- (a) as a result of a conviction for treason, or
- (b) in a case where an offence within regulation 254(2)(b) is committed.

CHAPTER 6

TRANSFERS

Transfers out

Introduction: rights to transfer value payment

220.—(1) This Chapter supplements the rights conferred by or under Chapter IV of Part IV of the 1993 Act (transfer values) and applies to practitioners.

(2) This Chapter is without prejudice to that Chapter or Chapter V of that Part⁽³⁴⁾ (early leavers: cash transfer sums and contribution refunds).

(3) Accordingly—

- (a) a member to whom Chapter IV of that Part applies (see section 89(1)(a) 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 the Scheme, and
- (b) a member to whom Chapter V of that Part applies (see section 97AA(1) of that Act) is entitled to a cash transfer sum or a contribution refund in accordance with that Chapter.

(4) Subject to paragraph (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 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.

Applications for statements of entitlement

221.—(1) A member who requires a transfer value payment to be made must apply in writing to the Department for a statement of the amount of the cash equivalent of the member's accrued benefits under 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 Department,
- (c) is specified in the statement of entitlement, and
- (d) is within the period of 10 days ending with the date on which the member is provided with the statement of entitlement.

(3) In counting the period of 10 days referred to in sub-paragraph (d), Saturdays, Sundays, Christmas Day, New Year's Day and Good Friday are excluded.

(4) In paragraph (2) "the required period" means—

- (a) the period of 3 months beginning with the date of the member's application for a statement of entitlement, or

⁽³⁴⁾ Chapter 5 (sections 97AA to 97AI) is inserted by Article 241 of the Pensions (Northern Ireland) Order 2005 (No. 255 N.I. 1)).

- (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 Department, the requisite information cannot be obtained to calculate the amount of the cash equivalent.

(5) The member may withdraw the application for a statement of entitlement by notice in writing at any time before the statement is provided.

Applications for transfer value payments: general

222.—(1) A member who has applied for and received a statement of entitlement under regulation 221 may apply in writing to the Department 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 223(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 Department may require.

(6) An application under this regulation may be withdrawn by notice in writing to the Department, 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.

Applications for transfer value payments: time limits

223.—(1) An application under regulation 222(1) must be made before the end of the period of 3 months beginning with the guarantee date, and, subject to paragraph (4), 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.

(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
- (b) it appears to the Department that the proceedings may lead to all or part of the member’s benefits being forfeited under regulation 254 (forfeiture of rights to benefit).

(4) The Department 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 254 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 does not fall within regulation 176(2)—
 - (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 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.

Ways in which transfer value payments may be applied

224.—(1) A member may only require the Department to apply the guaranteed cash equivalent transfer value payment in one or more of the ways permitted under section 91 of the 1993 Act.

(2) Paragraph (1) applies whether or not the member is entitled to a guaranteed cash equivalent transfer value payment under Chapter IV of Part IV of that 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 6th April 1997,

may be excluded from the guaranteed cash equivalent transfer value payment if section 92(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 Finance Act 2004, or
 - (b) an arrangement that is a qualifying recognised overseas pension scheme for the purposes of that Part (see section 169(2) of that Act).

Calculating amounts of transfer value payments

225.—(1) The amount of the guaranteed cash equivalent transfer value payment is to be calculated, subject to paragraphs (3) and (5), in accordance with guidance and tables provided by the Scheme actuary to the Department for use at the guarantee date.

(2) In preparing those tables the Scheme actuary must use such factors as the Scheme actuary considers appropriate, having regard to section 93 of the 1993 Act and regulations made under that Act (whether or not the payment is in respect of a person entitled to a guaranteed cash equivalent transfer value payment under that Act).

(3) Subject to paragraph (5), 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.

(4) In paragraph (3) "minimum transfer value", in relation to any person, means the sum of—

- (a) any transfer value payments that have been made to the Scheme in respect of the person as a result of which the person is entitled to count any pensionable service under the Scheme by reference to which the accrued rights subject to the transfer are calculated, and
- (b) any contributions paid by the person under Chapter 3 (contributions) as a result of which the person is entitled to count such service.

(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.

Effect of transfers-out

226. If a transfer value payment is made under this Chapter in respect of a person's rights under the Scheme, those rights are extinguished.

Transfers in

Right to apply for acceptance of transfer value payment from another scheme

227.—(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 the Scheme.

(2) This paragraph applies to—

- (a) a registered occupational pension scheme,
- (b) a registered personal pension scheme,
- (c) a registered buy-out policy, and
- (d) a corresponding health service scheme.

(3) Paragraph (1) does not apply to rights that are directly attributable to a pension credit.

(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 that 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.

Procedure for applications under regulation 227

228.—(1) An application under regulation 227—

- (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 during the period of one year beginning with the day on which the applicant becomes eligible to be an active member of the Scheme and before the applicant reaches the age of 65,
 - (d) if the Department 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 Department, and
 - (ii) in a case where the transfer is not made under those arrangements, of the service that member will be entitled so to count if the payment is so accepted by the Department within such period as is specified in the statement, and
 - (e) must meet such other conditions as the Department may require.
- (2) A statement given to the member in pursuance of a 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 149 (restriction on pensionable earnings 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.

Acceptance of transfer value payments

229.—(1) If an application is duly made by a member under regulation 227, the Department may accept the transfer value payment if such conditions as the Department may require are met, unless paragraph (4) applies.

- (2) If the Department accepts the payment—
 - (a) the member is entitled to count the increase in the member's pensionable earnings for the purposes of calculating benefits payable to or in respect of the member under 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 increase" means the increase calculated in accordance with regulation 230.
- (4) For the meaning of "capped transferred-in service", see regulation 231.
- (5) The Department may not accept a transfer value payment if—
 - (a) it would be applied in whole or in part in respect of the member's or the member's spouse'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.

Calculation of transferred-in pensionable service

230.—(1) The increase in pensionable earnings that the member is entitled to count under regulation 229 as the result of a transfer is calculated, subject to paragraphs (2) to (6), in accordance with guidance and tables provided by the Scheme actuary for the purpose by reference to any relevant factors as at the date on which the transfer payment is received by the Department.

(2) For the purposes of the calculation under paragraph (1) the benefits in respect of the transfer payment will be calculated by increasing the member's pensionable earnings for the financial year in which the member joined the Scheme (or the financial year in which the transfer payment is received if the payment is more than 12 months after the member joined the Scheme).

(3) The amount of the increase referred to in paragraph (2) will be calculated by—

- (a) treating the member as entitled to a period of officer service equal to the period of employment that qualified the member for the rights in respect of which the transfer payment is being made,
- (b) calculating the final year's pensionable pay that would have given rise to a cash equivalent in respect of officer service under regulation 98 (calculating amounts of transfer value payments), and
- (c) increasing the member's pensionable earnings by an amount equal to the pensionable pay that the member would have received during that period of officer service if the member's pensionable pay had been equal to the final year's pensionable pay mentioned in subparagraph (b) throughout that period.

(4) But paragraph (3) does not apply if—

- (a) a written statement estimating the increase in pensionable earnings that the member would be entitled to count as result of the transfer was given to the member by the Department during the period of 3 months ending 12 months after the starting day, and
- (b) the transfer payment is received by the Department 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 increase in pensionable earnings the member is entitled to count is calculated—

- (a) in accordance with those arrangements, 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 that is used by the transferring scheme for calculating the transfer value payment.

(6) If the transfer value payment is accepted from a corresponding health service scheme, the increase in pensionable earnings the member is entitled to count is the increase that the member would be entitled to count if—

- (a) the member's employment to which that scheme applied was HSC employment in respect of which the member was a member of the Scheme, and
- (b) the member's contributions to that scheme were contributions to the Scheme.

(7) In this Part "corresponding health service scheme" means—

- (a) a superannuation scheme provided under regulations made under sections 10 (1) and (2) and 12 (1) and (2) of, and Schedule 3 to, the Superannuation Act 1972,
- (b) a superannuation scheme provided under Regulations made under section 10 of the Superannuation Act 1972 and having effect in Scotland,
- (c) a scheme made under section 2 of the Superannuation Act 1984 (an Act of Tynwald) applies, and

- (d) any other occupational pension scheme approved for the purposes of this regulation by the Department.

Meaning of “capped transferred-in service”

231.—(1) This regulation applies if—

- (a) the Department 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 by which the 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 229(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(a), 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.

Public sector transfer arrangements

232. This Chapter applies in the case of a transfer to which the public sector transfer arrangements apply 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.

Bulk transfers out

233.—(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 the Scheme,
- (c) after that transfer the transferring employees become active members of another occupational pension scheme (“the new employer’s scheme”),
- (d) the Department 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 225, but
 - (b) is to be such amount as the Department determines to be appropriate in accordance with the special terms after consulting the Scheme actuary.
- (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 a statutory provision, this Chapter has effect with such modifications as the Department considers necessary in consequence of the transfer.
- (5) Where a member to whom this regulation applies is also a member to whom Part 2 applies, a bulk transfer under this regulation also operates as a transfer of that member's rights under Part 2.

Bulk transfers in

234.—(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 the Scheme,
 - (d) the Department 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) 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 a statutory provision, the Scheme has effect with such modifications as the Department considers necessary in consequence of the transfer.

EU and other overseas transfers

235.—(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 Department considers necessary to comply with—
- (a) the terms of those arrangements,
 - (b) any applicable provision contained in or made under any statutory provision, and
 - (c) the requirements to be met by a scheme registered under Chapter 2 of Part 4 of the Finance Act 2004.

CHAPTER 7

RE-EMPLOYMENT AND REJOINING THE SCHEME

Preliminary

Application of Chapter 7

236.—(1) This Chapter applies, subject to paragraphs (4) to (7), to persons who—

- (a) have been active members 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 the Scheme because of their rights in respect of that service,
- (c) become employed again in an employment that qualifies them to belong to the Scheme, and
- (d) become active members of the Scheme in respect of their service in that employment.

(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 157, 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 140(5) (pensionable service: breaks in service).

(6) Regulation 239 applies whether or not the employment mentioned in paragraph (1)(c) is employment that qualifies the member to belong to the Scheme.

(7) 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).

General rule: separate treatment of service etc except where unfavourable to member

General rule: separate treatment of service etc

237.—(1) The general rule is that, in accordance with regulations 192 and 218—

- (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 pensionable earnings in respect of the earlier service and the later service is determined separately.

(2) This regulation is subject to the provisions mentioned in regulations 192(4) and 218(5).

Exception to general rule in regulation 237

238.—(1) The general rule in regulation 237 does not apply if—

- (a) at the time that the member first becomes entitled to a pension under 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 Department 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 pensionable earnings 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 140(5)).

Special rules about re-employment of ill-health pensioners

Effect of re-employment on tier 2 ill-health pensions

239.—(1) This regulation applies if a member who is entitled to a tier 2 pension under regulation 182 in respect of earlier service—

- (a) did not opt to exchange that pension for a lump sum in accordance with regulation 186, 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 182, and becomes entitled to a tier 1 ill-health pension under that regulation.

(3) In a case where the further employment is—

- (a) not HSC employment, and
- (b) an excluded employment,

paragraph (2) does not apply.

(4) In a case where the further employment is—

- (a) HSC employment, and
- (b) an excluded employment

paragraph (2) does not apply during the initial period.

(5) As regards a further employment in HSC 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 HSC employment, whether or not that day is part of a continuous period of further HSC employment beginning with entry into that employment, and
- (b) the member may not rejoin the Scheme in respect of that employment or any other HSC employment until after the first anniversary of the member's re-entry into HSC employment, whether or not that or any other HSC employment is an excluded employment.

(6) For the purposes of this regulation—

- (a) an employment is an excluded employment at any time in a scheme year, in relation to a member, if the member's earnings 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 scheme 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 HSC employment and ceases to be employed at all during the initial period, or
 - (b) is in further employment that is not HSC 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 Department 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—
 - (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 182(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 182(3)(a).
- (9) If on an application under paragraph (7) the Department is satisfied that the member meets the condition in regulation 182(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 182, 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 Department if the member is in HSC employment at the end of the initial period,
 - (b) notify the Department if the member's aggregate earnings for the purpose of national insurance from employments held in a tax year are such that the lower earnings limit is exceeded,
 - (c) provide the Department or any other person specified by the Department with such further information as the Department specifies concerning any further employment.
- (11) This regulation is subject to regulation 240 (re-employed tier 1 ill-health pensioners).

Re-employed tier 1 ill-health pensioners

240.—(1) This regulation applies to re-employed members who are entitled to a tier 1 ill-health pension under regulation 182 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,

under regulation 182 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.

CHAPTER 8

ABATEMENT

Application of Chapter 8

241.—(1) This Chapter applies to practitioners.

(2) This Chapter applies if—

- (a) a person who is a pensioner member of the Scheme is employed in HSC employment, or
- (b) the person's pension is a pension under—
 - (i) regulation 182 (early retirement on ill-health: active members),
 - (ii) regulation 184 (early retirement on ill-health: deferred members), and
- (c) the person has not reached the age of 65.

(3) In this Chapter “HSC employment” includes—

- (a) employment to which regulations made under sections 10 (1) and (2) and 12 (1) and (2) of, and Schedule 3 to, the Superannuation Act 1972 apply,
- (b) employment with an employer in respect of whom a direction has been made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967⁽³⁵⁾,
- (c) employment to which regulations made under section 10 of the Superannuation Act 1972⁽³⁶⁾ and having effect in Scotland apply,
- (d) employment to which a scheme made under section 2 of the Superannuation Act 1984 (an Act of Tynwald) applies,
- (e) employment with an employer with whom an agreement has been made under section 235 of the National Health Service Act 2006.

(4) In this Chapter, subject to paragraph (5)—

- (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”,

⁽³⁵⁾ 1967 c. 28

⁽³⁶⁾ 1972 c. 11

- (c) the employment in respect of which the pension is payable is referred to as “the old employment”, and
 - (d) the employment in which the employed pensioner is employed is referred to as the “new employment”.
- (5) This Chapter applies whether or not the person is an active member of the Scheme in the new employment.
- (6) For the purposes of this Chapter, so much of any pension as is additional pension is ignored.

Information

- 242.**—(1) A person who becomes an employed pensioner must inform—
- (a) the person’s employer in the new employment, and
 - (b) any other person that the Department may specify,
- that the old service pension is payable.
- (2) A person who ceases to be an employed pensioner in one new employment and becomes an employed pensioner in another new employment must inform—
- (a) the person’s employer in the other new employment, and
 - (b) any other person that the Department may specify,
- that the old service pension is payable.

Reduction of pension

- 243.**—(1) If the condition in paragraph (2) is met, the amount of the old service pension for any scheme year is reduced.
- (2) The condition is that the employed pensioner’s relevant income for the scheme year exceeds the employed pensioner’s previous earnings.
- (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 244.
- (5) For the meaning of “previous earnings” see regulation 245.
- (6) If the employed pensioner holds the new employment for only part of any scheme year, this regulation applies as if—
- (a) the reference in paragraph (2) to the employed pensioner’s relevant income were a reference to the appropriate proportion of that income, and
 - (b) the reference in that paragraph to the employed pensioner’s previous earnings were a reference to the appropriate proportion of those earnings.
- (7) In paragraph (6) “the appropriate proportion” means the same proportion as the period during which the new employment is held bears to the whole scheme year.
- (8) If the member has a guaranteed minimum under section 10 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.

Meaning of “relevant income”

- 244.**—(1) The employed pensioner’s relevant income for a scheme year is the aggregate of—
- (a) the amount of pensionable earnings 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 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 179 (early payment of pensions with actuarial reduction).

(3) If the old service pension is payable under regulation 182 or 184 (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 179 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 179(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 179.

(5) If the employed pensioner exercised the option under regulation 185 (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) References in this regulation to the amount of a pension for any scheme year are to its amount for that year after any increases payable under the Pensions (Increase) Act (Northern Ireland) 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).

Meaning of “previous earnings”: general

245.—(1) For the purposes of this Chapter an employed pensioner's previous earnings is the average of the annual amounts of the member's earnings in respect of practitioner service (or service which is treated as practitioner service) uprated to the date of entitlement to the pension in accordance with regulation 176(4)(b) and adjusted in each scheme year for inflation.

(2) The reference in paragraph (1) to adjusting that amount in each scheme 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 (Northern Ireland) 1971 at 6th April in that scheme 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.

(3) 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 section 8(2) of the Pensions (Increase) Act (Northern Ireland) 1971.

Employed pensioners with more than one pension

246.—(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 241(2)(c) in any scheme year.

(2) In regulation 243—

(a) for paragraphs (1) and (2) substitute—

“(1) If the condition in paragraph (2) is met, the amount of the old service pensions for any scheme year is reduced.

(2) The condition is that the employed pensioner’s relevant income for the scheme year exceeds the employed pensioner’s previous earnings 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 scheme year before the reduction bears to the sum of the pensions for that year before the reduction”.

(2A) In regulation 244(1)(b) for “the old service pension” substitute “all the old service pensions”.

(3) Regulation 247 applies as if references to the old service pension were references to all those pensions.

Provisional reductions and later adjustments

247.—(1) If it appears to the Department that the condition in regulation 243(2) will be met in any scheme year in respect of the old service pension for that year, the Department may reduce the amount of that pension paid at any time in the scheme year.

(2) Where the old service pension for a scheme year is being reduced under this Chapter, the Department must review the amount of the reduction—

(a) at the end of the scheme year, and

(b) at any time during the scheme year if it appears to the Department 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 scheme year it so appears, the Department 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 Department to be required.

(4) If at the end of the scheme 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 Department must repay the amount due to the employed pensioner.

(5) If at the end of the scheme 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 243 was not made, the employed pensioner must repay the excess to the Department.

(6) Paragraph (5) does not affect the Department’s right to recover a payment or overpayment in any case where the Department considers it appropriate to do so.

CHAPTER 9

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

Scheme administrator

Appointment of Scheme administrator

248. For the purposes of this Part and of Part 4 of the Finance Act 2004, the Scheme administrator is the Department.

Claims

Claims for benefits

249. A person claiming to be entitled to benefits under this Part must make a claim in writing to the Department and provide such evidence of entitlement as the Department may require.

Power to extend time limits

Power to extend time limits

250. The Department 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

Beneficiaries who are incapable of looking after their affairs

251.—(1) In the case of a beneficiary who, in the opinion of the Department, is by reason of illness, mental disorder, minority or otherwise unable to look after the beneficiary's affairs, the Department 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 Department from any obligation under the Scheme in respect of the amount.

Commutation of small pensions

Commutation of small pensions

252.—(1) The Department may pay any person entitled to a pension under the Scheme a lump sum representing the capital value of the pension and of any benefits that might have become payable under 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 they apply)—

- (a) the contracting-out requirements,
- (b) the preservation requirements,
- (c) regulation 2 of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations (Northern Ireland) 1997⁽³⁷⁾,
- (d) regulation 3(2)(b) of the Pension Sharing (Pension Credit Benefit) Regulations (Northern Ireland) 2000,
- (e) the lump sum rule (see, in particular, paragraph 7 of Schedule 29 to the Finance Act 2004: trivial commutation lump sums for the purposes of Part 4 of that Act), and
- (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).

(37) [S.R. 1997 No. 153](#)

(3) The lump sum must be calculated by the Department in accordance with advice from the Scheme actuary.

(4) The payment of a lump sum under this regulation discharges all liabilities of the Department in respect of the pension in question and of any other such benefits as mentioned in paragraph (1).

Reduction in and forfeiture of benefits

Reduction in benefits in cases where loss caused by member's crime, negligence or fraud

253.—(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 Department—

- (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 safeguarded rights which are derived from rights to such a pension, or
 - (b) arise out of a transfer payment.

(3) If the Department proposes to exercise the power under paragraph (1), the Department 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.

(5) If the loss is suffered by an employing authority, the amount of any reduction under paragraph (1) must be paid to that authority.

Forfeiture of rights to benefits

254.—(1) The Department may direct, subject to paragraph (7), 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 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 Department may direct, subject to paragraph (7), that all or part of any rights to benefits or other amounts payable in respect of a member 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, nominated partner or surviving civil partner,
- (b) a dependant of the member,
- (c) a person not falling within sub-paragraph (a) or (b) who is specified in a notice given under regulation 214(3), or
- (d) a person to whom such benefits or amounts are payable under the member's will or on the member's intestacy.

(6) Subject to paragraph (7), a guaranteed minimum pension or safeguarded rights which are derived from rights to such pensions may be forfeited only if paragraph (1) applies in the case of an offence within paragraph (2)(b).

(7) This regulation is without prejudice to section 2 of the Forfeiture Act 1870⁽³⁸⁾ (under which forfeiture is required in cases of treason, subject to whole or partial restoration under section 9(2) of the Criminal Justice Act (Northern Ireland) 1953⁽³⁹⁾).

Provisions about tax

Deduction of tax

255.—(1) The Department may deduct from any payment under 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—

- (a) is a benefit crystallisation event under section 216 of the Finance Act 2004, 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 215 (tax treatment under the Finance Act 2004 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 that 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 the Finance Act 2004 (special lump sum death benefits charge) from the lump sum.

⁽³⁸⁾ 1870 c. 32

⁽³⁹⁾ 1953 c. 14 (N.I.)

*Interest on delayed payments***Interest on late payment of benefits and refunds of contributions**

256.—(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 or refund of contributions under the Scheme (other than any amount due under regulation 164 or 165 or interim award).

(3) The Department must pay interest on the unpaid amount to the person to whom it should have been paid unless the Department 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, means—

- (a) in the case of an amount in respect of a pension or lump sum payable to a member under Chapter 4 (members' retirement benefits), 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, the day after the date of death,
- (c) in the case of an amount in respect of a lump sum under Chapter 5 (death benefits) that is payable to the member's personal representatives, the earlier of—
 - (i) the date on which probate or letters of administration were produced to the Department, and
 - (ii) the date on which the Department was satisfied that the lump sum may be paid as provided in regulation 214(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 Department 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 175(3) or (4).

(6) If, on the date which, in accordance with paragraph (5), would have been the due date for an unpaid amount in respect of a pension, lump sum or refund of contributions, the Department was not in possession of all the information necessary for the calculation of the amount payable in respect of the pension, lump sum or refund, the due date for the unpaid amount is the first day on which the Department was in possession of that information.

(7) In this regulation, “interim award” means—

- (a) any amount paid by way of an interim payment calculated by reference to an expected benefit under the Scheme pending final calculation of the full value of that benefit, and
- (b) any amount paid that increases the amount of an earlier payment due to a backdated or later increase in pensionable pay.

Determinations

Determination of questions

257.—(1) Except as otherwise provided by this Part, any question arising under the Scheme is to be determined by the Department.

(2) Any such disagreement as is referred to in Article 50 of the 1995 Order (resolution of disputes) must be resolved by the Department in accordance with any arrangements applicable under that Article.

General prohibition on unauthorised payments

General prohibition on unauthorised payments

258. 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 Finance Act 2004 (see section 160(5) of that Act).

Prohibition on assignment or charging of benefits

Prohibition on assignment or charging of benefits

259.—(1) Any assignment of, or charge on, or any agreement to assign or charge, any right to a benefit under the Scheme is void.

(2) On the bankruptcy of any person entitled to a benefit under 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 Article 280 or 283 of the Insolvency (Northern Ireland) Order 1989⁽⁴⁰⁾ (income payments orders).

Record keeping and contribution estimates

Employing authority and certain member record keeping and contribution estimates

260.—(1) As regards a member who is a principal medical practitioner, in respect of each financial year—

(a) the member shall provide the host Board with a certificate of their pensionable earnings based on—

(i) the accounts drawn up in accordance with generally accepted accounting practice by the practice of which the member is a member; and

(ii) the return that member has made to Her Majesty's Revenue & Customs in respect of their earnings for that year,

no later than 1 month from the date on which that return was required to be submitted to Her Majesty's Revenue & Customs;

(b) a host Board shall forward to the Department a copy of the records maintained under regulation 164(17)(b) within 1 month of the end of the financial year immediately following the financial year to which the return in paragraph (1)(a)(ii) relates.

(2) As regards all other members under this Part, employing authorities shall keep records of all—

⁽⁴⁰⁾ S.I. 1989/2405 (N.I. 19)

- (a) contributions deducted in accordance with this Part; and
- (b) contributions to the Scheme made under regulation 162 (contributions by employing authorities: general),

in a manner approved by the Department, and, except where the Department waives such requirement, provide a statement in respect of such matters in respect of all members to the Department within 2 months of the end of each financial year.

(3) In respect of each financial year, employing authorities, including host Boards, shall also provide the Department with the best estimate in writing that can reasonably be made of the total contributions due to the Scheme under regulation 160 (contributions by members) and regulation 162 (contributions by employing authorities: general) within 2 months of the end of each such year.